NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION

A
Consultation Paper*
on

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FINANCIAL AUTONOMY OF THE INDIAN JUDICIARY

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Advisory Panel
on
Strengthening of the institutions of Parliamentary Democracy; (Working of the Legislature, Executive and Judiciary; their accountability; problems of Administrative, Social and Economic Cost of Political Instability; Exploring the possibilities of stability within the discipline of Parliamentary Democracy)

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CHAPTER I
INDEPENDENCE OF JUDICIARY IN INDIA
BASIC STRUCTURE – SCOPE AND WIDTH

1.1 Today, the Judiciary in India is blamed for the huge backlog of cases. It is time that the public is made aware that during the last 50 years after independence, little attention has been paid by the Government for improvement of the infrastructure of the Judiciary. There is a dearth of Courts and Judges and of buildings both for Courts and Judges and officers and staff. In several cases even minimum facilities have not been given. The reason is that there is no planning and proper budgeting of the Courts' requirements in consultation with the Judiciary as is done in other countries. Nor is there a long range Plan or at least a Five Year Plan. The result is that most courts are over burdened with cases on the civil and criminal side. Delay results in a serious infraction of right to speedy trials, to violation of human rights in various cases. A stage has reached when the parties are thinking of taking the law into their hands.

1.2 In the above scenario, it has become necessary to go into the subject of 'financial independence' or 'financial support' of the Judiciary in India at some length on a comparative basis and also to consider the need for adequate provision for the Judiciary as a 'Plan' subject.

1.3 The Commission shall first refer to certain fundamental concepts. In a number of judgments of the Supreme Court, it has been laid down that the independence of the Judiciary is part of the basic structure of our Constitution. In S.P. Gupta vs. Union of India & Another [1981 Suppl. SCC 87 at p 223], Bhagwati, J. (as he then was) observed that "The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity." In the same case, Fazal Ali, J. stated (p.408) that "it has, however, not been doubted by counsel for any of the parties that independence of judiciary is doubtless a basic structure of the Constitution". Again in Shri Kumar Padma Prasad vs. Union of India & Others [1992(2) SCC 428 at 446 and 456], Kuldip Singh, J observed that the "Independence of the Judiciary is the basic feature of the Constitution".

1.4 The independence of the Judiciary is not confined to the Judges in the Subordinate Judiciary but extends to the staff as well.

1.5 In Union of India & Others vs. Pratibha Bonnerjea & Another [1995 (6) SCC 765] the Supreme Court stated "from the scheme of the Constitution it is obvious that the Constitution-makers were evidently keen to ensure that the judiciary was independent of the Executive. The Constitution has tried to insulate the Judiciary from outside influence both from the Executive and the Legislature. Articles 223 to 237 in Chapter VI in Part VI of the Constitution dealing with the courts below the State High Court also show that the Constitution-makers were equally keen to insulate even the subordinate judiciary. Not only the

Judges but even the staff members are insulated from executive influence as is evident from Article 229". It was also so observed in High Court of Judicature at Bombay vs. Shirishkumar Rangrao Patil & Another [1997 (6) SCC 339].

1.6 Independence of the Judiciary deals with the independence of the individual Judges in relation to their appointment, tenure, payment of salaries and also non-removal except by process of impeachment. The independence has also other facets including the 'institutional independence of the Judiciary'. One of the accepted facets of 'institutional independence' is the one concerning the financial resources and financial freedom or autonomy that is to be given to the Judiciary. Today, this concept has been developed and accepted in most of the democracies governed by the rule of law. The doctrine of separation of powers has been suitably modified and adjusted to achieve the above goal of financial freedom of the Judiciary. The principle of judicial independence is almost universally accepted. Initially it is necessary to refer to resolutions of international bodies under the aegis of the UN and to resolutions passed under the auspices of the International Commission of Jurists.

CHAPTER II

RESOLUTIONS OF U.N. SUB-COMMITTEES AND INTERNATIONAL JURIST ORGANISATIONS: A CHRONOLOGICAL REVIEW OF RECENT EVENTS

2.1 The International Commission of Jurists enjoys consultative status with the United Nations Economic and Social Council (UNESCO) and the Council of Europe. (A historical review is also available in Dr. Shimon Shetreet's "Independence of the Judiciary, The Contemporary Debate", 1988, pp.396 etc.)

2.2 The first International Congress sponsored by the International Commission of Jurists (ICJ) was held in Africa in 1955 and it projected the dynamic concept of the 'Rule of Law'. Then came the International Congress of Jurists held in Delhi in January 1959, in which 185 Jurists from 53 countries participated. This Congress was the culmination of two years of preparation by the ICJ Secretariat, ICJ Nation Sections and Working Groups in many countries. The resolution of this Congress is known as the 'Declaration of Delhi'. The Congress constituted four committees on (i) the Legislature and the Rule of Law; (ii) the Executive and the Rule of Law; (iii) the Judiciary and the Legal Profession under the Rule of Law; (iv) Criminal process and the Rule of Law. The fourth of the Committees stressed in Clause X on the "access to law for both rich and poor". Thereafter, the African Conference on the Rule of Law took place at Lagos in 1961 where 194 Jurists from 23 African and Non-African nations met. This Conference while affirming the Delhi resolution on Rule of Law declared that these principles were of universal application. Clause 7 of the resolution of Committee III reaffirmed Clause X of the former Committee of New Delhi relating to the need for "equal access to law for both rich and poor alike" and provision for legal aid in civil and criminal matters.

2.3 The next Conference of the International Congress of Jurists on the Rule of Law was held in Rio de Janeiro in December, 1962. Then came the Conference of Bangkok, held in February 1965.

2.4 Thereafter, the U.N. Sub Commission, upon a petition by the Centre for Independence of Judges and Lawyers, Geneva, appointed Dr. L.M. Singhvi of India as Special Rapporteur to study the matters relating to the Independence and impartiality of the Judiciary, Jurors, Assessors and of the independence of lawyers and to formulate his recommendations, by its decision 1980/24. In the same year, the 6th U.N. Congress on the Prevention of Crime and Treatment of offenders, in its resolution No. 16, called for priority to be given to "the elaboration of the guidelines relating to the independence, selection, payment training and relation of Judges and prosecutors".

2.5 In his preliminary report, 1980 (see CIJL Bulletin, Geneva November, 1980) Dr. L.M.Singhvi, referred to the entire history of the movement for the Indepedence of the judiciary and said it was necessary to formulate a viable equation between 'independence' and 'accountability'. He said that "the plateau of perils to the impartiality and independence of Judges, Jurists and Assessors and the independence of the legal profession should be mopped up carefully and elaborately to enable us to negotiate the terrain and overcome the hazards by way of constitutional, legal, institutional, cultural, procedural and other appropriate safeguards." Dr. Singhvi submitted his progress reports in 1980, 81 and 82.

2.6 The famous Syracuse Draft Principles on independence of the Judiciary were formulated by a Committee of Jurists and the International Commission of Jurists at Syracuse, Sicily on 25th-29th May, 1981. The participants comprised distinguished Judges and Jurists from Africa, Asia,. America, Eastern and Western Europe. Articles l, 24, 25 and 26 of the said principles are of fundamental significance for all countries. They specially dealt with the need for collaboration with the Judiciary in the preparation of budget for the Judiciary so that reasonable provision is made for infrastructural developments for clearance of backlog of cases and for avoiding undue delay. The above Articles are worth quoting:

"Preamble

Article 1: The Universal Declaration of Human Rights (Article 10) and the International Covenant on Civil and Political Right [Article 14(1)] proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable for the implementation of this right".

Financial Provisions:

Article 24: To ensure its independence the judiciary should be provided with the means and resources necessary for the proper fulfillment of its judicial functions.

Article 25: The budget of the judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.

[Note: An inadequate provision in the budget may entail an excessive workload by reason of an insufficient number of budgeted posts, or of inadequate assistance, aids and equipment, and consequently by the cause of unreasonable delays in adjudicating cases, thus bringing the judiciary into discredit.]

Article 26: Judges should receive, at regular intervals, remuneration for their services at a rate which is commensurate with their status, and not diminished during their continuance in office. After retirement they should receive a pension enabling them to live independently and in accordance with their status.

[Note: It is essential for the independence of the judiciary, that salary levels should be such that judges are not exposed to the temptation to seek other sources of income.

An exception to the principle of non-reduction of salaries may be made at a time of economic difficulty if there is a general reduction of the public service salaries, and members of the judiciary are treated equally."

2.7 On 17th – 18th July, 1982, the LAWASIA Human Rights Standing Committee met in Tokyo, Japan (see CIJL Bulletin No.11, April 1983 p.49) and discussed about the Independence of the Judiciary in Asian Countries. Among various points in the resolution, it was stated in para 13 that the 'Committee is aware of instances, in the LAWASIA region where facilities which are now provided to Judges and to the Court system are below the minimum acceptable level at which Judges and Courts can carry out that

functions properly'. While recognising the economic circumstances in which some countries could be placed, it was resolved:

> "a proper system of court and proper performance of the Judicial function are each essential to the maintenance of proper values the rule of law, and the attainment of human rights within a society. The Committee therefore recommends that the priority of such facility be seen as having a priority of the highest order in the ordering of each society".

2.8 The International Bar Association adopted, at its 19th Biennial Conference held in New Delhi, October 1982, the recommendations made by Dr. Shimon Shetreet, Professor of Hebrew University, Jerusalem, Israel, who has done pioneering work in this field and written two great books 'Judges on Trial' and 'Judicial Independence: The Contemporary Debate'. His recommendations concerned the Minimum Standards of Judicial Independence and these are known as the 'Delhi Approved Standards' (Published later in CIJL Bulletin pNo.11, p.53 and CIJL Bulletin, 23, Jan. 1989, p.18). Para 2 thereof refers to the need for autonomy of the Judiciary and states that Judicial administration must be vested jointly in the Judiciary and the Executive and adequate financial resources must be made available. It was said:

> "2. The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.
>
> 9: The Central responsibility for Judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
>
> 10. It is the duty of the State to provide adequate financial resources to allow for the due administration of justice.
>
> 13. Court services should be adequately financed by the relevant government.
>
> 14.Judicial salaries and pensions shall be adequate and shall be regularly adjusted to account for price-increases independent of Executive Control.
>
> 15.(a) The position of the Judges, their independence, their security, and their adequate remuneration shall be secured by law.
> (b) Judicial salaries cannot be decreased during the Judges' serves' services except as a coherent point of an overall public economic measure.".

2.9 The Universal Declaration on the Independence of Judges as adopted in the World Conference of the Justices, Montreal on 5-10 June, 1983 (CIJL Bulletin Vol.12, October 1983 p.27) dealt with independence of International and National Judges. Para 2.09 states "Judges may take collective action to protect their judicial independence". It is said in para 2.40, dealing with 'Court Administration' that Court budgets must be prepared in consultation with the Judiciary and that the Judiciary shall submit its estimates to the concerned authority. It is said:

> "2.40: The main responsibilty for Court administration shall vest in the Judiciary.
>
> 2.41: It shall be a priority of the highest order for the State to provide adequate resource to allow for the due administration of Justice, including physical facilities appropriate for the maintenance of Judicial independence, dignity and efficiency, judicial and administrative personnel; and operating budgets.
>
> 2.42: The budget of the courts shall be prepared by the Competent Authority in Collaboration with the Judiciary. The Judiciary shall submit their estimate of the budget requirements to the appropriate authority.".

2.10 The 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in August-September 1985 adopted, among others, in para 7 (CIJL Bulletin, No.16, October 1985 p.53 and CIJL Bulletin No.23, April 1989, p.109) as follows:

> "7. It is the duty of each Member State to provide adequate resources to enable the Judiciary to properly perform its function".

2.11 The Lusaka Seminar on the independence of Judges and Lawyers held in November 1986 (CIJL Bulletin, Vols. 19-20, October, 1987 p.97) said in para 23, 24, 49 stated that the Judiciary must have a greater say in allocation of funds for the Judiciary. It was stated:

> "Resources.
>
> 23. The executive shall ensure that the Courts are adequately supplied with Judicial officers and supporting staff.
>
> 24.: The Courts should, as far as possible, make use of the modern aids to simplify and accelerate court proceedings, and government should be ought to provide, as far as possible, adequate funds for the Judiciary for this purpose."
>
> Administration of the Courts.
>
> 49.: The Judiciary, being a separate branch of government, should fall under the sole responsibility of the Chief Justice. Problems may arise when the Judicial branch is considered as a department of a Ministry. Conditions should therefore be created whereby the Judiciary has a greater say in the allocation of funds for the judiciary."

2.12 The International Commission of Jurists held a Conference on the Independence of Judges and Lawyers at Caracus, Venezuela, January 1989 (CIJL Bulletin, No.23, April 1989 and CIJL Bulletin 25-26, Oct.1990 p.22). It recommended certain basic principles and also the following procedure for adoption by the UNESCO (p.121):

> "Procedure 5: In implementing principles 7 and 11 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the Judicial system, including appointing a sufficient number of Judges in relation to case-loads, providing the Courts with necessary supporting staff and equipment, and offering Judges appropriate personal security, remuneration and emoluments".

2.13 Dr. L.M. Singhivi, pursuant to the UNESCO's proceedings referred to earlier, submitted his final report at the 38th session of the UN Sub-Commission and referred to his draft declaration on the Independence and Impartiality of the Judiciary etc. On circulation thereof, comments were submitted to the report and at its 45th session, the U.N. Sub Commission (Resolution 1989/32) requested governments to take into account the principles set forth by Dr. Singhivi in his draft declaration. (CIJL Bulletin, 25-26, Oct.1990, pp. 38-39) as approved in 1985. Paras 33 and 34 of the declaration deal with finances and budgets for the Judiciary and reads as follows:

> "Para 33: It shall be a priority of the highest order for the State to provide adequate resources to allow for the due administration of Justice, including physical facilities appropriate for the maintenance of Judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets.
>
> Para 34: The budget of the Courts shall be prepared by the competent authority in collaboration with the Judiciary having regard to the needs and requirements of Judicial administration.".

2.14 There has been a Conference at Beijing on 19.8,1995 (6th Conference of Chief Justices of Asia and Pacific). This Conference issued the 'Beijing Statement of the Principles of the Independence of the Judiciary in the LAWASIA region'. In its preamble, it refers to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It refers to the 6th U.N. Congress on the Prevention of Crime and treatment of Offenders, the 7th Congress at Milan in Aug-Sept. 1985 where the Basic Principles on the Independence of the Judiciary' were adopted, to the Tokyo Law Asia Conference in July 1982 when the 'Principles of the Independent Judiciary in the LAWASIA region ("The Tokyo Principles" were forwarded, to the 5th Conference of Chief Justices of Asia and Pacific at Colombo, Sri Lanka in Sept. 1993 wherein it was decided to modify the Tokyo Principles, and the modified declaration is now adopted in the Beijing Conference. It says (Article 2) that an independent Judiciary is indispensable for the implementation of the human rights referred to in the UN Declaration of Human Rights (Article 10 and the International Covenant on Civil and Political Rights (Article 14(11). Article 4 says:

> "The maintenance of the independence of the Judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the Rule of Law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.".

2.14.1 Adverting to Judicial administration and budgets, it says:

> "Judicial Administration:
>
> Article 35:…….
>
> Article 36: The principal responsibility for Courts administration including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the Judiciary, or in a body in which the Judiciary is represented and has an effective role.
>
> Article 37: The budget of the Courts should be prepared by the Courts or a competent authority in collaboration with the Judiciary having regard to the needs of judicial independence and administration. The amount allotted should be sufficient to enable each court to function without an excessive workload".

2.14.2 In two other Articles dealing with relationship with Executive, it is stated:

> "Article 41: It is essential that Judges be provided with the resources necessary to enable them to perform their functions.
>
> Article 42: When economic restraints make it difficult to allocate to the court system, facilities and resources which judges consider adequate to enable them to perform their function, the essential maintenance of the Rule of Law and the protection of human rights nevertheless require that the needs of the Judiciary and the Court system be accorded a high level of priority in the allocation of resources."

2.15 India is a signatory to the U.N. Charter and the Covenant and Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and also a party to several of their resolutions and to the resolutions of the LAWASIA for Asia and Pacific regions. There is, therefore, a bounden duty on the part of the Government to conform, to these resolutions.

CHAPTER III

UNITED STATES OF AMERICA

Part A

Historical Background

3.1 It is necessary to refer to the historical background and to the efforts of Chief Justice Taft in 1921-22 in laying firm foundation for the judicial independence in policy making and for the financial support and autonomy of the Federal Court.

3.2 When the need for a statutory back up on these aspects was initiated, there were several opponents from among the politicians. Thomas J. Walsh of Montana described the proposed Judicial Conference as a 'Junket' and as ending in 'dinners' and nothing else. He said:

> "…it means absolutely nothing on earth except a junket and a dinner…There is not any business, so far as I can see which can be transacted…. It involves an expanse which…has no justification whatsoever." (see Origin of the Judicial Conference by David S. Myers) (1971) – 57 Am. Bar Association Journal PP 597-600).".

Socialist Meyor London of New York argued that 'an annual conference of Judges would be an additional burden on the time of the Chief Justice and the senior circuit Judges'. In view of the sizeable backlog of cases already in the Federal Courts, he did not favour imposing an additional burden on their times. Clarance Fo Lea of California felt that the Conference "could become a propaganda organization for legislation for its own benefit," exposing the members of the Conference to public criticism and discredit. Fritz G. Lanham of Texas felt that the statistical data proposed to be gathered by the Conference could as well be gathered from the reports of the Federal Judges to the Chief Justice. John K. Shields of Tennessee likened the Chief Justice to a Commander-in-Chief and the senior Circuit Judges to General staff and district Judges to the men in ranks and he felt that the judicial Conference would encroach into the legislative and executive domains. The Conference would remain a 'social function'. Others attacked the provision which stated that the Attorney General was to report to the Judicial Conference on matters relating to business of the Courts. In spite of all this, the Bill was passed finally on September 14, 1922 (ibid, Myers p.597-600).

3.3 As pointed out by Frankfurter and Landis, the rise of US as a predominantly industrial nation required local needs to be taken up on the basis of national considerations. (Ibid, Myers, p.597). Types and volume of litigation, character of issues, duration of trials and speed of disposition had to be known in order to determine competence or laxity in the judicial administration. Records showed in 1921 that prior to the World War I, the dockets in US were over crowded. New legislations were adding new rights and new crimes into the law and were leading to tremendous increase in the cases going to the Courts. It was in those circumstances that the American Congress passed the law in 1922 which is now in Title 28.

3.4 Taft who became Chief Justice and was also the President of USA could make proper assessment and he said that Judges are better suited to make policy decisions. He said:

> "Judicial force ought to be under the executive direction of somebody, so that the number of Judges needed to meet the arrears of business at a particular place should be under the control of one who knows what the need is. …." (2. Pringle, The Life and Times of William Howard Taft, 993 (1939) quoted by Myers ibid, p. 598).

3.5 An annual survey of the Courts' work, gathering statistics of records of work done and proper coordination among courts. was necessary. In 1921, the Attorney General, H. Daugherty appointed a Special Committee of three Federal Judges and two US attorneys to recommend legislation for judicial reforms. The Committee adopted Chief Justice Taft's suggestion that:

> "each district Judge be required to file an annual report with the senior Circuit Court Judge of his Circuit, relating the conditions of his docket and presenting various statistics as to the functioning of his Court".

3.6 Legislation based on the Committee's recommendation was "promptly introduced" in Congress and passed. Chief Justice Taft testified before the Judicial Committee of the Senate as follows:

> "…One feature which I was glad to see…is the idea of giving some executive head to the management of the judiciary of this country for the purpose of massing against the places where arrears… (exist), enough judges to reduce arrears and produce normal condition. That provision is the assembling of Council of some of the nine senior Circuit Judges…"

3.7 After the 1922 legislation, for the first time, the entire structure of the federal judicial department was opened to discussion as new theories of judicial organization and administration came to be debated.

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Part B

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3.8 Prof. Shimon Shetreet, in the final Chapter (Chapter 52 – pages 590-658) of his book (Judicial Independence: The Contemporary Debate, 1988) while dealing with the subject of 'Judicial Independence: New Conceptual Dimensions and Contemporary Challenges' has pointed out that until 1939 the Central responsibility for court administration at the federal level in the United States of America was vested with the Attorney-General. The Judicial Conference (initially Circuits Conference) was founded in 1922. In 1939, the responsibility for court administration was statutorily transferred to the Judiciary by the 28 U.S.C.A.S.605 (P.592), to be performed as per the policies of the Judicial Conference. In that year the statute created the "Administrative office of the United States Courts" and the entire administration of the Federal Courts was transferred from the Department of Justice to the above 'Administrative Office of U.S. Courts'. The result was the creation of a largely centralised federal judicial administrative system autonomous in the conduct of its administrative and financial matters. Consequently, budget estimates were not submitted to the Executive but directly to Congress and budget estimates submitted by the Judiciary were not subject to executive sanction after this date (603). (See E.C. Friesen, Managing the Courts, 1971. Indiana policies Ind:) But the State Judiciary, which is not uniform as regards these matters, did not always have effective administrative control and certainly had not the budgetary freedom of the federal courts. The problems of shortage in court-financing led to actions in courts to mandate court-financing against the (local) government organisation which had often failed to provide the budget necessary for the State Courts. (See Smith vs. Millen 381. F.2d/ 738 (1963); Judges for the Third Circuit vs. Country of Wayne: 172-nW.2d. 436 (1969).

3.9 Chapter 29 of Dr. Shimon Shetreets' Book contains an Article by Prof. Robat B. Mckay & James M. Parkinson as to the position in USA. In regard to State Courts (i.e. other than Federal) It is said there that in the US (State Courts), Chief Justice of the Court en banc, is responsible for court administration at the court level in all American jurisdictions. The Court Administrator or clerk of Court, prepares the budget of the Court. The budget is then approved by the Chief Justice of the Court en banc before

submission to the proper authority in the executive and legislative branches. In municipal courts (City Courts) and courts of general trial jurisdiction in decentralised state systems –buildings and facilities are frequently under the management of the executive branch of government. In the state systems that are more unified and centralised, the Court administrator plays a larger role in facilities' management. Several State Supreme Court and the Supreme Courts of U.S.A. manage their own facilities and buildings.

3.10 There is, according to the above authors, no function in the US Courts comparable to what a Minister of Justice does in other countries. The Court administrator or the clerk of the Court, is usually responsible for court statistics at both State and Central levels. Court budgets are prepared by the Court administrator and approved in the ordinary procedure. These are judicial systems which exhibit relatively strong management with only a limited degree of budgetary unification as in New Jersey. Again as in Connecticut, a system may have a relatively decentralised administrative structure although its financial specifications are unified in a single subject. (360-361).

3.11 In the case of Federal Court budgets and those of States such as New York, the Court budget is brought directly to the legislature for approval. Other States, for example, like Missouri, include Court budgets as a regular part of the executive budget. In still other States, the budget is submitted simultaneously to the executive and legislative branches. The services to Federal court are financed by the federal government. The services to State Courts are financed by the respective State and local governments. The court buildings are generally the responsibility of the appropriate department of government but this is not so with the U.S. Supreme Court and several State Supreme Courts, which are solely responsible for their own administrative personnel and buildings. (p.363).

3.12 The question of Judicial salaries has been put before the Courts. On December 15, 1980, the U.S. Supreme Court effectively gave themselves and all other federal Judges a pay rise of more than 10% in a class-action case, U.S. vs. Will, (1980) 449 U.S. 200, involving the payment of cost-of-living index raise to federal Judges. (p.364).

3.13 Judges' salaries in U.S. were covered by a statutory provision for annual pay adjustment unto 1975 when the Executive Salary Cost-of-Living Adjustment Act was passed. This law provided that Judges would receive the same percentage increase accorded to General Schedule Employees. However, the provisions of this Act were rarely implemented because in subsequent years, Congress passed separate measures cutting off such raises for themselves and others. A further limitation was placed on federal Judges in 1981 when Section 140 of Public Law – 97-92 was enacted, which provided that no salary increase shall be given to Judges in the absence of separate legislative action. Finally, in 1989, Congress passed the Ethics Reform Act, which provided a catch-up pay raise approximately 33% over two years. But freeze in increase started again 1993.

3.14 In 1990, the Chief Justice of the State of New York submitted the budget for the Judiciary to the Governor seeking a 4% increase but instead, but the budget stood reduced by 4%. Consequently 1700 non judicial staff were discharged and no civil Judge trials were held for 3 months in some counties while in some others, the court rooms were closed. Judges remained in chambers. So Chief Justice Wachtuer filed a complaint verified on oath against Governor Cuomol and the legislature, - in the State Court of first instance claiming that the Judiciary has an inherent right and power to compel reasonable and necessary funding of court operations. Later the Chief Justice resigned following some other allegations of misconduct unconnected with his office. (See (1994) 6 Aust.L.J. 14(22) by Justice Miles, State of the Judicature in the Australian Capital Territory). There were precedents for both sides. For instance, the Pennsyluvanian Supreme Court in 1986 ordered Philadelphia to appropriate more than 1 million for its court of common pleas (Commonwealth vs. Tate 274 A. 2d.193). On the other hand, the New York Court of Appeals in 1975 refused to rule that there was a right to counsel at public expense in matrimonial cases. (In Re Smilcy: 36 NYS 2D.87). That Court said:

> "The absence of appropriate funds and legislation to raise taxes under our State Constitutional system – is not a judicially fillable gap."

3.14.1 For other earlier court cases in USA see Russel R. Wheeler (Judicial Administration)(1977) pp.122-123.

3.14.2 The above thought, although perhaps not the language, echoes the remarks of Justice Brennan of Australia in (1992) 67. AJAR 1 at 16.

3.15 In 1991, for want of funds eight States ceased hearing Civil cases so that they could hear criminal cases. In 5 States, public defenders of accused rejected cases because of insufficient funding of their offices.

See also Beckert vs. Warren. Pa Carrol vs. Tate : 442 Pa. (1971). These cases are based on the contention of an inherent power in the courts concerned to compel budget appropriations for the reasonable needs of the Judiciary in carrying out constitutionally mandated duties.

3.16 Recently in 1998, a group of senior Judges who said that their salaries have not kept pace with inflation has sued the Federal Government (Washington Post, 8th January, 1998). They are seeking to restore cost-of-living raises denied to federal Judges from 1993 to 1997. The class action was filed in December 1997 in U.S. District Court, Washington, where Judge John Garrat Penn would have to decide the case relating to himself and his peers. The Judges contended that the non-payment on the basis of cost-of-living adjustment violated the 1989 Ethics Reform Act and the Constitution' guarantee that Judicial salaries will not decrease while in office. The Ethics law includes a provision for executive level federal employees – including Judges – to receive cost-of-living increase beginning in 1991.

3.17 In 1995, the Judicial Conference's Judicial Branch Committee responded quickly to the Senates' budget plan to freeze pay increase for Judges until the year 2002. The Committee notified the dire effect of a 7-year freeze on federal Judges' salaries. In 1997, the Judicial Conference has resolved for a catch-up pay adjustment of 9.6% for the four last years, a delinkage of Judges' pay from the Executive Schedule and repeal of Section 140 of P.L.-97-92. In the 104th Congress, legislation was introduced to repeal Section 140 and delink the pay of Judges but the Bill could not be passed.

3.18 Chief Justice Willian H. Rehnquist recently stated in the 1996 Year-end-Report on the Federal Judiciary on their salary problems:

> "Once again this year – in my eleventh annual report on the state of the Judiciary – I am struck by the paradox of Judicial independence in the United States: We have as independent a Judiciary as I know of in any democracy, and yet the Judges are very much dependent on the Legislature and Executive branches for the enactment of laws to enable the Judges to do a better job of administering Justice".

3.19 In Article published in (1997) Electronic Journal, p.3 by Justice Breyer of the U.S. Supreme Court, tilted 'Judicial independence in the USA", he states as follows: There are three primary institutional pillars on which the U.S. Judicial administration is based. The first is the Judicial Conference of the States – which was created in 1922. It comprises the Chief Justice of the Supreme Court, 13 Chief Judges of the Circuits, 12 Dt. Court Judges and the Chief Judge of the Court of International Trade. The Judicial Conference is the national policy-making body for the Judiciary, and supervises the Adminstrative office of the U.S. Courts (which was established in 1939). The Second one is the Administrative Office of the U.S. Courts. It addresses to the needs for centralisation of Judicial administration and contains a body of professional administrators subject to the direct control of the Judicial Conference, which administers the federal court budget, personnel management, procurement and other house keeping and support functions. The third one is Circuit Judicial Councils which have the primary responsibility in the judiciary's disciplinary system.

3.20 Another independent, but centralized institution of the Judiciary is the Federal Judicial Centre, created by Congress in 1967. It is the Judicial Conference of the U.S. and headed by the Chief Justice and is composed of six Judges selected by the Judicial Conference and the Director of the Administrative Office. It has the responsibility of conducting research into Judicial administration and issues relevant to

the administrative of Justice, as well as to propose and prepare educational programme for federal Judges." The Judicial Conference of the U.S. & the Administrative Office

3.21 The Conference of Senior Circuit Judges was created by Congress in 1922 "to serve as the principal policy making body concerned with the Administration of the United States Courts. In 1948, Congress enacted Section 331 of title 28, US States Code, changing the name to the 'Judicial Conference of the United States'. It supervises the Administrative Office under Section 604 of title 28.

3.22.1 As stated earlier, the Administrative Office was created in 1939 by Congress. The Judicial Conference consists of 27 Judges, drawn from all Courts – viz. the Supreme Court, the Chief Judges of Circuit Court of Appeal, District Judges from each regional Circuit Courts, as stated above. There are none from the legislative or executive wings.

3.22.2 The Chief Justice of US is required to submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations (Section 331 of title 28).

3.22.3 The Conference meets twice in a year and goes into the disposal of cases, the requirements of the Judiciary, and the impact of new legislation on Courts. The Conference estimates the budgetary requirement and makes recommendations to the Congress. Members of the Conference in the Committees including the Chief Justice can even address Congress in regard to the said requirements. The Conference also takes into account the additional needs of the Judiciary on account of cases that may arise due to fresh legislation. The Conference also supervises and issues directions to the Administrative office of the U.S. Court.

3.22.4 Among the important Committees of the Judicial Conference are the following (see booklet of Judicial Conference Published in USA P 1-10)

(i) Committee on Budget.
(ii) Committee on Court Administration and court Management.
(iii) Committee on Information and Technology.
(iv) Committee on Security, Space and Accommodation.
(v) Committee on Long Range Planning.
(vi) Committee on Financial Disclosure.
(vii) Committee on international Judicial relations.
(viii) Committee on the Judicial Branch.
(ix) Committee on Judicial Resources.

3.22.5 The Committee on Judicial Resources concerns all issues of human resource administration, including the need for additional Article III Judges and support staff and oversees the organization of statistical systems and the development of methodologies for human resource needs, assessment and allocation. The Committee meets twice in a year, usually 2 months before the biennial meetings of the Judicial Conference.

3.23 In the booklet prepared by L. Ralph Mecham, Director of the Administrative Office regarding the Judiciary budget (p.15-16), it is stated as follows:

> "One the key functions of the Judicial Conference and of the Administrative Office relates to the Judiciary's budget. The Judicial Conference and its Executive Committee, with specific financial responsibilities, all have roles in developing budget-formulation and budget-execution policy for the Federal Judiciary. The Administrative Office, working closely with the Courts, develops the budget estimates for consideration by the Judicial Conference and its Committees. Once the Conference approves the budget request for the Judiciary, the Administrative Office prepares the necessary support materials for Congress and carries out entire liaison with the appropriations Committees' staff.

In developing the budget request, a variety of statistical and analytical techniques are used, including Caseload forecasts and sophisticated work measurement formulas, in conjunction with year-round program analysis and review of actual expenditures. The entire budget-formulation process takes 18 months from the time estimates are developed until the appropriations bill for the Judiciary is enacted.

Once an appropriation is enacted by Congress, the Executive Committee approves a spending plan for the federal Judiciary. The Administrative office implements the Plan by allocating money to program – management division, which collects the funds to the Courts. Under budget decentralization, each court – unit controls its own budget and can shift resources among activities to meet its needs. The agency provides technical assistance and guidance in the obligation and disbursement of appropriated funds in accordance with existing statutes and Judicial Conference guidelines, and maintains the Judiciary's official financial system and accounting records.

(p.18) Over the last several years, Administrative Office program manager's have addressed some of the most pressing needs the courts have, for automation leadership, space and facilities planning support, administrative improvements, and board-ranged trouble-shooting support for Judges and other Court-Officials. The agency has improved its internal management systems and reorganized the staff to operate more effectively and efficiently to meet the ever-changing demands of the federal Judiciary.".

3.23.1 Decentralisation is done as follows: (p.18-19)

"Rather than making decision in Washington about what a Court needs, those decisions are better made by the Courts themselves, with the Administrative Office providing needed guidance assistance and oversight.

In particular, budget decentralization has provided court managers with more flexibility to apply resources and meet local needs more expeditiously. The decentralisation of personnel management and classification of authorities will be another major step in granting each court flexibility over the composition of its work place."

3.23.2 Towards managing future changes, the Administrative office says (p.19).

"As the Courts have grown in size and the workload has become more complex, the responsibilities of Judicial administration have increased significantly. Also, the structure and activities of the Judicial Conference and its Committees have expanded in recent years. In support of these changes, the agency has been examining the demands likely to confront the federal courts in the future.

Many tasks confront the Administrative office: helping the Courts function with limited resources; working with Congress to obtain its resources and legislative changes the Judiciary needs;…supporting Judges and court staff in carrying out their responsibilities effectively; and reengineering operations to meet workload demands and take advantage of the most efficient use of emerging technologies.

A primary initiative for the Administrative office is to identify ways to reduce cost, improve service, and implement solutions that will enable the agency's staff to do the best job it can, with scarce resources.".

(More information can be obtained from office of Legislative and Public Affairs – Phone 202 – 272 – 1120.)

3.24 In a paper by Hon'ble Lloyd D. George (Chief U.S. Dt. Judge, Nevada), he states that in the US these 'administrative structures and procedures … contribute to the independence of the Judiciary in the following aspects:

(1) The Judicial Conference of the US controls judicial administration generally.
(2) Judges (through the Judicial Conference and its budget Committees), prepare and submit the Judicial branch budget to the Congress.
(3) The Judicial Conference, (through its various Committees), generally controls the preparation of rules of procedure for the Courts.
(4) Judges (through the Chief Justice and a Committee of the Judicial Conference exercising over sight the Administrative office) control the day-to-day operations of the Court-pay roll, personnel, equipment and supplies.
(5) Judges themselves deal with disciplinary procedures.
(6) Judges control judicial education. The education of court personnel is done by Judges
(7) Judges participate in the management of Court space and facilities (through the Judicial Conference and the Administrative Office).

He says that "Members of the Judicial Conference and Committees-members, including at times the Chief Justice, may be invited by Congress to speak at congressional hearings regarding the proposed legislation. Congress may thereby consider the impact of the legislation on the Judiciary" (i.e. increase of the workload). He says that in the US, on account of the mechanism of the U.S. Judicial Conference and the Administrative Office.

> "the administrative structure of the Judiciary developed a Constitutional frame work providing for the inter-relationship of the three branches of government. … The system has saved the Judiciary of the United States so successfully that often emerging governments may wish to incorporate within their appropriate frameworks, some of the following basic concepts:
>
> (1). Promotion of inter-relationship and communication between the Judiciary and other divisions of government.
>
> (2). The establishment of a centralized organization (like the Judicial Conference) within the Judiciary for co-ordinating and communicating with other divisions of government.
>
> (a) The creation of Committees within that centralized organization to carry out assignments regarding their problems.
>
> (b) The development of methods, of self-management and setting of professional standards by the centralized organization."

3.24.1 He concludes that Congress indeed has a vested interest in the successful operation of the Judiciary. The administrative structures and procedures established by Congress strengthen the independence of the Judiciary of the United States" . He states that the US systems are a model for 'emerging governments'.

3.24.2 The above paper by Judge Lloyd D.George clearly summarizes how the Judicial Conference and the Administration of office of US bring about a fine inter-relationship between the three wings of Government and how it helps in the maintenance of judicial independence in Judiciary as an institution.

3.25 The Federal Judicial Centre, Washington has published a pamphlet enumerating the 'Building Blocks of an Independent Judiciary' in USA. It says that

> "There can be no genuine human rights without the protection of an independent judiciary".

3.25.1 The Building Blocks are 18 in number and read as follows:

(1) Separation of powers.
(2) Equality of status of the Judicial branch with other branches of government.
(3) Separation of the Judicial branch from the department (Ministry) of Justice.
(4) Judges appointed for life.
(5) Adequate compensation for Judges.
(6) No reduction in Judges compensation.
(7) Adequate staff of Judges.
(8) Removal of Judges only by impeachment.
(9) The power of Judicial review.
(10) Discipline of Judges occurs only within the Judicial branch.
(11) Judicial Code of Conduct – prohibition against political and after kind of activity.
(12) A Conference of Judges (the "Judicial Conference of the US") which controls judicial administration.
(13) Judges prepare and submit the budget for the Judicial branch.
(14) Judges control rules of procedure for Courts.
(15) Judges control day=to-day operation of the courts.
(16) Judges have control over judicial education.
(17) Judges have control over court space and facilities.
(18) Lawyers serve as officers of court.

3.26 In a paper on the "Independence of the Judiciary in the 1980s." Sir Nicolas Browne – Wilkinson, then Vice Chancellor (see 1988 Public Law p.44) (at 51-52) says this about the American system:

> "In the USA, the problem of the financial independence of the federal Judiciary has been approached in a typically whole-hearted manner, reflecting the strict adherence to the doctrine of the separation of powers. Since 1939, there has been a Judicial Conference comprising the Chief Justice of the Courts and often elected Judges. The Judicial Conference is the federal Judiciary's policy-making body. Answerable to it (that is to say, answerable to the Judiciary) is a separate civil service, the administrative office, which runs the courts in their entirety, together with certain related services which we would not include in the Court service. The Judicial Conference prepares a budget which has to be transmitted to Congress without alteration by the executive: the executive may comment on the budget but not amend it. Congress then fixes the total budget, and the Judicial Conference is accountable directly to Congress for its expenditure. Thus the Judicial conference both prepares the total budget and is wholly responsible for its allocation and the administration through its own administrative branch, which is answerable to it. The executive has no power on either aspect of the matter".

3.26.1 Fixation of 'total budget' in the USA leaves to the Court, the entire flexibility of using the monies under any head of expenditure. His Lordship laments about the position in UK. He says:

> "This position is exactly the converse of that, in the United Kingdom where both the total budget and its allocation are under the exclusive control of the executive, who administer the system through ordinary civil servants who are not answerable to the the Judges. Judges have no power or function in relation either for the total budget or its allocation (For information on US position see J.M. Slack, "Funding the Federal Judiciary (1979) 82 West Viginia L.R. p.1.)".

3.26.2 He praises the US system as follows:

> "So far as I can discover, no other country goes to the same length as the United States in ensuring Judicial control over the financing and administration of the legal system.

3.26.3 He refers to Australia. The position appears to be better than in UK. The Court prepares the budget under the High Court of Australia Act, 1979, but those are submitted to the Ministry of Finance and then referred to Parliament. The Court is accountable to the Ministry of Finance for monies expended. Similar is the position in Canada. Position in Germany also is said to be comparatively better than in U.K.

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Part C

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The Statutory Framework in US: (The Judicial Conference, Judicial Council, Administrative Office and Budget)

3.27 The statute of 1922 created (i) the Judicial Conference of the United States and (ii) a Judicial Council for each circuit and a Judicial Conference for each circuit.

3.28 Before reference is made to the statute, it is necessary to refer to the structure of the Federal Courts in US. There are District Courts exercising original federal jurisdiction, then the circuits Courts (now called Courts of Appeals) exercising intermediate federal jurisdiction and then the US Supreme Court. There are other federal Courts such as the Court of Claims, the Court of Military Appeals, the Text Court of the US, the Customs Court and the Court of Customs and Patent Appeals. The District Judges who exercise original jurisdiction, also exercise admiralty and bankruptcy jurisdiction.

(i)(a) Judicial Conference of US:

3.29 Section 331 of Title 28 US Code Service states that the Chief Justice of US shall summon annually (a) the Chief Justice of each circuit, (b) the Chief Justice of the Court of Claims, (c) the Chief Justice of Court of Customs and Patent Appeal, (d) a District Judge from each Circuit. The District Judge nominees are to be selected at the annual conference of the Circuit under section 333 and shall serve for one year or two years or three years as stated in the Act. The Conference is to make a comprehensive survey of the condition of business in the Courts in US, prepare plans, submit suggestions to various Courts, and carry on a continuous study of the operation and effect of the rules and procedure for eliminating delay and unjustifiable expense. The Attorney General, upon request of the Chief Justice of US, is to report to such Conference on matters relating to the business of the several Courts, with particular reference to cases to which the US Government is a party. The statute further says that the Chief Justice of US shall submit to Congress an Annual Report of the proceedings of the Judicial Conference of US and its recommendations for legislation.

(b)(i) Judicial Councils in each Circuit

3.29.1 The Judicial Council of a Circuit consists of all the Circuit Judges of the Circuit Court i.e. the appellate Judges. Section 332 states as follows: The Chief Justice of each Circuit shall call, at least twice in each year, a Council of the Circuit Judges for the Circuit. At the meeting, the Chief Justice of the Circuit shall submit to the Council, the quarterly reports of the Director of Administrative Office of US Courts. The Council shall take such action thereon as may be necessary. Each Judicial Council shall make all necessary orders for the effective and expeditious administration of the business of the Court within its Circuit. The district Judges in the Circuit shall promptly carry into effect orders of the Judicial Council. A Judicial Council of each circuit may appoint a "Circuit Executive" from among persons who shall be certified by the Board of Certification. The "Circuit Executive" shall exercise such administrative powers and perform such duties as may be delegated to him by the Circuit Council.

3.29.2 The "Circuit Executive" shall serve at the pleasure of the Judicial Council of the Circuit. The Board of Certification is to select the Circuit Executives. On the basis of the standards set up by it – including (i) experience in administrative and executive positions, (ii) familiarity with court procedures and (iii) special training. The Board shall consist of five members, three of whom are elected by the Judicial Conference of US and at least one of the three so elected, shall be a person experienced in executive recruitment and selection. The other two members of the Board are the Director of the Administrative office of the US state Courts and the Director of the Federal Judicial Centre. These five members of the Board are elected for five years. Certification of an Executive of the circuit shall be for three years unless re-certified. The decision of the Board shall be a decision of at least three of its members. Expenses of the Board are borne from the funds of the Federal Judiciary. Any member of the Board who is an employee of the US shall serve without any extra compensation.

3.29.3 The duties delegated to the "Circuit Executive" of each circuit include:

(i) Exercising administrative control of all non-judicial activities of the Court of appeals of the circuit.
(ii) Administering the personal system.
(iii) Administering the budget of the Court of appeals of the circuit.
(iv) Maintain a modern accounting system.
(v) Establish and maintain properly control records and undertake a space management programme.
(vi) Conduct studies relating to the business and administration of the Courts in the circuit and prepare recommendations and reports to (a) the Chief Judge, (b) the Circuit Council and (c) the Judicial Conference.
(vii) Correct, compile and analyse statistical data for purpose of the reports.
(viii) Represent the Circuit as its liaison to the Courts of various States.
(ix) Arrange and attend meetings of Judges of the Circuit and Circuit Council.
(x) Prepare annual report to the Circuit and to the Administrative Office of US Courts for the preceding year plus its recommendations for the expeditious disposition of the business of the circuit.

All the duties are subject to the general supervision of the Chief Justice of the circuit.

(b)(ii) Judicial Conference of each Circuit:

3.29.4 There are as many 'Judicial Conferences for the Circuits' as there are Circuits.

3.29.5 This conference consists not only of the entire Judges in the Circuit Court (i.e. appellate Judges) but also the District Judges of the Circuit. Members of the Bar are also invited. (see also Oliver, Reflections on the history of Circuit Judicial Councils and Grant Judicial Conference 64 FRD. 201).

3.29.6 Section 333 refers to the 'Judicial Conference of Circuits' and requires the Chief Justice of each Circuit to annually summon the Circuit and district Judges of the Circuit, for the purpose of considering the business of the Courts and advising means of improving the administration of justice within such Circuit. The Court of appeals for each Circuit is to provide the rules for representation and active participation at such conferences by members of the bar of such Circuit.

Administrative Office of US Courts:

3.29.7 The Administrative Office of the US Courts is crucial for the implementation of the new statute. Sections 601 to 611 of Title 28 are in one chapter. Section 601 states that the Administrative Office of US Courts shall be maintained at the seat of the Government and will have a Director and a Deputy Director appointed, subject to the approval of the Supreme Court.

3.29.8 Section 602 states that the Director may appoint staff, subject to the civil service laws and section 603 states that his salary shall be the same as that of a District Judge.

3.29.9 Section 604 enumerates the duties of the Director as including -

(i) to examine the state of Court's dockets and secure information as to the Courts' need of assistance, prepare and transmit quarterly to the Chief Justices of Circuits, statistical data and reports of business of the Courts;
(ii) to determine and pay, necessary office expenses of Courts, Judges and officers;
(iii) to disburse, directly or through several US marshals, moneys appropriated for the maintenance and operation of the Courts;
(iv) to purchase, exchange, transfer, distribute and assign the custody of law books, equipment, and supplies need for the maintenance and operation of the Courts, the Federal Judicial Center, the offices of the US magistrates and Commissioners and offices of the pre-trial services agencies;
(v) to audit vouchers and accounts of the Courts, and of the Federal Judicial Centre, and of the pre-tria; services agencies and their staf;
(vi) to provide accommodation for the Courts, the Federal Judicial Centre, the pre-trial services agencies and their staff;
(vii) to perform such other duties assigned by the Supreme Court or Judicial Conference of US.

The Director's Report and recommendations will be public documents.

The Director, under the supervision of the US Judicial Conference shall compile data, which shall be laid before Congress annually by way of statistical tables and other information.

Budget Estimates

3.29.9 Section 605 is the crucial provision. It will be advantageous to extract it as it stands (the words which are not relevant here are shown in brackets).

> "Section 605: The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the Courts and the Administrative office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. (The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.)
>
> Such estimates shall be approved, before presentation to the Bureau of the Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Customs Court shall be approved by each Court.
>
> All such estimates shall be included without revision but subject to the recommendations of the Bureau of Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court"

3.29.10 It is thus clear that the budget sent up by the Director, as approved by the Judicial Conference of US, does not (unlike the procedure in the case of other departments) suffer any revision at the hands of the Bureau of Budget and is forwarded. The further procedure is stated in section 11 of Title 31. We shall now refer to that section:

Section 11 of Title 31: The title of section 11 is "President to transmit Budget to Congress; Contents thereof". Sub clause (5) of section 11(a) is very important.

> "Sec.11: (a) The President shall transmit to Congress during the first fifteen days of each regular session, the Budget, which shall set forth his Budget message, summary

data and text, and supporting detail. The Budget shall set forth in such form and detail as the President determine –

(1) ….

(2) ….

(3) ….

(4) a recommendation of the summary data on expenditures with proposed appropriations;

(5) estimates expenditures and proposed appropriations necessary in his judgment for the support of the Government for the ensuing fiscal year, except that estimated expenditures and proposed appropriations for such year for the legislative branch of the Government and the Supreme Court of the United States shall be transmitted to the President on or before October 15 of each year, and shall be included by him in the budget without revision.".

3.29.11 It will be noticed that under section 605 of Title 28 the budget estimates of the entire Federal Judiciary as prepared by the Administrative Office and as approved by the Judicial Conference of US are to be included under the head of "Estimates for the Supreme Court" (vide the last part of section 605 title 28) without revision by the Bureau of the Budget (with its recommendations i.e. for the entire amount) and the President submits the said estimate, without revision, before the Congress under section 11(5) of Title 31. The budget estimates of the Federal Judiciary are treated on par with budget estimate of the Legislative branch and the President does not revise the estimates. The Congress as pointed in Chapter III (USA) of this Paper by leading writers, does not (and it is the convention) make any cut in the estimates.

3.29.12 It is here necessary to point out that, in fact, section 16 of Title 31 deals with the 'Bureau of the Budget" which Bureau normally has power to "revise, reduce or increase the requests for appropriations from various departments" but the exception is with regard to the Budget Federal Judiciary and the Legislative Wing. Other sections of Title 31 deal with the appointment of the Comptroller and Auditor General and an elaborate procedure is laid down.

3.29.13 Section 84 of Title 31deals with 'rendition of accounts of officers of courts'. This is also important. The latter part of the section says, while referring to certain other accounts to be submitted to the General Accounting Office, that the accounts of the United States Commissioners, clerks of Courts and other officers of the Courts of the United States except the Supreme Court of the United States and Consulor Courts, shall be sent with their vouchers to the Director of the Administrative Office of the United States Courts and examined by them under their supervision. In other words, the expenditure accounts for the money spent for the Federal Courts which are included in the Supreme Court budget are not to be submitted to the General Accounting Office but are to be submitted only to the Director of the Administrative Office of the US Courts. This is also a remarkable feature.

3.29.14 Summarising the position in the US Federal Courts, we find that in US there are the District Courts at the lowest level and the Appellate Courts (are called the Circuit Courts) and above them is the Supreme Court. These courts administer the Federal laws and the Federal Constitution. All the Judges in the Courts of Appeal for each Circuit form the 'Judicial Council of the Circuit' and meet twice in an year. They have a 'Circuit Executive' who implements their decisions, on the basis of the report of the Director of the Administrative Office of US Courts. He sends his reports to the Judicial Council of the Circuit and also to the "Judicial Conference". He prepares a report to the Administrative Office of the US Courts. The "Judicial Conference" of each Circuit consists of the Judges of the appellate Circuit Court and the District Judges and considers the business of the courts and method of improving the administration. Members of the bar are also invited to its meetings. The Director of the Administrative office of courts examines the dockets of all the courts and reports to the Chief Justices of Circuits every quarter, collects statistics and determines the total expenditure and also disburses the budgetary grants, deals with buildings, infrastructure and accommodation and audits the vouchers and accounts of the courts. These vouchers need not be submitted to the General Accounts Wing as done by other departments. The Director acts under the supervision of US Judicial Council which consists of Chief Justice of US and the circuit Judges and a district Judge from each Circuit and certain Judges from the special courts. The Director prepares

the budget estimates and sends the name to the Chief Justice of US Supreme Court who heads the Judicial Conference of US. The said Conference, through the Chief Justice of US Supreme Court sends the estimates of budget to the Bureau of Budget. The Bureau of Budget sends the estimates without any revision (but which with its recommendations) to the President of US who places the budget estimates, again without revision before Congress directly. This procedure is similar to that in the case of the budget estimates of the Legislative Department. Then the appropriation bill is passed. As stated earlier, a Judge of the US Supreme Court may attend Congress at that time and by way of convention, the budget estimates are sanctioned in full without any revision. The budgetary grants are implemented by the Director of the Administrative Office at the various levels.

3.29.15 The recent 2000-2001 year report on the Federal Judiciary Budget gives us an idea of the procedure in US-

> The Administrative office of the United States Courts-
> "The Administrative Office of the United States Courts serves as the central support agency for the administration of the Federal Court system. Among the Administrative Office's most important responsibilities are preparing, under the guidance and direction of the Judicial Conference and its Committee on the Budget, the Judiciary's annual budget requests, and subsequently submitting that request to Congress. Because the Judiciary's appropriations bill is included with those of the departments of Commerce, Justice, State and certain other federal agencies, the Judiciary's budget was once again delayed this year because of policy differences between the Congress and the President. Although these issues had nothing to do with the federal Courts, the uncertain budget situation had the potential to jeopardize the effective and efficient operation of the Judicial Branch. Ultimately, however, under the leadership of the Judicial Conference's Budget Committee chaired by Judge John G. Heyburn, II, and Administrative Office Director Leonidas Ralph Mecham, the Judiciary fared well in the Fiscal Year 2001 Appropriation Bill. The 8% funding increase will enable the Judiciary, for the first time in two years, to hire new staff. This will come as especially welcome news to the Southwestern border courts, which have experienced a 125% increase in criminal case load over the past three years.
>
> Because much of the Judiciary's budget is expended for the salaries of its personnel, the Judiciary devotes considerable attention to developing scientifically derived staffing formulas based on the functions and work requirements of the different court offices. In order to ensure staffing formulas reflect current work, they are updated periodically. After an intensive study of all major staffing formulas, new formulas were developed and implemented this year. The new staffing formulas reflect deficiencies realized in all program areas since the last formulas were developed, as well as new work."
>
> An independent comprehensive study of the Judiciary's space and facilities program was completed this year. The consultant's report described numerous program achievements, including actions to achieve savings in the space and facilities program, a useful U.S. Courts Design Guide, and an effective long-range facilities planning process. Due to the efforts of the Judicial Conference's Committee on Security and Facilities, chaired by Judge Jane R. Roth, the Administrative Office and the General Services Administration, Congress approved funding for eight critically needed courthouse construction projects totaling $ 559 million over the next two years."
>
> A top priority of the Administrative Office is developing and implementing new technologies and systems that enhance.".

CHAPTER IV

UNITED KINGDOM

4.1 The best discussion of the subject generally and as far as UK is concerned is contained in the article by Justice Browne – Wilkinson, Vice Chancellor in his 'The Independence of the Judiciary in the 1980s '(See 1988 Public Law, p.44).

4.1.1 According to him, lack of "financial support" by a Government is a clear "threat to the independence of the legal system". The threats have arisen by reason of the executive' control of finance and administration. He says:

> "Control of the finance and administration of the legal system is capable of preventing the performance of those very functions which the independence of the Judiciary is intended to preserve, that is to say, the right of the individual to a speedy and fair trial of his claim by an independent Judge….the enforcement of the rule of law by the Judges could be wholly frustrated by the refusal to appoint Judges, to provide court rooms for them to sit in or staff to service those courts….there is a failure of the provision of adequate courts and court staff to meet society's current demands for Justice….It is that aspect of the independence of the Judiciary which I wish to consider…."

4.1.2 He points out that in England, the Lord Chancellor and his department prepare a budget which is negotiated with the Treasury. The Government then asks Parliament to vote the money. Once this is voted, then the Lord Chancellor with the help of his department often allocates funds amongst the different demands for legal services. The Lord Chancellor, as a member of the government and a responsible minister is accountable to Parliament for the expenditure incurred of the money voted. But if Parliament and the Minister, between them, control the provision and allocation of funds, how can the administration of Justice be independent of the legislative or executive?" He says,

> "He who pays the piper calls the tune".

4.1.3 According to him, things in Courts have changed over from 1950 or at any rate from 1970. There had been an upsurge in crime and also an increase (though in a lower degree) in civil cases. To meet this, There had to be a large increase in the number of Judges, Courts, Court staff and other legal expenditure. He, however, agrees:

> "The cost of providing the legal system (although still small as compared with that in any other developed country) has increased substantially; no longer is it possible for Judges to obtain all the facilities which in their view, are required."

4.2 The Beeching Report, 1971 led to a reorganization of Courts which shifted court administration from Judges to the executive in a substantial measure. In para 75 of the Constitution Paper No. 6 for the Civil Justice Review it was said that -

> "The Lord Chancellor is responsible as a Minister to Parliament for the Supreme Court and the Country Courts, He exercises His responsibility for those Courts through The administrative Court service created by the Courts Act, 1971"

4.3 The creation of a separate Court service in 1971 over which the Judiciary; had no control had also created problems. Judge Browne-Wilkinson says that there is a profound difference of views as to where administration ends and where Judicial function begins. That lies at the root of much of the friction. The assumption in the Beeching Report that administrative and judicial functions are distinct is according to him, not correct in the sense that the number of courts and Judges and adequacy of staff has a direct impact on the justice delivery system. After 1971, the Court administrators in UK are answerable not to the Judges but to their superiors in the civil service.

4.3.1 In the context of the Treasury's insistence on scrutinizing the spending by the concerned department. and theory of 'value for money' during the Thatcher regime, certain difficulties have arisen so far as the Lord Chancellors' office is concerned because -

> "It is not for the executive alone to determine whether a particular Judicial procedure provides 'value for money: Justice is not capable of being measures by an accountants' computer".

4.3.2 While in other departments, the concerned Ministries can weigh the balance between money expended and "value of service produced", this is not true of the Lord Chancellor's Department. Here assessment of the need for a facility is within the province of the Judge and not the executive. He says:

> "Under our Constitution, it is for the Judge to determine what is just and what is not just, subject always to legislation by Parliament.".

4.3.3 The result is that we have a system in which the Lord Chancellor's Department makes policies to subserve theories of `value for money ' – even without consulting Judges. He says that Judges must be involved in these decisions. He finally sums up the problems as follows:

> "To sum up my argument so far, it seems to me that the old machinery regulating the administration of justice no longer ensures the independence of the system from executive control. Judges are sitting in an environment wholly determined by executive decision in the Lord Chancellor's Department, which in turn is operating under the financial constraints and pressures imposed by the Treasury.".

The result is

> "The yardstick for decision-making is financial value for money, not the interest of Justice. What constitutes value for money is being determined by executive, not Judicial decision".

4.3.4 The Lord Chancellor's office is according to him, under the dictates of Finance Department of Government.

He says that a possible solution could be as follows:-

> (1) Judges have to accept that there are not and will not be sufficient funds available to meet all the demands of the legal system. The cost of providing justice is only one of the calls on public revenue. There is no justification for a claim that the legal system has a greater right to public funds than, for example, the National Health

Service or Education. Division of available funds is to a large extent a political question.

(2) But if there is to be Judicial independence, the Judges must at least be involved in the preparation of the estimate on which the total budget is voted. More important, the judges must be involved in the allocation of that budget, once voted, amongst the various functions of the legal system to ensure that, subject always to the supremacy of Parliament, the administration of Justice is under independent control.

(3) There must be a person or body which can speak for the Judges as a whole. The way the Lord Chancellor is positioned, it does not meet this problem fully. It will therefore be necessary to appoint a Lord Chief Justice as a person who can speak on behalf of the whole Judiciary or to establish some form of Collegiate body, like the American Judicial Conference, which has authority on behalf of all the Judges. Such a body would be responsible for those administrative functions which are to be controlled by the Judges.

(4) Now unfortunately, the Judges have the responsibility of providing justice without any responsibility for the economic and effective expenditure of the money required for that purpose: the executive have power to control finances, but no responsibility for the end-product, namely, the Judicial decision. This kind of separation of powers and duties – seems to be one of the basic shortcomings of the present system.

(5) Judges must be involved in the formulation of policies or objectives of the legal system. Now Parliament is evolving the policies without any consultation with Judges and such a system is unacceptable.

(6) If the American model were to be adopted and England is to have a Judicial Conference funded directly by the legislature and responsible for the whole administration of courts, these problems would at once be solved. But the British Constitution does not permit a system, which does not involve a minister.

(7) If the American model is not permissible in U.K., any other system would necessarily requires some departure from the separation of powers, it requires the acceptance of some degree of executive involvement in the administration of justice. An element of compromise has to be accepted, and an attempt is to be made to distinguish between those functions which the interests of justice require to be under Judicial control and those which are purely administrative. Experience in other countries suggests that in practice, such distinctions are extremely hard, may be impossible, to draw. There will always be demarcation disputes.

(8) There is a pressing need for a review of the entire Judicial finance system as done in USA, Australia and Canada.

(9) There must be a collegiate body – apart from the Lord Chancellor of Judges charged with the responsibility for taking policy decisions on behalf of the Judges. The said body shall be responsiblefor the management of certain functions of court administration, with the assistance of an administrative staff answerable directly to the collegiate body. The collegiate body would be funded by the Lord Chancellor's Department which would be accountable to the Lord Chancellor for these funds.

(10) If such a collegiate body were established, any decisions as to policy or objectives to be pursued in the administration of Justice could be taken by the Lord Chancellor in conjunction with the judicial college. The allocation of these funds so far

as they relate to functions of management to be carried out by the Judicial College would be made by the college.

(11) If in any case agreement between the Judicial College and the Lord Chancellor proves impossible, the ultimate decision would have to be the Lord Chancellor's.

(12) But, in the event of the Judges' views being rejected, the Lord Chancellor would be required to put before Parliament, a statement by the judicial college of their views.".

4.4 Indeed the solutions to the problem indicated by the Vice-Chancellor, Sir Nicolas Browne – Wilkinson are of great importance to countries like India and all Countries which do not have the American model.

4.5 In the recent book "The Independence of the Judiciary', the view from the Lord Chancellor's Office" by Robert Stevens (1993): it is pointed out (p.2) that the Lord Chancellor's has become a relatively large department after the passage of the Court's Act of 1971 and lies in the hands of lawyers employed therein who are exempt from basic Civil Service Regulations, but these officers have in 1990 been integrated into the Civil Service. The Lord Chancellor's Department has an annual budget of $ 1.4 Billion approved by Parliament.

4.5.1 In the Epilogue of the book, it is stated that in UK while the dignity and the financial status of Judges has slowly become eroded, their prestige flourished. While the general concept of Judicial independence (i.e. as a body) is vague, the independence of individual judges is protected. Their public political role has lessened but their reputation for professional and personal integrity has risen (p.182). The Lord Chancellor's office agrees that political control through budgetary constraints has been recognized by the Vice-Chancellor, Sir Nicholas Browne Wilkinson (1988 Public Law, 44). It agrees that in addition to the usual concerns about freedom from government pressure which is secured by payment-out of monies out of the consolidated fund, there is 'a subtler threat' through the 'executive's control of finance and administration'. It notes that, according to the Vice-Chancellor, U.K. is having court administrators reporting to the Civil Service rather than to the Judges and this has threatened the independence of the Judiciary – The 'value for money' theory was the Thatcher doctrine p.182). The Judges are obviously upset that they have not been consulted when the Lord Chancellor's Department produced its 'yardsticks' for the Treasury's analysis. 'A number of Judges think that there is some form of civil service conspiracy to erode the independence of the judiciary and their powers' (p.182-183).

4.6 The Lord Chancellor's office says that the paronia has further increased because of what was said in a Consultative paper in the Civil Justice Review, implying that Judges are indolent. This paper has been severely criticized by Lord Ackner. (Parliamentary Debates, H.L. Vol.505, Col.1415 (9th April 1989). It is in this context that there is further discussion of the threat of possibility of a Ministry of Justice being set up; and one can detect a level of friction between the Civil Service and the Judiciary which has resonances of the relations between Schuster and Hewart and Hewart and Sankey. As to whether there will be a threat of a Ministry of Justice, according to the Lord Chancellor's office, the threat is much ado about nothing. (Seek also G.Drewy, Ministers, Parliaments and the Courts) (1992) (142 New L.J. 56). Whatever the future holds – whether it is a more formalized Ministry of Justice or a less professional department – the Department remains currently effectively integrated into Civil Service (i.e. in 1990) (See also S.C. Silkin : The legal Machinery of Government, 1984 Public Law, 179-86).

4.7 According to the Lord Chancellor's Office, this suggests that the Courts will be treated as a wing of government – that Judges and lawyers are treated as providers of services as part of such a social service in a welfare State. This will surely demand a serious analysis of the independence of the judiciary. It asks, what should be the relationship of this independence to the public services which the Courts and the Judges provide? It says that in England, without any clear separation of powers, the status of the Judges has become the core of the discussion of the independence of the judiciary. Analysis of that aspect is essential if Judges are to play an appropriate role in the future of the

Constitution and of the public service. Britain in 1990's has to face concepts of separation of powers and judicial independence and as to how far Judges can be thought of as a coordinate branch of government.

4.8 The Rt Hon'ble Lord Steyn has, it will be noticed, treated the Lord Chancellor's Office as unsatisfactory in his lecture 'The Weakest and least Dangerous Department of Government' (1997 P.L. 84).

4.9 But the most recent article 'Judicial Review – the tensions between the Executive and the Judiciary', Rt. Hon'ble Lord Woolf (1998) (114 Law Quarterly Review p.579) has presented a different scenario, and says things are very much satisfactory in UK. However, a reading of his article shows that Lord Woolf has not referred to the core problems analysed by the Vice-Chancellor Lord Borwne-Wilkinson.

4.9.1 According to Lord Woolf the Lord Chancellor, - as the sole head of the Judiciary, then as a Minister and as Speaker of House of Lords always acts as a safety valve. As a member of the executive, the Lord Chancellor can "ensure that the Courts are properly resourced, and he can also explain to the Judiciary the political situation and the constraints of resources". But says Lord Woolf, the Lord Chancellor has to keep his roles punctilious so far as separation of powers is concerned. According to him the justice system is now better served than it would have been by having its interests represented by a Minister of Justice who would lack these other roles.

4.9.2 Lord Woolf points out that the "far reaching" recommendations of the Beeching Report 1969 were implemented in the Courts Act, 1971. No doubt, a centrally administered court system was created and the control of Judges over the Court administration was substantially reduced. Under section 27 of the Courts Act, 1971 the Lord Chancellor was given power to

> "appoint such officers and other staff of the Supreme Court and Country Courts as appear to him necessary for –
>
> (a) setting up a unified administrative Court services:
> (b) discharging any functions of these Courts; and
> (c) generally for carrying out the administrative work of these Courts.".

The new Court Service which the Act set up was, he agrees, intended to be virtually in the exclusive control off the Executive, that is the Lord Chancellor's Department.

4.9.3 But according to him, there appears to be a change – due to fortuitous circumstances, of things from what they were in 1980. He says that within a few years after the new 'Court Service'' being established,

> "It was accepted both by the Lord Chancellor's Department and the Judiciary that the judiciary needed once more to be involved in the management system. The result is that today, the Courts are managed by the Court Service in partnership with the Judiciary. The Court Service fully accepts that one of the principal functions is to perform its responsibilities in a way which supports the judiciary and assists them to perform their role. Without friction or confrontation with the Court Service, the Judiciary has come to be more involved and responsible for the administration of Justice than at any time since the nineteenth century"

4.9.4 According to him, the working relationship between the judiciary and the Court service is "now" usually entirely harmonious and he says that the judiciary has at the same time remained fiercely independent. Their status of Judges and their role in achieving justice has not been diminished and on the contrary, it has been enhanced. He points out that since 1971, the number of Judges has increased dramatically. The increase has been in each tier of the Judiciary. Numerous new Courts have been built. The size of the Lord Chancellor's office has mushroomed at least proportionately. New offices have been created for members of the Judiciary. Among others, a Judge is now Chairman of the Law

Commission. Another is Chairman of the Judicial Studies Board. He says there is now a "Judges' Council presided over by the Lord Chief Justice and a Council of Circuit Judges and an Association of District Judges " He says that at present the Judiciary is better organized to look after its own interests and the interests of justice than ever before. He says:

> "These changes have taken place with the complete support of and the finances provided by the Government. Successive Lord Chancellors have used their clout within government to ensure that system is properly resourced.".

Meetings take place regularly between the Lord Chancellor and the heads of Divisions. In general, the consultation between the Judiciary and the Lord Chancellor's Department and the Court Service is excellent.

4.9.5 According to Lord Woolf, this degree of co-operation between the Judiciary and the executive is made possible because of the dual roles of the Lord Chancellor as Head of Judiciary and minister in Government. If he was not the head of the judiciary, the partnership between his department and the Judiciary would be much more difficult. The Lord Chancellors have, according to him, been able to keep their balance on the tightrope According to Lord Woolf, the Judiciary in UK, has nonetheless retained its independence, in view of the Lord Chancellors' various roles and the present state of cooperation between the Judiciary and the civil service.

4.9.6 From the above views of Lord Woolf, it appears that in spite of the staff.of the Lord Chancellor's office being integrated into the Civil Service and Judges not being consulted regarding the budget – the present Lord Chancellors have by tight rope-walking and by their clout been able to achieve what Rt. Hon'ble Browne-Willkinson thought could not be achieved unless there was an independent civil Service under the Judicial Service and Judges had a say in the budget proposals. But Lord Woolf agrees that if the Lord Chancellor were not the head of the Judiciary this would not have been possible.

4.10 Salaries of Judges: One significant development in UK regarding 'salaries' of Judges has to be noticed. (*See* Independence of the Judiciary, The view from the Lord Chancellor's Office by Robert Stevens, 1993). It was not until the Judges' Remuneration Act, 1965 brought in the Labour Government was passed that the Judges salaries became comfortable. Salaries were raised by 25% and in future, salaries could be dealt with by delegated legislation. The Bill also meant that, for a short while, High Court Judges would be paid more than Permanent Secretaries in government departments, whose relative increase in salaries over the previous 100 years had reflected the increasing importance of the executive and the declining importance of the Judiciary (pp.132-133).

4.10.1 The establishment of a procedure whereby High Court Judges salaries would be increased by delegated legislation solved only half the problem. There was still friction between the Civil Service and the High Court. By 1971, the High Court Judges again lagged behind the Permanent Secretaries.

4.10.2 In May that year, the Conservative Government appointed a permanent body, the 'Top Salaries Review Body' to advice the Prime Minister on the remuneration of the high judiciary: senior civil servants, etc. As inflation gathered speed, increase was added on a yearly basis. The book refers (p.136) to the Report 6 of 1974 of the Review Body on Top Salaries (Cmnd. 5846 p.6,7) which said that, bar earnings are to be taken into consideration. They said:

> "The Advisory Group on the Judiciary saw no special merit in principle in the present equivalence between the salaries of a High Court Judge and of a Permanent Secretary in the Higher Civil Service; Theyalso felt that bar earnings (net expenses) (of the bar) provided a valuable independent means of checking whether Judicial salaries were likely to prove sufficient to maintain satisfactory levels of recruitment."

4.10.3 The Review Body said that since 1971, the salary of High Court Judges had been the same as that for Permanent Secretaries.

> "This relationship has evolved without principles and we have considered ourselves not bound by it.

They said significantly -

> "The group saw no special merit in preserving the present parity between High Court Judges and the Permanent Secretary, as the work content is very different." (P.32)

4.10.4 The said Body also dealt with Pensions. The arrival of the Top Salaries Committee led the Judges to outpace inflation pp.138). By 1992, the High Court Judges were drawing more than the Permanent Secretaries - $ 84, 300 for High Court Judges, $ 97,000 for Lords of Appeal and $ 93,000 for Lords Justice of Appeal, with $ 82,780 for Permanent Secretaries. Because of the Top Salaries Review Committee, the Judges salaries kept ahead of inflation, because it bore some proportion to salaries of business executives and members of the bar –

> "This was because of the rapid size in salaries of business executives and members of the Bar." (P.138).

In 1991, the Committee noted that the net average earnings in 3 years before appointment (of a member of the bar) appointed to the High Court was $211, 300 and for those appointed as Circuit Judges was $ 75,000.

4.10.5 In 1992, a 19% increase for ahead of inflation was recommended (p.168) in the 15th Report of the Committee. It was understandable. "The notion of comparability of salaries is an art, not a science, and it is arguable that the Review Body on Top Salaries has been forced to rely on intuition rather than principle. It has simply assumed that Judicial salaries should bear some comparison with those of leaders in industry and leaders at the bar". (p.168).

CHAPTER V

AUSTRALIA

5. The High Court of Australia Act, 1979 provides that the High Court administers its own affairs under the supervision of a Clerk who is bound to comply with any directions given to him, by the court and who holds office on terms fixed by the Court. Under the Clerk are certain other officers answerable indirectly to the Court.

5.1 The High Court prepares its own budget estimates. But these estimates are submitted to the Minister of Finance and voted by Parliament for the purposes of the Court. It appears that the High Court is accountable to the Minister of Finance when monies are expended. In South Australia, the Court – through the Registrar (appointed upon the recommendation or concurrence of the Chief Justice), is responsible for its own administration. It is said that in Victoria, there are proposals under which, although the Judges are accountable through the Ministers for the spending of the funds appropriated for the benefit of their Courts, the allocation of the sum so appropriated and the administration of the Court lies wholly within the Judges' own Control free from interference by the executive. (See 1988 P. L. 49 at 52-53L The Independence of the Judiciary in the 1980s by Sir Nicholas Borwne-Wilkinson, V. C.).

5.2 Justice Michael Kirby in his article relating to Australia (See Ch. 2 Judicial Independence: The Contemporary Debate by Shimon Shetreet p.8) states that the "administrative personnel of the Courts (in Australia) are responsible in each jurisdiction to a Chief Administrative Officer, in some Courts known as the Registrar. The Registrar is responsible to the Chief Justice for all matters pertaining to the business of the Court. The administrative personnel are government employees and the Registrar is, therefore, responsible to the executive government with respect to the terms and conditions of

employment, financial accounting and other non-judicial matters. The exception to this system is the High court of Australia where the administrative personnel are responsible, even in non-Judicial administrative matters, to the Judges in whom is vested by law, the responsibility for the administration of the Court.

5.3 The Chief Administrative Officer, often known as the Registrar, is responsible for preparing the budget of the Court, for contacts with the appropriate minister and organized bar and statistics.

5.4 Except in respect of terms and conditions of employment of administrative and financial accountability, executive control of the above matters is according to Justice Kirby, considered as being incompatible with judicial independence.

5.5 In most jurisdictions, the Court's budget is an identifiable part of the budget of the Department of Justice. In the High Court of Australia, it is a lump sum figure for the expenditure of which Judges are responsible. (This permits Interchange from one head to another). Court budgets form part of the executive budget and are approved in the same way as other budgets, according to ordinary procedure. The services to federal courts are financed by the federal government. The services to the States are financed by the respective States.

5.6 The Minister of Justice, or his equivalent is responsible for administrative personnel but in all matters pertaining to the business of the Court, these officers are responsible to the Chief Justice. Court buildings are the responsibility of the Minister. The exception is the High court of Australia, which is solely responsible for its own administrative personnel and buildings.

5.7 At the federal level and in some States, machinery has been established for the regular, automatic review of Judicial salaries. The salaries are determined by the Remuneration Tribunal pursuant to the Remuneration and Allowances Act, 1977 (Cmwth) (Part IV)_ and the Remuneration Tribunal Act, 1973 (Cmwth). The Chairman of the Tribunal is a State Judge. The Tribunal's report is placed before Parliament which if disapproved within 15 sitting days, it shall not come into operation or if it has already come into operation, it shall terminate from the date on which the resolution is passed. The Tribunal treats the Consumer Price Index as relevant in fixing the salaries.

5.8 Pressure of an indirect kind may be more important, according to Justice Kirby. The failure to appoint an adequate number of Judges to cope up with Court business or to authorize adequate expenditure or personnelfor Court functions, provides an illustration of indirect executive pressure on Judges.

5.9 Justice Mason in his 'judicial Independence and the Separation of Powers : Some Problems old and new (1990) (Vol. 13(2) U.N. SW Law Journal p.173) says while speaking of the institutional independence, that increase in litigation and legal aid costs have required greater financing by the State in recent years. He says that in earlier times the administrators were inclined to show deference to the Judges' views on matters of administration. Now they are more inclined to impose their own solutions. He says that, in Australia, no doubt, at the federal level, Courts have acquired greater autonomy in matters of administration and expenditure. The High Court of Australia Act, 1979 (cmwth) gave the High Court corporate status and made it responsible for its own administration. The Court enjoys a one line appropriate and, within certain parameters, it is theoretically at liberty to expend its own funds as it sees fit (i.e. it can shift monies from one head to another). The Federal Court and the Family Court now have the benefit of a one-line appropriation and the 'Courts and Tribunal Administration Amendment Act, 1989' (cth) has made the Chief Justice in each case responsible for managing the administrative affairs of these two Courts, though without giving them any corporate status.

5.10 So far as the High Court is concerned, although Parliament appropriates the High Court's funds by the annual Appropriation Acts, for all practical purposes the High Court's budget is determined by the Department of Finance after negotiation with officers of the Court and officers of the Attorney General's department. The process of negotiation may involve the Attorney-General and the minister of Finance and ultimately, if a decision is not reached at that level, it goes to the Expenditure Review Committee of Cabinet.

5.11 The participation of the Attorney-General and his officers is essential. Because in Australia, the systems of Executive Government reflect the Westminister model, important decisions affecting the Courts are made at ministerial or Cabinet level. So, it is essential, according to Justice Mason, that the Court be represented by a responsible Minister in negotiation with other Ministers or in Cabinet discussions. Australia has not followed the US procedure of negotiating an appropriation directly by the legislature. That is a public procedure in which the Justices of the Supreme Court of US appear and testify before a Congressional Committee.

5.12 Australian system has some disadvantages in staff recruitment. Courts can only offer a limited career while staff turnover tends to be high. While Courts participate in the negotiation of their budgets, the problem of securing adequate funds continues if government considers that it must reduce public expenditure. Justice Mason says that determination of Court funding by Parliament, rather than by the Executive, might alleviate this problem and eliminate this source of conflict with the Executive. It should involve a public process of negotiation in contrast to the existing process of private negotiation.

5.13 Justice Mason says that it is wrong for governments to think of funding Courts only through Court fee collections. He also refers to the fixation of salaries by the Tribunal.

5.14 In 1986, the Australian Institute of Judicial Administration conducted a seminar on financial budgeting of the Judiciary and the said seminar has gone into these aspects in great detail.

5.15 As pointed earlier, before 1986, the only Court in Australia which since 1979 had full control over its own budget and internal administration was the High Court of Australia. Subsequently, the federal Courts of Australia were given similar powers and responsibilities.

5.16 Justice B.M. Debbele (1993) 67 Australia Law Journal (p. 243-248) says that in 1989, the Fitzgerald Report of a Commission of Enquiry, stated as follows:

> "The independence of the Judiciary is of paramount importance and not to be Judicial Independence is an over-dependence upon administrative and financial resources from a government department or being subject to administrative regulations in matters associated with the performance of the Judicial role. Independence of the Judiciary be speak as much autonomy as is possible in the Internal management of the administration of Courts."

On 27th August, 1992, the South Australian Government took a step forwards for establishing a system independent of the Executive Government by introducing a Bill to enact the Court Administration Act. The Bill was referred to the Select Committee. The Judicial Council is to be a body corporate comprising the Chief Justice of the Supreme Court, the Chief Judge of the District Court and the Chief Magistrate of the Magistrates' Court. The said Council is to be responsible for providing or arranging for the provision of the administrative facilities and services. The Judicial Councils' Chief executive officer (the Court Administrator) will not be a member of the Public Service and would be responsible to the Judicial Council. Subject to the direction and control of the Judicial Council, he is responsible for the control and management of staff, property and facilities of the Department.

5.17 If enacted, the legislature will enable the Judicial Council to determine administrative policy and give major policy directions to the Court Administrator. The Court Administrator would be responsible, subject to the directions of the Judiciary through the Council, for preparation of the Court budget for submission to the Attorney-General. Under the Bill, the Attorney-General would continue to be responsible to Parliament for the operation of the Court system. The responsibility will entitle him to require and receive information of the administration of the Courts and to convey the Government's views to the Judiciary or Court Administrator as to any changes which should be made. Full accountability of the Judicial Council for its budget administration is provided for in the Bill.

5.18 The Select Committee recommended the Bill, making certain amendments. It also suggested that 'any member of the Council shall, if requested, attend at the Estimates Committees of the House of

Assembly and at any Parliamentary Committee established under the Parliamentary Committees Act. [It is not clear what happened thereafter].

5.19 Justice R.D. Nicholson of Australia in his 'Judicial Independence and Accountability: Can they Co-exist' (67)(1993 Australia Law Journal 404) has gone into the subject in greater detail. He has discussed the question of separation of powers and other aspects, including 'Finances' (p.421). He refers to what Justice Malcolm, Chief Justice of Western Australian Stated (Judicial Power, (1991) UWA L.R. 13):

> "the preparation of Judicial estimates by anyone not acting under the direction of the Judiciary and the exercise of control by the Government over the way in which the Courts expend the funds granted to them necessarily poses a potential threat to Judicial independence."

Justice Nicholson points out that for this reason, some countries provide for the judicial branch to have a right to present its budget direct to the legislature rather than through the Executive. This is the practice in the U.S. Federal Courts. In Papua New Guinea there is a constitutional right for Parliament to increase proposed expenditure for the services of the Judiciary where it falls below the estimate submitted by the Chief Justice [Papua New Guinea, Constitution s.209 (2B) s.210(3)]. Absent such a legal base and given political realities, there is a substantial problem which the judicial branch faces if a government fails to adequately fund the branch. That has not generally been the position in Australia but it has been the case in relation to Victoria measured on a comparative basis (see Alan Barnard and Glenn Withers, 'Financing the Australian Courts' – The Australian Institute of Judicial Administrations Incorporated, 1989). Probably the only potent weapon the judicial branch possesses in such a case is to publicly state the respects in which it is unable to deliver the services expected of it, although it could not be pretended that such an issue would either be understood publicly in the context of Judicial independence or would long hold the public imagination.

5.20 Sometimes there are sudden demands on the judicial branch because of unexpected statutory amendments resulting in fresh influx of cases or increase in legal aid – such as the Bhopal disaster in India or the worldwide share-market crash of October, 1987 giving rise to substantial litigation, or the success of one litigant, - such as in the asbestos cases. New remedies introduced by Parliament without adequate regard to the resource implications etc. could increase the workload heavily.

5.21 The existence of Judicial independence cannot, according to Justice Nicholson – be separated from adequate and proper judicial administration. This was recognized in Russell Wheeler's seminal essay in which he observed that

> "The importance of Judicial independence permeates judicial administration".
>
> (Russel Sheeler, Judicial Administration: It's relation to Judicial Independence: National Centre for Courts, 1988 p.4). He said that 'our contemporary understanding of judicial independence includes a panoply of administrative arrangements'. (ibid p.7)

5.22 Judicial Administration involves both policy making and policy administration. If the Judicial branch is poorly resourced and administered, its independence will be of little value to citizens. Appropriate Judicial administration requires adequate financing that leads to preservation of public confidence by the efficiency, which it produces. Consistent with Judicial independence, Judicial administration should be provided to the Judicial branch by its own staff.

5.23 The 1991 report of the Australian Institute of Judicial Administration (by Thomas.W.Church & Peter A Sallmann) "Governing Australian's Courts" has examined three models—

(i) the first is the 'traditional' model, present in most Australian States, whereby a generalised executive department, provides Court services;

(ii) the second is the 'separate executive department' model, seen in South Australia, by which Courts are administered by a separate department of State devoted exclusively to Judicial administration; and

(iii) the third is the 'autonomous' model, seen in the Federal and Family Courts and the Administrative Appeals Tribunal, whereby a substantial administrative autonomy lies with the Court. (Prof. Sallman is Executive Director of the Australian Institute of Judicial Administration. Prof. Thomas W. Church of State University of New York is a specialist in Judicial Administration).

5.24 According to Wheeler (n; 88, p.37), the efficiency and integrity of the judicial branch can be enhanced by three methods, namely:-

(i) by the daily promotion of effective administration of justice in the daily work of Court administration;
(ii) by protection of courts from dependence on other branches; and
(iii) by promotion of Courts' accountability through their relations with the external public which have interest in court operations.

5.25 Planning, according to Justice Nicholson, is of great importance. Planning of space and facilities necessary for the conduct of the business of the judicial branch – is to be done in advance. Long-range Planning, the determination of priorities for growth, the approval of minimum standards, factors pertaining to the location of courthouses, the role of technology in court-rooms and court-houses are matters in relation to which judicial leadership and input are important. The Chief Justice of South Australia has expressed that it is essential that control of Court buildings and facilities be vested exclusively in the Judiciary, including the power to determine the purposes to which parts of the buildings are to be put and the right to maintain and make alterations to the buildings (Chief Justice J. King "Minimum Standards of Judicial Independence, (1984) 58 A.L.J. 340 at 342-343).

5.26 It is true that increased Judicial independence will result in more judicial accountability at a time when Caseloads have increased. It also imposes an additional duty to maintain high efficiency in reducing delays so that public confidence is increased (A.J. Miller, 'Public Confidence in the Judiciary: Some Notes and Reflections: (1970) 35 LAW and Contemporary Problems 70 at 82). It is also necessary that the Court system be economically and procedurally accessible to all citizens. 'The authority of the law rests on public confidence' (Gallaghare vs. Durack (1983) 152 C.L.R. 238 at 243).

5.27 In (1994) 88 Australia Law Journal p.173 (at p.174) Justice Ken Marks, who was a Judge of the Supreme Court of Victoria, referred to his experience on financial 'Judicial Independence', as follows:

> "My only experience of the budget process is in Victoria where it can be confidently said that the administration of justice is quite adversely affected by the dominance of the Executive and the financial allocation for it. While lip service is paid to some kind of consultative process between the department and the Judges, decisions for the most part are made without regard to the information provided by the Judges or their views as to need. But more seriously, the chance of adjusting Court administration to the needs of a modern society is greatly reduced by the institutionalized disregard of the perception of those needs by the Judges. Needless to say, their opinions, which are not altogether irrelevant, have little or no persuasion."

He says that by under-resourcing and controlling of the staff, the Executive does undermine the independence of the judicial branch. In Victoria, for example, the budget is allocated to what is now called the Justice Department which itself decides the allocations between itself and the Courts. Each year's allocation progressively shrinks. He refers to the Australian Institute of Judicial Administration Report, which says:

> "Many Judicial officers lack interest in budget matters. But it is fuelled in Victoria by a common perception in the Courts that judicial efforts in the area seldom come to anything."

The Report says:

> "Australian Courts like their cousins in England and Canada, are not independent; on the contrary, in most Courts, the situation is one of almost complete dependence on the executive branch."

CHAPTER VI

CANADA

In Canada, the Judiciary does not – according to Hon'ble Jules Deschenes, Justice of the Supreme Court of the Province of Quebec and author of many works on Judicial Independence – enjoy the same independence in the court administration as it does in relation to judicial prerogatives. (*See* Judicial Independence, The Contemporary Debate, 1988, by Shimon Shetreet and J. Deschenes, Chapter 47, pp 514-524). Everywhere across Canada, it is basically the provincial Ministers of Justice who are responsible for the administration and in turn they call upon various departments for the purposes of judicial administration. This administrative subordination of the Judiciary to the executive causes a great deal of friction. The friction has attained a uniform level throughout the Country, in the 13 States namely, the Central Government, the 10 provinces and two sparsely populated territories. Essentially, he says, the Judiciary is disturbed by two factors:

(1) The ambiguity in the position of the Minister of Justice or Attorney of Justice or Attorney-General who combines the function of Attorney for public prosecution and that of provider of courts services;

(2) The ambivalent relations existing between Court staff and judiciary.
The subordination of the Judiciary is rooted in the executive's overt intention to take, exercise and keep total control of the management of the courts.

6.1 According to him, the public perception of justice does get adversely affected by this situation, where Judges are seen entreating permission and beg for resources from the executive. The Canadian Judiciary moved in depth in 1980 into the assessment of the situation. The Canadian Judicial Council, the Judges' Conference and the Institute for the Administration of Justice therefore jointly decided to sponsor and study and the same was started in 1981 by Justice Deschenes and Prof. Carl Baar of Brock University, in Ontario. It resulted in a Report, which was produced in mid-September, 1981 – called "Matters in their own House".

6.1.1 The inquiry by the Committee was extensive on the following:

(i) collection and study of 312 statutes dealing with various aspects of the administration of Justice;

(ii) examination of 99 written expressions of opinion received from Judges of all parts of the Country;

(iii) interviewing privately 187 people of 8 different nationalities in 27 cities of 4 countries;

(iv) meeting 12 of the 13 Ministers of Justice, 12 Dy. Ministers, 25 administrators of Court services, leaders of 11 Provincial or Territorial Bar and 40 Chief Justices of Chief Judges appointed by each of 13 governments;

(v) making on the spot-study of Federal and State systems in the USA, UK and meeting representatives of 25 countries in Lisbon;

(vi) embarking on extensive research programme which was carried to fruition by Prof. Carl Baar and enabled Justice Deschenes to have access to useful information in 125 works from Australia, England, France, Italy, Israel, New Southwales, New Zealand, Nigeria, USA and Canada; and

(vii) reflecting on the situation in 650 federally appointed and 1000 provincially appointed judges in all 13 Jurisdictions in a system which employs 10,000 support staff and spent in the fiscal year 1979-80, strictly for the administration of the Courts one can $ 322 million.

6.1.2 The above effort of the Committee ripened into 198 recommendations which bear the essence of the administration of Courts in Canada.

6.1.3 According to him, the study on the independent judicial administration of the Courts ought to be undertaken within the broader framework of the theory of the general independence of the judicial power. Canada got a Charter of Rights in 1982. The above Report made the Montreal Gazette congratulate its authors. But the newspaper stated that it was a sad story that the Report revealed and

> "demonstrated that the (Judicial) pillar rests on dangerously sandy ground (p.520)".

6.1.4 Thereafter, the Research Committee of the Judicial Council of Canada studied the Report and gave its recommendations.

6.1.5 Justice Deschenes refers then to the International efforts to promote Judicial Independence – which has been set out already in Chapter II. It appears that the Syracuse Report had the benefit of the Report of Justice Deschenes & Prof. Baar and finally the over-embracing study took place under the Special Rapporteur, Dr. L.M. Singhvi by the ECOSOC.

6.1.6 He concludes by criticizing the unsympathetic bureaucratic approach to the problems as follows: (p.523)

> "That is why in Africa as in America, in Europe as in Asia, Court ought and want to escape from the smothering hold of the political power.` In their (Courts') administrative autonomy lies the necessary guarantee of their independence fundamental freedoms that, by right of birth, each man and woman is entitled to enjoy. Let us join hands and efforts in order to achieve our aim. Once upon a time, Moses had thought that he could concentrate the whole administration of Justice into his hands. Jelthro, his father-in-law admonished.
>
> "Thou wilt surely wear away, both those, and this people that is with thee, for the thing is too heavy for thee; though art no able to perform it thyself alone (Exodus, 19:18)."

He says, let us not delude ourselves either: we need each other. But together, nothing is beyond our reach and the universal independence of the Judiciary can be seen dawning on the horizon.

6.2 Prof. Carl Baar – Co-author of the above Report in Canada – in an article 'The Courts of Canada' in the book 'The Political role of Law Courts in Modern Democracies', by Judge L.Walliman and Kenneth M. Holland, 1985 – has again given a picture of financial independence in Canada.

6.2.1 He says that in all the provinces (except the Supreme, Federal and Tax Courts of Canada), the responsibility regarding the administration of court services has been delegated to the provincial Attorney-General/Minister of Justice. Therefore, all Court administrators are employed by an executive department; according to standards developed for executive departments; even the rules of courts in most provinces require Cabinet approval. The provincial Attorneys General who are members of the provincial Cabinet justify their roles in Court administration. They argue that someone must be held accountable for the expenditure of public funds to operate the Courts, and only they as ministers can be called upon to account before the legislature; Judges as independent officers cannot be (so

accountable). They say that executive control over Court administration does not compromise the independence of the Judiciary because the Judicial independence extends only to the 'adjudicative functions and not to the administrative support services'. The Court clerk who is appointed, paid and promoted by the Attorney General's department is nonetheless under the direction of the Judge while in the Courtroom.

6.2.2 Prof. Baar says that therefore members of the Judiciary have grown increasingly apprehensive about this administrative system even though it has been the norm for a century. But, to many Canadian officials, the contrast between executive control of court administration in the provinces and judicial control of court administration in the US illustrates a difference in constitutional systems; a parliamentary system requires ministerial responsibility and hence executive control – while a system based on separation of powers leads to judicial control over the court administration within a separate branch of government (see Carl Baar, Patterns and strategies of Court administration in Canada: Canadian Public Administration XX: 242 (Summer 1977). According to Prof. Baar, this constitutional contrast ignores history for before 1939; the US federal courts too were administered by the Attorney General, who ceded control when the US Federal Judiciary showed its willingness to take responsibility. In 1977, initial steps in the same direction were taken by the Supreme Court of Canada, so far as superior courts were concerned.

CHAPTER VII

OTHER COUNTRIES

GERMANY

7. In order to reduce bureaucratic pressure over Federal Administrative and Fiscal Courts, Parliament in 1969 shifted supervisory authority from the Ministries of the Interior and Finance, respectively, to the Ministry of Justice, over whose policies the Courts could not sit in Judgment (Schram, Recruitment of Judges, p.692).

7.1 Because the Constitutional Court is a co-equal constitution organ, it draws up its own budget and receives appropriations directly from Parliament, by – passing the Justice Ministry. (See the book 'The Political Role of Law Courts in Modern Democracies by Jeord L. Waltman and Kenneth M. Holland: Chapter V by Kenneth M.Holland).

7.1.1 So far as Court supervision over Court services is concerned, the Judges are treated as part of Court administration – as distinct from their judicial functions. In matters of Court administration, they are subject to the directives of the competent Minister. (See Ch.10 by Prof. Peter Schlosser and Prof. Walther Habscheid in Prof. Shimon Shetreet's book).

7.1.2 On the financial side, the Courts have no financial autonomy. They cannot apply directly to Parliament for their budgets. This is done for them by the Ministry of Justice or other Minister who is competent for the sphere concerned.

7.1.3 In the budget plan of Parliament, no special provisions are made for the Judgeships and financial needs of any single Court, but are made for the Judiciary generally. The allocation to the individual Courts are the sole concern of the Minister of Justice or of the special Minister who is granted judicial powers in a particular field. In the latter case, the principle of global allocations to a ministry is particularly awkward, since there exists the danger that it will neglect its 'legal department'.

FRANCE

7.2 Court budgets are part of the executive budget. They are approved by the same ordinary procedure as all other budgets. At the central level, the Minister of Justice is responsible for the Justice budget in collaboration with the Finance Minister, like any other State administration. Chapter 8 of Prof. Shimon Shetreet's book by G. Grivant de Kerstrat).

7.2.1 The judiciary was suppressed by the revolutionaries, as well as the Bar but Napoleon "restored the Courts" though not the Judicial power. The existence of a judicial power enjoyed collectively and as an entity apart from the legislature and executive, has never been restored.

7.2.2 Curiously, the traditional French doctrine is resolutely against the very idea of 'separation of powers' though it was the French political theorist, Montesquieu who was the inventor of the phrase. This is borne out by the integration of the Judiciary into the executive and the 'functionalisation' of their personnel (Ch.7 in Prof. Shimon Shetreet's book by Dallisk Radamaker).

ITALY

7.3 The Italian Judiciary enjoys a high level of institutional independence. The Italian magistrates are recruited into the Judiciary and cannot be removed except by the Higher Council of Judiciary.

7.3.1 The heads of the several divisions of the Ministry of Justice must by law be chosen from among top-level magistrates and the Ministry has also selects among them its head of Cabinet. The Ministry of Justice is staffed in its top positions, by Magistrates, but the Minister – a politician with scarce experience in Judicial matters – has only limited authority over them since he cannot influence their career. Consequently, the resources that Judges and public prosecutors (recruited by the Judiciary) can exploit in order to enlarge their power, has increased (Chapter 8 by Giuseppe of Fediric and Carlo Guanieri in the book 'The Political Role of Law Courts in Modern Democracies').

JAPAN

7.4 Judicial administration is now in the hands of the Judicial Conference composed of 15 Supreme Court Justices. It is policy-making body as per the Constitution, with rule making power to ensure its judicial independence and autonomy. (There is also Judicial Conference for each Court).
7.4.1 Assisting the Judicial Conference of the Supreme Court is the general Secretariat of the Supreme Court. It's Secretary General as well as all its supervisory personnel are Judges. These top Judge-bureaucratsreplaced the pre-war Justice Minister (See Ch.10 by Hirosha Itch in the book 'The Political Role of of Courts in Modern Democracies by Jerold L.Wiltman & Kenneth M. Holland).

7.4.2 According to Prof. Jasuhei Taniguchi (see Ch.18 of Prof. Shimon Shetreet's book pp.205 etc.), at the level of each Court the Judicial Conference presided over by the President of the Court is responsible for the matters of Court administration. The Ministry of Justice has no organizational relation with the Judiciary. The Judicial Conference makes decisions by way of resolution and the president of the Court enforces them. The Judicial Conference of each Court decides various matters pertaining to judicial administration involving the subjects of personnel and preparation and enforcement of budget, maintenance of court buildings and facilities. On the other hand the President of the Court is internally responsible for enforcement of the decisions of the judicial council. He has control of his administrative staff. Contact with the Minister of Justice is handled by none except the Chief Justice of the Supreme Court. Responsibility for the central administration of the whole Judiciary lies with the Judicial Conference of the Supreme Court.

7.4.3 The budget procedure though presented to the Executive and by the Executive to the Legislative (the Diet), there are important safeguards. The budget is prepared by the Judicial Conference of the Supreme Court for the whole Judiciary. The budget for the Judiciary is an independent item of the national budget. It is not part of budget for any ministry. The budget is proposed by the Cabinet before the Diet. But if the Cabinet proposes cuts in the budget proposed by the Conference it has to place its proposals for cuts also before the Diet and indicate which item is to be cut or not to be cut to satisfy the Supreme Court's demand, so that the Diet can make a choice. In most cases, a compromise is reached

between the Supreme Court and the Ministry of Finance and the above procedure is rarely followed (p.207). Court services are financed by the State. The Judicial Conference of the Supreme Court is responsible for the Court buildings of the whole country.

7.4.4 Judicial salaries are fixed by the Diet but are kept higher than salaries of the non-judicial employees though in 1988 they were below those of the non-judicial employees.

There is a recent Article in 1996 Aust. L.J. p.125 by Davind Tan entitled "Death of Judicial Independence: The Japanese Judicial Bureaucracy on Trial". He says (p.128) that the existence of judicial independence cannot be divorced from adequate and proper judicial administration. Consistently with judicial independence, the judicial administration should be provided to the Judicial branch by its own staff and not by the executive branch.

> "In Japan, the Judicial bureaucracy that manages the day-to-day operations of the national judicial system is the "saibankan Kaigi" – the Grand Bench convening as a Judicial assembly to discuss matters of judicial administration – and it acts through resolutions that are implemented by the General Secretariat of the Supreme Court.".

There is also the exchange between the judiciary and the Ministry of Justice or the public prosecutors. In 1982, 14 Judges and Asstt. Judges were on transfer to the Ministry of Justice.

CHINA

7.5 Justice Mason, Chief Justice of Australia while referring to the lack of autonomy given to the High Court of Australia in the matter of its own administration and expenditure states that he noticed something curious in China during his visit. He states:

> "To my surprise, on a recent visit to China, I learned that the People's Republic had granted similar autonomy to the court system over its administration 10 years ago – an interesting development in a country which has not seen the need for Judicial independence as we have seen it". (See Vo.19 (1993) Commonwealth Law Bulletin, Speech by Sir Anthony Mason, Chief Justice of Australia in 'The Independence of the Bench' etc.).

CHAPTER VIII

INDIA

8. To have an independent Judiciary in India is not merely a fundamental right of the citizen but is part of the basic structure of the Constitution as held by the Supreme Court. Therefore, the independence of the Judiciary must have topmost priority.

8.1 In the last 50 years, there has been no proper allocation of funds commensurate with the corresponding increase in population, legal awareness, increase in legislation. There not being a periodic Five Year or an annual Plan for the Judiciary, the absence of such plans has compounded the problem. The result is that there is, in terms of international Covenants and resolutions set out in Chapter II, a clear violation of the basic structure of the Constitution and of the basic human rights resulting in an excessive 'overload' of cases.

8.2 The Judges in all courts are constantly under pressure for early disposal of all cases, old and new. The pressure today weighs on the mind of the Judges so much that it can lead to a miscarriage of

Justice. Delay in disposal of criminal cases is resulting in the prosecution not being able to establish the guilt of the accused. Long delays in the criminal courts at trial stages are requiring bail orders to be given to the accused or otherwise they would spend more time in jails than as under trial prisoners. Delays in criminal cases are resulting in witnesses turning hostile in many important cases, due to extra legal approaches made to them.

8.3 Property matters and Rent Control cases if not decided early can lead to parties taking the law into their own hands or resorting to extra judicial methods. Delay in disposal of matrimonial cases is resulting in the spouses not being able to get early adjudication of divorce disputes. So is the case of land acquisition and motor accident cases. It is not necessary to multiply examples. Trial Judges and appellate Judges are blamed when they adjourn cases to dates far off on the time scale. Litigants do not understand that if cases are listed to closer dates, cause lists will explode on the adjourned dates due to addition of an unreasonably large number of cases, and cases cannot at all be taken up. More time will be spent in calling out cases for adjournments.

8.4 So far as the Indian scenario is concerned, it is not as if there are not plus points. In certain respects we are in a better position than some other Countries, so far as the Judicial services, and that control of supervision of the Judicial services,- both in the higher and subordinate Judiciary. The officers and staff in the Supreme Court of India and in the High Courts are wholly under the control of the Chief Justice of India or the Chief Justice of the High Courts, as the case may be, under Article 146 and Article 229 respectively – in regard to recruitment and disciplinary action etc. The salaries and pension and administrative expenses of the Supreme Court and High Court, including salaries, allowances and pension payable to Officers and Staff are charged upon the Consolidated Fund of India and any fees or other money taken by the Courts is to form part of that Fund. Article 112(2)(d) and Article 202(3)(d) of the Constitution are also relevant. So far as the officers and staff in the Subordinate Judiciary are concerned, they are under the control of the District Judge, subject to the overall supervision of the High Court under Article 235 of the Constitution of India. There is absolutely no interference either from the executive or the legislature. No doubt Rules governing the condition of services of these officers in regard to salaries, leave or pension require the approval of the Executive, if there are financial implications but even then rules have to be made in consultation with the High Court.

8.5 However, so far as financial independence or support is concerned, our present system is suffering from serious difficulties. It is these difficulties that are the cause for the clogging of cases in the subordinate courts and in several High Courts. It is true that by means of Alternative Dispute Resolution systems such as Lok Adalats several lakhs of cases have been disposed of in the last more than a decade, but that, in the overall perspective, has not reduced the general congestion in the subordinate courts and the High Courts.

8.6 Basically, lack of long-range planning and lack of finances have been the main causes for the storage of courts and Judicial officers in all parts of the country.

8.7 In principal cities like Delhi, Bombay, Calcutta and Madras even increasing the court rooms has become difficult due to lack of land for construction or ready accommodation. Further extreme bureaucratic procedures requiring consultation with half a dozen departments thwart any progress. A stage has reached where, if officers upto the full strength of the Judicial service are recruited, some of them have to sit idle for want of court rooms.

8.8 From the analysis of the system in other countries, including USA, constitutional government of Germany and Japan, it is clear that the policy making for the Judiciary is by the Judges and the budgets are prepared by an administration which is responsible to the Judges and not to the executive and it takes into account the demand for extra Courts and the increase in Civil and criminal cases because of new legislation and it draws plans for the future, both long range and short range. The budget as prepared by its bureaucracy is approved by the Judicial Council as in US and German constitutional Court and sent (1) directly to Parliament or sent to Parliament through the Executive by placing before Parliament (as in Japan), the budget as prepared by the Judges council and as cut by the executive and at that stage, a broad settlement is made between the Judges Council and the Executive and approved. In the US a Judge may appear before the Congressional Committee if need be. It is therefore essential to have a Judges' Council as a policy making body to look into its own needs and a regular bureaucratic system of

administrators who will prepare the budgets and receive a lump sum grant for the government and spend it, under the supervision of the Court and are accountable to the Court. The Judicial Council is accountable to Parliament or its committee.

8.9 But we do not have a system by which the Judges can be involved in the preparation of long range Plans for the future, or a body which will be responsible for making statutory recommendations keeping in view the present excess work-load and the anticipated increase if cases, say, in the next five years. In India, no body does go into the question as to how any fresh legislation can increase the work-load – a study which is mandatory in USA before the legislation is brought into force. We have no judicial organization or body which can fight for the needs of the Judiciary.

8.10 In the Supreme Court and the High Courts, budgets are prepared by the respective Courts but these budgets have to be submitted to the Union or State Governments, as the case may be, which will have the final say in regard to the extent of budgetary support. On the theory that the Judiciary is not productive of 'goods' or utilities, or application of 'value for money' theory, propounded in England by Mrs. Thatcher, the judiciary has always been a very low priority. The result is that the judiciary has never got its due share of finances in the last fifty years either for increasing the number of Courts or the number of Judicial Officers and supporting staff, in the whole country.

8.11 Again, the Chief Justice of India alone has powers to shift the monies allocated for one subject to another subject (Justice P.N. Bhagwati, Vol.I CIJL Year Book p.16)(1992). The High Court Chief Justices had no such power. Result was that if monies allotted to one head are not spent, they will lapse at the end of the financial year. Only recently pursuant to a resolution of the Chief Justices' Conference, several State Governments have agreed to this shifting of allocations within the budget provided an officer of the Court (not a Judge) appears before the legislative committee. Further, in some States for every unit of expenditure (say) above Rs.10,000/-, a further approval of the executive is necessary, even though the expense is within the budget for that item. Registrars keep shuttling between the High Court and Secretariat of Government.

8.12 While the control of the staff and Judicial officers is within the power of the Indian Judiciary, their cadre strength cannot be enhanced under Article 146 and Article 229 inasmuch as such increase has financial implications. All such increases have to go for the governmental approval as per the rules made in this behalf. Rules cannot be made to remove these financial restrictions (see Article 146 and 229). Again establishment of new Courts involves expenditure for acquiring land for the constructions of buildings, and consequently the expansion programmes have to be submitted to the executive.

8.13 While it is true that the Judiciary cannot expect an undue share of the finances as compared to certain other important items of governmental expenditure having higher priorities, the fact remains that the Judiciary has not received – in the last 50 years – even a reasonable proportion of what was due to it.

8.14 In other words, while the matters relating to appointment, disciplinary control and supervision of the officers and staff of the Courts are in better shape and are directly under the control of the Judiciary, the expansion in strength of officers or staff and certain service conditions of these personnel involving financial implications are not exclusively within the purview of the High Courts. Whether it be long range planning or short range planning for purposes of increasing the number of Courts, Judges and staff, - there is no serious scientific planning done in consultation with the Judiciary. No policies are laid down by the judiciary. Again, budgets are generally based on usual recurring expenditure on the pattern of the previous year and these budgets are also submitted to the Executive, pruned or cut down in size and then placed before the legislature by a Minister. This is so both at the Central level and States level. It is this procedure based on total executive control that has resulted in the acute shortage in the number of Courts and Judges in the country.

Possible solutions for the above problems will be discussed in Chapter XI.

CHAPTER IX

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PLANNING FOR COURTS

9. One of the best books on Court Planning and Management is the 'Handbook of Court Administration and Management' by Steven W. Hays and Cole Blease Graham Jr. (1993). The book contains 25 chapters contributed by leading Jurists on Planning and by Court Management experts. Each chapter gives reference to a very large number of books, articles and committee reports on Court Planning and Administration. The book also contains the historical development of Court Planning initiated in the USA in the last thirty years. So is the book by Russel R. Wheeler & Howard R. Whitcomb 'Judicial Administration, Text and Readings', (1971) which is quoted in almost all works on Court Administration.

9.1 It appears that the movement towards court restructuring and management was started by Roscoe Pound in his 1906 keynote address to the American Bar Association (ABA : Pound, 1937 a). He criticized 'the general complacency of the established legal profession'

He condemned the fragmented court structures, duplication through concurrent jurisdictions, and waste of Judicial resources. He emphasized an improved, unified court structure along with administrative simplicity, flexibility, and responsibility. Several reports were prepared by others. In 1922, the Conference of Senior Circuit Judges (later Judicial Conference of US) was established by the State to deal with all these matters. The first Court administrator came in 1947. Meanwhile in 1939, as the Administrative Office of US was created in 1939, a separate bureaucracy to work under the Judicial Conference was set up. In 1940 Roscoe Pound published 'Principles and Culture of a Modern Unified Court Organisation'. In 1949, Minimum Standard of Judicial Administration were prepared by the ABA. In 1952, the Institute of Judicial Administration was established at New York University Law School. The National College for State Judiciary was founded in the sixties. In 1960, the National Association of Trial Court Administrators and National Association for Court Administrators were established.

9.2 In 1967, came the "Task Force Report: On the Court" by the Presidents' Commission on Law Enforcement and the Administration of Justice.

9.3 In 1967, under the leadership of Chief Justice Warren Burger, the 'Federal Judicial Centre' was started at Washington, sponsored by the Judicial Conference, a research facility for the Judiciary.

9.4 Due to the untiring efforts of Chief Justice Warren Burger, the Institute of Court Management – which gives a degree in Master of Judicial Management (MJA) – was started in 1970. The Institute publishes the 'Justice System Manual'. In 1971, the National Centre for State Courts was established at Williamsburg, Virginia. It publishes the 'State Court Journal', a professionally oriented compendium of court management developments nationwide. The National Centre for State Trial Courts was created in 1971 by the National Conference of the Judiciary in Williamsburg. Standards relating for the Court Administration were published by ABA in 1974 and 1983.

9.5 Planning and future problems began to receive more attention in the US on the last 30 years. Finally, the 1990 Conference of State Courts set afresh agenda for the Courts. Planning for Courts is done by the method called POSDCORB: Planning, Organising, Staffing, Directing, Coordinating, Reporting and Budgeting.

9.6 In Hay's book, Chapter 24, 'Planning for Court Management' by Theodore J. Fetter (p. 483), the subject of Court Planning is discussed in detail. It is said:

> 'Court planning retains at least 4 vital uses. First planning can guide decision about budgeting and allocation of resources. Second, planning can help to inform Court

managers about the performance of individual units or individuals. Third, planning can be a mechanism by which all Judges and staff can share the same sense of the entire organization and its goals. Fourth, Planning can assist in responding to individual issues as they arise.'

9.7 Budget and Resource Planning require us to think of 'what does the Court seek to accomplish in the next (say) 5 years or in this year? What is the most important need to be addressed? In times of cut back, what activities have to be curtailed? If the resources need to be concentrated in just a few essential tasks, what should those our priorities?

9.8 We have to estimate the annual increase in the filing of cases in trial court or in the appellate courts over the last 5 years. Using statistical projection techniques, it is possible to predict the increase in the case load for the immediate future. If such a prediction is possible, then we can find out the Courts in which the increase will show up in the years to come and at what percentage. To meet the demand, we can estimate the required increase in Courts or Judges or staff or in what best manner the existing Courts/Judges/Staff can be reorganized. We can estimate how much money is needed for increasing the court services and whether the Government will be able to provide this money in one or more years. We can also estimate to what extent alternative dispute resolution systems can reduce the cases? This is what is meant by 'Planning for the Future'.

9.9 There are a number of articles on Long Range Court Planning techniques published in (1993) 68 South California Law Review. The various types of statistical analysis, projections, graphs etc. which can lead macro as well micro Planning are referred to.

9.10 Literature about management frequently mentions 'Planning – programming – budgeting system. (PPBS). Planning precedes budgeting. It determines the organisations' goals and sets the priorities. Then programming examines the ways of achieving goals and evaluates them before deciding which way to take. Finally budgeting decisions become largely secondary, being the process of assuring that the resources are placed in the correct areas.

9.11 Planning is a structured and conscious process to define and revise goals, to assess and to determine strategies and implementation methods. But if planning for Courts is left to the Court Administrators leaving Judges merely to oversee the work of such administrators, it can be of no help. Planning must be done by the personal participation of Judges and they must be involved and share the planning process. Just as the Director's of a company cannot stand aloof from the corporate management, Judges can neither avoid nor keep aloof from the planning and court management processes.

9.12 The subject of 'Court Finances and Unitary Budgeting' is dealt with (at p.110) by Geofrey C. Hazard Sr. Prof. Yale Law School in R.Wheeler's book above mentioned. He also discusses the Court cases involving the 'inherent power doctrine' where American Courts started giving directions for budgetary grants. The pros and cons of 'inherent power' doctrine are also examined. Various systems of budgeting and their advantages are discussed.

9.12.1 He says (P.123) that the Courts' oldest method of raising revenue – charging fees for their services – is now substantially unavailable and unavailing. Clearly, this is so in criminal cases – where accused are mostly without money. Gideon vs. Wainwright 372 UDS 335 (1962): Griffin vs. Illinois 351 U.S. 12 (1956).

9.13 In our Constitution, clause (3) of article 146 provides that all administrative expenses of the Supreme Court including salaries, allowances and pensions payable to, or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Court shall form part of that Fund.".

Similarly, clause (3) of article 229 provides that the administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the

Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.".

9.14 In the first All India Judges Case, Ranganath Misra, C.J. (see 1992 (1) SCC 119) gave directions that all Court fees that is collected must be made available for the Courts expenditure.

Indian Scene and Plan:

9.15 A question has arisen whether the Judiciary is included as a subject for the Plan by the Planning Commission. It appears that, in a way, it is included. In the Second All India Judges Case [1993 (4) SCC 288], Sawant, J. observed (p.310):

> "We now understand the Judiciary has been included as a plan subject by the Planning Commission."

9.15.1 But the question is in what manner? Judges have not been involved by the Planning Commission in any policy planning for the Judiciary. There is no exclusive grant by the Centre for Court expenditure. Neither has the Finance Commission gone into this subject at any time. All that we have is an insignificant 'Centrally Sponsored Scheme' for Courts prepared by the Planning Commission which allots some monies for each State on population basis. There is no understanding or application of mind to the actual needs of the Courts in various States or in metropolitan towns like Bombay, Delhi, Calcutta and Madras etc., nor to the needs of specific types of Courts – like criminal courts where thousands of cases are pending. The Planning Commission has to consult the Judiciary. It must take into account the large number of parameters which should be the basis for distribution of monies among States. Before that, it must set apart a large fund for distribution for the Judiciary. Expenditure shows that the monies allotted under the present central scheme when distributed to various Districts in a State it comes down to a few thousands in some Districts. In fact if a big District Court Complex in a single District is taken up in an year, the entirety of the funds allotted to the State get exhausted.

9.15.2 Further, the present scheme has become nothing but an eye-wash for it requires the States to provide a matching grant, or else the central grant lapses. Most States are not able to provide the matching grants and the result is that the central grant lapses. To put it bluntly, the so called inclusion of Judiciary as a plan subject is no inclusion at all as it is totally unrealistic, unplanned and unrelated to the scenario at the grass-root level and also at the level of the appellate and superior courts.

9.15.3 This has necessitated the Supreme Court to give directions to the Central and State Governments in providing various basic facilities for the Judges and the Courts to the subordinate Judiciary in the public interest cases filed by the All India Judges Association. In the first case, Ranganath Misra, CJ observed: [1992 (1) SCC 119 (p.135) that the State cannot plead financial stringency for providing certain minimum standards required. His Lordship observed:

> "The efficient functioning of the Rule of law under the aegis of which our democratic society can thrive, requires an efficient, strong and enlightened Judiciary. And to have it that way, the Nation has to pay the price".

In the second case, [1993 (4) SCC 288], Swant, J. also rejected (p.305) the pleas of financial stringency as follows:

> "The alleged financial burden that would be thrown on the State exchequer on account of….is negligible, considering the enormous advantage that the administration of Justice and society would derive…."

As Rajeev Dhawan pointed out in his recent article 'The Least Expensive Branch' (Hindi, 20.11.1998), we are living in times when each Member of Parliament has been given one crore of Rupees for use in his constituency and only it appears that government has no money only for the Courts.

Fast Track Courts

9.16 Recently, it appears that pursuant to certain observations in State of U.P. vs. Upadhyaya, a PIL pending in the Supreme Court, a sum of Rs.502 crores were released for fast track courts where retired Judges are being employed to clear backlog of old cases, on a contractual-tenure basis. Problems such as dearth of retired Judges of the sub-ordinate judiciary who are willing to accept the cases or willing to work outside the places where they have settled, accommodation for the Courts/Judges, infrastructure etc. have surfaced. Above all, the question of disciplinary jurisdiction of such contractual appointees has also been raised.

9.17 Coming to figures of Judge-population ratio, the conditions reflect a pathetic situation and total governmental apathy. The Law Commission in its 120th Report on 'Management and Planning in Judiciary': A Blue Print' (1987) stated as follows:

> "the State should immediately increase the present ratio from 10.5 Judges per million of Indian population to at least 50 Judges per million of Indian Population within the next five years. It was further recommended that by the year 2000, India should command at least 107 Judges per million of Indian population."

This has not happened. Meanwhile the population is galloping and the Courts and Judges do not increase in numbers. The above views were reiterated by the Law Commission in its 127th Report 1988 (p.12).

9.17.1 Recently, the Chief Justice of India, Justice A.S.Anand, in his address at the Bar Council of India (10th October, 1998) stated that

> "in several European Countries, the number of Judges per million varies from 90 to 100. However, in India, it was only 11, which was rather disappointing.".

9.18 Dr. Rajeev Dhawan in his article. 'The Least Expensive branch' (Hindu, 20.11.1998). He says that –

> "We need an institutional mechanism to support the judiciary in its financial endeavours which are concerned not just with courts, but with the whole process of Justice – including legal aid and assistance."

9.18.1 After referring to some figures in the increase of cases and nominal increase in funds, he says -

> "there is no real procedure or basis of which the financial autonomy of the Judiciary can be assured. What emerges is frightening adhocism of a kind that is Humiliating and wholly contrary to the Interdependence of the judiciary, Law Ministers have often resorted to bullying When they should have demurred. Many Budgets are discussed at the Under-Secretary level with the Law Ministry Having an edge. The Judges have no choice But to make their modest demands more Models".

CHAPTER X

COMPARATIVE REVIEW OF THE POSITION

ABROAD AND IN INDIA

10. Having referred to the Court systems in various countries about Court Administration and Finances and to salaries position in US, UK and Australia, it is time to give a birds eye view of the picture so that we can know where we stand in the global scene.

10.1 At the outset, we have emphasized that 'institutional or collective independence of the Judiciary' is a part of the judicial independence and in fact a crucial part. It is as important as the other aspects relating to judicial appointment, tenure, removal, or even judicial independence in the adjudicatory process. India is a party to important covenants. International bodies under the UN and the International Commission of Jurists and LAWASIA have passed numerous resolutions to which we are signatories. All these deal with the need for financial independence of the judiciary.

10.2 Now the position in USA, Italy and Japan appears to be the best for there is in those countries almost total independence given to the judiciary in its finances and Court Administration. In the USA, the Judicial Conference of the US is a statutory body for the Federal Courts created in 1922 and it is the policy making body and it acts through its various Committees including committees for long-range Planning, Budgeting, space or Accommodation and Technology. It has its own bureaucracy – under its control – the Administrative office of the Courts in the USA. Statute vested the entire judicial administration in 1939 in this Administrative Office under the control of the Judicial Conference after shifting it from the office of the Attorney General. The staff and officers of the Courts are under the control of Courts. Budget for the Federal Courts is prepared on the basis of the policies of the Conference, the data prepared by the Administrative Office, in consultation with the Courts. It normally takes 18 months to prepare a budget. The Conference has to meet twice in one year. The Administrative Office gives it two reports in advance before each meeting. The budget proposals do not go to the Executive but are submitted direct to the Congress. Judges in the Committees can appear, if requested, before congressional Committees or the Congress. The budget asked for is normally passed in full by Congress. The budget allotment enables the Judiciary to use the amount in the best manner it thinks fit by shifting expenditure from one head to another. The judiciary is wholly responsible for the budget. It has to submit annual Reports to the Congress on its performance or plans for the future. This part of the judicial independence has reached a stage of perfection. But in the area of the Judges' salaries, there are clear problems as these are not revised periodically to keep pace with inflation. This is so in spite of the Ethics Act, 1989 which requires inflation to be taken into account.

10.3 In England, as pointed out by the Vice-Chancellor, Browne-Wilkinson in his article (see 1988 Public Law, P.44), the position is quite the reverse of what it is in USA. Judges are not involved in any policies or planning. The Court officers are integrated into the civil service. The officers in the Lord-Chancellor's office are also part of the Executive. Judges are not consulted in the budget formulations. The matter is under the exclusive control of the Lord Chancellor's office. The Lord Chancellor's office prepares the budget. The budget is not directly submitted to Parliament but is submitted through the Executive. There is no place for the Judges in any of these matters. The Vice Chancellor has grave doubts whether such a system is conducive to judicial independence. Lord Woolf in his recent article (1998) Law Quarterly Review, p. 579) has not addressed himself to these problems though he refers to the points raised by the Vice Chancellor. According to him the Lord Chancellors, as of now, are able to do some 'tight-rope walking' and are able to use their 'clout' in getting whatever they feel is the requirement of the Judiciary. This has become possible in UK because the Lord Chancellor heads the judiciary and is also a Member of the Cabinet and Speaker of the House of Lords. Thus in the area of Court finances the Judges have no say in UK. But in the matter of salaries, UK is far ahead of all countries. With the setting up of the 'Top Salaries Review Board' for Judges, Permanent Secretaries and others. The Advisory Group for Judiciary in that Board has thought it fit to consider that Judges' salaries must bear a reasonable proportion to the salaries received in Industry and to the net income of leaders of the Bar. Because of this approach, Judicial salaries which at one time were below (and later equal to) those of the Permanent Secretaries have now gone ahead of the salaries of Permanent Secretaries and also gone ahead of inflation.

10.4 In Australia, atleast in the High Court, the Federal Courts and Family Courts - the control over the staff and financial budget is within the Judiciary. But the budgets are presented to the Legislature by a Minister. The Legislature makes a 'single line' appropriation and there is flexibility in shifting the budget grants from one head to another. In all other courts, the staff and budgets are under executive control. There the budget is an identifiable part of the budget of the Ministry of Justice. Policies are not made in consultation with the Judiciary. However, salaries are increased according to inflation and the matters can go before a Tribunal manned by a former Judge and his decision is placed before the legislature for approval or deemed approval.

10.5 In Canada, except for the Supreme, Federal and Tax Courts, the Court administration is part of the Attorney General's office and is not under the control of the Judiciary. All the Court administrators are employed by the executive department. Budgets, staffing levels and personnel policies are set according to standards of the Executive. The Attorney Generals are members of the Cabinet in the States too. According to the Canadian executive, the American system is not capable of being introduced in Canada as, they say, there is no clear separation of powers. The Courts have thus no say in policy matters.

10.6 In Germany, the Constitutional Court alone draws its own budget and presents it directly to the legislature. In all other courts, there is no financial autonomy. But curiously so far as Court administration is concerned, the Judges have a dual role – one as Judges and another as Court Officers, that is, as part of the executive. In their latter role as part of the executive, they are under the control of the Ministers. On the financial side – except the Constitutional Court – other Courts have no autonomy. They cannot send budgets directly to Parliament. Budgets are presented by a Minister. But the allotment for a judiciary is a lump sum and not item-wise. The allotment to the individual courts is done by the Ministry of Justice.

10.7 In France, there is no separation of powers and the court budgets are part of the executive budget. The Minister of Justice is responsible for the Court budget.

10.8 In Italy, things are totally in favour of the Judiciary. The Judiciary recruits the Judges staff and the public prosecutors. Curiously, the several divisions of the Ministry of Justice are also manned by the magistrates recruited by the Judiciary.

10.9 In Japan too, things are in favour of the Judiciary. The Judicial administration is in the hands of the Judicial Conference composed of Judges. It is a policy making body as in USA. The Judicial Conference is assisted by a general secretariat of the Supreme Court and its Secretary-General and supervisory personnel are all Judge-bureaucrats.

10.10 In China, though there is no separation of powers, the Court administration staff is controlled by the Courts, though the finances are determined by the Parliament.

10.11 There is a striking contrast between Germany and Italy. While in Germany the Judges have a dual role – treated as part of the executive – and in their latter role are treated as part of the executive amenable to the control of the Minister, the position in Italy is so different, the magistrates recruited by the Judiciary man the Ministry of Justice and get all things done at the level of the executive or in the legislature according to the Courts requirements.

10.12 In India, we have the advantage of the Court officers and staff being under the complete control of the Judiciary from the highest court to the lowest courts. That way, our system is better than the one in UK and France. But the main problems are in regard to policy-making and finances.

10.12.1 The Judges are not involved directly in any policy making. All the Judges are not involved in the preparation of the budget. The Chief Justice of India and the Chief Justices of the Courts no doubt prepare a budget with the help of their Registrars but these are routine budgets based upon a notional increase of the figures of previous years. They are not based on any long range or short range plans for

the Judiciary. The budgets are sent to the Executive and suffer serious cuts. The budget is so even at the State level.

10.12.2 The Chief Justices Conference is presided by the Chief Justice of India. But this is a non-statutory body with no teeth and though sometimes it lays down some policies, it is customary for a Desk Officer or an Under Secretary to send a single line letter to the Registrar General of the Supreme Court that government is not accepting the recommendations.

10.12.3 There is neither an independent judicial council or conference with statutory status, nor an independent bureaucracy of court administration who can prepare the budgets and who can independently spend the lump sum allocation under various heads, subject to supervision by the Judges' Council. The judiciary's budget is part of the executive budget.

10.12.4 The Judiciary, as stated in Chapter IX relating to planning, is not involved in any planning policies prepared by the Planning Commission at the Central level or the State Planning Boards. The Finance Commission does not also deal with the requirement of the Judiciary as an Institution.

10.12.5 The unique distinction of the Judicial offices held by Judges as Constitutional functionaries – as opposed to Secretaries of Government – has been brought about in the first and second All India Judges Cases referred to in Chapter IX, 1992(1) SCC 119 and 1993(4) SCC 288. It has been held, on a thorough consideration of the nature of the offices, their work and mode of recruitment – particularly when lawyers give up a lucrative practice to come to the District Court or High Court – that the Judiciary stands on a different and higher footing under the Constitutional scheme and cannot be equated with the Executive. The Top Salaries Board in UK has also proceeded on that basis.

10.12.6 In the All India Judges' Case, it was held that the Judges salaries in the Subordinate Courts have to be fixed by an independent Judicial Commission. Then the Government appointed the Jagannatha Shetty Commission for the subordinate Judiciary. Its terms were extended to include the staff of the subordinate courts too.

CHAPTER XI

INDIA – PROPOSALS FOR CONSTITUTIONAL AMENDMENT AND/OR LEGISLATION

11. At the outset, it is necessary to refer to the various problems that are confronting the Judicial administration and then refer to the solutions. Then we shall refer to the Legislative amendments necessary for implementing the solutions. Some of the problems that the judiciary in India is facing have been earlier referred to in Chapter VIII.

11.1 In the Constitution of India, in the Chapter on Union Judiciary (Chapter IV of Part V) and in the Chapter on State Judiciary (Chapter V of Part VI), reference is made to various aspects of the judicial set up in the country. We shall here refer only to one special aspect of these provisions. The Chief Justice of India and the Chief Justices of the State High Courts have been empowered to make rules (see Article 146 and Article 229) in regard to the service conditions, salaries and allowances of the officers and servants of the respective courts but if any such revision has any impact on the finances of Government, the rules require the approval of the President or the Governor of a State, as the case may be. The need to have some executive control so far as these items are concerned was emphasized by Sir Alladi Krishnaswami Iyer in the debates in the Constituent Assembly.

11.2 The same difficulties are faced in regard to the creation of posts by the Chief Justice of India and the Chief Justice of the High Courts. Further, Rules permit creation of extra posts only in regard to particular categories and not in regard to all categories though there may be need at those levels.

11.3 Then there is an existing problem regarding powers of the Chief Justice of India and the Chief Justices of the High Court relating to appropriation and re-appropriation of expenditure under the different heads in the budget as allotted. Only the Chief Justice of India and the Chief Justices of one or two States have been allowed under Executive Orders of the respective Governments to re-appropriate amounts allocated under one head in the budget to another. This aspect has been repeatedly taken up at the conferences of the Chief Justices. For example, if within the total budgetary allocation, the State PWD is not able to spend monies allocated under one head, there is no good reason as to why the Chief Justice should not be allowed to utilize the amount for other pressing needs such as for the library of the Court or for stationary or for the computer division of the Court. The Union Government has recently requested all the State Governments to remove this restriction and follow the same procedure which is applied in the case of the Chief Justice of India and permit re-appropriation at the discretion of the Chief Justices of the High Courts. But a query has been raised in the States as to whether the Chief Justice of the High Court would be prepared to appear before the Public Accounts Committee of the State Legislature at its meetings, if called. This aspect has been examined and it has been pointed out that to cover like situations, the Speakers of the Legislatures have made rules exempting Ministers from appearing before the Committees of the Legislature and that a similar procedure has to be adopted in the case of the Chief Justices. As in the case of Ministers, senior officers of the High Court can appear and answer any questions before the Committee. It has also been pointed out to the State Governments that even in the absence of a like rule made by the Speakers, the same procedure as applied to Ministers has to be followed in the case of the Chief Justices of the High Courts, having regard to their constitutional status. Obviously, the above query postpones the implementation of the request made by the Union Government to the States.

11.4 Yet another problem is that in respect of monies allocated within the budget, certain financial procedures require that whenever expenditure above a particular amount (sometimes as low as Rs. 10,000/-) has to be incurred only upon fresh sanction from the Secretariat. This is indeed an unnecessary bottleneck created to make the Registrars of the High Courts run to the Secretariat on each of these occasions.

11.5 The main difficulty is about proper budget allocation for the Judiciary. We may state that the Planning Commission has not been making any separate funds available for the Judiciary in the last fifty years, though (as pointed in Chapter VIII), the Supreme Court was informed that there would be an allocation in the Plan. Such allocation in the Plan has not been made except by way of (i) the Centrally sponsored scheme which requires the State to make matching grants and (ii) the recent allocation of Rs. 500 crores and odd for Fast Track Courts. So far as the Centrally sponsored scheme is concerned, as it requires a matching grant from the States, it has not been fully utilized in several States because the States are not able to make adequate matching grants. So far as the Fast Track Courts scheme is concerned, this type of a grant after fifty years, for Courts which are to last only for a temporary period, does not meet the problem. Appointing retired judicial officers on contract basis can even create problems if they are not within the disciplinary jurisdiction of the High Courts under the existing rules. This temporary measure should be replaced by permanent and lasting solutions.

<u>Planning Commission and Finance Commission to allocate adequate funds for the Judiciary</u>

11.6 The proper thing for each State is to first require separate allocation of funds by the Planning Commission and the Finance Commission for the purposes of the State judiciary and once this is done, most of the problems will be solved.

11.7 There is an important reason as to why provision is to be made in the State plan by the Planning Commission and by the Finance Commission. The crucial point here is that the Subordinate Courts and the High Courts have been administering not only the laws made by the State Legislatures but also the laws made by Parliament under various Entries in List I and List III. In fact, laws made under the

Concurrent List in the Seventh Schedule (List III) are the most common statutes in use in the Courts everyday as they concern the civil and criminal administration of justice. These laws in the Concurrent List include the Indian Penal Code, the Civil and Criminal Procedure Codes, laws relating to Marriage and Divorce, Transfer of Property, Registration, Contracts, Actionable Wrongs, Bankruptcy and Insolvency, Trusts, Evidence, Forests, Adulteration of Food Stuffs, Drugs and Poison, Trade Unions, Education, Charities, Trade and Commerce, Factories, Electricity, Acquisition of Property and Requisitioning etc., - the list is unending. Then there is again a long list of Central statutes in List I. All these laws create a large number of rights and offences which are being administered by the subordinate Courts which are being run at the expense of the State Governments.

11.8 The Central Government cannot therefore throw the entire burden of establishing the subordinate Courts and maintaining the subordinate judiciary on the State Government. It is true that under Article 247, the Central Government has powers to establish additional Courts for purposes of the litigation arising in respect of subjects in List I of the Seventh Schedule. But, the number of Courts established at the level of the Subordinate Judiciary by the Central Government in exercise of its power under Article 247 of the Constitution even for purposes of cases arising out of subjects in List I, is almost negligible. It appears on the whole that there is a concurrent obligation on the Central Government also. Therefore, the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State judiciary in each of the States. These monies must come through the Planning Commission and the Finance Commission.

11.9 In fact, in Latin American countries, it may be noted, that there is a 'constitutional requirement' of allocation of a fixed percentage of the country's total budget to the judiciary. The most generous provisions are in Costa Rica, which grants the judiciary not less than 6% of the nation's ordinary annual receipts, excluding loans and grants. (see Article 177 of the Constitutional Practice de La Republica de Costa Rica). While Hondurus allocates at least three per cent and Peru 2%, Gautamala and Panama allocate 2% of the nation's ordinary annual receipts (see Bulletin of the Centre for the Independence of Judges and Lawyers, No. 122, October 1988, page 18 in an article by Kutt S. Rosehn on 'The Protection of Judicial Independence in Latin America'.).

Proposals for Constitutional or Statutory backup for Judicial Council and Administrative Offices in each State and at the Central Level

11.10 In the earlier chapters, we have seen how in several countries, particularly in the US, Germany and Japan the problems of the judiciary are tackled by establishing a separate internal machinery for the purposes of planning, budgeting and implementation of the needs of the Judiciary. Thus the Judiciary is associated effectively in the planning, budgeting and the machinery for implementation. As Chief Justice Taft pointed out (see Chapter III), the Judges who administer the laws are best suited for planning the requirements of the judiciary and they must have the main say on all aspects of judicial administration.

11.11 The first step therefore is to create, under a law to be made by Parliament, a Judicial Council for India and Judicial Administrative Office of India and then create separate Judicial Councils and administrative offices at the State levels.

I. National Judicial Council and its Administrative Office

11.12 The National Judicial Council at the Central level should consist of the Chief Justice of India and two Judges to be nominated by him from the Supreme Court and will have to include all the Chief Justices of the High Courts. They have to meet twice in a year and consider various aspects of judicial administration relevant to the whole country. The Administrative Office of the National Judicial Council will help it in various respects. It can gather national statistics from the Administrative offices attached to the State Judicial Councils.

11.12.1 So far as the "staff and the budgetary needs of the Supreme Court" are concerned, it may not be proper to associate the National Judicial Council with it. As of now, these aspects are, under Article 146(3), within the exclusive administrative jurisdiction of the Chief Justice of India and he alone

can take decisions on these matters. The administrative powers of the Chief Justice of India cannot be diluted by making those powers subordinate to the views of the National Judicial Council. No doubt, the Chief Justice of India can take the help of the Administrative Office of the National Judicial Council, if need be. The Administrative office at the national level can help in laying down general and broad guidelines applicable for the whole country so that there can be uniformity.

11.12.2 The Judicial Council at the Central level can go into the question of the uniformity in the service conditions of the subordinate judiciary in the whole country. It can go into various aspects of the over all needs of the Judiciary in the country from the statistics as gathered by its Administrative Office through the State Administrative Offices working under the State Judicial Council. It can make general recommendations to the Central and State Governments and to the Planning Commission and Finance Commission after gathering statistics from each State Judicial Council about the needs of the High Courts and the subordinate Judiciary in each State. But it shall not have any administrative control over the State Judicial Councils or the Administrative offices of the State Judicial Councils.

11.12.3 The personnel of the Administrative Office of the National Judicial Council must be put on a strong pedestal at the Central level and also at the State Level and must consist of direct recruits recruited at a middle level who have a degree in Court administration from the proposed Institute of Court Management coupled with an LL.B. degree. There should be promotee officers too drawn from the cadres of Judicial officers of the subordinate judiciary at various levels and from the staff of the subordinate judiciary. They must be put in different cadres with promotional avenues. These Administrative Offices at the Central and State levels must work under the concerned Judicial Council of the State and assist them in planning, budgeting and implementation. The Administrative office at the Central level shall not have administrative control over the State Administrative Offices.

11.13 Four institutions to be under the general control of the National Judicial Council

(a) An Institute of Court Management;

11.13.1 Today, there is a great need **to put the management systems in the Courts on a professional basis**. A Post-Graduate Degree Course in Court Administration is to be started for those who are possessing degrees in Law. They must be eligible for being recruited into the staff of the Subordinate Courts or High Court or the Supreme Court or even to the various quasi-Judicial tribunals. The direct recruitment could be at a level of two stages from the lowest level and along with other departmental promotees, unified cadres can be formed. The lower staff could also be given training in the Institute. These graduates can also be recruited into the Administrative offices attached to the Judicial Councils at the Central level and State levels.

The Institute must be under the control of the National Judicial Council.

(b) The National Judicial Academy, Bhopal to be made a Commonwealth Law Centre

11.13.2 The National Judicial Academy was built at Bhopal a few years ago with an expenditure more than Rs. 70 crores.

The Academy must be converted into a Commonwealth Law Academy with faculty from India and other Commonwealth countries and it could conduct Research in Law, publish books and journals and also have a wing wherein Judicial Officers from all over the country could come for courses on Continuing Legal Education by itself and in collaboration with State Judicial Academies. The Institute could also be brought within the purview of the National Judicial Council.

(c) The Indian Law Institute, New Delhi

11.13.3 The Indian Law Institute must be made a deemed university with a separate campus where diplomas, degrees and PG degrees in subjects like Human Rights, Environment, Intellectual Property,

International Law, Comparative Constitutional Law, Administrative Law etc. could be awarded. It should also be under the supervision of the National Judicial Council.

(d) International Legal Data Centre, New Delhi

11.13.4 There should be established at Delhi, an International Legal Data Centre, with internet facilities for the use of the Supreme Court, High Courts all over the country, the Subordinate Courts, all Bar Associations, Law Universities, affiliated Law Colleges, individual lawyers and faculty members and law students.

The Centre should have information about all legal literature,- law books and law journals available all over the world and in India, including books and journals from the Supreme Court Library and the Indian Law Institute and those available in other libraries in India, in the Universities and the High Courts. Subject wise category of information is to be furnished.

This Data Centre should also be under the control of the National Judicial Council.

II. State Judicial Councils and Administrative Offices

11.14 Having regard to the fact that the State High Courts are independent constitutional Courts which are not administratively subordinate to the Supreme Court, it must be ensured that the National Judicial Council has no administrative control over the Judicial Council of the State. Nor can Administrative office of the National Judicial Council have any administrative control over the Administrative offices in the States. The Administrative Offices in the States must not be under the control of the State Governments but must be under the control of the respective Judicial Councils.

11.14.1 The State Judicial Council must consist of the Chief Justice of the High Court, four Judges of the High Court nominated by him, the Registrar General of the High Court and three senior District Judges nominated by the Chief Justice. They will be concerned with the policy-making, planning, budgets and implementation so far as the Subordinate Courts are concerned.

11.14.2 The State Judicial Council is not to interfere with the administration of the High Court which is within the exclusive control of the Chief Justice. Nor can it impinge on the powers of the High Court under article 235 of the Constitution of India.

11.14.3 In case there are any such overlapping areas, the State Judicial Council can make its recommendations to the High Court for its due consideration.

11.14.4 The Judicial Council at the State level shall have to go into the long range plans, budgets, space and accommodation requirements and suggest steps for clearing backlogs, etc. It must also estimate the number of civil or criminal cases that may be added to the dockets of the High Court and the subordinate Courts every year by virtue of new laws passed under List I and List III of the Seventh Schedule by the Parliament and under List II and List III by the State legislatures.

11.14.5 The relevant committees which every State Judicial Conference must have, as in USA are as follows:

(i) Committee on Budget
(ii) Committee on Court Management
(iii) Committee on Information and Technology
(iv) Committee on Security, Space and Accommodation
(v) Committee on Long Range Planning
(vi) Committee on Financial Disclosures
(vii) Committee on National and International Judicial Relations
(viii) Committee on the Subordinate Judiciary
(ix) Committee on Judicial Resources.

III. The Budget procedure for the Judiciary

11.15 This subject is most crucial to the autonomy and the financial support for the Judiciary.

(a) So far as the budget for the Supreme Court of India is concerned, it is not felt necessary to make any special provision in this Paper.

(b) So far as the expenditure required for the National Judicial Council is concerned, the same has to be prepared by the said Council with the help of its Administrative office and the budget will be finally settled in consultation with the Central Government. The budget estimates so settled shall, by way of a convention to be followed, pushed through the Parliament without any downward revision.

(c) So far as the budget estimates for the High Court are concerned, the matter is within the exclusive purview of the Chief Justice of the High Court and it will, therefore, be not within the jurisdiction of the State Judicial Council.

(d) So far as the budget estimates of the Subordinate Judiciary are concerned, they have to be prepared by the State Judicial Council.

11.15.1 The State Judicial Council, as already stated, will go into the pending of cases, civil and criminal and the number of Courts and judicial officers and staff available. It shall keep the average disposal of a judicial officer in mind and shall estimate the number of Courts/Judicial Officers/staff and also the infrastructure like buildings for Courts, buildings for judicial officers, furniture, telephones, fax, computers, stationery, conveyance, etc. that are necessary. A Plan will be prepared for the subordinate Courts in each State for implementation progressively. The Judicial Council shall also take into account the new legislations passed by the Parliament and the State Legislature and estimate how many new civil or criminal cases may get added to its dockets year after year. On that basis, the State Judicial Council, with the help of its Administrative Office, must prepare the annual budget estimates for the subordinate Judiciary.

11.15.2 Formulation of procedures for Budget of the State Judiciary, is very important. The Commission do not propose that as in the USA, the budget should be directly presented to the State Legislature. This is because the separation of powers between the Legislature, Executive and the Judiciary in our Constitution is not as distinct as it is in the USA. The following procedure is recommended. The State Judicial Council must prepare the budget estimates and must first submit the said budget estimates to the State Executive. The State Executive should, if it is not inclined to approve the budget proposals of the High Court, as presented, have an effective consultation with the State Judicial Council or with a committee of Judges and officers nominated by the State Judicial Council and then both of them will have to arrive at a consensus as to the budgetary needs of the State Judiciary. Once the State Executive and the State Judicial Council thus finalise the budget estimates in the above manner, as a matter of convention there should be no downward revision in the legislature. Again, once the budget is passed, the entire amount is to be kept under the control of the State Judicial Council and there should be no need to seek permission of the Executive for re-appropriation. Within the budgetary allotments, the State Judicial Council must be able to spend the monies through the State Administrative Office. The expenditure will have to be scrutinized by the Financial Adviser drawn from the Office of the Comptroller and Auditor General of India.

11.15.3 If there is to be a convention of the agreed budget to be accepted by the State Legislature without revision, then there may be no need to include the budget estimates of the Subordinate Judiciary in the Consolidated Fund of the State by a State Law under Article 202(3)(f). The question of making law under Article 202(3)(f) may be kept as the last option if any such need arises over a period of time.

11.15.4 The approach of the State Government to the Judicial budget must be based on the following considerations. Having regard to the duty of the State to uphold the rule of law and to maintain peace, law and order in society, and the duty to render speedy justice, both Civil and Criminal, and in view of the various facets of 'life' falling under Article 21 of the Constitution of India as interpreted by the Supreme Court of India, the Central and State Governments must put the financial requirements of the Judiciary on

par with other items of top priority like its development schemes. It must be realized that every other development activity of the State will depend upon the health and well being of the citizens and if adequate allocation is not made for upholding the rule of law, that is bound to affect every other sphere of activity adversely. A pragmatic approach is thus needed on the part of the Executive while dealing with the budgetary proposals that emanate from the State Judicial Council. The attitude of the Executive must be positive and fair and should not be one always, as a matter of course, to cut down the legitimate demands of the judiciary. It is no doubt true that the State has various other pressing demands on its revenues but the point here is that the requirements of the judiciary must be kept almost at the same level as the other most pressing demands.

11.15.5 The procedure indicated above in regard to budgets appears to be similar to the one in Japan (see Chapter VII).

IV. Legislation necessary to constitute the Judicial Council and the Administrative Offices and the Budget procedure:

11.16 Several Constitutional provisions, as already stated, deal with the Union and State Judiciary, but obviously there is little scope under the existing provisions for creation of Judicial Councils and Administrative Offices or for laying down budgetary procedures. Necessarily new provisions have now to be made. Question is (i) whether the Constitution is to be amended, if so, in what manner or (ii) whether fresh legislation can be made under any of the Lists.

11.16.1 We do not think that as of now, any amendment to the Constitution need be made. If a law is made by Parliament under Entry 11A in the Concurrent List that will be sufficient for the present.

> Entry 11A of List III reads as follows:
>
> "Entry 11A: Administration of Justice: Constitution and organization of all Courts, except the Supreme Court and the High Courts."

11.16.2 Under the first part of that Entry, a law can now be made by Parliament both for constituting the National Judicial Council and the State Judicial Council, while under the second part, Parliament can establish additional Courts also, in addition to the Courts it can establish under Article 247 for purposes of Entries in List I.

11.16.3 Parliament can also establish the respective Administrative Offices for the National Judicial Council and for the various State Judicial Councils. Parliament can vest the said Judicial Councils with the powers already referred to and delineate their functions as stated above. The manner in which the budget estimates may be prepared by the National Judicial Council and the State Judicial Council can be elucidated. It may then be stated that the budget estimates so prepared will be discussed with the Union Executive or the State Executive, as the case may be, and a consensus will be arrived at keeping the needs of the Judiciary on par with other high priority items. The budget estimates as so settled will be placed before the Parliament or the State Legislatures, as the case may be. To that extent, there must be legislation.

11.16.4 The procedure, thereafter, is to be based on a convention to be followed. The Executive will place the Budget estimates as so finalized before the State Legislature and will see that it is passed in the Legislature without any downward revision. This part of the convention can not obviously be part of the proposed legislation.

11.17 Summary of suggestions

I. (1) Judiciary must be included separately in the Plan by the Planning Commission and separate allotment be made by the Planning Commission and the Finance Commission.

(2) The National Judicial Council and the State Judicial Councils and their respective Administrative Offices are to be established. The membership of the Judicial Council must be as stated in this Chapter.

The National Judicial Council will deal generally with the overall needs of the Judiciary. The State Judicial Council will deal with the policy making, budget and implementation of the same, so far as the Subordinate Judiciary is concerned.

(3) Budgets are to be prepared by the National Judicial Council or the State Judicial Council initially and are to be presented to the Executive and finalized at that stage, by mutual effective consultation, keeping in mind that expenditure on the demands of the Judiciary are no less important than other development expenditure and thereafter the budget as finally settled, is to be presented in Parliament or the State Legislature, as the case may be. A convention is to be made that the budget estimates as so finalized shall be pushed through Parliament or the State Legislatures without any downward revision.

(4) Financial Advisers from Comptroller and Auditor-General of India's office to monitor expenditure and keep a check and take suitable action according to normal procedures, in their annual reports.

(5) A convention is to be accepted that officers nominated by the Judicial Council can appear before the Public Accounts Committee. If necessary, the relevant rules made by the Speaker/Chairman of the Legislatures, may be so amended.

(6) Within the budget, the Judicial Council must have full freedom for re-appropriation. This should be made clear in the statute. Again the Registrar of the High Court need not run to the Secretariat for obtaining sanction whenever the expenditure crosses a particular amount, as is the procedure currently.

(7) A National Institute of Court Management to be established to confer degrees and to train Court staff and Judicial Officers in Court management.

(8) A National Data Centre on Legal Information to be established at New Delhi.

(9) National Judiciary Academy, Bhopal to be converted into a Commonwealth Law Centre - bye-laws to be changed. It shall deal with continuing legal education of the judiciary and can collaborate with the State Judicial Academies.

(10) Indian Law Institute, New Delhi, to be made an autonomous deemed university with a separate campus to impart legal education in specialized branches and for conducting research.

(11) All these four institutions to be under the overall control of the National Judicial Council.

II. (1) Parliamentary legislation to be straightway made, establishing the Judicial Councils at the national and State levels and the Administrative Offices referring to the autonomy and financial support for the Judiciary, as enunciated in this Chapter.

(2) The said legislation will lay down the following procedure for the Budgets:

(a) Budget estimates to be prepared for the National Judicial Council and the State Judicial Council (the latter deals with the expenditure for the Subordinate Judiciary) by the said Judicial Council with the help of its Administrative Office and then it shall be finalized in consultation with the Executive. The budgets as finalized will be placed before Parliament or the State Legislatures, as the case may be.

(b) A convention is to be established by the Executive at the Central and State levels that the budgets as finalized with the Executive will be pushed through Parliament or the State Legislatures, as the case may be, without any downward revision.

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QUESTIONNAIRE
ON
FINANCIAL AUTONOMY OF THE INDIAN JUDICIARY

1. Today, the judiciary in India is blamed for the huge backlog of cases. There is a dearth of courts and judges and buildings for both judges and staff. In several cases, even minimum facilities are not available. What, according to you, is the main reason for all these shortcomings?

Planning ☐ Finances ☐ Both Planning and Finances ☐

2. (a) The Judges who administer the laws are best suited for planning the requirements of the judiciary and that they must have the main say on all aspects of judicial administration. Hence, do you consider it necessary that a personal participation of the judges and their involvement in the planning process will bring considerable improvement in the judicial administration?

Yes ☐ No ☐

(b) If not, what specific measures are required to be taken to improve the situation?

(Not more than 200 words)

3. (a) Do you consider that, for independent and efficient functioning of judiciary, it should have full financial autonomy including preparation of its budget?

Yes ☐ No ☐

(b) If not, the extent of autonomy may please be suggested:-

(Not more than 200 words)

(c) Do you agree to the suggestion that the expenditure of the Supreme Court of India should be charged on the Consolidated Fund of India and the expenditure of the High Courts and

subordinate judiciary should be charged on the Consolidated Fund of the concerned State/States?

Yes ☐ No ☐

4. It may be noticed that in USA, the budget estimates of the entire federal judiciary as prepared by the Administrative Office and as approved by the Judicial Conference of the US are to be included under the head of "Estimates for the Supreme Court" without revision by the Bureau of the Budget (with its recommendations) and the President submits the said estimate, without revision, before the Congress. The budget estimate of the Federal judiciary are treated on par with budget estimate of the Legislative Branch and the President does not revise the estimates. The Congress does not make any cut in the estimate. Do you subscribe to the view that a similar system should be introduced in India?

Yes ☐ No ☐

5. (a) The Consultation Paper suggests for consideration the question of enactment of a Parliamentary legislation for constitution of a Judicial Council for India and Judicial Administrative Office of India and then create separate judicial councils and administrative offices at the State level. Do you subscribe to this proposition?

Yes ☐ No ☐

(b) If yes, please indicate the details of your suggestion:-

(Not more than 200 words)

(c) Do you agree to the suggestion that the management system in the Courts should be put on a professional basis, i.e. utilizing services of persons having special qualifications in court management system?

Yes ☐ No ☐

(d) Do you subscribe to the view that the Administrative Office of the National Judicial Council should have direct recruit law graduates at the middle level who have a degree in Court Administration?

Yes ☐ No ☐

6. The Paper suggests that the National Judicial Academy, Bhopal should be made a Commonwealth Law Centre with faculty from India and other Commonwealth countries so as to enable it to conduct research in Law, publish journals, etc. Do you subscribe to this suggestion?

Yes ☐ No ☐

7. The Paper suggests that the Indian Law Institute, New Delhi, should be declared as a deemed University with a separate campus where diplomas, degrees and post-graduate degrees in subjects like Human Rights, Environment, Intellectual Property, etc. could be given. Do you agree to this suggestion?

Yes ☐ No ☐

8. The Paper suggests for establishment of an International Legal Data Centre at Delhi with internet facility for the use of the Supreme Court, the High Courts and the subordinate courts in the country, Bar Associations, Law Universities, etc. Do you agree to this suggestion?

Yes ☐ No ☐

9. (a) The Paper suggests that the National Judicial Academy, Bhopal, the Indian Law Institute, New Delhi, and the proposed International Legal Data Centre, should be under the supervision and purview of the proposed National Judicial Council. Do you agree to this suggestion?

Yes ☐ No ☐

(b) If not, please give briefly your suggestions in this regard:-

(Not more than 200 words)

10. (a) The Paper suggests that the proposed Judicial Council at the State level should be empowered to go into plans, budgets, court room facilities, accommodation requirements, steps required to take clearing of backlog of cases, etc.

Yes ☐ No ☐

(b) Please indicate your suggestions, if any, in this regard:-

(Not more than 200 words)

11. Do you consider it necessary to amend the Constitution for making specific entry therein for establishment of Judicial Council and the administrative offices and new budget procedure for courts?

Yes ☐ No ☐

12. Do you consider that the judicial councils and the administrative offices and for laying down new budgetary procedures for courts, necessary legislation may be placed within the scope of the existing entries in the Seventh Schedule to the Constitution?

Yes ☐ No ☐

13. Do you wish to make any other suggestion on financial autonomy of the Indian Judiciary? If so, please give details:-

(Not more than 200 words)