

RELATIONSHIP BETWEEN

“HIGH COURT”

AND

“DISTRICT JUDICIARY”

- High Court - The Highest Court in the State;
- Over and Above the District Judiciary;
- Image of 'Judiciary', however, depends upon the image of 'District Judiciary'.
- District Judiciary - Backbone of Judicial System;
- Trial Court Judge - Kingpin in the Administration of Justice;
- District Judiciary - Face of the Judicial System.

- District Judiciary - directly and entirely, under the administrative, judicial and disciplinary control of the High Court.
- Unlike, SC, HC enjoys power of superintendence over District Judiciary and Tribunals under Article 227 of the Constitution of India.
- If the SC and HC, both, were to be thought of as brothers in the administration of justice, HC has larger jurisdiction but the SC still remains the elder brother. ***[Tirupati Balaji Developers Pvt. Ltd. Vs. State of Bihar, AIR 2004 SC 2351].***
- For District Judiciary, HC holds the position of not only an elder brother but that of a '*guardian - parents paren*'.

227. Power of Superintendence Over All Courts by the High Court -

- (I) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.**

(2) Without prejudice to the generality of the foregoing provisions, the High Court may -

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

Registrar General, Patna High Court

Vs.

Pandey Gajendra Prasad & Ors.

[(2012) 6 SCC 357]

“Article 235 of the Constitution of India not only vests total and absolute control over the subordinate courts in the High Courts, but also enjoins a constitutional duty upon them to keep a constant vigil on the day to day functioning of these courts. There is no gainsaying that while it is imperative for the High Court to protect honest and upright judicial officers against motivated and concocted allegations, it is equally necessary for the High Court not to ignore or condone any dishonest deed on the part of any Judicial Officer.”

“It is the Constitutional mandate that every High Court must ensure that the subordinate judiciary functions within its domain and administers justice according to law, uninfluenced by any extraneous considerations. The members of the subordinate judiciary are not only under the control but also under the care and custody of the High Court. Undoubtedly, all the Judges of the High Court, collectively and individually, share that responsibility.”

TGN Kumar Vs. State of Kerala,
[AIR 2011 SC 708]

“Superintendence power of High Court is both administrative and judicial. But, such power is to be exercised sparingly and only in appropriate cases to keep the subordinate courts within the bounds of their authority. Powers of superintendence cannot be exercised to influence subordinate judiciary to pass any order / judgment in a particular manner.”

- The Constitution has vested the control of Subordinate Judiciary under Article 235 in the HC as a whole and not in its Chief Justice alone. Hence, every Judge should take adequate interest in the Institution, which is placed under the control of HC on Administrative Side.
- To create the atmosphere of trust and belief between the two.
- To create appropriate conducive working conditions for JOs so that they should have a reasonable mental peace in order to perform their duties satisfactorily.
- *“Rendering justice is a difficult job - Unless the JO has a reasonably worry-free mental condition, it would be difficult to expect unsoiled justice from his hands.” – [All India Judges’ Association Vs. Union of India, AIR 1992 SCC 1].*

Obligations on the HC

- HC must take greater interest in the proper functioning of the District Judiciary.
- Inspection should not be a matter of casual attention.
- In recruitment, promotion, selection, conferring of selection grade, supertime scale, review, transfers, disciplinary proceedings, compulsory retirement etc., the HC has to function in a most fair, transparent, objective and independent manner by following the principles of natural justice.

Parameters of Administrative Control

To Strengthen the Judicial Infrastructure -

- Taking sufficient interest in the proper functioning of District Judiciary;
- Providing sufficient strength of the staff;
- Residential Quarters;
- Transfer Policy – to be fair;
- To hold regular informal interaction;
- To discuss working problems with Jos;
- Taking the role of Guardian Judge with all the seriousness it requires;
- Counselling of JO before taking any action;
- To treat them with the dignity of JO, which they deserve.

- Assessment of Judgments;
- Holding of Workshops;
- To spot bright talent;
- To encourage and motivate JOs;
- To identify their specific areas of interest and expertise and give them scope accordingly;
- To weed out bad elements;

- To help them in evolving best and uniform practices for the governance of the Courts and effective administration of justice;
- To create support mechanisms for them;
- To avoid calling upon JOs to give more disposal or to decide the cases expeditiously or within a time bound manner, without knowing their calendar or their file.
- To equip and enable them to give expeditious disposal;
- To sensitize and train them by holding the Workshops and Training Programmes;

- To understand their problems;
- To have discussions with Presidents of Bar Associations to resolve the critical issues;
- To send a signal to the Bar Members that HC is taking not only keen interest, but is standing behind the JOs to support them strongly in case of need.
- Then only the JOs will do the work confidently, independently, boldly, without fear or favour, which is a 'hallmark' of Judiciary.

Importance of ACR

“Undoubtedly, ACRs play a vital and significant role in the assessment, evaluation and formulation of opinion on the profile of a Judicial Officer, particularly, in matters relating to disciplinary action against a Judicial Officer. The ACRs of such officer hold supreme importance in ascertaining his conduct, and, therefore, the same have to be reported carefully with due diligence and caution. We feel that there is an urgent need for reforms on this subject, not only to bring about uniformity but also to infuse objectivity and standardisation.” [*Vide R.G., Patna HC Vs. Pandey Gajendra Prasad, (2012)*

6 SCC 357]

“The Confidential Report of an officer is a proper document, which is expected to be prepared in accordance with the Rules and practice of the Court, to form the basis while considering the officer for promotion to higher post and all other service related matters, in future. Non-writing of the confidential Reports is bound to have unfair results. It affect the morale of the members of the service. The timely written Confidential Reports would help in putting an officer at notice, if he is expected to improve in discharging of his duties.” [*Vide R.G., Patna HC Vs. Pandey Gajendra Prasad, (2012) 6 SCC 357*]

“Highly competitive standard of service discipline and values are expected to be maintained by the Judicial Officers as that alone can help them for better advancement of their service career. In such circumstances, the significance of proper Superintendence of the High Court over the Judicial Officers has a much greater significance than what it was in the past years. In fact, in our view, it is mandatory that such Confidential Reports should be elaborate and written timely to avoid any prejudice to the administration as well as to the officer concerned.”

HC Control – Judicial Side

- Entire control of District Judiciary vests with HC on Judicial Side.
- On Judicial Side – no law like Article 141 of the Constitution of India making HC's Judgments binding on District Judiciary. However, it is implicit in the power of supervision.

East India Commercial Company Ltd., Calcutta

Vs.

Collector of Customs, Calcutta,

[AIR 1962 SC 1893]

“Under Article 227, HC has jurisdiction over all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which HC has superintendence can ignore the law declared by that HC. Though there is no specific provision just like in the case of SC making the law declared by the HCs binding on Subordinate Courts, it is implicit in the power of supervision. We, therefore, hold that the law declared by the highest Court in the State is binding on the Authorities or Tribunals under its superintendence.”

- So far as Appellate and Revisional Jurisdiction is concerned, in all Civil, Criminal and other matters, HC is the highest court of appeal for District Judiciary.
- Under Article 228 of Constitution of India, HC may transfer any case pending before it to the District Court, or, from one District Court to another, or, may withdraw the case to itself.
- Appellate jurisdiction of HC inherently carries with it a power to issue corrective directions binding on the Forums below and on the failure of the latter to carry out such directions, to visit the District Judiciary with consequences and penalties.

- As an Appellate Court, HC plays important role in securing the standards of judicial behaviour in District Courts.
- HC has to, therefore, carefully phrase its criticism by using temperate language.
- Criticism has to be fair and to ensure that the Judge to whom the criticism is addressed, as well as other Judges, get the message.

What is the Obligation of HC on Judicial Side to maintain Healthy Relations

[Ishwari Prasad Misra Vs. Mohd. Isa, (1963) 3 SCR 722]

“To adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary, as, in such matters, the concerned Judge has no remedy in law to vindicate his position.”

K.P. Tiwari Vs. State of M.P.

[1994 Supp. (1) SCC 540]

- SC reminded all concerned that using intemperate language and castigating strictures on the Judges of the lower Judiciary diminishes the image of Judiciary in the eyes of the public.
- HC has to remember that every error, however gross it may look, should not be attributed to improper motive.

➤ The Judges in the higher courts have also a duty to ensure judicial discipline and respect for the Judiciary from all concerned. The respect for the Judiciary is not enhanced when Judges at the lower level are criticized intemperately and castigated publicly. No greater damage can be done to the administration of justice and to the confidence of the people in the Judiciary, than when the Judges of the higher courts publicly express lack of faith in the Subordinate Judges for one reason or the other.

'K' A Judicial Officer (In Re)

[(2001) 3 SCC 54]

➤ The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition, if committed, once innocently or unwittingly.

- The power to control is not to be exercised solely by wielding a teacher's cane.
- The Members of Subordinate Judiciary look up to the HC for the power to control to be exercised with parent-like care and affection.

Amar Pal Singh Vs. State of U.P.

[(2012) 6 SCC 691]

- HC has to maintain judicial decorum and propriety by avoiding unwarranted comments against JO.
- HC is required to maintain sobriety, calmness, dispassionate reasoning and the poised restraint, however, strongly it may feel about the unmerited order.

➤ The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied. However, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities.

- Firstly, the Judicial Officer (JO) is condemned unheard, which is violative of principles of natural justice. A member of Subordinate Judiciary himself dispensing justice should not be denied this minimal natural justice, so as to shield against being condemned unheard.
- Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the JO contained in a Judgment, reportable or not, is a pronouncement in open and therefore becomes public.

- Thirdly, human nature being what it is, such criticism of a JO contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge, who had decided the case against him. This is subversive of judicial authority of the deciding Judge.
- Fourthly, seeking expunging of the observations by a JO by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the HC or SC – a situation not very happy from the point of view of the functioning of the Judicial System.

How High Court Should Deal ?

- To remember that the Judges of the lower courts are not necessarily wrong, nor the higher courts are always right.
- To remember that the trial court judiciary mostly works under a charged atmosphere and is constantly under a psychological pressure.
- Trial JOs do not have the benefit of detached atmosphere of the higher courts to think coolly and decide patiently.

- The proper course for HC is to make note of his conduct in the Annual Confidential Report of his work; to use it on proper occasions, instead of condemning them in public in judicial pronouncements.
- Such discouraging remarks in the judicial pronouncements of HC has the effect of strained and spoiling relations between the District Judiciary and HC. If it can be avoided, why should it not be avoided?

HC – The Disciplinary Control

[Yoginath Bagade Vs. State of Maharashtra, AIR 1999 SC 3734]

“In view of Article 235 of Constitution of India, although appointing authority for Subordinate Judiciary is a Governor of the State, as complete control over them is vested in the HC, HC is the disciplinary authority, and in exercise of this power, HC can hold disciplinary proceedings and recommend punishment / penalty to be imposed to the Governor, who alone will be competent to impose this punishment as per the recommendation of HC. However, recommendation of HC is binding on the Governor.”

- Article 233 – Appointment and Promotion to the post of District Judge directly by HC.
- Article 234 – Recruitment of other JOs by Governor, after consultation with State Public Service Commission and HC.

235. Control Over Subordinate Courts -

The control over District Courts and Courts subordinate thereto, including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court.

- The relations between the HC and the District Judiciary have to be really in each and every sense, like, that of the guardian, philosopher and the parent, as healthy, as they are expected to be.
- District Judiciary looks upon HC as an ideal to aspire, to be in that position.
- Hence, HC has to maintain such ideal position in its control and conduct with District Judiciary.

Role of Collegiality in Court Governance

“To inculcate in them a set of values, traditions and culture, which can be established and reinforced by those in key leadership positions as they convey their vision and goals for what they believe the organization should become and do and then delegate the responsibility of achieving these goals to their subordinates.”

- *By R. Dale Lefever*

Thank You

A close-up photograph of a hand holding a silver fountain pen, writing the words "Thank You" in a dark blue, elegant cursive script on a light blue, textured surface. The pen is positioned at the end of the word "You", with the nib pointing towards the right. The background is a soft, gradient blue with faint, diagonal lines. A faint watermark "Can Stock" is visible in the center of the image.