THE SUPREME COURT AND SENIOR COUNSEL
AT CROSSROADS

by

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The observations of the Supreme Court concerning the behaviour of senior counsel in re: T. V. Chaudhary make painful reading. The fact that such an urbane Justice as Justice A. P. Sen was moved to write (for himself and Justice B. C. Ray) four paragraphs in a short judgment of fourteen paragraphs about the role and obligation of senior counsel suggests a deep malaise, symptoms of which have erupted from time to time, as, for example, in Jagmohan case where counsel contradicted concessions recorded by the Court in the course of the judgment.

In this case, the matter was rather simple. The petitioner, an I. A. S. official, complained that the suspension ordered against him by the Andhra Pradesh Government was discriminatory insofar as other equally culpable co-officers were treated leniently. The Court, before the 1986 summer vacation, expressed its surprise at this differential treatment and directed the State to proceed with obtaining of necessary permission for prosecution for the other officers. It also indicated that if this was not done "it may become necessary... to revoke the suspension of the petitioner before the next hearing".

The permission having been obtained, one of the adversely affected officials, T. V. Chaudhary, attacked the Court's order as "illegal", being a product of non-application of the judicial mind on the "relevant provisions of law, case law, and parameters of judicial power and the necessity to observe the principles of natural justice". When the Court drew the attention of the learned Counsel to these "objectionable" averments, it got the "impression that the application was settled by the learned counsel without noticing the offending averments".

1. Professor of Law, Delhi University, Hon. Director of Research, Indian Law Institute.
4. Ibid. at 263.
5. Ibid.
This was a serious enough matter. Apparently, it was aggravated by what subsequently happened, since the Court was constrained to put on record its "disapproval of the manner in which the arguments were advanced" with "undue vehemence and unwarranted passion, reflecting identification of interests beyond established conventions". Indeed, they were, said the Court, "of degrees (sic) not usual of (sic) enlightened senior counsel to adopt".

The Court was moved to remind senior counsel at the Supreme Court for the need for reasoned argumentation, temperate behaviour and other virtues of rectitude which will make the senior bar a "model for the junior members of the profession". The Court even had to indicate what the duties to 'settle' pleadings mean in relation to senior counsel.

It is incumbent upon the Supreme Court Bar Association and the Bar Council of India to take full cognizance of these anguished observations. The Court's observations must be fully discussed by senior counsel among themselves as a body, if they have not already done so, and an undertaking by way of a collegiate decision should be conveyed to the Chief Justice of India and his companion Justices that the Bar is as determined as the Bench to preserve the best standards and traditions. They should take this occasion to formulate a code of honour in the matter of settlement of pleadings, the size of pleadings, courtroom conduct and decorum and other related issues. And the code should include the requirement that any concession given by counsel during the course of hearing should be immediately recorded in form of an affidavit filed with the court, with a view to avoid conflicting retrospective recollections which tend to lower the dignity of the Bar and Bench as very nearly happened in Jagmohan case. The senior Bar should find it possible to take the observations of Justice Sen outside the immediate context of the case, as reflecting the overall desperation of the Court at some general trends over the last decade.

6. The high fees charged by senior lawyers are justified in the first place by the fact that they would pay careful attention to expeditious and equitable administration of justice power and influence of the senior Bar—See court's observations on the duties of senior counsel at p. 264.

7. Supra note 4.

8. Ibid.

9. Supra note 4 at 264.

10. Ibid.

11. See supra note 2; See also U. Baxi, "Delay in Jagmohan Case": Statesman November 13, 1985. Given the extraordinary circumstances, I was constrained to observe: The least one could say in the circumstances is that the conduct of Mr. Jagmohan, of the senior counsel representing him, and the advocate on record, is rather unfortunate. Officers of court; they have duties to the court as well as to the client, and one assumes that the latter set of duties cannot be efficiently performed without an affirmation of respect for the credibility of the court. Recognition as a senior advocate should not be made on a periodic assessment of how he or she balances obligations to a client and the Institution of justice. But should the present unfortunate trend continue, Supreme Court judges may not be unjustified in considering this harsh step.

12. Supra note 4 at 264-65.