



सत्यमेव जयते

LAW COMMISSION OF INDIA

ONE HUNDRED AND FOURTH REPORT

ON

THE JUDICIAL OFFICERS' PROTECTION ACT, 1850

10th October, 1984

GOVERNMENT OF INDIA
Ministry of Law, Justice and Company Affairs

**Corrigenda to the 104th Report on the "Judicial Officers
Protection Act, 1850"**

1. In the contents page against chapter 4 *for* the title "Preliminary matters" the title "Short Title and Extent" should be substituted.
2. In the 4th line of para 1.4 on page 1, the footnote figures "2-2" should be substituted by the figures "2-3".
3. On page 3, in footnote 2, the alphabet "s" should be added to the word "Chapter".
4. On page 6 in para 6.1 in line 5 above and at the end of the word "adopted" the figure "4" should be inserted for the figure "3" and at the end of the word "expresses" the figure "4a" should be inserted for the figure "4".
5. In the footnote on page 6 a new footnote "4, See Paragraph 5.2, *supra*" should be added, and the figure for the footnote "4", the figure "4a" should be substituted.
6. On Page 8, in sub-paragraph of para 8.5 in line 5 in item 3 the alphabet "s" should be inserted reading the word "Section" as "Sections".
7. In appendix 1 on page 11 the figure "77" should be substituted by the figure "78" in the heading.

Justice K. K. Mathew

D. O. No. F. 2(8)/84-LC

New Delhi

Dated, the 10th October, 1984.

My dear Minister,

I am forwarding herewith the One Hundred and Fourth Report of the Law Commission on "The Judicial Officers' Protection Act, 1850". The subject was taken up by the Law Commission on its own.

The Commission is indebted to Shri P. M. Bakshi, Part-time Member, and Shri A. K. Srinivasamurthy Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

Sd/-

(K.K. Mathew)

Shri Jagannath Kaushal,
Minister of Law, Justice
and Company Affairs,
New Delhi.

Encl:— 104th Report

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CHAPTER 1

INTRODUCTORY

1.1. Revision of the Judicial Officers' Protection Act, 1850, has been taken up by the Law Commission of its own, as a part of its function of simplifying the law. The manner in which the Act is expressed has become out of date, particularly as a result of subsequent legislative and other developments that have taken place in India. The Act therefore needs revision badly. The Act was passed more than a century ago. Since then, no comprehensive review of its provisions has been undertaken. The points that arise out of the Act are important enough to require serious consideration.

1.2. Stated broadly, the object of the Act is two fold. It seeks to confer protection on persons performing judicial functions, and it is also designed to protect persons executing decrees and orders passed by the judiciary in exercise of its functions. The first seems to be the principal objective of the Act; the second objective, of protecting the executive officers, may be regarded an ancillary to the first.

1.3. The Act lays down no new principle. Most common law countries confer substantial protection on their judges, even in respect of acts beyond their jurisdiction, provided such acts be done honestly and on reasonable and probable cause. However, though the principle is not controversial, several matters of detail arise and it is desirable to consider the provisions of the Act at some length. Before discussing the provisions of the Act in detail, it may be convenient to give its history in brief.

1.4. The Law Commission had, for ascertaining opinion on the subject, prepared and circulated¹ a Working Paper, inviting comments from interested persons and bodies. The comments received on the Working Paper will be referred to, at the appropriate place.^{2,3}

CHAPTER 2

HISTORY

2.1. Prior to 1850, in India, there was no comprehensive legislation relating to judicial immunity. A British statute, dealing with a very limited area of the subject, provided as follows⁴ :—

“And, whereas it is reasonable to render Provincial Magistrates, as well as natives as British subjects, more safe in execution of their office; be it enacted, that no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the Country Courts, for any judgment, decree or order of the said Court, nor against any person for any act done or in virtue of the Order of the said Court.”

¹Law Commission of India, Working Paper on the Judicial Officers Protection Act, 1855.

²Chapter 9 *infra*.

³All comments received upto the date of signing this Report have been taken into account.

⁴Section 24, Statute 21 Geo 3 Ch. 70.

View of Privy Council as to object of British statute.

2.2. The object of that section of the British statute¹ was to protect persons exercising a judicial office for things done *within their jurisdiction*, though erroneously or irregularly done, leaving them for things done wholly *without jurisdiction*. It was so held by the Privy Council.²

Privy Council Construction of Statute referred to above.

2.3. The Privy Council further laid down³ that the statute referred to above (protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices) did not confer unlimited protection on Magistrate. It placed them on the same footing as English courts of similar jurisdiction. The Privy Council saw no reason why Indian judges should be "more or less protected than English judges of general and limited jurisdiction under the like circumstances."

According to the Privy Council, to give them (Indian judges) an exemption from liability when acting bonafide but *without jurisdiction* would be to place them on a better footing than the English judges, and would leave the injured individual wholly without remedy. The Privy Council further observed:---

"For, English Judges, when they act wholly without jurisdiction, whether they may suppose they had it or not, have no privilege; and the justice of the peace, whether acting as such, or in their judicial character, in case of summary conviction, have no other privileges than that of having notice of action, a limitation of time for bringing it, a restriction as to the venue, the power of tendering amends, and of pleading the general issue, with certain advantages as to costs."

Position prior to 1850.

2.4. Thus, prior to the passing of the Act of 1850, the protection for judges in India existed only for acts within jurisdiction, as held by the Privy Council. As will be pointed out later, the Act of 1850 has expanded the protection available to judges.

CHAPTER 3

PRESENT LAW

Scope of the Act of 1850.

3.1. The Act of 1850 makes more definite provision as to the protection of judges than the earlier law⁴. In the first place, it covers all judicial officers, by enumerating them specifically. Secondly, it protects the judicial officers from suits, not only for acts done or ordered to be done by them in the discharge of their duties *within the limits of their jurisdiction*, but also for acts done *beyond the limits of their jurisdiction*, provided that, in the latter case, the officer, at the time of doing the act or ordering it to be done, in good faith believed himself to have such jurisdiction. Thirdly, the Act also protects persons acting in pursuance of the orders of a judicial officer, if acting in good faith, *even* if the judicial officer had no jurisdiction to pass the particular order.

Scheme of the Act, and three major heads of study.

3.2. The scheme of the Act is simple enough. Because of the legislative practice in those days, the Act does not commence with the usual clause dealing with its short title and territorial extent. The Act consists of only one section, and its structure is not complicated.

¹Section 24, Statute 21 Geo 3 Ch. 70.

²*Calder v. Halket*, (1840) 2 Moo Ind. App. 293 13 E.R. 12; 3 Moo. P.C. 28; (1835-1842) All ER R.p. 306.

³*Calder v. Halket*, (1840) 3 Moo P.C. 28; 13 E.R. 2 Moo. Ind. App. 293; (1835-1842) All E.R. REP. 306.

⁴For the earlier law, see Chapter 2, *supra*.

However, there is a possibility of detailed study in regard to (i) the persons who receive the protection of the Act,¹ (ii) the kind of proceedings for which such protection is available,² and (iii) the extent of the protection so available.³

3.3. Section 1 of the Act may be quoted in full:

Section 1.

"1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders. No judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would "be bound to execute, if within the jurisdiction of the person issuing the same".

3.4. Each of the three matters mentioned above⁴ in our analysis of section 1 has an importance of its own. The first, which relates to the persons entitled to protection, is important, because of the recent increase in the number of authorities performing quasi-judicial functions. The second—the kind of proceedings enjoying protection—is important, because of certain emerging concepts of administrative law. The third—the extent of protection—is also important, because of its concern with the state of mind and other elements which are the essential criteria for availability of the immunity granted by the Act. Importance of three aspects of Section 1.

CHAPTER 4

SHORT TITLE AND EXTENT

4.1. Coming to the changes needed in the Act, we begin our examination of the Act with the short title "The Judicial Officers Protection Act, 1850". In our opinion, this needs to be revised. The expression "Judicial officers" is not quite appropriate. By a layman, it may be taken as denoting only persons belonging to the lower judicial cadre of the State, but the Act is not confined to them. It extends to all persons who act judicially—broadly speaking, "Judges".⁵ It would be more appropriate to bring that idea in the forefront. The short title of the Act should therefore be revised as "The Judges Protection Act, 1850". Short title to be amended.

We are separately⁶ recommending adoption of the definition of "Judge" as given in the Indian Penal Code.⁷

4.2. The next topic to be considered relates to the territorial extent of the Act. At present, there is no provision in the Act defining its territorial extent. Territorial extent.

¹Chapter 5, *infra*.

²Chapter 6-7, *infra*.

³Chapter 8, *infra*.

⁴Paragraph 3.2, *supra*.

⁵Cf. section 19, Indian Penal Code.

⁶See, Paragraph 5.2, *infra*.

⁷Section 19, Indian Penal Code.

It appears that before independence, the Act was in force in all the Provinces of (British) India, except the Scheduled Districts.¹ Subsequently, (i.e. after independence), the Act was extended to the merged states², and Union Territories.³ However, the Act has not so far been extended by *Parliamentary Legislation* to the area of Part B States, though, presumably, substantially similar legislation may be in force in most of those areas.

Need for change.

4.3. There seems no reason why the Act should not be extended to the whole of India except the State of Jammu and Kashmir. We see no constitutional difficulty in doing so. The pith and substance of the Act seems to fall within the subject of "Actionable wrongs", which is specifically included in the Concurrent list in the Constitution.⁴ Even if the Act is regarded as touching the subject of "administration of Justice", that also is a matter which now falls within the Concurrent List.⁵ There should, therefore, be no objection to extending the Act to the areas of former Part B States. In such matters, uniformity is desirable and should be sought for, if there is no constitutional difficulty.

Proposal to extend the Act to whole of India.

4.4. Accordingly, we propose that the Act should be extended to the whole of India except the State of Jammu and Kashmir.

CHAPTER 5

PERSONS ENTITLED TO PROTECTION AS JUDGES

Section 1
Persons
entitled to
protection.

5.1. Turning, now, to the actual provisions of the Act, we find that the persons on whom protection is conferred by the Act are enumerated in section 1 as "judge, magistrate, justice of the peace, Collector or other persons acting judicially". Underlying the enumeration of all the persons in the section is the central concept of "acting judicially". We find that the same idea is expressed briefly, but more comprehensively, in section 77 of the Indian Penal Code,⁶ which confers on judges protection from criminal liability in respect of certain judicial acts.

Definitions
of "judge"
and "court"
of Justice
in the Indian
Penal Code.

5.2. The expression "Judge", and also the connected expression "court of Justice", are appropriately defined in the Indian Penal Code.⁷ By Section 19 of the Penal Code (omitting the illustrations), the word "Judge" has been given the following meaning:

"19. The word "Judge" denotes not only every person who is officially designed as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which if confirmed by some other authority, would be definitive, or who is one of a body or persons, which body of persons is empowered by law to give such a judgment".

¹Section 3, Laws, (Local Extent) Act, 1874 (15 of 1874).

²Merged States (Laws) Act, 1949 (59 of 1949).

³Union Territories (Laws) Act, 1950 (30 of 1950).

⁴Constitution, Seventh Schedule; Concurrent List, entry 8.

⁵Constitution, Seventh Schedule, Concurrent List, entry 11A.

⁶See Appendix 1.

⁷Sections 19-20, Indian Penal Code.

5.3. Section 20 of the Indian Penal Code (omitting the illustration) defines a Court of Justice, as under:— Section 20, Indian Penal Code.

“20. The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body is acting judicially”.

5.4. If the definitions of the expressions “Judge” and “Court of Justice” (as given in the Penal Code) are incorporated in the Act under discussion¹, it would be possible to improve the drafting of this part of section 1 of the Act, by adopting the language of section 77 of the Penal Code. Section 77 is the substantive provision conferring on judges, protection in regard to criminal liability.² Possible re-draft of part of Section 1.

On this basis, this part of section 1 of the Act under consideration can be revised as under:—

“No Judge shall be liable to be sued in any Civil Court for anything which is done by him, when acting judicially in the exercise of any power which is given to him by law, or which in good faith he believes to be given to him by law.”

5.5. Before proceeding to consider the other issues arising out of section 1 of the Act, (that is to say, the issues which relate to the nature of the protected acts and various other conditions of judicial immunity), some words may be in order about quasi-judicial authorities. According to doctrines of constitutional and administrative law, these authorities are regarded as bound by the rules of natural justice, and consequentially amenable to judicial control exercised by High Courts under article 226 of the Constitution. The extent of permissible judicial control is, of course, a question primarily relatable to that article. For the present purpose, the precise issue to be considered is this: to what extent is judicial immunity from liability (conferred by the Act under consideration) available to such quasi-judicial authorities? Authorities other than judges.

5.6. The question passed above assumes practical importance, because these authorities have a very wide range. At the one end of the scale are statutory tribunals which operate almost like courts. These tribunals are vested with the function of finding facts and applying the law, in a formal manner and after following the procedure prescribed for a civil court.³ Range of authorities.

At the other end of the scale are administrative authorities who, though they are bound to act quasi-judicially and to follow the rules of natural justice, do not perform any judicial function as such.

In between the two, there is a vast variety of authorities. Where there is no judicial immunity (because the authorities concerned are not “courts”) nor is statutory protection given by a special provision, the presiding officers of such authorities would presumably be liable in the same circumstances as other purely executive officers.⁴

¹Cf. Paragraph 8.5, *infra*.

²See Appendix I.

³Cf. Wade, Administrative Law (1977), pages 641-642.

⁴Cf. Wade, Administrative Law (1977), page 642.

Effect of proposed re-draft.

5.7. It would appear that the proposed redraft of this part¹ of section 1, dealing with persons entitled to the protection in question would meet the ends of justice. On the one hand, it would cover all those whose function is to give a "definitive judgment".² At the same time, the proposed re-draft will not be unduly wide, as authorities not entitled to give a definitive judgement would be excluded.

Incidentally we find³ that in the context of the law of contempt, the matter has been discussed academically in England, and it has been pointed out that two rival tests could be thought of, namely, (i) the source of authority "test", and (ii) the "function" test. The test which we are proposing is principally based on the functions vested in the authority concerned.

CHAPTER 6

PROCEEDINGS FOR WHICH PROTECTION IS AVAILABLE

Section 1 earlier half and proviso.

6.1. The substantive provision is section 1 (earlier half and the proviso) of the Act under consideration, which deals with the nature of the protection given to the persons concerned, can now be taken up. It appears that it would be an improvement if, for that purpose also, the simpler provision in section 77, Indian Penal Code, is adopted.⁴ Section 77 expresses⁵ (in much briefer language) all that this part of section 1 of the Act under consideration tries to express.

Position as to acts within and without jurisdiction.

6.2. It may be desirable to analyse a few aspects of the Act of 1850 which is under consideration. Under the Act of 1850, the protection applied to acts done within jurisdiction, irrespective of questions of good faith; but the protection does not apply to acts done without jurisdiction, if the act is not done in good faith. This will be apparent from the conditions for claiming the protection, analysed in the next paragraph.

The protection afforded to a judicial officer under the Act requires that (i) he was acting judicially, (ii) that he made the order in discharge of his judicial duties, and (iii) that either the action was within the limits of his jurisdiction or (if it was without jurisdiction) that, in good faith, he believed himself to have jurisdiction to do or order the act complained of. This is fairly clear on a reading⁶ of section 1.

Effect of proposed adoption of section 77.

6.3. The adoption of section 77, Indian Penal Code, which we have suggested above,⁷ will not make a substantial difference in this regard. But it will certainly state the law in a simpler and neater form.

Meaning of "Judicial".

6.4. It may be mentioned that the Act under consideration requires that the act must have been done in discharge of "judicial" duty. Although a large number of rulings on the expression "judicial" exist in this context,⁸ they are mostly focussed on the facts of each case, and do not necessitate any textual amendment.

¹See paragraph 5.2, *supra*.

²*Cf.* Sections 19-20, Indian Penal Code.

³Lowe & Rowlings, "Tribunals and the Law Protecting Administration of Justice" (Autumn 1982) Public Law 418, 438, 439.

⁴See Appendix 1.

⁵See Paragraph 3.3, *supra*, for the text of section 1.

⁶Paragraphs 5.2, and 6.1, *supra*.

⁷See also paragraph 3.3, *supra*.

⁸Iyer, Torts (1975), page 46, Chapter 2, para 16.

6.5. The expression "jurisdiction" as used in the Act under consideration does not mean the power to do or order the (particular) act impugned, but means generally authority of the judicial officer to act in the matter.¹ Where a Sub-divisional Magistrate, orders the arrest of a person for the offence of mischief without taking cognizance of the offence, the Sub-divisional Officer is acting in an executive capacity and is liable to pay damages for false imprisonment to the person as arrested.

Meaning of "jurisdiction"

CHAPTER 7

MINISTERIAL ACTS

7.1. So far, we have considered that part of section 1 of the Act under discussion which relates to the immunity of judges. The latter part of the section confers protection on an officer of court and "other person" who executes any warrant or order issued by the judge, which that officer or other person would be bound to execute if within the jurisdiction of the person receiving the same. Here also, it appears preferable to adopt the similar language of section 78 of the Indian Penal Code.² That Section is concerned with the protection against criminal liability for ministerial acts done in pursuance of the orders of a judge (as defined in that Code).

Section 1 and Ministerial Acts.

7.2. On this basis, the latter part of section 1 could be revised as under:--

"Nothing which is done in pursuance of, or which is warranted, by the judgement or order of a court of justice, if done whilst such judgement or order remains in force, shall render a person liable to be sued in any civil court, notwithstanding that the court may have had no jurisdiction to pass such judgement or order, provided the person doing the act in good faith believes that the court had such jurisdiction."

Possible re-draft of section 1, latter part.

CHAPTER 8

"GOOD FAITH" AND OTHER EXPRESSIONS

8.1. One important point that must also receive attention in connection with section 1 of the Act is the question whether the belief of the person acting judicially 'in good faith' must be based on reasonable inquiry. In other words, does the expression "good faith" here postulate due care and attention? The point was discussed in detail in a Calcutta case.³ On the facts of the belief was held to be both honest and reasonable. At the same time, it was pointed out that there may be some difficulty as to the exact meaning of the expression "in good faith" as appearing in section 1. A question, it was said, may arise if it was necessary to see whether there existed a *reasonable cause* for the belief of the Magistrate, or whether it was sufficient if he himself thought that there was sufficient cause.⁴

Section 1 - Good faith.

¹Anowar Hussain v. Ajay Kumar, A.I.R. 1965 S.C. 1651, approving A.I.R. 1959 Assam 28.

²Appendix 1.

³Rohini Kumar v. Niaz Mohammed, A.I.R. 1944 Cal. 4, 10 (Pal J.).

⁴See also Collector of Sea Customs v. Chidambaram. (1876) I.L.R. 1 Mad. 89.

Suggestion to adopt definition of "good faith" in Penal Code.

8.2. The difficulty pointed out in the Calcutta case mentioned above¹ would disappear if the definition of "good faith" as given in the Penal Code² is adopted for the purpose of the interpretation of the Act under consideration also. Section 52 of the Penal Code reads as under:—

"52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

It is desirable that for the purposes of the Act under consideration also, reckless belief should confer no immunity. It may be mentioned that a judge acting without jurisdiction recklessly enjoys no immunity from criminal liability.³

Definition of "act".

8.3. There is another useful definition contained in the Indian Penal Code—definition of the expression "act"—which is worth adopting⁴. That expression is used in the Act under consideration but is not defined by the Act.

In the Indian Penal Code, two sections are relevant as defining its scope. Section 32 of the Indian Penal Code provides as under:—

"32. In every part of this Code except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions."

Section 33 of the same Code provides as under:—

"33. The word 'act' denotes as well as a series of acts as a single act; the word 'omission' denotes as well as series of omissions as a single omission."

Uniformity.

8.4. The definitions contained in the Penal Code are useful. Moreover, some uniformity is desirable in such matters, as regards civil and criminal liability, unless a distinction is justified on some matter of principle.

Proposal for adopting definitions given in Indian Penal Code.

8.5. On this logic, there is a case for inserting, in the Act under consideration, a provision to the effect that words and expressions defined in the Indian Penal Code and used but not defined in the Act have the meanings respectively assigned to them in the Indian Penal Code.

So far as we could ascertain, there are four expressions defined in the Penal Code, which would be useful for the purposes of the Act under consideration—

- (1) Section 19—'Judge' (defined with reference to 'Court of Justice').⁵
- (2) Section 20—'Court of Justice' (used in the definition of 'Judge').⁶
- (3) Section 32-33—'act'.⁷
- (4) Section 52—'good faith'.⁸

It would be useful if they are adopted into the Act under consideration.

¹Paragraph 8.1, *supra*.

²Section 52, I.P.C.

³Section 77, I.P.C. (See Appendix 1).

⁴Sections 32-33, I.P.C.

⁵Paragraph 5.2, *supra*.

⁶Paragraph 5.3, *supra*.

⁷Paragraph 8.3, *supra*.

⁸Paragraph 8.2, *supra*.

CHAPTER 9

COMMENTS RECEIVED ON THE WORKING PAPER

9.1. In response¹ to the Working Paper circulated on the subject by the Law Commission, three comments have been received.² Of these replies, one is from a High Court, which has no comments to offer.³ The second is from a High Court, which agrees with the proposal put forth in the Working Paper.⁴ The third is also from a High Court, which not only agrees with the proposal, but also adds that the proposal will⁵ go a long way towards giving protection to judicial officers. Comments received on the Working Paper.

9.2. The proposals have thus been welcomed.

CHAPTER 10

MAIN RECOMMENDATIONS

10.1. The main recommendations made in this Report may, for the sake of Main Recommendations. convenience, be summarised as under:—

(1) The short title of the Judicial Officers Protection Act should be revised to read as "The Judges Protection Act, 1850".⁶

(2) The Act should be extended to the whole of India, except the State of Jammu and Kashmir.⁷

(3) The provision in the Act for the protection of Judges should be revised⁸ as under:—

"No Judge shall be liable to be sued in any Civil Court for anything which is done by him when acting judicially, in the exercise of any power which is given to him by law, or which in good faith he believes to be given to him by law."

(4) As regards ministerial action taken in pursuance of Judicial acts, the relevant provision of the Act should be revised so as to read as under:—

"Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a court of justice, if done whilst such judgment or order remains in force, shall render a person liable to be sued in any civil court, notwithstanding that the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction."⁹

(5) A new provision should be inserted in the Act to the effect that words and expressions defined in the Indian Penal Code and used but not defined in the Act, have the meanings respectively assigned to them by the Code.¹⁰

¹Law Commission File No. F.2(8) 84-L.C. S.No. 2, 3 and 4.

²All comments received upto 18th August, 1984 have been taken into account.

³Law Commission File No. F.2(8)/84 L.C. S.No. 2.

⁴Law Commission File No. F.2(8)/84 L.C. No. 3.

⁵Law Commission File No. F.2(8)/84 L.C. S.No. 4.

⁶Paragraph 4.1, *supra*.

⁷Paragraph 4.4, *supra*.

⁸Paragraphs 5.4 and 6.1, *supra*.

⁹Paragraph 7.1, *supra*.

¹⁰Paragraph 8.5, *supra*.

10.2. The Judicial Officers' Protection Act, 1850 should be revised on the ^{Act to be} lines recommended in this Chapter. _{revised.}

(K.K. MATHEW)
CHAIRMAN

(J.P. CHATURVEDI)
Member

(DR. M. B. RAO)
Member

(C.M. BAKSHI)
Part-time Member

(VEPA P. SARATHI)
Part-time Member

(A.K. SRINIVASAMURTHY)
Member-Secretary

DATED : 10th October, 1984.

APPENDIX

SECTIONS 75-77, INDIAN PENAL CODE

Sections 76 to 78 of the Indian Penal Code read thus

"Sections 76.—Nothing is an offence which is done by a person who is or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound by law to do it.

"Section 77.—Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

"Section 78.—Nothing which is done in pursuance of, or which is warranted by the judgement or order of, a court of Justice, if done whilst such judgement or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgement or order, provided the person doing the act in good faith believes that the Court had such jurisdiction."

APPENDIX 2

ENGLISH LAW AS TO THE PROTECTION OF JUDGES

English law as to the protection of Judges has had an interesting history. Originally, in England, a distinction was (by case law) made between superior and inferior courts in this context. For example, the view taken in the 19th century, in a case in which there was an unsuccessful action against Mr. Justice Blackburn, was that¹—

Position in England—View in 19th Century as to Superior Courts.

"This is a principle of our law that no action would lie against a judge of one of the superior courts², for a judicial act though it be alleged to have done maliciously and corruptly."

In the case of inferior courts, however, there were decisions which held the presiding officers liable where a wrong was committed in excess of jurisdiction.³ For example, judges were in such cases—i.e. in matters beyond their jurisdiction held personally liable for damages for false imprisonment and assault even where they had acted in good faith; and officers executing their judgements were similarly liable.⁴

Inferior Courts.

In 1848, the Justices Protection Act, was passed, protecting justices *acting within their jurisdiction*, unless the plaintiff proved malice and want of reasonable and probable cause.⁵ This statute, to some extent, brought the position of the justices nearer to the position of the Judges of the superior courts.

As to acts of Justices without jurisdiction, however, the statute of 1848 gave no protection.⁶

Until 1975, the position in England appears to have been as under:⁷—

Position upto 1975.

(a) No action lies against any judge of a superior court in respect of anything done or said by him in the exercise of his duties, no matter how malicious or wrongful⁸, or (probably) even if he is acting outside his jurisdiction.

(b) Judges of other courts (*inferior courts*) are liable for acts outside jurisdiction. The authorities stated (so far, of course, only in relation to judges of inferior courts), that a judge was liable for exceeding his jurisdiction⁹.

¹*Fray v. Blackburn*, (1863) B & S 576, 578, 122ER 217 (Crompton J).

²Emphasis added.

³See *O'Connor v. Issac*, (1956) 1 All E.R. 513.

⁴Wade, *Administrative Law* (1977), pages 640-641.

⁵Section 1, Justices' Protection Act, 1848. See now section 44, Protection of Justices, Act, 1979.

⁶Section 2, Justices' Protection Act, 1848.

⁷See (a) L.A. Sheidan, "Protection of Justices" (1961) 14 *Modern Law Rev.* 267.

(b) D. Thompson "Judicial Immunity and the Protection of Justices" (1958) 21 *M.L.R.* 517.

⁸*Anderson v. Corrie* (1895) 1 Q.B. 668 (C.A.)

⁹*Calder v. Halket*, (1840) 3 Moo, P.C. 28; 13 E.R. 12 (P.C.); (1835-1842) All E.R. Rep. 306
Palmer v. Crane, (1927) 1 K.B. 804; *Sammy-Joe v. G.P. Mount Pleasant Post Office*, (1966) 3 All E.R. 924.

(c) By virtue of the Justices Protection Act, 1948, a magistrate is liable (i) for acts done outside his jurisdiction and (ii) for acts done within the jurisdiction which are carried out maliciously or without reasonable and probable cause. The burden of proving malice and want of reasonable and probable cause is on the plaintiff.

In 1975, there came an important judgement of the Court of Appeal. The distinction between superior and inferior courts seems to have been over-ruled by that decision of the Court of Appeal, 1975. According to the judgement of Lord Denning M.R. in that case²—

“Every judge of the courts of this land—from the highest to the lowest³—should be protected to the same degree, and liable to the same degree.....What he does may be outside his jurisdiction—in fact or in law—but so long as he honestly believes it to be within his jurisdiction, he should not be liable.”

According to this view, every judge, whether of a superior court or of an inferior court (including a Magistrate), is immune in respect of judicial acts done in an honest belief that the acts are within his jurisdiction. Although the judgements of members of the Court of Appeal give different reasons for the conclusion reached the Court of Appeal seems to have been unanimous on the question of treating all judges alike. There seemed no logic in leaning more heavily on magistrates or circuit judges, Duckly L.J. was satisfied that the authorities established that there was no distinction made in principle^{4,5}.

This seems to be the better view, although some writers are cautious enough to state that inferior Judges are liable for all acts done in excess of jurisdiction⁶.

At the same time, it should be mentioned that by section 45 of the Justices of Peace Act, 1979, an action is allowed against Justices for an act done without jurisdiction, where the conviction or order of the Justices has been quashed by the High Court.

¹See *O'Connor v. Issac* (1956) 1 All E.R. 513-527.

²*Sirross v. Moore* (1975) Q.B.D. 118; (1974) 3 All E.R. 776, 785 (C.A.).

³Emphasis added.

⁴*Sirros v. Moore*, (1975) Q.B.D. 118; (1974) 3 All E.R. 776, 787, 788 (C.A.).

⁵Brazier, “Judicial Immunity” (1976) Public Law 397, 408.

⁶E.g. Salmond Torts (1981), page 387.