



**SPEECHES DELIVERED  
BY HON'BLE  
JUSTICE P. SATHASIVAM,  
CHIEF JUSTICE OF INDIA  
AT  
TAMIL NADU STATE  
JUDICIAL ACADEMY**

**Compiled by :  
TAMIL NADU STATE JUDICIAL ACADEMY**

---

**Speeches Delivered by  
Hon'ble Mr. Justice P. SATHASIVAM,  
Chief Justice of India  
at  
Tamil Nadu State Judicial Academy**

---

**TAMIL NADU STATE JUDICIAL ACADEMY**

No. 30(95), P.S.K.R. Salai, R.A.Puram, Chennai 600 028.

Ph: 044 - 2495 8595 / 96 / 97 Fax: 044 - 2495 8595

<http://www.hcmadras.tn.nic.in/jacademy/indexnew.html>

E-mail: [tnsja.tn@nic.in](mailto:tnsja.tn@nic.in)

Tamil Nadu State Judicial Academy, acknowledges the permission granted by Hon'ble Mr. Justice P. SATHASIVAM, Chief Justice of India to bring out this compilation of His Lordship's Speeches delivered at Tamil Nadu State Judicial Academy

*with great pleasure  
we publish here, the photograph of*



The Honourable  
Mr. Justice **P.SATHASIVAM**  
Chief Justice of India



## **Hon'ble Mr. Justice P. SATHASIVAM, Chief Justice of India**

Hon'ble Mr. Justice P. Sathasivam was born on April 17<sup>th</sup> 1949 in Kadapanallur Village, Bhavani Taluk, hailing from a family of agriculturists. His Lordship was the first graduate in the family and the first Advocate from the Village. His Lordship completed Degree Course in Ayya Nadar College, Sivakasi, and then joined Madras Law College and completed three year B.L. Degree course in 1973 and enrolled as an Advocate on 25-07-1973. His Lordship joined the office of Mr. K. Doraisamy, Senior Advocate.

His Lordship was appointed as Government Advocate on 26-10-1983, as Additional Government Pleader on 21-07-1988 and as Special Government Pleader on 27-07-1991 and helped the Court to dispose of several batch cases arising out of the Land Acquisition Proceedings. His Lordship was also Legal Adviser for several State owned Transport Corporations, Municipalities, Nationalized Banks etc.,

His Lordship was appointed as a Permanent Judge of the Madras High Court on 08-01-1996.

While welcoming His Lordship, the then Advocate General Mr. R. Krishnamoorthy, had remarked "I am sure that Your Lordship will make very significant contribution for the development of law in the Madras High Court and in the disposal of cases which are pending for a long number of years."

On His Lordship's transfer on 20-04-2007 to the High Court of Punjab and Haryana, the then Advocate General, Mr. R. Viduthalai, in his farewell address pointed out the above remarks and stated that the above expectations had proved "prophetic". Statistics had been given showing that His Lordship had disposed of totally 36,550 main cases and 50,708 miscellaneous cases during His Lordship's tenure at Madras High Court.

The Advocate General further said "Your Lordship always administered Justice with compassion tempered by mercy fully realizing that law is not an end in itself and Justice is the ultimate objective."

The Editor, Law Weekly, conveying their greetings to His Lordship had stated "His Lordship's eleven year tenure on the Bench of our High Court has

made its impress by reason of his notable contribution in more than one field, judicial and administrative. His soft manner of talk, his hard work at home, his anxiety to be of service to the litigant public and members of the Bar and the Judiciary, and his thorough always-updated knowledge, of the case law has helped him to render innumerable judgments on a variety of topics which have found place in the Law Reports.”

While replying to the farewell speech on transfer to the High Court of Punjab and Haryana, His Lordship had stated “...My upbringing in an agricultural family, that too in an area which had no exposure to modern, advanced education, the name that I earned in the village on account of my interest in studies and my ambition, coupled with an arduous zeal to attain high position energized me to successfully cross the hurdles on the way and reach this elevated position...”

On His Lordship's elevation to the Supreme Court of India on 21-08-2007, the Editor, Law Weekly had observed “He has earned justifiable reputation as a humane judge, with a soft corner towards the weaker sections of the Society.”

During the Felicitation Ceremony on His Lordship's elevation to the Supreme Court, the Advocate General, Mr. R. Viduthalai remarked “Today we are gathered here to felicitate one of the finest personalities the judiciary had ever seen. It is often said that a man who does not harm, insult or insinuate others either by words or by deeds is the most virtuous human being. In this respect, Hon'ble Mr. Justice P. Sathasivam is unique and unparalleled. To him 'Help ever Hurt never' was not only a policy to be preached but a principle to be practiced. I am aware that there is an absolute consensus amongst the Members of the Bar even under extremely provocative situations. Patience and poise are not only his trait but also a way of life for him. No wonder that he had reached the highest temple of justice ease and grace.”

His Lordship was sworn as Chief Justice of India on 19-07-2013. This Book is presented as a source of inspiration to every member of the legal fraternity.



## INDEX

Sl. No.	TOPIC	Page Nos
1.	Messages	
2.	Criminal Jurisprudence of the Supreme Court : Key Highlights	1 - 6
3.	Offences Relating to Women and Children	7 - 36
4.	Rights of Transgender People - Sensitising Officers to Provide Access to Justice	37 - 56
5.	Appreciation of Evidence Including Evidence Recorded through Electronic Media for Sessions Cases	57 - 82
6.	Role of Courts in Protection of Human Rights	83 - 96
7.	Role of Judicial Officers in Criminal Justice Administration	97 - 110
8.	Speedy Disposal of Corruption and Vigilance Cases	111 - 128
9.	Women and Children - Role of Courts	129 - 148
10.	Effective District Administration and Court Management	149 - 169





F.M. IBRAHIM KALIFULLA  
Judge  
Supreme Court of India



6, Tughlak Road,  
New Delhi-110011  
Tel. No. : 011 23017467  
011 23017478

July 15, 2013

**MESSAGE**

I am happy to know that the Tamil Nadu State Judicial Academy has decided to compile the lectures delivered by Hon'ble Mr. Justice P. Sathasivam, Chief Justice of India (Designate) for the benefit of the Judicial Officers.

I must state that I had the opportunity both as a sitting Judge of the Madras High Court, as well as, in my present capacity as a Judge of the Supreme Court, to hear many of the lectures delivered by His Lordship Hon'ble Mr. Justice P. Sathasivam in the academy. I used to wonder how inspite of the busy schedule His Lordship was able to concentrate and prepare the lectures on various topics covering issues, such as, Offences relating to Women and Children, Rights of Transgenders, Role of Courts in Protection of Human Rights, Role of Judicial Officers in Criminal Justice Administration and very recently the lecture on Effective District Administration and Court Management which definitely require enormous time and energy. I have always found His Lordship addressing the audience with full preparation of such lectures with minute details. The written papers of those lectures always used to contain the historical background, the statutory provisions, the judgements of the Supreme Court on the issue and also His Lordship's views on the subject. Therefore, the compilation of the lectures for distribution to the Members of the Judiciary is definitely a welcome step.

I appreciate the decision of the Hon'ble the Acting Chief Justice of Madras High Court and the Chairman and Members of the Academy for their thoughtful decision.

I wish such compilations of other valuable speakers can also be considered for the benefit of the Judicial Officers.

With warm regards,

  
**[F.M. Ibrahim Kalifulla]**



*R.K. Agrawal*  
*Acting Chief Justice*



*High Court,*  
*Madras.*

July 19, 2013

## **MESSAGE**

The Speeches delivered by Hon'ble Sri Justice P.Sathasivam, Chief Justice of India, at the Tamil Nadu State Judicial Academy, over the past four years, have been nicely compiled and printed by the Tamil Nadu State Judicial Academy.

In these nine speeches, the Hon'ble Chief Justice of India has covered a myriad of issues ranging from Criminal Jurisprudence of the Supreme Court to Court Management. Each speech, as we go through it, is borne out of thorough research and reflects the clear thinking and wisdom of the Hon'ble Chief Justice of India. Thanks to His Lordship's extensive practice as Advocate and then long innings as Judge, these speeches present to the readers a bouquet of information, which we cannot otherwise get without spending a considerable time.

In fact, I was fortunate to listen some of these later speeches. I fervently hope that the listeners then, would have been, and the readers in future of these speeches, would be, immensely benefited by these speeches and make use of the ideas of Hon'ble Chief Justice of India, for their future guidance. There is no doubt that this book shall be a valuable guide to all those who are connected with the field of law.

*R.K. Agrawal*

**(R.K. AGRAWAL)**

---

Office:  
☎ 044-2534 2240  
Fax: 044-2533 2101



Residence:  
No. 23, Greenways Road, Chennai-600 028.  
☎ 044-2495 4222 Fax: 044-2495 7230



**Justice R. Banumathi,**  
President, Board of Governors,  
**Justice S. Manikumar,**  
**Justice S. Nagamuthu,**  
**Justice M.M. Sundresh,**  
**Justice G.M. Akbar Ali,**  
Members, Board of Governors,  
Tamil Nadu State Judicial Academy.



19<sup>th</sup> July, 2013

Tamil Nadu State Judicial Academy claims with pride, rightfully, that it has had the privilege of the presence of Hon'ble Mr. Justice P. Sathasivam, The Chief Justice of India, on many occasions during special and refresher training programmes for the Judicial Officers of the State. His Lordship had always readily and willingly accepted our invitations with a smile.

His Lordship is a voracious reader and His Lordship's lectures are based on deep research and fortified with data. The collection of His Lordship's speeches delivered in this Academy consists of various topics which are relevant to the District Judiciary. His Lordship has made in-depth studies in various subjects like Constitution, the Fundamental Rights, in particular, Human Rights, Penal Laws, Civil Laws, Laws relating to Juveniles, Women and Children etc. The lectures delivered include not only legal aspects but also topics with social content which are of great relevance and inspiration to deliver justice. His Lordship's speeches and presence were a source of inspiration for all the Judicial Officers which encouraged us to circulate the speeches of His Lordship to the participant Judicial Officers to ensure knowledge dissemination.

We are deeply indebted to His Lordship for having granted us the permission to present this compilation of the speeches delivered at the Judicial Academy in a book form. We are sure that the messages conveyed and the thoughts and information contained in this volume would provide ample knowledge for the readers.

*R. Banumathi*  
Justice R. Banumathi

*S. Manikumar*  
Justice S. Manikumar

*M.M. Sundresh*  
Justice M.M. Sundresh

*S. Nagamuthu*  
Justice S. Nagamuthu

*G.M. Akbar Ali*  
Justice G.M. Akbar Ali



**South Zone Regional Judicial Conference  
on  
“Enhancing Timely Justice: Strengthening  
Criminal Justice Administration”**

**Criminal Jurisprudence of the  
Supreme Court: Key Highlights**

**29<sup>th</sup> November 2009**



## **Introduction**

The Constitution of India gives the Supreme Court the jurisdiction to hear appeals in criminal cases. Article 132 provides for the appellate jurisdiction from the High Courts in certain cases. It states that 'An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution'.

Article 134 deals with appellate jurisdiction of the Supreme Court in criminal cases. Article 134(1) provides that-

'An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court

- (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
- (c) certifies under Article 134A that the case is a fit one for appeal to the Supreme Court.

Provided that an appeal under sub-clause (C) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.'

Order XXI of the Supreme Court Rules, 1966 deals with special leave petitions in criminal proceedings and criminal appeals.

### **Right to Appeal in Criminal Matters?**

The constitutional scheme makes it clear that there is no general right to appeal in criminal matters apart from those as laid down in Article 134(1)(a) and (b). Article 134(c) gives the power to the

High Court to certify cases which can be appealed, which must involve a substantial question of law, and not merely application of facts or evidence.

### **Enlargement of Jurisdiction**

Article 134(2) further provides that the 'Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law'.

In pursuance of this power, the **Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970** was promulgated. Section 2 of the Act states:

Without prejudice to the powers conferred on the Supreme Court by clause

(1) of article 134 of the Constitution, an appeal lie to the Supreme Court from any judgement, final order of sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

- (a) Has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years;
- (b) Has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years

The scope of this provision has been dealt with in *Kishore Singh v. State of Madhya Pradesh*,<sup>1</sup> where the court held that if a right to appeal would lie under Section 2 of this Act, a certificate by the High Court under Article 134(1)(c) would not be necessary. Thus, the right to appeal under Section 2 is in addition to that under Article 134(1)(c).

---

1. (1977) 4 SCC 524.

Thus, the position is now clear- that in cases which do not come under clause (a) and (b) of Article 134(1) or under the Act of 1970 or Section 379 of the Cr.P.C., and appeal does not lie as of right to the Supreme Court against any order of conviction by the High Court unless a certificate is granted by the High Court under Article 134(1)(c) certifying that the case is fit for appeal or by way of Article 136 by way of a Special Leave Petition in cases where the certificate is refused by the High Court.

The role of the Supreme Court at the time of admission of the appeal is instrumental, and if the High Court has not given this certificate, the case will be dismissed. But as the Court has held in *State of Assam v. Abdul Noor*,<sup>2</sup> the Supreme Court after declining to accept the certificate can allow the appellant to apply under Article 136 in proper cases.

### **Appeals against acquittal and conviction**

In ordinary circumstances, the Apex Court does not interfere with the acquittal or conviction order of the High Court or lower courts. But as has been held in *Satbir v. Surat Singh*,<sup>3</sup> the Supreme Court has the power and duty under Article 142 to do complete justice, and if the Court does not interfere in cases where a clear case of miscarriage of justice is made out, the Court would be failing in its responsibility. But at the same time, the Supreme Court is not supposed to interfere with the orders of High Courts only on mere errors of fact or even law.

Further, the Supreme Court does not usually take cognizance of facts or evidence. Only such examination of the evidence would be ordinarily necessary needed to see that the High Court approached the question properly and applied the principles correctly.<sup>4</sup> But the Court under Article 136 has overriding powers in the interests of justice, and in cases where injustice is manifest, the Court may look into questions of law and fact both.

The Supreme Court, especially in cases of death penalty, exercises wider powers than in other ordinary cases. Thus, the Court can go into the entire record and come to its own conclusions with regard to the appropriateness of the death sentence.

---

2. (1970) 3 SCC 10.

3. (1997) 4 SCC 192

4. *State of Maharashtra v. Prakash*, 1993 Supp.(1) SCC 653;

*State of Madhya Pradesh v. Chhayaram*, 1993 Supp(1) SCC 470.

## **Power of the Court under Articles 134 and 136 compared**

It is clear that whereas the appellate jurisdiction of the Supreme Court under Articles 133(1) and 134(1) can be invoked only against final orders, no such limitation is imposed upon Article 136(1) and may be exercised at the discretion of the Court even against the interlocutory order or decision. The limitation imposed on Article 136 is imposed by the Court itself in its discretion and are not prescribed by the provision.<sup>5</sup> Therefore, the power under Article 136 is unaffected by Article 132, 133 and 134.

## **Power of the Court to look at Evidence**

Normally, the power of the Supreme Court is limited with respect to review of evidence in criminal appeals, unless there is some irregularity or illegality or some serious lapse on the part of the Courts below in marshalling or evaluating evidence and the Supreme Court feels justified in reviewing it is the larger interest of justice. The role of the Supreme Court in cases of criminal appeals is to ensure that the accused gets a fair trial on proper evidence rather than to become an ordinary criminal court and appraise the evidence to ascertain guilt or evidence.

It is for this reason that the Supreme Court does not interfere with acquittal orders recorded by the High Courts unless interests of justice dictate interference. The Court may also interfere in cases where the High Court overlooks important facts and evidence.

## **Review of Criminal Proceedings**

Order XL Rule 1 provides limited grounds of review in criminal proceedings as compared to those in civil proceedings. In criminal proceedings the grounds are limited to 'errors apparent on the face of it'. On the other hand the power of review under Article 137 of Constitution is equally wide in all proceedings. In the important case of *Eswara Iyer v. Registrar, Supreme Court of India*<sup>6</sup> the Supreme Court considerably widened the scope of review in criminal proceedings. In a review petition it must be shown that there has been miscarriage of justice.

---

5 Engineering Mazdoor Sabha v. Hind Cycles Limited, AIR 1963 SC 874.

6 (1980) 4 SCC 680.





**Refresher Course for District Judges**

**Offences Relating to  
Women and Children**

**27<sup>th</sup> November 2010**

## **STATUS OF WOMEN**

In India, women constitute nearly fifty percent of the population. About 48.60% of the rural population is that of women and they are the vital labour force of the country. However, they remain amongst the most oppressed ones and are often denied the basic human rights.

### **Pre-Independence:**

According to studies, women enjoyed equal status and rights during the early Vedic period. However, later (approximately 500 B.C.), the status of women began to decline with the Smritis and with the Islamic invasion and later Christianity curtailing women's freedom and rights. By and large, the women in India faced confinement and restrictions. The practice of child marriages is believed to have started from around sixth century. Women played an important role in India's independence struggle.

### **Constitution of India:**

The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16) and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the State in favour of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A) (e)), and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief. (Article 42).

Reservation of 50 per cent of the posts in favour of female candidates is not arbitrary. Reservation of certain posts exclusively for women is valid under Article 15(3). Clause 3 of Article 15 which permits special provision for women and children has been widely resorted to and courts have upheld the validity of special measures in legislation or executive orders favouring women. In particular, provisions in the criminal law in favour of women or in the procedural law discriminating in favour of women have been upheld. Similarly, provisions providing for reservation of seats for women in local bodies, Panchayats or in educational institutions are valid. Article 39 of the Constitution mandates certain principles of policy to be followed by

the State. The State shall, in particular, direct its policy towards securing that the citizens, men and women equally have the right of adequate means of livelihood, equal pay for equal work for both men and women.

Part III of the Constitution, consisting of, Articles 12 to 35 relating to Fundamental Rights, is considered as the heart of the Constitution.

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws within the territory of India. Though Article 14 permits reasonable classification, yet classification based on sex is not permissible<sup>1</sup>

In the case of ***Air India v. Nargesh Mirza***<sup>2</sup>, the Supreme Court, while dealing with fixation of different ages of retirement for male and female employees and preventing female employees from having children, expressed the view that the retirement of air hostesses in the event of marriage taking place within four years of service does not suffer from any irregularity or arbitrariness but retirement of air hostesses on first pregnancy is unconstitutional. It was considered that such a provision was callous, cruel and an insult to Indian womanhood.

Payment of equal pay for equal work has also been justified under Article 14. Unequal pay for materially equal work cannot be justified on the basis of an artificial classification between the two kinds of work and employment.<sup>3</sup>

Article 15 widens the scope of Article 14. Article 15 (1) prohibits the state from discriminating on the grounds of religion, race, caste, sex, place of birth or any of them. The Supreme Court has held that a law which deprived a female proprietress to hold and enjoy her property on the ground of her sex was held violative of Article 15<sup>4</sup>.

---

<sup>1</sup> *Chitra Ghosh v. Union of India*, AIR 1970 SC 35

<sup>2</sup> AIR 1981 SC 1829

<sup>3</sup> *Madhu Kishwar v. State of Bihar*, AIR 1996 SC 1864

<sup>4</sup> *A Cracknell v. State*, AIR 1952 ALL. 746



In **Yusuf Aziz v. State of Bombay**<sup>5</sup>, the validity of Section 497 of IPC (adultery) was challenged under Articles 14 and 15 (1) of the Constitution. Section 497 of the IPC only punishes a man for adultery and exempts the women from punishment though she may be equally guilty as an abettor and this section was held by the Supreme Court to be valid since the classification was not based on the ground of sex alone, thus relying on the mandate of Article 15(3). Even Section 354 of IPC (assault or criminal force to woman with intent to outrage her modesty) is not invalid because it protects the modesty only of women and Section 125 is valid although it obliges the husband to maintain his wife but not vice versa. Similarly, Section 14 of the Hindu Succession Act, 1956 converting the women's limited ownership of property into full ownership has been found in pursuance of Article 15(3)<sup>6</sup>

It is noteworthy to mention the case of **Associate Banks Officers Association v. State Bank of India**<sup>7</sup>, wherein the Apex Court held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In **Air India Cabin Crew Association v. Yeshaswinee Merchant**<sup>8</sup>, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour.

Article 19 (1) (g) of the Constitution guarantees that all citizens have a right to practice any profession or to carry on any occupation or trade or business. Sexual harassment in exercise of this right at the work place amounts to its violation. In the case of **Delhi Domestic Working Women's Forum v. Union of India**<sup>9</sup> relating to rape and violence of working women the Supreme Court called for protection to the victims and provision of appropriate legal representation and assistance to the complainants of sexual assault cases at the police station and in courts. To realize the

---

<sup>5</sup> AIR 1954 SC 321

<sup>6</sup> *Thota Sesharathamma v. Thota Mankiyamma*, (1991) 4 SCC 312

<sup>7</sup> AIR 1998 SC 32

<sup>8</sup> AIR 2004 SC 187

<sup>9</sup> (1995) 1 SCC 14

concept of gender equality, the Supreme Court has laid down exhaustive guidelines in the case of ***Vishaka v. State of Rajasthan***<sup>10</sup> to prevent sexual harassment of working women at their work place. The Supreme Court held that it is the duty of the employer or other responsible person to prevent sexual harassment of working women and to ensure that there is no hostile environment towards women at their working place. These guidelines were framed to protect the rights of working women to work with dignity under Article 14, 19 and 21 of the Constitution. The Supreme Court had also observed: “each incident of sexual harassment of women at workplace results in violation of fundamental rights of Gender Equality and the Right to Life and Liberty”.

Article 21 contains provisions for protection of life and personal liberty of persons. In the case of ***State of Maharashtra v. Madhukar Narayan Mandikar***<sup>11</sup>, the Supreme Court has held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy. This article has also been invoked for the upliftment of and dignified life for the prostitutes.

The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women.<sup>12</sup>

Article 23 (1) of the Constitution of India prohibits traffic in human beings and beggars and other similar forms of forced labour. To curb the deep rooted social evil of prostitution and to give effect to this Article, the Parliament has passed The Immoral Traffic (Prevention) Act, 1956. This Act Protects the individuals, both men and women, not only against the acts of the State but also against the acts of private individuals and imposes a positive obligation on the State to take all measures to abolish these evil practices. Another evil practice of the Devdasi system, in which women are dedicated as devdasis to the deities and temples, was abolished by the State of Andhra Pradesh by enacting the Devdasi (Prohibition of Dedication) Act, 1988. The Supreme Court has also held that traffic in human beings includes devdasis and speedy and effective legal action should be taken against brothel keepers.<sup>13</sup>

---

<sup>10</sup> AIR 1997 SC 3011

<sup>11</sup> AIR 1991 SC 207, 211

<sup>12</sup> *Bodhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922: *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988

<sup>13</sup> *Vishal Jeet v. Union of India*, AIR 1990 SC 1412

Similarly, evil practices are prevalent in India such as selling the female infant and girls to foreigners under the guise of inter country adoption and marriages.

The “Directive Principles of State Policy” are fundamental in the governance of the country. These Directive Principles are ideals which are based on the concept of “Welfare State” and they fix certain goals; social and economic; for immediate attainment by the Union and State Governments while formulating a policy or enacting a law. According to Article 39 (a), the State shall direct its policy towards securing that the citizens men and women equally, have the right to an adequate means of livelihood.<sup>14</sup> The Supreme Court has held that under Article 39 (d), the State shall direct its policy towards securing equal pay for equal work for both men and women<sup>15</sup>. This Article draws its support from Articles 14 and 16 and its main objective is the building of a welfare society and an equalitarian social order in the Indian Union. To give effect to this Article, the Parliament has enacted the Equal Remuneration Act, 1976 which provides for payment of equal remuneration to men and women workers and prevents discrimination on the ground of sex. Further Article 39 (c) is aimed at protecting the health and strength of workers both men and women.

A very important and useful provision of women’s welfare and well being is incorporated under Article 42 of the Constitution. It imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen’s Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, and the like. In the case of **Dattatraya v. State of Bombay**,<sup>16</sup> the Supreme Court held that legal provisions to give special maternity relief to women workers under Article 42 of the Constitution do not infringe

---

<sup>14</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

<sup>15</sup> *State of M.P. v. Pramod Bhartiya*, AIR 1993 SC 286

<sup>16</sup> AIR 1952 SC 181

Article 15 (1). In the case of ***Municipal Corporation of Delhi v. Female Workers (Muster Roll)***,<sup>17</sup> the Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees of the Municipal Corporation who are casual workers or workers employed on daily wages basis. This applies to the claim of non-regularized female workers for maternity relief.

Article 44 provides that the State shall endeavor to secure for the citizens, a Uniform Civil Code, throughout the territory of India. Placing reliance on Article 44 by the Supreme Court in upholding the right of maintenance of a Muslim divorcee under Section 125 of the Criminal Procedure Code has resulted a separate law of maintenance for Muslim female divorcee<sup>18</sup>.

Article-51– A under Part IV-A of the Constitution of India lays down certain Fundamental Duties upon every citizen of India, which were added by the Forty-Second Amendment of the Constitution in 1976. The later part of Clause (e) of Article 51-A, which related to women, gives a mandate and imposes a duty on Indian citizens “to renounce practices derogatory to the dignity of women”. The duties under Article 51-A are obligatory on citizens, but it should be invoked by the Courts while deciding cases and also should be observed by the State while making statutes and executing laws.

### **The Protection of Women from Domestic Violence Act, 2005 (“PWDVA”):**

Prior to the passing of the PWDVA in 2005 and its enforcement in October 2006, women could only seek criminal sanctions for domestic violence under Section 498A of the Indian Penal Code or Section 304B, or face the social stigma of getting a divorce. These two pieces of legislation could be used only in very limited circumstances: 498A only punishes husbands or relatives of husbands for acts of harassment or violence that would likely to drive a woman to commit suicide or cause grave danger to her life, limb or health; 304B may only be used to punish violence against a woman when the cause of her death can be shown to be related to dowry demands.

---

<sup>17</sup> AIR 2000 SC 1274

<sup>18</sup> Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 954

Recognising these significant gaps in the law excluding numerous women victims, the National Commission of Women approached the Lawyer's Collective in 1993 to draft legislation to close these loopholes. After years of work and with the combined efforts of the Lawyers Collective, other women's rights groups, and input from government officials, the PWDVA was born. Its remedies consist of ex-parte, interim, and permanent orders including protection orders, residence orders, monetary relief and custody orders.

Section 2 of the Act provides protection against any act / conduct / omission / commission that harms or injures or has the potential to harm or injure, and it will be considered as 'domestic violence'. Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Even a single act of commission or omission may constitute domestic violence. Now, women do not have to suffer a prolonged period of abuse before taking recourse to the law. This legislation has widened the scope of domestic violence and now it can be broadly related to human rights.

Very recently, on November 4, 2010 the government approved the introduction of the Protection of Women against Sexual Harassment at Workplace Bill, 2010, which aimed at providing protection to women against sexual harassment at the work place. The Bill provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, and daily waged worker or in ad-hoc capacity. Students, research scholars in colleges/university and patients in hospital have also been covered under it. Further, the Bill seeks to cover workplaces in the unorganised sectors. It allows women to complain of harassment ranging from physical contact, demand or requests for sexual favors, sexually colored remarks or showing pornography. The bill also has a penalty provision for employers who do not comply.

It is sad that even today the numbers of dowry deaths in India are very high. Due to the non fulfillment of demands of dowry, many women die at the hands of their in-laws in both rural and urban India.

## **Indian Penal Code:**

Section 304 B was introduced in the Indian Penal Code in order to strictly deal with and punish the offence of Dowry Death. It was a new offence created with effect from November 19, 1986 by insertion of the provision in the Indian Penal Code providing for a more stringent offence, than provided by Section 498A of the same Act, which deals with punishment for cruelty by husband and his relatives.

If the two conditions as mentioned in the section exist, it would constitute a “dowry death”, and the husband and/or his relatives shall be deemed to have caused her death. For the purposes of this sub section, dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The definition of “Dowry” includes any property of valuable security given or agreed to be given either directly or indirectly.

- ◆ By one party to a marriage to the other party to the marriage; or
- ◆ By the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of the said parties.

Section 304 B also provides that whoever commits a dowry death shall be punished with imprisonment for a term which shall not be less than 7 years but which may extent to imprisonment for life.

According to Section 8-A of the Dowry Prohibition Act, which came into force for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing the offence is made. Similarly, under Explanation to Section 113 B of the Indian Evidence Act, there is a presumption that a death caused within 7 years of marriage is a dowry death.

The demand for dowry is itself punishable if the other ingredients of Section 304 B are established. In case of ***Pawan Kumar Vs. State of Haryana***<sup>19</sup>, the periphery of the word 'dowry' was considered. The earlier meaning confining and limiting dowry to the time at or before the marriage got extended and enlarged even after the marriage and that there be no need to show any agreement for the payment of such dowry to make it as a punishable offence. The Court also held that the facts proved cruelty in connection with dowry demand.

In the case ***Kunhiabdulla and Anr. V. State of Kerala***<sup>20</sup>, the Supreme Court recognized that the menace of dowry cuts across caste, religion and geographical Location.

Chapter XX-A of Indian Penal Code, 1860, refers to 'cruelty by husband or relatives of husband' and includes section 498-A.

Section 498-A states, that whoever being the husband or relative of the husband of woman, subjects such woman to cruelty shall be punished with the imprisonment for a term which may extend to three years and also be liable to fine.

The section was enacted to combat the menace of dowry deaths. It was introduced in the code by the Criminal Law Amendment Act, 1983 (Act 46 of 1983). By the same Act, Section 113-A has been added to the Indian Evidence Act to raise presumption regarding abetment of suicide by married woman. The main objective of Section 498-A of I.P.C is to protect a woman who is being harassed by her husband or relatives of husband.

The Object for which section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No.46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some of the cases, cruelty of the husband and his relatives which culminate

---

<sup>19</sup> (1998) 3 SCC 309

<sup>20</sup> AIR 2004 SC 1731

in suicide or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 ('the Cr.P.C') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law's and relatives. The avowed object is to combat the menace of dowry death and cruelty.

It was held by the Supreme Court in ***Kaliyaperumal vs. State of Tamil Nadu***<sup>21</sup>, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304B for the offence of dowry death can be convicted for an offence under section 498A of IPC. The meaning for cruelty is given in explanation to section 498A. Section 304B does not contain its meaning but the meaning of cruelty or harassment as given in section 498-A applies in section 304-B as well. Under section 498-A of IPC cruelty by itself amounts to an offence whereas under section 304-B the offence is of dowry death and the death must have occurred during the course of seven years of marriage. But no such period is mentioned in section 498-A.

The presumption of Cruelty within the meaning of section 113-A, Evidence Act, 1872 also arose making the husband guilty of abetment of suicide within the meaning of section 306 where the husband had illicit relationship with another woman and used to beat his wife making it a persistent cruelty within the meaning of Explanation (a) of section 498-A.

Section 375 of the Indian Penal Code defines rape, which means an unlawful intercourse done by a man with a woman without her valid consent. In certain cases, when consent is taken by fraudulent means or by misrepresentation, the act is still quite rightly-taken as rape. The consent of a woman of unsound mind and of a girl below 16 are not taken to be lawful consent because it is presumed that these women are not in a position to truly understand the nature and gravity of sexual intercourse.

The Supreme Court does vividly acknowledge the plight of many India women by stating that they often live their lives 'at the mercy' of

---

<sup>21</sup> AIR 2003 SC 3828



their employers and the police and are therefore especially susceptible to violence and intimidation by men. Many of the rape cases that have been handled as PIL cases are of an extreme nature, and have led the Supreme Court to indicate broad parameters in assisting the survivors of rape.

### **Property Right :**

Prior to enactment of Hindu Succession Act 1956, Hindus in India were governed by Shastric and customary laws which varied from region to region and sometimes it varied on caste basis. A Hindu wife was not capable of holding any property separate from her husband. Of the two types of property women were to hold – Streedhan and women's estate, the holder of the later enjoyed the right during her lifetime and she could not alienate the same. To secure equality of status to improve Hindu women's right to property, Hindu Succession Act 1956 came into force. This Act, under section 14(1) and 14 (2) gives women absolute right of ownership over property and also the right to alienate it.

At the time of enactment of this Act, daughters could not become members of the co-parcenary and the Act did not afford the right of natural inheritance to daughter because of the very concept of right by birth and by reason of sex as only males can be coparceners. This Act was then amended in the year 2005 and the parliament passed the Hindu Succession (Amendment) Act, 2005. By amending sections 6 and 23 of the amended Act, daughters were given equal status to that of sons. It now provides that daughter shall have a right to claim partition in the joint family properties as well as the right to claim right of partition in the dwelling house of the joint family and she shall also have a right to claim partition during the lifetime of her father. This privilege is only given to Hindu women. The laws applicable to Muslims & Christians do not give equal status to women.

### **Female Infanticide:**

It is unfortunate that the one reason or the other the practice of female infanticide still prevails. One of the reasons may be the problem faced by the parents during marriage coupled with the dowry demand by

the so-called educated and/or rich person who are well placed in society. The traditional system of female infanticide whereby female child was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing fully well that it is immoral and unethical as well as it may amount to an offence; foetus of a girl child is aborted<sup>22</sup>.

Further in the case of ***Centre for Enquiry Into Health and Allied Themes (CEHAT) and Ors.v. Union of India (UOI) and Ors.***<sup>23</sup>, the Supreme Court has admitted that:

*“.. in Indian Society, discrimination against girl child still prevails, may be because of prevailing uncontrolled dowry system despite the Dowry Prohibition Act, as there is no change in the mind-set or also because of insufficient education and / or tradition of women being confined to household activities. Sex selection/sex determination further adds to this adversity. It is also known that number of person condemn discrimination against women in all its forms. And agree to pursue, by appropriate means, a policy of criminating discrimination against women, still however, we are not in a position to change mental set-up which favours a male child against a female. Advance technology is increasingly used for removal of foetus (may or may not be seen as commission of murder) but it certainly affects the sex ratio. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth and thereafter abortion is evident from the 2001 Census figures which reveal greater decline in sex ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra and Gujarat, which are economically better off.”*

---

<sup>22</sup> *Centre for Enquiry into Health and Allied Themes (CEHAT) & Ors. V. Union of India and Ors.*, AIR2001SC2007.

<sup>23</sup> AIR 2003 SC 3309

## Surrogacy :

A standard surrogacy arrangement involves a contract for the surrogate to be artificially inseminated, carry a foetus to term, and relinquish her parental rights over the child once born. In some countries around the world<sup>24</sup>, surrogacy is legally recognized only if it is non-commercial.

India's first gestational surrogacy took place in 1994 in Chennai<sup>25</sup>. In 1997, a woman from Chandigarh agreed to carry a child for 50,000 rupees in order to obtain medical treatment for her paralyzed husband<sup>26</sup>. In 1999, a villager in Gujarat served as a surrogate for a German couple<sup>27</sup>. In 2001, almost 600 children in the United States were born through surrogacy arrangements. In comparison, in India, it is estimated that the number of births through surrogacy doubled between 2003-2006<sup>28</sup>, and estimates range from 100-290 each year<sup>29</sup> to as many as 3,000 in the last decade. A major case involving the issue of surrogacy before the Supreme Court was the case of ***Baby Manji Yamada v. Union of India et al***<sup>30</sup>.

## Conclusion :

The Government of India declared 2001 as the Year of Women's Empowerment (Swashakti). The National Policy for The Empowerment of Women was framed in 2001.

On March 9, 2010 one day after International Women's day, Rajyasabha passed Women's Reservation Bill, ensuring 33% reservation to women in Parliament and state legislative bodies.

---

<sup>24</sup> Greece, West Australia, and South Australia are all examples of jurisdictions that allow altruistic but not paid agreement

<sup>25</sup> Geeta Padmanabhan, Hope in the Test Tube, THE HINDU, Jan, 19, 2006, available at <http://www.thehindu.com/thehindu/mp/2006/01/19/stories/2006011900540200.htm>.

<sup>26</sup> Sandhya Srinivasan, Surrogacy Comes Out of the Closet, SUNDAY TIMES OF INDIA, July 6, 1997, at 1.

<sup>27</sup> Jyotsna Agnihotri Gupta, *Towards Transnational Feminisms: Some Reflections and Concerns in Relation to the Globalization of Reproductive Technologies*, 13 EUR J. WOMEN'S STUD 23, 30(2006).

<sup>28</sup> Sudha Ramachandran, *India's New Outsourcing Business – Wombs*, ASIA TIMES ONLINE, June 16, 2006, [http://www.atimes.com/atimes/south\\_asia/hf16df03.html](http://www.atimes.com/atimes/south_asia/hf16df03.html)

<sup>29</sup> Kritivas Mukherjee, *Rent-a-womb in India Fuels Surrogate Motherhood Debate*, REUTERS, Feb 12, 2007, available at [www.reuters.com/article/latestCrisis/idUSDEL298735](http://www.reuters.com/article/latestCrisis/idUSDEL298735) (though noting that the number of failed attempts is likely much higher); Alifiya Khan, *Surrogacy is Soaring in India*, HINDUSTAN TIMES, Sept 18, 2008 [Http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=93bca0a7-e5do-4c06-9552dbebb0669833](http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=93bca0a7-e5do-4c06-9552dbebb0669833).

<sup>30</sup> Writ Petition No. 369 of 2008, Supreme Court of India

In India, the judiciary is the ultimate guarantor of Fundamental Rights and is the guardian of the Constitution. Naturally, the judges have a special role and responsibility in correcting the distortions in law enforcement and upholding the rights of women who approach the courts. Women generally approach the courts seeking reliefs in matrimonial disputes, in matters of maintenance and custody of children, domestic violence and dowry harassment cases, rape and sexual harassment as well as in discrimination in respect of employment. Parliament has enacted laws giving preferential rights to women in many of these situations. However, the enforcement of these laws depend first on the government departments entrusted with the task and when they fail to do so, with courts of law. There is enough evidence to suggest that there are many barriers in accessing justice. The Family Courts Act, 1984 is the legislative response to some of these barriers. Judiciary should also consciously recruit more and more women judges to have gender balance among judges as well. Gender justice training should extend to ministerial staff of courts and advocates also.

## **CHILDREN**

Children who form 42 per cent of the India's population are at risk on the streets, at their workplace, in schools and even inside their own homes. Every year thousands of children become victims of crime – whether it's kidnappings, violent attacks, or sexual abuse.

According to National Crime Records Bureau and NHRC, crime against children increased by 3.8 per cent nationally (14,975 cases in 2005 from 14,423 in 2004); Child rape increased by 13.7 per cent (4,026 cases from 3,542 in 2004); Madhya Pradesh reported the highest number (870) followed by Maharashtra (634). Together they accounted for 37.3 per cent of rape cases. Delhi tops the list of 35 Indian cities on crime against children (852 cases of violence against children in 2005, 27 per cent of all cases) followed by Indore (448), Pune (314) and Mumbai (303). 1,327 children were reported murdered in 2005 from 1,304 in 2004 (an increase of 1.8 per cent). Uttar Pradesh reported the highest number

(390) accounting for 29.4 per cent of cases. Nearly 45,000 children go missing every year; more than 11,000 are never traced<sup>31</sup>.

Offences against children need a humanitarian legislative approach. As was opined by the Supreme Court in the case of ***Bandhua Mukti Morcha V. Union of India***<sup>32</sup>:

*“The child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood – socially, economically, physically and mentally – the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The Founding Fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the need of its best development. Dr. Ambedkar, who was far ahead of his time in his wisdom projected these rights in the Directive Principles including the children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and the rule of law”.*

---

<sup>31</sup> <http://www.azadindia.org/social-issues/crime-against-children.html>

<sup>32</sup> (1997) 10 SCC 549, at page 553

## **Constitutional Provisions :**

There are special safeguards in the Constitutions that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation.

These provisions have been inserted into the Constitution to ensure the welfare and well being of children in the country without which it would not be possible for the nations to progress as a whole. The Constitution of India provides a comprehensive understanding of child rights. A fairly comprehensive legal regime exists for their implementation. India is also signatory to several international legal instruments including the Convention of the Rights of the Child (CRC).

Article 15(3)<sup>33</sup> of the Constitution has provided the State with the power to make “special provisions” for women and children.

Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years<sup>34</sup>. The word “life” in the context of article 21 of the Constitution has been found include “education” and accordingly the Supreme Court has implied that “right to education” is in fact a fundamental right.

Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most valuable section of the society. It is a known fact that many children are exploited even by the parents who allow their exploitation because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality.

---

<sup>33</sup> *Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children*

<sup>34</sup> *Article 21A: Right to Education- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*

The word beggar has been explained by the Supreme Court in the case of ***People's Union for Democratic Rights vs. Union of India***<sup>35</sup> and held that labour or service for remuneration which is less than minimum wage, amounts to violation of Article 23. This includes inadequate payment for the work rendered by the child which may amount to begging or forced labour. Sometimes, the children of tender age are enticed for the flesh trade, thus all in violation of Article 23. In this case, which is otherwise referred to as the Asiad Workers Case, the Supreme Court said, "*We are, therefore, of the view that when a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India*"<sup>36</sup>."

Article 24 expressly provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment<sup>37</sup>. The Supreme Court has issued elaborate guidelines to child labour. Child labour shall not be engaged in hazardous employment. There shall be set up a Child Labour Rehabilitation Welfare Fund in which offending employer should deposit Rs.20,000/-.

It must be noted that this article does not absolutely bar the employment of children below the age of 14 years. The employment is prohibited only in factories or mine or in any other hazardous occupation. This provision raises a question as to what are the 'hazardous' employment. While interpreting the nature and extent of hazardous employment the Supreme Court in the case of ***Labourers working on Salal Project vs. State of J & K***<sup>38</sup> has held that child below the age of 14 years cannot be employed and allowed to work in construction process. Supreme Court has issued various directions as to education, health, nutrition and child labour.

---

<sup>35</sup> AIR 1982 SC 1473

<sup>36</sup> <http://www.swamiagnivesh.com>

<sup>37</sup> [http://www.hrcr.org/safrica/childrens\\_rights/India.html](http://www.hrcr.org/safrica/childrens_rights/India.html) accessed on 18th August, 2010

<sup>38</sup> AIR 1984 SC 117

In ***M.C.Mehta vs. State of Tamil Nadu***<sup>39</sup> it was held that in view of Article 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous. Children can, however be employed in the process of packing but it should be done in an area away from the place of manufacturing to avoid exposure to accidents. In addition to regulating the phases of production that could involve child labour, the court ordered that:

- ◆ Children involved in certain positions must be paid at least 60% of the minimum wage of their adult counterparts.
- ◆ Education, recreation, and socialization facilities must be provided; and
- ◆ The state government must ensure that factories meet their responsibilities to provide recreation, medical care, and compulsory insurance, and must pay attention to the basic diet of children.

The Apex Court was of the opinion that children below the age of 14 years cannot be employed in any hazardous industry, mines, or other works and has laid down exhaustive guidelines how the state authorities should protect economic, social and humanitarian rights of millions of children working illegally in public and private sections. Subsequently, wide ranging directions were issued by the court with regard to the employment and exploitation of children wherein it was specifically prohibited to employ children below the age of 14 years. The Court went on to instruct the government of the importance of a child's health, nutrition, and education, and affirmed a child's constitutional right to an education.

These guidelines and directions were also reiterated in the case of ***Bandhua Mukti Morcha vs. Union of India***<sup>40</sup>. Here, the Supreme Court held *"whenever it is shown that the labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour."*

---

<sup>39</sup> (1996) 6 SCC 756

<sup>40</sup> AIR 1997 SC 2218



There are certain other provisions contained in part IV, dealing with the Directive Principles of State Policy, which although do not lay emphasis on the child welfare directly, yet the children are bound to be the beneficiaries if these provisions are implemented. The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self-imposing direction towards securing the health and strength of workers, particularly to see that the same in the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.

Article 39 provides for certain principles to be followed by State. These principles of policy are to be followed by the State to ensure public welfare. Article 39(e)<sup>41</sup> and 39(f)<sup>42</sup> specifically includes children within the ambit of workmen who should not face abuse and that children should be provided with equal opportunities and facilities for their growth and development.

Clause (f) was modified by the Constitution (42<sup>nd</sup> amendment) Act 1976 with a view to emphasize the constructive role of the state with regard to children.

Reading Article 39(e) and (f), the Constitution also incorporates a few more provisions to promote the welfare of the children. The Supreme Court has through a plethora of cases shown its concern towards the welfare of children.

This was particularly highlighted in the case of **Lakshmi Kani Pandey vs. Union of India**<sup>43</sup> wherein the Supreme Court emphasized upon the need of child welfare in the country. In this case, the Court issued guidelines with regard to adoption of Indian children by foreign parents. The Court further emphasized that the primary purpose of giving the child for adoption is to provide a better future to the child and hence great care must be taken in permitting foreigners to adopt Indian children.

---

<sup>41</sup> Article 39: *The health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*"

<sup>42</sup> Article 39(f): *"that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".*

<sup>43</sup> AIR 1984 SC 469

Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive signifies that it is not only confined to primary education, but extends to free education whatever it may be upon the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education.

Virtually Article 45 recognizes the importance of dignity and personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years.

As per IPC, particularly, Section 82 which says that nothing is an offence which is done by a child under 7 years of age. Section 83 says that nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct.

### **Sexual Abuse of Children :**

The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. A 2007 study by the Ministry of Women and Child Development (MWCD) found that 53.22 per cent of India's children have experienced some form of sexual abuse. Against this background, the lack of specific provisions for child sexual abuse in our criminal law is a serious lacuna.

Sexual abuse of children can occur in a number of different settings. Children can be sexually abused by family members (intrafamilial) or by strangers (extrafamilial).

A more precise categorization of the term for Indian context is made under **the Prevention of Offences against the Child Bill, 2009** where in sexual abuse of children has been classified under various heads, but the bill is yet to be passed.

The Indian Penal code defines the child as being 12 years of age. Section **376 of IPC**, which punishes the perpetrators of the crime of rape, defines the age of consent to be below 16 years of age.

**Although Section 377**, dealing with unnatural offences, prescribes seven to ten years of imprisonment, such cases can be tried in a magistrates court, which can impose maximum punishment of three years. If the abuse is repeated several times it affects children more severely, however as yet there is no law for repeated offenses against the one child. **Section 509**, dealing with word, gesture or act intended to insult the modesty of a woman, extends to minor girls also. The gravity of the offence under section 509, dealing with obscene gestures, is less. Yet even in such cases, the child's psyche may be affected as severely as in a rape.

The matter had come to the Supreme Court in the case of **Sakshi v. Union of India**<sup>44</sup> , where a PIL was filed with growing concern, the dramatic increase of violence, in particular, sexual violence against women and children as well as the implementation of the provisions of the Indian Penal Code, namely, Sections 377, 375/376 and 354.

The Supreme Court gave the following directions;

In holding trial of child sex abuse or rape:

- (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- (ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

---

<sup>44</sup> *Saksi v. Union of India*, (2004) 5 SCC 518, at page 545

## Child Trafficking :

Child-trafficking, traditionally associated with only trafficking for commercial sex, is growing fast in India. There are no laws that specifically target child-trafficking. Commercial sex-trafficking offences are handled under the Immoral Traffic (Prevention) Act. Labour-trafficking offences are handled under the Child Labour Act for those hazardous industries in which child labour is considered an offence. There is no law prohibiting employment of children in work outside the definition of “hazardous”.

Child Trafficking can be defined as:

“Sale and purchase of children for gain, within the country (intra-country) and across borders (inter-country), by deceit, fraud or force, resulting in exploitation of the person trafficked”

Trafficking of children is done for various reasons like **Sexual Exploitation** (Forced prostitution, Socially and religiously sanctified forms of prostitution, Sex tourism, Pornography), **Illegal Activities** (Begging, Organ trade, Drug peddling and smuggling), **Labour** (Bonded labour, Domestic work, Agricultural labour, Construction work, Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy), **Entertainment and Sports, Adoption, Marriage.**

From the legal point of view – India has been a front-runner in the battle against human trafficking. The criminalization of trafficking flows from Article 23(1) of the Constitution.

To tackle human trafficking, we have had the necessary legislation in place, principally **the Immoral Traffic (Prevention) Act, 1956**, in addition to several provisions in labour laws and the Indian Penal Code. These form a composite legal code for the prosecution and punishment of traffickers. In addition to these legislative measures, the Supreme Court of India has touched on this issue in two prominent judgments, i.e. – **Vishal Jeet vs. Union of India** (1990) and in **Gaurav Jain v. Union of India** (1997). These judgments directed the Government of India, among other things, to prepare a ‘National Plan to Combat Trafficking and Commercial Sexual

Exploitation of Women and Children'. As a result of this, a National Plan was drafted in 1998 which lays down suggested measures for prevention, rescue, rehabilitation and reintegration.

In the case of **Vishal Jeet v. Union of India**<sup>45</sup> Supreme Court gave the following directions:

- “(1) All the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.
- (2) The State Governments and the Governments of Union territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists criminologists, members of the women’s organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:
  - (a) the measures to be taken in eradicating the child prostitution, and
  - (b) the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.
- (3) All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

---

<sup>45</sup> 1990 (3) SCC 318

- (4) The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.
- (5) The Central Government and the Governments of States and Union territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.
- (6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.”

In **Gaurav Jain v. Union of India**<sup>46</sup>, the Supreme Court held that juvenile homes should be used for rehabilitating child prostitutes and neglected children.

#### **Rape of a Minor :**

In **Dhananjay Chatterjee vs. State of W.B.** which involved rape-cum-murder, the trial court, the High Court and the Supreme Court agreed it to be a fit case for imposition of death penalty. The Court pointed out that in recent years, rising crime rate, particularly against woman had made judicial sentencing a subject of concern. The object of sentencing should be to see that criminal does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done.

The sentence of death appears more appropriate where rape and murder is committed by an accused having criminal record.

The emerging inference is that if a girl child is raped and murdered, the probability of death sentence is highest.

---

<sup>46</sup> 1997 (8) SCC 114

## **Child Delinquency and Neglected Children of Juvenile**

The Juvenile Justice Act, 1986 (for short, the 'JJ Act') was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts to deal adequately with the subject.

The object of the Act, therefore, is to provide specialised approach towards the delinquent or neglected juveniles to prevent recurrence of juvenile delinquency in its full range keeping in view the developmental needs of the child found in the situation of social maladjustment. That aim is secured by establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles.

As per Indian law, the Juvenile Justice (Care and Protection of Children) Act, 2000 defines a juvenile as a person below the age of 18 years. The Act intends to provide care and protection to juveniles, who violate laws in India. The Act intends to settle the issues in the best interest of children and not with an intention to punish them under criminal law. This Act is a comprehensive legislation that provides for proper care, protection and treatment of children in conflict with law and children in need of care and protection by catering to their development needs, and by adopting a child friendly approach. It conforms to the UNCRC and other relevant national and international instruments.

A clear distinction has been made in this Act between the juvenile offender and the neglected child. It also aims to offer a child increased access to justice by establishing Juvenile Justice Boards and Child Welfare Committees. The Act has laid special emphasis on rehabilitation and social integration of the children and has provided for institutional and non-

institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship, and after care.

‘Neglected juvenile’ which is more relevant for the purpose of this case, has been defined in Section 2(1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

In order to understand the JJ Act and how juveniles have to be safeguarded, I request all of you to go through the recent decision of the Supreme Court in **Hari Ram vs. State of Rajasthan**, 2009 (13) SCC 211.

One of the land mark judgments in the sphere of child and minor welfare is **Sheela Barse and Others vs. Union of India Others**<sup>47</sup>. In this case, the Supreme Court made an order issuing various directions in regard to Physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for ‘safe custody’. The Court directed the Director General of Doordarshan as also the Director General of All India Radio to give publicity seeking cooperation of non-governmental social service organizations in the task of rehabilitation of these children. The Court declared that it was “extremely pained and anguished that these children should be kept in jail instead be being properly looked after, given adequate medical treatment and imparted training in various skills which make them independent and self-reliant.”

---

<sup>47</sup> AIR 1986 SC 1773



## **Child Labour**

In India, the Child Labour (Regulation and Prohibition) Act, 1986 does not define the term “child labour”. It defines “child” as a person who has not completed his fourteenth year of age<sup>48</sup>. Further it prohibits child labour in hazardous occupations and processes as listed in the schedule of the Act.

Poverty remains the root cause of child labour. All the other causes, though differentiated and made specific, in some way or the other emanates from poverty. People living below poverty line do not get sufficient to sustain themselves. In such situations, it becomes imperative for them to send their children to work. Child labour in turn hampers physical and mental growth of children and deprives them of education. Going to school, instead of betterment, proves to be waste of hard earned resources of the family and so parents are unwilling to send their children for education. This hampers their upward social movement and restricts them to the unorganized sector. This keeps them in poverty and they are unable to better their situation and thus the vicious circle of poverty and child labour continues.

This Act has provided certain specific provisions to tackle child labour and has given many concrete provisions for abolition of child labour. It prohibits employment of children below the age of 14 in all hazardous occupations and processes<sup>49</sup>.

## **Child Marriage**

Child Marriage is the most unfortunate practices followed in India even today. Child Marriage is an abuse of children especially girls by their own parents in the form of celebration.

---

<sup>48</sup> Section 2(ii), *The Child Labour (Regulation & Prohibition) Act, 1986*

<sup>49</sup> Section 3, *The Child Labour (Regulation & Prohibition) Act, 1986*

The Child Marriages Act, 2006, as it exists prohibits marriage for women younger than 18 and men under age 21.

### **Foeticide and Infanticide**

Foeticide is punishable under Section 315 of IPC which reads as;

“Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.”





**Refresher Course for Civil Judges**

**Rights of Transgender People -  
Sensitising Officers to Provide  
Access to Justice**

**12<sup>th</sup> February 2011**

## **DEFINITION**

The term 'transgender' has been derived from the Latin word 'trans' and the English word 'gender'. Different sorts of individuals come under this category. No particular form of sexual orientation is meant through the term transgender. The way they behave and act differs from the 'normative' gender role of men and women. Leading a life as a transgender is far from easy because such people can be neither categorized as male nor female and this deviation is "unacceptable" to society's vast majority. Trying to eke out a dignified living is even worse.

## **HIJRAS: THE THIRD GENDERED PEOPLE**

In India, the hijra community has existed for more than four thousand years and is currently believed to number half a million. The word "hijra" designates an alter-native gender to the male-female binary; the term translates as eunuch or hermaphrodite. The hijras' base their group's third gender identity on an episode in the Ramayana where Rama is banished. In the story, Rama tells a tearful group of men and women, lamenting his banishment, to leave and return to the city. A group of people "who were not men and not women" did not know what to do and remained with him. Rama rewarded the hijras for their loyalty by giving them the power to bless auspicious occasions such as marriage and childbirth through customary singing and dancing.

Irregular male sex organs are central to the group's definition. The hijras include both ceremonially emasculated males and intersexed people whose genitals are "ambiguously male-like at birth." All hijras have a female gender identity. There are no ambiguous females who identify as males in the group. Instead, all hijras dress and act as women even though they are not biological women.

## **RIGHTS OF TRANSGENDER PEOPLE**

*Preamble to the Constitution mandates Justice - social, economic, and political equality of status.*

Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.

Article 21 ensures right to privacy and personal dignity to all the citizens.

Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labour and any contravention of these provisions shall be an offence punishable in accordance with law.

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgenders) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied.

This phenomenon can be observed at the international level also, principally in the form of practice related to the United Nations-sponsored human rights treaties, as well as under the European Convention on Human Rights. The development of this sexual orientation and gender identity-related human rights legal doctrine can be categorized as follows:

- a) Non-discrimination
- b) Protection of Privacy rights and
- c) the ensuring of other general human rights protection to all, regardless of sexual orientation or gender identity

In the light of the Constitutional guarantees provided, there is no reason why Transgender Community should not get their basic rights, which include Right to Personal Liberty, Dignity, Freedom of Expression, Right to Education and Empowerment, Right against Violence, Discrimination and exploitation.

The Constitution endures persons in every generation and every generation can invoke its principles in their own search for greater freedom, therefore, it is the duty of judiciary to interpret the provisions of the Constitution in such a way so as to ensure a life of dignity for them.

As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders. Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Identification on the basis of sex within male and female is a crucial component of civil identity as required by the Indian state.

The Indian state's policy of recognizing only two sexes and refusing to recognize hijras as women, or as a third sex (if a hijra wants it), has deprived them at a stroke of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Such deprivation secludes hijras from the very fabric of Indian civil society.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption.

In 1994, transgender persons got the voting right but the task of issuing them voter identity cards got caught up in the male or female question. Several of them were denied cards with sexual category of their choice.

The other fields where this community feels neglected are inheritance of property or adoption of a child. They are often pushed to the periphery as a social outcaste and many may end up begging and dancing. This is by all means human trafficking. They even engage themselves as sex workers for survival.

## ACCESS TO JUSTICE

One to four percent of the world population is intersexed, not fully male or female. After independence however they were denotified in 1952, though the century old stigma continues. This stigma reduces the transgender to individuals who are not considered human, thus devoid of all human rights. They suffer a whole lot of mental, physical and sexual oppression in the society. The health and well-being of transgender people suffers great harm by attitudes of intolerance and hatred toward diverse gender expression.

The laws that, in today's date, terrorize the transgender community are Section 377 of the Indian Penal Code, 1870 and the Immoral Traffic Prevention Act, 1986.

***Immoral Traffic Prevention Act of 1956*** (amended in 1986) is the chief instrument of the Indian state's regulation of prostitution which mandates to prevent the traffic of women and children into prostitution. With the 1986 amendment, the title was modified to "Immoral Traffic Prevention Act," and it became gender neutral. The ambit of the Act now applied to both male and female sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both male and hijra sex workers became criminal subjects of the ITPA. This provided the legal basis for arrest and intimidation of the transgender sex workers population.

***Sec 377 of the 1860 Code*** was drafted by Lord Macaulay. It comes under the Section titled 'Offences Affecting the Human Body' and provision provides the sanction for the prosecution of certain kinds of sexual acts deemed to be unnatural. It is important to note that regardless of consent these sexual acts are liable for prosecution provided they are seen as carnal intercourse against the order of nature, with man, woman, or animal and, thus satisfy the requirement of penetration. **And to be a homosexual or a hijra is to draw the presumption that the hijra or the homosexual is engaging in "carnal intercourse against the order of nature.**



Section 377 has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons. Various such incidents have come to light in the recent past. In *Jayalakshmi v. State of Tamil Nadu*, Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station.

Similarly, policemen arrested Narayana, a transgender, in Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in identifying other transgenders he was acquainted with.

Homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society.

Similarly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) have not prescribed any guidelines for Sex Reassignment Surgery (SRS). This reticence on the part of the medical sphere has led many transgenders to approach quacks, putting themselves at grave risk.

From the numerous instances of abuse and violence against homosexuals and transgenders, it is evident that Section 377 has been grossly misused. It is equally obvious that a judicial move to address this concern was exigent in the face of a law enforcement framework so hostile that exploitation at the hands of the alleged protectors became a quotidian affair for sexual minorities in India.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009 that for the first time any court in India pronounced that the oppression meted out to the transgender community and the homosexuals in the country is violative of Right to Equality under Article 14, Right against Discrimination under Article 15, and Right to Privacy and Personal Dignity under Article 21 of the Indian Constitution.

These rights are not only constitutionally guaranteed but are also implicit in the Universal Declaration of Human Rights and should therefore; enjoy a superior position to other rights. The judgment of the Delhi High Court reflects a sense of conscience and empathy towards the sexual minorities, emotions that were hitherto unknown. Section 377, in its criminalization of homosexual activity, was a repressive measure on the fundamental rights of the transgender community.

And when a transgender is treated like an unequal or is humiliated by the ordinary people, there are not a lot of redressal mechanisms that are available to him. Thus to put an end to all the inhuman behavior towards the transgender community it is very important that reforms are made in the existing laws, the law officers are sensitized to adapt to a complete humanitarian approach while dealing with a person of transgender community and also the society should get rid of the century old bias and realize that transgender behavior is a normal and natural as their own feeling towards their sexual orientation.

All the laws of the land should be applied to them like any other person. They should be treated equally, respectfully and without any discrimination. They should not be discriminated against in exercising their right to apply for a job, access to a public place, right to property or their right to access to justice.

Thus it is very vital that the judicial officers and the police officers do not become the means to institutionalize or to enforce such discrimination. Rather, they should spread awareness in the societal area they work in and enlighten the laymen that the transgender are as human as them and deserve to be treated in the same manner. There should be a group of activists to whom any matter involving transgender rights as soon as it reaches the court can be referred to. This panel of activists should involve social workers dedicated to the cause of upliftment of the transgender community and also lawyers through with the law on the subject.

Shelter homes should also be made available for such transgenders who are facing violence and are in further risk of going through the same during the proceedings. The officials dealing with issues relating to transgenders should observe complete transparency during such events. One should always remember that being in the legal profession it is our first and foremost duty to fight for the rights of the people who can't fight for themselves. Thus establishment of a division under the local legal services authority in order to provide legal aid to the transgenders, will adequately serve the purpose.

While reforms are needed and suggested in the existing laws for the realization of equal rights for the transgender community, the target can not be achieved, if not fully but partially, if reforms take place in the implementation of such laws and the State of Tamil Nadu has set an example of the above statement to the entire world. While it is the first State to constitute a Welfare Board for the transgender community, known as aravanis, with the official working staff along being the members of the transgender community; it has also taken affirmative action to achieve equality by reserving seats for third-gender students in government-owned art and science colleges and providing ration cards (identity documents) to third-gender people with the appropriate gender category. The state government was also giving subsidy to all those transgenders who wish to undergo surgical treatment for change of their sex.

India's transsexuals are also listed as 'others', distinct from males and females, on electoral rolls and voter identity cards since 2009. This identity of a third gender was a major step ahead in their struggle for political rights.

Another area of law which has to be seen with the glasses of welfare of transgenders is the juvenile justice system. Welfare and protective measures have to be implemented in the procedures and working of the Juvenile Justice system. The Juvenile Justice Act is more of a welfare legislation that penalizing one because it aims at proper upbringing of the delinquents by making the environment child friendly and informal. It is usually children with humiliating experiences in familial, economic or school life are found to be in conflict with law. Another factor that can be added to the list these humiliating experiences are the ones relating to the child's sexual orientation, which the Juvenile Justice System does not contemplate upon.

Adolescence is a confusing time during which the children learn the skills required to become healthy adults. They experience significant intellectual, emotional, and physical developments during this bridge to adulthood. This is equally true of the transgender adolescent, but they have the added disadvantage of coming of age in a society in which their identities are stigmatized and their families and schools often harass and victimize them. These children are often rejected, neglected, or abused by their guardians and choose a life on the streets rather than remain in hostile environments.

The members of the Juvenile Justice Board should be particularly compassionate towards a transgender juvenile and have a deeper understanding of his problems that led him into a delinquent act.

If the purpose of the juvenile justice system is to intervene in a troubled youth's life and guide them towards becoming contributing members of society, then the juvenile justice system must support transgenders in their youth in the exploration and expression of their sexual orientation and gender identity.

To bring about a change in the societal aspect it is necessary that we implement the seeds of equal treatment for transgenders in the minds of the new generation. A comprehensive gender and sexuality education should be provided to all children and youth, within and outside formal education systems, which includes discussions on sexual and gender diversity and sexual rights. This will not only ensure a better future outlook for the transgenders but also they will be able to earn self esteem and self respect which they deserve for the mere fact of being a human being.

To get any reform in any law that would affect the transgender community it is proposed that a few members of the transgender community be made a part of such commission so that the law does not remain a toothless piece of legislation and serves the purpose it was enacted or amended for.

It is of utmost importance that the transgender community is made free from violence and discrimination at all levels of the society. It is due to the discrimination they face since school that they never have enough confidence to continue studying and become eligible for all the white collar jobs. This mindset has to change if India truly wants to be the champion of human rights in the world. The surgery of sex reassignment

should be given a legal status so that the transgenders do not risk their lives going through it in a secret unlawful manner. This record will also be helpful in accurately determining their census. There should also be a separate column in the sex determinant portion in all government and non-government forms.

There is need for their social acceptance. They should be provided separate wards in all government hospitals. The authorities do not admit them in women's ward because women do not feel comfortable or free in their presence and in men's ward they face sexual abuse. Besides, there are no separate toilet facilities for them.

**Some progressive measures are:**

- a) To sensitize the society with regard to their identity.
- b) Support of civil society organization to advocate for their cause and efforts. For example, advocate for land/ shelter, creation of separate public toilets, hospital wards, recognition of their right to vote as citizens, reservation seats in election, etc.
- c) Support of Media - both print and electronic, to highlight their status and plight rather than portraying them in poor light.
- d) Extend financial support for community based organizations run by transgender communities.
- e) To generate awareness, so that the transgender is viewed and understood as a culture, community and a movement.

**RECOMMENDATIONS AND SUGGESTIONS**

Discrimination against hijras and kothis is embedded in both state and civil society. The violence that this community faces is not only due to the state but also has deep societal roots. Wider change is promised on changing existing social relations. Apart from shifts in class relations, change would also crucially hinge upon overturning the existing regime of both gender and sexuality that enforces its own hierarchies, (e.g. heterosexuality over homosexuality), exclusions (e.g, hijras as the excluded category) and oppressions. While keeping in mind this wider context, a human rights approach has to deal with the various institutional contexts and think through ways in which change can be brought about.

## Legal Measures

1. Every person must have the right to decide their gender expression and identity, including transsexuals, transgenders, transvestites and hijras. They should also have the right to freely express their gender identity. This includes the demand for hijras to be considered female as well as a third sex.
2. Comprehensive civil rights legislation should be enacted to offer hijras and kothis the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour. The Constitution should be amended to include sexual orientation/ gender identity as a ground of non-discrimination.
3. There should be a special legal protection against this form of discrimination inflicted by both state and civil society which is very akin to the offence of practicing untouchability.
4. The Immoral Trafficking Prevention Act, 1956, as has been pointed out earlier, is used less for preventing trafficking than for intimidating those who are the most vulnerable i.e., the individual sex worker as opposed to brothel keepers or pimps. This law needs to be reformed with a clear understanding of how the state is to deal with those engaged in sex work.
5. Section 375 of the IPC should be amended to punish all kinds of sexual violence, including sexual abuse of children. A comprehensive sexual assault law should be enacted applying to all persons irrespective of their sexual orientation and marital status.
6. Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender / sex identities.

## **Police Reforms**

1. The police administration should appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against kothis and hijras in public areas and police stations, and the guilty policeman be immediately punished.
2. The police administration should adopt transparency in their dealings with hijras and kothis; make available all information relating to procedures and penalties used in detaining kothis and hijras in public places.
3. Protection and safety should be ensured for hijras and kothis to prevent rape in police custody and in jail. Hijras should not be sent into male cells with other men in order to prevent harassment, abuse and rape.
4. The police at all levels should undergo sensitization workshops by human rights groups/queer groups in order to break down their social prejudices and to train them to accord hijras and kothis the same courteous and humane treatment as they should towards the general public.

## **Other Measures**

1. A comprehensive sex-education program should be included as part of the school curricula that alters the heterosexist bias in education and provides judgement-free information and fosters a liberal outlook with regard to matters of sexuality, including orientation, identity and behaviour of all sexualities. Vocational training centers should be established for giving the transgender new occupational opportunities.

2. The Press Council of India and other watchdog institutions of various popular media (including film, video and TV) should issue guidelines to ensure sensitive and respectful treatment of these issues.
3. Several NGO's are working in almost every field but ironically there are very few NGOs for transgender.

### **Reforming the Medical Establishment**

1. Initiate a debate on whether being transgender should be classified as a gender identity disorder or whether it should be seen as a choice.
2. The Medical Council of India should issue guidelines to ensure that discrimination in medical treatment of hijras and kothis, which would include refusal to treat a person on the basis of their gender identity, is treated as professional misconduct.
3. Reform medical curricula in medical colleges that moves beyond seeing transgenderism as a disease and a deviance.

### **Hopes for the Future**

- ◆ The right to be treated fairly with compassion & free from unjust treatment, cruelty, discrimination, & exploitation in all private & government institutions & other entities.
- ◆ The right to be recognized as a marginalized group thus appropriate representation be afforded to us in all government instrumentalities & all other groups & organizations whether local or international.
- ◆ The right to be given equal Opportunities in employment as Transgenders.



- ◆ The right to participate in all socio-Economic, political & cultural activities, programs & services that directly concern and affect us.
- ◆ The right to build a family and home without prejudices and biases.
- ◆ The right to form and organize groups to freely redress our grievances against the government and other institutions without fear of being imprisoned or killed.
- ◆ The right to adequate access to health care and support, appropriate information and attain the highest standard of sexual and reproductive health.
- ◆ The right to bodily autonomy and to decide freely the matters concerning our health and reproduction that is free of discrimination, coercion, violence and deceit.

### **TAMIL NADU SHOWS THE WAY TO TRANSGENDERS IN INDIA**

There is a population of approximately 30,000 transgenders in the State of Tamil Nadu. They meet in *Koovagam*, a village in the Ulundurpet taluk in *Villupuram* district, Tamil Nadu in the Tamil month of Chitrai (April /May) for an annual festival which takes place for fifteen days.

In Tamil Nadu, Hijras are known as Aravanis. Most of them do not finish high school because they are constantly teased by their peers. They dress in saris, give themselves feminine names, and refer to each other in female kinship terms. After becoming Aravanis, most of them leave their natal homes, and join the Aravani community. They are shunned by family members, especially their male kin, and offer material as well as emotional support to each other. Aravanis are more than cross-dressers. Many go through a sex change operation or take hormones to become a “perfect” female, and many also become sex workers to serve non-Aravani men. At times they maintain a monogamous relationship with a man they call a husband.

Tamil Nadu government took bold steps to recognize transgenders as a separate gender for the first time in the country.

In Tamil Nadu, a remarkable group of aravani activists have, through legal and advocacy measures, been able to get the Tamil Nadu government to constitute an Aravani Welfare Board, meant especially to look after the welfare of the aravani community. The Board has ten aravani representatives who act in an unofficial advisory capacity. The welfare board is empowered to look into the various problems, difficulties and inconveniences faced by the transgenders and based on these inputs, formulate and execute welfare schemes for their betterment.

The government also announced to create a special database of transgenders that would help deal with their problems and demands. The database would be created by a non-governmental organization and would map the population of transgender in the state and find out their detailed demands such as ration cards, voter identity cards and health facilities etc.

It is the responsibility of the Government to ensure wide publicity through the print and visual media, of the fact that aravanis are entitled to get registered in electoral rolls and that transgender individuals could choose either 'male' or 'female' as their gender when applying for official identity documents. The state's education department issued a G.O. creating a **"third gender category"** for admission In educational institutions.: As per this order, educational institutions have to issue application form for undergraduate courses that will include **transgender as a separate category**. This will permit transgender students to join any college of their choice, whether co-educational, men's or women's colleges. Further, the government has issued guidelines for schools to provide for counseling of transgender students, counseling for families of transgender students to ensure they don't disown them, and ensuring

disciplinary action against schools and colleges who refused to admit aravanis.

Transgenders are in need of **equality and security**. They are being shunned by the society, suffer offences and crimes and are deprived of basic housing facilities. The sorry state of transgender is not an age old phenomena. In ancient and medieval times they had some respect in the society. Recorded history says that transgenders were used as palace guards. They were entrusted with the responsibility to look after the security of the female chamber of the Royal Palace.

However, with the advent of Victorian sense of morality imposed by the British rule the transgender fell out of the mainstream in India. The Indian society now sees them as evil and immoral.

It is very heartening that very laudable efforts are being taken by the Government of Tamil Nadu, mainly after the conference was organized In Chennai, to rehabilitate the transgender and to achieve equality for them in the community.

I am happy to inform you that the Government of Tamil Nadu have taken the pioneer effort to reach out to the transgenders and the Government on the Floor of the Assembly announced to constitute Welfare Board for the Transgenders in the State and allocated an amount of Rs.100 Crores. The Welfare Board comprise of 9 Transgender members, who have been empowered to look into the various problems, difficulties and inconvenience faced by the community and based on the inputs received, the Government have formulated and executed various welfare schemes. I would like to highlight some of the welfare schemes so formulated by the Government of Tamil Nadu:-

- 1) The Government has created a database on Transgender that would help to deal with their problems and demands such as housing, ration card, voter identity, patta, health facility etc.

- 2) The Government has also issued a Government order for admission of Transgenders in Government Schools and Colleges.

After the Judicial Colloquium, definite progress has been made and awareness on the part of public and philanthropists enabled for creating new job opportunities and programmes for Transgenders.

Life Insurance Corporation of India, in response to the Seminar arranged for employment mela has given appointments to Transgenders as Agent In the Corporation. Nearly 100 Transgenders participated and 14 of them were selected for appointment as agent. Further, 50 transgenders have given willingness to work as agents in the Life Insurance Corporation of India.

So far 8 meetings of the Welfare Board have been held and progress has been made and in the Welfare Meetings the Transgenders expressed their grievances.

The Transgender persons have been provided with education assistance of Rs.15,300/-

A proposal has been sent for making a documentary film on Transgenders incurring an amount of Rs.1,05,000/-, which has been approved by the Government.

Likewise, Rs.13,380/- has been approved for starting a tailoring training by a NGO for the transgenders in Chennai.

Rs.2.25 Lakhs has been distributed to the District Social Welfare Officer, Chennai for starting Beautician course for the transgenders.

It is proposed to start self-employment of manufacturing Agarbathis in Tuticorin District and in this regard the Government has been addressed for approval of Rs.1.60 Lakhs.

An amount of Rs. 100 Crores has been sanctioned by the Government for group houses for 182 Transgenders in 10 districts.

An amount of Rs. 1,06,813/- has been sanctioned towards staff salary and maintenance of the short stay home for the Transgenders, which is being run in Chennai by the Government.

In Chennai, efforts are being made to get houses for 163 Transgender persons through the Tamil Nadu Slum Clearance Board and proposal to this effect has been sent to the Slum Clearance Board.

Transgender persons, who have enrolled themselves with the Welfare Board, action plan has been drawn for rehabilitation through awareness programmes and providing employment opportunities.

It is high time the Central Government and the State Governments come forward, like the State of Tamil Nadu and take all possible steps for bringing the Transgender Community into the mainstream. The progress made in fostering public health systems and affirmative action policies for transgenders in Tamil Nadu should be replicated at the national level.

**To put in a nutshell the following solutions are needed:**

- ◆ The transgender persons must be properly documented in census.
- ◆ They need to be considered for statutory reservation in educational institutions and job opportunities in public and private sectors.
- ◆ They need to be empowered with high degree of educational and vocational trainings to up-grade their earning and status in the society.
- ◆ Since they are prone to health setbacks, they need proper medical facilities including insurance in the health sector.

There has to be togetherness. They should be brought under one umbrella, where people from mainstream society enjoy certain rights and

benefits. They could be accorded security and further benefits through social, political and legislative intervention. Separate law is needed to ameliorate the condition of eunuchs, and ensure that they enjoy the rights granted to every citizen.

UNDP Country Director Caitlin Wiesen pointed out the progress made in neighbouring Pakistan and Nepal to give due recognition to the transgender community. She particularly highlighted the Pakistani Supreme Court's landmark judgment affirming their right of access to all government schemes and programmes.

In western countries, the transgenders are very much part of the society, then why not in India they will be given recognition and respect like others. We need to take a look either into their past or into the future to stop vast discrimination against such a large portion of the population and to help them to divert their way from sex workers to good Citizens.







**Lecture delivered by Hon'ble Justice P.Sathasivam on "Criminal Jurisprudence of the Supreme Court : Key Highlights" on 29.11.2009 during South Zone Regional Judicial Conference on "Enhancing Timely Justice : Strengthening Criminal Justice Administration" at TNSJA**



**On the Dias - Hon'ble Justice P.Sathasivam and Hon'ble Justice F.M.Ibrahim Kalifulla during the Refresher Course for District Judges on "Offences relating to Women and Children" on 27.11.2010 at TNSJA**





**Lecture delivered by Hon'ble Justice P.Sathasivam on "Offences relating to Women and Children" on 27.11.2010 during the Refresher Course for District Judges at TNSJA**



**Lecture delivered by Hon'ble Justice P.Sathasivam on "Offences relating to Women and Children" on 27.11.2010 during the Refresher Course for District Judges at TNSJA - also a view of the audience**



**On the Dias - Hon'ble Justice P.Sathasivam and Hon'ble Justice V.S.Sirpurkar during the Refresher Course for District Judges on "Offences relating to Women and Children" on 27.11.2010 at TNSJA**



**Programme on : Rights of Transgender People - Sensitising Officers to Provide Access to Justice on 12.02.2011 at TNSJA. Hon'ble Justice P.Sathasivam distributing assistance to Transgender in the presence of Hon'ble Justice Altamas Kabir & Hon'ble Justice Dalveer Bhandari, Judges, Supreme Court of India and Hon'ble Justice M.Y.Eqbal, Chief Justice, Madras High Court**



**Lecture delivered by Hon'ble Justice P.Sathasivam on "Appreciation of Evidence including Evidence Recorded through Electronic Media for Sessions Cases" on 26.03.2011 during the Refresher Course for District Judges at TNSJA**



**On the Dias - Hon'ble Justice P.Sathasivam is flanked from left to right by Hon'ble Justice S.Nagamuthu, Hon'ble Justice D.Murugesan, Hon'ble Justice P.Jyothimani & Hon'ble Justice M.M.Sundresh during the Special Programme for District Judges on "Appreciation of Evidence including Evidence Recorded through Electronic Media for Sessions Cases" on 26.03.2011 at TNSJA**



**Lecture delivered by Justice P.Sathasivam on "Role of Courts in Protection of Human Rights" on 25.02.2012 during South Zone Regional Judicial Conference at TNSJA**



**Lecture delivered by Justice P.Sathasivam on "Role of Courts in Protection of Human Rights" on 25.02.2012 during South Zone Regional Judicial Conference at TNSJA - On the Dias - Justice Elipe Dharma Rao, Justice S.B. Sinha, Justice M.Y.Eqbal & Justice P.K.Misra**



**Lecture delivered by Justice P.Sathasivam on “Role of Courts in Protection of Human Rights” on 25.02.2012 during South Zone Regional Judicial Conference at TNSJA - a view of the audience**



**Lecture delivered by Justice P.Sathasivam on “Role of Courts in Protection of Human Rights” on 25.02.2012 during South Zone Regional Judicial Conference at TNSJA - another view of the audience**



**Hon'ble Justice P.Sathasivam along with dignitaries during the South Zone Regional Judicial Conference on "Role of Courts in Protection of Human Rights" on 25.02.2012**



**Lecture delivered by Hon'ble Justice P.Sathasivam on "Role of Judicial Officer in Criminal Administration" on 05.01.2013 during the Induction Training Programme for Newly Recruited Civil Judges at TNSJA**



**Lecture delivered by Hon'ble Justice P.Sathasivam on "Role of Judicial Officer in Criminal Administration" on 05.01.2013 during the Induction Training Programme for Newly Recruited Civil Judges at TNSJA - also a view of the audience**



**Lecture delivered by Hon'ble Justice P.Sathasivam on "Speedy Disposal of Corruption and Vigilance Cases" on 23.02.2013 during the Special Training Programme for District Judges / Chief Judicial Magistrates at TNSJA**



**On the Dias - Hon'ble Justice P.Sathasivam with Hon'ble Acting Chief Justice R.K.Agrawal during the Special Programme for District Judges and Chief Judicial Magistrates on "Women and Children – Role of Courts" on 23.03.2013 at TNSJA**



**On the Dias - Hon'ble Justice P.Sathasivam is flanked from left to right by Hon'ble Justice R.Banumathi, Hon'ble Acting Chief Justice R.K.Agrawal & Hon'ble Justice S.Manikumar during the Special Programme for District Judges and Chief Judicial Magistrates on "Women and Children – Role of Courts" on 23.03.2013 at TNSJA**





The President, Board of Governors, TNSJA, Justice R.Banumathi, presenting a memento to Hon'ble Justice P.Sathasivam, on the occasion of the Special Programme on "Effective District Administration & Court Management" on 15.06.2013 in the presence of Hon'ble Justice Dipak Misra & Hon'ble Justice F.M.Ibrahim Kalifulla, Judges, Supreme Court of India.



Release of Books (1) Effective District Administration (2) Courts – Staff – Registers – Legal Procedures : A Guide for District Judiciary (3) Courts – Staff – Registers – Legal Procedures : A Guide for Chennai City (4) Important Legal Provisions at a Glance (English & Tamil Version) compiled by TNSJA on the occasion of the Special Programme on "Effective District Administration & Court Management" on 15.06.2013. Hon'ble Justice P.Sathasivam is flanked from left to right by Justice R.Banumathi, Acting Chief Justice R.K.Agrawal, Justice Dipak Misra (Supreme Court of India), Justice F.M.Ibrahim Kalifulla (Supreme Court of India) & Justice Elipe Dharma Rao.

**Special Programme for District Judges**

**Appreciation of Evidence  
Including Evidence Recorded  
through Electronic Media for  
Sessions Cases**

**26<sup>th</sup> March 2011**

## **Law on Electronic Evidence**

The proliferation of computers, the social influence of information technology and the ability to store information in digital form have all required Indian law to be amended to include provisions on the appreciation of digital evidence. In 2000 Parliament enacted the Information Technology (IT) Act 2000, which amended the existing Indian statutes to allow for the admissibility of digital evidence. The IT Act is based on the United Nations Commission on International Trade Law Model Law on Electronic Commerce and, together with providing amendments to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891, it recognizes transactions that are carried out through electronic data interchange and other means of electronic communication.

### **Changes to Evidence Act**

Although the Evidence Act has been in force for many years, it has often been amended to acknowledge important developments. Amendments have been made to the Evidence Act to introduce the admissibility of both electronic records and paper-based documents.

### **Evidence**

The definition of 'evidence' has been amended to include electronic records (Section 3(a) of the Evidence Act). Evidence can be in oral or documentary form. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act, which provides for "data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated microfiche".

### **Admissions**

The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance. Section 22A has been inserted into the Evidence Act to provide for the relevancy of oral evidence regarding the contents of electronic records. It

provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of the electronic records produced is in question.

### **Statement as Part of Electronic Record**

When any statement is part of an electronic record (Section 39 of the Evidence Act), the evidence of the electronic record must be given as the court considers it necessary in that particular case to understand fully the nature and effect of the statement and the circumstances under which it was made. This provision deals with statements that form part of a longer statement, a conversation or part of an isolated document, or statements that are contained in a document that forms part of a book or series of letters or papers.

### **Admissibility of electronic evidence**

New Sections 65A and 65B are introduced to the Evidence Act under the Second Schedule to the IT Act, 2000. Section 5 of the Evidence Act provides that evidence can be given regarding only facts that are at issue or of relevance. Section 136 empowers a judge to decide on the admissibility of the evidence. New provision Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B. Section 65B provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record (ie, the contents of a document or communication printed on paper that has been stored, recorded and copied in optical or magnetic media produced by a computer ('computer output')), is deemed to be a document and is admissible in evidence without further proof of the original's production, provided that the conditions set out in Section 65B(2) to (5) are satisfied.

### **Conditions for the admissibility of electronic evidence**

Before a computer output is admissible in evidence, the following conditions as set out in Section 65(B)(2) must be fulfilled:

“(2) The conditions referred to in subsection (1) in respect of a computer output shall be the following, namely:

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
  - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
  - (c) throughout the material part of the said period the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
  - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
- (3) Where over any period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of subsection (2) was regularly performed by computers, whether:
- (a) by a combination of computers operating over that period;
  - (b) by different computers operating In succession over that period;
  - (c) by different combinations of computers operating In succession over that period; or
  - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer and references in this section to a computer shall be construed accordingly.”

Section 65B(4) provides that in order to satisfy the conditions set out above, a certificate of authenticity signed by a person occupying a responsible official position is required. Such certificate will be evidence of any matter stated in the certificate.

The certificate must:

- ◆ identify the electronic record containing the statement;
- ◆ describe the manner in which it was produced; and
- ◆ give such particulars of any device involved in the production of the electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer.

The certificate must also deal with any of the matters to which the conditions for admissibility relate.

### **Presumptions Regarding Electronic Evidence**

A fact which is relevant and admissible need not be construed as a proven fact. The judge must appreciate the fact in order to conclude that it is a proven fact. The exception to this general rule is the existence of certain facts specified in the Evidence Act that can be presumed by the court. The Evidence Act has been amended to introduce various presumptions regarding digital evidence.

### **Gazettes in electronic form**

Under the provisions of Section 81A of the Evidence Act, the court presumes the genuineness of electronic records purporting to be from the Official Gazette or any legally governed electronic record, provided that the electronic record is kept substantially in the form required by law and is produced from proper custody.

### **Electronic agreements**

Section 84A of the Evidence Act provides for the presumption that a contract has been concluded where the parties' digital signatures are affixed to an electronic record that purports to be an agreement.

## **Secure electronic records and digital signatures**

Section 85B of the Evidence Act provides that where a security procedure has been applied to an electronic record at a specific time, the record is deemed to be a secure electronic record from such time until the time of verification. Unless the contrary is proved, the court is to presume that a secure electronic record has not been altered since obtaining secure status. The provisions relating to a secure digital signature are set out in Section 15 of the IT Act. A secure digital signature is a digital signature which, by application of a security procedure agreed by the parties at the time that it was affixed, is:

- ◆ unique to the subscriber affixing it;
- ◆ capable of identifying such subscriber; and
- ◆ created by a means under the exclusive control of the subscriber and linked to the electronic record to which it relates in such a manner that if the electronic record as altered, the digital signature would be invalidated.

It is presumed that by affixing a secure digital signature the subscriber intends to sign or approve the electronic record. In respect of digital signature certificates (Section 85B of the Evidence Act) , it is presumed that the information listed in the certificate is correct, with the exception of information specified as subscriber information that was not verified when the subscriber accepted the certificate.

## **Electronic messages**

Under the provisions of Section 88A, it is presumed that an electronic message forwarded by a sender through an electronic mail server to an addressee corresponds with the message fed into the sender's computer for transmission. However, there is no presumption regarding the person who sent the message. This provision presumes only the authenticity of the electronic message and not the sender of the message.

## **Five-year old electronic records**

The provisions of Section 90A of the Evidence Act make it clear that where an electronic record is produced from custody which the court considers to be proper and purports to be or is proved to be five years old, it may be presumed that the digital signature affixed to the document was affixed by the signatory or a person authorized on behalf of the signatory. An electronic record can be said to be in proper custody if it is in its natural place and under the care of the person under whom it would naturally be. At the same time, custody is not considered improper if the record is proved to have had a legitimate origin or the circumstances of the particular case are such as to render the origin probable. The same rule also applies to evidence presented in the form of an electronic copy of the Official Gazette.

## **Changes to Banker's Book Evidence Act**

The definition of 'banker's book' has been amended to include the printout of data stored on a floppy disc or any other electro-magnetic device (Section 2(3)). Section 2A provides that the printout of an entry or a copy of a printout must be accompanied by a certificate stating that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager, together with a certificate from a person in charge of the computer system, containing a brief description of the computer system and the particulars of its safeguards.

## **Changes to Penal Code**

A number of offences were introduced under the provisions of the First Schedule of the IT Act, which amended the Penal Code with respect to offences for the production of documents that have been amended to include electronic records. The range of additional includes:

- ◆ absconding to avoid the production of a document or electronic record in a court (Section 172 of the Penal Code);
- ◆ intentionally preventing the service of summons, notice or proclamation to produce a document or electronic record in a court (Section 173 of the Penal Code);



- ◆ intentionally omitting to produce or deliver up the document or electronic record to any public servant (Section 175 of the Penal Code);
  - ◆ fabricating false evidence by making a false entry in an electronic record or making any electronic record containing a false statement, and intending the false entry or statement to appear in evidence in judicial proceedings (Sections 192 and 193 of the Penal Code);
  - ◆ the destruction of an electronic record where a person hides or destroys an electronic record or obliterates or renders illegible the whole or part of an electronic record with the intention of preventing the record from being produced or used as evidence (Sec. 204 of the Penal Code);
- and
- ◆ making any false electronic record (Sections 463 and 465 of the Penal Code).

### **Recent Court Rulings**

#### **Search and Seizure**

*State of Punjab v Amritsar Beverages Ltd*<sup>1</sup> involved a search by the Sales Tax Department and the seizure of computer hard disks and documents from the dealer's premises. The computer hard disk was seized under the provisions set out in Section 14 of the Punjab General Sales Tax Act 1948, which requires authorities to return seized documents within a stipulated time frame (Section 14 (3)), provided that the dealer or person concerned is given a receipt for the property. Section 14 reads as follows:

"14. Production and inspection of books, documents and accounts

(1) The commissioner or any person appointed to assist him under subsection (1) of section 3 not below the rank of an [Excise and Taxation Officer], may, for the purpose of the act, require any dealer referred to in section 10 to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiry from such dealer relating to his business, as may be necessary.

---

<sup>1</sup> 2006 IndLaw SC 391

Provided that books, documents and accounts of a period more than five years prior to the year in which assessment is made shall not be so required.

- (2) Every registered dealer shall:
  - (a) maintain day-to-day accounts of his business;
  - (b) maintain a list of his account books, display it along with his registration certificate and furnish a copy of such list to the assessing authority;
  - (c) produce, if so required, account books of his business before the Assessing Authority for authentication in the prescribed manner; and
  - (d) retain his account books at the place of his business, unless removed therefrom by an official for inspection, by any official agency, or by auditors or for any other reason which may be considered to be satisfactory by the assessing authority.
- (3) If any officer referred to in subsection (1) has reasonable ground for believing that any dealer is trying to evade liability for tax or other dues under this act, and that anything necessary for the purpose of an investigation into his liability may be found in any book, account, register or document, he may seize such book, account, register or document, as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall:
  - (a) in the case of a book, account, register or document which was being used at the time of seizing, within a period of 10 days from the date of seizure; and
  - (b) in any other case, within a period of 60 days from the date of seizure;

return it to the dealer or the person from whose custody it was seized after the examination or after having such copies or extracts taken therefrom as may be considered necessary, provided that the dealer or the aforesaid person gives a receipt in writing for the book, account, register or document returned to him. The officer may, before returning the book, account, register or document, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officers have been affixed on each book, account, register or document.

- (4) For the purpose of subsection (2) or subsection (3) , an officer referred to in subsection (1) may enter and search any office, shop, godown, vessel, vehicle or any other place of business of the dealer or any building or place except residential houses where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any book, account, register, document or goods relating to his business.
- (5) The power conferred by subsection (4) shall include the power to open and search any box or receptacle in which any books, accounts, register or other relevant document of the dealer may be contained.
- (6) Any officer empowered to act under subsection (3) or subsection (4) shall have power to seize any goods which are found in any office, shop, godown, vessel, vehicle or any other place of business or any building or place of the dealer, but not accounted for by the dealer in his books, accounts, registers, records and other documents.”

This section entitles the officer concerned to affix his or her signature and seal at one or more places on the seized document and to include in the receipt the number of places where the signature and seal have been affixed. In the case at hand, the officers concerned called upon the dealer, but the dealer ignored their requests.

After examination, the Sales Tax Authority was required to return all documents seized within 60 days. However, the authority failed to return the hard disk, claiming that it was not a document . When the matter came before the Supreme Court, a creative interpretation was adopted, taking into account the fact that the Punjab General Sales Tax Act was enacted in 1948 when information technology was far from being developed. It was determined that the Constitution of India is a document that must be interpreted in light of contemporary life. This meant that a creative interpretation was necessary to enable the judiciary to respond to technological developments. The court was permitted to use its own interpretative principles since Parliament had failed to amend the statute with regard to developments in the field of science. The court stated that the Evidence Act, which is part of the Procedural laws, should be construed to be an ongoing statute, similar to the Constitution, which meant that in accordance with the circumstances, a creative interpretation was possible

It was held that the proper course of action for officers in such circumstances was to make copies of the hard disk or obtain a hard copy, affix their signatures or official seal on the hard copy and furnish a copy to the dealer or person concerned.

### **Evidence recorded on CD**

In *Jagjit Singh v State of Haryana* <sup>2</sup> the speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. (2) When hearing the matter, the Supreme Court considered the appreciation of digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel and the Haryana News of Punjab Today television channel.

The Supreme Court of India indicated the extent of the relevance of the digital materials in Paragraph 25 of his ruling:

“The original CDs received from Zee Telefilms, the true translation into English of the transcript of the interview conducted by the said channel and the original letter issued by Zee Telefilms and handed over to Ashwani Kumar on his request were filed on June 23 2004. The original CDs received from Haryana News channel along with the English translation as above and the original proceedings of the Congress legislative party in respect of proceedings dated June 16 2004 at 11.30am in the Committee room of Haryana Vidhan Sabha containing the signatures of three out of four independent members were also filed.”

---

<sup>2</sup> AIR 2007 SC 590

In Paragraphs 26 and 27 the court went on to indicate that an opportunity had been given to the parties to review the materials, which was declined:

- “26. It has to be noted that on June 24, 2004 counsel representing the petitioners were asked by the speaker to watch the interviews conducted in New Delhi on June 14, 2004 by Zee News and Haryana News, which were available on the CD as part of the additional evidence with the application dated June 23, 2004 filed by the complainant. The counsel, however, did not agree to watch the recording which was shown on these two channels. The copies of the application dated June 23, 2004 were handed over to the counsel and they were asked to file the reply by 10 a.m. on June 25, 2004. In the replies the petitioners merely denied the contents of the application without stating how material by way of additional evidence that had been placed on record was not genuine.
27. It is evident from the above facts that the petitioners declined to watch the recording, failed to show how and what part of it, if any, was not genuine, but merely made general denials and sought permission to cross-examine Ashwani Kumar and the opportunity to lead evidence.”

The speaker was required to rule on the authenticity of the digital recordings, as indicated at Paragraph 30 of the ruling :

“Under these circumstances, the speaker concluded that ‘there is no room for doubting the authenticity and accuracy of the electronic evidence produced by the petitioner’. The speaker held that :

“In this regard, it is to be noted that the petitioner has produced the original CDs containing the interviews conducted by Zee News and Haryana News of the six independent members of the Haryana Vidhan Sabha, including the respondent, and the same have been duly certified by both television channels as regards their contents, as well as having been recorded on June 14 2004 at New Delhi. It has also been certified by both television channels through their original letters (P-9 and P-12) duly signed

by their authorized signatures that the original CDs were handed over to Ashwani Kumar, who was authorized by the petitioner in this regard and whose affidavit is also on record as Annexure P-8, wherein he states that he had handed over the original CDs to the petitioner. The letters, Annexures P-9 and P-12, also give out that the coverage of their interviews on June 14 2004 was also telecast by both television channels. In fact, the certificate given by Haryana News authenticates the place of the interview as the residence of Mr Ahmed Patel at 23, Mother Teresa Crescent in Delhi, which interview as per the certificate was conducted by the correspondent of the said television channel, namely Shri Amit Mishra on June 14 2004. The same certificate, P-12, also authenticates the coverage of the [Congress Legislative Party] meeting held in Chandigarh on June 16 2004 conducted by their correspondent Mr Rakesh Gupta.”

The court determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the conclusion that the voices recorded on the CD were those of the persons taking action. The Supreme Court found no infirmity in the speaker’s reliance on the digital evidence and the conclusions reached in Paragraph 31 bear repeating in full:

“Undoubtedly, the proceeding before the speaker, which is also a tribunal albeit of a different nature, has to be conducted in a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a strait -jacket. These are flexible rules. Their applicability is determined on the facts of each case. Here, we are concerned with a case where the petitioners had declined to avail of the opportunity to watch the recording on the compact disc. They had taken vague pleas in their replies. Even In respect of signatures on the [Congress Legislative Party] register their reply was utterly vague. It was not their case that the said proceedings had been forged. The speaker, in law, was the only authority to decide whether the petitioners incurred or not disqualification under the Tenth Schedule to the Constitution in his capacity as speaker. He had obvious opportunity to see the petitioners and hear them and that is what has been stated by the speaker in his

order. We are of the view that the speaker has not committed any illegality by stating that he had on various occasions seen and heard these [members of legislative assembly]. It is not a case where the speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable. No illegality can be inferred merely on the speaker relying upon his personal knowledge of having seen and heard the petitioners for coming to the conclusion that the persons in the electronic evidence are the same as he has seen and so also are their voices. Thus, even if the affidavit of Ashwani Kumar is ignored in substance, it would have no effect on the questions involved.”

The comments in this case indicate a trend emerging in Indian courts: judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

### **Admissibility of intercepted telephone calls**

*State (NCT of Delhi) v Navjot Sandhu*<sup>3</sup> was an appeal against conviction following the attack on Parliament on December 13 2001, in which five heavily armed persons entered the Parliament House Complex and killed nine people, including eight security personnel and one gardener, and injured 16 people, including 13 security men. This case dealt with the proof and admissibility of mobile telephone call records. While considering the appeal against the accused for attacking Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under Section 65B(4) of the Evidence Act. The Supreme Court concluded that a cross-examination of the competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records.

### **Examination of a witness by video conference**

*State of Maharashtra v Dr Praful B Desai*<sup>4</sup> involved the question of whether a witness can be examined by means of a video conference. The Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of

---

<sup>3</sup> AIR 2005 SC 3820

<sup>4</sup> AIR 2003 SC 2053

the witness does not mean actual physical presence. The court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.

This Supreme Court decision has been followed in other high court rulings (eg, *Amitabh Bagchi v Ena Baqchi* <sup>5</sup> More recently, the High Court of Andhra Pradesh in *Bodala Murali Krishna v Bodala Prathima* <sup>6</sup> held that necessary precautions must be taken to identify the witness and ensure the accuracy of the equipment being used. In addition, any party wishing to avail itself of the facility of video conferencing must meet the entire expense.

### **Comment**

Science and law, two distinct professions have increasingly become commingled, for ensuring a fair process and to see that justice is done. On one hand, scientific evidence holds out the tempting possibility of extremely accurate fact-finding and a reduction in the uncertainty that often accompanies legal decision making. At the same time, scientific methodologies often include risks of uncertainty that the legal system is unwilling to tolerate.

The above analysis brings out clearly that though the Indian evidence law cannot be said to be withered in the wake of new scientific challenges, as suitable amendments have been incorporated, however much remains to be done to make it comprehensively adequate to face any modern challenges that may arise.

The need of the hour therefore is to fill the chasms where no law exists and to reduce it into writing where judicial pronouncements have held up the system so far.

Besides there is a need for overhauling the entire justice system by adopting E-governance in Judiciary. E-Governance to the judiciary means, use of information and communication technology to smoothen and accelerate case progression to reach its logical end within the set time frame, with complete demystification of the adjudicatory process ensuing transparency. This would perhaps make us closer to the pursuit of truth and justice.

---

<sup>5</sup> AIR 2005 Cal 11

<sup>6</sup> 2007 (2) ALD 72



### **Evidence of eye witness**

- (i) Having examined all the eyewitnesses even if other persons present nearby, not examined, the evidence of eyewitness cannot be discarded, courts are concerned with quality of evidence in a criminal trial. Conviction can be based on sole evidence if it inspires confidence
- (ii) Where there are material contradictions creating reasonable doubt in a reasonable mind, such eye witnesses cannot be relied upon to base their evidence in the conviction of accused.
- (iii) Evidence of an eye witness cannot be disbelieved on ground that his statement was not recorded earlier before he was examined in motor accident claim case by police.
- (iv) Where court acquitted accused by giving benefit of doubt, it will not affect evidence of eye witnesses being natural witnesses.

### **Interested witness**

- (i) It has been held regarding “interested witness” that the relationship is not a factor to affect credibility of witness.
- (ii) Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses.
- (iii) The mechanical rejection of evidence on sole ground that it is from interested witness would invariably lead to failure of justice.

### **Maxim “Falsus in uno falsus in omnibus”**

- (i) “*Falsus in uno falsus in omnibus*” is not a rule of evidence in criminal trial and it is duty of the Court to engage the truth from falsehood, to shift grain from the chaff.
- (ii) The maxim “*Falsus in uno falsus in omnibus*” has not received general acceptance nor has this maxim come to occupy the status of rule of law. The maxim merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of evidence”.

## **Natural witness**

Witnesses being close relations of deceased living opposite to house of deceased, are natural witnesses to be believed.

### **Testimony: when to be relied**

- (i) The testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.
- (ii) Rejection of whole testimony of hostile witness is not proper.
- (iii) Where evidence of some witnesses was found not safe for conviction, whole of their testimony should not be rejected.
- (iv) The testimony of a single witness if it is straightforward, cogent and if believed is sufficient to prove the prosecution case.

### **Opinion as to electronic signature when relevant (Section 47A)**

When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

### **Presumption as to electronic agreements (Section 85 A)**

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signature of the parties was so concluded by affixing the electronic signature of the parties.

### **Presumption as to electronic records and electronic signatures (Section 85B)**

- (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

- (2) In any proceedings, involving secure electronic signature, the court shall presume unless the contrary is proved that-
- a. the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record.
  - b. except in the case of a secure electronic record or a secure electronic signature nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

### **Judge's power to put questions or order production (Section 165)**

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant, and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, not, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

### **The Information Technology Act, 2000**

#### **Legal recognition of electronic records (Section 4)**

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference.

### **Legal recognition of digital signatures (Section 5)**

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

*Explanation* - For the purposes of this section, “signed”, with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression “signature” shall be construed accordingly.

### **Use of electronic records and digital signatures in Government and its agencies (Sec. 6)**

(1) Where any law provides for-

- the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
- the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
- the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe-

- (a) the manner and format in which such electronic records shall be filed, created or issued;
- (b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause

### **Retention of electronic records (Sec. 7)**

- (1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-
  - (a) the information contained therein remains accessible so as to be usable for a subsequent reference;
  - (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
  - (c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record :

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

- (2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

### **Publication of rule, regulation, etc., in Electronic Gazette (Sec. 8)**

Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette.

## INJURED WITNESS

In the case of *State of Madhya Pradesh v. Mansingh*<sup>7</sup>, Arijit Pasayat, J. stated:

The evidence of **injured witnesses** have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the **injured witnesses** PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the **injured witnesses** are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle.

In another case of *Balraje v. State of Maharashtra*<sup>8</sup>, it was held that:

“In law, testimony of an **injured witness** is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.”

---

<sup>7</sup> (2003) 10 SCC 414

<sup>8</sup> (2010) 6 SCC 673

In *Jarnail Singh v. State of Punjab*<sup>9</sup>, the Apex Court considered the precedence of *Shivalingappa Kallayanappa v. State of Karnataka*<sup>10</sup> whereby it was held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In *State of U.P. v. Kishari Chand*<sup>11</sup> a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon.

In the case of *Vishnu v. State of Rajasthan*<sup>12</sup>, the court considered the fact that in, then present circumstances, what cannot be ignored by the Court is that this is a case wherein at least five persons were injured. Those five injured persons are closely related to the deceased. When a person receives injuries in the course of occurrence, there can be hardly any doubt regarding his presence at the spot. Further, injured witnesses would not spare the real assailants and falsely involve innocent persons.

### **Evidence Produced By Child Witness**

Capability of a witness is the condition precedent to the administration of oath or affirmation, and is a question distinct from that of his creditability when he has been sworn or has been affirmed. Under Section 118 of the Indian Evidence Act, every person. is competent as a witness unless the Court considers that he is prevented from considering the question put to him or from giving reasonable reason because of the factor of age i.e. tender or extreme age.

---

<sup>9</sup> (2009) 9 SCC 719

<sup>10</sup> 1994 SCC (Cri) 1694

<sup>11</sup> (2004) 7 SCC 629

<sup>12</sup> (2009) 10 SCC 477

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders, In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge.

To determine the question of competency courts, often undertake the test whether from the intellectual capacity and understanding he is able to give a rational and intelligent account of what he has seen or heard or done on a particular occasion. Therefore it all depends upon the good sense and discretion of the judge.

### **Assessment of *Voir dire*:**

*Voir dire* is a phrase in law which comes from Anglo-Norman. In origin it refers to an oath to tell the truth, i.e., to say what is true, what is objectively accurate or subjectively honest in content, or both. The word *voir (or voire)*; in this combination, comes from Old French and derives from Latin *verum*, "that which is true".

Child witness as far as defense is concerned is dangerous witness. Because once tutored they stick on that version in any circumstances. Before putting a child into witness box a *Voir dire* test must be conducted by the Court. Under this test the court puts certain preface questions before the child which have no connection with the case, in order to know the competency of the child witness. Some examples of the questions asked under this test can be that regarding their name, father's name or their place of residence.

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders. In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge. To determine the question of competency courts, often undertake the test whether from the intellectual capacity and understanding he is able to give a rational and intelligent account of what he has seen or heard or done on a particular occasion. Therefore it all depends upon the good sense and discretion of the judge.



When the court is fully satisfied after hearing the answers to these preliminary questions, as to the capability of the child to understand these questions and to give rational answers thereto, then further court starts with substantial questions which are considered as evidences.

### **The Requirement Of Corroborative Evidence:**

As a matter of prudence courts often show cautiousness while putting absolute reliance on the evidence of a solitary child witness and look for corroboration of the same from the facts and circumstances in the case, the Privy Council decision in *R v. Norbury*<sup>13</sup>, where the evidence of the child witness of 6 years, who herself was the victim of rape, was admitted.

Here the court observed that a child may not understand the nature of an oath but if he is otherwise competent to testify and understand the nature of the questions put before him and is able to give rational answers thereto, then the statement of such a child witness would be held to be admitted and no corroborative proof is necessary.

The Supreme Court in *Tahal Singh v. Punjab*<sup>14</sup> observed: "In our country, particularly in rural areas it is difficult to think of a load of 13 year as a child. A vast majority of boys around that age go in fields to work. They are certainly capable of understanding the significance of the oath and necessity to speak the truth."

### **In-Capability of Child Witness:**

The competency of a witness is the condition precedent to the administration of oath or affirmation, and is a question distinct from that of his creditability when he has been sworn or has been affirmed. Under section 118 of the Indian Evidence Act, every person is competent as a witness unless the Court considers that he is prevented from considering the question put to him or from giving reasonable reason because of the factor of age i.e.; tender or extreme age.

---

<sup>13</sup>(1978) CrimLR 435

<sup>14</sup>AIR 1979 SC 1347

This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders. In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge.

In *State v Allen*<sup>15</sup>, it was observed that the burden of proving incompetence is on the party opposing the witness. Courts consider 5 factors when determining competency of a child witness. Absence of any of them renders the child incompetent to testify.

They are as follows:

1. An understanding of the obligation to speak the truth on the witness stand.
2. The mental capacity at the time of the occurrence concerning which he is to testify, to receive an accurate impression of it.
3. A memory sufficient to retain an independent recollection of the occurrence.
4. The capacity to express in words his memory of the occurrence; and,
5. The capacity to understand simply questions about it. Another relevant case law is: *State v. Yen-kappa*<sup>16</sup>

Here the accused was convicted for the murder of his own wife on the basis of the statements of his children who were adolescents. Admission of such statement was challenged on appeal. In this regard the accused produced some evidence as to the fact that the children have been tutored and therefore their evidence must be rejected.

Here the SC observed that it is the settled law that just because the witness happens to be a child witness his evidence could not be rejected in toto on that score.

However the court must be cautious enough to see that an innocent is not punished solely acting upon the testimony of child witness, as the children are very easily suspect able for tutoring.

---

<sup>15</sup>70 Wn.2d 690, 424 P.2d 1021 (1967)

<sup>16</sup>(2003) CRI LI 3558



**South Zone Regional Judicial Conference  
on  
“Role of Courts in Protection of Human  
Rights”**

**Role of Courts in Protection of  
Human Rights**

**25<sup>th</sup> February 2012**

Human Rights – Two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being”.

India being a diverse country with its multicultural, multi-ethnic and multi-religious population, the protection of human rights is the *sine qua non* for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have tried their hands in defining Human Rights as “**the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution** or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993.

It is implicit from the definition that Human rights are omnipresent in all legislations in our country and it is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. In precise, our judgments should be articulated in such a manner to accommodate human rights whenever it is required.

### **Active Role of Judiciary:**

Of course, all legal rights are human rights but it is unfortunate that all human rights have not become legal rights as on date. This is because the law follows the action, as a consequence, it is not possible to codify all probable laws in anticipation for protection of human rights, and this is when the due procedure of law or the principle of natural justice plays an active role in protecting the rights of the people when there is no legislation available.

As I have mentioned earlier, the magnificence of human rights is that it is all pervading, the trick lies in the successful execution of the same. Fundamentally, the basic motive of all the three wings of the democratic government, namely, the executive, the legislative, and the Judiciary revolves around the protection of human rights. They strive together and separately to uphold the human rights of the people in the country.

The Judiciary with no doubt has played a vital role in protection of Human rights over the decades. Some of the most unpleasant violation of human rights like Sati, Child Marriage, Honor Killings, Slavery, Child labour etc., have been abolished wholly owing to widespread awareness and strict implementation measures taken by the Judiciary.

The status of human rights is fairly high under the Constitution of India which makes provision for fundamental rights and empowers Supreme Court of India and High Courts to enforce these rights. Equally important is the fact that India is a signatory to international conventions on economic, social, cultural, civil and political rights, with certain conditions. These rights are partly contained in Part III of the Constitution of India including the right to equality in Article 14, right to freedom of speech and expression in Article 19(1)(a), the right to protection of life and personal liberty in Article 21 and the right to religious freedom in Article 25 etc.

In Part IV of the Constitution, the Directive Principles of State Policy i.e. the duties of the State or the socio-economic rights, have been envisaged which are non justiciable in any court of law but complementary to the fundamental rights in Part III. It directs the State to apply policies and principles in the governance of the country so as to enhance the prospects of social and economic justice. For instance, Article 43 directs the State to secure for workers a living wage, decent standard of life and social and cultural opportunities. On a different note, the society should be changed in a positive way by the State, enlighten and place every human being in a society where their individual rights can be protected as well as upheld.

The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The definition of Human Rights can be found under Section 2(d) of the Protection of Human Rights Act, 1993 as, *“The rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Court of India.”* So it is evident that Courts have a major role to play in enforcing the rights.

## Barriers

Working towards the protection of human rights ought to be the paramount goal of any Court of the country. I sense some barriers which I believe are to be set aside.

- ◆ Avoidance of the legal system due to economic reasons or fear.
- ◆ Excessive number of laws.
- ◆ Expensive legal procedures.
- ◆ Inadequate Legal Aid Systems.
- ◆ Inadequate information about laws, the rights arising out of them and the prevailing practices.
- ◆ Failure of legal systems to provide remedies which are preventive, just, non-discriminatory and adequate.
- ◆ Lack of public participation in reform movements.

PIL is an excellent example to refer to at this moment. During our lifetime we've seen plethora of injustices being dealt with using the mechanism of PIL. I can vividly recollect a few for which the Supreme Court has been approached in the last few decades:

- ◆ lack of access to food,<sup>1</sup>
- ◆ deaths due to starvation,<sup>2</sup>
- ◆ out-of-turn allotment of government accommodation,<sup>3</sup>
- ◆ prohibition of smoking in public places,<sup>4</sup>
- ◆ investigation of alleged bribe taking,<sup>5</sup>
- ◆ employment of children in hazardous industries,<sup>6</sup>
- ◆ rights of children and bonded labours,<sup>7</sup>

---

1 **PUCL v Union of India** (2001) (7) SCALE 484; **PUCL v Union of India** (2004) (5) SCALE 128.

2 **Kishen Pattnayak v State of Orissa** (1989) Supl.(1) S.C.C. 258.

3 **Shiv Sagar Tiwari v Union of India** (1996) 6 S.C.C. 558.

4 **Murli Deora v Union of India & Ors.** (2001) 8 S.C.C. 765.

5 **Vineet Narain v Union of India** (1996) 2 S.C.C. 199.

6 **M.C. Mehta v State of Tamil Nadu** AIR 1997 SC 699.

7 **Narendra Malava v State of Gujarat** 2004 (10) SCALE. 12; **PUCL v State of Tamil Nadu** 2004 (5) SCALE 690.

- ◆ extent of the right to strike,<sup>8</sup>
- ◆ right to health,<sup>9</sup>
- ◆ right to education,<sup>10</sup>
- ◆ sexual harassment in the workplace,<sup>11</sup>

However, PIL is a delicate instrument which ought to be used with utmost care. For PILs to become really effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench and most importantly by the masses.

PIL is just one way of protecting human rights. It certainly isn't the only way. Various other legal systems and procedure have to work simultaneously to enable the attainment of the ultimate objective which is to ensure that everyone's human rights are safeguarded.

#### Some instances:

- The Supreme Court in ***Hussainara Khatoon and others vs. Home Secretary State of Bihar*** AIR 1979 SC 1360 expressed anguish at the “travesty of justice” on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.
- In ***Prem Shankar Shukla vs. Delhi Administration*** (1980) 3 SCC 526 the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that “to bind a man hand-and-foot’, fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile

---

8 **CPM v Bharat Kumar** AIR 1998 SC 184; **T.K. Rangarajan v State of Tamil Nadu** AIR 2003 SC 3032.

9 **Parmanand Kataria v Union of India** AIR 1989 SC 2039; **Paschim Banga Khet Mzdoor Samity v State of West Bengal** (1996) 4 S.C.C. 37; **Kirloskar Bros Ltd v ESIC** (1996) 2 S.C.C. 682; **Air India Stat. Corp v United Labour Union** (1997) 9 S.C.C. 377.

10 **Mohini Jain v State of Karnataka** (1992) 3 S.C.C. 666; **Unni Krishnan v State of Andhra Pradesh** (1993) 1 S.C.C. 645.

11 **Vishaka v State of Rajasthan** AIR 1997 SC 3011; **Apparel Export Promotion Council v A.K. Chopra** AIR 1999 SC 625.



his dignity, vulgarise society, and foul the soul of our constitutional culture". Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to "manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood...". The rule thus laid down was reiterated in the case of ***Citizens for Democracy vs. State of Assam & Ors.*** (1995) 3 SCC 743.

- In ***Icchu Devi Choraria vs. Union of India*** (1980) 4 SCC 531 the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that "the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil".
- In Smt. ***Nilabati Behera @ Lalita Behera vs. State of Orissa & Ors.*** (1993) 2 SCC 746 the Supreme Court asserted the jurisdiction of the judiciary as "protector of civil liberties" under the obligation "to repair damage caused by officers of the State to fundamental rights of the citizens", holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the "duty of care" which could not be denied to anyone. For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".
- In ***Joginder Kumar vs. State of UP and Others*** (1994) 4 SCC 260 the court ruled that "the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....".
- In ***Delhi Domestic Working Women's Forum vs. Union of India & Others*** (1995) 1 SCC 14 the Court asserted that "speedy trial is one of the essential requisites of law" and that expeditious investigations and trial only could give meaning to the guarantee of "equal protection of law" under Article 21 of the Constitution.

- In ***People's Union for Civil Liberties [PUCL] vs. Union of India and another*** AIR 1997 SC 568 the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting "arbitrary interference with privacy, family, home or correspondence" and stipulating that everyone has the right to protection of the law against such intrusions.
- In ***D.K. Basu vs. State of West Bengal***, AIR 1997 SC 610 the Court found custodial torture "a naked violation of human dignity" and ruled that law does not permit the use of third degree methods or torture on an accused person since "actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair".
- In ***Vishaka & Ors. vs. State of Rajasthan & Ors.***, (1997) 6 SCC 241 Supreme Court said that "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution."

The aforesaid cases are only few examples from numerous judgments concerning human rights.

Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment.

#### **Road ahead:**

Yes, it is true that Judiciary has done a tremendous job in the past by actively involving in safeguarding the human rights in process of delivering justice. But the future is far more challenging with the new **social innovations like Surrogacy, Cyber Terrorism, etc.**; which does not have a concrete law as on date and the scope of violation of human rights are far more severe than anticipated; therefore it is only with due conviction and determination by the subordinate judicial officers these challenges can be overcome in an orderly manner.

#### **Enabling provision:**

The right to enforce the Human Rights provided in the Constitution of India is protected through enabling provisions. Article 226 of the Constitution empowers High Courts to issue directions, orders or writs in the nature of *Habeas Corpus*, *Quo Warranto*, *Mandamus*, *Certiorari*, *Prohibition* for the enforcement of fundamental rights as well as any other legal rights. Article 32, itself a Fundamental Right, invests the Supreme Court with the power of judicial review for the enforcement of fundamental rights with the power to issue directions, orders and writs as well.

It is worth mentioning that Dr. Ambedkar who in course of his speech referred to draft Article 25 corresponding to the present Article 32, in the Constituent Assembly, said, "if I was asked to name any

*particular article in the Constitution as the most important-an article without which this Constitution would be nullity – I would not refer to any other article except this one. It is the very soul of the Constitution and very heart of it and I am glad that the House, has realized the importance”.* During the debates in the Constituent Assembly Alladi Krishnaswami Aiyar also remarked, *“The future evolution of the Indian Constitution will thus depend to a large extent upon the work of the Supreme Court and the direction given to it by the Court, while its function may be one of interpreting the Constitution....it cannot in the discharge of its duties afford to ignore the social, economic and political tendencies of the time which furnish the necessary background”.* And these predictions have come true. Any aggrieved person could have direct access to superior Courts for obtaining quick relief against the state for violation of any fundamental right. In addition to the above provisions, Article 142 enables the Supreme Court to make such orders as are necessary to do complete justice in the cause; Article 141 provides that the law declared by the Supreme Court shall be binding on all; and Article 144 obliges all authorities to act in the aid of the Supreme Court.

### **Versatile Role of Courts**

The Indian judiciary with its widest interpretation in observance of Human Rights has contributed to the progress of the nation and to the goal of creating India as a vibrant State. The intervention by the courts for issues involving the economic, social and cultural rights definitely created a positive implication.

I can say with pride that some very important developments have occurred wholly due to the initial efforts taken by the Judiciary, like

- ◆ Many of the recent changes in law and policy relating to education in general, and primary education in particular, are owed to the decision in ***Unnikrishnan P.J vs. State of A.P. and others (1993 4 SCC 111)***

- ◆ For instance, the decision in ***Paschim Banga Khet Mazdoor Samity & Ors vs. State of West Bengal & Anr.*** (1996) 4 SCC 37 delineates the right to emergency medical care for accident victims as forming a core minimum of the right to health.
- ◆ The orders in ***PUCL vs. Union of India*** 2003(10) SCALE 967 underscore the right of access for those below the poverty line to food supplies as forming the bare non-derogable minimum that is essential to preserve human dignity.
- ◆ PIL cases concerning environmental issues have enabled the Court to develop and apply the 'polluter pays principle', the precautionary principles, and the principle of restitution.

The role of court is diverse in nature, sometimes it is required to become the arbitrator too. The PIL case brought before the Supreme Court in 1994 by the Narmada Bachao Andolan (NBA), a mass-based organization representing those affected by the large-scale project involving the construction of over 3,000 large and small dams across the Narmada river flowing through Madhya Pradesh, Maharashtra and Gujarat, provided the site for a contest of what the Court perceived as competing public interests: the right of the inhabitants of the water-starved regions of Gujarat and Rajasthan to water for drinking and irrigation on the one hand and the rights to shelter and livelihood of over 41,000 families comprising tribals, small farmers, and fishing communities facing displacement on the other.

In its decision in 2000, the Court was unanimous that the Sardar Sarovar Project (SSP) did not require re-examination either on the ground of its cost-effectiveness or in regard to the aspect of seismic activity. The area of justifiability was confined to the rehabilitation of those displaced by this Project. By a majority of two to one, the Court struck out the plea that the SSP had violated the fundamental rights of the tribals because it expected that: 'At the rehabilitation sites they will have more, and better, amenities than those enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of society will lead to betterment and progress'.

The Court acknowledged that in deciding to construct the dam 'conflicting rights had to be considered. If for one set of people namely those of Gujarat, there was only one solution, namely construction of a dam, the same would have an adverse effect on another set of people whose houses and agriculture would be submerged in water'.

However, 'when a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision'. Even while it was aware that displacement of the tribal population 'would undoubtedly disconnect them from the past, culture, custom and traditions', the Court explained it away on the utilitarian logic that such displacement 'becomes necessary to harvest a river for the larger good'.

Henceforth, it is no doubt that in 21<sup>st</sup> century the courts ranging from the subordinate courts to the highest court of the country requires the judges to play an active role in resolving the issue. The adversarial legal system is changing more towards the inquisitorial legal system, due to the complexity of the issues involved.

For example, in a hypothetical situation, if the issue of cyber terrorism is brought before the court of law, is it possible for the Judges to decide the matter like any other regular criminal cases. The reply would definitely be in negative, owing to the reason it might result in gross violation of rights. I stated this example to demonstrate that law is not mathematics; rather a logical conclusion arrived in the light of the substantive law.

Hence, it requires immense knowledge and active participation of the judges for the justice to be delivered.

### **Vanguard Role of District judiciary:**

The District judiciary renders an active role in dispense of justice, they have a massive duty to protect the constitutional rights of the citizens. Barring few limitations, the District Judicial Officers are in charge of all matters including application and interpretation of constitutional provisions like Articles 14, 19, 21 etc.

It is after the appreciation of work done by the District judicial officers, that the legislators enacted the Human rights Act, 1993. One of the main objectives of the Human Rights Act, 1993 is to establish the Human Rights Courts at every district level. Section 30 of the Act enables the State Government to specify for each district, a Court of Sessions to be a Human Rights Court after the due concurrence with the Chief Justice of the respective High Courts.

The motive behind the provision is to provide speedy trial of offences arising out of violation of human rights. The creation of Human Rights Courts at the district level has a great potential to protect and realize human rights at the grassroots level.

On 9<sup>th</sup> September 2011, the West Bengal government was the first to set up Human Rights' Courts in all 19 districts of the State to ensure speedy disposal of cases concerning human rights. These courts function from the district headquarters and it is under the District Sessions Judge. Separate public prosecutors are being appointed in each District Human Rights Court, as provided by the section 31 of the Protection of Human Rights Act, 1993.

More and more Session Courts must be specified as the Human Rights Courts for achieving the full benefits from the act.

### **Final Remarks:**

In the present era, the human rights refers to more than mere existence with dignity. The International Institute of Human Rights in Strasbourg divides the human rights into three generations. **First-generation human rights** are fundamentally civil and political in nature, as well as strongly individualistic in nature; **the Second-generation human rights** are basically economic, social and cultural in nature, they guarantee different members of the citizenry with equal conditions and treatment; **the Third-generation human rights** refers to the right to self-determination and right to development.

As a consequence with the expansion of scope of human rights, the ambit of safeguarding the rights also increases, as a result, the judiciary

should toil more to prevent the violation of human rights. Judiciary is the only organ which can translate these rights into reality; which is not possible without the help of the judicial officers of the respective courts.

The Indian judiciary is playing a role incomparable in the history of judiciaries of the world. It must, therefore, prove itself worthy of the trust and confidence which the public reposes in it. The judiciary must not limit its activity to the traditional role of deciding dispute between two parties, but must also contribute to the progress of the nation and creation of a social order where all citizens are provided with the basic economic necessities of a civilized life, viz. employment, housing, medical care, education etc. as this alone will win for it the respect of the people of the country.

I from the bottom of my heart congratulate the Academy's effort to organise such regional conferences which certainly creates a forum for the judicial officers to develop a national dialogue of emerging challenges and also to contribute towards the excellence of the judicial system. With conviction, I can say that with such conferences and training programmes organised more frequently; it will facilitate in achieving our challenges at ease.







**Induction Training Programme for  
Newly Recruited Civil Judges**

**Role of Judicial Officers in  
Criminal Justice Administration**

**05<sup>th</sup> January 2013**

Tamil Nadu is my home State and I am always delighted to be back here. Today, in particular, I find myself embraced by intense nostalgia to be back at a place where I began my career. I feel elated and immensely happy in addressing you, the youngest members of judiciary who will be part of the foundational edifice of the machinery of criminal justice in our country. You may have limited jurisdiction in terms of sentencing and nature of offence, yet you constitute the basis of pyramid of our judicial structure. In your domain resides the daunting task of administering swift justice at the grassroots and reassuring public confidence in our legal system.

At the Academy, you have undergone training in assessing evidence, decision-making, judgment writing and case management. At the same time your curriculum focuses on Judicial Accountability, Judicial ethics and conduct, Sensitivity training in contemporary social issues and Personality Development. You are now ready to utilise this training and translate it into action. I must say, the role of judge is neither that of mute spectator nor a neutral umpire, but that of an active player embodying the right spirit of ensuring justice.

### **MAGISTRATE: THE KINGPIN IN CRIMINAL JUSTICE ADMINISTRATION**

Criminal Justice reflects the responses of the society to crimes and criminals. The key components engaged in this role are the courts, police, prosecution, and defence. Administering criminal justice satisfactorily in a democratic society governed by rule of law and guaranteed fundamental rights is a challenging task. It is in this context that the subordinate judiciary assumes great importance. The role of magistrate is effectively summed up in the words of Former Chief Justice Ranganath Mishra in a writ petition relating to conditions of subordinate judiciary in the case of ***All India Judges' Association vs. Union of India (1992) 1 SCC 119***

Where he observes:

*“The Trial judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant*

*during the proceedings in court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personalities, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful".*

Mentioning the high expectations of society from the judges, he further advises:

*"A judge ought to be wise enough to know that he is fallible and therefore, ever ready to learn and be courageous enough to acknowledge his errors".*

Right to speedy trial is implicit in the right to life and liberty guaranteed by **Article 21** of the Constitution of India. However, there is a huge pendency of criminal cases and inordinate delay in the disposal of the same on the one hand and very low rate of conviction in cases involving serious crime.

As per the latest amendment, Section 309 of the Cr.PC has been inserted with an explanation to its sub-clause. With an aim to speed-up trials, the amendment states that no adjournment should be granted at the party's request, nor can the party's lawyer being engaged in another court be ground for adjournment. Section 309 contains a mandatory provision that in every inquiry or trial the proceedings shall be held as expeditiously as possible and in particular when the examination of witnesses has once begun the same shall be continued from day to day until all witnesses in attendance have been examined unless the court finds the adjournment of the case beyond the following day to be necessary for reasons to be recorded. When the enquiry or trial relates to an offence under Section 376 to 376D IPC, the same shall be completed within a period of two months from the date of commencement of the examination of witnesses.

The introduction of Plea Bargaining included under sections 265A to 265L of the Code of Criminal Procedure has also been noticed very effectively. Judicial Officers must be aware of “offences affecting the socio-economic condition of the country” for the purpose of Section 265A. A judge should be well versed with the latest amendments and further developments which take place in law and put them into practice to give effect to the intent of the legislature which is to speed up the process of delivering justice.

Section 165 of the Indian Evidence Act grants sweeping powers to the Judge to put questions. The rationale for giving such sweeping powers is to discover the truth and indicative evidence. Counsel seeks only client’s success; but the Judge must watch justice triumphs. If criminal court is to be an effective instrument in dispensing justice, Presiding Officer must cease to be a spectator and mere a recording machine. He must become an active participant in the trial evincing intelligence and active interest by putting questions to witness in order to ascertain the truth.

The Code of Criminal Procedure delineates the powers and functions of judicial magistrates at every stage both pre-trial, during trial and post-trial. I am confident that you are aware of these provisions and the same require no repetition. However, I wish to remind you that these powers and functions bestowed upon you are to be exercised as public trust in full compliance with the Constitutional mandates of fair and speedy trial for both the accused and the complainant.

Criminal system to be truly just must be free of bias. There should be judicial fairness otherwise the public faith in rule of law would be broken. One of the cardinal principles of criminal law is that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent court. Justice requires that no one be punished without a fair trial and judicial officers play their part in ensuring the same.

## **FAIR TRIAL TO ACCUSED: CO-RELATIVE DUTIES OF MAGISTRATE**

It is well settled today that the accused has fundamental right to know the grounds of his arrest, right to legal aid in case he is indigent, right to consult his lawyer and such other rights guaranteed by Constitution and equivalent safeguards incorporated in CrPC. Let's pause here and dwell more on the corresponding duties of a magistrate in ensuring fair trial to the accused.

Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest and no one shall be detained in custody beyond the said period without the authority of a magistrate. The magistrate can pass order of remand to authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding 15 days in the whole. Justice Bhagwati summed up the purpose of these safeguards in ***Khatri II vs State of Bihar (1981) 1 SCC 627***

*“This healthy provision enables the magistrates to keep check over the police investigation and it is necessary that the magistrates should try enforcing this requirement and where it is found disobeyed, come down heavily upon the police... There is however, no obligation on the part of the magistrate to grant remand as a matter of course. The police have to make out a case for that. It can't be a mechanical order”.*

Right to know the ground of arrest is conferred the status of fundamental right under article 22(1). It is reasonable to expect that grounds of arrest communicated in language understood by the accused. Further, the accused has right to inform his friend or relative of his arrest. Arrest of a person is a denial of an individual's liberty which is fundamental to one's existence. The fundamental rights will remain mere promise if Magistrates do not ensure compliance of the same. Hence, magistrates have been given the fundamental duty under amended section 50A of the Criminal Procedure to satisfy that the police has informed the arrested person of his rights and made an entry of the fact in book to be maintained in the police station.

There have been frequent complaints about the police's non-compliance of the above mentioned requirements. The magistrates are empowered under section 97 to issue search warrant which is in the nature of a writ of habeas corpus for rescue of a wrongfully confined person by intervention of police directed by a magisterial order. If magistrate has reason to believe that any person is confined under circumstances that amounts to an offence, he may issue a search warrant and person if found shall be immediately taken before a magistrate.

The accused has a right to be medically examined and if such a request is made, the Magistrate shall direct examination of the body unless he considers it is made for purpose of delay or defeating the ends of justice. In ***Sheela Barse vs State of Maharashtra (1983) 2 SCC 96***, it was held by the Hon'ble Supreme Court that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of section section 54. In this case, High court directed magistrates to ask the arrested person as to whether he has any complaint of torture or maltreatment in police custody.

The state under constitutional mandate is required to provide free legal aid to an indigent accused person and this arises not only when the trial commences but when the accused is for the first time produced before the magistrate, as also when he is remanded from time to time. In ***Anil Yadav v State of Bihar 1982 (2) SCC 195*** commonly referred to as ***Bhagalpur Blinding case***, the judicial magistrates failed in their duties to inform blinded prisoners of their rights. As a result, the Supreme Court had to cast a duty on all magistrates and courts to promptly and duly inform the indigent accused about his right to get free legal aid as without this the right may prove to be illusory. The right to legal aid today is enshrined in Article 39A and further institutionalised with the coming into force of the Legal Services Authorities Act, 1986. This assumes more significance as denial of the same may even vitiate the trial at later stage.

Further, in *Hussainara Khatoon V Case (1980) 1 SCC 108* it was held that it is the duty of the magistrate to inform the accused that he has a right to be released on bail on expiry of statutory period of 90 or 60 days as the case may be. Suffice is to say that magistrates are the best persons to oversee that the accused is not denied his rights.

We must not forget that ensuring criminal justice requires cooperation of the two arms of the state directly involved i.e. the judiciary and the police machinery. While direct interference is not desirable in investigation process, the magistrate is kept in the picture at all the stages of the police investigation. On a conjoint reading of section 57 and 167 of the Code, it is clear that the legislative intention was to ensure speedy investigation after a person has been taken in custody. It is expected that investigation is completed within 24 hours and if not possible within 15 days. The role of magistrate is to oversee the course of investigation and prevent abuse of law by investigating agency. However, you must understand that your role is complementary to that of police. In doing so, you must preside without fear or favour.

## **RECORDING CONFESSIONS & DYING DECLARATION**

Confessions and dying declarations recorded by magistrate constitute valuable evidence as they may form the basis of conviction of the accused. Although there is no hard and fast rule as to proper manner of recording the same, the Magistrate must follow certain broad guidelines to ensure that the document inspires confidence of the court assessing it.

Just as the FIR recorded is of great importance because it is the earliest information given soon after the commission of a cognisable offence before there is time to forget, fabricate or embellish. Similarly the confession made to magistrate is highly valuable evidence. Section 164 empowers magistrate to record even when he has no jurisdiction in the case. Before recording any such confession, the magistrate is required to explain to the person making confession that



- a) He is not bound to make such a confession
- b) If he does so it may be used as evidence against him

These provisions must be administered in their proper spirit lest they become mere formalities. The magistrate must have reason to believe that it is being made voluntarily. You must exercise your judicial knowledge and wisdom to find out whether it is voluntary confession or not. The magistrate must see that the warning is brought home to the mind of the person making the confession. If the recording continues on another day, a fresh warning is necessary before a confession is recorded on the other day.

After giving warnings, the magistrate should give him adequate time to think and reflect. There is no hard and fast rule but the person must be completely free from possible police influence. Normally such a person is sent to jail custody at least for a day before his confession is recorded. How much time for reflection should be allowed depends on circumstances in each case.

The act of recording confession is a solemn act and in discharging such duties the magistrate must take care to see that the requirements of law are fully satisfied. The magistrate recording the confession must appreciate his function as one of a judicial officer and he must apply his judicial mind to the task of ascertaining that the statement the accused is going to make is of his own accord and not on account of any influence on him.

A dying declaration is an admissible piece of evidence under section 32 of Indian Evidence Act as it is the first hand knowledge of facts of a case by the victim himself. I myself have held in ***Surinder Kumar vs. State of Haryana (2011) 10 SCC 173***, a case relating to wife burning, that if the dying declaration is true and voluntary, it can be basis of conviction without corroboration. Thus, proper recording of the dying declaration by the magistrates assumes significance. There is no exhaustive list of procedures

to be followed rather depends on case to case basis. It may be recorded in the form of question and answers in the language of the deceased as far as practicable. Before proceeding to record the dying declaration, the magistrate shall satisfy himself that the declarant is in a fit condition to make a statement and if medical officer is present, a fitness certificate should be obtained. It is the duty of the magistrate to ensure the making of a free and spontaneous statement by the declarant without any prompting, suggestion or aid from any other justice. If possible, at the conclusion of recording, the declaration must be read out to the declarant and signature must be obtained symbolic of correctness of the same.

### **LAW ON ELECTRONIC EVIDENCE**

The proliferation of computers, the social influence of information technology and the ability to store information in digital form have all required Indian law to be amended to include provisions on the appreciation of digital evidence. In the year 2000 Parliament enacted the Information Technology (IT) Act 2000, which amended the existing Indian statutes to allow for the admissibility of digital evidence. The IT Act is based on the United Nations Commission on International Trade Law which adopted the Model Law on Electronic Commerce together with providing amendments to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891, recognizing transactions that are carried out through electronic data interchange and other means of electronic communication. Digital knowledge has become prerequisite for effective judgship.

### **SUMMARY TRIALS: ROLE OF MAGISTRATES IN DELIVERING SWIFT JUSTICE**

The magistrates are empowered to deal with summons cases and few specific warrant cases in a summary way with the clear intention of ensuring speedy justice. They can give an abridge version of regular trial in offences like petty thefts, house trespass, cattle trespass, insult to provoke breach of peace and other such offences punishable with imprisonment not exceeding 2 years.

The inclusion of additional forms of crime, for example, section 138 cases under the Negotiable Instruments Act or section 498A cases under the Indian Penal Code have contributed a large number of cases in the criminal courts. Over 38 lakh cheque bouncing cases are pending in various courts in the country. Huge backlog of cheque bouncing or dishonoured cheque cases need to be speedily disposed, lest the litigants lose faith in the judicial system and the purpose of the Act be defeated. In this context, the Law Commission in its 213<sup>th</sup> Report has recommended setting up of fast track magisterial courts to for fast disposal of cheque. However, I strongly believe that if magistrates fulfill the mandate laid down in section 143 of the Act, separate courts may not be required. The provisions of section 143, as inserted in the Act in 2002, state that offences under section 138 of the Act shall be tried in a summary manner. It empowers the Magistrate to pass a sentence of imprisonment for a term up to one year and an amount of fine exceeding five thousand rupees. It also provides that if it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, he can do so after hearing the parties and recalling any witness who may have been examined. Under this provision, so far as practicable, the Magistrate is expected to conduct the trial on a day-to day basis until its conclusion and conclude the trial within six months from the date of filing of the complaint. Further, section 147 makes the offence punishable under section 138 of the Act compoundable i.e. it can be settled between the parties. The court can note the same and record the settlement reached. In ***Damodar S Prabhu vs Sayed Babalal (2010) 5 SCC 663***, the Court laid down certain broad guidelines to ensure that application for compounding is made at an early stage of trial. The guideline empowers the magistrate to

- (a) *Give directions making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.*

(b) *If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.*

The court further observed that:

*“Complaints are being increasingly filed in multiple jurisdictions in a vexatious manner which causes tremendous harassment and prejudice to the drawers of the cheque. We direct that it should be mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the CrPC”.*

I have recapped section 143 of the Act and above-mentioned guidelines so that you comprehend the significance of summary trial procedure as a tool in your hands, which you must utilize to deliver swift justice. The responsibility is cast on you to act in a fair, judicious and yet balanced way to ensure that the accused also gets a fair opportunity of defending the case and, at the same time, also to ensure that this provision is not misused by the accused only for the purpose of protracting the trial or to defeat the ends of justice.

## **CROSS CASE**

In a recent case ***Dr. Mohammad Khalil Chisti vs. State of Rajasthan*** involving free fight where there was cross case, I myself observed with regret the duplication of proceedings in the same case which should have been ideally heard and disposed of together at both trial and appellate stage. You may come across similar circumstances where there are allegations and counter allegation. Where there are two different versions

of same incident resulting into two criminal cases are described as “case and counter case” In such a scenario, you must try the two cases together. Trial of cross cases presents a variety of ticklish practical issues and challenges. Under section 319 of the Code, if a magistrate upon hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in connected offence he should hold trial together.

In **State Of M.P vs Mishrilal (2003) 9 SCC 426**, both the parties lodged an FIR against each other in respect of the same incident. The Supreme Court while giving guidance as to the procedure to be adopted in such cases has observed as follows:-

*“The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.”*

#### **FINAL REMARKS**

To conclude, I would like to convey that a vibrant subordinate judiciary is the need of the hour. Inordinate delays, escalating cost of litigation and inequality in the system sometimes make the delivery of justice an unattainable goal. But we have to be optimistic and work together to not just uphold the rule of law, but ensure that litigant does not lose faith in the maze that our legal system has become. Young judges must brace themselves to do their part which may be onerous but fully satisfying.

Section 89 of the CPC allows judges to refer disputes for settlement through ADR procedures in cases where elements of settlement are discernible. The provisions of Section 89 should be employed wherever the opportunity arises since the same encompasses two objectives. The referral to ADR **decreases the caseload and arrears of the court** and

thus increases the time, which can be devoted to contentious matters which cannot be settled through ADR methods. In addition, the regular employment of Section 89 shall also foster and promote the method of ADR.

You must not see judicial service as service in the sense of employment. The judges are not employees. They exercise the sovereign judicial power of the state as prime dispensers of justice. Working in court of law is not purely mechanical but demands ability, alertness, resourcefulness, tact and imagination. Changing dynamics of our legal system demands that judges be in continuous training and education.

If independent and efficient judicial system is to remain the basic structure of our Constitution, a competent subordinate judiciary is its indispensable link. I have full faith that you will fulfil this role dutifully and efficiently.





**Special Training Programme for District  
Judges functioning in Chennai /District  
Judges dealing with CBI Cases / Chief  
Judicial Magistrates /Special Judge for  
DVAC Cases, Chennai**

**Speedy Disposal of Corruption  
and Vigilance Cases**

**23<sup>rd</sup> February 2013**



Tamil Nadu is my home State and I am always delighted to be back here. Today, in particular, I find myself embraced by intense nostalgia to be back at a place where I began my career. I feel elated and immensely happy in addressing you, the members of judiciary who are the foundational edifice of the machinery of criminal justice in our country.

India's stellar performance in rankings on growth indicators and its innovative approaches to poverty alleviation are often compromised due to corruption in all segments of public life. Complete eradication of corruption is achievable only when the root cause of corruption is identified and policies are made accordingly. Institutions provide the structure that give shape and content to any strategy to combat corruption. The following key institutions play an important role in reducing corruption levels, which are: the disciplinary committees investigating agencies, enforcement agencies and judiciary. Their improved performance plays a pivotal role in curbing corruption.

The legal structure of society forms an important pillar in the fight against corruption. If corruption is to be cured, the need for a strong legal framework against the same is almost axiomatic. Judiciary should not only guard its independence from other wings of the government but it should also ensure that it does not itself get afflicted with the scourge of corruption. We may use two strategies to combat corruption, viz., (a) systemic checks and balances on itself and (b) speedy disposal of corruption cases. Speedy disposal of anti-corruption and vigilance cases has a direct bearing in lessening the corrupt practices. It is the fear of prompt conviction, which will curb the offenders from commission of offence.

### **Legal Framework:**

The Prevention of Corruption Act, 1988 (PC Act) was enacted with the intended purpose of consolidating and amending the law relating to the prevention of corruption. Enactment of this act is stalwart move in the direction to prevent bribery and corruption among public servants.

Major changes brought by the PC Act:

### **1. *Enlarged definition of Public Servant***

Section 21 IPC defines public servant while emphasizing on the authority employing and the authority remunerating whereas under Section 2(c) of the PC Act, emphasis is on public duty. Public duty has been defined under section 2 (b) to mean a duty in the discharge of which the state, the public or the community at large has an interest. Thus, the definition of 'public servant' has been enlarged so as to include the office-bearers of the registered co-operative societies receiving any financial aid from the Government, or from a Government Corporation/Company, the employees of universities, Public Service Commissions, Banks etc.

### **2. *Minimum sentence prescribed***

The Act prescribes minimum sentence of six months for all the offences committed under the Act. In a recent judgment authored by me, ***A.B Bhaskara Rao vs. Inspector of Police, CBI Viskhatnam*** (2011) 10 SCC 259, an important issue was raised as to whether the courts are empowered to reduce the sentence which is lower than the threshold prescribed by statutory provision. We held as follows-

***“Long delay in disposal of appeal or any other factor may not be a ground for reduction of sentence, particularly, when the statute prescribes minimum sentence. In other cases where no such minimum sentence is prescribed, it is open to the Court to consider the delay and its effect and the ultimate decision.”***

Hence, it is a settled position that the courts have no reason to reduce the statutory minimum sentence.

### **3. *Presumption in favour of complainant***

The public servant can no longer sit tight and wait for the prosecution to conclusively prove his guilt beyond doubt and hold the dictum that until the contrary is proved everyone in the face of law is deemed innocent. The prosecution has the initial responsibility to establish the offence. However, once certain circumstances against the public servant are pointed

out, it becomes his equal responsibility to explain his conduct satisfactorily and prove his innocence or else he may be presumed to be guilty. In short, if the prosecution proves the specific actions of the public servant implying presumption of misconduct under the Act, it is the duty of the public servant to explain his actions satisfactorily.

#### **4. *Determination of Quantum of Fine***

Section 16 mandates that while fixing the amount of fine as part of penalty for committing an offence under this Act, the court shall take into consideration the value of the properties which are proceeds of crime and in case of disproportionate assets, pecuniary resources or property for which the accused is unable to account satisfactorily. This is a noticeable amendment brought out by the PC Act, 1988, which puts the special duty on the courts.

#### **5. *Freezing of Ill-gotten Properties during Trial***

Though there is a separate law, that is Criminal Law (Amendment) Ordinance, 1944, which deals with freezing, seizure and confiscation of properties illegally obtained, Section 5 of the PC Act also empowers the Special Judge to exercise all the powers and functions under the said law during trial.

### **Offences and Penalties under the PC Act**

Various acts of omissions and commissions defined as offences under the PC Act can be broadly divided into the following categories:

#### ***(i) Bribery of Public Servants: (secs. 7, 10, 11 & 12 of the Act)***

Section 7 punishes a public servant or a person expecting to be a public servant, who accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act. The important point to note here is that even the mere demand of bribe or agreeing to accept a bribe is an offence under this law. Actual exchange of a bribe is not an essential requirement to be prosecuted under this law. A willing bribe giver is also punishable under Section 12 of the PC Act. Further, those public servants

who do not take a bribe directly, but through middlemen or touts, and those who take valuable things from a person with whom they have or are likely to have official dealings, are also punishable as per Sections 10 and 11 respectively. All these offences are punishable with a minimum imprisonment of six months which is extendable up to five years along with fine.

***(ii) Embezzlement, Misappropriation of Property by Public Servants: (sec. 13(1)(c) of the Act)***

Section 13(1)(c) punishes public servants who dishonestly or fraudulently misappropriates or converts to their own use any property entrusted to them as a public servant which is punishable with a minimum imprisonment of one year, extendable up to seven years along with fine.

***(iii) Trading in Influence: (secs. 8 & 9 of the Act)***

Sections 8 and 9 punish middlemen or touts who accepts or obtains or agrees to accept or attempt to obtain, gratification as a motive or reward for inducing by corrupt or illegal means, or by exercise of personal influence, any public servant, to do or forbear to do any official act respectively. These offences are punishable with a minimum imprisonment of six months, extendable up to five years, along with a fine.

***(iv) Abuse of position by Public Servants: (sec. 13 (1) (d) of the Act)***

Section 13 (1) (d) punishes public servants who abuse their official position to obtain for himself or herself or for any other person, any valuable thing or pecuniary advantage (quid pro quo is not an essential requirement). This offence is punishable with a minimum imprisonment of one year extendable up to seven years, and also with a fine.

***(v) Illicit Enrichment of Public Servants: (sec. 13(1)(e) of the Act)***

Section 13(1)(e) punishes public servants, or any person on their behalf, who are in possession, or who have been in possession of pecuniary resources or property disproportionate to their known sources of income, at any time during the period of their office. Known sources of income have further been explained as income received from a lawful source only. It is a very important provision, particularly for booking public servants in

senior positions because often there are not many complaints against them related to bribe seeking or abuse of official position. This offence is also punishable with a minimum imprisonment of one year, extendable up to seven years, and also with a fine.

***(vi) Habitual bribe seekers (sec. 13 (1)(a)& (b) of the Act)***

Section 13 (1)(a) & (b) punishes persons who habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration or any valuable thing without due consideration. They are punished with minimum imprisonment of one year, extendable up to seven years, and also with a fine.

***(vii) Habitual middlemen (sec. 14 of the Act)***

Section 14 punishes habitual middlemen or touts, or who pay bribes under section 8, 9, or 12 with a minimum imprisonment of two years, extendable up to seven years, and also with a fine.

***(viii) Attempt at Certain Offences by Public Servants: (sec. 15 of the Act)***

Section 15 punishes an attempt at committing offences pertaining to criminal misappropriation of property or abuse of official position by a public servant with imprisonment for up to three years and also with a fine.

These are the broad categories of offences, which are exclusively within the jurisdiction of the special judge who are appointed under section 3 of the PC Act.

**Preliminary Investigation:**

When a complaint is received or information is available which may, after verification, indicates serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 Cr.P.C., a preliminary enquiry may be registered after obtaining approval of the Competent Authority. Sometimes the High Courts and the Supreme Court also entrust matters to CBI for enquiry and submission of report. In such situations also which may be

rare, a 'Preliminary Enquiry' may be registered after obtaining orders from the Head Office. When the verification of complaint and source information *prima facie* reveals commission of a cognizable offence, a Regular Case is to be registered as is enjoined by law. The Preliminary Enquiry would result either in registration of a Regular Case or Departmental Action, or being referred to the department through a self-contained note for such action, or being closed for want of proof. As soon as sufficient material disclosing the commission of a cognizable offence is available during the course of preliminary enquiry and it is felt that the outcome of investigation is likely to culminate in prosecution, a Regular Case should be registered at the earliest.

#### **Previous Sanction for Prosecution:**

Section 19 of the Act mandates that the investigating agency, after completing an investigation of a case for offences under sections 7, 10, 11, 13 and 15 of this Act to obtain prior approval of the concerned authority, before launching prosecution in a court of law. No court can take cognizance of the offences unless such a sanction accompanies the report of the investigating agency filed in the court of law.

Hence, after completing investigation, the investigating agency forwards its investigation report, containing detailed findings of the investigation, to the competent authority to provide sanction for launching prosecution against the accused public servant. The investigation report is filed in a court of law along with such sanction to enable the court to initiate prosecution. This has been done with a view to save public servants from frivolous prosecution or from prosecution for acts done in good faith while discharging an official function. But the same protection has become a delaying tactics in the hands of the accused.

In ***Subramaniam Swamy v. Manmohan Singh & Anr.***, (2012) 3 SCC 65, the Supreme Court endorsed the following directions laid down in ***Vineet Narain Case***:-

***“Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However,***

***additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."***

The Supreme Court recommended restructuring of Section 19 of the P.C. Act by the Parliament incorporating following suggestions:

- (a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the concerned authority.***
- (b) At the end of the extended period of time limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the chargesheet/ complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time limit.***

It is necessary to recall the settled law that even when the Supreme Court or High court directs the cases to CBI , the sanction proceeding is mandatory and the investigating agency can't bypass the same. In ***Supreme Court Bar Association vs. UOI*** (1998) 4 SCC 409, the Constitution Bench after reviewing the case laws, reiterated the view taken earlier In ***Prem Chand Garg vs. Excise Commissioner, U.P (1963) Supp(I) SCR 885***, as well as the observations made in ***Union Carbide Corpn vs. UOI*** (1991) 4 SCC 584 and ***A.R. Antulay vs. R.S Nayak (1988) 2 SCC 602*** holding that *"however wide and plenary the language of Article 142, the direction given by the court should not be inconsistent with or repugnant to or in violation of specific provisions of any statute. Therefore, the Courts cannot bypass the clause of sanction even while directing the CBI to register the case. "*

#### **Delay in disposal of cases:**

Despite these timely amendments and strict interpretation rendered by courts to the provisions of the Act, corruption tends to breed like cancer in our society. One of the primary factors is the delay caused in disposal

of corruption cases. Delays in trial allow the guilty to get away as they are not awarded the punishment, which they deserve. It amounts to double jeopardy for the innocent officers who suffer frivolous and malicious cases.

In **V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors** (2011) 3 SCC 317, I had the occasion to highlight the grim reality of corruption cases involving public servants which normally take longer time to reach its finality. In the case on hand, the contract related to the year 1982 and the State Government initiated prosecution only in 1991. The trial prolonged for nearly nine years and the Special Court passed an order convicting the accused only in 1999. The appeal was decided by High Court in 2003 and finally by Supreme Court in 2011. It was further observed:

***“Though the issue was handled by a Special Court constituted for the sole purpose of finding out the truth or otherwise of the prosecution case, the fact remains it had taken nearly two decades to reach its finality. We are of the view that when a matter of this nature is entrusted to a Special Court or a regular Court, it is but proper on the part of the court concerned to give priority to the same and conclude the trial within a reasonable time. The High Court, having overall control and supervisory jurisdiction under Article 227 of the Constitution of India is expected to monitor and even call for a quarterly report from the court concerned for speedy disposal. Inasmuch as the accused is entitled to speedy justice, it is the duty of all in charge of dispensation of justice to see that the issue reaches its end as early as possible”.***

The trend is continuing even today. The National Crime Records Bureau Statistics 2011 on disposal of anti-corruption cases in Tamil Nadu, points to increase in registration of cases under Prevention of Corruption Act. It further shows rise in total number of cases pending trial from 577 in 2010 to 720 in 2011. Disappointingly, the trial was completed in only 73 cases resulting in low conviction rate of 24.8%. The number of cases



pending investigation at the end of the year were 305. Only 33.7% of the cases where investigation was completed were then charge sheeted.

### **Root Causes of delay:**

1. Inadequate number of special courts and special judges.
2. Lack of assistance by Investigating Officer to the prosecutor.
3. Less number of Prosecutors.
4. Delay in execution of warrants by police officers.
5. Unnecessary adjournments taken by prosecution and the defence.
6. Lack of proper witness protection measures and the Court failing to act promptly in cases of complaints of harassment/ inducement of witnesses.
7. Ineffective case management measures.
8. Trials are often held up on account of pendency of quash proceedings in the High Courts after the charges are framed.

One glance at the above reasons for delay evidently reveals that the delay in disposal of cases owes both to pre trial and during trial proceedings. Hence, only an organized approach at every stage of the case can holistically address the problem of delay in disposal of cases.

### **Strategies for Speedy Disposal:**

#### **1. Adequate number of special courts**

It is important to acknowledge that the scenario of delay in disposal of corruption and vigilance cases continues despite the provision for appointment of special judges provided in the Act. It is mostly on account of disproportionate number of special courts to number of cases pending and secondly, the special judges are entrusted with cases other than corruption. To enhance efficient case disposal, adequate strength of judges along with requisite support staff should be sanctioned and they should be entrusted exclusively with corruption cases to witness noticeable reduction in the backlog of corruption cases.

## **2. Quality Investigation required**

In *King Emperor vs. Khwaja Nazir Ahmad*, (1944 LR 71) the Privy Council said, “*the functions of the judiciary and the police are complementary and not overlapping*”. It is true that the working of both institutions police and judiciary is harmonizing in nature because it is the report of investigation, which is the base for the initiating a trial. Therefore, primarily the investigation team, which puts forth a prima facie case and thereafter the court, adjudicates on the case. As a consequence, quality investigation would unquestionably aid in the speedy disposal of anti-corruption and vigilance cases.

## **3. Pivotal role of Investigating Officer**

Section 17 of the Act categorically states the persons who are authorized to investigate offences. The cadre of officers like Inspector of Police in case of the Delhi Special Police Establishment (CBI), Assistant Commissioner of Police in the metropolitan areas as notified, and lastly, deputy superintendent of police or a police officer of equivalent rank are authorized to investigate the offence under the act.

The pivotal role of Investigating Officer is to render all possible assistance and facilitate the Prosecutor. The Investigating Officer should realise that his duty does not end when the investigation has been completed but he is also obligated to assist the Prosecutor during the conduct of the cases in the Courts. On commencement of trial proceedings, the I.O should ensure that the summons are procured well in advance and served in time.

One of the problems which is often faced In cases of prosecution is that the witnesses are won over by the accused. This is done either through threats or allurements. To avert such a situation, the investigating officer must maintain contact with witnesses throughout, and make sure that they give their testimony truthfully.

## **4. Responsibility of Public Prosecutor**

The prosecutor should prepare his groundwork before the commencement of trial. Statements should be thoroughly gone into and a

rough outline should be arrived at so as to help in summoning crucial witnesses at the apt time. The entire facts of the case should be assimilated before the stage of arguments. Before stepping into the arguments battle the armour of the prosecutor should be full with the latest decisions rendered by the High Courts and the Supreme Court that are not only relevant and support the case but also aid in getting over any defects on the side of prosecution. An appraisal of entire evidence should be made at the time of preparation of arguments. All the relevant evidence that would support the prosecution should be culled out from the depositions of witnesses.

In a landmark pronouncement in ***Siddharth Vashisht @ Manu Sharma V. State (2010) 6 SCC 1***, which I was party to, the role of a public prosecutor and his duties of disclosure have received a wide and in-depth consideration of this Court (SC). It was held that though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails. In addition, there should be adequate number of public prosecutors to handle the huge number of cases.

## **5. Coordination between IO and the Prosecutor**

Conducting prosecution is a joint responsibility of the police and prosecutors. Prosecutors are not only responsible for advocating on behalf of the state at trial, they shall also guide the investigating officers during investigation of the cases. The prosecutors lead the evidence in the court of law, whereas the police officers assist them in briefing the witnesses and prepare them for arguments on points raised by the other side. Hence, coordination between the police and public prosecutor plays pivotal role in efficacy of the trial.

## **6. Quality of witnesses must be seen not quantity**

One of the causes for delay is owing to the long list of witnesses to be examined. Thus even before the commencement of trial, necessary

witnesses should be shortlisted. Statements should be evaluated and witnesses speaking relevant facts should alone be summoned. Mostly, witnesses speaking on the same points should be avoided to the exception of those circumstances that would require corroboration. This shall spare the time of the court to a large extent.

## **7. Need for ear-marked police personnel for Court duties**

The most conspicuous reason for the delays in the progress of trial is non-execution of warrants by the Police. Unserved summons and non-bailable warrants (NBWs) have a telling effect on the Criminal Justice scenario. Police inaction, indifference or inabilities are the contributory factors to the grim situation of pendency of large number of unexecuted NBWs. The cases get adjourned from time to time because of non-appearance of one or more of the accused. Police plead their inability to apprehend the accused (against whom NBW s and Proclamation orders have been issued) for good and bad reasons. Hence, it is a prerequisite to have adequate number of police personnel for facilitating faster disposal of cases.

## **8. Day-to-Day Trial**

One of the major problems facing anti-corruption and vigilance cases is adjournments, which prolongs the pendency of each case. It is noteworthy that section 4(4) of the PC Act says that a special judge shall, as far as practicable, hold the trial of an offence on day-to-day basis. An “Zero-adjournment policy” must be adhered by these special courts.

Though, unnecessary adjournments must be avoided but the same must not stand as hindrance for a fair trial. In ***V.K. Sasikala vs. State Repr. by Superintendent of Police (2012) 9 SCC 771***, the appellant accused sought for certified copies or in the alternative for inspection of certain unmarked and unexhibited documents in a trial pending under Section 13 of the Prevention of Corruption Act. Court observed

***“Seizure of a large number of documents in the course of investigation of a criminal case is a common feature. Though it is only such reports which support the prosecution case***

***that are required to be forwarded to the Court under Section 173 (5) in every situation where some of the seized papers and documents do not support the prosecution case and, on the contrary, supports the accused, it is the duty of the Court to make available such documents to the accused.”***

Hence, there is a clear distinction needs to be drawn by the court whether the act is a delaying tactics or integral to ensure fair trial to the accused.

### **9. No stay of proceedings**

Section 19 (3) (c) of PC Act specifically states that no court shall stay the proceedings under the Act on any other ground except on the ground of irregularity in sanction which has resulted in a failure of justice. Despite this provision when public servants are sought to be prosecuted under the said act, the parties file revisions under section 397 Cr.P.C or by filing petitions under section 482 Cr.P.C for stay of trial thereby managing to delay the trial. This has an adverse effect on combating corruption amongst public servants. It has therefore become necessary to reiterate the law which was decided in ***Satya Narayan Sharma vs. State of Rajasthan*** in the following words:-

***“ ... Thus in cases under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned Court to expedite the hearing of that petition. However merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily”.***

## **10. Power to Grant Pardon to an Approver**

As per section 5, Special Judges can grant pardon to any person who has been involved in the commission of an offence under this Act with a view to obtaining his or her evidence, on the condition of him or her making a full and true disclosure of all the facts and circumstances related to commission of that offence and persons involved in the same, including him or herself. Thus, special judge may exercise this power at any time after the case is received for trial and before its final adjudication.

## **11. To try cases summarily**

Section 6 empowers the special judge to try certain cases summarily. Therefore, the special judge can decide to dispose of the case summarily where the nature of the case is such that a sentence of imprisonment for term exceeding one year may be passed. According to subsection (2) of section 6, there shall be no appeal by a convicted person in any case tried summarily under the section in which the special judge passes a sentence of imprisonment not exceeding one month and of fine not exceeding Rs.2000 whether or not any order under section 452 of the Cr..P.C. is made in addition to such sentence. Hence, appropriate use of power to try summarily is one of the ways to reduce the pendency.

## **12. Training in latest technologies**

Use of multimedia gadgets should be deployed so as to derive the utmost benefit from science and technology. The sophistication and complexity of these corruption offences is a real challenge to the prosecutor. Therefore the judges should be updated with modern techniques to handle complex issues. Information Technology Act, 2000 is a boon in this direction.

### **Final Remarks:**

It is trite that expeditious investigation of offences and trial is a facet of rule of law and a component of Article 21 of the Constitution. The society at large has legitimate interest that the persons accused of serious crimes should be proceeded against with promptness and expedition and the process should not get tainted by undesirable or extra-legal practices. Further, viewed from the point of view of the accused, speedy trial is a

fundamental right under Article 21. Thus, fast track of anti-corruption cases is the need of the hour.

**Summary of Recommendations:**

- ◆ Adequate number of special courts must be established for speedy disposal of cases.
- ◆ Quality investigation is a prerequisite In speedy disposal of anti-corruption and vigilance cases.
- ◆ The Investigating Officer’s duty is confined not only to investigation of the case completely but also to assist the Prosecutor during the conduct of the cases in the Courts.
- ◆ Though the primary duty of a Public Prosecutor is to ensure that an accused is punished, his duties extend to ensuring fairness in the proceedings and also to ensure that all relevant facts and circumstances are brought to the notice of the Court for a just determination of the truth so that due justice prevails.
- ◆ Coordination between the police and public prosecutor plays pivotal role in efficacy of the trial.
- ◆ Before the commencement of trial, witnesses likely to be dispensed with should be shortlisted.
- ◆ It is a prerequisite to have adequate number of police officials for facilitating faster disposal of cases.
- ◆ ‘Zero-adjudgment policy’ must be adhered by these special courts.
- ◆ The Special Court/Judge shall endeavour to dispose of the trial of the case; within a period of one year from the date of its institutions or transfer.
- ◆ The special judges should be entrusted only with the anti corruption related cases.
- ◆ The high court using its supervisory powers should give timely directions to these special courts for speedy disposal of old cases on priority basis and also keep constant vigilance at the working of these courts.

- ◆ These special judges should also be given adequate incentives for larger disposal of cases.
- ◆ The proceedings must not be stayed under any circumstance except as provided in section 19(3) (a) & (c) .
- ◆ Special judge should utilize the provision of granting pardon in appropriate cases
- ◆ Appropriate cases must be disposed of summarily.
- ◆ Last but not the least the special judge should be up to date with the modern technologies as sophistication and complexity of these corruption crimes is a *real* challenge.

If these strategies can be implemented then the public trust in the criminal justice system would be revived and justice will be done.







**Special Programme for  
District Judges  
&  
Chief Judicial Magistrates**

**Women and Children  
- Role of Courts**

**23<sup>rd</sup> March 2013**

A very Good Morning and warm greetings to each one of you assembled here today. At the outset, I must applaud the enduring efforts of the Tamil Nadu State Judicial Academy to organize at frequent intervals conferences like these on topics of contemporary relevance, which no doubt benefit the legal fraternity at large. After all, it is only with constant thinking and deliberations, we can ensure that statutes do not remain mere statutes, but evolve into a legal system responsive and sensitive enough to meet the challenges of present times with an eye on future.

It is with this very idea that the State Judicial Academy is organizing today's session. It is heartening to know that the highest body in the state for training judges has undertaken such an endeavor to sensitize judges who form the foundation of the judicial pyramid in our country.

The topic of my address is "Women and Children - Role of Courts". To begin with, we all agree that in a democratic country like ours, the courts, as the guardian of rights, play a crucial role in enforcing the rights of the people as enshrined in the Constitution and elaborated in various acts. Without enforcement, rights remain mere paper promises. As judges, we are often called upon to perform a 'twin role' of balancing conflicting rights of the persons or groups who approach the courts and simultaneously restore faith of the public in rule of law.

In the last 65 years of independence, if there is one concern, which has been the subject of much debate and has constantly encompassed the judicial mind is the rights of women and children in India. Counted together, they form more than the majority population and yet their voices and choices continue to be in minority. Their social and economic disadvantages further disable them to seek legal remedies. It is in this background that judiciary has exhibited extra precaution in deciding civil and criminal cases involving women and children. Courts have given a purposive interpretation to the legislations to undo age old inequalities and extend the benefits favorably.

In spite of timely interference by legislature and judiciary, the equal status of women and children has not translated into actual reality. The vulnerable status of women and child is the only element, which has not

witnessed radical change in this globalized and liberalized world. However, the eternal truth remains that no country can see the full swing of development both economic and social until their women and children prosper.

Recent statistics of rape, child abuse, sexual harassment, child marriages and female foeticide depict the grim reality, which prevails today. Violence and its various manifestations point to the fact that discrimination against women and children is not mere local issue. In this light, the judicial wing of the State has to play a vital role in elimination of such discrimination in particular and for the upholding of women and children rights in general.

India is a diverse country with its multicultural, multi-ethnic and multi-religious population where the protection of human rights become sine qua non for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have defined Human Rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993. The women and children are entitled to the same human rights as individuals. This was envisaged by our Constitution makers and the same has to be enforced by the judiciary.

It is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. The Apex court and High courts are armed with writ jurisdiction to check the violation of fundamental rights. The Procedural laws delineate various powers and functions of the district judges at every stage both pre-trial, during trial and post-trial. I am confident that you are aware of these provisions and the same require no repetition. However, I wish to remind you that these powers and functions bestowed upon you are to be exercised as public trust in full compliance with the Constitutional mandates of fair and speedy trial. As District Judges and Magistrates you have a greater calling while discharging statutory functions. Hence, it is a moral imperative as well as a duty upon the district judges to reduce disparity in society.

## **CONSTITUTIONAL COMMITMENTS IN SAFEGUARDING WOMEN AND CHILDREN**

The framers of the Indian Constitution took note of the adverse and discriminatory position of women and children in society and took special care to ensure that the State must take positive steps to give them equal status. The framers have bestowed two kinds of rights based on role of State i.e. firstly, positive rights which obliges the State to actively undertake welfare measures and secondly, negative which prohibits discrimination. Together, Fundamental rights and Directive principles of State policies are an amalgam of these two kinds of rights.

### **Positive Rights:**

**Article 14:** “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

**Article 15(3)** enables the State to make special provisions for children.

**Article 21A and 45** provide for free and compulsory education to child below 14 years of age.

**Article 39:** “The State shall, in particular, direct its policy towards securing

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that there is equal pay for equal work for both men and women;
- (c) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (d) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**Article 42:** “The State shall make provision for securing just and humane conditions of work and for maternity relief “.

**Article 47** stipulates that it is the duty of the state to raise the level of nutrition and health of the children.

**Negative rights:**

**Article 15(1):** “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”.

**Article 16(2):** “ No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

**Article 23 & 24** specifically prohibits trafficking, forced labour and child labour.

The Directive Principles under **Article 39 (e) & (f)** bars all forms of exploitation prejudicial to any aspects of the children’s welfare.

Though the concept of rights of the child was not very lucid at the time of making of the Constitution, it still envisioned children as the assets of the country who need protection to develop into a complete being capable of steering the nation to development. These provisions only highlight the fact that our Constitution makers were fully aware of their responsibility towards women and children.

Apart from constitutional guarantees there is a plethora of legislative enactments and policies that have been passed to give effect to the constitutional mandate.

This has been further supplemented and implemented by judicial precedents with passage of time. Next, I wish to highlight the jurisprudence relating to gender justice and then subsequently on child rights.

## **WOMEN EMPOWERMENT THROUGH JUDICIAL PROCESS**

Upliftment and advancement of women has been at the centre of constitutional mechanism. Various provisions of the Constitution as earlier stated and the amendments providing 33.3 percent reservation for women in local self governance aim at achieving the two ideals of the Preamble i.e. equality of status and equality of opportunity.

While there are several schemes and programmes relating to education and health of women in rural and urban areas indicative of the continuous efforts on part of executive to ensure equality, the question to be asked is what has been and what is the role of courts in achieving gender equality.

It is my view that the judiciary has attempted to venture into the critical role of a social reformer by upholding the rights of women. It continues to play a progressive, dynamic, creative and proactive role for social, economic and cultural transformation. The role of the judiciary can be further discerned from a number of progressive decisions rendered over the decades. For an organized reference, I have clubbed the cases under two different heads viz. Equal opportunities and Equal Status.

### **EQUAL OPPORTUNITIES**

#### **A. Ending Discrimination in Public Employment and More Representation through Reservation**

The difficult task before courts is to harmonize gender equality with gender differentiation in order to ensure gender justice in its truest sense. This requires careful balancing and must depend on facts and circumstances of each case. I may refer to two case laws to illustrate this approach that courts in my view must adopt.

In ***C.B. Muthamma, IFS vs. Union of India*** (1979) 4 SCC 260 , the validity of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 was challenged which forced women diplomats to obtain a written permission from the government before marriage could be solemnized and left it to government's satisfaction to terminate services marriage. Although the petition was dismissed as the government amended the

particular rules, the case brought to light the discrimination faced by women even in high government posts. Writing the judgment, Justice Krishna Iyer observed:

*"..We do not mean to universalize or dogmatise that men and women are equal in all occupation and all situations and do not exclude the need to pragmatism where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern".*

In **Government of Andhra Pradesh vs. PB Vijay Kumar** (1995) 4 SCC 520, the court upheld the government's notification reserving 30% seats for women in public services and also the preferential treatment in posts better suited for women. Giving wide meaning to the term 'special provision' under Article 15(3) to include both reservation and affirmative action, the Court observed that:

*"Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16".*

## **B. Sexual Harassment**

The role of court in laying down guidelines for public and private employers in order to curb sexual harassment is well acknowledged. The fact that these guidelines have been in operation for 15 years and only in 2012, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2012 was enacted which points to dynamic role of courts in enforcing equal opportunity to women at workplace in compliance with international convention against discrimination.

In **Vishaka and others vs. State of Rajasthan**, (1997) 6 SCC 241, the Supreme Court held that sexual harassment of working women at her place of employment amounts to violation of rights of gender equality and right to life and liberty enshrined in Articles 14, 15 and 21 of the



Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further, the Supreme Court, in this case said that, as there is no law relating to sexual harassment in India, therefore, the provisions of International Conventions and norms are to be taken into consideration, and charted certain guidelines to be observed at all work places or other institutions until a legislation is enacted for the purpose.

In ***Apparel Export Promotion Council vs. A.K. Chopra***, (1999) 1 SCC 759, again the Supreme Court reiterated Vishaka ruling and said that the attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Articles 14 and 21 of the Constitution. The Court further stated that international instrument such as the convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration casts obligations on the State to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

Recently in ***Medha Kotwal vs. Union of India***, (2013) 1 SCC 297 a three Judge Bench of the Supreme Court heard a PIL raising the grievance that the guidelines in *Vishaka* case are not followed in substance and spirit. The court took note of the fact that there is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and issued necessary directions on the same.

### **C. Plight of Women Workers - from equality to empowerment**

The plight of women workers has been brought to the attention of courts in several cases. They form one of the most neglected sections of the society as mostly employed in the unorganized sector. A very important and useful provision of women's welfare and well-being is incorporated under Article 42 of the Constitution. It imposes an obligation upon the State to make provisions for securing just and humane conditions of work

and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, and the like.

In the case of ***Dattatraya Moreshwar Pangarkar vs. State of Bombay*** AIR 1952 SC 181, the Supreme Court held that legal provisions to give special maternity relief to women workers under Article 42 of the Constitution do not infringe Article 15(1). In the case of ***Municipal Corporation of Delhi vs. Female Workers (Muster Roll)*** (2000) 3 SCC 224 the Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees of the Municipal Corporation who are casual workers or workers employed on daily wages basis. This applies to the claim of non-regularized female workers for maternity relief.

By giving favorable interpretation such as extending maternity benefits to all women whether employed on regular, casual, daily wages or on muster roll basis, it can be said that court have moved a step ahead from equality to empowerment.

It is noteworthy to mention the case of ***Associate Banks Officers Association vs. State Bank of India*** (1998) 1 SCC 428, wherein the Apex Court held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In ***Air India Cabin Crew Association vs. Yeshaswinee Merchant and Ors.*** (2003) 6 SCC 277, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour.

## **EQUAL STATUS**

The Supreme Court delivered a very significant judgment when it ordered in ***Velamuri Venkata Sir prasad vs. Kothuri Venkateshwarlu,*** (2000) 2 SCC 139 that equality of status was integrated to the concept of basic structure of the Constitution and was an important dimension of gender justice.

In **Yusuf Aziz vs. State of Bombay**, AIR 1954 SC 321 the validity of Section 497 of IPC (adultery) was challenged under Articles 14 and 15 (1) of the Constitution. Section 497 of the IPC only punishes a man for adultery and exempts the women from punishment though she may be equally guilty as an abettor and this section was held by the Supreme Court to be valid since the classification was not based on the ground of sex alone, thus relying on the mandate of Article 15(3). Even Section 354 of IPC (assault or criminal force to woman with intent to outrage her modesty) is not invalid because it protects the modesty only of women and Section 125 is valid although it obliges the husband to maintain his wife but not vice versa. Similarly, Section 14 of the Hindu Succession Act, 1956 converting the women's limited ownership of property into full ownership has been found in pursuance of Article 15(3).

Another landmark judgement was given by the Apex Court in **Gita Hariharan vs. Reserve Bank of India**, (1999) 2 SCC 228. In this case, the Court interpreted Section 6 of the Hindu Minority and Guardianship Act, 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

In **Arun Kumar Agrawal vs. National Insurance Co. Ltd** (2010) 9 SCC 218, a significant question which arose for consideration was the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income. The court, while raising the amount of compensation has rightly observed the following:

*"In India, the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is*

*required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may*

*volunteer to render some of the services to the family which the deceased was giving earlier”.*

To reiterate, it is the duty of the courts and tribunals to factor these considerations in assessing compensation for housewives who are victims of road accidents and fix just compensation. Thus, courts have a role in giving such an interpretation to beneficial and welfare legislation which serves to ameliorate the status and conditions of women in our society.

Apart from these cases, there are many other cases in which the Apex Court had given the judgments, helping to give a dignified status to the women. The judiciary, definitely, filled the vacuum created owing to inadequacies in laws.

## **ARTICLE 21- DIGNITY OF WOMAN AS AN INDIVIDUAL**

Article 21 contains provisions for protection of life and personal liberty of persons. In the case of ***State of Maharashtra vs. Madhukar Narayan Mandikar***, (1991) 1 SCC57, it was held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy. This article has also been invoked for the upliftment of and dignified life for the prostitutes.

The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women was held in ***Shri Bodhisattwa Gautam vs. Subhra Chakraborty***, (1996) 1 SCC 490; ***Chairman, Railway Board v. Mrs. Chandrima Das***, (2000) 2SCC 465.

Article 21 has to be read together with Article 51 A Clause (e) as added by the Forty-Second Amendment which gives a mandate and imposes a duty on Indian citizens “to renounce practices derogatory to the dignity of women”. The duties under Article 51-A are obligatory on citizens, but it should be invoked by the Courts while deciding cases and also should be observed by the State while making statutes and executing laws.

### **FAST AND FAIR SETTLEMENT OF MATRIMONIAL DISPUTES TO BRING RELIEF TO WOMEN AND CHILDREN**

.In the last decade or so, there has been an enormous upshot in matrimonial disputes which are often a hybrid of civil and criminal proceedings. This leads to further delays as parties approach multiple courts with their claims and counter claims. The rigor of legal procedures is disruptive of normal family life and has a direct bearing on future of many women and children litigants. Thus, only fast and fair settlement of matrimonial disputes can bring just relief to them.

In a recent judgment pronounced on 15<sup>th</sup> March this year, in ***Jitendra Raghuvanshi vs. Babita Raghuvanshi***, Cr. Appeal No: 447/2013, the Supreme Court upheld the inherent power of High Courts to quash criminal proceedings in non-compoundable offences under Section 498A and 406 provided a mutual settlement is arrived between matrimonial parties. The court further observed that:

*“The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction”.*

I believe that there are higher chances of successful mediation in matrimonial disputes when done at initial stage itself. Here, the role of district courts and subordinate judiciary in encouraging amicable settlement assumes primary importance and is very much within the statutory mandate of Section 89 of the Civil Procedure Code. The Apex Court is conscious that the subordinate courts are in the best position to help parties arrive at a meaningful settlement favorable to both. Keeping this in mind, the Supreme Court while allowing transfer petitions in matrimonial matters has been issuing directions to district family courts to make all endeavors for early settlement and disposal.

### **ROLE OF MAGISTRATES IN DOMESTIC VIOLENCE CASES:**

Domestic violence is a serious infringement of human rights of women, which needs to be eradicated completely. Previously, when a woman is subjected to cruelty by her husband or his relatives, her only remedy was under section 498A IPC. However, with the enactment of the Protection of Women From Domestic Violence Act, 2005 (*hereinafter as 'the Act'*), the civil remedy to women in such offences was recognized. In precise, this act was enacted to effectively protect rights of women who are victims of violence within the family and to provide expeditious civil remedy to them. The Magistrates role becomes very vital for reaping the full benefits of this act.

Magistrates should be pro-active and inform the applicant of her legal options, including securing maintenance, custody and divorce. All efforts should be made to deal with applications for protection orders promptly. Each case of physical abuse, sexual abuse, verbal and emotional abuse must be treated seriously, fairly, expeditiously and with sensitivity. Section 14 of the Act also entails the magistrate at any stage of the proceedings to direct the respondent or the aggrieved person, either singly or jointly, undergo counseling.

Further, under section 9(2) of the Act vests control and supervision with the concerned Magistrate to oversee the various duties which are performed by the Protection Officer. The Magistrates must make all endeavours to dispose of applications for relief within a period of 60 days

from the date of first hearing. Giving such speedy relief is the mandate of Section 12(5) and also in concurrence with the larger objective of ending violence against women which is occurring within four walls of the house.

### **RECENT CRIMINAL LAW (AMENDMENT) ACT 2013**

The Criminal Law (Amendment) Act 2013 has been recently passed by Parliament on 19<sup>th</sup> March amending IPC, CrPC and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum 20 years for gang rape has been prescribed.

The amended law places additional duties on magistrates to ensure fair and speedy disposal of crimes against women especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions.

- ◆ Newly amended Section 164(5A) expects the Judicial Magistrate to record the statement of the person accused in offences punishable under Section 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police.
- ◆ In Section 273 CrPC, a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination.
- ◆ Section 309 (1) now mandates completion of inquiry or trial for rape within a period of 2 months from date of filing of chargesheet as compared to earlier proviso which contemplated relevant date from commencement of examination of witnesses.

Next, I wish to focus on child rights jurisprudence.

### **ROLE OF COURTS IN UPHOLDING CHILD RIGHTS**

The courts have aimed at equal rights for women and children, it is always their welfare and interest which is of paramount consideration. Courts are often called upon to exercise their *Parens Patriae* (Latin term for “Parent of the Nation”) jurisdiction and decide cases involving children with utmost care and caution applying human touch to the problem.

## **BEST INTEREST OF CHILD**

- ◆ The ***civil rights of children*** include the right to a name and nationality, birth registration, protection from torture and maltreatment, special rules governing the circumstances and conditions under which children may be deprived of their liberty or separated from their parents, etc.
- ◆ The ***economic rights of children*** include the right to benefit from social security, the right to a standard of living adequate to ensure proper development, and protection from exploitation at work.
- ◆ The ***social rights of children*** include the right to the highest attainable standard of health and access to medical services, the right to special care for handicapped children, protection from sexual exploitation and abduction and the regulation of adoption.
- ◆ The ***cultural rights of children*** include the right to education, access to appropriate information, recreation and leisure.

There is an urgent need for recognizing another important inalienable right of the children, which is the **'Right to petition'**. In precise, children must have the right to be heard by the courts in deciding issues, which affect them directly. Already a start has been made in this regard, as in most child custody cases; interaction of the judge with the child to gauge his/her preferences has become standard procedure. I hope that this good practice is adhered to in all district courts of the State.

## **CHILD PROTECTION**

There is no issue concerning children that is not potentially in some way related to child protection. Often, protection concerns lie hidden beneath the surface of issues that seem unrelated. For example, the concern of lack of sanitation in schools is intertwined with safety of girl students who may be vulnerable to sexual abuse. Further, it acts as a barrier in coming to school adversely affecting their right to education. Thus child protection links closely to all aspects of children's well being and is very much a concern for courts today. Child protection means protection from abuse and violence.



The need of the hour is for the courts to award stringent punishment in offences against children. In ***Childline India Foundation vs. Alan John Waters and Ors.*** (2011) 6 SCC 261, complaints of physical and sexual abuse of children kept in shelter homes in Mumbai were before the Supreme Court. Convicting the accused who deserved no leniency the court observed as follows:

*“Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation”.*

India has witnessed an increase both in crimes committed by children and those committed against them. Children who are likely to come in contact with the judicial system may be children in conflict with law or juveniles and children who are victims or witness in the case.

In ***Sheela Barse vs. Children Aid Society and Ors.*** (1987) 3 SCC 50, a petition was moved for the plight of children in observation and homes the court issued several directions with regard to trial of cases against juveniles and establishment of special courts presided over by special cadre magistrates trained suitably for dealing with cases against children. We now have in place the Juvenile Justice (Care & Protection of Children) Act as amended in 2010, which lays down the special procedure to be followed in cases of children in conflict with law. The challenge before courts is to balance goals of deterrence and reformation. Both of which are extremely relevant when children come in conflict with the law.

The moot point is that courts have to be sensitive to the fact that children are not one homogenous category. All children are not similarly placed. Further, their vulnerabilities differ in type and extent. Children in difficult circumstances include orphans, street children, migrant children, children affected by manmade and natural disasters, drug addicts, refugee children, slum and migrant children and children of commercial sex workers.

Taking note of this fact, in ***RD Upadhyay vs State of Andhra Pradesh and Ors.*** AIR 2006 SC 1946, the court issued directions for the development of children with their mothers who are in jail either as under trial prisoners or convicts. While observing that the best interest of the child is the primary consideration in our Constitution, it was held that such children shall not be treated as an under trial or convict while in jail with his or her mother. Further, they are entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

Deciding cases involving children becomes even more challenging as courts are pitted against economic and social malaise, which can't be undone by judiciary in one go. An illustration of this is the issue of child labour in light of extreme poverty prevailing in the country. The courts are not immune to this reality and have admitted public interest litigations on behalf of children exploited as bonded labourers in stone quarries, employed in firework factories, construction industry and circuses. The landmark case of ***MC Mehta vs. State of Tamil Nadu*** (1996) 6 SCC 756 is reflective of court's pragmatic approach in dealing with issue of child labour. While upholding children's right to education, the court also suggested measures such as provision for alternative employment to parents.

Time and again, the courts have dwelt on the obligations of the state and society towards children and recalled India's commitment by acceding to the UN Convention on Rights of Child. Thus, judges must adopt pragmatic approach while dealing with cases involving child rights and remedy the gaps in access to justice for them.

### **ENSURE CHILD FRIENDLY COURTS**

Whether children come into contact with the law as victims, witnesses, offenders or complainants, it is equally important that they are met with a system that understands and respects both their rights and their unique vulnerability. There have been some progressive developments in the last few years, which have provided children the right to be heard in court. Perhaps the most significant among the in-camera trial for sexually abused children. Prolonged and delayed trials

keep children and their aggrieved families away from seeking any legal redressal at all and they give up mid-way. To counter this, courts must adopt child friendly procedures and easy access to child victims and child witnesses.

Guidelines have been laid down in *Sakshi vs Union of India* (2004) 5 SCC 518 with regards to holding trial in cases of child rape or abuse such as screen to be placed between victim and accused, sufficient breaks to be given to child during testimony etc. District Judges and magistrates must give their special attention that these directives are strictly followed both in letter and spirit.

Further, it is important to create an enabling environment wherein the children are able to express themselves. This clearly calls for new and additional infrastructure and change in the existing infrastructure in all courts dealing with children. It also calls for a change in the functioning of the courts. The newly enacted The Protection of Children from Sexual Offences Act, 2012 provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as the paramount importance at every stage of the judicial process. Likewise, the Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. The Act is a progressive step and must be implemented in its full spirit.

Children need to be informed about their rights under the laws and in the legal system. This can be achieved only by propagation of awareness among the children. The District Legal Aid Committees must ensure that legal aid and advice reaches to children who seek legal representation.

### **MEASURES NECESSARY TO IMPROVE COURT'S ROLE IN PROVIDING SPEEDY JUSTICE TO WOMEN AND CHILDREN: A REMINDER**

1. Prioritize cases where women or children are party by early listing and hearing without unnecessary adjournments.
2. Ensure that cases of rape, molestation, kidnapping, eve-teasing, murder for dowry, cruelty by husband/relatives, trafficking of girls are referred to Fast Track courts set up for the purpose.

3. Although there is no outer time limit for completion of trials, judges should try to achieve the mandate of Section 309(1) of CrPC that:

*“in every inquiry or trial the proceedings shall be held as **expeditiously** as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from **day to day** until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*

4. Timely and proper recording of dying declaration of the victim by the judicial magistrate is crucial for final conviction and officers must be adequately trained in this regard.
5. Trial in rape cases must be in-camera as per Section 327(2) of CrPC. The provision seeks to protect the identity of the victim and must be adhered to. However, under the proviso, the presiding judge may allow support person to accompany the victim on written application. Such a request should be allowed if favorable to recording victim’s testimony.
6. Create an enabling environment for child victims/witnesses inside the courtroom. Children should not be forced to have contact with alleged perpetrators and, where appropriate, audio-visual or closed-circuit television technology should be made available to facilitate the process. Children should be asked straightforward questions in language that they understand.
7. Legal aid and advice should be made available round the clock. District Legal Aid Committees should take the lead in the same and take special measures to reach out to women and children.
8. Setting up of all women courts and child friendly courts is a positive development. However, gender-sensitive training must be necessary part of training for judicial officers and other court staff.
9. Organization of Lok Adalats to encourage settlement in matrimonial disputes should be adhered too.

Thank You!





**Special Programme for District Judges  
&  
Chief Judicial Magistrates**

**Effective District Administration  
and Court Management**

**15<sup>th</sup> June 2013**

A very Good morning and warm greetings to each one of you assembled here today. I feel elated and immensely happy in addressing you on the topic - *“Effective District Administration and Court Management”*. For a number of reasons, the past three decades have witnessed heavy accumulation of cases. One noticeable reason for this is that the institutional framework within which courts historically operated placed little emphasis on sound management and administration. Even today, court administration remains the greatest challenge to the profession.

An independent and efficient judicial system is one of the basic structures of our Constitution. The centrality of a strong justice mechanism lies in its essential contribution in enabling all manner of disputes to be resolved within a structured and orderly framework. It is this lack of managerial skills in the court administration, which has attributed to the current increase in pendency rates of both civil and criminal matters. Here the role of District Judge and Chief Judicial Magistrate becomes utmost important for mechanizing effective court management system. In their domain resides the daunting task of administrating court affairs, which will aid in dispensing swift justice.

As a District Judge/Chief Judicial Magistrate, many responsibilities devolve on you in the process of delivering justice. One such incidental but prominent duty is to see that the court is administered effectively and efficiently and in compliance with the statutes. “Court management” is inclusive of entire set of actions that a court takes to monitor and control the progress of cases, from initiation of a case to trial. It is the tool to pursue the institutional mission of resolving disputes with due process and in due time.

India, the biggest democracy has one of the largest judicial systems in the world with 15 cases being filed per thousand population every year. Global and national experience show that the number of new cases filed into a judicial system increases with literacy and economic wealth. Therefore, as India’s literacy rate and per capita income increases the number of new cases filed per thousand population is likely to increase

rapidly in the next few decades. As a consequence, the subordinate judiciary should equip itself with managerial skills to cope not just with the current backlogs but also for potential escalation in number of cases in the near future.

Addressing these challenges will require substantial upgrading of court management system. One such aspect is adapting to information and communication technology. Today, data on cases filed in the subordinate courts is still gathered and maintained in manual data systems in majority of courts in India. An overhaul of this system is requisite for effective administration. Though this process would be gradual. For instance, in the federal system of the United States, the transition from a paper-based to the fully electronic case information management system, including electronic filing and noticing, occurred progressively over a period of roughly 25 years. Certainly, the change is time consuming but inevitable in the process of pursuing justice.

## **RESPONSIBILITIES OF DISTRICT JUDGES/ CHIEF JUDICIAL MAGISTRATES**

The District Judges/ CJM ordinarily play a pivotal role in the development of court policy. Every District Judge/CJM must cultivate the art of court management.

### **They have collective responsibilities for these functions.**

- **Leadership:** As a District Judge or Chief Judicial Magistrate, you are uniquely situated to lead the court in determining the administrative policies for better working of the courts.
  - **Court management:** You have the responsibility to make sure that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. Behavior of the judge in the court is the most important aspect in court management. You have 5 segments of people in the court to behave with.
1. **Lawyers:** Judges must show respect, courtesy and patience to the lawyers, at the same time maintain the control of the proceedings and also has an obligation to ensure that proceedings are conducted in a civil manner.



2. **Witness:** The foremost aspect that every trial judge should remember is that the statement of a witness is the lifeline of a case. Their protection is primary for friction free trial. Thus, every trial judge has an obligation to treat them with dignity and respect. Sections 150, 151 and 152 of the Evidence Act, 1872 should be strictly followed in the process of examination of witness. Whenever, the presiding judge notices abuse of witness in courts, they should come down with heavy hands and convey the message that witness box will not be allowed for committing offences under section 500 IPC. Otherwise the dignity and solemnity of the court will be impaired.
3. **Court Staffs:** Court management cannot succeed without the support of the court staff and its registry. Thus, Presiding Judge must always maintain the decorum of the court and never create tension in the minds of court staffs. Tension inflicted on the staff would not only cause them to commit repeated mistakes but the records will become unmanageable. There is a great adage. "It is nice to be important, but it is more important to be nice." This must be your coat of arms when you are in the court or in the court office.
4. **Subordinate Officers:** Always treat your counterparts and the subordinate officers with due respect. The court management is a comprehensive procedure. Therefore, even the smallest aspect has significant impact on the effective administration of justice.
5. **Litigants:** Judges should not employ hostile or demeaning words in opinions or in written or oral communications with litigants.
  - ◆ **Case management:** The District Judges/ CJM's are provided with the authority over the allocation of cases to other courts. You should utilize this position to monitor caseloads and trends and to identify problems that are contributing to the delay in the trial. Further, you must recognize that case management is relevant also for those courts that are not currently experiencing delays or backlogs.

- ◆ **Prioritization of old cases:** “Five plus Zero” initiative must be adopted to ensure that cases pending for more than 5 years are taken up on priority basis and such cases are brought down to zero level.
- ◆ **Supervision of Court Managers:** Judges are ultimately responsible for effective court management. However, the complexity of the modern court requires the delegation of administrative functions and responsibilities to the Court managers subject to the supervision and direction of the Presiding Judge. Thus you must have effective control of working of these Court Managers.
- ◆ **Inspection of Subordinate Courts:** The District judge and CJM’s should conduct frequent inspection of subordinate courts for better accountability and efficiency.
- ◆ **Budgets:** The judicial officers must be proficient in the art of planning and preparation of budgets so that the budget meets the requirements for the next year and is neither excessive nor short.
- ◆ **Annual Confidential Reports:** The Annual Confidential Reports of members of Subordinate Judiciary must be maintained properly and on regular basis.
- ◆ **Periodic meetings between Police and District Judge:** Such meetings must be encouraged for smooth running of judicial system.

## **TECHNIQUES OF CASE MANAGEMENT**

No doubt today almost every court is overburdened and there is an acute shortage of judicial officers and litigants have to wait years for justice. In all these adverse conditions though it is very difficult to impart justice rapidly but by adopting the techniques of court management, we can provide swift justice to the people.

The effective use of case management techniques and practices improves the efficiency in the use of justice system resources, hence reducing the costs of justice operation. By reducing the time required for resolving disputes, the appropriate use of case management may also help build public confidence in the effectiveness of the courts and the accountability of judges.

The court's control over cases entails the implementation of two different principles viz. **(1)** early court intervention and **(2)** continuous court control of case progress.

### **1. Early Court Intervention**

Early court intervention requires that judges familiarize themselves and impose management controls immediately after the case is assigned to them. Case screening is the important technique that can be used to monitor the early stages of litigation and reduce or eliminate unnecessary time, which contributes to case processing delays.

Case screening is the review of case information for management purposes by judges and/or court staff. It is generally the most meaningful form of early intervention because it provides a basis for the court to assess the management requirements of a case at the beginning of the process. Issues to be addressed during case screening include, but are not limited to are status of service; case priority including public policy issues and impending death; alternative dispute resolution/diversion referral; jurisdiction etc. Court support staffs should monitor the above aspects under the effective control of the judges at every periodic interval.

It is also useful to screen filings before entering them into the case management system to identify filings that do not meet court rule or statutory requirements, or filings that contain clear errors or have procedural issues that should be brought to the attention of the judge. Like unsigned pleadings, illegible documents, incorrect filing or motion fees, improper parties, incorrect venue, or filings not within time frames.

## **2. Continuous Court Control Of Case Progress**

Continuous court control of case progress is a method by which judges can continue to exercise such controls and monitor case progress and activity throughout the life of the case. Though the court supervision of the case progress is an administrative process, it indirectly has an impact on the adjudication of substantive legal rights. Therefore case flow management is the absolute heart of court management.

The case flow management will aid in creating a judicial system that is predictable to all users of the system. This will result in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources. Various minor aspects can reduce substantial delay in the process of trial. Like settling issues by summary trial, encouraging parties to resort to ADR mechanism, extensive use of Order X of Code of Civil Procedure, 1908 in civil matters to narrow down issues etc.

For effective case flow management the following aspects must be considered.

- ◆ **Monitoring unnecessary delay**

To instill public confidence in the fairness and use of court systems, courts must eliminate delay. An effective case flow management system does not initiate or cause delay. As a result the Presiding Judge must exploit the various procedures enunciated in both criminal and civil code to avoid the delay.

***Filing of plaint/written statement:***

Order 8 Rule 10 provides that where a defendant fails to present written statement within the time permitted or fixed by the court, the court can pronounce judgment against him. This can be used against the person who seeks continuous adjournments. Likewise, Order 7 Rule 18 and Order 8 Rule 8A prohibits the reception of documents at a later stage unless the court grants leave. This discretionary power vested in the court must be exercised diligently for avoiding protraction of the litigations.

### ***Summoning Procedure:***

Simultaneously, the criminal courts should take care that summons to the witnesses are issued in time and efforts should also be made that the material witnesses get served through investigating officer, if witnesses fail to turn up despite service, court should not hesitate to use coercive methods. Similarly, in civil matter, if any party fails to take steps to summon the witness then court should not grant adjournments unless sufficient cause is shown or cost is imposed for the default. Long time taken by prosecution, then in such a situation, the summons should be sent through the investigating officer with specific warning that if prosecution fails to bring the witness on the next occasion then no further opportunity will be given to the prosecution.

### ***Recording of Evidence:***

Another main cause for delay in disposal of the case is that the parties and prosecution takes years to complete their evidence. Though under the law there is a provision that once the case is fixed for evidence, the evidence will be recorded on day-to-day basis but the provision has lost its sanctity due to dearth of judicial officers. In civil matters the list of witness is generally small but their testimony is generally long. Hence court should not grant more opportunity to any party beyond the number of its witnesses. Court can also impose cost when any party fails to examine or cross-examine the summoned witness.

### ***Drop unnecessary Witnesses***

Whenever it is possible, courts should also try to persuade the parties to drop the name of formal witnesses whose examination and non-examination cannot affect the decision of the case. This will save the precious judicial time to a large extent.

### ***Compounding of offence***

It has been observed that in Magisterial Courts a substantial portion of litigation is of compoundable offences and in such cases there is a strong probability of compromise between the parties. Thus, Courts should encourage the parties at the first opportunity to settle their dispute

amicably. Similarly in civil matter also there is always better chances of compromise between the parties. Thus, in such cases courts should make special efforts to encourage the parties to settle their disputes amicably. This practice will not only give full satisfaction to the affected parties but it will also reduce the burden on the appellate courts because in such cases the order is not challenged in the higher courts.

Therefore any delay in the summons process, pretrial procedures, trial scheduling and trial management must strictly be reprimanded.

### **Restrict the uncalled for adjournments**

Traditionally, our court systems have let the parties to a case control the pace of the litigation process. The assumption is that the parties can thereby take the time they need to adequately prepare and present their respective arguments. However, this position must be changed. Since Court control of adjournments is important for three reasons. Firstly, adjournments contribute to delay; secondly, an adjournment policy influences attorney and litigant perceptions of court commitment to case flow management; and thirdly, a lenient adjournment policy undermines a predictable system of event date certainty. Granting of adjournments is a discretionary power, which must be exercised with utmost diligence.

Nevertheless, a court's adjournment policy should not be excessively rigid or governed by arbitrary rules, but it should create the expectation that events will occur when scheduled unless there are compelling reasons to postpone. Judges must also record the reasons for adjournments.

### **Certainty of trial dates:**

Court control of adjournments is closely related to achieving event date credibility; one cannot be successfully implemented without the other. Therefore, credible scheduling must be based on a restrictive adjournment policy. It is only through such a policy that the court can convey its expectation of readiness to counsel.

The judges should regularize the number of cases to be listed on the board according to their disposal rate. Merely listing of cases with full knowledge that only a small number of cases can be tried, will send wrong signal to the counsels to probe for more adjournments. Certainty of date for trial should be maintained as far as possible.

**Average life cycle of case:**

The litmus test to check whether the court has an effective case flow management or not is to look at the case age at the disposition stage. There is an equally urgent need to shorten the average life cycle of all cases. Not only time spent within each court, but also total time in the judicial system as a whole.

**EFFECTIVE COURT MANAGEMENT – ITS HUMAN SIDE**

As the term “management” itself suggests, it means judicious deployment of resources including human resources for optimum output. For achieving maximum output in minimum available time and with minimum resources at command, we need to have a motivated, disciplined and dedicated team. The team should share the collective objective of the judicial system i.e smooth discharge of the business of the court and prompt disposal of cases, within the available infrastructure and limited resources.

Handling deftly, disruptive persons, aggressive lawyers, reluctant witnesses, sluggish staff, would go a long way in effective disposal of cases. A judicial officer must have an understanding of different ways, customs and social background of people. It not only helps managing judicial business in a better manner but also reduces mental stress.

Since the overall functioning of a court depends heavily on the interplay between judges and administrative staff, it is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office.

## **INFORMATION and COMMUNICATION TECHNOLOGY (ICT)**

At present, a number of technologies can support different areas of court operation. On the one hand, such technologies have been used for the automation of administrative tasks like case tracking, case management system, office automation. On the other hand, ICT has been designed to offer to lawyers and citizens access to statutes, regulations and case laws, to increase transparency of court decisions, and access to key legal information.

This advancement must be used for all practical purposes like recording of statement of accused from prisons through video conferencing. This will avoid the unnecessary delay that is generally caused in bringing the accused to the court.

## **RECENT CRIMINAL LAW (AMENDMENT) ACT 2013**

The Criminal Law (Amendment) Act 2013 has been recently passed by Parliament on 19<sup>th</sup> March amending IPC, CrPC and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum 20 years for gang rape has been prescribed.

The amended law places additional duties on magistrates to ensure fair and speedy disposal of crimes against women especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions.

- Newly amended Section 164(5A) expects the Judicial Magistrate to record the statement of the person accused in offences punishable under Section 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police.
- In Section 273 CrPC, a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination.



- Section 309 (1) now (year 2013) mandates completion of inquiry or trial for rape within a period of 2 months from date of filing of chargesheet as compared to earlier proviso (inserted in 2009) which contemplated relevant date from commencement of examination of witnesses.

## **Women and Children – Role of Courts**

The role of Courts in cases dealing with women and children assume great importance in view of changing mindset. The women and children are heading the victims' tally in recent crime related incidents. Though there are many reasons for the declining values, we can identify some of them, viz., lack of awareness, patriarchy, male chauvinism, subjugation, certain deep rooted traditions and custom, lack of effective enforcement etc.

Sensing the alarming trend, the Supreme Court had said that 'we are failing to treat women with dignity, equality and respect'. Last month, a special Bench of the Supreme Court (of which myself was also one of the Members) allowed a curative petition filed against a judgment in ***Bhaskar Lal Sharma & Ors. vs. Monica*** (2009) 10 SCC 605 which held that kicking daughter-in-law is not cruelty under Section 498A and had set aside that judgment ordering for a *de novo* hearing.

There are various laws on the protection of women like Protection of Women from Domestic Violence Act 2005, Dowry Prohibition Act 1961, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act 1986 and the Pre-Natal Diagnostic Techniques (Regulation & Prevention) Act 1994.

Our Constitution contains many Articles on the welfare of women. Article 15(3) deals with special protection for women, Article 16 ensures equal opportunity of public employment irrespective of the sex of the person, Article 39 deals with securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, Article 42 deals with securing humane conditions of work and maternity relief and Article 51-A(3), a Fundamental duty, insists on renouncing practices derogatory of women.

Section 294 of the IPC deals with obscenity, Section 304-B deals with Dowry Death and Section 498-A deals with cruelty.

When it comes to children, trafficking in children has become an increasingly lucrative business for the reason that punishment is very rare. The promise of marriage or employment is often used to lure the young children into sexual trade. Most of the children, who are victims of deception, are frequently physically, emotionally and sexually abused in the places of their employment.

There are many legislations like Children (Pledging of Labour) Act 1933, Employment of Children Act 1938, Young Persons (Harmful Publications) Act, 1956, Child Welfare Act 1978, Juvenile Justice (Care & Protection of Children) Act 2000, Right of Children to Free and Compulsory Education Act 2009 etc.

No children shall be deprived of his fundamental rights guaranteed under the Constitution of India and bring to child traffic and abuse.

All of you have to ensure that the provisions of these legislations are complied with in their letter and spirit fulfilling the Objects of the Act.

A judge needs to show understanding and consideration whenever women and children appear either as a party, or as witness, or as victim so as to inculcate confidence in his/her during the court proceedings. Any comment, gesture or other action on the part of any one in or around the courtroom that would be detrimental to the confidence of them should be curbed with a heavy hand by the presiding judge. Adhering to following acts by the presiding judges may make the courtroom setting more conducive to women and children:-

- ◆ They should be treated with courtesy and dignity while appearing in the Court. Any gender bias must be carefully guarded against in the courtroom and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession.

- ◆ The examination and cross-examination must be conducted by the court itself or under the direct supervision of the presiding judge.
  - ◆ Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more empathy and understanding towards the case.
  - ◆ Crime against women and children ought to be dealt with on priority basis because delay in delivery of justice will defeat the very purpose.
- 1) Section 26 of the Code of Criminal Procedure, 1973 has been amended by prescribing that the offences under Section 376, 376A to D of IPC, are to be tried, as far as practicable, by a court presided by a women.
  - 2) Section 173 (1A) has been amended to state that the investigation of a case of rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of a police station.
  - 3) Section 327(2) which prescribed in camera trial in cases of offences under Section 376, 376A to 376D has been amended by providing that 'in camera' trial shall be conducted as far as possible by a woman judge or magistrate.

Section 327(2) in the Code of Criminal Procedure, 1973 provides that "(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code shall be conducted in camera: provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court."

- 4) Section 327(3) which bars printing/publishing any matter in relation to such 'in camera' proceedings except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties.

- 5) Section 137 of the Indian Evidence Act, 1874 provides for the Examination-in-Chief, Cross Examination and Re-Examination of witnesses appearing from the opposite side basically to extract the truth behind the statement made by the witness.

Where a lady witness appears before the Court, it shall be the duty of the Judicial Officer to keep watch on the counsel conducting the cross-examination that he/she should not ask any question to the witness which apprehends her modesty.

The questionnaire round with the victim of rape/sexual assault, shall not be conducted in the open court as it directly challenges the modesty of a woman. Such procedures shall be conducted only by a lady advocate, in the chamber of the judge in presence of the parents or guardian of the victim.

- 6) Section 309 gives the power to the court to adjourn the proceeding for a future date.

Section 309 proviso to sub-clause (1) (added by 2008 amendment act) provides that when the enquiry or trial relates to an offence under Section 376A to 376D of the IPC, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of commencement of the examination of witnesses.

Section 309 proviso to sub-clause (2) (added by 2008 amendment Act) provide that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

Now, the provision inserted under Section 309 as proviso to sub-clause (1) & (2) are to be strictly followed in its spirit and letters so that the very intention of the legislature to pass such amendment cannot be defeated.

The proviso added to sub-clause (2) provides for a kind of discretion to the court as far as adjournment of a proceeding is concerned. But such power shall be exercised very carefully as to decide which circumstances are beyond the control of the party. The Court has to

keep an eye on the party which is seeking adjournment, to ensure that the party is rightly praying for it and it is not for the purpose of benefiting the ill intentions of the accused.

7) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

8) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in the Court, is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness.

9) Guidelines laid down by the Supreme Court in:-

Delhi Domestic Working Women Forum vs. Union of India (1995) 1 SCC 14 needs to be followed:

“Directives to the police to maintain a list of lawyers capable of handling the cases of rape victims and to provide them help in rehabilitation.”

10) It shall be the duty of a “District Judge” of a district to prepare and maintain a ‘list of lady advocates’, to be circulated to every Sessions Court in the district, who are well reputed and acquainted with the cases and respective laws relating to women like domestic violence, dowry matters, dowry deaths, rape matters and matters relating to the modesty of a women.

With the help of such an extensive list prepared by the District Judges, lady counsels can be engaged on behalf of the women victims of crime and a proper honorarium can be paid from a fund created for this purpose or under Section 12 of the Legal Services Authorities Act, 1987 they can be engaged for providing legal aid to the victims at State cost.

11) Bail of women prisoners – Section 437 provides for:-

“when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without any warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but –

1. such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.
2. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence.

Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

Under an adversarial system like ours, the courts insist on the search for proof rather than the search for truth. Whether the legal system is primarily adversarial or inquisitorial, bail hearings should be inquisitorial, with the magistrate inquiring into all the facts and circumstances relevant to the decision. This should be done even if the accused is not legally represented. As the adversarial system does not impose a positive duty on the judge to discover the truth, but he should play a positive role as far as bail of women prisoner is concerned. A good trial judge needs to have a “third ear”, that is to hear and comprehend what is not said.

- 12) The Statement under Section 164(1) of a victim of rape or any kind of sexual assault, shall not be recorded in open courtroom. It may be recorded in the chamber or the residence of the Judge/Magistrate in presence of the parents or guardian of the victim. Such statement shall be recorded, as far as practicable, by a woman judge.

- 13) Section 164-A (as introduced by Act No. 25 of 2005; w.e.f. 23/06/2006) provides for compulsory medical check-up of rape victims within 24 hours ensuring substantial evidence against accused is not lost.

These type of provisions have to be followed very promptly by the state authorities because if these provisions are not followed in their true spirit and letters then the basic objective behind introducing such provisions stands defeated. The benefit, which ought to be availed by the victim/prosecution, starts shifting towards the accused/offender/s.

- 14) 173(1)(h) (inserted by Cr.P.C. (amendment) Act, 2008) will also have to mention whether report of medical examination of the woman has been attached where the investigation relates to an offence under Section 376 and 376A to D of the IPC.
- 15) The 2008 Act adds a proviso in Section 157(1) which provides that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality.
- 16) In respect of Section 157(1) and Section 164A, it has been provided under Cr.P.C. as an obligation upon police to comply with the procedure laid down, it is the duty of judicial officer or the Court to ensure strict compliance of the obligation. The court should confirm from the victim that obligation on part of police was duly served or not. If not, then court should take appropriate steps to do the needed and write to the head of the concerned police department to take appropriate action against such police officer.
- 17) Proper counseling.- The District Judge and District Legal Services Authority shall endeavour to seek co-operation from women advocates, other public spirited advocates and different NGO's working in the field for women empowerment, to organize counseling camps for women victim/witness/accused inside the Court premises, at Mahila Thanas and other Police stations.

- 18) Whenever a woman appears before a court of session, the Judge shall be duty bound to address her on legal rights specially provided for women in Cr.P.C. during trial in the court.
- 19) The name of the victim or relatives or any other information like addresses, shall not be disclosed in the judgment of the Court. It ultimately publicises the victim's bad image in the society and hurts the modesty of the victim.
- 20) The Family Courts Act, 1984 provides for the power of the Family Court to lay down its own procedure with respect to discharge of its duty (provided under Section 9 of the Act) to endeavour for the settlement between the parties.

By virtue of Section 10 "power to lay down own procedure" a mechanism can be formulated so as to serve the larger interest of the women coming to the forum.

### **Surrogacy**

Surrogacy, as you know, is an arrangement in which a woman carries and delivers a child for another couple or person. In a traditional surrogacy, the child may be conceived via home artificial insemination using fresh or frozen sperm or impregnated via intrauterine insemination.

You, as District Judges and Chief Judicial Magistrates, come across cases relating to surrogacy and reading of the decisions of the Supreme Court certainly help in dealing with those issues in a better way.

### **JUDICIAL ETHICS IN PRACTICE:**

The integrity of the judicial officers plays a prominent role in the court management. Let me share with you some of the ethical values that I cherish and believe are extremely vital for all judicial officers.

- ◆ The first lesson is that judges should not lose the temper in court. It spoils the whole atmosphere.
- ◆ **Punctuality:** As a member of an ideal institution of our country, you have to set ideals to be followed by others. The first step towards ensuring the same is to be punctual in convening trials



and hearings. Punctuality of judges is indispensable to maintaining dignity and decorum of courts.

- ◆ **Proper Conduct in both official and personal capacity:** The respect that society bestows on office of a judge and his judgments is determined by the manner in which a judge conducts himself in his public and private life. Hence, close association with individual members of the Bar especially those who practice in the same court, police officials and other government functionaries must be avoided.
- ◆ **Judgments:** Judgments must be clear and decisive and free from ambiguity, and should not generate further litigations and demand for clarifications.
- ◆ **Avoid unnecessary delays in pronouncing judgments:** There is also a serious grievance that judgments are not delivered in time and in many matters arguments have been made months before but judgments remain pending. The inconvenient truth is that the judiciary is equally responsible for delayed justice. Judges must pronounce judgments within reasonable time preferably within 30 days of final hearing.
- ◆ **Continuous Learning and Training:** You must appreciate that progress in law and judicial thought is a continuous process. Judges are expected to be well versed with not only laws and procedures but also latest legal developments. Therefore, you must find time to regularly read latest judgments of the Supreme Court and the Madras High Court, and also various law journals, which are now easily accessible online.

You must not see judicial service as service in the sense of employment. The judges are not employees. They exercise the sovereign judicial power of the state as prime dispensers of justice. Working in court of law is not purely mechanical but demands ability, alertness, resourcefulness, tact and imagination.

The recent decision by the Supreme Court in the Vodafone case pertaining to taxability over Capital Gains on an overseas transaction between 2 foreign companies (having non-resident status in India) as well as the Bayer case concerning sale of investment comprising of shares of an Indian Company has clearly brought home the need for the judiciary to be equipped with specialized knowledge to deal adequately with questions that are of international concern.

### **Final remarks**

Successful implementation of programs or practices requires attention to virtually all aspects of the system.

To conclude, I would like to convey that a vibrant subordinate judiciary is the need of the hour. Inordinate delays, escalating cost of litigation and inequality in the system sometimes make the delivery of justice on unattainable goal. But we have to be optimistic and work together to not just uphold the rule of law, but ensure that litigant does not lose faith in the maze that our legal system has become. Young judges must brace themselves to do their part which may be onerous but fully satisfying.

In a country like ours, where people consider Judges only second to God, efforts must be made to strengthen that belief of the common man.

If independent and efficient judicial system is to remain the basic structure of our Constitution, a competent subordinate judiciary is its indispensable link. I have full faith that you will fulfil this role dutifully and efficiently.

Thank You!



---

## **TAMIL NADU STATE JUDICIAL ACADEMY**

No. 30(95), P.S.K.R. Salai, R.A.Puram, Chennai 600 028.

Ph: 044 – 2495 8595 / 96 / 97 Fax: 044 – 2495 8595

<http://www.hcmadras.tn.nic.in/jacademy/indexnew.html>

E-mail: [tnsja.tn@nic.in](mailto:tnsja.tn@nic.in)