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# ILI Newsletter

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## Editorial

Belated incorporation of Fundamental Duties in a Constitution which has often been described as an "individualistic document" (by Sir Ivor Jennings) for its over-emphasis on rights can be said to be an exercise in self-reflexivity of a post-independent state which was beginning to perceive an inalienability between the two. Therefore, it is only befitting that to mark the celebrations of 70<sup>th</sup> anniversary of the adoption of the Indian Constitution on 26<sup>th</sup> November, Government of India has launched a nationwide campaign to spread awareness regarding fundamental duties. In the scheme of the Constitution of India a citizen is the fundamental unit of Indian polity – he is envisioned as the sovereign and the governed at the same time. Therefore, the values he espouses, the ethos he displays have an inevitable effect on the quality of democratic governance. Fundamental duties, although not originally part of the scheme of Indian constitution were rightfully included under it *via* 42<sup>nd</sup> amendment of the Constitution. The incorporation of fundamental duties under the Constitution was done on the basis of recommendations of the Swaran Singh Committee which was appointed by Government of India for a review of the Constitution. These recommendations were implemented in the form of incorporation of a new article 51A in Part IV A of the Constitution.

Contemporary jurisprudential understanding sees concept of rights and duties as inclusive of one another so much so that statements such as 'for every right, there is a corresponding duty' and that 'rights flow only from duties well performed' have become legal truisms. Even the international law instruments recognize the significance of duties in human affairs. The Universal Declaration of Human Rights, for instance, accords importance to fundamental duties under Article 29 (1) of the Declaration which states that, "everyone has duties to the community in which alone the free and full development of his personality is possible". The incorporation of Fundamental Duties in the Indian Constitution, therefore, was indeed a significant step. Originally ten fundamental duties were listed. Later on, by virtue of 86<sup>th</sup> Constitution Amendment in the year 2002, eleventh duty was added. Fundamental duties are essential for the fulfilment of societal goals and aspirations. Thus, adherence to them will no doubt ensure common brotherhood, fortify India's unity and integrity and improve the quality of life. Education system plays a pivotal role in constituting responsible citizens therefore it is essential that teaching of fundamental duties must be incorporated in the school and college curricula in such a way which brings about transformation in behaviour. Even the Courts have, in determination of a wide variety of cases at hand, have alluded to and creatively used the provisions of Article 51(A) of the Constitution.

The operationalization of citizenship values is indeed a complex and formidable task but it can only be meaningfully achieved by creating a widespread awareness about fundamental duties. It is not surprising therefore that the celebration of seventy years of the adoption of the Constitution of India will commence with a yearlong programme in which special focus will be on fundamental duties to promote constitutional values among citizens.

**Manoj Kumar Sinha**

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## ACTIVITIES AT THE INSTITUTE

### ILI-NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

#### 1. Two Day Training Programme for Prison Officials on “Human Rights: Issues and Challenges”(February 15-16, 2020)

The Indian Law Institute in collaboration with the National Human Rights Commission organised a Two Days Training Programme for Prison Officials on “Human Rights: Issues and Challenges” on February 15-16, 2020 at the Plenary Hall of the Institute. Professor (Dr.) Ranbir Singh, Vice Chancellor, National Law University, Delhi inaugurated the training programme and presided over the function. Smt. Jyotika Kalra, Member, NHRC was the Chief Guest at the function.



Smt. Jyotika Kalra and Prof. (Dr.) Ranbir Singh inaugurating the training programme



From L-R, Prof. (Dr.) Manoj Kumar Sinha, Prof. (Dr.) Ranbir Singh, Smt. Jyotika Kalra and Shri Shreenibas Chandra Prusty

While delivering the inaugural address the dignitaries emphasised on important aspects of Human Rights. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.



Participants of the training programme along with dignitaries

The first day of the programme consisted of five interactive technical sessions on different themes namely:

- Initiatives of the National Human Rights Commission in improving the conditions of the Indian prisons
- National Policy on Prison Reforms and Correctional Administration
- Indian prisons and issues related with overcrowding
- Rehabilitation and Aftercare service of Juveniles and youthful offenders

The speakers included Dr. Sanjay Dubey, Former Director, NHRC, Mr. Sunil Gupta, Former Law Officer, Tihar Jail, Mr. Arun Gupta, OSD and Ex-officio, DG & IG, Correctional Services, West Bengal and Mr. Vikram Srivastava, I-Thought, Noida.



Mr. Sunil Gupta addressing the participants

On second day of the programme important topics like, Protection of Human Rights of Juveniles in Remand Home, Correctional Home with Special Reference to new Juvenile Justice Act, Role of Media in Indian Judiciary in Protection of Under Trial Prisoners, Gender Sensitization of Prison Officials, Corruption and Criminal Justice System: Rights of Prisoners. The important speakers of the session included Mr. Shanshank Shekhar, Former Member, DCPCR, Ms. Anju Mangla, Deputy Secretary, Delhi Secretariat, Mr. Sudhanshu Ranjan, TVANC, Doordarshan News and Mr. Amit Vashist, RPFC, EPFO The programme was concluded with the distribution of certificates to all the 28 participants.

## 2. Two Day Training Programme for Judicial Officers on “Human Rights: Issues and Challenges” (March 14-15, 2020)

The Indian Law Institute in collaboration with the National Human Rights Commission organised a Two Days training Programme for Judicial Officers on “Judicial Officers and Human Rights: Issues and Challenges” on March 14-15, 2020 at the Plenary Hall of the Institute.



Views from the inaugural session of the training programme

The training programme was inaugurated by Hon'ble Mr. Justice Anirudha Bose, Judge, Supreme Court of India. While delivering the inaugural address, His

Lordship highlighted the importance of organising the training programme for the judicial officers on issues and challenges on Human Rights. The Chief Guest of the function was Smt. Jyotika Kalra, Member, NHRC also addressed the participants of the training programme. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

The programme was designed for judicial officers to bring a clear understanding about human rights violations and adopt an approach towards effective implementation of human rights issues. The participants were addressed by experts in the field of Human Rights and Justice Delivery System. During the Training Programme eminent speakers delivered lectures and interacted with the participants in different sessions.

The first day of the training programme consisted of four technical sessions on different aspects of Criminal Justice and Human Rights. Dr. Sanjay Dubey, Former Director, NHRC interacted with the participants on “Role of NHRC in Promotion and Protection of Human Rights”. Professor B.T.Kaul, Former Chairperson, Delhi Judicial Academy delivered a lecture on the topic “Criminal Justice and Human Rights of Accused” and Ms. Anju Mangla, Deputy Secretary, Delhi Secretariat interacted with the audience on the topic “Judiciary and Prison Reforms”. Mr. Sudhanshu Ranjan, TVANC, Doordarshan News spoke on “Role of Judiciary and Media”.

On the second day of the training programme, Dr. Jyoti Dogra Sood, Associate Professor, ILI delivered a lecture on “Criminal Justice and Human Rights” and Dr. Anurag Deep, Associate Professor, ILI delivered a lecture on “Law of Sedition in India and Human Rights Concerns”.



Dr. Jyoti Dogra Sood and Dr. Anurag Deep addressing the participants of the training programme

The valedictory session was graced by Hon'ble Mr. Justice Iqbal Ahmed Ansari, Chairperson, Punjab Human Rights Commission, Chandigarh. Delivering the valedictory address, His Lordship stressed on the need of creating awareness on Human Rights issues and challenges. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.



Valedictory session of the training programme

Certificates of participation were distributed to the participants of the training programme. Fifteen participants serving as Judicial Magistrates from various States participated in the training programme.



Participants of the training programme along with Director, Faculty of ILI

## OTHER PROGRAMMES

### One day Seminar Human Rights and Persons with Disabilities (January 11, 2020)

The Indian Law Institute in collaboration with the Law Mantra, Maharashtra National Law University, Nagpur, National Law University and Judicial Academy, Assam organised a One Day International Seminar on "Human Rights and Persons with Disabilities" on January 11, 2020 at the Plenary Hall of ILI.



Inaugural session of the seminar

The Seminar was inaugurated in august presence of Professor (Dr.) Manoj Kumar Sinha, Director, The Indian Law Institute, New Delhi, Professor (Dr.) Vijender Kumar, Vice-Chancellor, Maharashtra

National Law University, Nagpur, Professor (Dr.) J.S Patil, Vice-Chancellor, National Law University and Judicial Academy, Assam, Dr. Adish C Aggarwala, Senior Advocate & President, International Council of Jurists, London, Shri Khaleel Ahmad, Deputy Registrar (Law), NHRC and Mr. Kishor Kumar Mishra, President, Law Mantra. In the Inaugural session selected abstracts which were published in the form of Compilation published in Law Mantra Online Journal followed by the release of books titled “Human Right and Disability Law” Foreword by Professor (Dr.) Manoj Kumar Sinha, Director, The Indian Law Institute, New Delhi, edited by Professor (Dr.) Naresh Kumar Vats, Registrar, Rajiv Gandhi National University of Law, Punjab, “Women, Law and Society” edited by Professor (Dr.) Vijender Kumar, Vice- Chancellor, Maharashtra National Law University, Nagpur & Professor (Dr.) Naresh Kumar Vats, “Children, Law and Society”, edited by Professor (Dr.) Vijender Kumar, Vice- Chancellor, Maharashtra National Law University, Nagpur & Professor (Dr.) Naresh Kumar Vats, Registrar, Rajiv Gandhi National University of Law, Punjab, published by Victorious Publishers, New Delhi.



The valedictory session of the One-day seminar

The valedictory session was presided by Professor (Dr.) Naresh Kumar Vats, Professor of Law and Registrar, Rajiv Gandhi National University of Law, Punjab as chief guest and the other guests were Mr. Vivek Tanwar, Director, Kr. Vivek Tanwar Advocate & Associates, Gurugram, Professor (Dr.) Yugal Kishore, Dean, ICFAI Law School, Dehradun,

Professor (Dr.) Shefali Raizada, Addl Director/Joint Head(s), Amity Law School, Noida, Dr. Himanshu Pandey, Associate Professor of Law, Maharashtra National Law University, Nagpur (Guest of Honour). In the Seminar total 184 Participants presented their paper in different technical session. Total 119 papers were presented in 7 different technical sessions. Shri Aditya Mishra, Managing Trustee of Law Mantra and Organising Secretary of Seminar Ms. Akansha Jain, Joint Secretary, Law Mantra proposed vote of thanks.

### **Training Programme for Officer-Trainees of Indian Economic Services (January 27-31, 2020)**

The Indian Law Institute organised a One Week Probationary Training Programme for Officer-Trainees of Indian Economic Services 2018 batch on “International and National Economic and political Laws, RTI and Rule of Law” on January 27-31, 2020 at the Indian Law Institute.

The One-week training programme deliberated on the topics included “New International Economic Order, WTO, Economic Nationalisation, IPR, RBI, Insolvency and Bankruptcy Code, Law and Economic Crimes in India, RTI, Ease of Doing Business, Media Law, Banking Law, ADR, Banking Fraud, Cyber Crimes, Socio-Economic Crimes, Money Laundering and the Supreme Court and The Indian Constitution”. Experts like Dr. Vinai Singh, Assistant Professor and Deputy Director, ISIL, Mr. M.K. Rao, Secretary General, ISIL, Dr. Deepa Kharb, Assistant Professor, ILI, Dr.K.S. Kardam, Former Deputy Controller of IP, Prof. (Dr.) G. Mallikarjun Professor, Lloyd Law College, Noida, Dr. Lisa P. Lukose, Associate Professor, GGSIPU, Dr. Risham Garg, Associate Professor, NLUD, Mr. Amit Vashist, Regional PF Commissioner, Dr. Vikrant Narayan Vasudeva, Advocate, Supreme Court of India, Prof.(Dr.) M. Sridhar Acharyulu, Former CIC Commissioner, Dean, Benett University, Dr. G.R. Raghvendra Joint Secretary (National Mission for Justice Delivery & Legal Reforms), Prof. (Dr.) S. Sivakumar, Professor, ILI, Dr. Susmitha P. Mallaya, Assistant Professor, Delhi University, Mr. Sanjay Diwakar, Advocate, Supreme Court of India, Mr. Neeraj Aarora, Advocate, Supreme Court of India, Mrs. Arya A. Kumar, Assistant Professor, ILI, Dr. Anurag Deep, Associate Professor, ILI and Prof. (Dr.)S.N. Singh, Former Dean, Delhi University.



Participants of the training programme along with Dr.A.K.Verma, Deputy Registrar, ILI.

### One Day Legal Research Methodology Workshop on “Dissertation Writing” (January 28, 2020)

The Indian Law Institute organised a One Day Legal Research Methodology Workshop for Ph.D & LLM Students on “Dissertation Writing” on January 28, 2020 at the plenary hall of the Institute. This workshop was organized to give a proper training to LL. M. Learners and Ph.D. Research Scholars primarily to give an outlook on how to initiate their research and writing on dissertation and Ph D. The other objectives were to make the learners aware of research design, necessity to have ethics in research, difference between primary and secondary research, the value of mentor-mentee relation, the meaning of logics in syllogism and finally on evaluation of thesis or dissertation.

It was conducted by Prof. (Dr.) S. Sivakumar, Professor, ILI and the speakers were Prof. (Dr) Manoj Kumar Sinha, Director ILI; Prof. Kameshwari, Professor, Lloyd Law College; Ms Arya Kumar, Dr Deepa Kharb, Assistant Professors, ILI; Dr. T.K Vishwanathan, Padma Shri Awardee, Secretary General of the 15<sup>th</sup> Lok Sabha; Dr Lisa P Lukose, Associate Professor, Guru Gobind Singh Indraprastha University, Delhi and Prof. (Dr.) S. Sivakumar, Professor, ILI.



Prof. (Dr.) Manoj Kumar Sinha, Director, ILI delivering the lecture

At the outset, the event was summarized by Professor (Dr.) S. Sivakumar addressing the dais. He thus invited Professor (Dr.) Manoj Kumar Sinha, Director ILI to speak on Research Design. Stating that Research Design is very similar to the plan of an architect, Professor (Dr.) Manoj Kumar Sinha, divided research design into further components such as research plan to have a title and research problem, formulation of research hypothesis, research methodology and how important literature review. Taking the example of CAA, he stated what approach a researcher takes signifies the title, if on sovereignty or any theory or philosophy, it should be reflected. Thus he clarified how important it is to know about nationality while doing the research on citizenship. Citing the writings of Martha Nussbaum's theory on cultivating humanity in legal education, he emphasized upon how multi disciplinary approach in research is flourishing indicating the deficiency and widening research on various International Instruments. To him, this also necessitates the researcher to do ample reading on genesis and various national or international writings, developments. Literature review thus place a pertinent role.



Dr. Kameshwari addressing the participants of the programme

The next speaker was Dr. Kameshwari, who spoke on research *vis a vis* dissertation in interdisciplinary approach. She started her lecture by asking how important it is to know about the social or political condition while dealing with the topic such as corruption or juvenile delinquency. Further, the lecture went on to state that the various aspects of Philosophy, Psychology, and Economics also play an

important role while doing the research. When the research aims at finding the lacunae of any legislation or working condition of a statute in a society, it has to take into account the institutions and other machineries or stake holders. This is why CVC or CBI or Police force also comes under the study when the topic is of “corruption”. Highlighting that different approach by way of multi-disciplinary or quasi disciplinary approach can help to form fine research questions, the lecture ended up with the necessity to have a holistic approach while doing the research.



Dr. Deepa Kharb, Assistant Professor, ILI delivering the lecture

After a short break for tea, the session resumed with Dr. Deepa Kharb's lecture on Mentor-Mentee relation. This was more on the fiduciary relation a mentor and mentee holds while research goes on. As primary facets, loyalty or trust and honesty were considered as food and fuel to the bonding. It was remarked that just like any partnership, the mentor and mentee need to create such ambit to have healthy discussions. As a part of this, forming the compatibility is very substantial and for this expectations have to be balanced. It was further observed that communication, giving space for each other, streamlining and discussion were found as very important. The relation can be affected if problems arise, which according to the speaker could be predictable and preventable. For this, students were classified as active learners, passive learners and disinterested category. Concluding that the relation needs to be balanced two-way, the point stressed by the speaker was if the researcher doesn't take initiative, it is her or his research that get hampered.



Ms Arya Kumar, Assistant Professor, ILI delivering the lecture

The fourth speaker was Ms Arya Kumar who spoke on application of logic in doing the research. Dealing with syllogism, deductive and inductive reasoning, the speaker had talked about the major premise and minor premise. By quoting Justice Holmes famous comment “Life of law has not been logic and it has been experience”, the speaker then went on to explain on Jurimetrics and its technical issues. The lecture was concluded by stating that use of any computer technology may hamper the logical reasoning.

The very next speaker was Dr. Anurag Deep, who spoke about the editing and proof reading in research. By providing two different articles by eminent authors published in celebrated publishing house, the speaker asked the audience to find if any mistakes in certain paragraphs of the distributed articles. When the audience could cite the mistakes, the speaker remarked how such factual mistakes can happen despite written by eminent persons and reviewed by famous publishers. There he stated the necessity to have proof reading and the name or fame does not matter. Explaining the way ILI law review works, the speaker went to in to explain how editing can actually change the aspect of writing of an author. The comments and remarks of a proof reader could make the author re-write a piece also how the author could revise his stand from such third party comments. This session was concluded with a lunch break.

Post lunch saw the session by Dr. T K Vishwanathan, the ex-Law Secretary who spoke about the legislation as primary source of research. He being a part of legislation process explained how difficult the drafting process of a statute. Quoting the jurists such as Jeremy Bentham and Jeremy Hall, he stated the need for the legislative scrutiny to be a rigorous

process. Further stating the every law is an infraction of liberty, he stressed upon the current over-criminalization system existing whenever conviction don't happen properly. The lecture was concluded by suggesting to have an Impact analysis on legislation so that necessary amendments can be possible before it is scrutinized by Judiciary and thus repeal after many years can be prevented.

The next session was taken by Dr. Lisa P Lukose, who spoke on secondary sources and ethics in research. Clearly segregating the differences between primary and secondary sources, she spoke on how a journal article can also be a primary source if it is the very piece writing for the first hand information. Then she went on to explain the importance of ethics in research citing the UGC regulation on Higher Studies dealing with similarity index and its cut off percentages. Stating that ethics imply honesty, transparency and acknowledgment of others work, she highlighted on the importance of having originality and absence of misrepresentation in one's research. Carefulness and sincerity if one researcher possess, she stated, it would imply proper research and responsibility in writing or citing the work. Also dealing upon ethics in non-doctrinal study, she cited how important the consent is while dealing with any recording or taking any questionnaire.



The concluding session was taken by Professor (Dr.) S. Sivakumar who spoke on the evaluation in a thesis. Professor dealt with the importance of each one in detail. Explaining the current ILI format of Thesis Declaration and Certificate, Professor highlighted on the off-putting impact of high similarity index in many so-called research and its ramifications. The main text comprising of the introduction, chapter and

conclusion therefore how can be written in a research oriented manner was the crux of discussion thereafter. The zero level tolerance is necessary in conclusion and recommendation for the concluding remarks researcher having cannot presumably be copied. He further went on to state the example of writing a piece on CAA where history and objective of Statute necessarily to be looked into. Further he stated that if any case is used as reference- two lines on its facts and judgment summary is to be mentioned for any readers to understand. Likewise if any article or book is stated in paper, the background in one line is good to be written for reader's convenience. He further explained on Bibliography to be written properly by citing International Documents or Conventions, Constitution, Indian Statutes, Delegated Legislations, Commission and Committee report as one by one. He went on dealing with the value addition and contribution a research can bring in, Professor concluded by stating uniqueness and objectivity in research. The brainstorming session was thus concluded by Professor (Dr.) S. Sivakumar mentioning that a second edition of this workshop can be developed and planned. Every researcher indeed had a day of deliberation and discussion.



### **One Day Conference on Changing Contours of International Refugee Law and the Indian Position (February 1, 2020)**

The Indian Law Institute organised a one day National Conference on “Changing Contours of International Refugee Law and the Indian Position” on February 1, 2020 at the Institute. The seminar extensively discussed various issues pertaining to the plight of refugees from national and international perspectives.



Hon'ble Mr. Justice K.G. Balakrishnan former Chief Justice of India & former Chairperson of the National Human Rights Commission of India inaugurating the workshop

The speakers and participants engaged in critical debates covering various perspectives on the matter of Refugee status, entry into national territory, further protection and legal rights, duties of states etc. The speakers included Mr. Narinder Singh, Former Chairman, International Law Commission (United Nations), Mr. Harsh Mander, Director, Centre for Equity Studies, speakers from ICRC, UNHCR. Members of the academia and other researchers participated in the Conference. The Conference was coordinated by Dr. Jyoti D. Sood, Associate Professor, ILI and the student coordinators were Mr. Setu Gupta and Ms. Aswathy Madhukumar, Research Scholars, ILI.



Inaugural session of the workshop

Hon'ble Mr. Justice K.G. Balakrishnan, former Chief Justice of India/ Chairman, NHRC inaugurated the Seminar. Professor (Dr.) Manoj Kumar Sinha, Director, ILI welcomed the participants.



### One Day Workshop on “MOOCS: Design, Development and Deliver (February 19, 2020)

The Indian Law Institute organised a one day workshop on “MOOCS: Design, Development and Deliver” to introduce MOOCS pedagogy and the open source on February 19, 2020 at the Institute.



Dr. Jyoti D. Sood addressing the participants



Dr. (Mrs.) Pankaj Mittal inaugurating the programme

The Chief Guest of the programme Dr. (Mrs.) Pankaj Mittal, Secretary General, Association of Indian Universities inaugurated the programme. In her inaugural speech she highlighted that to enable and enhance the teacher's skills in integration and adoption of new technologies in teaching and learning process, It is necessary to be updated with the supporting tools and techniques for e- teaching. The primary objective of this workshop was how to create and teach MOOCs with novel Pedagogy process, Various steps involve in designing and delivery of online and MOOCs Courses, Examine strength and weakness of online platform and best practices of MOOCs. Eminent Guest Prof. K.Srinivas Head of ICT & PMU of National Institute of Educational Planning and Administration (NIEPA), MHRD, Govt. of India, New Delhi was the Resource Person of this workshop. This workshop was jointly coordinated by Dr. Deepa Kharb, Assistant Professor ILI, Mrs. Gunjan Jain, Assistant Librarian ILI, Mr. Bhoopendra Singh, CSA, ILI.



Participants of the training programme along with dignitaries

### **One day Consultation for Juvenile Justice Stakeholders in Delhi on their Roles & Responsibilities (February 20, 2020)**

The Indian Law Institute (ILI) in collaboration with Centre for Research and Advocacy for Child Rights & Persons with Disability (CRACR&PD) and Delhi Commission for Protection of Child Rights (DCPCR) organised a One Day Consultation for Juvenile Justice Stakeholders in Delhi on their Roles and Responsibilities on February 20, 2020. The participants included officials of SJPU, Probation Officers including LPOs, the DCPO, PO-IC, PO-NIC, social workers and counsellors at the DCPUs and CWCs. The consultation aimed at meaningful engagements with all stakeholders regarding their roles, responsibilities and working in tandem towards betterment of children.

The inaugural session was addressed by Shri Ramesh Negi, Chairperson, DCPCR; Dr. Jyoti Dogra Sood, Associate Professor, ILI; Ms. Rita Singh, Member, DCPCR; Mr. Shashank Shekhar, Advocate, Former Member, DCPCR & Founding Member, CRACR&PD; Mr. S.B. Shashank, IAS, Director, Women and Child Development. The technical sessions had group presentations by the stakeholders which was moderated by Ms. Rita Singh and Mr. Shashank Shekhar.

The consultation ended with a session on the Way Forward where the day's proceedings were summarized and analyzed and a way forward was presented. The consultation on behalf of ILI was coordinated by Dr. Jyoti Dogra Sood, Associate Professor, ILI.



Views from the One Day Workshop on 'MOOCs: Design, Development and Deliver'



Views from the One day Consultation for Juvenile Justice Stakeholders in Delhi.

## PROGRAMME HELD IN PREVIOUS QUARTER

### One-Week Programme on Legal Awareness (December 12-18, 2019)

The Indian Law Institute in collaboration with Delhi State Legal Services Authority conducted a one-week programme on legal awareness in Sanjay Colony, Chanakypuri from December 12-18, 2019. The topics included fundamental rights, fundamental duties, Juvenile Justice Act, POCSO, Child Labour Prohibition Act and Justice Administration was extensively covered in this programme. The programme was coordinated by Dr. Jyoti Dogra Sood, Associate Professor, ILI and Mr. Chander Jit Singh, Secretary, New Delhi District Legal Services Authority. The sessions were conducted by Ph.D scholars and LL.M. students of ILI namely Ms. Aswathy Madhukumar, Mr. Setu Gupta, Ms. Aparna Singh, Ms. Saumya, Mr. Jatin Kalon, and Ms. Pooja.



Mr. Chander Jit Singh, Secretary, New Delhi District Legal Services Authority interacting with the participants of the programme

## STATE UNIT ACTIVITIES

The ILI State unit, Chandigarh Chapter in collaboration with High Court Legal Services Committee organised a training programme on “Deciphering Cyber Laws and Enforcement” on January 18, 2020 at Chandigarh Judicial Academy, Chandigarh. The training programme was organised

with an objective to enhance the skills of the legal aid panel lawyers. Under the able guidance of Hon'ble Mrs Justice Daya Chaudhary, Executive Chairperson, ILI State Unit experts like Ms. Reema Bhandari and Mr. Manish Manocha of New Delhi interacted with the participants of the training programme.



Views from the training programme

## EXAMINATION

Result for the LLM, First Semester examination was declared in February, 2020.

## SPECIAL LECTURES

- The Indian Law Institute organized a special lecture by Dr. Ramesh C. Gaur, Dean and Director (Library & Information) & Head - Kala Nidhi Division at Indira Gandhi National Centre for the Arts (IGNCA), New Delhi, Ministry of Culture, Government of India on Research Ethics and Plagiarism for faculty, staff, Ph.D and LL.M. students of institute on January 22, 2020.



- Talk on "Indian Constitution" by Professor. M.P Singh on January 23, 2020 and February 27, 2020 at ILI.



As part of the celebrations of seventy years of adoption of the Indian Constitution, a talk is being organised on Indian Constitutional Law by Professor (Dr.) G. Mohan Gopal, Former Director of National Judicial Academy on February 27, 2020 at 4.00-5.00 pm at the Plenary Hall of ILI.



## HONORARY PROFESSOR



Honorary Prof. A. R. Blackshield and Rosemary

Professor Blackshield first visited India (in 1963) for a seminar on the teaching of jurisprudence in India (at Mount Abu, Rajasthan). His later visits included two periods of work at the Indian Law Institute (ILI) – in 1965 as a Ford Foundation Consultant, and in his second visit in 1997 when he was conferred Honorary Professor of the ILI and since then he has

been associated with the ILI and takes interest in the academic activities of the ILI. Among his contributions to the *Journal of the Indian Law Institute*, his articles on “‘Fundamental Rights’ and the Institutional Viability of the Indian Supreme Court” (in 1966) and on “Capital Punishment in India” (in 1979) were particularly influential. According to Madhav Khosla, *The Indian Constitution* (Oxford, 2012, page 182), the 1966 article and its sequel in 1968 remain “indispensable accounts” of the early development of India's Fundamental Rights.

At home in Australia, Professor Blackshield was a founding member in the 1970s of the Faculty of Law at the University of New South Wales. He had previously taught in the Department of Jurisprudence and International Law at the University of Sydney (together with his friend Upendra Baxi). Later he taught at La Trobe University (in Melbourne) and Macquarie University (in Sydney), where he is now an Emeritus Professor. Until its fifth edition in 2010, he was co-author of Blackshield & Williams, *Australian Constitutional Law and Theory*, now in its seventh edition. He was also a co-editor of *The Oxford Companion to the High Court of Australia*, published in 2001.

In 2014 he was appointed as an officer of the Order of Australia, for distinguished service to the law as an academic, to legal education and scholarship. In 2020 Professor Tony Blackshield and his wife, Professor Rosemary Huisman, were Distinguished Scholars in Residence at NALSAR University of Law, near Hyderabad, where Professor Blackshield taught a course on Comparative Constitutional Law, comparing judicial decisions from the United States, Canada, Australia, India and South Africa.

## VISITS TO THE INSTITUTE

- 16 students of Kashmir law College, Srinagar visited Indian Law Institute on January 17, 2020.
- 5 students of K R Mangalam University, Gurugram visited Indian Law Institute on January 27, 2020.

- 60 students of Surendranath Law College, Kolkata visited Indian Law Institute on February 02, 2020.
- 29 students of Pendekanti Law College, Chikkadapally, and Hyderabad visited Indian Law Institute on February 12, 2020.
- 36 students of Indian Institute of Legal Studies, Siliguri, Darjeeling, and West Bengal visited Indian Law Institute on February 14, 2020.

## STAFF MATTERS

**Mr. Bhoopendra Singh, Computer System Administrator, ILI**, published an article on "Role of Cyber security in e-Learning Education" published in "International Journal of Advanced Science and Technology (Scopus Indexed Journal).

## RESEARCH PUBLICATIONS

### *Released Publications*

- \* Journal of the Indian Law Institute (JILI) Volume 61 (4) (October-December, 2019).
- \* ILI Newsletter Vol. XXI, Issue (IV) (October-December, 2019).
- \* Book titled *Rethinking Law and Violence* by Dr. Latika Vashisht and Dr. Jyoti Dogra Sood.

### *Forthcoming Publications*

- \* Journal of the Indian Law Institute (JILI) Vol. 62(1) (January - March, 2020).

## FORTHCOMING EVENTS

The Indian Law Institute in association with Association of an Law Institute Alumni (AILIA) will conduct a series of webinars on Law Media and Covid -19: Issues and Challenges from May-June, 2020.

## LIBRARY

Library Added 20 Books on Intellectual Property Rights, Human Rights, Criminal Law, Civil Law, Constitution Law and Tax Law

## E-LEARNING COURSES

### Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E Learning course of three months duration on “Cyber Law” (35th batch) and “Intellectual Property Rights and IT in the Internet Age” (46th batch) was started on January 21, 2020.

## FACULTY NEWS

**Professor (Dr.) Manoj Kumar Sinha, Director, ILI** delivered a talk on “Research Design: Formation, Components and Structure” to the participants of One week workshop on Research Methodology in Law, organised by Faculty of Law, Maharshi Dayanand University, Rohtak on March 3, 2020. He was also invited as the Guest of Honour to deliver special address in the Inaugural function of the Virtual Law School, organised by Virtual Law School on March 27, 2020.

**Dr. Jyoti Dogra Sood, Associate Professor, ILI** addressed judicial officers on the topic “Criminal Justice and Human Rights” in a Two day Sensitization programme for judicial officers on Human Rights: Issues and Challenges on March 15, 2020 at ILI.

## LEGISLATIVE TRENDS

### THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2020

(Act No. 1 of 2020)

The Insolvency and Bankruptcy Code, 2016 was enacted by the Parliament with the aim to provide and revamp the framework for insolvency resolution in India in a time bound manner and for the promotion of entrepreneurship, credit availability and balancing of different interests of each and every stakeholder of a Company. The Code has been amended time to time since its enactment to remove bottlenecks and to streamline the Corporate Insolvency Resolution Process under the Code. The Amendment Act has amended Sections 5, 7, 11, 14, 16, 21, 23, 29A, 32A, 227, 239 and 240 of the Code.

### **THE MINERAL LAWS (AMENDMENT) ACT, 2020**

(Act No. 2 of 2020)

The Act was enacted to further to amend the Mines and Minerals (Development and Regulation) Act, 1957 and to amend the Coal Mines (Special Provisions) Act, 2015.

### **THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020**

(Act No. 3 of 2020)

The Direct Tax Vivad se Vishwas Act, 2020 introduced a dispute resolution scheme, which was applicable to all appeals/petitions filed by the taxpayers or the income tax department, which were pending until January 31, 2020, before any appellate forum. In essence, it offered complete waiver of interest and penalty if the taxpayer agreed to pay the disputed tax amount by March 31, 2020.

### **THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2020**

(Act No. 4 of 2020)

The Act was enacted to further to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of the Scheduled Tribes in the State of Karnataka.

### **THE JAMMU AND KASHMIR APPROPRIATION ACT, 2020**

(Act No 8 of 2020)

The Act was enacted to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Jammu and Kashmir for the services of the financial year 2019-20.

### **THE CENTRAL SANSKRIT UNIVERSITIES ACT, 2020**

(Act No. 5 of 2020)

The Act was enacted with an objective in spreading the knowledge of Sanskrit language not only in India but also across the world in a better way. The Act accords central university status to three 'deemed' universities on Sanskrit studies, including, Rashtriya Sanskrit Sansthan (New Delhi), Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth (New Delhi)

## **LEGAL JOTTINGS**

### **Discretion of granting bail exercised in contravention of directions of apex court may be set aside**

This batch of appeals arises from a judgment of a learned Single Judge of the High Court of Rajasthan at its Jaipur Bench. Allowing the bail application filed under section 439 of the Code of Criminal Procedure, 1973 (Cr. P.C), the High Court enlarged the first respondent on bail subject to certain conditions therein. The original complainant is in appeal before this Court.

Hon'ble Dr. D.Y. Chandrachud and Hrishikesh Roy, JJ, have held that essentially, this court is required to analyse whether there was a valid exercise of the power conferred by section 439 of the Cr. PC to grant bail. The power to grant bail under section 439 is of wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course.

The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight

jacket formula exists for Courts to assess an application for the grant or rejection of bail, the Court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an Appellant Court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail. Where a Court considering an application for bail fails to consider relevant factors, an Appellate Court may justifiably set aside the order granting bail. An Appellate Court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. Without expressing any finding or opinion on the merits of the case, a case has been made out for setting aside the bail granted by the High Court. The High Court has manifestly erred in not taking note of the material which has been adverted to above. The order passed by the High Court fails to notice material facts and shows a non-application of mind to the seriousness of the crime and the circumstances referred to earlier which ought to have been taken into consideration.

The High Court has erred in not considering material relevant to the determination of whether the accused were to be enlarged on bail. The order of the High Court enlarging the accused on bail is erroneous and liable to be set aside. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the Court for the exercise of its disciplinary power. In the present case, where an order refusing or granting bail does not furnish the

reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the Appellant Court to furnish specific reasons as to why bail should be granted.

*(Mahipal v. Rajesh Kumar; 2020 (205) AIC 5 SC, decided on December 5, 2019)*

### **Quasi Judicial bodies on Child rights should not fight over their jurisdictions**

Showing dismay over the fact that the National Commission for Protection of Child Rights (NCPCR) and the West Bengal Commissions for Protection of Child Rights set up to protect children have been at loggerheads over their so called jurisdictions, the bench of Deepak Gupta and Aniruddha Bose, JJ held that there is no dispute over the jurisdiction of the two Commissions and that it was sorry that it had to spend its time resolving such disputes. Stating that in the fight between the State Commission and the National Commission the children have been, all but forgotten. The Court dealing with the issue wherein the NCPCR initiated an inquiry into the reports of Child Trafficking in the State of West Bengal, the NCPCR sought reports from various authorities, including Dr. Rajesh Kumar ADGP, CID West Bengal. It, however, received no response whatsoever from any authority. It, therefore, summoned the ADGP who responded by stating that the WBCPCR had already taken cognizance of the matter and, therefore, the NCPCR is barred from taking up the inquiry. To this the NCPCR responded that if he did not appear before it, action against him will be taken under Section 166A of the Indian Penal Code, 1860. Thereafter, Dr. Rajesh Kumar sent a detailed reply challenging the authority of the NCPCR to summon him and also taking exception to the language used in the letter.

When the matter reached Calcutta High Court, it stayed the NCPCR inquiry which then resulted into the present case before the Supreme Court. The Supreme Court held that from a perusal of the documents on record it was apparent that Dr. Rajesh Kumar did not cooperate with the NCPCR. It said,

“We fail to understand why this police official took such a step. We may mention that he has not been served despite various attempts by this Court. It

appears to us that he does not want to appear before us on one pretext or the other.”

It further noticed that the answer given by the State CID to the NCPCR is that the documents are lying with the Court. The Court was called upon to answer the following Jurisdictional issues:

Whether Section 13 (2) of the CPCr Act places the two Commissions in watertight compartments where they oust the jurisdiction of each other?

There is no question of ouster of jurisdiction of any Commission. The only constraint placed by Section 13(2) is that if the State Commission has already started an inquiry, the National Commission should naturally refrain from inquiring into the matter. This, however, does not mean that the National Commission cannot go into the other larger questions which may have led to the specific incidents of violation of child rights which need to be inquired into.

Whether in a case which has interstate or international ramifications the jurisdiction, if any, of the NCPCR can be ousted? Even a State Commission has the power to inquire into those matters which fall within its purview and even if the illegality is such that it has interstate or international ramifications, e.g. a child is being illegally sent for adoption abroad. However, if the State Commission in such a case asks for assistance from the National Commission or some other State Commission where the child may have been illegally trafficked, the National Commission or the other State Commission(s) should cooperate with the Commission inquiring into the matter.

The Court concluded by saying that both the Commissions have to work for the best interest of the children in a spirit of cooperation and that there were no jurisdictional issues involved.

*(National Commission for Protection of Child Rights v. Dr. Rajesh Kumar, 2020 SCC OnLine SC 27, decided on January 13, 2020)*

### **Members of subordinate judiciary can't claim direct recruitment to the District judge post under quota meant for practicing advocates**

A 3-judge bench of Arun Mishra, Vineet Saran and S. Ravindra Bhat, JJ has held that members of the judicial service of any State cannot claim to be

appointed for vacancies in the cadre of District Judge, in the quota earmarked for appointment from amongst eligible Advocates, under Article 233.

The Court was hearing a reference from a case wherein the petitioners who are in judicial service, had claimed that in case before joining judicial service a candidate has completed 7 years of practice as an advocate, he/she shall be eligible to stake claim as against the direct recruitment quota from the Bar notwithstanding that on the date of application/appointment, he or she is in judicial service of the Union or State.

Rejecting the contention of the petitioners, the Court held,

“Though the appointment is made under Article 233(1), but the source and the channel for judicial officers is the promotion, and for the members of the Bar is by direct recruitment.”

The Court told the petitioners that it was open to them not to join the subordinate services. They could have staked a claim by continuing to be an advocate to the Higher Judicial Service as against the post of District Judge. However, once they chose to be in service, if they had seven years' experience at Bar before joining the judicial service, they are disentitled to lay a claim to the 25% quota exclusively earmarked for Advocates; having regard to the dichotomy of different streams and separate quota for recruitment.

“The recruitment from the Bar also has a purpose behind it. The practicing advocates are recruited not only in the higher judiciary but in the High Court and Supreme Court as well. There is a stream (of appointment) for in-service candidates of higher judiciary in the High Court and another stream clearly earmarked for the Bar. The members of the Bar also become experts in their field and gain expertise and have the experience of appearing in various courts.”

Justice Mishra, writing for himself and Justice Saran, hence, held:

- The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.
- The Governor of a State is the authority for the purpose of appointment, promotion, posting and

transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

- Under Article 232(2), an Advocate or a pleader with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.
- For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.
- The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

Writing down a separate but concurrent view, Justice Bhat also held that under Article 233, a judicial officer, regardless of her or his previous experience as an Advocate with seven years' practice cannot apply, and compete for appointment to any vacancy in the post of District Judge; her or his chance to occupy that post would be through promotion, in accordance with Rules framed under Article 234 and proviso to Article 309 of the Constitution of India. Stating that *the Constitution makers envisaged that at every rung of the judicial system, a component of direct appointment from members of the Bar should be resorted to*, Justice Bhat said,

“The Constitution makers, in the opinion of this court, consciously wished that members of the Bar, should be considered for appointment at all three levels, i.e. as District judges, High Courts and this court. This was because counsel practising in the law courts have a direct link with the people who need their services; their views about the functioning of the courts, is a constant dynamic.”

The Court also overruled the decision in *Vijay Kumar Mishra v. High Court of Judicature at Patna*, (2016) 9 SCC 313 providing eligibility, of judicial officer to

compete as against the post of District Judge by way of direct recruitment.

(*Dheeraj Mor v. High Court of Delhi*, 2020 SCC OnLine SC 213, decided on February 19, 2020)

### **Rejection of mercy petition by the President on the ground of juvenility in *Nirbhaya* case**

**The Supreme Court by putting the last nail in the coffin** for the *Nirbhaya* death row convicts who were hanged, the 3-judge bench of R. Banumathi, Ashok Bhushan and AS Bopanna, JJ dismissed the plea file by Pawan Kumar Gupta challenging the rejection of his mercy petition by the President on the ground that his plea of juvenility had not been finally determined and this aspect was not kept in view by the President of India while rejecting his mercy plea.

The hearing that took place late at night at 2:30 AM wherein the Court rejected Pawan's plea of juvenility and held that the said plea has already been duly considered and rejected by the Courts before and there was no need to go into it again. On the contention that due to torture in the prison the petitioner had sustained head injuries and that he was sutured with more than 10 sutures and proper treatment was not given to the petitioner, the Court held,

“The alleged torture, if any, in the prison cannot be a ground for judicial review of the executive order passed under Article 72 of the Constitution of India rejecting the mercy petition.”

On the ground that petitioner might not have shared the common intention along with other co-accused and that he cannot be imposed the grave capital punishment, the Court said that the said ground has been considered both by the Trial Court as well as the High Court and by this Court and the petitioner Pawan Kumar Gupta has been found guilty and convicted. Hence, dismissing the petition the Court concluded,

“When the power is vested in the very high constitutional authority, it must be presumed that the said authority had acted carefully after considering all the aspects of the matter.”

The 23-year-old paramedic student, referred to as *Nirbhaya*, was gang raped and brutally assaulted on the intervening night of December 16-17, 2012 in a

moving bus in south Delhi by six people before being thrown out on the road. She died on December 29, 2012 at Mount Elizabeth Hospital in Singapore. The friend with whom Nirbhaya boarded the bus was also beaten, gagged and knocked unconscious with an iron rod by the accused. He suffered broken limbs but survived.

(*Pawan Kumar Gupta v. State of NCT of Delhi*, 2020 SCC On-Line SC 340, decided on March 20, 2020)

## CASE COMMENTS

### *Indian Social Action Forum v. Union of India*

2020 (5) SCALE 515

Decided on March 6, 2020

In this case the petitioner approached the Supreme Court of India against the decision of the High Court of Delhi in which the writ petition filed by the petitioner was dismissed. The petitioner had approached the High Court requesting the Court to declare that sections 5(1) and 5(4) of the Foreign Contribution (Regulation) Act, 2010 and Rules 3(i) and 3(vi) of the Foreign Contribution (Regulation) Rules 2011 were violative of Articles 14, 19(1)(a), 19(1)(c) and 21 of the Constitution of India. The petitioner challenged the power conferred to the Central Government of declaring an organization to be an organization of a political nature under the section 5(1) of the Act on the ground that no guidelines were provided for the exercise of such power. The High Court dismissed the petition and aggrieved by the decision the Petitioner filed this appeal. The main objection of the Appellant-organization to section 5(1) of the Act was that the terms activity, ideology and programme were vague and not defined with clarity in the Act which resulted in conferring excess power to the executive and thus it was alleged that section 5(1) violates the article 14 of the Constitution. The Supreme Court found that the observation of the High Court regarding section 5(1) didn't suffer from any infirmity thereby making it fall outside the scope of Article 14. Another contention of the Appellant was that the guidelines in Rule 3 of the Rules are vague and there are huge possibilities of abuse of power by bringing voluntary organization within its ambit. It was further submitted that this may lead to denial of receiving foreign fund by an

organization which has no interest in active politics. Thus, it was alleged that there is an infraction of Article 19 of the Constitution as the Rules are also unreasonable and violate the freedom of speech and expression and the right to form associations protected Under Article 19(1)(a) and 19(1)(c) of the Constitution. In this regard, the Court agreed with the argument on behalf of the Union of India that the Appellant-organization is not entitled to invoke Article 19 because no member of the Appellant – organization is arrayed as party. Article 19 guarantees certain rights to all citizens. The Appellant, being an organization, cannot be a citizen for the purpose of Article 19 of the Constitution. The Court observed that it is settled principle of interpretation that the provisions of statute have to be interpreted to give the words a plain and natural meaning. However, if there is possibility of two interpretations, in such a case the Courts have preferred purposive construction. In case of ambiguity in the language used in the provision, the courts can take aid from the historical background, the parliamentary debates and the aims and objects of the Act including the long title. The Court held that a balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organizations to have access to foreign funds. The purpose of denying foreign funds to those who are actively involved in active politics is to ensure that the values of a sovereign democratic republic are protected. The Court also made it quite clear that in case of those voluntary organizations which have absolutely no connection with either party politics or active politics, they cannot be denied receipt of contributions from foreign sources. Therefore, such organizations which are working for the social and economic welfare of the society cannot be brought within the ambit of the Act or the Rules by enlarging the scope of the term 'political interests'. Any organization which supports the cause of a group of citizens and is engaged in agitating for their rights without a political goal or objective cannot be penalized by being declared as an organization of a political nature. The Court observed that the expression 'political interests' in Rule 3(v) has to be construed only in connection with active politics or party politics.

This decision has removed the ambiguity which was raised by the Appellant and also clarified that the

object of the Act is to ensure that Parliamentary institutions, political associations and academic and other voluntary organizations as well as individuals working in the important areas of national life should function in a manner consistent with the values of sovereign democratic republic without being influenced by foreign contributions. The organizations which are working for the welfare of the society are entitled to receive the foreign funds. It also made clear that the government is required to take into account the activities, ideology or the programme of the organization including the association of the organization with activities of any political party before declaring an organization as an organization of political nature not being a political party.

**Manoj Kumar Sinha**

***Saumitra Kumar Nahar v. Parul Nahar***

*2020 (4) SCALE 24*

Decided on February 19, 2020

Children are often the most vulnerable group and the victims of violence both within and outside the home. Over the past decade, the international community has increasingly responded to the need to enhance the child rights. Unfortunately, the children neither benefit from adequate protection of their rights nor from child-friendly procedures. Since children are dependent on adults, the realisations of their rights are mostly depended on the parental responsibilities.

In the present case, in a battle for custody of two minors who were forced to stay in a boarding school due to an ongoing marital dispute between their parents, the bench of AM Khanwilkar and Ajay Rastogi, JJ has said,

“No matter which parent wins but the child is always the loser and it is the children who pay the heaviest price as they are shattered when the Court by its judicial process tells them to go with the parent whom he or she deems. The rights of the child need to be respected as he/she is entitled to the love of both the parents. Even if there is a breakdown of marriage, it does not signify the end of parental responsibility. It is the child who suffers the most in a matrimonial dispute.”

In addition to the above, the Court stated that in matrimonial cases, all the endeavours are to be made to resolve the matrimonial disputes in the first instance through the process of mediation which is one of the effective modes of alternative mechanism in resolving the personal disputes but if it couldn't make possible in resolving through the process of mediation, further endeavour must be made by the Court through its judicial process to resolve such personal disputes as expeditiously as possible.

The father of the children submitted before the Court that the guardianship of both the minor children be handed over to him as they are living separately from both the parents for quite some time and if he is unable to persuade this Court in taking the custody of the minor children, liberty may be granted to him to file a separate guardianship petition before the competent authority and the interim arrangement made by this Court may remain subject to the outcome of the stated petition, if any, being filed by either party regarding custody of the minor children.

The mother, on the other hand, argued that both the paternal grandparents of the children have recently passed away and there is no one who may have a positive influence on the children and who may contribute and ensure their wellbeing and cultural growth. Further, there is no female member in the house to look after the growing daughter at present and at least she may be permitted by the school administration to have a glimpse of her beloved children to which she is entitled for under the law as their mother.

After taking note of all the submissions and the facts of the case, the Court held that the interim arrangement which has been made by the court and orders passed thereafter shall continue with a liberty to the parties to file independent proceedings for the custody or guardianship of the minor children before the competent Court of jurisdiction which, if instituted, may be decided independently in accordance with law and that alone would be in the best interest of the children.

In this significant judgement, the Hon'ble Supreme Court has rightly observed that the parental responsibility of the couple does not end even if there is a breakdown of the marriage.

**Arya A Kumar**