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Editorial

The 24th Conference of the Parties (COP) of the United Nations Framework Convention on Climate Change (UNFCCC) took place from December 2-15, 2018 in Katowice, Poland. The most important outcome of COP24 was that the countries have agreed on a "rulebook", which is the operating manual needed for when the global deal enters into force in 2020. The Rulebook spells out the details on implementing the Paris Climate Agreement. It lays down how countries' national climate contributions should be measured, compared and forwarded to the UNFCCC secretariat. The Paris Agreement Rulebook contains detailed rules and guidelines for implementing the landmark global accord adopted in 2015, covering all key areas including transparency, finance, mitigation and adaptation. Under the Paris Agreement, developed countries have to provide financial resources to developing countries to help them to mitigate and adapt to the risk posed by climate change. The international community had pledged in Paris 100 billion US dollars annually from 2020 in order to help developing countries and emerging economies implement the Paris Climate Agreement. India and other developing countries wanted a transparent roadmap on how these funds would be transferred. This will start a new international climate regime under which all countries will have to report their emissions – and progress in cutting them – every two years from 2024.

In addition to the "rulebook", the conference focused on other key issues including the conclusion of 2018 Facilitative Talanoa Dialogue and the stock take of Pre-2020 actions implementation and ambition. In addition, the first Talanoa Dialogue took place at COP24, during which the international community reviewed global emissions reductions since 2015. The countries discussed how they can step up their efforts and increase their national climate targets, thus sending the clear message that they want to see more climate protection. India engaged positively and constructively in all the negotiations while protecting India's key interests including recognition of different starting points of developed and developing countries; flexibilities for developing countries and consideration of principles including equity and Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC).

Manoj Kumar Sinha

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Inside

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NEW PRESIDENT OF ILI

Hon'ble Mr. Justice Ranjan Gogoi
Chief Justice of India/President, ILI

Hon'ble Mr. Justice Ranjan Gogoi, assumed the august office of the Chief Justice of India on October 3, 2018. Justice Gogoi was born on November 18, 1954 as the son of the Congress leader Kesab Chandra Gogoi who served as the Assam Chief Minister in 1982. His Lordship was enrolled at the bar in 1978, and practised at the Gauhati High Court, where he was made as a permanent Judge on February 28, 2001. He was transferred to the Punjab and Haryana High Court and became the Chief Justice on February 12, 2011. His Lordship was elevated as a Judge of the Supreme Court on April 23, 2012. Sworn as the 46th Chief Justice of India, Justice Gogoi is the first person from Northeast India to become the Chief Justice of India.

His Lordship has several landmark judgements to his credit. Some of the significant judgements of Justice Gogoi include the decision that taxpayers' money cannot be spent to build "personality cults" of political leaders, the judgment that the name of a religious book cannot become the subject matter of monopoly for an individual and the order that the monitoring of the Assam's draft National Register of Citizens (NRC) under the guidance of Hon'ble Supreme Court to address the objections and claims of approximately four million people left out in the draft NRC.

ACTIVITIES AT THE INSTITUTE

ILI-NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

1. One Day Training Programme for Officials Working in Juvenile Homes, Old Age Homes and Health Sector (October 6, 2018)

The Indian Law Institute in collaboration with the National Human Rights Commission organized a One Day Training Programme for officials working in Juvenile Homes, Old Age Homes & Health Sector on "Human Rights: Issues and Challenges" on October 6, 2018 at the Plenary Hall of the Institute. Hon'ble Mr.Justice Pinaki Chandra Ghose, Member, NHRC inaugurated the training programme and presided over the function. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

Hon'ble Mr.Justice Pinaki Chandra Ghose inaugurating the training programme

Hon'ble Mr. Justice Pinaki Chandra Ghose Member, NHRC delivering the inaugural address

The programme has been designed to cover wider aspects relating to Human Rights of the Senior Citizens, Juveniles and Health Officials involved in such activities. The training programme consisted of four technical sessions covering the broad theme of the programme. The participants were addressed by experts in the field of Human Rights. Shri Amod Kanth, General Secretary, Prayas Juvenile Aid Centre Society spoke on the topic "Protection of Human Rights of Juveniles" and Mr. Vikram Srivasthava, Independent Thought, Noida interacted with the participants on "Securing the Rights of Children in need of care and protection".

Participants of the training programme

Mr. Yashwant Jain, Member, NCPCR, New Delhi and Dr. Chaavi Sawhney, Associate Professor, AIIMS, New Delhi interacted on "Role of NCPCR in Protection of Child Rights with Special Reference to JJ Act and POSCO" and "Role of Health Officials in Protecting Human Rights of Juveniles and Old age Persons" respectively.

From L-R, Prof. (Dr.) Manoj Kumar Sinha, Shri Salman Khurshid and Shri Shreenibas Chandra Prusty

The valedictory session was graced by the presence of Shri Salman Khurshid, Former Cabinet Minister, Ministry of External Affairs/Senior Advocate, Supreme Court of India. In his address Shri Khurshid highlighted the importance of organising such training programmes on the issues and challenges pertaining to Human Rights. Professor (Dr.) Manoj Kumar Sinha, Director, ILI addressed the audience and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks. Certificates were distributed to the participants of the training programme.

Participants of the training programme along with Director, ILI

2. Two Days Training Programme for First Class Judicial Magistrates on "Human Rights: Issues and Challenges" (November 17-18, 2018)

The Indian Law Institute in collaboration with National Human Rights Commission organized Two Days Training Programme for First Class Judicial Magistrates on "Human Rights: Issues and Challenges" on November 17-18, 2018 at the Plenary Hall of the Institute.

Hon'ble Mr. Justice Surya Kant, Chief Justice, Himachal Pradesh High Court and Hon'ble Mr. Justice Dilip B. Bhosale, Former Chief Justice, Allahabad High Court inaugurating the training programme

Hon'ble Mr. Justice Surya Kant, Chief Justice, Himachal Pradesh High Court inaugurated the training programme and presided over the function. While delivering the inaugural address His Lordship emphasised on important aspects of Human Rights. Hon'ble Mr. Justice Dilip B. Bhosale, Former Chief Justice, Allahabad High Court also addressed the audience.

Inaugural session of the programme

Hon'ble Mr. Justice Surya Kant, Chief Justice, Himachal Pradesh High Court delivering the inaugural address

Hon'ble Mr. Justice Dilip B. Bhosale, Former Chief Justice, Allahabad High Court addressing the participants

Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Dr. Sanjay Dubey, Director (Administration & Policy, Research) NHRC also addressed the participants. The Two days training programme comprised of eight technical sessions that covered numerous contemporary issues on 'Human Rights' which were followed by detailed discussions and interactions with the participants of the training programme.

Participants of the training programme

Dr. Sanjay Dubey, Director (Administration & Policy, Research) NHRC deliberated on the topic "Role of NHRC in protecting Human Rights violations of Vulnerable Groups-I" and Mr.Siddharth Luthra, Senior Advocate, Supreme Court of India spoke on the topic "Criminal Justice System and Human Rights". Shri A.K.Ganguli, Senior Advocate, Supreme Court of India spoke on the topic "Issues related to Bonded Labour" and Smt. Chhaya Sharma, DIG, NHRC deliberated on the topic "Immoral Traffic (Prevention) Act, 1956 and Role of Judicial Officers in Protection of Human Rights".

Professor G.S. Bajpai, Professor and Registrar, NLU Delhi delivering the lecture

Speakers of the second day of the training programme included Dr. Anurag Deep and Dr. Jyoti Dogra Sood, Associate Professors, ILI. They spoke on "Criminal Justice and Human Rights with Special Reference to Burden and Stadard of Proof" and "Protection of Human Rights of the Juveniles *vis-a-vis* the Juvenile Justice (Care and Protection of Children) Act, 2015" respectively. Professor G.S. Bajpai, Professor and Registrar, NLU Delhi deliberated on the topic "Rights of Victims" and Shri Sunil Gupta, Former Law Officer & PRO, Tihar Jail spoke on the topic "Indian Judiciary and Prison Reforms".

Hon'ble (Dr.) Justice Arijit Pasayat, Former Judge, Supreme Court of India delivering the valedictory address

The valedictory session was graced by Hon'ble (Dr.) Justice Arijit Pasayat, Former Judge, Supreme Court of India. In his valedictory address His Lordship stressed on the need of creating awareness on Human Rights and challenges. Professor (Dr.) Manoj Kumar Sinha, Director, ILI addressed the audience and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks. Sixty Judicial Officers from all over the Country participated in the training programme with great enthusiasm. Certificates were distributed to the participants of the training programme.

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

3. One Day Training Programme for Media Personnel & Government Public Relation Officers on "Media and Human Rights: Issues and Challenges" (December 22, 2018)

The Indian Law Institute in collaboration with the National Human Rights Commission organized a One Day Training Programme for Media Personnel and Government Public Relation Officers on "Media and Human Rights: Issues and Challenges" on December 22, 2018 at the Plenary Hall of the Institute.

Dr. Sanjay Dubey, Director (Administration & Policy, Research) NHRC addressing the participants of the programme

Participants of the Training Programme

Dr. Sanjay Dubey, Director (Administration & Policy, Research) NHRC addressed the participants. Professor (Dr.) Manoj Kumar Sinha, Director Indian Law Institute delivered the welcome address and and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

Views from the Training Programme

The programme consisted of four technical sessions and the speakers included Dr. Sanjay Dubey, Director (Administration & Policy, Research) NHRC, Professor Pushpesh K.Pant, Dean, Northcap University, Gurugram, Haryana, Mr.Shashank Shekhar, Former Member, DCPCR and Dr. Y.S.R.Murthy, Professor and Registrar, JGU Executive Director, Centre for Human Rights Studies, Jindal Global Law School, Haryana. Certificates of participation were distributed to the fifty seven participants of the training programme.

Group photograph of the participants of the training programme

IDIA-ILI Annual Awards and Conference (December 8, 2018)

The Indian Law Institute in collaboration with the Increasing Diversity by Increasing Access to Legal Education (IDIA), a Charitable Trust organised the annual Conference on "Law and Storytelling" at the Indian Law Institute on December 8, 2018. This was the second year of collaboration between ILI and IDIA to organise a day-long conference on interesting and thought provoking thematic topics relating to the law. This year's conference theme was "Law and Storytelling" wherein distinguished Judges of the Hon'ble Supreme Court and High Courts, Senior Advocates of the Bar, Law firm partners, academicians and even writers and professional storytellers grace the occasion with their wonderful insights into their own experience of using the medium of storytelling to understand, explain and apply the law to cases at hand.

Hon'ble (Dr.) Justice D.Y. Chandrachud, Judge Supreme Court of India delivering the keynote address

The keynote addresses were given by Hon'ble (Dr.) Justice D.Y Chandrachud, Judge Supreme Court of India and Shri Javed Akhtar, noted lyricist, poet and screenwriter. Keeping in line with the theme, Justice Chandrachud began by narrating few stories about his experiences as a judge. His Lordship explained how just as novelists shape the narratives of the characters in their stories; judges too rely on the facts before them to craft a narrative that they believe to be most probable in the circumstances of the case.

Participants of the Conference

Professor (Dr.) Shamnad Basheer, Founder and Managing Trustee of IDIA addressed the audience on the objective of IDIA, the methodology of IDIA and its achievements so far. One of the key reasons, the IDIA program started was to avoid the homogeneity that was developing in the elite law schools. Dr Basheer also spoke about the need to reform legal pedagogy in the country. He cited Christopher Columbus Langdell's "Case Plus Method" of teaching the law by incorporating stories to lay out the narrative of the law. Stories humanize the legal problem. Instructional mode of teaching the law hardly explains the legal creativity that goes into building broader legal proposition.

Shri Javed Akhtar interacting with the audience

Shri Javed Akhtar, noted lyricist, poet and screenwriter, had an interesting take on the law and storytelling as someone from outside the legal profession. Mr Akhtar said that for him, as a layman, law explains what is right and what is wrong. He mentions how it is interesting that law is based on some story. A story could be based on some law or a

norm or a tradition. Certain laws were born because there were some stories that were admired and respected. Drawing a reference to Justice Chandrachud's speech, he mentioned how there is a story behind the Constitution of India.

The conference proceeded to two interesting sessions. The first session on the topic "Storytelling and the Practice of Law" was moderated by Shri Arghya Sengupta, Founder and Research Director, Vidhi Centre for Legal Policy and had a very distinguished panel of speakers like Hon'ble Mr. Justice Srikrishna, Former Judge of the Supreme Court of India, Hon'ble Justice Gita Mittal, Chief Justice of the Jammu and Kashmir High Court, Mr. Rajiv Luthra, Founder and Managing Partner, Luthra & Luthra Law Offices, Mr. Amarjit Singh Chandiok, Senior Advocate, Delhi High Court& Ex-Additional Solicitor General of India; and Mr. Shyam Divan, Senior Advocate, Supreme Court of India.

The second session titled "Justice and Storytelling" was moderated by Professor (Dr.) Shamnad Basheer and had a very engaging discussion with the panel that included Mr. Carl Malamud, President and Founder of Public Resource Organisation, Professor Moolchand Sharma, Professor of Law in University of Delhi; Ms. Maja Daruwala, Senior Advisor at Commonwealth Human Rights Initiative; Professor Nandini Sundar, Professor of Sociology at Delhi School of Economics; and Ms. Simi Srivastav, Founder of Kathashala. The programme concluded with a valedictory and thank you note by Dr. Basheer.

View from the Conference

One Day Consultation on "Child Welfare Committees" By ILI and DCPCR (December 15, 2018)

The Indian Law Institute in collaboration with Delhi Commission for the Protection of Child Rights (DCPCR) organized a One-Day Consultation on Child Welfare Committees on December 15, 2018 in the Plenary Hall of the Indian Law Institute.

The consultation programme was inaugurated by Mr. Ramesh Negi, Chairperson, DCPCR. Professor (Dr.) Manoj Kumar Sinha, Director, ILI addressed the audience and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

Dr.Jyoti D.Sood, Associate Professor, ILI addressing the audience

View from the technical session of the programme

Shri Shashank Shekhar, Advocate, Supreme Court of India/Former Member, DCPCR took the first technical session on the topic "Linkages of CWC with various departments/stakeholders". Ms Bharati Ali, Co-Director, Haq Centre for Child Rights spoke on "Empowerment of CWC in Administrative Field" in the Second technical session. In the third technical session Ms. Geetanjali Goel, Additional District and Sessions Judge /Special Secretary, Delhi State Legal Service Authority deliberated on the topic " Legal Provisions and CWC".

The CWCs through this interaction got a chance to engage with experts on various issues concerning their jurisdiction and functioning and also got a much needed platform to discuss their problems and limitations. Dr. Jyoti Dogra Sood, Associate Professor, Indian Law Institute coordinated the Consultation.

Participants of the consultation programme

International Conference on "Digital Transformation: Preservation, Policy and Privacy "(ICDT-2018)

National Law University, Delhi jointly with Indian Law Institute and other organisations organised an International Conference on "Digital Transformation: Preservation, Policy and Privacy "(ICDT-2018) from November 29-December 1, 2018 at National Law University, Delhi.

Views from the Conference

Observance of National Unity Day

The Government of India observes October 31st all over the country as a special occasion to foster and reinforce our dedication to preserve and strengthen the unity, integrity and security of our nation, by celebrating it as Rashtriya Ekta Diwas (National Unity Day) to commemorate the Birth Anniversary of Sardar Vallabhbhai Patel. As Part of the celebrations, a pledge ceremony was organised wherein all employees of the institute participated.

National Unity Day celebrations held at ILI

SPECIAL LECTURES

Hon'ble Mr. Justice Vineet Kothari, Judge, Madras High Court delivered a Special Lecture on "A talk on Contemporary Issues and Challenges in Indian Tax Laws" on October 3, 2018 at the ILI.

Niti Manthan Lecture Series

The Indian Law Institute in collaboration with NLU, Delhi with the support of YUVA and PRAGYA Pravah organized the Second Lecture on "Constitutional Underpinnings for Minority Rights" as a part of Niti Manthan Lecture Series on October 11, 2018 at the Indian Law Institute.

Professor Jeroen Vervliet, Director Peace Palace Library, International Court of Justice, delivered a Special Lecture on November 28, 2018.

COMMITTEE MEETINGS

➢ **Library Committee**

Library Committee meeting was held on November 16, 2018 under the Chairmanship of Hon'ble Mr. Justice Kurian Joseph, Judge, Supreme Court of India. Mrs. B. Vijaylaxmi, Advocate, Supreme Court of India was welcomed to the Library Committee.

➢ **Membership Committee**

Membership Committee meeting was held on November 17, 2018 under the Chairmanship of Hon'ble Mr. Justice A.M. Khanwilkar, Judge, Supreme Court of India.

EXAMINATIONS

PG Diploma Supplementary Examination-2018

The Supplementary Examinations for Post Graduate Diploma Courses were held during September 24-October 04, 2018. The result of the same was published on October 31, 2018.

LL.M. 1 year Supplementary Examinations

The LL.M. Supplementary Examinations was held on November 1, 2018. The result of the same was published on December 14, 2018.

LL.M. 1 year (1st Semester) Examinations

The LL.M. Semester End Examinations (1st Sem) was held during December 10-21, 2018.

LIBRARY

➢ As part of the superannuation of Hon'ble Mr. Justice Kurian Joseph, Judge, Supreme Court of India/Chairman, Library Committee, ILI a meeting was held on November 16, 2018 in which the Institute fraternity and committee members felicitated His Lordship in the Library. His Lordship also revisited memory line of his association with the Institute Library.

A power point presentation regarding the achievements/developments taken place in the library during the tenure of his Chairmanship was also shown. The members also appreciated the dedicated efforts of His Lordship in developing the Institute's Library.

- The Indian Law Institute's Ph.D Research scholar thesis is uploaded on INFLIBNET-Shodhganga for sharing and access of the institute's Ph.D thesis on Shodhganga as per the UGC Guidelines.

- Library Added 131 Books on Indian Penal Code, Arbitration, Intellectual Property Rights, Family Law, Muslim Law, International Law, Criminal Law, Banking, Media Law, Human Rights, Juvenile Justice and Environmental Laws to enrich the library collections.

STAFF MATTERS

Shreenibas Chandra Prusty, Registrar, ILI participated in a National Workshop on 'Emerging Trends in Information Technology in University Management" organised by ICFAI, University Tripura on December 1-3, 2018.

Gunjan Jain, Assistant Librarian, ILI participated in the Advanced Training Programme on Shodhganga from December 26-28, 2018 organised by INFLIBNET, Ghandhinagar, Gujarat.

Jyoti Dargan, Assistant Controller of Examinations, ILI, attended the National Workshop on "Examination Reforms in Higher Education" organised by Integral University, Lucknow in collaboration with Association of Indian Universities, Delhi at Integral University, Lucknow from October 8-10, 2018.

Bhoopendra Singh, Computer System Administrator, ILI, participated in a National Workshop on "Emerging Trend in Information Technology in University Management" organised by ICFAI, University Tripura on December 1-3,2018. He also delivered a Lecture on the "Role of Cyber Security and Cyber Crime" at Gandhigram Rural Institute, Dindigul, Tamilnadu on December 9, 2018.

Sonam Singh, Library Superintendent, ILI was nominated as the Member Secretary in the Awards and Honours Committee in the "International Conference on Digital Transformation: Preservation, Policy & Privacy"(ICDT) organised by National Law University, Delhi in association with Indian Law Institute, New Delhi, National law University, Bhopal, Rajiv Gandhi National University of Law, Punjab and The Energy Research Institute at National Law University, Delhi campus from November 29-December-1, 2018.

Sanjeev Kumar, Library Assistant, ILI, participated as Rapporteur in the ICDT held at National Law University, Delhi campus from November 29- December-1, 2018.

RESEARCH PUBLICATIONS

Released Publications

* *Journal of the Indian Law Institute (JILI)* Vol. 60 (3) (July -September, 2018)

* *ILI Newsletter* Vol. XX, Issue III (July-September, 2018)

* *ILI Law Review* (Summer, 2018)

Forth Coming Publications

* *Journal of the Indian Law Institute (JILI)* Vol. 60 (4) (October- December, 2018)

* The book titled "Bail : Law and Practices in India" edited by Professor Manoj Kumar Sinha & Dr. Anurag Deep.

* *ILI Law Review* (winter, 2018)

E-LEARING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights law

E-Learning Certificate Courses of three months duration on **"Cyber Law"** (31st batch) and "**Intellectual Property Rights and IT in the Internet the Age**" (42nd batch) was completed on December 31, 2018.

VISITS TO THE INSTITUTE

- 99 students from Law College Durgapur, West Burdwan Kolkatta visited the Institute on October 1, 2018.
- 32 students from Department of Library and Information Science, Gauhati University visited the Institute on October 12, 2018.
- Students of IMS Law College, Noida, Uttar Pradesh visited the Institute on October 31, 2018.
- Students of Vitasta School of Law, University of Kashmir visited the Institute on November 1, 2018.
- Students of Durgapur Institute of Legal Studies, Burdwan, West Bengal visited the Institute on November 27, 2018.
- Students of Haldia Law College, West Bengal visited the on November 27, 2018.
- 30 students from Gujarat Law Society College, Ahmedabad, Gujarat visited the Institute on December 12, 2018

FORTHCOMING EVENTS

- ILI in collaboration with NHRC will organise a Two Days Training Programme for Prison Officials on January 19-20, 2019 at the ILI.
- ILI in collaboration with NLU, Law Mantra will organise a One Day International Seminar on "Protection of Women and Children Rights: Issue and Challenges" on January 12, 2019 at the ILI.
- ILI will host a talk on "International Commercial and Transport Law" by Dr. Tabetha Kurtz-Shefford from Swansea University U.K. on January 21, 2019 at Indian Law Institute.
- ILI in collaboration of SGT University Gurugram will organise a Seminar on "Alternate Dispute Resolution-The Way Forwad" on January 22, 2019at the ILI.
- ILI in collaboration with NHRC will organise a Two Days Training Programme for Judicial Officers on February 23-24, 2019 at the ILI.
- ILI in collaboration with NHRC will organise a Two Days Training Programme for Police Personnel on March 23-24, 2019 at the ILI.
- The ILI in collaboration with Centre for International Law, Research and Policy (CILRAP),Campus Law Centre, University of Delhi, OP Jindal Global University and Indian Society of International Law will organise a Two days International Conference on "Quality Control in Criminal Investigation" on February 22-23, 2019 at the ILI.

FACULTY NEWS

Manoj Kumar Sinha, Director ILI addressed the participants of NITI MANTHAN lecture series on "Constitutional Underpinnings of Minority Rights" on October 11, 2018 at ILI, New Delhi.

Chaired a Session on "Reviewing the Procedure and Practice of the Judicial Appointment in India" organised by International Association of Constitutional Law (IACL), Jindal Global Law School and National Law University, New Delhi on November 2, 2018.

Delivered a Special Lecture on, "Diplomatic Immunity with Special Reference to Jamal

Khashoggi Case" to students of Maharashtra National Law School, Aurangabad on November 3, 2018.

Delivered a talk on, "SDGs and Human Rights" to the participants of Short Term Course on Human Rights for Senior Teachers of University and colleges in Assam, organised by Gauhati University on November 15, 2018.

Delivered couple of lectures to the LL.M students of Central University, Tripura on November 18-19, 2018.

Inaugurated and addressed the participants of Faculty Development Programme (FDP) on "Legal Research" organised by NMIMS, Kirit P.Mehta, School of Law, Mumbai on November 23, 2018.

Chaired a session on "Trends of E-Learning and Digital Achieves" to the participants of an International Conference organised by National Law School, Delhi on November 30, 2018.

Delivered a talk on "Legal Research Methodology" to faculty members of Delhi Metropolitan Education Institute, Noida on December 4, 2018.

Presented a paper on "Sustainable Development Goals and Human Rights" in the two day Seminar organised by The Tamil Nadu Dr. Ambedkar Law University, Chennai on December 11, 2018.

Furqan Ahmad, Professor, ILI was invited to deliver a lecture on the topic "Rhetoric Law of Divorce and Gender Inequality in Islam" for LL.M in Access to Justice students at School of Law, Rights and Constitutional Governance, Tata Institute of Social Sciences, Mumbai on December 28, 2018.

Anurag Deep, Associate Professor ILI, on invitation, delivered a lecture on the topic "Democracy and the Supreme Court in India" in the orientation course conducted by HRDC, JNU, New Delhi on October 25, 2018. He also delivered a lecture on the topic "Impact of section 377 Judgement: A Critical Study," at Chotanagpur Law College, Ranchi on October 27, 2018. He also delivered a lecture on the topic "Freedom of speech and Contemporary developments," at Centre for Professional Development in Higher Education (CPDHE), UGC-HRDC, University of Delhi, Refresher Course in Contemporary Issues of the World on December 1, 2018.

Delivered 5 lectures on Human Rights Jurisprudence at Chotanagpur Law College, Ranchi from December 26-30, 2018.

Jyoti Dogra Sood, Associate Professor, ILI was invited by AIWEFA as a session speaker on the topic "Laws for Protection of Elderly" in a two-day National Seminar on November 1, 2018 at Lady Irwin College, Delhi. She also delivered a lecture on the topic "Protection of Human Rights of the Juveniles *vis-a-vis* The Juvenile Justice (Care and Protection of Children) Act, 2015" on November 18, 2018 in a Training Programme for First Class Judicial Magistrates on Human Rights: Issues and Challenges organised at ILI.

LEGISLATIVE TRENDS

NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES (AMENDMENT) ACT 2018

(Act No. 35 of 2018)

The new act amended the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The Act was enacted to streamline the appointment and resignation of members of a trust which helps persons with disability to live independently.

LEGAL JOTTINGS

Conviction under Section 376 IPC upheld in light of act being 'forcible' and 'non-consensual'

The 3-Judge Bench comprising of CJ Ranjan Gogoi and Sanjay Kishan Kaul and K.M. Joseph, JJ.,

dismissed an appeal filed by the accused-appellant for his conviction under Section 376 IPC for a sentence of 7 years.

The facts of the case as presented in the appeal are that the accused was convicted for raping a 16-year-old girl. The victim's family was neighbors and friends with the accused's family. The incident of rape happened in January 1996 but was discovered by the mother of prosecutrix only in May-June when the victim missed her cycle that she was 5 months pregnant.

The FIR in this regard was filed in the month of July 1996 stating that prosecutrix and her family did not want to spoil the reputation or bring disharmony in the family of the accused and later the complaint was filed only on the basis that the accused had denied providing funds for the victims' abortion.

The Supreme Court Bench in the present case focused on the cardinal issue that has to be decided whether the initial act was consensual or a forcible act. Further, the Court stated that the close relations between the families and that being the reason for the delay in lodging an FIR cannot be brushed aside. Court also took notice of the facts that there was a solitary incident and was not followed by repeated acts which lead us to this act being non-consensual.

Therefore, the prosecution was successful in proving that it was a forcible act and not consensual which failed the present appeal by upholding the conviction and sentence of the accused-appellant.

P.J. Mathew v. *State of Kerala*, 2018 SCC Online SC 2044, decided on October 4, 2018.

Only "green" fireworks permitted to be manufactured and sold

The 2- Judge Bench comprising of A.K. Sikri and Ashok Bhushan, JJ., gave directions to be followed for burning of crackers while refusing the complete ban on the sale of firecrackers as it may lead to "extreme economic hardships" (observing without conclusively holding) and further stating that there have been lots of efforts for production of firecrackers which do not contain harmful chemicals and thereby not causing air pollution, which are even termed as *'Green Crackers'*.

The present petition was filed by next friends of three infants concerning the health of the children as due to the alarming degradation of the air quality, leading to severe air pollution in the city of Delhi, the petitioners may encounter various health hazards. Children are much more vulnerable to air pollutants as exposure thereto may affect them in various ways. Further, they have submitted that air pollution hits its *nadir* during *Diwali* time because of indiscriminate use of firecrackers. In light of the above submissions, the petitioners have prayed for directions to the official respondents to take possible measures for checking the pollution by sticking at the causes of the pollution.

The Supreme Court on duly considering the submissions of the parties and taking note of the reports based on earlier orders of the Supreme Court concerning the same issue, stated that bursting of firecrackers during *Diwali* is not the only reason for deterioration of air quality, the other reasons which contribute to the issue are unregulated construction activity and crop burning. Further, the Court stated that "our endeavor is to strive at balancing of two rights, namely, right of the petitioners under Article 21 and right of the manufacturers and traders under Article 19(1)(g) of the Constitution of India.

Respondent 1, on the direction of Apex Court's earlier order, filed an affidavit in consultation with various ministries to deal with the problems and issues as stated above, which have been accepted by the Supreme Court and further direction has been given for the implementation of the same. The directions given by the Court have been stated below in a succinct manner:

- Complete ban on manufacture and sale of all fireworks which are high emission. Therefore all

existing fireworks like sparklers, flower pots, chakras, rockets and crackers stand banned.

- Only "green" and low emission fireworks which will have to be made in future are permitted, once cleared by PESO.
- Any of those fireworks which are green or low emission when invented will be permitted to be used only in community areas as demarcated and not in front of everybody's houses.
- Any violation of the sale of prohibited fireworks or their use or the bursting of permitted fireworks in non designated areas will be the responsibility of the respective SHO who can be hauled up for contempt of the Supreme Court.
- No E-Commerce site can sell any of the traditional Fireworks and if they do so they will be guilty of contempt of Supreme Court as well.
- It will be the responsibility of PESO to ensure that all existing fireworks are disposed of and not permitted to be sold.
- On *Diwali* days or on any other festivals like *Gurupurab*, when fireworks generally take place, it would strictly be from 8:00 p.m. till 10:00 p.m. only. On Christmas and New Year eve, when such fireworks start around midnight, i.e. 12:00 a.m., it would be from 11:55 p.m. till 12:30 a.m. only.
- Union of India, Government of NCT of Delhi and the State Governments of the NCR would permit community fire cracking only (for *Diwali* and other festivals etc.)

Therefore, the Court having regard to the overall circumstances, decided to have a balanced approach to tackle the stated issue which may take care of the concerns of both the parties and provide a reasonable and adequate solution.

Arjun Gopal v. *Union of India*, 2018 (14) SCALE 209, decided on October 23, 2018.

CASE COMMENTS

In Re: Inhuman Conditions in 1382 Prisons

JT 2018(12) SC 159

Decided on December 13, 2018

The Supreme Court in this case considered some applications filed for seeking direction and declarations whether prisoners sentenced to death by any court have a right to be treated on par with convicted prisoners and should be provided similar facilities that are given to other prisoners. It was also prayed in this application whether solitary confinement of prisoners on death row or their separate and cellular confinement should be struck down as unconstitutional. This matter was heard by the bench comprising of Justice Madan B.Lokur, Justice S. Abdul Nazeer and Justice Deepak Gupta. The Court looked into one of the important questions when it could be said that a convict is under the sentence of death? The Court referred to its decision in *Sunil Batra v. Delhi Administration and Ors.* (1978)4 SCC 494 and highlighted that a prisoner under sentence of death can only mean a prisoner whose sentence of death has become final, conclusive and indefeasible and which cannot be annulled and voided by any judicial or constitutional procedure. The Court held that a prisoner can be said to be a prisoner on death row when his sentence is beyond judicial scrutiny and would be operative without any intervention from any other authority. Until then, such a prisoner cannot be said to be under a sentence of death in the context of Section 30 of the Prisons Act, 1894. It also observed that the prisoner is entitled to every facilities such as bed and pillow, writing material and newspapers and the opportunity to communicate with family members. The Court also held that the prisoner is entitled to move within the confines of the prison like others undergoing rigorous imprisonment.

The Court relied on *Frances Coralie Mullin v. Administration, Union Territory of Delhi*, (1981)1 SCC 608, regarding the question of entitlement of a

prisoner on death row to have meetings and interviews with his lawyers or family members. The Court held that such meetings and interviews should be permitted as decided in the *Frances Mullin* case. The Court also referred to two important international human rights instruments, namely, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and highlighted that these instruments recognise the right to live with human dignity as fundamental. The Court held that a prisoner is entitled to have an interview with members of his family. No prison regulation and procedure to the contrary can be upheld as constitutionally valid under Articles 14 and 21 of the Constitution unless it is reasonable, fair and just.

The Court observed that the old Rules and circulars and instructions issued under the Prisons Act are inconsistent with the Constitution especially with Article 21 of the Indian Constitution. Accordingly, the Court directed the State government of Rajasthan and all other state governments to convert the rulings of the Court having impact on the Prison Administration into Rules and instructions so that violations of prisoners' freedom can be halted. The Court held that rights of prisoners would be available not only in a particular State but would be available to them in all the states and Union Territory Administration across the country. It also directed the Governments and Union Territory Administrations to modify the prison manuals, regulations and rules accordingly.

The bench requested Justice Amitava Roy Committee to look into all other issues raised in the application in greater depth in addition to its Terms of Reference. The Supreme Court constituted a three member committee on 25th September 2018, headed by its former Judge Justice Amitava Roy, to look into the aspects of jail reforms across the country and suggest measures to deal with them. In this case the Court has addressed the issue of prisoners under sentence of death from a humanitarian and compassionate perspective. This judgment reinforces the commitment of Indian judiciary to protecting human rights of prisoners and ensure that even prisoners under sentence of death have human rights, and the State must take appropriate steps to ensure that these rights are respected.

Manoj Kumar Sinha

M. C. Mehta* v. *Union of India

2018(14) SCALE 263

Decided on October 24, 2018

This case is decided by the three judge's bench of the Supreme Court on October, 24th 2018. The facts of the instant case pertain with regard to the Bharat Stage IV (for short BS-IV) compliant vehicles. Whether the vehicle should be permitted to be sold in India after 31.03.2020 was the main issue before the court. The court referring its earlier judgment and order dated 13.04.2017dated 29.03.2017 whereby it had directed that on and from 01.04.2017, vehicles which are not BS-IV compliant, should not be sold by any manufacturer or dealer or motor vehicle company whether such vehicle is a two wheeler, three wheeler, four wheeler or commercial vehicle etc. The Court referred to the National Auto Policy based on the recommendations of the Mashelkar Committee and underlined the initiatives taken by the government in this regard. The Apex Court examined the notification of sub-rule 16, 17 of Rule 115 of the Central Motor Vehicle Rules, 1989. The issue raised by the manufacturers of motor vehicles was that they should be given reasonable and sufficient time for sale of stocks of those vehicles which are not BS-IV compliant vehicles but manufactured up to 31.03.2017. Bajaj Auto also filed an application in this Court praying that it was already manufacturing BS-IV compliant vehicles and that the vehicles not complying with BS-IV norms should not be registered after 2017. The Society of Indian Automobile Manufacturers (for short `SIAM'), have submitted that though they are not averse to manufacturing BS-VI compliant vehicles, they should be given some time to sell the stocks of non-BS-VI compliant vehicles manufactured upto 31.03.2020. Mr. Gopal Subaramaniam, counsel appearing for one of the manufacturers, submitted that his clients were already manufacturing vehicles which are both BS-IV and BS-VI fuel compliant and

they were on the road already. Additional Solicitor General submitted that keeping in view the difficulties faced by the manufacturers and balancing the need to have a cleaner environment, three months' period given to the manufacturers is reasonable. Ms. Aparajita Singh, *amicus curiae*, has made a passionate plea that no non-BS-VI compliant vehicle should be permitted to be sold in the entire country after 01.04.2020. She has drawn attention to the Report of the Parliamentary Standing Committee dated 07.08.2018. The Court underscored some of the observations made by the Committee which includes the problem of air pollution affecting human beings and therefore any leniency on the part of the Government in tackling it will have a cascading effect on the health of the citizens. The Court observed that there can be no two views that air pollution is hazardous to health. It further stated that certain observations of the Report of the above mentioned committee which show that one out of three children in Delhi suffers from respiratory problems. This is almost twice as high as compared to the city of Kolkata or rural areas. The Court expressed the anxiety for increased air pollution in big cities of the country.

The Apex Court pointed out the event of Auto Expo held in February, 2018 wherein many members of SIAM have exhibited vehicles which are technologically much more advanced than even BS-VI compliant vehicles. These manufacturers have not only asserted that they can manufacture electric bvehicles but also asserted that they are developing hydrogen cell fuel vehicles along with hybrid, electric and CNG vehicles. In this context the Court concluded that manufacturers are not willing to comply with the 31.03.2020 deadline not because they do not have the technology but because the use of technology will lead to increase in the cost of the vehicles which may lead to reduction in sales of the vehicles and ultimately their profit. The Court underscored that there can be no compromise with the health of the citizens and if one has to choose between health and wealth, keeping in view the expanded scope of Article 21 of the Constitution, health of the teeming millions of this country will have to take precedence over the greed of a few automobile manufacturers. The Court further opined that, India has the dubious distinction of having 15 out of the 20 most polluted cities in the world. The situation is alarming and critical. It further states that it is an established principle of law that the right to life, as envisaged under Article 21 of the Constitution of India includes the right to a decent environmentwhich is within the scope of the right of a citizen to live in a clean environment. With regard to vehicular traffic, the Court had already issued a number of directions to ensure a clean environment to reduce pollution. The Court referred to various leading cases in its support and then submitted that the right to clean environment is a fundamental right. The Court further observed that the right to live in an environment free from smoke and pollution follows from the "quality" of life which is an inherent part of Article 21 of the Constitution. Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. It further states that when there is a concern for the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists. The Court enumerated that the effect of pollution on the environment and health is so huge that it cannot be compensated in the marginal extra profits that the manufacturers might make. The amount spent on countering the ills of pollution such as polluted air damaged lungs and the cost of healthcare far outweigh the profits earned.

The Court therefore took *suo moto* notice of the impugned sub-rule 21 of Rule 115 and stated that it is very vague. The Court further referred to the judgment dated 13.04.2017, which has held that "when the health of millions of our countrymen is involved, notification relating to commercial activities ought not to be interpreted in a literal manner." Therefore, the Court, in exercise of the power vested under Article 142 of the Constitution, read down sub-rule 21 of Rule 115. Court further urged the automobile industry to show the will,

responsibility and urgency in this regard. It referred to Europe and stated that the Europe already had introduced Euro-IV fuel in the year 2009 and Euro-VI standards in 2015. Lamenting that India is already many years behind them, the Court felt that India cannot afford to fall back further even by a single day. The need of the hour is to move to a cleaner fuel as early as possible. Therefore, Court, in exercise of the power vested under Article 142 of the Constitution, read down sub-rule 21 of Rule 115 and further held that no motor vehicle conforming to the emission standard Bharat Stage-IV shall be sold or registered in the entire country with effect from 01.04.2020.

The court must be appreciated for their concern about health and environment and looks not to compromise with the *advanced technology* which it believed would go a long way in ameliorating the lives of the people of not only of this generation but also the future generation. And therefore uphold the International Principle Inter-generational equity.

Furqan Ahmad

Manohar Lal Sharma* v. *Narendra Damodardas Modi

2018 SCC OnLine 2807

Decided on December 14, 2018

The power of judicial review has remained a contentious issue in the area of constitutional and administrative law. Should the judiciary examine the decision making process of the State or should it also evaluate the choice (decision) made by the State after the decision making process. Former is classical role of judicial review and later is merit review. Is the role of judicial review restricted in case of contractual transactions? Is it further restricted if the contractual matter is related to national security, defence and foreign policy? The judgement under comment answers both the questions in "yes." It is a restatement and reiteration of the classical role of judicial review established all over the world.

In April 2015 the Government of India decided to purchase 36 Rafale Jets in flyaway condition through an Inter-Governmental Agreement (IGA). In June 2015 the government finally withdrew a previous proposal to buy 126 *Medium Multi-Role Combat Aircraft* (*MMRCA)*. The deal of Rafale Jets was finalized in Sept 2016. In 2018, news papers reported chances of favouratism. A few people filed PILs. The petitioners argued that the government (surprisingly Narendra Damodardas Modi was respondent in person) favoured Reliance company deliberately ignored Indian company, [Hindustan Aeronautics Limited *i.e* HAL], changed the terms of deal to receive unlawful benefits and there were chances of corruption. They prayed for the registration of FIR, a Court Monitored Investigation into illegality and non-transparency in the procurement process, quashing the Inter-Governmental Agreement of 2016 for purchase of 36 Rafale Jets, investigation into the reasons for cancellation of earlier deal. The issue before the Supreme Court was whether there was some evidence for the interference by the Supreme Court' that too exercising the power of judicial review under article 32 of the Constitution of India. In other words, was the petition convincing enough that any of the above prayers (FIR, Court monitored investigation *etc.*) be lawfully honoured. The three judges bench discussed three issues *viz*. Decision Making Process, Pricing and Offsets partner. Based on the evidences present they did not smell anything wrong and finally rejected all four PILs. The Court held that "on all the three aspects, and having heard the matter in detail, we find no reason for any intervention by this Court on the sensitive issue of purchase of 36 defence aircrafts by the Indian Government. Perception of individuals cannot be the basis of a fishing and roving enquiry by this Court, especially in such matters."

The Supreme Court at first decided the mandate of judicial review in this case. Taking clues from the precedents of *Jagdish Mandal* v. *State of Orissa* (2007) 14 SCC 517*, Maa Binda Express Carrier* v. *North East Frontier Railway*, (2014) 3 SCC 760 (both on the issue of construction contract) where the Supreme Court, recalled that in commercial transactions, the judicial review is confined to the parameters of unreasonableness and *mala fides*.

Unless it is found that the transaction have been tailor made to benefit any particular tenderer, the Court cannot interfere. The Supreme Court also took support from a full bench opinion in *Tata Cellular* v. *Union of India*, (1994) 6 SCC 651, that the scrutiny should be limited to the Wednesbury Principle of Reasonableness and absence of mala fides or favouritism.

Then the Court also reminded that the contractual issue involved in this tender was special in nature because it deals with defence and national security. The tender was not for construction of roads, bridges, etc. "The parameter of scrutiny would give far more leeway to the Government." The only foreign judgement referred by the Court through an scholarly material was *Council of Civil Service Unions* v. *Minister for the Civil Service* (1985 AC 374) where the House of Lords held that if a royal prerogative (it enables Ministers to take executive decisions in certain cases like national interest, international treaties, grant honour *etc.*) is in context of national security, the power of court to interfere is very limited, though a royal prerogative can be judicially reviewed. Based on this decision the Supreme Court held that as the subject of the procurement was crucial to the nation's sovereignty, the scope of judicial intervention was limited.

Subject matter of judicial review decides the level of inquiry a court can make into the question involved. If the subject matter is fundamental right, (or corruption exclusively) the court can dig deep into the matter and extract the truth from the bottom of the facts. If it is a contractual transaction between two parties, the scope of inquiry is limited. If the subject matter is national security or foreign policy the scope of judicial review is further restricted and petitioners ought to come up with something concrete and persuasive to show a *prima facie* case.

This is the gist of the jurisprudence restated by the Supreme Court in the decision on *Rafale Defence deal* case. This case differs in numerous respects from the conventional claims of fundamental rights and public interest. Unlike the typical suit involving favouratism and corrupt practices, the petitioners sought to invalidate a defence deal of immediate national security needs. The claim of the petitioners accordingly raised a number of delicate issues regarding the scope of the constitutional right under article 32 as well as the manner and standard of proof. The petitioners failed to make a persuasive case for any direction.

Be it a *laissez faire* or a welfare state, defence or foreign affairs remained the exclusive domain of the central government. The fate of these PILs was known from the beginning because of two reasons; limited scope of judicial review and non availability of convincing evidences. The petitioners' arguments constituted recycling of the unsubstantiated media reports, selective statistics and heavy reliance on anecdotal evidence. The petitioners were able to produce only a part of the picture.

Rafale case reminds of the national security jurisprudence developed through the precedents of US Supreme Court especially *Trump* v. *Hawaii* [585 U. S. (2018)] where it was held that cases of national security and foreign affair always involve a circumscribed judicial review and that there was no need to "define the precise contours of that inquiry in this case" because in cases of national security and foreign policy, the Court has only to evaluate "whether the policy is facially legitimate and bona fide" or not. If the answer is yes that "would put an end to our review."

This PIL (*Rafale case*) is another instance of wastage of precious human resources and time and may be a misuse of judicial process. In last few years there is a tendency to file PIL for oblique objectives. The spectrum spans from publicity to political or business rivalry. In *Judge Loya death* case, it was rightly observed by the supreme court that "the true face of the litigant behind the facade is seldom unravelled" and "political rivalries have to be resolved in the great hall of democracy when the electorate votes its

representatives in and out of office." Rafale petition had a political colour and judicial forum was misused to tarnish the image of a government. Another intention of this PIL was to reap political benefits in the election year. Post decisional criticism indicate that an (may be unintended) objective of such PIL is also to make serious attacks on the credibility or wisdom of the judges. Petitioners, political parties and so called independent critics have left no stone unturned to make a mountain out of a molehill. Unnecessary PIL and motivated criticism undermines public faith in democratic institutions, independence of judiciary and the rule of law. They need to be checked with iron hand as early as possible.

Anurag Deep

Nipun Saxena* v. *Union of India

JT 2018 (12) SC 264

Decided on December 11, 2018

Victimology in India gained momentum in the 1970s. Over a period of time, victim rights began to be recognized and victim, which had become a "forgotten entity", began to figure actively in criminal trials through various amendments in Cr PC and through judicial pronouncements. However, rape victims and child victims of sexual assault needed special and nuanced protection. Inasmuch the victim role in the criminal process needed to be recognized, the rape victim's identity needed to be protected from the public gaze. This is not so required for victims of other criminal offences. Reasons for the same are varied which is not within the scope of this comment. The institutional and social impediments that a rape victim has to go through are well documented by legal and sociological scholars, among others. In 1983, when rape laws were being rewritten as an aftermath of the infamous *Mathura* case, a very significant addition was made in the IPC by way of insertion of section 228A. This section made disclosure of identity of the victim of rape an offence which had penal consequences. To further protect the identity of the rape victims, sub section (2) was added in section 327 CrPC, which mandated *in camera* trials in cases of rape. All this was to prevent further victimization of the rape victim. Court spaces which dispense 'justice' could become sites of violence for the victim and this necessitated the amendments. The law, however, continued to be flouted and in the instant writ petition *Nipun Saxena* v. *Union of India*, the highest court of the land through Deepak Gupta and Madan Lokur JJ took cognizance of the matter and passed significant directions.

The opening paragraph starts with a question as to "How and in what manner identity of adult victims of rape and children who are victims of sexual abuse should be protected so that they are not subjected to unnecessary ridicule, social ostracisation and harassment…" The fact that privacy and dignity rights are not invoked but ridicule, ostracisation and harassment are mentioned in itself in loud terms proclaim that the law, is "speaking of" and not "speaking with" the rape victim.

The judgment has been divided into two parts–the first dealing with adult rape victims and second part with children victims of sexual assaults. The Ist Part takes judicial notice of false notions of 'honour' which results in under reporting of cases and when at all it is reported, multiple institutions meant to provide succor to victims end up further victimizing the woman. The love-rape cases have been specifically mentioned touching on a very important aspect of sexual agency of a woman. The unfriendly and intimidating police investigation lead to the court room encounters where justice is portrayed in the form of woman but justice to the woman in this juridical landscape is conducted through the laws of legal logic, which is so masculine in its approach and conduct that victim feels violated again! This violation has been acknowledged in the judgment as well. Dwelling further on disclosure of identity, the court underlined the fact that it is not only the name which is identity revealer but other indices may also reveal identity; this is pertinent since the provisions of IPC and CrPC do not define 'identity'. The court

directed that care must be taken that identity in any way is not compromised. Specific directions were given to police officers regarding disclosure of FIR, while taking samples, while DNA profiling etc. The court also made it clear that this is not to be made available under the Right to Information Act, 2015 as this information is personal in nature and serves no public purpose.

In cases of adult victims, the identity may be revealed if they authorize the same. However, the court was rightly skeptical of the provision regarding "next of the kin of victim giving an authority to the Chairman or the secretary of recognized welfare institutions or organizations to declare the name." The court also highlighted the failure of the Central and State Governments in recognizing such welfare institutions or organizations and invoked its powers under Article 142 of the Constitution authorizing concerned Sessions Judge/Magistrate for allowing such disclosures upon application made in that behalf. The court did not buy the argument that the "victim becomes a symbol of protest or is treated as an iconic figure". The interest of "next of kin" and the interest of the victim may not converge and so the competent court must decide the matter. The judgment quotes precedents to buttress its arguments and it is humbly submitted that the rape victim will continue to be derided unless we reimagine a language of law, which describes the harm to the woman. Our otherwise progressive judgments (like the instant one) continue to quote precedents where the law imagines that "A murderer destroys the physical body of this victim, a rapist degrades the very soul of the helpless female."! (*Gurmit Singh*)

In the IInd Part of the judgment, the identity of child victim, the court reasoned, cannot be regulated by the amorphous concept of "interest of child" and ordered that in all cases of sexual assault in no way (whether directly or obliquely) should the identity of child be disclosed as per section 23 of POCSO. The court was also sensitive to the issue of afterlife dignity. The court cautioned that the dead "cannot be denied dignity only because they are dead" (para 34). These children cannot be used to drum up sentimentality.

In the instant case, the issue before the court was regarding victims of crime but the court felt obligated to show its concern for children in conflict with law as well and directed that the name, address, school or other particulars which may lead to be identification of the child in conflict with law must never be revealed. As is common knowledge that the media in order to comply with the law refrains from spelling out the name but gives such vivid details otherwise that to use Deepak Gupta J.'s expression, "it is no rocket-science" to establish the identity of the child. This practice will have to stop now lest they become guilty of contempt of court.

Further dealing with the issue the court in para 42 conflating women and children issues suggests that children courts can also be used as trial courts for trying cases of rape against women. This may be a welcome step as these courts may be structured in a manner that the victim and the perpetrator do not come face to face while testifying. The provisions regarding specially designed witness court rooms in the proposed witness protection scheme 2018 may be useful in these cases as well. However, there may be practical difficulties in the implementation as the latter part of the same para talks about one stop centres where court room(s) should also be there. The example of *Bharosa* is given which is an initiative of the Hyderabad Police. So to have courts in these one stop centres may seem ideal but how far that scheme is viable needs to be explored. Undoubtedly the idea of one stop centre in line of Bharosa in every district is a laudable direction which must be implemented at the earliest. The court at the end of the judgment summed up the discussion by giving nine point directions and requested the states to set up at least one 'one stop centre in every district within a year from the date of pronouncement of the judgment. The court stepped in to fill the gap by giving concrete directions which should have been done by the legislature post the 1983 amendments.

Jyoti Dogra Sood

Kamala* v. *M.R. Mohan Kumar

2018 (14) SCALE 257

Decided on October 24, 2018

The objectives of section 125 of CrP.C are to achieve gender justice a facet of social justice and to prevent vagrancy and destitution. The nature and scope of section 125 of Cr.PC was clarified by the judiciary in the path breaking judgement, *Mohammad Ahmed Khan* v. *Shah Bano Begum*, 1985 (1) SCALE 767 wherein the Constitution bench opined that the said provision is truly secular in character and is different from the personal law of the parties. The court further added that such provisions are essentially of a prophylactic character and cut across the barriers of religion.

In the present case the bench comprising of R. Banumathi and Indira Banerjee, JJ while setting aside the impugned judgment of the High Court of Karnataka and allowing the present appeal stated that "proceedings under Section 125 CrPC do not require strict standard proof of marriage." The factual matrix of the case was that the appellant had filed the present appeal against the judgment of Karnataka High Court which has set aside the family court's decision of paying maintenance. The appellant had two children from wedlock between appellant and respondent and while the marriage of appellant and respondent was subsisting, the respondent got married to one of his colleagues and started harassing and neglecting the appellants. The appellant filed a police complaint after which the respondent was asked to pay Rs 3000 as maintenance. Appellant on not being able to maintain herself and her two children filed a criminal miscellaneous application under Section 125 CrPC for maintenance. The respondent contended that there was no valid marriage existed between them and hence the petition for maintenance was not maintainable. High Court had set aside the order of the family court and held that appellant was unable to prove she was the legally wedded wife of the respondent.

When the matter reached before the apex court it held that "Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 CrPC, such strict standard proof is not necessary as it is summary in nature meant to prevent vagrancy." Reiterating its earlier views the the Supreme Court stated that family court on the basis of documentary and oral evidence held rightly in favour of the appellant and High Court being the revisional court had no power of reassessing the evidence and substitute its views on findings of facts. Hence, the impugned judgment of the High Court was set aside and the present appeal was allowed with a liberty given to the appellants to approach the family court for further enhancement of maintenance if required.

Unfortunately, in the present era, a trend has evolved among the unmarried couples without enter into the legally binding marriage to live together as husband and wife as long as they have attained the age of majority. Section 125 of the Criminal Procedure Code, 1973 provides an effective remedy for neglected persons to seek maintenance under law. It is to be appreciated that in the present case the court has given a broad and expansive interpretation to the term "wife" so as to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.PC, so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.

Arya.A.Kumar

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