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Editorial

The 25th Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) was held in Madrid, Spain from December 2-15, 2019. The COP 25 was scheduled to be held under the Presidency of Chile, but at the last moment Chile's President Sebastian Pinera announced that his country was not in a position to hold the conference due to violent protests taking place in the State. At this very crucial juncture, Spain agreed to hold the event in Madrid. Nevertheless, Chile retained the Presidency, with the event renamed "COP25 Chile Madrid". The COP 25 meeting was considered as an important meeting on climate change as state parties are moving from the pre-2020 period under the Kyoto Protocol to the post-2020 period under the Paris Agreement. The conference aimed to finalise the "rulebook" of the Paris Agreement, when it takes effect in 2020, by settling on rules for carbon markets and other forms of international cooperation under "Article 6" of the Paris Agreement. Unfortunately, the State parties failed to achieve consensus on a number of areas, this led to deferring decision for the next COP meeting in Glasgow under "Rule 16" of the UN climate process. UN Secretary General Antonio Guterres said he was "disappointed" with the outcome of COP25 and that "the international community lost an important opportunity to show increased ambition on mitigation, adaptation & finance to tackle the climate crisis." India demanded that the developed nations must fulfil their commitment of providing \$1 trillion to finance the fight against climate change. Another major hurdle remained Article 6 of the Paris Agreement, regarding carbon markets. India, China and Brazil have been demanding that the past carbon credits earned under the existing marker mechanism in the Kyoto Protocol should be transitioned to the new market mechanism to be created under the Paris Agreement.

The Indian representative stressed on transition of the Clean Development Mechanism (CDM) earned under the Kyoto Protocol to the Paris Agreement. It was also demanded the carryover of the untraded emission reduction certificates held by Indian companies, which they can sell to raise funds. Indian representatives were very critical regarding the role of developed nations on climate action. Unfortunately, the talks failed to reach consensus on many areas and pushed decisions to be taken next year.

Manoj Kumar Sinha

Editorial Committee

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Manoj Kumar Sinha

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SUBSCRIPTION RATES

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NEW PRESIDENT OF ILI



Hon'ble Mr. Justice S. A. Bobde

Chief Justice of India / President, ILI

Hon'ble Mr. Justice Sharad Arvind Bobde was appointed as the 47th Chief Justice of India on November 18, 2019. Justice Bobde was born on April 24, 1956 in Maharashtra. His Lordship graduated from SFS College, Nagpur and Dr. Ambedkar Law College, Nagpur University in 1978. Justice Bobde was enrolled at the Bar Council of Maharashtra in the year 1978. He was designated as Senior Advocate in 1998. His Lordship as an Advocate specialized mainly in Constitutional, Company, Administrative, Election and Environmental laws. His Lordship was elevated to the Bombay High Court on March 29, 2000 as an Additional Judge. He was sworn in as Chief Justice of Madhya Pradesh High Court on October 16, 2012. His Lordship was elevated as a Judge of the Supreme Court of India on April 12, 2013. He was subsequently appointed as Chief Justice of India on November 18, 2019.

His Lordship delivered several landmark Judgements in Indian jurisprudence such as Aadhaar being mandatory and the Ayodhya case. Justice Bobde was the only Indian judge to represent India at the High Level Counter Terrorism Committee Executive Directorate, which was established by the United Nations Security Council Resolution, 1373. His Lordship will hold office till 23rd April, 2021.

ACTIVITIES AT THE INSTITUTE

National Workshop on “Legal Capacity Building/Capacity Building of persons with Intellectual and Developmental Disabilities. (PwIDDS)” (October 23, 2019)

The Indian Law Institute jointly with the National Trust for the persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities organized a National Workshop on Building Legal Capacity of Persons with Intellectual and Developmental Disabilities (PwIDDS) to address issues concerning PwIDDS on October 23, 2019 at the Plenary Hall of Indian Law Institute.

The workshop was inaugurated by Hon'ble (Mr.) Justice K.G. Balakrishnan, former Chief Justice of India/Chairperson, NHRC. The other dignitaries included Professor (Dr.) Manoj Kumar Sinha, Director, ILI, Shri Nikunja Kishore Sundaray, JS & CEO, National Trust, Ms. Shakuntala D. Gamlin, Chairperson, National Trust/Secretary, DEPwD and Mr. S.C. Prusty, Registrar, ILI. In his welcome address, Professor (Dr.) Manoj Kumar Sinha, Director, ILI highlighted the issues pertaining to disabled people addressed in the judgment by the Hon'ble Supreme Court in *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397. Delivering the inaugural address, the chief guest, Hon'ble Justice K.G Balakrishnan, commended that 'it is wonderful and allows everyone to take pro-active steps for people with multiple disabilities'.



Views from the technical sessions of the workshop

While introducing the workshop and issues concerning people with disabilities, Shri Nikunja Kishore Sundaray suggested that disability is an intersection of social and biological development and not an affixation, and therefore the best approach is to look at this issue having a human rights approach apart from the laws. In her presidential address, Ms. Shakuntala D. Gamlin emphasised that India has taken leadership that has been appreciated internationally by having a country law which is so much in consonance with UNCRPD. In his vote of thanks Shri S.C Prusty commended that in case of a child with disability, the mother undergoes through a lot of stress and expressed vote of thanks to all participants.

The compendium titled 'Building Legal Capacity for Persons with Intellectual & Developmental Disabilities, India, 2019' was released by the Hon'ble dignitaries during the inaugural session of the workshop.



Hon'ble Mr. Justice K.G. Balakrishnan inaugurated the workshop and delivering the address



Hon'ble dignitaries releasing the compendium during the inaugural session of the workshop

The workshop consists of three technical sessions where luminaries from various fields and government departments presented their research ideas, opinions and recommendations. The speakers for the first technical session of the workshop included Professor Sheffali Gulati, HOD, Child Neurology Division, Department of Pediatrics, AIIMS, New Delhi, Dr. Nimesh Desai, Director, Institute of Human Behavior and Allied Sciences (IHBAS), New Delhi, Dr. Gaurav Gupta, World Health Organization (WHO) and Dr. Meenakshi Batra, Pandit Deendayal Upadhyaya National Institute for Persons with Physical Disabilities (Divyangjan), New Delhi. The speakers deliberated on various perspectives on disabilities from medical perspectives to social issues.



Participants of the workshop

The speakers of the second technical session of the workshop were from governmental bodies as well as parent organisations which included Shri Prasanna Kumar Pincha, former Chief Commissioner for Persons with Disabilities, Government of India, New Delhi, Mr. Sanjay Kant Prasad, Dy. Chief Commissioner of PwD, Shri Shivajee Kumar, State Commissioner for Persons with Disabilities, Bihar and Cdr. S.N.Bijur, President of PARIVAAR. In the third technical session the speakers gave an insight about the current developments and the strategies needed to be adopted to develop PWIDDS as human resources. The speakers included Dr. Aloka Guha, Ex-Chairperson, National Trust on Empowerment of

Caregivers, Dr. S.P. Das, Director Swami Vivekanand National Institute of Rehabilitation Training and Research (*SVNIRTAR*), Dr. Himangshu Das, Director National Institute on Empowerment of Persons with Multiple Disabilities (*NIEPMD*), Chennai and Ms. Saakshi Sinsinwar.



Hon'ble (Dr.) Justice Arijit Pasayat 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 human rights issues that PwDs face and how they are treated to be unwanted by their own families and community. Registrar of ILI, Shri S.C Prusty thanked His Lordship Justice Pasayat and all other speakers for taking time out and making the workshop a success. The primary purpose of the workshop was to bring together experts from various fields in order to efficiently understand and address the issues concerning PWIDDS and come to effective solutions for the issues faced by them.

Prof. N.R. Madhava Menon Workshop on Teaching Techniques and Research for Young Law Teachers and Research Scholars (November 6-12, 2019)

In an endeavour to create competent, committed and passionate law teachers and researchers, who are equipped in teaching and research so as to impart the requisite knowledge, skills and attitude to the law students, Menon Institute of Legal Advocacy and Training (MILAT) and Commonwealth Legal Association (CLEA), in association with Indian Law

Institute (ILI) and Lloyd Law College (LLC) organized a week-long workshop on Teaching Techniques and Research. The motto of the workshop was “to equip law teachers with teaching techniques for moulding the law students to be profession-ready”. Professor (Dr.) S. Sivakumar, Professor, ILI conceived the concept of this workshop and worked out the detailed modalities for its implementation.

The workshop was held from November 6-12, 2019. The Workshop was a seven-day fully residential face-to-face interactive training at Delhi in Indian Law Institute and at Lloyd Law College, Greater Noida to provide theoretical and practical inputs in law teaching and research by experts and professionals. Fifty-two competent young teachers and research scholars were hosted from November 6– 9, 2019 at ILI, Delhi and from November 10-12, 2019 at Lloyd Law College, Greater Noida. They included young law teachers and researches not only from all parts of the country but also from Bangladesh from where four participants took part in the workshop.



Hon'ble Mr. Justice Surya Kant delivering the inaugural address

The workshop was inaugurated by Hon'ble Mr. Justice Surya Kant, Judge, Supreme Court of India on November 6, 2019 at Indian Law Institute, New Delhi. He shared his valuable experiences and a heartening anecdote from his college days whereby he expressed how profoundly his teachers had impacted his life and what seminal role they had played in moulding his personality. He emphasized

on the need of stepping into the profession of teaching only if one is dedicated and truly passionate.

The program was conceptualized as a teaching workshop that is not merely oriented towards information dissemination, but envisioned as an interactive and stimulating exercise on practical implementation of various principles/theories of law teaching and research. It was conducted by a group of experienced faculty comprising academics, professionals and advocates of eminence from India and the Commonwealth countries. Distinguished lead resource persons for the workshop included Professor (Dr.) Mirzanur Rahman, Former Chairman, Bangladesh Human Rights Commission, Professor (Dr.) Adolfo Paolini, Director, LLM Programmes, Buckingham University Law School, U.K., Prashanta B Barua, Director, European College of Law, UK and Professor Meera Furtado, Head of Law, Sussex University, U.K/ Secretary General, CLEA. The renowned luminaries in the list of resource persons were Shri R. Venkataramani, Senior Advocate, Supreme Court of India, Dr. T.K Vishwanathan, Former Secretary General, Lok Sabha Secretariat, Professor (Dr.) M.P Singh, Former Vice-Chancellor, WBNUJS; Dr. Kanwal D.P Singh, Dean USLLS, IP University; Dr. P. Puneeth, Associate Professor, JNU; Dr. M.P Raju, Dr. Aman Hingorani, Shri Romy Chacko, Dr. Manoj Kumar, Dr. K.S Chauhan, and Shri Ravi Prakash, Advocates, Supreme Court.





Views from the inaugural and technical sessions of the workshop

A practical demonstration of teaching skills via video recording of a small lecture by all the participants took place during November 10-12, 2019 at the Lloyd Law College. The workshop was an intensive, thoroughly interactive initiative whereby the participants not only shared their experiences, concerns and suggestions, but also came to know about several initiatives of Lloyd Law College like the Legal Aid Services, PIL activities, SAARC moot court competitions, trial advocacy exercises etc. to make teaching and learning actively engaging, effective and socially-relevant for the students. Professor (Dr.) Mohd. Salim, Director, Lloyd Law College organized an informal bonfire for them in the evening, post the valedictory session, as gesture of hospitality and gratitude.

Hon'ble Mr. Justice Anil R. Dave at the valedictory session of the workshop

The valedictory ceremony was held in the Seminar Hall of Lloyd Law College on November 12, 2019. Hon'ble Mr. Justice Anil R. Dave, former Judge, Supreme Court of India was the chief guest. He underlined the importance of such initiatives to enhance the skills of law teachers and researchers in building strong, equipped and vibrant legal professionals for the bar, bench and society at large. All the participants were presented with the certificate of participation.

Professor (Dr.) S. Sivakumar, ILI; Professor (Dr.) G. Kameswari, Professor (Dr.) Mohd Salim, and Professor (Dr.) G. Mallikarjun from Lloyd Law College; and Dr. Lisa P. Lukose, GGSIU/Secretary, CLEA were the resident resource persons handling sessions and coordinating the academic aspects of the workshop.

The workshop was organized under the leadership of Professor (Dr.) Manoj Kumar Sinha, Director, ILI who was the Chairman of the organizing committee and Shri Manohar Thairani, President, Lloyd Law College was the organizing Secretary. The logistic and administrative support was rendered by teams headed by Shri Shreenibas C. Prusty, Registrar, ILI and Shri Akhilesh Kumar Khan, Deputy Director, Lloyd Law College.



Participants of the workshop with the organisers of the programme

Two Day Training Programme for Police Personnel on “Police and Human Rights: Issues and Challenges” (November 23-24, 2019)

The Indian Law Institute in collaboration with the National Human Rights Commission organised Two Days Training Programme for Police Personnel on “Police and Human Rights: Issues and Challenges” on November 23-24, 2019 at the Plenary Hall of the Institute.

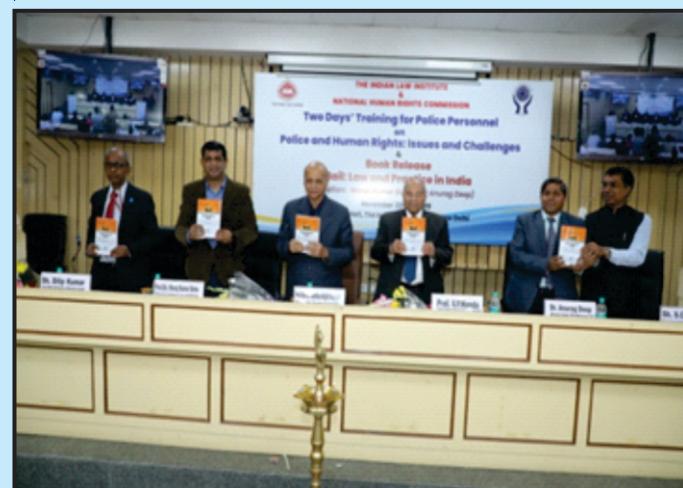


Hon'ble (Dr.) Justice Arijit Pasayat inaugurated the programme by lighting the lamp

Hon'ble (Dr.) Justice Arijit Pasayat, Former Judge Supreme Court of India, inaugurated the training programme and presided over the function. While delivering the inaugural address His Lordship emphasised about the need for organising such

training programme for Police Personnel on the issues of human rights. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and emphasised the role of Police Personnel in the realisation of Human Rights. Shri Dilip Kumar, JS & Web Information Manager, LOKPAL, USA addressed the audience and Professor V.P.Nanda, Emiratus Professor, University of Denver, USA delivered the special address. Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

On this occasion, the book entitled *Bail: Law and Practice in India* edited by Professor Manoj Kumar Sinha, Director, ILI and Dr Anurag Deep, Associate Professor, ILI published by the Indian Law Institute, New Delhi. The book was released by Hon'ble (Dr.) Justice Arijit Pasayat in the presence of dignitaries.



Hon'ble dignitaries releasing the book at the inaugural function

First day of the training programme consisted of four technical sessions on various themes of Human Rights. Dr. Sanjay Dubey, Director (Admn. & Policy Research, NHRC) deliberated on 'Role of NHRC in protecting human rights' and Mrs. Manzil Saini, IPS, Senior Superintendent of Police, NHRC spoke on 'Human Rights and Police Investigation: Issues and Challenges' in the first and second sessions of the training programme. Mr. Amod K. Kanth, Former DGP and Chairperson, DCPCR, General Secretary, Prayas Juvenile Aid Centre Society, Delhi spoke on 'Human Rights, Terrorism, National Security and

'Role of Police' and Mr. Sunil Gupta, Former Law Officer, Tihar Jail deliberated on 'Role of Police Personnel in Functioning of Prison' in the third and fourth sessions of the training programme.

Smt. Rakesh Maheshwari, Sr. Director/Scientist G, Group Coordinator (Cyber Law & E-Security), M/o Electronics and Information Technology delivered a lecture on 'Role of Police Officers in Investigating Cyber Crimes' and Mr. Vikram, I-Thought, Noida spoke on 'Role of Police in implementing laws related to Children' in the fifth and sixth sessions of the training programme. Dr. Anurag Deep, Associate Professor, ILI addressed the audience in the seventh session of the programme on 'Constitutional Rights of Persons in Custody' and Mr. Sudhanshu Ranjan, Journalist, Doordarshan deliberated on 'Impact of Media During Police Investigation' in the final technical session of the training programme.



Hon'ble Mr. Justice Swatanter Kumar delivering the valedictory address

Hon'ble Mr. Justice Swatanter Kumar, Former Judge, Supreme Court of India & Former Chairperson, National Green Tribunal (NGT) was the chief guest for the valedictory function. While delivering the

valedictory address His Lordship appreciated the ILI for organising such training programme. Special address was delivered by Mr. P.K. Malhotra, Former Secretary, Department of Legal Affairs, Ministry of Law & Justice. Welcome address was delivered by Professor (Dr.) Manoj Kumar Sinha, Director, ILI and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks. Approximately thirty six judicial officers participated in the training programme and certificates of participation were distributed to them.



Participants of the programme along with Director & Registrar, ILI.

Certificate Course in Mediation (November 22-24, 2019 & December 06-08, 2019)

The Indian Law Institute along with MAADHYAM, Council for Mediation and Conflict Resolution and SAARCLAW (India Chapter) conducted an integrated certificate course in 'Mediation' on November 22-24, 2019 (Phase -I) & December 06-08, 2019 (Phase II) at the ILI. The course aimed at reaching out to a multitude of persons interested in taking up mediation professionally, including lawyers, judges, counselors, etc.



Hon'ble (Mr.) Justice Madan B. Lokur and Hon'ble (Mrs.) Justice Gita Mittal addressing the participants

The course was inaugurated by Hon'ble (Mr.) Justice Madan B.Lokur, Former Judge, Supreme Court of India. Hon'ble (Mrs.) justice Gita Mittal, Chief Justice, High Court of Jammu and Kashmir was the guest of honour at the inaugural function. While delivering the inaugural address His Lordship appreciated the efforts of the organising team for conducting the training programme and opined that the purpose of such training programme for making the teachers, students to become 'trained mediators'. Shri Rakesh Munjal, President, SAARCLAW (India Chapter) highlighted the need for organizing such programmes and also emphasized that the SAARCLAW will continue to strive for this kind of programmes. He also suggested that these kind of programmes should not be confined to lawyers but also to University teachers. He indicated that similar kinds of programmes will be conducted in other Countries in future. Hon'ble (Mrs.) justice Gita Mittal appreciated all the organisers for conducting the training programme.



Inaugural session of the mediation course

Shri Rakesh Munjal addressing the participants

Classes were conducted by experts like Shri J.P Singh, Shri Sudhanshu Batra, Senior Advocates, Delhi High Court; Ms. Sadhana Ramachandran and Ms. Veena Ralli, Advocates, Delhi High Court. The course covered topics like 'Understanding and Transforming Conflict', 'Negotiation and Bargaining',

'Essentials and Communication in Mediation', Roles and Ethics in Mediation', 'Relevant Provisions of Law', etc.



Technical sessions of the mediation course

The Course covered multiple aspects that lead to conflict between persons, groups or nations, and how to classify them into broad dimensions of Conflict Core, Conflict Spiral, Conflict Triangle and Conflict Cycle to enable better understanding. It also analyzed how adversarial approach is different from the problem-solving approach to negotiation, and how different communication styles, negotiation climate and tactics are involved in the two, leading to different consequences/outcomes. The Course also covered phases of mediation, beginning with the introduction, and proceeding to joint/private sessions, and culminating with the wrap-ups. Importantly, this aspect of the Course covered the different wrap-ups necessary in cases of settlement and non-settlement, and how to draft the settlement agreements. The course also dealt with examples of matters that were mediated at the Conciliation and Mediation Centre of the Delhi High Court, Samadhan, in order to promote better practical understanding among the participants. Most importantly, the Course had questions for discussion at the end of each part, to facilitate and encourage thinking and analysis on the part of the participants rather than mere attendance of classes. The course culminated with all participants completing the training successfully and receiving their Certification; but perhaps more importantly, the course was able to promote mediation skills in the legal fraternity, thus enhancing the possibility of more amicable settlements of future and current disputes.

STATE UNIT ACTIVITIES

Constitution Day Celebrations (November 26, 2019)

The Kerala State Unit of the Indian Law Institute in collaboration Kerala State Legal Services Authority (KeLSA) celebrated the Constitution Day on November 26, 2019 at the Kerala High Court Auditorium. Hon'ble Shri Justice S. Manikumar, Chief Justice High Court of Kerala who is also the Patron-in-Chief of KeLSA delivered the Constitution Day Message. His Lordship's message centred on the vitality and significance of the Preamble and enduring wisdom of our Constitution.



From L-R : Mr. Nissar Ahamed, Mr.Sunil Jacob Jose, Hon'ble Mr.Justice C.K.Abdul Rehim ,Hon'ble Mr.Justice S Manikumar, Hon'ble Mr.Justice A.M. Shaffique, Mr. C.P.Sudhakara Prasad, Smt.S.K.Devi and Mr. George Cherian



Hon'ble Mr.Justice S.Manikumar delivering the Constitution day message

The event was presided over by Hon'ble (Mr.) Justice C.K. Abdul Rehim who is also the Executive

Chairman of KeLSA. The Presidential Address emphasized on the role of Bar and Bench in upholding the principles that are imbibed in our Constitution. Hon'ble Sri Justice A.M. Shaffique, Judge High Court of Kerala Executive Chairman, Indian Law Institute, Kerala State Unit delivered the Key Note Address. In his address His Lordship warned of the various threats that our Constitution faces in contemporary India.

Shri C.P. Sudhakara Prasad, Advocate-General of Kerala, Sri Sunil Jacob Jose, President, Kerala High Court Advocates Association, Smt S.K. Devi, President, Kerala Federation of Women Lawyers, Senior Advocate Shri George Cherian, Executive Council Member and Shri Nisar Ahammed K.T, District Judge and Member Secretary, KeLSA also spoke at the event.

Law Lecture on “The Freedom to Express Dissent: A Jurisprudential Approach” (November 30, 2019)

The Kerala State unit of the Indian Law Institute organized a Law Lecture, as the first in a series of lectures, aimed to promote continued legal education and discourse. The Lecture was delivered by Hon'ble (Mr.) Justice L. Nageswara Rao, Judge Supreme Court of India on November 30, 2019 at the Kerala High Court Auditorium on the pertinent topic “The Freedom to Express Dissent: A Jurisprudential Approach”.



Hon'ble Mr. Justice L.Nageswara Rao delivering the lecture. Hon'ble Mr.Justice S.Manikumar and Hon'ble Mr.Justice A.K.Jayasankaran Nambiar are also seen

Hon'ble Justice L. Nageswara Rao, Judge, Supreme Court of India built an engaging narrative by

historically tracing the development of the jurisprudence of free speech and the freedom to dissent, from a comparative perspective. He highlighted the concept of the “marketplace of ideas” in understanding the free speech discourse and traced the path taken by the American Supreme Court in developing standards for protection of speech or dissent. Justice Rao elaborated on the evolution of US jurisprudence from the “clear and present danger” test being abandoned in favour of the prevailing imminent lawlessness” test, which predicates both imminence and probability as twin requirements for prosecution of harmful speech. He also elaborated on the Hicklin test for obscene content, its subsequent repudiation and the cases of *Ranjit Udeshi* and *Aveek Sarkar*. He concluded with a deft delineation of the contemporary laws of sedition and defamation in India.



From L-R: Hon'ble Mr.Justice S.Manikumar, Hon'ble Mr. Justice L.Nageswara Rao and Hon'ble Mr. Justice A.K.Jayasankaran Nambiar

Hon'ble Sri Justice S.Manikumar, Chief Justice, High Court of Kerala who is also President of Kerala State Unit of ILI delivered the introductory address. The event was concluded by an address delivered by Hon'ble Shri Justice A.K. Jayasankaran Nambiar, Judge, High Court of Kerala and Executive Council Member, Indian Law Institute, Kerala State Unit.

EXAMINATIONS

PG Diploma Supplementary Examination-2019

The Supplementary Examinations for Post Graduate Diploma Courses were held during September 27, 2019 to October 04, 2019. The result of the same was published on November 05, 2019.

LL.M. 1 year Supplementary Examinations

The LL.M. Supplementary Examinations were held from October 07-14, 2019. The result of the same was published on October 24, 2019.

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

The LL.M. Semester End Examinations (1st Sem.) was held during December 11-20, 2019.

SPECIAL LECTURES



The Indian Law Institute organized special lectures on “Ethno nationalism, Pluralism and Practice” by Professor Upendra Baxi, Emeritus Professor of Law, University of Delhi & University of Warwick, UK and on “Legal Pluralism and Indian Laws in a global age” by Professor Werner F. Menski, Emeritus Professor, SOAS University of London, UK on November 6, 2019.



On this occasion, the book entitled *Dispelling Rhetorics: Law of Divorce and Gender Inequality in Islam* edited by Professor (Dr.) Manoj Kumar Sinha, Director, ILI and Professor (Dr.) Furqan Ahmad, Former Professor, ILI published by the Indian Law Institute, New Delhi. The book was released by Professor Upendra Baxi and Professor Werner F. Menski in the presence of dignitaries.



The Indian Law Institute organized a Special Lecture by Professor Ved P. Nanda, Distinguished University Professor, Director, The Ved Nanda Centre for International & Comparative Law, University of Denver Sturm College of Law on the topic “Higher Legal Education in the US” on November 22, 2019.

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 courses of three months duration on “Cyber Law” (34th batch) and “Intellectual Property Rights and IT in the Internet Age” (45th batch) was completed on December 31, 2019.

VISITS TO THE INSTITUTE

- 36 law students from Mody University of Science & Technology, Lakshamangarh, Rajasthan visited the Institute on October 1, 2019.
- 39 students from Bengal Law College, Santiniketan, Doranda visited the Institute on October 15, 2019.
- 117 students from Law College Durgapur, West Bengal visited the Institute on November 19, 2019.
- Law students from Kazi Nazrul University, Asansol, West Bengal visited the Institute on November 26, 2019.
- 36 students from GLS Law College, Ellis bridge, Ahmedabad, visited the Institute on December 3, 2019
- 61 Students from Sureswar Dutta Law College, Howrah, West Bengal visited the Institute on December 5, 2019.
- Students from University School of Law, Gujarat University, visited the Institute on December 17, 2019.

STAFF MATTERS

- Ms. Gunjan Jain Assistant Librarian, ILI participated in the NDLI-UNESCO International Symposium on Knowledge Engineering for Digital Library Design 2019 (KEDL 2019) at IIT Delhi from December 09-11, 2019 and International IFLA/IALL workshop on “Open Access to Legal Knowledge” from December 2 - 3, 2019 at Le Méridien, New Delhi.
- Mr. Bhoopendra Singh, Computer System Administrator, ILI participated in the International IFLA/IALL workshop on ”Open Access to Legal Knowledge” from December 2 - 3, 2019 at Le Méridien, New Delhi.

FORTHCOMING EVENTS

- The Indian Law Institute will organise a talk on “Indian Constitution” by Professor. M.P Singh on January 23, 2020 at the ILI.
- The Indian Law Institute in collaboration with Ministry of Finance, Govt. of India will organise Probationary Training Programme for the Officer-Trainees of Indian Economic Services on “International and National Economic & Political Laws, RTI and Rule of Law on January 27-31, 2020.
- The Indian Law Institute will organise One Day Legal Research Methodology Workshop for Ph.D and LL.M. Students on "Dissertation Writing" on January 28, 2020.
- The Indian Law Institute in collaboration with NHRC will organise Two Days Training Programme for Prison Officials on “Human Rights: Issues and Challenges on February 15-16, 2020.
- The Indian Law Institute is hosting a “One Day Hands on Workshop on“MOOCs: Design, Development and Deliver” to introduce the MOOCs pedagogy and the open source MOOCs platforms on February 19, 2010.

FACULTY NEWS

The Bar Association of India (BAI) celebrated Sixty Years of its existence on December 3, 2019. The BAI annually celebrates December 3, 2019 as “Lawyers of India Day.” On this occasion, Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute was felicitated by the BAI, recognising his significant contribution in the field of legal education and human rights fields.



Professor (Dr.) Manoj Kumar Sinha was felicitated by Hon'ble Ms. Justice Indira Banerjee, Judge, Supreme Court and Justice Ravindra Bhat

Professor (Dr.) Manoj Kumar Sinha, Director, ILI
Invited as chief guest to deliver inaugural address to the participants of the Eight ILNU National Students Conference on International Humanitarian and Refugee Laws, Nirma University, Ahmadabad on November 13, 2019.

Delivered a talk on, “International Initiatives & Cyber Cooperation Mechanisms in Regulating Cyber crimes” in an International Conference on Cyber law, Cyber Crime & Cyber security, organised by Cyber laws and Pavan Duggal Associates, New Delhi on November 22, 2019.

Invited as a keynote speaker to deliver a talk on, “Women Empowerment, Gender Justice and the Role of Law- Inequalities Re-examined (an Indian Perspective), organised by Mody University, Lakshmangarh, Rajasthan on November 29, 2019.

Delivered a talk on “Legal Research in contemporary Area”, organised by JEMTEC School of Law, Greater Noida on December 18, 2019.

Invited as a chief guest to deliver the inaugural address on Research Methodology on Domestic and International Perspectives, organised by the Indian Society of International Law on December 20, 2019.

Delivered a talk on "Access to Justice" to interns of NALSA, organised by NALSA, New Delhi on December 23, 2019.

Professor (Dr.) S. Sivakumar, Professor, ILI has participated in the 15th Korea Legislation Research Institute (KLRI) - ALIN General Meeting & International Conference during August 27-29, 2019 organised at Chulalongkorn University Faculty of Law, Thailand and he spoke about strengthening ALIN through participation of all member organizations. He has contributed 'legislative news on five recent developments on law pertaining to India'. The General meeting decided to entrust the Indian Law Institute to organize the 2022 ALIN General Meeting & International Conference at New Delhi, India.



Prof (Dr.) Sivakumar along with the participants of KLRI - ALIN General Meeting

Prof Sivakumar has presented a paper on "Need for a Comprehensive Policy Frame Work for Sustainable Socio-economic Transformation in Asia" in International Conference—Sustainable Asia, Sustainable World on August 29, 2019 at Chulalongkorn University Faculty of Law, Thailand organized by Asia Legal Information Network (ALIN), Chulalongkorn University Faculty of Law (LawChula), and Korea Legislation Research Institute (KLRI).

Dr. Jyoti Dogra Sood, Associate Professor, ILI delivered a special lecture on "Human Rights and Juvenile Justice" to LL.B. students of RV Institute of Legal Studies, Bengaluru and also delivered a special lecture on "Criminal Law and Juvenile Justice" to LL.M. students at University Law College, Bangalore University on November 18, 2019. She also delivered a special lecture on "Criminal Law in Forensic Science" to the students of the Department of Forensic Science, Bangalore University on November 19, 2019. She also addressed participants on "Juvenile Justice: International and Domestic framework" in a Conference for Principal Magistrates, JJB and Capacity Building of other stakeholders on November 22, 2019 at the Delhi Judicial Academy.

She was invited as a resource person in the State Consultation on Care Reforms Effective Implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 with focus on Quality Care and Linkages with Family based Alternative Care organized by Patna High Court Juvenile Justice Committee supported by UNICEF at the Bihar Judicial Academy on November 30, 2019. She also coordinated a One-week programme on legal awareness organised by the Indian Law Institute in collaboration with Delhi State Legal Services Authority from December 12- 18, 2019 at Sanjay Colony, Chanakyapuri.

LEGISLATIVE TRENDS

THE NATIONAL INSTITUTE OF DESIGN (AMENDMENT) ACT, 2019

(Act No. 38 of 2019)

The National Institute of Design (Amendment), 2019 amended the National Institute of Design Act, 2014 declares the National Institutes of Design in Andhra Pradesh, Madhya Pradesh, Madhya Pradesh, Assam and Haryana as institutes of national importance. The Act confers upon them the power to grant degrees and diplomas.

THE JALLIANWALA BAGH NATIONAL MEMORIAL(AMENDMENT)ACT, 2019

(Act No. 39 of 2019)

The Jallianwala Bagh National Memorial (Amendment) Act, 2019 amended the Jallianwala Bagh National Memorial Act, 1951. The Act provides to construct a National Memorial for the people killed or wounded in the Jallianwala Bagh, Amritsar on April 13, 1919. A Trust has to be created to manage the National Memorial. The Act removes the President of the Indian National Congress from the Trustees and states that if there is no Leader of Opposition in Lok Sabha, then the leader of the single largest opposition party will be the Trustee. The trustees will be appointed by the central government for a period of five years but can be terminated by the government before the expiry of their term.

THE CHIT FUNDS (AMENDMENT) ACT, 2019

(Act No. 41 of 2019)

The Chit Funds (Amendment) Act, 2019 amended the Chit Funds Act, 1982. The act increases the limit of aggregate fund collections in chit funds by thrice the current limit. The limit for chit funds with less than four partners has been increased to Rs.3 lakh from Rs 1 Lakh and for chit funds with four or more partners has been increased to Rs 18 lakhs from Rs 6 lakhs. The amended act also gives the foreman a right to lien against the credit balance from subscribers and increases their commission from 5% to 7%.

THE SPECIAL PROTECTION GROUP (AMENDMENT),ACT, 2019

(Act No. 43 of 2019)

The Special Protection Group (Amendment) Act, 2019 amended the Special Protection Group Act, 1988. The amended act states that security will be provided to the Prime Minister and his/her immediate family residing with them at Prime Minister's official residence. The former Prime Ministers and their immediate family will be provided security if they are residing with them at the residence allotted to the former Prime Minister. The duration for this security is 5 years from the date they cease to be the Prime Minister.

THE TAXATION LAWS (AMENDMENT) ACT, 2019

(Act No. 46 of 2019)

The Taxation Laws (Amendment) Act, 2019 amended the Income Tax Act, 1961 and the Finance (No 2) Act 2019. The act replaces the ordinance promulgated by the President in September 2019 to reduce corporate tax rates. The Act provides the domestic companies an option to pay tax at 22% without claiming certain deductions under the Income Tax Act. The new domestic manufacturing companies have been provided an option to pay income tax at the rate of 15% without claiming certain deductions. The Minimum Alternate Tax (MAT) will not be applicable to companies including domestic companies, opting for new tax rates.

THE CITIZENSHIP (AMENDMENT) ACT, 2019

(Act No. 47 of 2019)

The Citizenship (Amendment) Act, 2019 amended the Citizenship Act 1955 providing citizenship to Hindu, Sikh, Buddhist, Jain, Parsi and Christian who have fled from religious persecution in Pakistan, Bangladesh and Afghanistan before 31st December 2014. Further, the Act reduces the naturalisation period from six years to five years. The Act has also made changes in the provisions on registration of Overseas Citizens of India (OCI) cardholders.

THE ARMS (AMENDMENT) ACT, 2019

(Act No. 48 of 2019)

The Arms (Amendment) Act, 2019 amended the Arms Act, 1959. The Act reduces the number of permitted firearms per person from three to one. The validity of a firearm licence have been increased from three to five years. The Act increases the penalties for certain acts and also introduced new categories of offences.

LEGAL JOTTINGS

Minimum qualifying years of service cannot be ignored for granting invalid pension

The Supreme Court Bench comprising of Justice R. Banumathi, A.S. Bopanna and Hrishikesh Roy held

that while granting invalid pension the qualifying years of service cannot be ignored and must be taken into consideration. In the present case, The Odisha Administrative granted the family of a man an invalid pension even though he had not completed his stipulated period employment under the Orissa Civil Service (Pension) Rules, 1922. The Court said:

"The condition of qualifying service prescribed in the Pension Rules must be satisfied to become eligible for invalid pension and the arguments made to the contrary that invalid pension can be claimed under Rule 39 without satisfying the stipulated qualifying service mentioned in the same Rules, do not appeal to us."

The court held that an employee is entitled to pension as an award for his hard work and long services towards the employer. The Pension Rules clearly state that a qualifying service of 10 years was required to claim the pension. The Court elaborated that provisions of the Pension Rules should be understood in context of statute as a whole. Since the employer did not fulfilled the requirement of he did not have the right to claim invalid pension under Rule 39 of the Pension Rules.

(*State of Orissa v. Maju Naik*, 2019 SCC On Line SC 1548, decided on December 4, 2019).

Supreme Court lays down guidelines for appointing amicus curiae in cases of granting life sentence or death sentence.

The three judge bench of U.U Lalit, Indu Malhotra and Krishna Murari has laid down the guidelines for appointment of amicus curiae in cases of death sentence. Following are the guidelines:

1. Only those advocates having a minimum experience of 10 years at the Bar can be considered to be appointed as Amicus Curiae or through legal services to represent an accused.
2. In matters of High Court concerned with confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae

3. Reasonable time should be provided to the Counsel appointed as the Amicus Curiae in order to enable the counsel to prepare and be thorough with the matter. Although there is no rule prescribed to decide what constitutes a reasonable time, for reference a minimum of seven days may be considered appropriate and adequate.
4. Any counsel appointed as Amicus Curiae on behalf of the accused must be allowed to have meetings and discussions with the accused in the concerned case.

The guidelines were issued in the case that the Apex Court was hearing where the Amicus Curiae appointed on behalf of the accused was asked to defend the charges on the same day of his appointment as Amicus Curiae. This was disadvantageous for the Counsel as he did not have sufficient time to go through case and have any discussion with the accused. This led to accused been awarded death sentence for the murder of a 9 year old girl. The Court held that though expeditious disposal is necessary in criminal matters, however in pursuit of expeditious disposal, cause of justice must not be allowed to suffer.

"What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice."

The Court set aside the conviction given by the Trial Court and directed de novo consideration of the matter.

(*Anokhilal v. State of Madhya Pradesh*, 2019 SCC On Line SC 1637, decided on December 18, 2019)

Contents of pen drive or a memory card amounts to documentary evidence and not material evidence

The Division Bench of the Supreme Court comprising of Justice Am Khanwilkar and Justice Dinesh Maheshwari that contents of a pen drive or memory card are to be considered as 'document' and not a

'material object'. The Court also directed that the accused is entitled a copy of the same in order to prepare a defence under Section 207 of the Code of Criminal Procedure, 1973. However, if the evidence is presented in a rape case than keeping in mind the sensitivity of the contents, the Trial Court can deny the accused the copy but allow its inspection by the accused and their respective lawyers for preparing a defence.

'The Court was hearing a Kerala actor's plea who was accused of sexual crime by an actress. The accused filed the plea for gaining access to the visuals of the alleged sexual crime in February 2017. The Court said that the memory card is to be treated as a material object if the prosecution relies on the fact of the recovery of the memory card. However, if the prosecution relies on the contents of the memory cards then it will be considered as documentary evidence'.

The judgement made reference to section 3 of the Indian Evidence Act, 1872 which includes electronic records in the definition of 'documentary evidence'. The court cited precedents stating that tape records of speeches and compact discs containing visuals etc are deemed to be 'documents. Also, section 2(1)(t) of the Information Technology Act, 2000 [IT Act, 2000] defined "electronic record" to mean 'data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfiche'. In the light of this, the court held that the footage contained in the memory card or pen drive will be regarded as 'document'.

(*P. Gopalkrishnan v. State of Kerala*, 2019 SCC OnLineSC 1532, decided on November 11, 2019)

Victim's counsel cannot argue in the case but can only make up for the deficiencies in the prosecution case

The apex court decided upon the question of the extent to which the victim's counsel can participate in the case. They held that the victim's counsel is subject to the directions of the Public

Prosecutor and do not possess the right to make oral argument or examine and cross-examine witnesses.

"To ensure that the right of appeal accorded to a victim under the proviso to Section 372 of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution."

The court stated that the role accorded to the Public Prosecutor by the Cr.PC should not be interfered with and was of the opinion that full effect should be given to Section 24(8) and 301(2). Section 24(8) acts as a safety valve in which the victim's counsel can address the aspects that has left out by the prosecution in examining the witnesses or while presenting arguments to the Court. Section 301(2) states that the victim's counsel is subject to the directions of Public Prosecutor or the Assistant Public Prosecutor.

The court stated that:

"Even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has recourse by channelling his questions or arguments through the Judge first."

CASE COMMENTS

Karnataka State Pollution Control Board v. B. Heera Naik and Ors.

AIR 2020 SC 200

Decided on November 26, 2019

This case raised an important question as to whether the Commissioner of City Municipal Council and the Chief officers of City Municipal Council can be prosecuted under section 48 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act). The Karnataka State Pollution Control Board has challenged the judgment of the High Court of Karnataka of 16th February 2015. The respondents,

who were working as Municipal Commissioner and Chief officers of the Municipal Council, approached the High Court under Section 482 Code of Criminal Procedure, the appeal was allowed and the proceeding initiated for their prosecution by Appellants under the Water Act 1974 was quashed. In this case the Karnataka State Pollution Control Board filed a complaint in the Court of Metropolitan Magistrate at Bangalore for taking cognizance of the offence punishable under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act 1974 (Water Act) against the accused persons and to punish them for the offences. The complaint highlighted that the Board had accorded a consent to the accused persons to discharge sewage effluent treatment which was expired on 30 June 2006 and thereafter the same was not renewed. The Complaint stated that non-obtaining of the consent after the expiry date and discharging the untreated sewage into the neighbouring water bodies constitute a violation of Section 25 of the Water Act, 1974, which is punishable under Section 44 of the Act, 1974.

The Court had observed that the concept of corporate criminal liability as contained in Section 141 of the Negotiable Instruments Act, 1881 is attracted to corporation and a company. Section 141 uses the term "person" and refers it to a company. There is no trace of doubt that the company is a juristic person. In light of the above the Court examined the purpose and objects of the Water Act 1974, and held that Section 47 can be resorted to for offences by body corporate. The Court observed that the Karnataka State Pollution Control Board by filing a complaint before the Magistrate for taking cognizance of offence under Section 49 did not commit an error. Section 49 embraces cognizance of all offences under the Act. Thus, in the event any offence is committed by anyone, its cognizance can be taken under Section 49. However, the Court reiterated that offences by a body corporate are to be covered by Section 47, since in the event offences by body corporates are not covered by Section 47, the benefit of Section 47(1) proviso shall not be available to that body corporate. The Court held that offences by body corporate like City Municipal Council are covered under Section 49, treating it as an offence by company as provided in Section 47 and held that the High Court erred in quashing the complaint filed by Karnataka State Pollution Control Board against the Respondents. The applications filed Under Section 482 Code of

Criminal Procedure by the Respondents stand dismissed and allowed the Magistrate/Metropolitan Magistrate to proceed with the complaints in accordance with law. This decision by the Court reaffirms its deep commitment to ensuring effective implementation of laws related to protection of the environment. The case also sends a clear message to those who are holding responsible positions in the Municipality and Municipal Corporation to ensure that the environment is not damaged; otherwise they will be held responsible under various laws.

Manoj Kumar Sinha

***In Re Assessment of the Criminal Justice System
in Response to Sexual Offences***

2020 (2) SCALE 317

Decided on December 18, 2019

Enforcement of criminal laws is a serious concern not only in India but in developing countries especially South Asia. In the case of sexual offences the concern is graver because conviction rate is very poor.(NCRB 2018 suggests it is 27%). Time and again the Supreme Court has expressed its disappointment on poor enforcement of criminal laws. This case under comment is, however, first of its kind where the Supreme Court has taken a more organised and comprehensive exercise to address the issue of enforcement of criminal laws that deal with sexual offences.

The court has highlighted many areas of concern which revolve around provisions relating to sexual offences. Many of these provisions were incorporated through the Criminal Law Amendment Act of 2013 and 2018. Some of the questions raised by the Supreme Court are as under :

- (1) Whether all the Police Stations have a woman police officer or woman officer to record the information of the victim? (2) In case, an information relating to offence of rape received at a Police Station, reveals that the place of commission of the offence is beyond its territorial jurisdiction, whether in such cases FIR without crime number are being recorded?
- (3) Whether provisions are available for recording of first information by a woman police officer or a woman officer at the residence of the victim or any other place of choice of such person in case the victim is temporarily or permanently mentally or physically

disabled? (4) Whether all the District Police Units have the details of special educator or an interpreter in case of a mentally or physically disabled victim? (5) Whether the police department of states or union territories have issued any circulars to make provision of videography of the recording of statements and depository of the same? (6) Whether any state has published guidelines in the shape of Standard Operating Procedure (SOP) to be followed for responding after receipt of the information relating to case of rape and similar offences? (7) Whether any case has been registered under the section 166A of IPC against any public servant? (8) Whether there is any mechanism in place to complain about the non-recording of information by the officer giving cause to offence under section 166A with any other institution/office, other than the concerned police station?

There are many other areas where the Supreme Court has sought the status *viz.* availability of medico-forensic kit to all health centers, two finger test, availability of lady doctors, interim and final compensation to victim, number of women judges because they should try such cases, case calendar by prosecution, protection of witnesses, Utilisation of Nirbhaya funds, trial to be completed within two years as per section 173 (1)(a) of the Criminal Procedure Code,1973. The Court has sought answers to these questions from all states and union of India. The case is yet to be decided but this case is going to change the system.

It is good to hear that the Supreme Court has not only expressed concern but is also evaluating the effectiveness of the laws. There are three categories of laws in this context. (A) Primary legislation (statutory provisions) under IPC, Cr.PC and Evidence Act. Subordinate legislation like Guidelines and Protocols issued by Ministry of Health and Family Welfare to assist rape victims. And judicial legislations like *Lalita Kumari v. Govt. of U.P*, AIR 2014 SC 187 (whether preliminary inquiry is essential before FIR), *Lillu Alias Rajesh v. State of Haryana*, (2013) 14 SCC 643 (do away with two finger test) and *Nipun Saxena v. Union of India*, 2018 (11) SCALE 350 (Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018) and *State of Kerala v. Rasheed*, AIR 2019 SC 721 (preparation of case calendar under section 230 of Cr.PC). Many of these issues are questions that

common people ask every day. Many times the legislature passes the law and is least bothered whether the enactment is followed in word and spirit or not. Similarly the executives issue many directions but hardly bother whether the directions are complied in spirit or not. And the judiciary issues several directions and then they do not have time to examine what is the impact of their directions. However, this case is *sui generis* in the sense that the Court has taken upon this burden on its own shoulders on a very wide scale. This was indeed the core function of the executive to examine the lacuna in the enforcement of laws. The judiciary was compelled to takeover this before it is too late.

The Supreme Court of India is not a judicial forum for mere conventional purpose. It has established itself as an active and sensitive justice delivery machine through various mechanisms. It has developed jurisprudence unknown to the legal world, for example-relaxing the rule of *locus standi* and the idea of continuing mandamus. First category of persons are aggrieved parties themselves. This is conventional or classical *locus standi*. Second category comprises those who are not aggrieved themselves but they represent other aggrieved, weaker, poor mass who are not able to approach the Court. This is liberal *locus standi*. Third category are those cases where public interest is involved even if that does not impact poor people. Fourth category is where the court does not wait for some aggrieved person or their representatives to formally knock the door but a letter can be sufficient (which is called as “Epistolary Jurisdiction”). This is *locus standi through letters*. A fifth category is *suo moto* registration of case by the Supreme Court where no one approaches, neither aggrieved party, nor any concerned citizen, nor is any letter addressed to the Court. But the Court takes up case themselves. This case under comment comes in the fifth category. This will be another illustration of continuing mandamus. Way back in 1985 Professor Upendra Baxi called this approach of liberalising *locus standi* as “taking suffering seriously.” But the judiciary must develop a mechanism to make executive and “duty holder” as accountable. This accountability issue has to be taken on periodic basis and not something taken up once in a decade. For example, when *Lalita Kumari Judgement* was delivered, the Supreme Court should have constituted a committee of experts which would have submitted a quarterly report to the Union Home

Ministry as well as the Supreme Court on the enforcement of its own judgement based purely on statutory provisions. This committee could have come up with a few data whether FIR in cognizable offence cases (or to begin with sexual offences case) is being registered or not as directed in *Lalita Kumari*. This committee could have suggested penal, departmental and contempt proceedings against those errant officers who fail to register an FIR. The risk with this approach is that it might amount to governance by Judiciary. But this could have been justified for a temporary period under doctrine of necessity. Some risk has to be taken when the criminal justice system is not responding especially to those who are weak, voiceless and vulnerable.

Anurag Deep

Miss XYZ v. State of Gujarat

2019 (14) SCALE 392

Decided on October 25, 2019

Rape reform statutes have undergone significant reformulations during the past years. The changes brought out in the rules of evidence and rape law enactments would make it less likely that the character, reputation, and behaviour of the victim would affect decision making about the case.

In the present case, the apex court set aside the verdict of Gujarat High Court that quashed the criminal proceedings against a man accused for sexually assaulting and blackmailing his employee, held that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the respondent was consensual.

The court observed:

"where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and such woman states in her evidence before the Court that she did not consent, the court

shall presume that she did not consent."

The respondent had taken inappropriate pictures of the appellant while she was asleep. He had gone to visit the appellant when she was unwell. Taking advantage of the situation, he started blackmailing her to make viral her pictures and to terminate her employment. He then started committing rape on her. When she resigned from the job, he contacted her fiancée and told him that she is not of good character and she had physical relationship with him and with other boys. When the fiancée refused to meet him, he sent a cover to his residence containing her nude/inappropriate pictures. The parties later entered into a written agreement wherein it was agreed that the dispute between the parties are settled and that the respondent has allegedly paid a huge amount to the appellant.

The court noticed that whether the respondent by clicking inappropriate pictures of the appellant has blackmailed her or not and further whether he has continued to interfere by calling appellant's fiancée or not are the matters for investigation. It, hence, held that the High Court should not have made a roving inquiry while considering the application filed under Section 482 Cr.PC. Holding that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the respondent was consensual, the court said,

"When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated."

In this landmark and extremely laudable judgment, the apex court has very rightly held that rape case can't be quashed when victim has a case that 'settlement' was made under threat and coercion. This latest development pertaining to rape cases proves that the criminal justice system is more efficacious and responsive in all kinds of sexual offences.

Arya A. Kumar

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