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A Training Session in Progress

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EDITORIAL

We are happy to be able to reach our esteemed readers albeit after a gap. A spurt in the activities of the academy brought about by progressive planning over the last couple of years and the diminished strength of officers in the corresponding period had forced us to temporarily discontinue this Journal after the first quarter issue in 2007.We are reviving it in its renewed form initially on a half yearly basis and hope to bring out the quarterly publication as and when time and resources permit.

During the interregnum, the Delhi Judicial Academy has taken concrete steps towards becoming a centre for collective thinking and participative learning for excellence in judicial administration. Its programmes have been structured in a manner that all the four aspects of knowledge, skills, ethics, and attitude get interwoven in all the programmes. The refresher courses have been made much more interactive and participatory. Movies and other audio-visual aids, role plays, hypotheticals and break out group discussions are being used as training tools. Short field visits for sensitization, week long excursions for personality development and bonding, and village immersion programmes for newly inducted trainee officers and very participatory Training of Trainers (ToT) Programmes for officers of the Delhi Higher Judicial Service have become the distinguishing features of the Delhi Judicial Academy.

The journal in your hands is an effort to foster an inquisitive attitude, skilful legal research and articulate expression.

In the present issue, Honourable Mr. Justice K. G. Balakrishnan, former Chief Justice of India shares effective strategies for strengthening Judicial Administration. Honourable Mr. Justice Swatanter Kumar takes a look at the immense benefits of Science and Technology in investigations, trials and Court Management, while cautioning against errors due to possible inaccuracies in scientific evidence. In his article 'Gender Justice', Honourable Mr. Justice A. K. Sikri, Judge, High Court of Delhi highlights the need to interpret statutory provisions in a manner as to advance “Social Justice”.

Sh. V. P. Vaish, Registrar General, High Court of Delhi in his article argues that the provisions of the Protection of Women from Domestic Violence Act, 2005 have to be construed contextually in order to extend substantive justice to victims

of violence and harassment within the households. In a group presentation made during the refresher course at the Delhi Judicial Academy, Sh. S. K. Sarvaria, Ms. Anju Bajaj Chandna, Sh. Dharmendra Rana and Sh. Sandeep Garg, officers of DHJS and DJS have elaborately discussed statutory provisions, executive schemes, and judicial directions for rehabilitation of various categories of prisoners and victims and the role of courts in effective implementation of the same.

In her article 'In the Name of Family Honour', Ms. Poonam A Bamba, DHJS stresses the need for spreading education and sensitization apart from the proposed new legislation to counteract the menace of 'Honour Killing'. Ms. Nisha Saxena, DHJS takes up the issue of 'Media Trials' and argues for striking a balance between the freedom of speech and expression and responsible and ethical reporting. An article by Sh. Pawan Kumar Jain, DHJS contains elaborate guidelines for investigators and magistrates in dealing with road accident cases and Sh. Narinder Kumar, DHJS has listed some do's and don'ts of appropriate judicial behaviour in the Court.

We, at Delhi Judicial Academy express our sincere thanks to the learned authors who have contributed to the issue. We also solicit from all our readers, their valuable suggestions for improvement and their articles, write ups, etc., on legal and socio-legal issues and issues of court administration for our forthcoming issues.

ALOK AGARWAL

Hon'ble Mr. Justice Dipak Misra, Chief Justice, High Court of Delhi, lighting the ceremonial lamp at the valedictory session of Induction Training on completion of one year Induction Training for new entrants to Delhi Judicial Service, on 2nd July, 2010. Also seen in the picture are Hon'ble Mr. Justice A.K.Sikri, Hon'ble Mr. Justice Vipin Sanghi, Hon'ble Ms. Justice Indermeet Kaur and Hon'ble Mr. Justice G.P.Mittal, the then District Judge-1 & Sessions Judge, Delhi

Hon'ble Mr. Justice Dipak Misra, Chief Justice, High Court of Delhi, addressing the participants of Orientation Programme for Counsellors, Family Courts, Delhi on 17th July, 2010. Hon'ble Ms. Justice Hima Kohli, Judge High Court of Delhi, Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy and Ms. Deepa Sharma, Principal Judge, Family Courts, Delhi grace the dais.

Newly appointed DHJS Officers from Bench and the Bar at Wild Life Institute of India, Dehradun on an Excursion cum Educational Outstation Trip, on 13th November, 2010.

Hon'ble Mr. Justice A.K.Sikri, Chairperson, Judicial Education & Training Programme Committee, High Court of Delhi, participating in the Ice Breaker session in cascading Training of Trainers Programme on 3rd of Sept, 2010.

Hon'ble Mr. Justice A.P. Shah, Former Chief Justice, High Court of Delhi addressing the participants of Refresher Course in a session on "Section 377 IPC and Naz Foundation Case" on 17th September, 2010. Also seen Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy.

Human Rights Activists Ms. Pramada Menon and Sh. Gautam Bhan, addressing the session on sensitization in respect of the Rights of LGTB and Hizra Community on 17th September, 2010.

Valedictory Function of Orientation Programme for DHJS Officers recruited from the Bar held on 15th December, 2010 in the High Court of Delhi. The Officers are seen with the Hon'ble Members of the Judicial Education & Training Programme Committee, High Court of Delhi and the Director and Additional Director of the Delhi Judicial Academy.

Singing of the National Anthem on the closing ceremony of Valedictory function for Induction Programme of DJS Officers on 2nd July, 2010. On the dais (L to R), Prof.(Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy, Hon'ble Mr. Justice A.K.Sikri, Chairperson, Judicial Education & Training Programme Committee, Hon'ble Mr. Justice Dipak Misra, Hon'ble the Chief Justice, High Court of Delhi, Hon'ble Mr. Justice Vipin Sanghi, Hon'ble Ms. Justice Indermeet Kaur and Hon'ble Mr. Justice G.P.Mittal (then District Judge-1 & Sessions Judge, Delhi). At the podium, Ms. Anu Malhotra, Director, Delhi Judicial Academy.

THE ROAD AHEAD FOR JUDICIAL ADMINISTRATION

Justice K.G. Balakrishnan[*]

It is common knowledge that the root causes for the high pendency levels are the chronic shortage of judicial officers as well as inadequate budgetary allocations. While the erstwhile colonial government may have deliberately under-staffed and under-funded the judicial branch, the problem of a low 'judge to population' ratio has unfortunately persisted till the present times. I am not here to engage in a blame-game but I am simply stating a problem for which we are collectively responsible.

In recent years, the disposal rates of judicial officers have actually been improving with each passing year but the rate of institution of fresh proceedings is far higher. This is but natural in a society where millions of individuals are gradually emerging from the clutches of poverty, illiteracy, and status-based discrimination. With a more egalitarian socio-economic order, more and more people will gain the capacity and the confidence to approach the judicial system. In this sense, we must recognise that a strong and efficient judicial system is not only a pre-requisite for enabling social justice but also a public service which will be increasingly demanded by more citizens. While the existing pendency figures may be a cause for worry by themselves, we must prepare for a far bigger 'docket explosion' in the future. The onus is on us to improve access to justice for those sections of society who were excluded in the past. Hence, our agenda for judicial reforms should not only focus on reducing the existing pendency and arrears, but it should also account for the incremental challenges that await us in the years to come.

The comparison between judicial statistics from different States also shows that the litigation rates in various States do not bear a consistent correlation with their respective population. This means that in some States, a larger proportion of the population has been approaching the courts as compared to that of other States. What is especially worrying is the immense disparity between the

[*] Former Chief Justice of India (January 2007 – May 2010). This note is based on an address delivered at the 'National Consultation for Strengthening the Judiciary Towards Reducing Pendency and Delays' organised by the Union Ministry of Law and Justice in collaboration with the Indian Law Institute (ILI) in New Delhi on October 24-25, 2009. Research assistance provided by Sidharth Chauhan (Law Clerk) is duly acknowledged.

number of civil and graduates. It is also perceived in many quarters that it is only those who are unable to build a practice of their own, appear for the judicial services examinations. There must be some pro-active measures to mitigate this perception. The prevailing system for recruiting judicial officers needs to be overhauled in order to attract the best available talent. Apart from improving pay-scales and service-conditions, there must also be a commensurate improvement of prospects for career-advancement.

However, it has been argued in some quarters that the recruitment process in most States is itself quite lengthy and cumbersome, thereby leading to the piling up of vacancies. It must be highlighted here that an elaborate selection process is necessary to ensure that only competent and suitable persons join the judiciary. The recruitment process is coordinated by the respective High Courts and the State Public Service Commissions who are responsible for conducting the written examinations and interviews. Hence, there are always bound to be some vacancies on account of the time needed to conduct a thorough evaluation of the candidates, but nevertheless efforts must be made to keep the vacancies within proper limits.

There is, of course, scope for improving the examination process by incorporating problem-based questions that test the candidates' analytical and communication skills rather than those of rote-memorisation. Some High Courts have also taken the initiative of organising pre-appointment training for selected candidates in order to equip them with necessary skills such as research, judgment-writing, and case-management. In this regard, we must whole heartedly support the activities of the National Judicial Academy (NJA) and the various State Judicial Academies that organise periodic training programmes for serving judicial officers. It is only through constant upgradation of knowledge, that our judicial officers will be able to tackle the challenges before them.

Another proposal for improving the quality of subordinate courts is the creation of an All India Judicial Service (AIJS). This would entail the formation of an All-India cadre for officers appointed at the rank of Additional District Judge (ADJ). The recruitment would be through a national-level examination and it is suggested that upto 25% of the officers in each State could be drawn from this All-India cadre. However, this proposal has faced some criticism since there are apprehensions that individuals belonging to one State may face language problems when they are posted to another state. This can be addressed by factoring in the candidate's language skills while deciding on the location of their assignment. The main objective is to ensure a degree of uniformity in the examination process.

An important measure taken for expanding the subordinate judiciary is the enactment of the Gram Nyayalayas Act. It envisages the creation of courts at the level of Intermediate Panchayats or a group of contiguous Gram Panchayats. These village-level courts would be manned by judicial officers of a rank equivalent to a Civil Judge (Junior Division) or a Judicial Magistrate First Class (JMFC) and they will be known as 'Nyaya-Adhikaris'. It has been estimated that nearly 4,000 judicial officers will be needed in order to implement this scheme. I must also lay stress on the fact that these officers will be chosen through the regular judicial services examination conducted by the respective State Governments. There is tremendous potential in the Gram Nyayalayas scheme since the intention is to reduce the costs that are borne by litigants in approaching courts located at district-centres. The underlying philosophy is of course to bring justice to the doorsteps of rural citizens. The Central Government has already assured financial assistance to the State Governments for the purpose of establishing the 'Gram Nyayalayas'.

Coming to the High Courts, I must reiterate here that there has been an upward revision in the sanctioned strength of several High Courts in recent years. The Central Government has promptly approved of the requests for increasing the number of judges at the High Court level. However, there exists a disparity in the proportion between the number of High Court judges and the respective population of different States. This is so because the rate of institution, disposal, and pendency of cases is also taken into account for deciding the strength of the judges. While the service-conditions for High Court judges have seen a substantial improvement, we still need to dwell on how to attract qualified persons to a career in the higher judiciary. One strategy is, of course, that of selecting more persons from the subordinate judiciary.

As far as appointments to the Supreme Court are concerned, I must say that we are bound by the procedure in accordance with the Constitution Bench decisions given by our predecessors in 1993 and 1998. The proper forum for suggesting changes to the appointment process is the Union Parliament. It would, of course, not be proper for me to enter the debate at this stage.

Physical Infrastructure

A vast majority of our Magistrates and Civil Judges work with very poor infrastructural facilities. Even the District and Sessions Judges face numerous obstacles in their daily routine on account of poor maintenance of court complexes. While the progressive expansion of the judiciary through measures such as the Gram Nyalayas Act should be supported, there is also a compelling need to ensure the proper maintenance of the existing courts. This calls for consistent financial commitments from the respective State Governments.

Independent studies have shown that the budgetary allocations for the judiciary form a very small portion of the aggregate public expenditure. Some commentators have suggested that the picture will drastically improve even if a large portion of the Court-fee that is collected at different levels, is re-invested into the judicial system. It must be recognised that expenditure directed at the judicial system will help in preventing the long-term costs associated with protracted litigation as well as the intangible costs that are incurred by society on account of unresolved disputes.

Apart from financial commitments, the judiciary has also been making attempts to streamline its own administration. One such measure is a comprehensive system for compiling reliable statistics on the institution, disposal, and pendency of cases at all levels. The National Informatics Centre (NIC) has implemented a computerised system for compiling this data from the Supreme Court and the various High Courts which are also responsible for collecting data from the subordinate courts lying in their respective territorial jurisdictions. These statistics are compiled on a monthly, quarterly, and annual basis with a clear indication of various subject categories. The availability of accurate and reliable judicial statistics is, of course, a necessity to implement the proposed 'National Arrears Grid'. It is important for judges, administrative staff, as well as policy-makers, to study the statistics at length for identifying the root causes behind pendency in particular areas.

Of particular note, is the implementation of the E-Courts project under which thousands of judicial officers have been equipped with computer facilities. Information Technology (IT) tools are being progressively used in the administration of justice – especially for purposes such as notification of cause-lists as well as the publication of orders and judgments on court websites. Efforts are underway to devise comprehensive programmes which will help advocates, litigants, and the general public to easily track the progress of ongoing cases. The National Judicial Academy (NJA) at Bhopal has been developing a 'Case Signalling System' for this purpose which will also generate reliable empirical data on the problematic stages in the proceeding of each case.

In order to implement these technological solutions, the judiciary must, of course, hire the software and hardware professionals who have the relevant expertise. The efficiency of the judges can be greatly enhanced if they are ably supported by the administrative staff which looks after numerous routine functions such as filing, correction of records, listing, and eventual processing of decisions. With the increased use of IT facilities, the performance of these functions can also be made more smooth and litigant-friendly. In the larger

scheme of things, due emphasis must be placed on recruitment methods and service-conditions of the various personnel who work in the judicial system.

Procedural Innovations

While expanding the size of the judicial system is an important objective, I must also highlight the importance of pursuing several other strategies to streamline the administration of justice. All of you are conversant with the benefits of resorting to Alternative Dispute Resolution (ADR) methods, especially since Civil Judges are now empowered to refer disputes for resolution through Permanent Lok Adalats, mediation and negotiated settlements. Most of the High Courts and numerous District Courts have established 'Mediation Centres' for the twin purpose of resolving disputes as well as training judicial officers and lawyers in these methods. For many categories of cases filed before the courts – such as those relating to traffic offences and petty property disputes, methods such as conciliation and negotiation, are far more appropriate than the traditional model of adversarial litigation.

While the Legal Services Authorities have been increasingly organising Lok Adalats for many categories of disputes, it is also important to inform the general public about the utility of these methods. On account of incomplete information about the various options, an aggrieved party often chooses to proceed with lengthy adversarial litigation instead of choosing more conciliatory methods. Even the Code of Criminal Procedure was amended in 2006 to include provisions for 'plea-bargaining' but public awareness about the same is quite limited. It goes without saying that all of us need to think about and promote solutions that need not always be 'Court-centric'.

The Union Law Minister as well as the Attorney General and the Solicitor General have repeatedly stressed on reducing the volume of litigation that involves the government as a party. This is indeed a welcome trend. They have already spoken at length on how to strengthen administrative remedies under the various statutes and on how to streamline the representation of the governments' interests before the courts. It goes without saying that judges should not be asked to second-guess and examine administrative actions as a matter of routine. Judicial interference should be confined to patent acts of illegality and unreasonableness. The Law Officers and Standing Counsels who represent the various Ministries, Departments, Authorities, and Public Sector Undertakings (PSUs), must also work to promote conciliatory methods for the purpose of addressing the grievances of citizens and public employees as well as disputes among government agencies themselves.

There are many other issues which deserve our collective attention and I

hope that all of you will utilise the working sessions scheduled for today and tomorrow to chalk out some concrete and decisive resolutions. I would like to conclude by thanking the Department of Justice as well as the Indian Law Institute for taking on the responsibility of organising this national-level consultation.

Thank You!

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INCREASED USE OF TECHNOLOGY IN COURTS: BENEFITS AND PITFALLS

Justice Swatanter Kumar[*]

English Mathematician Alan Turing explored the idea of machine being able to match human intelligence in 1940.[1] He had also devised test of Artificial Intelligence (AI). Recently American Computer *guru* Ray Kurzweil, while addressing the American Association for Advancement of Science (AAAS) in Boston, said that machines would rapidly overtake humans in their intellectual abilities and would soon be able to solve some of the most intractable problems of 21st Century.[2] Computer power will match the intelligence of human beings within the next 20 years due to the accelerating speed at which technology is advancing. The Daily News Analysis (DNA) comments that Computers are well on the way to creating a 'post-human' world where an intelligent entity would exist alongside people.[3]

People are working on new frontiers of technology that will soon let you control your devices with just a look, a nod of head or just even with a thought[4] passing your mind. An Austrian company is working on what it calls a "brain computer interface" which will allow its users to type documents and surf the internet purely by thought. A Swedish company has come out with a Personal Computer (PC) that works by tracking the eye movement of its user.[5] Use of such techniques in courts is a distant dream. People may think that the use of computers in court is limited to judgment typing, storing, listing cases, finding case laws through various search engines and that's all. But behold! Judges in China are using computers equipped with sophisticated legal database as an aid to determining punishment for hundred different crimes, including robbery and rape, tapping in details of the crime and mitigating circumstances.[6] A programme

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[*] Judge, Supreme Court of India.

1 Turing, Alan, "Machinery and Artificial Intelligence", LIX (236) *Mind* 433-460 (October, 1950).

2 Briggs, Helen, "Machines to Match Man by 2029"; BBC, Saturday, February 16, 2008, *available at*: http://news.bbc.co.uk/2/hi/7248875.stm.

3 Agency, "Will Robots Outsmart Humans?", DNA India, Saturday, February 16, 2008 *available at*: http://www.dnaindia.com/world/report_will-robots-outsmart-humans_1151 260-al.

4 See, http://www.gtec.at/index.htm.

5 Girard, Nicole, "New Computer Controlled by Eye Movements", Cnet News, August 4, 2006 *available at*: http://news.cnet.com/8301-10784_3-6102548-7.html.

6 Agency, "Courts use Computers to Decide who should face Death Sentence", Mail Online, September 13, 2006 *available at*: http://www.dailymail.co.uk/news/article-405001/Courts-use-computers-decide-face-death-sentence.html#ixzz10Fs1eo2N.

called 'penalty calculator' recommends sentence on various offences.[7] Thus, we may find truth in the words of Modern Novelist Arthur C. Clarke when he said in *The Lost Worlds of 2001*, "Any sufficiently advanced technology is indistinguishable from magic."[8]

Dream of High-Tech Courts

Courts across India have started using computers in Case Management and Court Management but we can make extensive use of computers in improving quality and speed of justice. We must try to make 'justice', cost effective and time effective with the help of computers.

The power of technology is unlimited. Though it has potential dangers, its comparative rewards are still greater.

High technology court room is becoming a reality in the United States of America, Australia, Canada, England, Scotland, Israel, Singapore, Hong Kong, and Netherlands. Court room technology is being considered as a promise of effecting significant, direct and indirect financial savings. The adjudicative changes which computers may bring would improve the administration of justice by making it more certain, more accurate, faster, and less expensive. Even the current use of technology by the courts has been very much helpful to both, the people in the legal profession as well as to general public. Having a look at the websites of the Supreme Court and other High Courts shows how convenient it has become. It is possible for even a layman now to track the status of a case, figure out the judgments of the courts, e-filling, etc. These techniques have made the things swifter and cheaper. The Indian justice administrative system has always accepted change with open arms. Keeping pace with the technological advancement of the developed countries is not easy but is also not impossible.

Technology based court records is the first target of high-tech courts. Verbatim record, accurate and immediate access to transcript, extensive use of digital audio and video recording, document imaging with Optical Character Recognition (OCR) are going to become regular features of a high-tech court. The evidence presenting system is also changing radically. Use of remote video for evidence recording would help in protecting victims and witnesses.

As we have seen so far, the use of technology in courts around the globe has made judicial functioning more efficient and further attempts are being made to incorporate new technologies. At the same time we need to see as to how the use of technology can be useful in dispensation of justice in courts. The new scientific

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[7] *Ibid*.

[8] Clarke, Arthur C., *The Lost Worlds of 2001*, Signet Publishers, New York (1972).

techniques of evidence collection and their admissibility are much debated issues now.

In modern times, the legal system has to deal with evidence obtained by use of new scientific techniques. As science has outpaced the development of law, there is unavoidable complexity regarding what can be admitted as evidence in court.

Though such evidence holds out possibility of being extremely accurate, the scientific methodologies include some risk of uncertainty which a court of law cannot tolerate.

Scientific evidence tests the abilities of not only experts but also lawyers and judges. Lawyers and judges may not have required scientific knowledge to comprehend the analysis offered by the scientific method.

Forensic science includes the use of science in the service of law and disciplines that can aid in collection, preservation and analysis of evidence related to the fields of Chemistry, Engineering and Biology.

In the current paper we would discuss various scientific technologies which are either made admissible, completely or partially, or their admissibility is still debatable. Are they in accordance with the provisions of the Constitution? What are the issues of admissibility linked with them?

DNA Testing

Deoxyribo Nucleic Acid (DNA) in a cell of a living being gives personal genetic blue print of an individual. It can be extracted from blood, saliva, semen, hair, urine, body fluids, tissues, and body organs. Sir Alec J. Jeffereys discovered use of DNA for forensic analysis in 1984.[9] DNA tests are highly effective because every person's DNA is unique. It is specific to every individual and cannot be tampered with. DNA tests can be used to establish parenthood, detect crime, and identify mutilated corpses. This technique is of great help in criminal justice administration.

The evidentiary value of DNA Test remains within the scope of Sections 45 and 46 of the Indian Evidence Act, 1872. Expert evidence helps the courts to draw logical conclusion from the facts presented by experts using their specialized skills. In *People* v. *Castro*,[10] the New York Supreme Court (Appellate Division) found that while deciding on admissibility of DNA evidence, a three pronged questions should be asked:

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[9] Jeffreys A. J., Wilson V., Thein S. L., 316 *Nature* 76–79 (1985).

[10] 545 NYS 2d 985.

(i) Is there a theory, which is generally accepted in the scientific community which supports the conclusion that DNA forensic testing can produce reliable results?

(ii) Are there techniques of experiments, currently existing, which are capable of producing reliable results in DNA identification and which are generally accepted in the scientific community?

(iii) Did the testing laboratory perform the accepted scientific techniques in analyzing the forensic samples in that case?

Medical forensic evidence plays a crucial role in helping court in arriving at logical conclusions. Justice Malimath Committee recommended comprehensive use of forensic science in criminal investigation. According to the report, a DNA expert should be included in the list of experts under Section 293 (4) of Criminal Procedure Code, 1973. The issue of DNA report and its validity as a conclusive evidence has been a much debated issue in the courts. The Supreme Court in the case of *Gautam Kundu* v. *State of West Bengal*,[11] was not very much in favour of allowing the DNA or Blood Test and admitting it as a piece of evidence in determining the paternity of a child. Rather, the court was in favour of presumption as given under section 112 of Indian Evidence Act. However, the court finally concluded that:

(i) That courts in India cannot order blood test as a matter of routine.

(ii) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(iii) There must be a strong prima-facie case and the husband must establish 'non-access' in order to dispel the presumption arising under Section 112 of the Evidence Act.

(iv) The court must carefully examine as to what would be the consequence of ordering blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(v) No one can be compelled to give sample of blood for analysis.

The position as laid down in the above case was liberalized by the

[11] (1993) 3 SCC 418.

Supreme Court in the case of *Sharda* v. *Dharmpal*,[12] where the Court, increasing the ambit of admissibility of DNA test evidence, held that:

(i) A matrimonial court has the power to order a person to undergo medical test.

(ii) Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

(iii) However, the court should exercise such a power only if the applicant has a strong *prima facie* case and there is sufficient material before the court in support thereof. If, despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him.

Some of the High Courts have recently allowed the DNA test. In the case of *Bhabani Prasad Jena* v. *Orissa State Commission Women*,[13] the Orissa High Court allowed the DNA test for the determination of the biological father. The matter came before Supreme Court on special leave. A Bench of Aftab Alam and R.M. Lodha, JJ., disallowed the same. Relying on its earlier judgments, the Supreme Court held that where the paternity of the child is involved the court should be extremely careful in taking help of such techniques.

In the case of *Banarsi Das* v. *Tikku Dutta and Anr*,[14] the Supreme Court was of the view that even though the test results coming out of the DNA test may be scientifically accurate it cannot rebut the presumption arising out of Section 112 of the Evidence Act. The court while deciding so was mindful of the injustice which might be caused to the husband who would have to bear the expenses for raising the child. However, the court leaned in the favour of the innocent child.

Polygraph Test

It is commonly known as the "lie detector" test. Various probes are attached to the body of person interrogated by an expert. Variations in the pulse rate, heart beats, skin conductance, and blood pressure are measured by the probes. Basic principle underlying this test is that when people tell lies they are nervous. The test produces a graph of multiple physiological parameters from the baseline of truthfulness. An expert studies such graph after interrogation regarding target question and explains the reactions in physiological parameters

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12 AIR 2003 SC 3450.
13 (2010) 7 SCALE 582.
14 (2005) 4 SCC 449.

before court. The judge may then examine the opinion after cross-examination and may accept or reject the opinion of expert. This scientific method of test and its reliability was discussed by the Supreme Court recently in *Smt. Selvi* v. *State of Karnataka*.[15] After discussing the method of the test, literature available on the issue and the case laws, the court was of the view that this is not a test which can said to be 100% accurate. The results of such a test can vary due to physiological and psychological factors and some of them may even be controlled.

Brain-Mapping Test

It is also called as P-300. In this test, sensors applied to the person interrogated (using headband) measure electronic brain responses. The sensors detect memory through an encoding related to Multifaceted Electro-encephalographic Response (MERMER). Computers analyze the brain wave responses and determine whether facts related to the crime in question are stored in the suspect's head. The test indicates possession of knowledge about relevant issues which helps in the investigation.

In *Ranjitsing Brahmajeetsing Sharma* v. *State of Maharashtra and Anr*,[16] the Supreme Court, while dealing with admissibility of a report of Brain-Mapping Test, held that the admissibility of a result of a scientific test will depend upon its authenticity.

The matter was discussed in detail in *Selvi's* case. While discussing the reliability of the narco-analysis test, the Supreme Court was of the view that it was first of all violation of mental privacy. Further, even if it is allowed, the probes which are used for the purpose of the test were not found to be very much reliable. The problem was that the subject of the test can be aware of the facts through external sources but during the probe he may be found to have knowledge of the incident.

Narco Analysis

Narco analysis is one such scientific development that has become an increasingly, perhaps alarmingly, common term in India in the recent past. In the spate of high-profile cases, such as those of the Nithari murders, Abu Salem and the Mumbai train blasts, suspects have been whisked away to undergo an interview, drugged with the barbiturate sodium pentothal.

Far from being novel, truth serums have been in use since the early part of the 20th century. During and after the War years, United States armed forces and intelligence agencies continued to experiment with truth drugs.[17] The Central

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15 (2010) 10 SCALE 690.
16 (2005) 5 SCC 294.

Intelligence Agency (CIA) has admitted to using these as part of its interrogation tactics.[18]

The Narco Analysis Test is conducted by injecting 3 grams of sodium pentathol dissolved in 3000 ml of distilled water along with 10% dextrose over a period of 3 hours.[19] Due to the dose the person under interrogation becomes more suggestible and less wilful. A person putting questions may then create a context for either recalling memories or constructing new ones. The drug is used to reduce resistance to the hypnotist.

The Narco Analysis Test takes a person to a stage of hypnosis which may amount to conditioning of mind extraneously. Validity of such test needs to be analyzed on the background of opinion of Supreme Court in *State of Bombay* v. *Kathi Kalu Oghad*,[20] where the court observed, "Compulsion is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and therefore extorted".

In *Jitubhai Babubhai Patel* v. *State of Gujarat*,[21] the Supreme Court held that whether the consent of the accused is needed to conduct a narco test or not is an academic question, and it has to be decided on the basis of the facts in a particular case.

Section 73 of the Indian Evidence Act, 1972 authorizes a Court to direct any person present in the court to write any word or figure for the purpose of enabling the court to compare it. In *Kathi Kalu's case*,[22] the Supreme Court observed that giving a thumb impression, specimen writing or exposing a part of the body for identification is constitutionally valid.

As already mentioned the recent judgment of the Apex Court in the *Selvi's case*, the Court has dealt with the issue of polygraph test, brain mapping, and narco-anlaysis. All the investigating agencies and the Government of India were in favour of adopting these techniques and admitting them as evidence. Dealing with these issues the court held that such techniques cannot be applied compulsorily as it would lead to the violation of the fundamental right guaranteed under Article 20(3) of the Constitution. However, if a person consents to such test

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17 Nagaraj M.R. (Editorial), "Narco-analysis – Right or Wrong?", 6 (20), *Indian Democracy* (May 15, 2010) *available at*: http://www.indiademocracy.org/article /viewArticle/id/1399.

18 *Ibid*.

19 Amol Shrivastava, "Narcoanalysis: Reliability v/s Human Rights", *Jurisonline*, August 8, 2010 *available at*: http://jurisonline.in/2010/08/narcoanalaysis-r-h/.

20 AIR 1961 SC 1808.

21 (2005) 10 SCC 545.

22 *Supra* n. 20.

then they can be conducted. Even if a person agrees to such a test then also it cannot be admitted as evidence as the person subjected to such tests doesn't have complete mental consciousness. Referring to Section 27 of the Evidence Act the court held that any information subsequently recovered on the basis of voluntary test can be admitted as evidence.

The Supreme Court further held that the guidelines developed by the NHRC in this respect should be strictly adhered to. The guidelines are as follows:

1. No lie detector test can be administered except on the basis of the consent of the accused. An option should be given to the accused to whether he wishes to avail such a test.
2. If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional, and legal implication of such a test should be explained to him by the police and his lawyer.
3. The consent should be recorded before a Judicial Magistrate.
4. During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
5. At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a `confessional' statement to the Magistrate but will have the status of a statement made to the police.
6. The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
7. The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
8. A full medical and factual narration of the manner of the information received must be taken on record.

It is, thus, clear that as such these tests do not form part of evidence. They are only techniques for collecting clues for leading towards material which may be collected as evidence during investigation. In other words, the result of any of these tests may not be produced before court as evidence but any material which is collected in furtherance to the clues gained by these tests may be supplied as evidence. It is thus analogous to the logic of admissibility of discovery of fact under Section 27 of the Evidence Act, 1872.

Self Incriminating Evidence

In the International Covenant on Civil and Political Rights (ICCPR), Article 14(3)(g) enumerates the minimum guarantees that are to be accorded during a trial and states that everyone has a right not to be compelled to testify against him or to confess guilt. In the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(1) states that every person charged with an offence has a right to a fair trial.

The principle of immunity from self incriminating evidence is founded on the presumption of innocence; the maxim *Nemo tenetur seipsum accusare* had its origin in a protest against inquisitorial and manifestly unjust methods of interrogating accused persons. It is not necessary that the actual trial needs to commence for an accused to avail this privilege. Guarantee for the right against self incrimination is an essential element of fair trial in a criminal case. Article 20(3) of the Constitution provides:

No person accused of any offence shall be compelled to be a witness against himself.

A question may be raised as to whether any person can be subjected to such scientific tests for the purpose of interrogation or investigation. Whether it would be in violation of his/her fundamental human rights? It may pose a dilemma between individual liberty and obligation of State to prevent crime.

In *Indiana Police* v. *Edmond*,[23] the US Supreme Court held that truth serum may be administered without any warrant or a probable cause in order to assist war against terrorism or other grave offences. It was also held that if there is a need, the general interest of the public would override individual rights and this truth extraction would be helpful in extracting much needed information especially in cases where security or economy of the State is at stake.

In the case of *Nandani Satpathy* v. *P.L. Dani*,[24] the Supreme Court dealt with the issue of self incrimination and Article 20(3) of the Constitution of India. They found that the every accused person has right to remain silent, the accused cannot be forced to give a statement pointing to his/her guilt.

In a recent case *Amrit Singh* v. *State of Punjab*,[25] a streak of hair was found in the hand of the deceased. Accused refused to give sample of his hair for analysis. The Apex Court held that the accused had the right to give or refuse to give sample of his hair and he could not be compelled to be a witness against

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[23] 531 US 32 (2000).
[24] AIR 1978 SC 424.
[25] (2006) 12 SCC 79.

himself.

Admissibility and Evidentiary Value

In *Mohd. Zahid* v. *State of Tamil Nadu*,[26] the Supreme Court observed that the evidence of the doctor conducting post mortem without producing any authority in support of his opinion is insufficient and it cannot be considered as a basis for convicting an accused.

This test can very well be applied while considering opinion of an expert regarding any scientific test so as to determine the questions of its admissibility and evidential value. The Supreme Court in *Ram Narayan* v. State of UP,[27] has warned that opinion of an expert is not infallible and, therefore, when expert opinion is adduced in evidence it has to be received with great caution.

The Supreme Court in *Mohd. Zahid's case*[28] observed that great care and caution has to be exercised by the courts while receiving expert opinion in evidence, especially when there is no corroborating authority. In certain cases, lack of supporting and corroborative authority can be a ground for rejection of expert's evidence.

In *State of Punjab* v. *Hukam Singh*,[29] the Supreme Court has observed that in case of conflict between medical and ocular evidence, ocular evidence should be preferred unless it belies fundamental facts.

In *Vishnu* v. *State of Maharashtra*,[30] the Apex Court held that expert evidence based upon ossification test is of advisory character and not binding on witness of fact.

Expert Evidence

Whenever an expert testifies before court according to Lord Russel,[31] following questions invade mind of the Judge:

(a) Is he peritus?

(b) Is he skilled?

(c) Has he adequate knowledge?

Leonard Caplain[32] outlined qualities of an expert witness as (1) expertise,

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26 (1999) Crl. LJ 3699 (SC).
27 AIR 1973 SC 2200.
28 *Supra* n. 26.
29 [(2005) 4 Mh. LJ 1178 (SC)].
30 AIR 2006 SC 508.
31 *Rex* v. *Silverlock*, (1894) 2 QB 766.
32 Caplain, L, 47(4) *The Medicolegal Journal* 124-137 (1979).

(2) clarity, (3) relevancy and (4) reliability (a) system of cross-examination, (b) expert being called by a party, (c) text of report.

With these tests, court may demand scientific evidence of better quality, sensitive methods of instrumental analysis, proper analysis of date and meticulous examination of contents of report. Proactive role of advocates and judges during trial will help in demanding more sophisticated and accurate reports from experts. This would lead to an improvement in techniques and will ultimately help in administration of criminal justice.

CONCLUSION:

Science has become vital part of our daily life. It helps us assessing what we know of the material world with reasonable certainty. In this era of Science it cannot be kept at margin in the field of law. It is only due to science and technology that access to factual knowledge of all kinds is rising while dropping in unit cost. Take the case of communication through mobile phone; it is easily accessible and cost effective. Extensive use of technology thus is destined to become global and democratic. Soon it will be omnipresent. Tomorrow is for those who put together the right information at right time and use it for the benefit of all.

But keeping in mind the phenomenon of 'uncertainty' which is inextricably attached with science, the courts had to be absolutely certain about the accuracy of any scientific technique before admitting it as evidence in the court proceedings.

The increase in use of technology in courts is inevitable and has certainly made the life of the litigants, court personnel, advocates, and even the judges easier. At the same time the possibility of error, if it is not properly handled, is huge. Ultimately it can be said that the controlled use of technology will obviously benefit the courts' management and their functioning. There are some issues related to reliability and certainty of the techniques used in collecting evidence, but considering the pace of evolution of science it is certain that these difficulties will be overcome in near future and science will obviously be of great assistance to administration of law and justice.

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GENDER JUSTICE

Justice A.K. Sikri*

In this paper, my endeavour is to highlight the approach which the courts have adopted and should adopt in deciding issues relating to gender justice.[1]

At the outset, I may clarify one thing by putting a question to myself: what is the role of a Judge? Indubitably, the judge is supposed to decide the dispute brought before him. These disputes are to be decided by applying the law of the land. When the law is available in the form of a statute, those statutory provisions are to be applied while deciding the disputes. Thus, a Judge decides the case before him in accordance with law. But can this "role" of a Judge be put in such simplistic form? Answer has to be in the negative. Otherwise, we would not confront with conflicting judgments on the same issue. We would not find the terms "liberal Judge" and "conservative Judge". People would not describe a Judge as "Pro-landlord/pro-tenant", "Pro-employee/pro-employer" Judge, etc. Although, it is not necessary to delve deeper into this kind of debate, what is emphasized is that there can be different outcomes of the same dispute before different Judges. This may arise at two levels, *viz.*, (a) appreciation of the facts and evidence, which can be perceived differently by two different Judges; and (b) interpretation of a particular provision of law, if such a provisions is susceptible to more than one interpretation. In the process, discretion which is exercised by a Judge in resolving the disputes may be exercised differently. These questions do not arise in the "easy cases" in which there is one answer to the legal problem and the Judge has no choice but to choose it. Problem arises in deciding "hard cases" in which legal problem has more than one legal answer.

All disputes coming before the court are not of the same nature. Otherwise, there would not have been any debate on "social justice". Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing all its citizens, justice, liberty, equality, and fraternity. It specifically highlights achieving social justice. Therefore, it becomes the bounden duty of a Judge to advance the cause of the social justice. Of late, in this very direction, it is emphasized that the courts have to adopt different approaches in "social justice adjudication", which is also known

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* Judge, High Court of Delhi.

1 Empowerment of both men & women.

as "social context adjudication". There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Law relating to ethnic minorities, SCs, STs and OBCs, children rights, rights of disabled persons, etc., will fall in these categories. Social justice adjudication is constitutionally mandated by Articles 14 to 18 (Right to Equality), Article 21 as interpreted by the Supreme Court, Articles 23-24 (Right against Exploitation), Articles 29-30 (Cultural and Educational rights), Articles 38 to 49 (Directive Principles fundamental in governance), Articles 51-A (Fundamental Duties) and Articles 330 to 342 (special provisions relating to SCs, STs, Anglo-Indian community, etc.). The central issue involved in these provisions is what the Preamble articulated as social justice or equality and dignity of the individual. Prof. Madhava Menon describes it eloquently:-

> It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.[2]

Let me again emphasize that a Judge is supposed to decide the case in accordance with the law. If a dispute between husband and wife comes before the court, the court has to find out who is at fault. It has to return such findings on the basis of evidence laid before it. Law is to be applied on the facts that are established on record. Therefore, it is not at all suggested that every case has to be decided in favour of the wife in a dispute between husband and wife or in favour of the woman if it is a dispute relating to property between her and other family members. The judicial system still remains adversarial and, therefore, a Judge is supposed to work within the system. In the process, while undertaking social context, a Judge is supposed to impart equal justice in an unequal society. This can

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[2] Delivered a key note address on "***Legal Education in Social Context***".

be achieved at two levels, *viz.,:*

(a) Ensuring level playing field; and

(b) By innovative and purposive interpretation of statutory provisions in deciding "hard cases".

a) Level Playing Field:

Let me start with some key points. The harsh reality is that most people find an appearance before the courts to be a daunting experience, particularly people who have difficulty in coping with the language or those who are socio-economically disadvantaged in society. Those at a particular disadvantage may include people from ethnic minority communities, individual with disabilities (physical or mental), woman, children, and those who due to poverty or some other reasons are socio-economically excluded. Many of them may simply feel to be intimidated to inadequacy or to articulate to speak up. This justifies special or different treatment to be provided to such people ensuring fairness or equality of opportunity. Identifying situations in which an individual may be at a disadvantage because of some personal attribute is of no direct relevance to the proceedings and taking the appropriate steps to ensure that there is no consequent obstacle to achieving justice is an important skill. This is all part of the art of judge craft that may be performed during case management. Part of that skill lies in identifying situations of disadvantage at an early stage, and discreetly dealing with them without prejudicing other parties. They can arise at any time and in any type of case. The equality of judicial decision making is crucial.

Neutral application of legal rules is fundamental to high-quality judicial decision making. Decisions based on erroneous perceptions, interpretation or understanding may lead to faulty decisions and thus to substantive unfairness. It is important to emphasize that we are not concerned about equal treatment but about fair treatment. It is not sufficient to treat everyone in the same way – equal treatment may itself amount to discrimination.

Fair treatment means affording equal opportunity for the parties to achieve justice. How to achieve this? Some of the steps, which are to be borne in mind, are listed below:-

i) Special Needs:

Some people, for a variety of reasons, find it difficult or impossible to:

- Attend at a court,
- Function in a court room,
- Understand what is going on, or
- Be understood by others

As judicial office-holders, we should demonstrate an awareness of the feelings and difficulties experienced by those appearing before us. Every effort should be made to help in an effective way whilst maintaining a balance between assisting and adjudicating to enable people to participate fully in the proceedings.

ii) Avoid Delays:

It is not only the final decision, but the entire process in judicial decision making is relevant. If application under Section 125 Cr. P.C. filed by a destitute woman is decided after five years, the undue delay in disposing of request for interim maintenance, even if the ultimate decisions is in her favour, may make the decision to be of no worth to her.

iii) Sensitization while Analyzing the Needs:

A Judge is supposed to analyze the facts and evidence appearing before him/her in an impartial and objective manner. While doing so in the case of gender issues, a Judge is supposed to be sensitive regarding key points:

- Though women and girls comprise more than half the population, they remain disadvantaged in many areas of life.
- Stereotypes and assumptions about women's lives can unfairly impede them and might frequently undermine equality.
- Care must be taken to ensure that our experiences and aspirations as women or of other women, are not taken as representative of the experiences of all women.
- Factors such as ethnicity, social class, disability status, and age affect women's experience and the types of disadvantage to which they might be subjected.
- Women may have particular difficulties participating in

the Justice System, for example, because of child care issues.

- Women's experiences as victims, witnesses, and offenders are in many respects different to those of men.

In one of my addresses on the Protection of Women under Domestic Violence Act, 2005, I highlighted the approach of the Judge to deal with these cases in the following manner:

> Proper implementation of the Act and its effective enforcement is dependent on the appropriate approach which is required to deal with such cases. I am posing this question keeping in mind the possible misuse of such provisions as is the experience with the similar welfare enactments, for example, Section 498A of the IPC and labour legislations. What is seen is that many times frivolous cases are filed as pressure tactics and thereby the provisions of such enactments are misused. At the same time, there would be genuine cases who are really the victims. There may also be victims suffering from various kinds of disabilities – like lack of literacy, financial and even social. In such a scenario, on the one hand the enforcement agencies have to ensure that there is no misuse of the provisions of the Act and the same is not allowed to reach dangerous proportion and whereas, on the other hand, the victims of domestic violence who are suffering from such acts are given immediate succor. Therefore, while dealing with such cases of domestic violence the Judges have to adopt: "PRAGMATIC APPROACH COUPLED WITH SENSITIVITY". A pragmatic approach whereby filtering frivolous cases from those which are genuine. The task is difficult but achievable.
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> Once it is found that the complainant is really a victim, then the case is to be dealt with humane approach/sensitivity whereby also enforcing the concept of "SOCIAL CONTEXT ADJUDICATION" in such cases. It mainly implies sensitivity towards the victim and her problem by all who have a role in the implementation of the Act. Unless the Judge delves with this exercise, he/she won't be able to do justice in the case. It would be important for the Judge to understand the psyche of the case. What was the cause of suffering? Why she was tolerating for all these years? Why she continued to stay in abusive relationships? I give below the basic inputs which should be kept in mind:-
>
> There are women who choose to subject themselves to harm. You offer them everything but still they would not leave the relationship. You'll

simply end up resenting and thinking she got what she deserved. However, these are several reasons why women tolerate violence. Some of them are:

- To preserve the marriage as their status outside marriage is marginal:
- Due to lack of education, the livelihood opportunities are poor;
- Lack of shelter, or an alternative, if they leave the home;
- Fear of unwelcome advances from the men outside;
- Attachment to children and fear of losing custody of children.

Once these factors are kept in mind, the Judge would be in a position to find answers to many frivolous defences which may be put forth by the opposite side. Same kind of approach is needed while deciding other similar issues relating to women.

b) <u>Purposive Interpretation and Judicial Discretion</u>:

No doubt the Legislature makes the law, however, while enforcing that law by applying the same in a given case; it is the Judge who states, by interpretative process, what actually the law is. It is, therefore, a myth that a Judge merely states the law and does not create it. Hard reality is that, while interpreting a statute and declaring what the Legislature meant thereby, Judge is the final arbiter in deciding as to what law is. While performing this function in social justice adjudication, the Judge is supposed to bridge the gap between law and society. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the judge is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, a judge must sometimes exercise discretion in determining the proper relationship between the subjective and objective purposes of the law. Indeed, a theory of interpretation cannot be constructed without interpretive discretion as its foundation. Interpretation without judicial discretion is a myth. Any theory of interpretation - internationalism, originalism,

purposivism and so on - must be based on an inherent internal element of interpretive discretion. Discretion exists because there are laws with more than one possible interpretation.

In the process of interpreting the statutory law, the judge attempts to find out the intention of the legislature and in this pretence, it is his final word as to what the legislature intended and thus, what the law is. After all, legal practice is pervasively interpretation. It is, therefore, now widely accepted that in this whole process, the judge or the judiciary makes the law as well. In fact, like the interest in rules during the 1960s and in legal principles during the 1970s, much of legal theorizing in the 1980s had been built around the concept of interpretation. Interpretation has now become one of the main intellectual paradigms of legal scholarship. Dworkin promulgated, in the 1980s, interpretative theory of law.[3] Accounting for the concept of law, he claims, is inevitably tied up with the considerations about what the law is there to settle. Cardozo acknowledges in his classic 'The Nature of the Judicial Process': "I take judge-made law as one the existing realities of life", and that: "…no system of jus scriptum has been able to escape the need of it", and he elaborates: "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. "The fact is, says Gray in his lecture on the "*Nature and Sources of the Law*",[4] "that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what is would have intended on a point not present to its mind, if the point had been present." The judge as the interpreter of the community of its sense of law and order must supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision "*libre recherché sceintifique*".[5]

This approach is particularly needed while deciding the issues relating to gender justice. At times the judiciary has made exemplary efforts in this regard.

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3 "Interpretive Theories", 17 (2) *Bond Law Review.*

4 John Chipman Gray, The Nature and Sources of the Law.

5 Means "free scientific research".

Journey from *Shah Bano*[6] *to Shabana Bano*[7] guaranteeing maintenance rights to Muslim women is a classical example. At times, however, judicial responses to the challenges posed have not been encouraging.

In her recent article,[8] Ms. Flavia Agnes has analyzed various cases decided by the courts on the aforesaid aspects of women's rights. Let me highlight those cases where social justice is done adopting positive approach.

In *Govindrao* v. *Anandibai*,[9] it was held that since Hindu Marriage Act is a beneficial legislation, it would not be right to adopt a narrow approach and deprive a large number of women their right of maintenance as this could not have been the intention of the legislature. The Supreme Court also upheld a similar position in *Dwarika Prasad Satpathy* v. *Bidyut Praya Dixit*,[10] and laid down that strict proof of a valid marriage is not necessary while deciding the issue of maintenance in summary proceedings under Section 125 of the Code of Criminal Procedure. Another important ruling on this issue was delivered by the Supreme Court in 2004 in *Rameshchandra Daga* v. *Rameshwari Daga*,[11] where the right of another woman in a similar situation was upheld. Here the Apex Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence, a financially dependent woman cannot be denied maintenance on this ground.

A contrary view, however, was expressed by another bench of the Supreme Court in 2005, in *Savitaben Somabhai Bhatiya* v. *State of Gujarat*,[12] which denied the woman maintenance on the ground that it is inconsequential that the man was treating the woman as his wife. The court commented, "However desirable it may be to take note of the plight of the unfortunate woman, the legislative intent being clearly reflected in S.125 Cr.P.C. there is no scope for enlarging it by introducing any artificial definition to include a woman not lawfully married in the expression "wife".

Notwithstanding this position, contained in *Savitaben,* it is not difficult to impart justice in given cases where facts eloquently demand the same. Two such judgments were given by the Delhi High Court in the year 2008. In the first case,

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6 AIR 1985 SC 945.
7 AIR 2010 SC 305.
8 " Conjugality, Property, Morality & Maintenance", 44 Economic and Political Weekly (31st October 2009).
9 AIR 1976 Bom 433.
10 AIR 1999 SC 3348.
11 AIR 2005 SC 422.
12 AIR 2005 SC 1809.

Suresh Khullar v. *Vijay Kumar Khullar*,[13] while contracting the present marriage, the husband's first marriage was dissolved by a court of law. The wife was innocent and oblivious of the fraudulent circumstances under which the husband had obtained an ex parte decree of divorce against his first wife. After a few months of her marriage the woman was driven out of the matrimonial home. Thereafter, the husband's ex parte decree of divorce was set aside on the ground of fraud and through this legal incident; Suresh Khullar's marriage was rendered bigamous and invalid. She filed a suit for damages against the husband and his first wife on the ground of fraud and cheating, which was decreed by a civil judge. While upholding the right of the woman, the court with respect to Section 18 of the Hindu Adoption and Maintenance Act, 1956 (HAMA) held that while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. The court invoked the legal maxim *construction ut res magis valeat guam pereat*, i.e., where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. The court commented that if this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. It was held that for the purpose of claiming maintenance under Section 18 of HAMA, the woman should be treated as the legally wedded wife.

The second ruling was pronounced in *Narinder Pal Kaur Chawla* v. *Manjeet Singh Chawla.*[14] The wife had approached the court for maintenance under Section 18 of HAMA in 1997 and pleaded that her husband had duped her by suppressing his earlier marriage. The couple had lived together for 14 years and had two daughters. The husband pleaded that since his earlier marriage was valid and subsisting, his marriage with Narinder Pal Kaur was void. After a prolonged and contentious litigation, she was able to secure an order of interim maintenance of 1500/- p.m. But when the case was finally decided in 2005, the trial court dismissed her petition on the ground that she could not be treated as a 'Hindu wife' under Section 18 of HAMA as she did not have the status of a legally wedded wife. But in appeal, the Delhi High Court upheld the right of the wife and held that even if the woman cannot be treated as a 'Hindu wife', she is entitled to a lump–sum settlement by way of damages.

Confronted with contradictory viewpoints regarding the criterion for determining the 'legislative intent' of a beneficial provision, what are the crutches that the trial court judges have at their disposal while delivering 'Constitutional

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[13] I (2008) DMC 719 Del.
[14] I (2008) DMC 529 Del.

justice'? The court attempted to provide an answer:

> Where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than the one which would put hindrances in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

In this tussle between the old world, feudal value systems reflected in the ancient Hindu law – the law of the *Smritis* alongside pluralistic traditions validated by customs at one end, and the newer statutory provisions of the modern codified Hindu law at the other, what are the avenues for harmonious constructions of legal principles? How do we revisit the provisions of the ancient Hindu law in the context of its modern day distortions, within the statutory framework of contemporary Hindu law, while delivering justice? The court provided certain tools of interpretations in this respect:

> The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. There is clear evidence to indicate that the law of maintenance stems out of the secular desire and so as to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Organically and originally the law itself is irreligious. Its foundation spring is humanistic. In its operation field although it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

Ms. Flavia Agnes in her underneath mentioned article has provided following critique to the aforesaid and some other judgments:-

> Beyond protection of individual rights, the courts also have a mandate to evolve the science of jurisprudence as it was

brought to our notice by Chief Justice S. B. Sinha, Justice Ramesh Madhav Bapat, and N. G. Ramana of the Andhra Pradesh High Court in the following words:-

> The interpretation of law is not merely for the determination of a particular case but also in the interest of law as a science. As such, interpretation of law must be in accordance with justice, equity and good conscience, and more so, in furtherance of justice. If the court prima facie comes to the conclusion that the plaintiff/petitioner is entitled to interim maintenance it can award interim maintenance in the interest of justice, without being fettered by orthodox prejudices, by showing liberal readiness to move with times.

This call to move with the times and blend the ancient with the modern in pursuit of justice is the call of duty.

The judicial oath mandates this. The primary aim of the courts is to 'do justice' as Justice P. N. Bhagwati and Justice Ranganath Misra (as the Lordships then were, subsequently both justices became the Chief Justices of India) succinctly point out: “The role of the court is not that of silent spectator or of a passive agency. When a dispute is brought before the court where maintenance of a neglected wife or a minor child is in issue, the court must take genuine interest to find out the truth of the matter. If the magistrate had asked proper questions to the witnesses when they were before him and deposing about the marriage, the relevant evidence would have come up before the court. It was the duty of the lawyer appearing for the appellant also to have played his role properly at the right time.” Due to this judicial and procedural lapse, a case for a pittance of maintenance, filed in 1971 had to be sent back from the Supreme Court to the magistrate's court for retrial in 1985.

Within this framework of the call of duty and judicial mandate, I am constrained to invoke the framework provided to us in 1978 by yet another Bench of the Supreme Court comprising of legal luminaries, Justice V. R. Krishna Iyer and Justice D. A. Desai: “The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.”[15]

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[15] By Ms. Flavia Agnes.

I may end by referring to "Virtue Jurisprudence" which is being debated for deciding social context issues. It highlights a virtue centered theory of judging. Virtue jurisprudence is a normative and explanatory theory of law that utilizes the resources of virtue epistemology, virtue ethics and virtue politics to answer the central question of legal theory.[16] In a sense, virtue jurisprudence is a new theory, drawing on the resources provided by recent developments in moral philosophy, but virtue jurisprudence is also a very old theory, rooted in Aristotle's conception of ethics, politics, and the nature of law. This theory demonstrates that apart from well known judicial virtues, namely, (i) judicial temperance; (ii) judicial courage; (iii) judicial temperament; (iv) judicial intelligence, and (v) judicial wisdom there is another crucial and central virtue, namely, "virtue of justice". **Lawrence B. Solum** has beautifully summed up this virtue in the following words:-

> We call high judges, "justices", we call the buildings they occupy the "halls of justice", and we call what they do, "the administration of justice". If we know anything about judges, it is that they ought to be just. If judges should possess the virtue, then surely they should possess the virtue of justice.[17]

He highlights at least three ingredients in the virtue of justice as it applies to judges: "judicial impartiality", "judicial integrity" and "legal vision". I emphasise this legal vision while deciding "hard cases".

If this *'Legal Vision'* is kept in mind, it will bring about just results and that should be the approach of a Judge in *'Social context adjudication'*.

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[16] Virtue Jurisprudence (A Virtue-Centered Theory of Judging) by Lawrence B. Solum.
[17] *Ibid.*

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: CAN WOMAN BE ARRAYED AS "RESPONDENT"?

V.P.Vaish*

The legislature drafts the law with great skill and expertise with the hope that the meaning of the words or expression used in the statute would be clear and unambiguous in accordance with the intention of the legislature. However, English language is not an instrument of mathematical precision and as rightly pointed out by Lord Denning, it would be idle to expect every statutory provision to be 'drafted with divine prescience and perfect clarity'. As the legislation is drafted by the human beings and is not derived from the divine, errors or ambiguity in the language or expression used in the statute is bound to occur. This is where the draftsmen of Acts of Parliament have often been unfairly criticized as it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity. Here comes the role of the courts to correctly interpret the ambiguous provisions so as to give effect to the intention of the legislature. It becomes the duty of the court to give correct interpretation to such a provision having regard to the purpose sought to be achieved by enacting a particular legislation. The famous and oft-quoted principle relied by Lord Denning in the case of *Seaford Court Estates Ltd.* v. *Asher*[1] is:

> When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature.

The Protection of Women from Domestic Violence Act, 2005 (in short, DV Act, 2005) came into force on 26/10/2006. The Statement of the Objects and Reasons of the Act states that the Act was legislated on the basis of the recommendation of the United Nations Committee on Convention on Elimination of All Forms of Discrimination against Women (CEDAW). The statute is a benevolent piece of legislation and aims to provide for more effective protection of rights of women guaranteed under the Constitution that are victims of violence of any kind occurring within the family and for matters connected therewith or

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* Registrar General, High Court of Delhi.

1 (1994) 2 All ER 155.

incidental thereto. The Act *inter-alia* provides for various reliefs to the "aggrieved person" against the "respondent" like protection order, residence order, and custody order. As far as the definition of "aggrieved person" under Section 2(a) of the DV Act, 2005 is concerned, there is no controversy.

However, the same is not true with Section 2(q) of the DV Act, 2005 which defines "Respondent" as follows:

> 2(q):"respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
>
> Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

The aforesaid definition clause can be divided into two parts; i.e., first, the main provision of Section 2(q), which defines, "respondent" and specifically states that it would mean any 'adult male person'. However, the second part, the proviso carves out specific category of 'aggrieved person', viz, a wife or a female living in a relationship in the nature of a marriage. It stipulates in such a case that such aggrieved wife or female can file a complaint against "a relative of the husband or the male partner" as well. It is argued that the expression 'a relative' would be circumscribed by adult male person and once that is the clear and categorical definition provided to the term 'respondent' in the main provision, the proviso has to take color there from in as much as it cannot expand or limit the scope of the main provision and therefore, such a relative as mentioned in the proviso could only be an adult male person and would not include a female relative.

Thus, if we look at the definition clause, we find the provision is not very satisfactorily worded and there appears to be some ambiguity or loophole in the definition of 'respondent' as contained in Section 2(q) of the Act. The Director of Southern Institute for Social Science Research, Dr. S.S. Jagnayak in his report has described the ambiguity in Section 2(q) as "loopholes to escape the respondents from the cult of this law" and opined :

> As per Section 2 Clause (q) the respondent means any adult male person who is or has been in a domestic relationship. Hence, a plain reading of the Act would show that an application will not lie under the provisions of this Act against a female. But, when Section 19(1) proviso is perused,

it can be seen that the petition is maintainable, even against a lady. Often this has been taken as a contention, when ladies are arrayed as respondents and it is contended that petition against female respondents are not maintainable. This is a loophole which should be plugged.

The ambiguity with respect to the correct interpretation and scope of the term "respondent" first came up in the case of *Ajay Kant and Ors* v. *Smt. Alka Sharma*[2] in which the Hon'ble Madhya Pradesh High Court dealt with the notice issued by the Magistrate to the petitioners on an application filed under Section 12 of the Act. The Learned single Judge after referring to the definition of respondent in Section 2(q) and Statement of Objects and Reasons for enacting the Act held that for obtaining any relief under the Act, an application can be initiated against only adult male person and on such application or under such proceeding, protection order can be passed; those orders will also be passed only against the adult male person and as provided under Section 31 of the Act, non compliance of a protection order or an interim protection order has been made punishable and as such it can be said that the complaint for this offence can only be filed against such adult male person/respondent who has not complied with the protection order, and it is clear that the application under Section 12 of the Act which has been filed by the respondent against petitioners No.3 and 4 who are not adult male person is not maintainable and accordingly quashed the proceedings against petitioners 3 and 4 therein.

The premises in the *Ajay Kant* case were:

- Considering the Statement of Objects and Reasons under which the Bill for passing the Act was placed before the Parliament, the Act has been passed to provide the civil remedy against domestic violence to the women.

- The provisions of Sections 19, 27, 28, 31 to 33 of the DV Act, 2005 clearly mention that some of the proceedings under the Act are of criminal nature. Under Sections 19 to 22 of the Act an order to provide residential facilities, monetary reliefs, custody order for a child, and compensation can be ordered by the Magistrate under the Act. Except a part of Section 19 with regard to direction of execution of a bond and dealing the same as provided under Chapter VIII of Cr.P.C., all reliefs under Sections 18 to 22 appear to be of civil nature. Thus, some of the proceedings under the Act can be said to be of civil nature and some of the proceedings can be said to

[2] (2008) 2 Crimes 235 (MP).

be of criminal nature.

- Section 12 of the Act provides that an application (not a complaint) for seeking one or more reliefs under the Act can be filed. On perusal of Sections 18 to 22 of the Act, it appears that the reliefs under these sections as mentioned herein above, can be passed on the application under Section 12 of the Act.

- The word complaint as appeared in the definition of respondent under Section 2(q) of the Act has not been defined anywhere in the Act. Although it is not provided that the definition of complaint can be considered the same as provided under Cr.P.C. but at the same time, it is also not prohibited. In view of this, the definition of complaint can appropriately be seen in Cr.P.C. which is as under:-

> 2(d) "Complaint" means any allegation made orally or in writing to a Magistate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

- It is clear by this definition that a complaint as provided in Cr.P.C. can only be for an offence. As mentioned hereinabove only two offences have been mentioned in this Act and those are (1) under Section 31 and (2) under Section 33. It appears that this word complaint appeared in the definition of respondent has been used for initiating proceedings for these two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given a right to file a complaint against a relative of the husband or the male partner.

- This word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2(q) that is for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with a protection order or interim protection order.

Thus, it is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person.

- As provided under Section 31 of the Act, non-compliance of a protection

order or an interim protection order has been made punishable and as such it can be said that the complaint for this offence can only be filed against such adult male person/respondent who has not complied with the protection order. Hence, the application under Section 12 of the Act filed against females is not maintainable.

The aforesaid judgment of *Ajay Kant*[3] was followed by the Hon'ble Madras High Court in the case of *Uma Narayanan* v. *Priya Krishna Prasad*[4] in which the Hon'ble Madras High Court held that term respondent would mean only an adult male person. Thus, an application under Section 12 of the DV Act, 2005 is not maintainable as against a woman.

The Karnataka High Court in the case of *Sri Amruth Kumar* v. *Smt. Chithra Shetty*[5] held that word 'relative' appearing in the proviso to definition of 'respondent' has to be understood to mean only male relative of the husband or male partner of the aggrieved person with whom she is in domestic relationship. In case of *Smt. Menakuru Renuka and Ors* v. *Menakuru Mono Reddy and Anr*[6] similar view is expressed that in view of the contents of Section 2(q) of the Act of 2005 female members of the domestic relationship have to be excluded, as the word used in Section 2(q) of the Act is that respondent means any adult male person. Further, the MP High Court in its recent judgment in *Tehmina Qureshi* v. *Shazia Qureshi*[7] has reiterated its earlier judicial precedent and held that application for seeking one or more relief under the Act can be filed against adult male member only as is apparent from Section 2(q) of the Act wherein, it is specifically mentioned that 'respondent' means only adult male person. The words used are not like 'respondent' means any adult person. So complaint against relatives of husband cannot include female members. Female members cannot be made respondents in proceedings under the Protection of Women from Domestic Violence Act, 2005.

However, the aforesaid judicial pronouncements have been based on an erroneous interpretation of Section 2(q) of the DV Act, 2005 which purportedly rules out the Woman as “Respondent” under the scheme of the DV Act, 2005. The aforesaid judgments have taken a narrow interpretation of the term “respondent” not properly interpreting it in light of other provisions and also the Statement of Objects and Reasons.

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3 *Ibid.*

4 (2008) 3 MLJ 756 (Mad).

5 (2010) 1KCCR 459.

6 (2009) Cri LJ 819: AIR 2009 AP 1544.

7 (2010) 1MPHT 133.

It is the accepted rule of interpretation with respect to "Proviso" as an internal aid to interpretation as enunciated in the judgment of Hon'ble Apex Court in *J.K. Industries Ltd. and Ors* v. *Chief Inspector of Factories and Boilers and Ors*[8] that proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be part of the main provision. As a general rule, in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justifying its necessity. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso. On the other hand, an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole; each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially. The proviso of Section 2 (q) should be read together with the main enacting part to give meaning to the proviso with a view to justifying its necessity and both should be read together without making either of them redundant or otiose.

The proviso to Section 2(q) deals with complaint against two categories of persons i.e., (1) relative of the husband or (2) the male partner. By construing the main enactment part of Section 2(q) without taking into consideration the proviso, the meaning of "Respondent" is restricted only to the male persons, which makes the expression "a relative of the husband" redundant as used in proviso to Section 2(q) which is not contemplated under the scheme of the DV Act, if read with Section 19 and Section 21 of the DV Act. The provisions of Section 19 of the DV Act are reproduced below :

> Section19. Residence Orders.- (1) While disposing of an application under subsection (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(a) directing the respondent to remove himself from the shared household;

(b) restraining the respondent or any of his relatives from entering any

[8] (1996) VII AD (SC) 125.

portion of the shared household in which the aggrieved person resides;

(c) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(d) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(e) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

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(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

Thus, from the wording of Section 19 of the DV Act it is clear that the Section provides for disposal of applications made under Sub-section (1) of Section 12 by the Magistrate. Under Sub-section (1) of Section 19, the Magistrate can pass any order against a female person other than the orders under Clause (b). Whereas proviso to Sub-section (1) of Section 19 puts a bar on the power of the Magistrate for passing an order against any person who is a woman under Section 19(1)(b).

In other words, except residence order under Section 19(1) (b), it is competent for the Magistrate to pass orders against the relatives of the husband including a female person under Section 19(1) (c), i.e., restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. For example, if the aggrieved person along with her husband resides in a house owned by joint family including the parents of the respondent, his brothers, and sisters, if any, whether or not the respondent has no legal or equitable interest or title in the shared household, he can be restrained from dispossessing the aggrieved person.

Further under Sub-section (8) of Section 19, if an aggrieved person was provided with residential house towards her Stridhan, which is in occupation of the relatives of the husband, the Magistrate can direct the respondent including the female relative of the husband for return of the possession of Stridhan property or valuable security, namely, gold jewellery, etc., which was in possession of the female member of the husband.

Further, Section 21 of the Act deals with grant of temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specifies necessary arrangements for visit of such child or children by the respondent. For instance, if the children are under the custody of mother-in-law of an aggrieved person, if we give a restricted meaning to Section 2(q), no such order can be passed for giving temporary custody of the child against a female relative of the husband, i.e., father, mother who are residing jointly.

It is a well settled principle of law that for the interpretation of statute, attempt must be made to give effect to all the provisions and all the provisions should be read together. No provision should be considered as surplusage or redundant which is clear from the pronouncement of Hon'ble Apex Court in *Bhavnagar University* v. *Palitana Sugar Mill Pvt. Ltd. and ors.*[9]

> An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

Thus, it is well settled that the Legislature does not use any word unnecessarily. In this regard, it would be appropriate to quote part of paragraph 9 of the judgment of the Apex Court in *Utkal Contractors & Joinery Pvt. Ltd.* v. *State of Orissa:*[10]

> No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily.

Every word, expression used in a statute has a meaning, a reason and it cannot be devoid from its reason. The statute should be construed with reference

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9 AIR 2003 SC 511.
10 AIR 1987 SC 1454.

to its reason as observed, in paragraph 9 of the judgment of the Apex Court in *Utkal Contractors & Joinery Pvt. Ltd.*[11]

A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it.

Similarly, the Hon'ble Apex Court in another case of *Reserve Bank of India* v. *Peerless General Finance and Investment Co. Ltd. and Ors,*[12] has observed as under:-

> Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

The provisions of DV Act 2005, i.e., the definition clauses, provisions of the DV Act, if read together with the Statement of Objects and Reasons under Bill No. 116 of 2005 for passing the DV 2005 Act, makes it clear that the complainant shall be necessarily be a woman and the respondent also shall necessarily be a male except in cases where the complainant is a wife, the respondent may be a female relative of the husband or male partner. The Bill under Clause 4(i) of the Statement of Objects and Reasons is reproduced below:-

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11 *Ibid.*

12 (1987) 2 SCR 1.

4. The Bill, inter alia, seeks to provide for the flowing:

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

The aforesaid Clause 4(i) of the Statement of Objects and Reasons seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. The Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner; it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner. The judgment of the MP High Court in *Ajay Kant* has not completely read out the Statement of Objects and Reasons of the DV Act, 2005 as it has refrained from discussing the aforesaid Clause 4(i) of the Statement of Objects and Reasons which could have thrown some light on intention of the legislature and would have guided the judicial wisdom to interpret the provision of statute in accordance with the legislative intent.

It is fairly well settled from a series of various judicial pronouncement that reference to the "Statement of Objects and Reasons" is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil, which the statute was sought to remedy. Justice G.P. Singh in his scholarly book *Principles of Statutory Interpretation*[13] has observed:

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[13] Wadhwa & Co. 8th Edn., 2001.

> Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy.

There are various judicial pronouncements of Apex Court which support the use of external aid, i.e., "Statement of Objects and Reasons" to find out the true legislative intent. For example; recently the Apex Court in *A. Manjula Bhashini and Ors* v. *The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Anr*[14] decided on 06.07.2009 has observed that the statement of objects and reasons can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The statement of objects and reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act.

However, the recent judicial wisdom has now taken a divergent view against the judicial precedents cited above and have taken a view that the "Respondent" does include "Female Respondent" also by adopting the correct principles of interpretation in light of other provisions together with the Statement of Objects and Reasons to give effect to the intention of the legislature. The Hon'ble High Court of Rajasthan in *Sarita* v. *Smt. Umrao*,[15] has categorically held that

> From a plain reading of the proviso to Section 2(q) of the Act of 2005 it is apparent that a complaint by a wife or a female living in relationship in the nature of marriage may also file a complaint against a relative of the husband. The term relative is quite broad and it includes all relations of the husband irrespective of gender or sex.

The High Court of Rajasthan in another case *Nand Kishore and Ors* v. *State of Rajasthan and Anr*[16] has observed that S.2(q) of the Act and its proviso, if read together nowhere suggest that the relative of the husband or the male partner has to be a male. In proviso to Section 2(q) of the Act the word is "relative" and not male relative. It further held that a female relative is not excluded from the definition of respondent contained in section 2(q) of the Act. The judgment of the Hon'ble Andhra Pradesh High Court in *Afzalunnisa Begum*

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14 (2009) 9 SCALE 99.
15 2008) 1 WLN 359.
16 RLW(2008) 4 Raj 3432.

& Ors v. *The State of A.P. and Ors*[17] in which the Hon'ble High Court after making detailed analysis of Section 2(q) read with various provisions of DV Act, 2005 particularly Sections 19 and 21 together with the Statement of Objects and Reasons under Bill No.116 of 2005 for passing the DV Act has in clear terms laid down that the 'respondent' as defined under Section 2(q) of the Act includes a female relative of the husband.

Similarly, the Bombay High Court in the case of *Archana Hemant Naik* v. *Urmilaben I. Naik and Anr*[18] held that relative within the meaning of proviso to Section 2(q) cannot be only a male relative and the relative referred to in proviso to Clause (q) of Section 2 can also be a female relative of the husband or the male partner, as the case may be. Also the Gujrat High Court in the case of *Jaydipsinh Prabhatshinh Jhala and Ors* v. *State of Gujarat and Ors*[19] pronounced on 22/12/2009 held that in case, aggrieved person is a wife or a woman living in a relationship in the nature of wife, in an application under Section 12 of the Act, if the facts so warrant, a female relative of the husband or the male partner as the case may be can also be joined as respondent. The Madras High Court in its recent judgment *of R. Nivenran and Ors* v. *Nivashini Mohan @ M. Nivashini*[20] pronounced on 17/02/2010 has overruled its earlier decision cited above and held that the "respondent" as defined under Section 2(q) of the Act includes a female relative of the husband or the male partner and women could be added as respondents in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

Recently, the Hon'ble Delhi High Court in the recent judgment of *Varsha Kapoor* v. *UOI and Ors*,[21] has given a very reasoned judgment based on the correct interpretation of the provisions of the Domestic Violence Act and its Statement of Objects & Reasons. The Hon'ble Delhi High Court has pointed out that proviso to Section 2(q) caters for wife or a female in a livein relationship. In their case, the definition of 'respondent' is widened by not limiting it to 'adult male person' only, but also including ' a relative of husband or the male partner', as the case may be. What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, *viz,* sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

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17 Criminal Petition No.7160 and 8495 of 2008 pronounced on 02/06/2009.
18 2010 Cr LJ 751.
19 (2010) 51GLR635.
20 Crl. O.P. No.24598/2008.
21 WP(Crl.) No. 638 of 2010.

Having dissected definition into two parts, the rationale for including a female / woman under the expression 'relative of the husband or male partner' is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelly and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

Thus, it can be concluded that it is a well-recognized principle of law that while interpreting a provision in statute, it is the duty of the court to give effect to all provisions. When the provisions of the DV Act 2005 are read conjointly keeping the scheme of the said Act, it becomes abundantly clear that the legislator intended female relatives also to be respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage.

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PRESENTATION ON ROLE OF COURTS IN REHABILITATION OF PRISONERS, WOMEN PRISONERS, MENTALLY ILL PERSONS, PROBATIONERS, WOMEN VICTIMS, CHILD ACCUSED, CHILD IN NEED, CHILD VICTIMS, AND TERMINALLY ILL PERSONS

Group Officers:
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Role of Courts in Rehabilitation

The reformative theory of the punishment is based on the notion that the punishment is to be inflicted on an offender so as to reform him, or rehabilitate him, so as to make their reintegration into society easier. Although the importance of inflicting punishment on those persons who breach the law, so far to maintain the social order' is retained, the importance of rehabilitation is also given priority. However, we would like to point out that the predominant role in rehabilitation of prisoner - men or women, probationers, victims - child or woman, and the women and children who need care and protection is in executive domain to implement the legislative policy in this regard. But, certain actions and orders of the court have great impact in rehabilitation of said category of persons. An order passed by Magistrate under the Protection of Women from Domestic Violence Act, 2005 injuncting the husband or his family members from dispossessing the victim woman from shared household or restoring of the said woman in shared household are certainly orders conducive for rehabilitation of the victim woman. Probation orders also play a major role in rehabilitation of a convict of an offence. Similarly, the grant of bail in the bailable and non bailable offences and, order referring the matter to the State Legal Services Authority for compensation to the victim under Section 357A CrPC may help in rehabilitation of the accused/victim, male or female.

1. Rehabilitation

The ordinary meaning of the term 'to rehabilitate' is to bring back to former position and rehabilitation means the act of restoring forfeited rights or privileges. The term rehabilitation is not defined in CrPC, IPC or certain Acts dealing with crime against woman or child. In Wharton's Law Lexicon, the term

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** Officers of DJS.

'rehabilitate' is explained to mean, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore the forfeited right. In Section 2 (w) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, rehabilitation is defined to refer to a process aimed at enabling persons with the disabilities to reach and maintain their optimum physical, sensory, intellectual, psychiatric or social functional levels.

The Hon'ble Supreme Court had the occasion of explaining the term rehabilitation in *Collector of 24 Parganas* v. *Lalit Mohan Mullick*,[1] though in somewhat different context of acquisition of land for settlement of immigrants under the W.B. Land Development and Planning Act (21 of 1948), S.4, S.6 and it was observed that:

In Collins Dictionary of the English Language, the meaning for the word 'rehabilitate' is given as "to help a person (who is physically or mentally disabled or has just been released from prison) to readapt to society or a new job as by vocational guidance, retraining or thereby .....". By rehabilitation what is meant is not to provide shelter alone. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. It would be too much to contend, much less to accept, that providing medical facilities would not come within the concept of the word 'rehabilitation'. No detailed discussion is necessary to hold that putting up of a hospital and in particular one for crippled children is one of the important facets of the concept of 'rehabilitation of displaced persons'.

2. Prisoners

There are several Acts relating to prisoners but the term prisoner is defined only in the Repatriation of Prisoners Act, 2003 to mean a person undergoing the sentence of imprisonment under an order passed by a criminal court including the course established and the law for the time being in force in contracting States. However, in the Prisons Act, 1894 instead of the term prisoner the terms 'criminal prisoner' and 'convicted criminal prisoner' are used. The criminal prisoner according to Section 3 (2) means a person duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction, or by order of the court martial. The convicted criminal prisoner according to Section 3 (3) means any criminal prisoner under sentence of a court or court martial and includes a person detained in prison under the provisions of Chapter VIII of the CrPC or the Prisoners Act. Therefore, both undertrial person accused facing trial in the courts and the person convicted of the offences are to be treated as prisoners under the Prisons Act, 1894. Another category of prisoners is defined

[1] AIR 1986 SC 622.

in Section 3 (4) of this Act, i.e., ' civil prisoner' who is defined to mean any prisoner who is not a criminal prisoner.

Section 34 of this Act deals with employment of civil prisoners who are permitted to work and follow any trade or profession with the permission of Superintendent of Jail. Section 35 deals with employment of criminal prisoners sentenced to labour or employed on labour at his own desire with the sanction in writing of the Superintendent for more than nine hours on any one day except in case of emergency and subject to certification by Medical Officer. Therefore, mainly it is for the jail authorities to provide employment and take work from the prisoners. The visits of Hon'ble Judges from our High Court from time to time in the district jails have acted as a catalyst for the jail authorities to impart vocational training, employment, and other welfare activities for the prisoners. For instance, the Italian lacemaking programme was inaugurated in Tihar Jail on 15/4/2010 to empower the women prisoners both socially and economically through provision of access to sustainable income generating options in respect of Italian lace products. The project involved training of seventy-five women inmates in the jail. The jail administration has tie-up with the shoe designer and three-month course in shoe designing by renowned trainer is taught to the prisoners in Central Jail No.4 in Tihar and after learning the art of shoemaking, the prisoners would be able to secure it for themselves and even set up their own business. There is a Vocational Training Institute at Tihar in Central Jail which was set up on 10/10/2009 under the Skilled Development Initiative Scheme (SDIC) of Union Ministry of Labour. This Institute is providing training to the jail inmates in various sectors such as automotive repair, beauty culture and hairdressing, carpet, garment making, woodwork, hospitality, card printing, refrigeration and air conditioning, sweets, snacks, and food, woodwork, food processing and preservation. These efforts of the jail authorities in coordination with the government are certainly conducive for rehabilitation of the prisoners. Recently on 16/4/2010 the jail administration has set up 'Tihar Outlet' at Delhi High Court for display and sale of variety of products being manufactured in jail factory by inmates such as bakery products like biscuits, namkeen, muffins, handmade paper bags, file covers, shirts, handkerchief, wooden gift items, candles, mustard oil, Phenyl, etc. The Tihar Jail products are sold under the brand name TJ's.[2]

Special provision has been made in NDPS Act for rehabilitation of convicts, who are drug addicts. The Government is required to set up Rehabilitation and De-addiction Centres. A special provision has been introduced for rehabilitation of drug addict convicts which can be traced to Secion 64-A of

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[2] Tihar News, January to April 2010.

the Act and State Government has been mandated under Section 71 NDPS Act to make provisions of rehabilitation.

After sentencing the accused of an offence to imprisonment in jail, there does not seem to be any role of the criminal court in the rehabilitation of the convicted person. As already stated this work is to be done by executive in accordance with government policies which is being done in Tihar Jail by the jail authorities in Delhi, referred above.

However, the higher courts have a role to play if the inmates of the jail are not paid a reasonable remuneration. The payment has to be equivalent to the service rendered; otherwise it would be 'forced labour' within the meaning of Article 23 of the Constitution.

A Division Bench in *Gurdev Singh* v. *State of Himachal Pradesh*,[3] said that Article 23 of the Constitution prohibits 'forced labour' and mandated that any contravention of such prohibition shall be an offence punishable in accordance with law. The court had no doubt that paying a pittance to them is virtually paying nothing. Even if the amount paid to them were a little more than a nominal sum the resultant position would remain the same. Government of India had set up in 1980 a Committee on jail reforms under the Chairmanship of Mr. Justice A.N. Mulla, a retired judge of the Allahabad High Court. The report submitted by the said Committee is known as 'Mulla Committee Report'. It contains a lot of very valuable suggestions, among which the following are contextually apposite.[4]

> All prisoners under sentence should be required to work subject to their physical and mental fitness as determined medically. Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoners, their training for work, the forming of better work habits, and of preventing idleness and disorder. Punitive, repressive and afflictive work in any form should not be given to prisoners. Work should not become drudgery and a meaningless prison activity. Work and training programmes should be treated as important avenues of imparting useful values to inmates for their vocational and social adjustment and also for their ultimate rehabilitation in the free community Rates of Wages should be fair and equitable and not merely nominal or paltry. These rates

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3 AIR 1992 HP 70, 1992 Cri LJ 2542.

4 Saurbh Kothari, "Taking Prisoner's Rights Seriously", *available at:* http://www.legalserviceindia.com/articles/po.htm.

should be standardized so as to achieve a broad uniformity in wage system in all the prisons in each State and Union Territory.[5]

The court finally gave the following observations:

(1) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether they consent to do it or not.

(2) It is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose.

(3) It is imperative that the prisoner should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners the State concerned shall constitute a wage fixation body for making recommendations. We direct each State to do so as early as possible.

(4) Until the State Government takes any decision on such recommendations every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above. For this purpose we direct all the State Governments to fix the rate of such interim wages within six weeks from today and report to this court of compliance of this direction.

(5) State concerned should make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode.

Therefore, if the prisoners are not adequately paid as per the government norms and minimum wages prescribed, the Hon'ble High Courts and Supreme Court can correct the position in appropriate writ petition being filed by the aggrieved person or the public spirited NGO. The civil courts and the Labour Tribunals may also pass appropriate orders to correct the position under the relevant laws.[6]

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[5] *Ibid.*

[6] Saurbh Kothari, *Taking Prisoner's Rights Seriously*, available at http://www.legalserviceindia.com/articles/po.htm.

3. Women Prisoners

The case of women prisoners is also on the same footing as of male prisoners. However, women being weaker sex are provided with certain benefits and preferential treatment. The arrest of a woman accused cannot be made between sunset and sunrise and a woman is to be arrested and searched by a woman police official only. The woman accused get a relaxed and lenient treatment in their favour for grant of bail from the court of Magistrate under Section 437 (1) CrPC. A woman prisoner is kept in a separate ward in the prison and in the judicial lock-up in District Court Complexes. An important Act dealing with the sexually abused female offenders is the Immoral Traffic (Prevention) Act, 1956. The relevant provisions for the present discussion are Section 10A pertaining to detention of female offenders in corrective institution, Section 21dealing with establishment of appropriate number of protective homes and corrective institutions, and Section 21A regarding production of the records and other documents maintained by such home or institution before court.

4. Women Victims

There are several Acts dealing with women victims. The National Commission for Women is created under the National Commission for Women Act, 1990 for looking after the welfare of women. The Dowry Prohibition Act, 1961, the Indecent Representation of Women (Prohibition) Act, 1986, the Commission of Sati (Prevention) Act, 1987, the Child Marriage Restraint Act, 1929 are some of them. Besides some sections of the major Acts are also of benefit and give protection to the women. Sections 125 to 128 CrPC pertain to maintenance to some category of persons including women. Sections 354 of IPC pertains to assault or use of criminal force to woman with intent to outraged her modesty. Section 376 of IPC provides for punishment for commission of rape, which is defined in Section 375 IPC. Section 376A pertaining to intercourse by a man with his wife during separation, Section 498A pertaining to husband and relatives of husband of a woman subjecting her to cruelty, Section 304B pertaining to dowry death and Section 306 regarding abetment of suicide by a married woman are some other provisions dealing with woman victims. These provisions of Indian Penal Code have been proved to be deterrent for offences against woman in the matrimonial home or in society. Besides these, under the Indian Evidence Act, there are some sections beneficial to woman, like Section 113A regarding presumption as to abetment of suicide by a married woman, Section 113B pertaining to presumption as to dowry death, Section 112 regarding presumption of legitimacy of the child born within 240 days of the marriage, Section 114A regarding presumption as to absence of consent in certain prosecution for rape.

The Protection of Women from Domestic Violence Act, 2005 is a new enactment giving very wide powers to the magistracy for redressal of grievances of the victim woman. Under this Act, a victim woman being an aggrieved person can get protection orders under Section 18, residence order under Section 19, monetary relief under Section 20, custody of children under Section 21, compensation orders under Section 22, interim relief and ex parte orders under Section 23. In *Vimalben Ajitbhai Patel* v. *Vatslabeen Ashokbhai Patel*[7] it was held that:

> The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share.

The right of residence means a higher right. The nonworking woman gets immediately rehabilitated in the shared household if it is the property owned by her husband or her husband is tenant in it or is co-sharer or coparcener or joint owner in it. If woman is entitled to live in the shared household and can get the residence order from the Magistrate by restraining the respondent husband or other family member from dispossessing her from shared household or directing the respondent husband or any other family member from removing himself/themselves from shared household or restraining the respondent husband or any of his relative from entering any portion of the shared household in which the aggrieved woman resides or restraining the respondent husband from transferring or disposing off the shared household or restraining the respondent husband from renouncing his rights in the shared household without the leave of the Magistrate or directing the respondent to secure some level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required.

Therefore, by giving the right of maintenance, residence, custody of child which are quickly obtained by the woman under the provisions of the Protection of Women from Domestic Violence Act, 2005, this Act helps a woman rehabilitated after obtaining orders from the Magistrate under the relevant provisions of the Act.

For the rehabilitation of victim woman, the State Government may notify shelter home for the purpose of the Protection of Women from Domestic Violence Act, 2005 as provided in its Section 2 (f). The duties of the shelter homes are given

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[7] AIR 2008 SC 2675.

in Section 6 of this Act. If an aggrieved person or on her behalf the protection officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved victim woman being aggrieved person in the shelter home. The provisions of this Act would go a long way in the redressal of grievances of the women in our society. The protection officers are given several duties and functions as provided in Section 9 of this Act. Rule 16 of the Protection of Women from Domestic Violence Rules deals with the shelter to the aggrieved person. On the request being made by aggrieved person the protection officer or a service provider may make a request under Section 6 to the person in charge of the shelter home in writing clearly stating that the application is being made under Section 6. This request shall be accompanied by a copy of domestic incident report registered under Section 9 or under Section 10. If the aggrieved person so desires, shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against. The victim woman is also entitled to medical facilities to be provided by service provider on the request of the victim woman or the protection officer under Rule 17. In times to come the provisions of this Act or the Rules framed under it would bring sweeping changes pertaining to right of women in the society so as to rehabilitate them.

In the court complexes in Delhi, the women prisoners are kept in a separate lock-up room with no male prisoner or policeman entring it.

5. Probationer

In 1958, the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be responsible to give a pre-sentence report to the Magistrate and also supervise the accused during the period of his probation. Both the Act and S.360 of the Cr PC exclude the application of the Cr PC where the Act is applied. The Cr PC also gives way to state legislation wherever they have been enacted.

The pre-sentence report of the probation officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedents and throw light on the background which prompted him to commit the offence and give information about the offender's conduct in general and chances of his rehabilitation on being released on probation.[8]

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[8] D Trayosha, "Probation: A Study in the Indian Context", available at http://www.legalserviceindia.com/articles/pro_bat.htm.

The judge may also pass a supervision order under Section 4(3) of the Act, whereby the offender is placed under the supervision of a probation officer and certain conditions are imposed upon him. This is mostly in the form of regular visits to the supervising officer. Some of the conditions which must be followed have been laid down in Section 4(4). On the application of the probation officer such conditions may be varied under Section 8(2) and also the offender may be discharged under Section 8(3). If the offender fails to follow the conditions laid down by the court, the original sentence against him may be revived under Section 9. [9]

Probation keeps the offender away from the criminal world. Further, the fear of punishment in case of violation of probation law has a psychological effect on the offender. It deters him from law breaking during the period of probation. Thus, probation indirectly prevents an offender from adopting a revengeful attitude towards the society. Moreover, sentencing an offender to a term of imprisonment carries with it a stigma, which makes his rehabilitation in society difficult. Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies. [10]

The society is also served. The object of society that all its members play a positive role by seeking their self-rehabilitation is achieved by the probation system. It is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control. Also, during the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him in securing a livelihood for himself after he is finally released and thus lead an absolutely upright life. And whatever work an offender is doing as a probationer, he is contributing to the national economy. Thus, he no longer remains a burden on the society and is rehabilitated. [11]

6. Child Accused

The Juvenile Justice (Care and Protection of Children) Act, 2000 (in short JJ Act) deals with juvenile in conflict with law and child in need of care and protection. It is a comprehensive law. A juvenile or child according to Section 2 (k) means a person who has not completed 18 years of age and the juvenile in

[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*

conflict with law according to Section 2 (j) of this Act means a juvenile who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of such offence. Generally, the juvenile in conflict with law is granted bail as per Section 12 of the JJ Act, only in exceptional cases where there is possibility of juvenile mixing with the criminals after release on bail, the bail is refused. Chapter II consisting of Sections 4 to 28 deals with juveniles in conflict with law. Section 16 of the JJ Act prohibits death sentence or life imprisonment or sentence in default of payment of fine or in default of furnishing security to the juvenile in conflict with law. Section 15 of this Act authorises the JJ Board to pass dispositional alternative orders like admonition, to participate in group counselling and similar activities, to perform community service by juvenile, released on probation of good conduct and placing him under care of any parent, Guardian or other appropriate person or placing him under care of any free distribution for good behaviour and his well-being for a period not exceeding three years, order directing the juvenile to be sent to a special home for a period of three years in the manner indicated in Section 15 of the JJ Act.

Section 2 (o) of the JJ Act defines observation home to mean a home established by a State Government under Section 8 as an observation home for juvenile in conflict with law. Section 8 of JJ Act deals with observation homes where initially juvenile in conflict with law may be temporarily kept during the pendency of any enquiry against him. Section 16 of the JJ Act provides that State Government or voluntary organisation recognised by State Government shall set up separate observation homes or special homes for boys and girls which shall have residential facilities for boys and girls up to 12 years, 13-15 years and 16 years and above. All facilities and services for juveniles in conflict with law shall be made available and maintained as per provisions of the Act and the State rules. The JJ Act provides for the report of a probation officer or a recognized voluntary organization to be considered before passing a sentence. The Act provides for the setting up of observation and special homes by the State Government where the juvenile could be placed. Here the rehabilitation and social integration of the child would take place. It also provides for an aftercare programme which would take care of the delinquent child after he has been discharged from these homes, based on the report of the Probation Officer. The Probation Officers appointed under the Probation of Offenders Act would also function under the Juvenile Justice (Care and Protection of Children) Act. Such a report can also be obtained by JJ Board from the voluntary organisation on the basis of interaction with the juvenile and his family wherever possible.

7. Child in Need and Child Victims

As to child in need of care and protection, the Chapter III of the JJ Act consisting of Sections 29 to 39 deals with it. It talks about Child Welfare

Committee, procedure to be followed by and the powers of the Committee. Children Home are the institution established by State Government or by voluntary organisation certified by State Government under Section 34. Section 34 of the JJ Act provides for establishment and maintenance of Children Homes either by State Government or in association with voluntary organisations by it, in every district or group of districts, as the case may be, for the reception of the child in need of care and protection during pendency of any enquiry and subsequently for their care, treatment, education, training, development and rehabilitation. All institutions whether run by State Government or by voluntary organisation for children in need of care and protection were required to be registered within a period of six months from the date of commencement of the JJ Act, in such manner as was prescribed.

The shelter homes of reputed and capable voluntary organisations may be recognised by State Government who shall provide them assistance to set up and administer as many shelter homes for keeping children as may be required. These shelter homes as per Section 37 of the JJ Act shall function as drop-in centres for the children in the need of urgent support who have been brought to such homes through such persons as provided under subsection (1) of Section 32.

Section 39 of the JJ Act deals with the restoration of the child from children's home or shelter home to his/her parents, adopted parents, foster parents, guardian, fit person or fit institution for the benefit of child who is deprived of his family environment temporarily or permanently.

As regards child victims several Acts take care of their problems which include Child Labour (Prohibition and Regulation) Act, 1986, Child Marriage (Prohibition) Act, 2006, Right to Free and Compulsory Education Act, Immoral Trafficking (Prohibition) Act, 1956, Offences against Children Act, 2005 and Preconception Prenatal Diagnostic Techniques (Prohibition of Sex Selection), Act, 1994. Recently in *Virender* v. *State of NCT of Delhi*,[12] Hon'ble Justice Gita Mittal has passed comprehensive guidelines to be followed by police, recording of statement before Magistrates, medical examination of the prosecutrix, recording of statement of child witness before the court and some general guidelines to be followed by police and courts below.

Another important Act passed by Parliament is Commission for Protection of Child Rights Act, 2005. The Preamble of the said Act speaks about speedy trial and disposal of the offences against children for the violation of the right of children. Commission for Protection of Child Rights has been appointed by the government which has various powers to hold enquiry in the matters

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[12] Crl.A.No. 121/2008 decided on 29.9.2008 (Delhi High Court).

pertaining to child rights. The said Commission is interacting with different government departments to ensure that appropriate rights of the children are maintained and recognised and the provisions in this regard be implemented. The said Commission is also authorised to make enquiry in the matters and has been empowered with the powers of the civil court with regard to summoning of person as witnesses for the purpose of the said enquiry into different aspects of the child rights. In appropriate cases, it can under Section 14 (2) of the said Act, file complaint against the accused before the Magistrate which is to be treated as being forwarded under Section 346 Cr PC for the purpose of taking action under Section 345 Cr PC for the offences indicated therein. Under Section 25 of the said Act, Children Courts are to be set up which shall be presided over by Additional Sessions Judges in Delhi for each of the districts. All cases in which a child is a victim and witness, shall be tried and adjudicated by the said Children Courts to be set up shortly under Section 25 of the said Act.

8. Mentally Ill Prisoners

Mentally ill person according to Section 2 (l) of the Mental Health Act, 1987 means a person who is in need of treatment by reason of any medical disorder other than medical retardation. The term 'mentally ill prisoner' according to Section 2 (m) of the same Act means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in Section 27 has been made. The Section 27 of the said Act deals with admission and detention of mentally ill prisoner in accordance with orders passed in different Acts by different authorities/court. Such an order can be passed by criminal court under Section 330 or 335 Cr PC.

Section 54 of the said Act provides for appointment of a manager for management of the property of a mentally ill person. Where a mentally ill person is incapable of taking care of himself, the District Court or, where the direction has been issued under Section 54 (2) of the Act for appointment of manager by the District Court after obtaining consent of the collector of the district in which the land is situated, the collector of the district will find a suitable person to be appointed as the guardian of the mentally ill person. Section 55 of the Act deals with appointment of manager by collector where the property of a mentally ill person has been entrusted to the collector by the District Court under subsection (2) of Section 54 of this Act.

Under Section 40 of the Mental Health Act, 1987 the medical officer in charge can discharge the mentally ill person but not a mentally ill prisoner other than as provided in Section 30 of the Prisoners Act, 1900, or in any other relevant law. Section 30 of the Prisoners Act pertains to the question of dealing with the

lunatic prisoners detained or imprisoned under any order or sentence of any court. By the order of the State Government, the said person of unsound mind can be removed to a lunatic asylum or other place of safe custody within the State, to be kept and treated for the remainder of the term for which he has been ordered to be detained or imprisoned, or if on the expiration of that term if it is certified by the medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care treatment, then until his discharge according to law.

Section 30 of the Prisoners Act, 1900 indicates how lunatic prisoners are to be dealt with under subsection (2) of Section 30 of this Act, where it appears to the State Government that the prisoner has become of sound mind, it shall by a warrant direct a person having charge of the prisoner. If still liable to be kept in custody, remand him to the prison from where he was removed, or to another prison within the State, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

Under sub-section (3) of the same Act, the provisions of Section 9 of the Lunatic Asylums Act, 1858 shall apply to every person confined in lunatic asylum under sub-section (1). After the expiration of the term for which he was ordered or sentenced to be detained or imprisoned and the time during which the prisoner is confined in a lunatic asylum, that subsection shall be reckoned as part of the term of detention or imprisonment which he may have ordered or sentenced by the court to undergo.

Under subsection (4) of the same section, in any case in which the State Government is competent under subsection (1) to order the removal of the prisoner to a lunatic asylum or other place of safe custody within the State, the State Government may order his removal to any such asylum or place within any other State or within any part of India to which the Prisoners Act, 1900 does not extend by agreement with the State Government of such other State; and the provisions of the Section 30 of the said Act respecting the custody, detention, remand and discharge of a prisoner removed under subsection (1) shall, so far as they can be made applicable, reply to a prisoner removed under the subsection (4).

Section 80 of the Mental Health Act, 1987 reaffirms the liability of the person legally bound to maintain a mentally ill person for maintaining such a mentally ill person notwithstanding the fact that the cost of maintenance of a person detained in psychiatric hospital or psychiatric nursing home is to be borne by the government under Section 78 of the said Act or the said cost of maintenance can be recovered from the estate of the mentally ill person by moving an application to District Court for payment of cost of maintenance under Section 79 of the said Act.

As regards the role of the court with regard to mentally ill prisoners, Chapter XXV consisting of Sections 328 to 339 Cr PC deals with the provisions as to accused persons of unsound mind. Section 328 makes it mandatory for the Magistrate to enquire into the fact of unsoundness of mind of the accused when he has reason to believe that the accused is of unsound mind and consequently incapable of making defence. The Magistrate has to take the help of civil surgeon of the district or medical officer at the State Government, who in turn may take the help of a psychiatric or clinical pathologist and then inform the Magistrate whether the accused is suffering from unsound mind or mental retardation. Pending such examination, the Magistrate may deal with the accused under Section 330 Cr PC and release him on bail pending investigation or trial of the case. He can also in appropriate cases in which Bail is not granted, can direct the accused to be kept in such place where regular psychiatric treatment can be provided but such an order is to be made in accordance with the Mental Health Act, 1987.

If the accused on medical enquiry is found to be of unsound mind, the Magistrate under subsection (3) of Section 328 Cr PC shall determine whether the unsoundness of mind renders the accused incapable of entering defence and if so a finding to the effect shall be recorded by him and he shall examine the record of evidence and if it is found that no *prima facie* case is made out against the accused then he shall discharge the accused and deal with him in the manner provided under Section 330 Cr PC. Similarly while making such medical enquiry during trial of the case, Magistrate or the Sessions Court as to the unsound mind of the accused which came to the knowledge of such Magistrate or Sessions Court during trial of the case, it shall be determined whether due to unsoundness of mind the accused is incapable of entering into defence and if he is so found incapable, the Magistrate or Sessions Court shall record a finding to the effect and after examining the record produced and hearing arguments from both sides, if it is found that no *prima facie* case is made out against the accused, instead of postponing the trial the accused shall be discharged and dealt with in the manner provided in Section 330 CrPC.

As per Section 331 Cr PC, when the accused ceases to be of unsound mind, the enquiry or trial postponed under Section 328 or Section 329 Cr PC can be resumed by the concerned court. When accused appears to have been of sound mind and the Magistrate is satisfied that at the time the offence was committed by him, by reason of unsoundness of mind, he was incapable of knowing the nature of his act, the Magistrate shall proceed with the case and if it is triable exclusively by court of sessions commit him for trial to the court of sessions, as provided under Section 333 Cr PC. Section 334 Cr PC speaks of recording of finding whether the accused has committed the act or not which constituted the offence when he by reason of the fact that on account of unsoundness of mind he was

incapable of knowing the nature of the act as alleged constituting the offence. Such accused persons who is acquitted on the ground of mental illness though he committed the act prosecuting the offence is to be detained in safe custody in such place in a manner as the Magistrate or Court thinks fit or he can be delivered to any relative or friend of such a person. However, no order as to detention of the accused in a lunatic asylum shall be made otherwise than in accordance with the rules of the State Government made under the Indian Lunacy Act, 1912. Further, no order for the delivery of accused to a relative or friend shall be made except upon application of such relative or friend and on his giving security to the satisfaction of Magistrate or Court that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself or to any other person;

(b) be produced for inspection of such officer, and at such times and places, as the State Government may direct.

The State Government has also power to release the mentally retarded person to his friend or the relative on fulfilment of certain conditions under Section 339 Cr PC. When a mentally retarded person is detained as provided in Section 330 Cr PC or Section 335 Cr PC, and if any relative or friend desires his delivery to him to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall-

(a) be properly taken care of and prevented from doing injury to himself and to any other person;

(b) be produced for inspection of such officer, and at such times and places, as the State Government may direct;

(c) in case of a person detained under the sub-section (2) of Section 330, be produced when required before such Magistrate or Court; order such person to be delivered to such relative or friend.

CONCLUSION

In view of the stated provisions and position, some orders under the Domestic Violence Act, the JJ Act and the Probation of Offenders Act, the Mental Health Act are certainly helpful and have far-reaching effects in rehabilitation of the prisoners, child victims and women. Although the real onus and effective implementation of schemes regarding rehabilitation of these categories of persons is to be done by the Executive, the court's role in passing appropriate orders can act as catalyst and motivating factor for effective implementation of rehabilitation of these categories of persons.

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IN THE NAME OF FAMILY HONOUR

Poonam A. Bamba*

Those who hurt the "honour" of the family, face violence, which takes many forms like, public lynching, killing, rape, parading naked, shaving off head, blackening of face etc. Hundreds of women are killed by their families in the name of family's honor. The concept of woman as a property of men is at the root of this problem. The Mahabharta offers an insight in this regard. After Yudhisthira lost all his possessions in a game of dice to Shakuni, he put queen Draupadi at stake; she was dragged by Dushasana into the assembly of nobles to humiliate her. Bhishma had then said, "A woman and a slave are the property of others."

Honour killings are prevalent in the countries where the women are considered as a repository of male's honour like India, Bangladesh, Pakistan, Afghanistan, Iran, Iraq etc. In India, honour killings are mostly reported from Haryana, Punjab, Western UP, rural Delhi, and some areas in southern India. Honor killings are carried out by men for various reasons like, woman marrying against family's wishes, inter-caste marriage, marital infidelity, pre-marital sex, flirting, and there have been cases where it has taken place for failing to serve a meal to the husband on time. Not only this, unfortunately even the victims of rape are vulnerable to such killings. In conservative societies, it is thought that the victims themselves are responsible for their fate and have brought shame to the family. Reportedly, in Turkey, a young woman's throat was slit in the town square because a love ballad had been dedicated to her over the radio programme.[1] Sadly, the females in such families also generally support these acts.

Story of *Samia Imran* is one of the most widely reported cases which illustrates the vulnerability of women in a culture that turns a blind eye to such practices. *Imran*, a 28 years old married woman, applied for divorce from her violent husband after 10 years of marriage. This was strongly opposed by her own family including her doctor mother and father, who was the president of the Chamber of Commerce in Peshawar. Imran's family considered her seeking of divorce to be a great shame for her family's honour. Imran's mother on the pretext of meeting Imran, arrived at her lawyer's office with a male companion, who shot

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1 "Thousands of Women Killed for Family Honor", Hillary Mayell for National Geographic, February 12th, 2002.

and killed Imran, immediately. Although the murder took place in a broad daylight and was allegedly abetted by the Imran's mother and had occurred in the office of *Asma Jahangir*, a prominent Pakistani lawyer, still reportedly no one was ever punished for *Imran's* death. [2]

Recently, a Kurdish woman was brutally raped, stamped on and strangled by members of her family and their friends in an "honour killing" carried out at her London home because she had fallen in love with the "wrong man", as per her family; her family thought that she had brought shame to the family.[3]

India is no way behind. There had been a spate of honour killings in Indian capital and in the neighbouring states, in recent past. Recently, *Monika Dagar*, a girl from Sahibabad married her friend *Gaurav Saini* of Delhi, against her parents' wishes.[4] They were forcibly brought back by her parents. A case of kidnapping was slapped on *Gaurav Saini* by the police who allegedly were bribed by *Monika's* family and few days later, *Monika* was found dead under mysterious circumstances. Her parents reportedly told the police that *Monika* died of lung infection and was cremated on the same day. No post mortem was conducted. Subsequently, when this case received a lot of publicity, the Investigating Officer was suspended and SHO concerned was transferred. FIR was registered against *Monika's* mother, father, brother and uncles for abducting the couple from their house at Defence Colony at Delhi and taking them to Sahibabad.

Similar was the story of *Anchal @ Amina*, a Muslim girl from Kashmir who got married to a Hindu boy *Rajneesh Sharma* from Jammu after seven years of their friendship.[5] The boy was allegedly found hanging in a cell in Srinagar's Ram Munshi Bagh Police Station. *Amina @ Anchal* alleged foul play and alleged that her father and brothers were behind her husband's death.

Another heart rending incident from Haryana came to light when a young couple was found hanging from a tree in Sapa Kheri village about 30 km from Jind.[6] They also were suspected to be victims of honour killing, as they were in

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2 Samia Imran Case *available a*t http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling_2.html.

3 Women living under Muslim laws – Kurdistan, *available a*t http://www.wluml.org/node/178 http://www.dailymail.co.uk/news/article-452288/The-moment-teenage-girl-stoned-death-loving-wrong-boy.html.

4 Gaurav Saini – Monika Dagar Case - *available a*t http://www.stophonourkillings.com/?q=taxonomy/term/311 http://news.in.msn.com/crimefile/article.aspx?cp-documentid=3259338.

5 Anchal @ Ameena – Rajneesh Sharma *available a*t http://www.openthemagazine.com/article/living/the-girl-who-dared.

6 Sapa Kheri, Jind, October 29th, 2009 *available a*t http://timesofindia.indiatimes.com/city/chandigarh/Young-couple-found-hanging-in-Jind village/articleshow/5174644.cms.

love with each other to the dislike of their parents. Their bodies were also cremated before cops could reach the village. Rather, villagers did not allow outsiders including police to enter the village.

In Jan' 2010, a father allegedly killed his daughter in front of entire neighborhood when she visited her husband's aunts house at Ghaziabad, (where her parents stayed) two years after eloping with her lover.[7]

In the south, Tamil Nadu has seen similar incidents in the recent past.[8] Here, however, the objection to marriage was based on caste prejudice. In 2003, a young couple, *S. Murugesan* and *D. Kannagi*, was harassed and killed by the young woman's relatives because the former was a Dalit and the latter a Vanniyar. This happened at Puthukkooraippettai village in Cuddalore District. Both got married without the knowledge of their parents. *Kannagi's* father, who was the president of the local panchyat, saw it as an affront to his "family honour" as well as "caste honour." The couple ran for life, but were caught and allegedly poisoned to death. A major difference between the North Indian incidents and the Cuddalore village tragedy is that the informal *oor* panchayat (which exists in almost every village in Tamil Nadu) did not seem to have played any role in the Puthukkooraipettai atrocity. It is sad that such incidents take place even in a progressive State like Tamil Nadu.

Five years earlier, in November 1998, at Thirunallur village in Pudukottai District in the State, three Dalit young men were tonsured, stripped, and beaten up by the majority caste Hindus of the village for marrying non-Dalit girls. The humiliation came as a punishment to the Dalits as ordered by a 12-member *oor* panchayat of the village. The reason the *oor* panchayat gave for finding all three guilty was that their marriages would encourage the other Dalit boys to emulate them. The Dalit youth were made to roll around the village through the night in the presence of a large number of people who included their relatives. The next morning they were ordered to leave the village.

Only a month later, after some political parties staged a demonstration against the atrocities and demanded action against those involved in humiliating Dalits, did the police arrest some persons under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and initiate legal action.

As the woman is considered a receptacle of family honour, what better way to take revenge than to violate the woman in order to hurt the family honour. The woman is violated to hit the family where it hurts most. Case of *Mukhtar Mai*

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7 Kuldeep – Monika Case, Times of India, Friday, June 25th, 2010.

8 The Hindu, April 26th, 2010, "Honor Killings: What needs to be done" *available a*t http://www.thehindu.com/opinion/Readers-Editor/article409862.ece.

(of Pakistan) is the burning example.[9] *Mukhtar's* 12 years old brother was accused of having spoken to a twenty years old girl of *Mastoi Clan*, despite belonging to a peasant family of Gujars'. The tribal council decided to punish the boy's family for his indiscretion by ordering that *Mukhtar* (boy's sister) be gang raped. The sentence was carried out in public view and *Mukhtar* was forced to walk home nearly naked before a jeering crowd. It is another matter that *Mukhtar* managed to overcome her strong desire to commit suicide and has become an agent for change and a beacon of hope for oppressed women around the world. She is now leading a revolution against rape, illiteracy and the repression of women.

Another form of "honour killing" is carried out at the dictates of Caste Panchayats. The boy and girl who dare to marry against the so called "societal norms" are eliminated for having hurt the honour of family/society.

A 'Gehlot' boy from Dharana married a Kadyan girl from Siwan in Panipat. Kadyan Khap (caste) Panchayat ruled out marriage between the two.[10] Logic was that the marriage cannot happen between the two gotras, as they were kin by virtue of their living in the same village. They met a somewhat similar fate. Boy's entire family was also banished from the village. Yet another couple was made to drink pesticide by Khap Panchayat, they having married within same gotra, thus hurting the family/ society's honour.[11] Beniwal Khap Panchayat annulled marriage of another such couple.[12] It is not the Haryana Khaps alone that are notorious for banning same gotra marriages and punishing those who violate the rule. Even Rajasthan has persisted with the gotra rule. The same gotra marriage of princess *Diya Kumari* daughter of *Bhawani Singh* with *Narender Singh* continues to haunt Jaipur's ex-royals. *Narender Singh* and his father were reportedly ex-communicated from the community of Rajputs in the year 1997 in view of "same gotra" marriage between them.[13] Some are killed and some commit suicide, fearing the worst.

What is dangerous is a broad social acceptance of Khap's diktats. Writ of Khaps, the "self styled law enforcing agencies", runs high in these states, where honour takes precedence over feelings of the boys and girls. Government is able to exercise little control, which worries the civilized society.

It is intriguing that although the honor killings attract considerable

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9 "In the Name of Family Honor" – Mukhtar Mai *available a*t http://news.bbc.co.uk/2/hi/4620065.stm.

10 Gehlot – Kadyan Case. *available a*t http://timesofindia.indiatimes.com/india/Medieval-justice-just-50km-from-Delhi/articleshow/4984351.cms.

11 Manoj – Babli Case, May 28, 2010, *available a*t http://arabnews.com/world/article58712.ece.

12 http://hr.abclive.in/haryana_reports/beniwal_khap_panchayat_rohtak_html.

13 September 24th, 2009, *available a*t timesofindia.indiatimes.com/city/jaipur/FIR-against-Rajput-Sabha on- controversy-over-same-gotra-marriage/articleshow/5048653.cms and also at www.outlookindia.com/article.aspx?204095.

attention and outrage, but they still continue to take place. What is painful is that the officials often claim that not much can be done to stop this practice. Such reaction actually emanates from the deep rooted mind-set of patriarchal societies, where men only decide as to how the women should behave and conduct themselves. Police officials and prosecutors dealing with such matters need to be sensitized and convinced to treat these occurrences as not only crimes but as serious crimes.

A silver lining is that the judiciary has come to the rescue of such couples in certain cases. In the wake of alarming and growing number of honour killing cases, the Delhi High Court has come down heavily upon the police for failing to protect people.[14] Referring to a massive hunt launched by the police in March 2010 to find Delhi police Commissioner's dog that went missing, the court remarked, "You can search the entire city if a dog of your boss is lost but you can't provide protection to the people..." The Court slammed the Police for manipulating and fabricating honour killing cases and providing false reports.

A Bench of Hon'ble Supreme Court[15] comprising of *Justice Ashok Bhan* and *Justice Markandey Katju*, in a writ petition filed by *Lata Singh* from Lucknow termed "honour killing" as an "act of barbarism". The Hon'ble Supreme Court noted that, "We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only this way can we stamp out such acts of barbarism." The Court ordered the police across the country to take stern action against those resorting to violence against major boys and girls who go for inter-caste or inter-religious marriages.

Noting that honour killings have become a sort of everyday tale in some states, *Justices J. N. Patel* and *Amjad Sayed*, sitting on the bench of Bombay High Court directed the Saki Naka police to provide protection to a young couple in the writ petition filed by *Sabeena Lagoo*. Vide her petition, *Sabeena*, belonging to a conservative Muslim family from Kashmir, had sought protection against alleged threats from her kin following her marriage to *Ravi Tiwari* from Bihar.[16]

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[14] Legal voice against honour killing *available a*t http://news.oneindia.in/2010/06/17/delhi-hc-slams police-over-honour-killing-cases.html and also at http://news.outlookindia.com/item.aspx?397670 http://www.zeenews.com/news643390.html

[15] *Ibid*.

[16] http://timesofindia.indiatimes.com/city/mumbai/High-court-orders-protection-to-runaway-Hindu-Muslim-couple/articleshow/5204888.cms#ixzz14mT7ty5P. "Punjab to Protect Runaway Couples", The Tribune, November 3rd, 2010. http://www.tribuneindia.com/2010/20101104/nation.htm#5. "Amritsar Administration Earmarks Protection Centres for Newly Wed Couples, August 26th, 2010.

Hon'ble Punjab and Haryana High Court also recently lambasted the police and state administration in one such case. Hon'ble Court cautioned that "self styled law enforcing agency" i.e., Khap Panchayats can not become law unto themselves and have no authority to order cancellation of marriages.[17] Hon'ble court also warned that if a Deputy Commissioner and Senior Superintendent of Police fail to control the situation, then their failure will be reflected in their Annual Confidential Reports.

But, the sordid saga of honour killings continues in Haryana. Rattled by the spate of honor killings, the Central Government is now considering amending the Indian Penal Code to provide for a deterrent punishment against khap panchayats which order death penalty to young couples defying caste barrier. It is also being considered to make honor killings separate and distinguished offence. The prevention of Crimes in the Name of 'Honour' and Tradition, Bill, 2010[18] is underway to be considered in the Parliament. It affirms the right of youngsters to choose their own partners in marriage. Any action to prevent the exercise of such right is made an offence. It has laid down that all the members of the caste or clan or community or caste panchayat, who are present, or participate or incite the commission of an act by which death is caused, shall be deemed to be guilty of having committed such an act. Punishable acts would include harassment, mental or physical, extraditing couples or their family members etc. The bill proposes putting the burden of proof on the accused as honor killings often remain closely guarded family secrets making it difficult for the police to get witnesses. What is significant is the preventive measures provided in the form of duty cast on the police not to take any action against the couple after receipt of information from any Government official about the age and willingness of the couple to marry and be together.

Would the amendment in law only be sufficient to bring about desirable results? The fact that child marriages are still prevalent in certain states despite lapse of almost 80 years after the Child Marriages Restraint Act was brought into being in the year 1929 is proof enough that the enactment of law alone cannot tackle this problem. Honour killing is a social problem. To address this problem, it needs to be accepted as a problem first of all. No doubt, deterrent and exemplary punishment in few cases would send a strong message. But that is a remedy post act. Call of the situation is to spread education to nook and corner and to bring about attitudinal change amongst educated. It cannot be forgotten that two-thirds of India's women still live in villages, where education in its real sense is yet to

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17 "Khaps Firm on Demand", The Tribune, June 23rd, 2010. "Law and Honor", Indian Express, June 24th, 2010. "Delhi Killings Prompted Centre to Mull Ordinance", Times of India, June 24th, 2010.

18 The Prevention of Crimes in the Name of 'Honour' and Tradition Bill, 2010.

make inroads. Spreading of education and increased public awareness would go a long way. Interestingly, a study by Indian and foreign researchers has reported that there is a genetic relationship between all Indians.[19] Thus by Khap logic, Indians cannot marry inter se. Education, only, can spread awareness and bring about social change.

Surely, there is a long way to go before the rule of law can be enforced across India in the teeth of deep-rooted social oppression and prejudice and ideas that have come down generations. But education, political will, sensitization of police, administrators & judiciary and literacy & empowerment of women collectively can bring hope in this direction.

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[19] Times of India, September 25th, 2009, "Aryan-Dravidian Divide a Myth – A Study Conducted Jointly by Centre for Cellular and Molecular Biology, India, Harvard Medical School, Harvard School of Public Health and the Broad Institute of Harvard and MIT *available a*t http://timesofindia.indiatimes.com/india/Aryan-Dravidian-divide-a-myth Study/articleshow/5053274.cms.

TRIAL BY MEDIA

Nisha Saxena*

Ruchika, Aarushi, Jessica, Don't these names sound familiar? Well, these are the names of some of the unfortunate victims at the centre of recent cases marked by vivid sensational reporting by electronic and print media. The media went into a frenzy during the trial of these cases. 24 x 7 and all T.V. news channel kept reporting the incident indiscriminately. This sort of instant reporting and one upmanship among various competing media houses is the result of race to be first among equals. Since there is no time to reflect as to what should and what should not be reported instantly, it leads to many a slip ups and technically wrong reporting. Though many a times media has played a constructive role in bringing to the fore many injustices and wrong doings but any lowering of guard will prove to be self destructive.

Readers will recollect that while the terrorist attack was on in Mumbai on 26/11, the live coverage of the proceedings gave away vital clues to the perpetrators across the country who took advantage of the situation. The trial of *Mohd. Ajmal Kasab* was totally under public glare. After verdict in the case, media has been speculating on the right quantum of sentence even before it has been pronounced by the court and is trying to build public opinion on these lines.

The media has been playing roles of prosecutor, judge, jury and executioner. The plea of the media is that their job does not finish with just reporting the verdict of a court. If there is any injustice, then the media would be failing in their duty if they simply reported the verdict and moved on to the next big story. If the media did not highlight the injustice they would have lost their right to claim themselves to be the watchdog of society. Basically, the media provides the fodder on which public opinion is formed. If, day in and day out, one is listening to the same story it will obviously have some kind of impact on a person.

In the above referred cases, the frenzied mode of media led to public outrage. Thousands of SMSs inundated TV channels. Public assembled for candle light marches and protests which again became fresh media events. Internet, another platform for expression was also not left behind and blogs were

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overflowing with comments by the people. The print and electronic media facilitated it to snowball quickly into a mass movement.

Is this trial by media? The media says 'no'. It is not the activism of media barons, editors or producers but of millions of common people who are no longer 'couch potatoes'. They have become a virtual 21st Century jury. Doesn't that sound scary? The public can sometimes resemble a lynch mob, calling for blood as happened in *Nithari* Case. However, one shivers to think what may happen given this rhetoric of justice that the media is selling and the middle class are buying into. The media and public tries to influence the course of justice on the basis of a presumption that accused is guilty without the guilt having been established by a court of law.

The media says that their job is to focus on injustice and if judges are swayed by the strength of their commitment then they hardly think that media could be blamed as it would be judicial failure. Is it realistic to expect judges to remain unfazed by the entire 'media circus'? One cannot lose sight of the fact that judges are also a part of the same society. Ideally, justice must be 'blind', blind to everything outside the purview of the case. The emotions have no place in law. The only goal is 'justice' - justice to the accused as well as to the victim.

However, the media cannot be allowed to sway the masses. The media cannot decide whether justice or injustice has been done in a particular case. Only a superior court has authority to decide the same. Actually, the media and the public feed on one another. First, media forms the public opinion. Once they sway and mobilize the public opinion, it captures their emotions and again shows the same. Many a times, the media reporters are not well versed in law, for example, if the evidence was enough or not to convict an accused but regardless they continue to report. Over reporting and exaggeration by the media or any rash outrage of public may culminate into the public taking law into their hands, as happened in the Delhi School Teacher *Uma Khurana's* case.

The media's right of freedom of speech and expression is guaranteed under Article 19 (1) of the Constitution. This is, however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub-judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. In *R. K. Anand* v. *Registrar, Delhi High Court*,[1] the court defined trial by media. It says the expression trial by media is defined to mean 'the impact of television and newspaper coverage on a person's reputation by creating a widespread perception

[1] (2009) 8 SCC 106.

of guilt regardless of any verdict in a court of law.' During high publicity court cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial nearly impossible but means that, regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny.

Sub section (1) of Section 3 of the Contempt of Court Act provides immunity to a publisher of any matter which interferes or tends to interfere with, or obstructs or tends to obstruct the course of justice in any civil or criminal proceeding if he reasonably believed that there was no proceeding pending. Sub-section (3) of Section 3 deals with distribution of the publication as mentioned in Sub-section (1) and provides immunity to the distributor if he reasonably believed that the publication did not contain any matter which interfered or tended to interfere with, or obstructed or tended to obstruct the course of justice in any civil or criminal proceeding. The immunity provided under Sub-section (3) is subjected to the exceptions.

The news channels in the country are second to none in the world in matters of coverage of news, impartiality and objectivity in reporting, reach to the audience and capacity to influence public opinion and are actually better than many foreign TV channels. But that is not to say that they are totally free from biases and prejudices or they do not commit mistakes or gaffes or they some times do not tend to trivialize highly serious issues or that there is nothing wanting in their social content and orientation or that they maintain the same standards in all their programmes. In quest of excellence they have still a long way to go. A private TV channel which is also a vast business venture has the inherent dilemma to reconcile its business interests with the higher standards of professionalism /demands of profession. The two may not always converge and then the TV channel would find its professional options getting limited as a result of conflict of priorities. The media trips mostly on TRPs (television rating points) when commercial considerations assume dominance over higher standards of professionalism.

The court observed in *R. K. Anand* v. *Registrar, Delhi High Court*[2] that it is not their intent to lay down any reformist agenda for the media. Any attempt to control and regulate the media from outside is likely to cause more harm than good. The norms to regulate the media and to raise its professional standards must come from inside. However, there is a danger of serious risk of prejudice if the media exercise an unrestricted and unregulated freedom such that it publishes

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[2] *Ibid.*

photographs of the suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the accused guilty even before such an order has been passed by the Court. Despite the significance of the print and electronic media in the present day, it is not only desirable but least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly does not prejudice the right of defence of the accused in any manner whatsoever. It will amount to travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

The Apex Court of the country in case of *R. K. Anand* v. *Registrar, Delhi High Court*[3] clearly stated that it would be a sad day for the court to employ the media for setting its own house in order and the media too would not relish the role of being the snoopers for the court. Media should perform the acts of journalism and not as a special agency for the Court. The impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt, regardless of any verdict by a Court of law is disastrous. This will not be fair. Even in case of *M. P. Lohia* v. *State of West Bengal and Anr*,[4] the court reiterated its earlier view that freedom of speech and expression sometimes may amount to interference with the administration of justice as the articles appearing in the media could be prejudicial, this should not be permitted.

Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending. In that event, it will be opposed to the very basic rule of law and would impinge upon the protection granted to an accused under Article 21 of the Constitution.[5] It is essential for the maintenance of dignity of Courts and is one of the cardinal principles of rule of law in a free democratic country that the criticism or even the reporting, particularly in sub judice matters, must be subjected to check and balances so as not to interfere with the administration of justice. The Court observed in *Sidhartha Vashisht @ Manu Sharma* v. *State* (NCT of Delhi),[6] that various articles in the print media has appeared even during the pendency of the matter before the High Court which again gave rise to unnecessary controversies and apparently, had an effect of interfering with the administration of criminal justice. We would certainly caution all modes of media to extend their cooperation to ensure fair investigation, trial,

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3 *Ibid.*
4 (2005) 2 SCC 686.
5 *Anukul Chandra Pradhan* v. *Union of India and Ors*, (1996) 6 SCC 354.
6 (2010) 6 SCC 1.

defence of accused, and non interference in the administration of justice in matters sub judice.

Though the media should avoid interference in the administration of justice but we also need to look within our system and ask ourselves if this outrage is the result of several inadequacies and delays in the system itself. We need to take stringent steps in these areas which are causing delay and ultimately resulting in frustration of people. We need to have state of the art equipment required for adjudication in this supersonic age, like audio visual recording of the statement of witnesses so that they do not turn hostile resulting in acquittals. Each organ of the state has to perform their duties independently and exclusively not encroaching into the arena of other organ. The duty of the media is to report facts without any favour or fright and not to pass judgments, which is best suited to the judiciary.

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ROAD ACCIDENT CASES: PRECAUTIONS DURING INVESTIGATION AND TRIAL

Pawan Kumar Jain[*]

About thirty years ago, Hon'ble Justice Mr. Krishna Iyer in *Rattan Singh* v. *State of Punjab*,[1] observed**:**

> More people die of road accidents than by most diseases, so much so the Indian highways are among the top killers of the country. What with frequent complaints of the State's misfeasance in the maintenance of roads in good trim, the absence of public interest litigation to call State transport to order, and the lack of citizens' tort consciousness, and what with the neglect in legislating into law no-fault liability and the induction on the roads of heavy duty vehicles beyond the capabilities of the highways system, Indian Transport is acquiring a menacing reputation which makes travel a tryst with death. It looks as if traffic regulations are virtually dead and police checking mostly absent. By these processes of lawlessness, public roads are now lurking death traps. The State must rise to the gravity of the situation and provide road safety measure through active police presence beyond frozen indifference, through mobilisation of popular organisation in the field of road safety, frightening publicity for gruesome accidents, and promotion of strict driving licensing and rigorous vehicle invigilation, lest human life should hardly have a chance for highway use.

It is unfortunate that even after thirty years, the above observations are as true as it were then because no significant changes have taken place during the said period. This proves from the observations made by the Apex Court in 2007 in *Prabhakaran* v. *State of Kerala*:[2]

> About 82,000 persons were killed on Indian roads in 2002. Official statistics regarding serious injuries are not reliable as they underestimate the actual number, but it is estimated

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1 AIR 1980 SC 84.

2 VI (2007) SLT 165.

> that the number of people hospitalized may be 15-20 times the number killed. In a do-nothing scenario, it is possible that India will have 1,20,000 - 1,30,000 road traffic fatalities in the year 2008 and possibly 1,50,000 - 1,75,000 in 2015. Our vision should aim at reducing the fatalities to less than 1,00,000 in the short term (2008) and less than 70,000 in the long term (2015).
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> As developing countries increase vehicular use, road traffic injuries are expected to become the third leading cause of death and disability worldwide by 2020. In developing countries, each vehicle is much more lethal than the vehicles in developed countries, because it most frequently takes the lives not of vehicle occupants, but of vulnerable road users; pedestrians, cyclists. Many developing countries are increasing the rate of motorised vehicle use at up to 18% per year. In India, for example, there has been a 23% increase in the number of vehicles from 1990-1999 and a 60 fold increase is predicted by 2050.

It emerges from the above observations that the State Governments had not realized the seriousness of the situation when alarm was raised by the Apex Court in 1980 and due to the insensitivity of the Executive, lacs of persons have lost their lives during the said period. The worst part of the situation is that even the investigating agencies also do not take the accident cases seriously, sincerely, and with sensitivity. As a result, the victims lose their life because of rash driving while the culprits escape from the punishment due to negligence and carelessness in the investigation.

As and when a real culprit escapes punishment, it erodes the faith of public at large in the entire system including justice imparting system. Though the main cause of acquittal in road accident cases is the poor and sub-standard investigation yet each acquittal also shows the failure of our judicial system which failed to set the things right at the appropriate time. It is pertinent to mention here that justice fails not only by unjust conviction of the innocent but also by acquittal of the guilty for unjustified failure to produce available evidence.

My endeavour is to highlight the inherent defects in investigation and trial and to suggest measures, which may be helpful in imparting justice to the accused and the victims as well. The discussion is carried out in two parts, namely, defects during investigation and precautions during trial.

I. Defects in Investigation

a) Purpose of investigation:

To understand the problem, we have to first consider what is the purpose of investigation? Whether it is just to book any person to solve the case and to please the victim or to collect sufficient admissible evidence against the offender before forwarding him for trial? Purpose of investigation is defined under Rule 25.2 (3) of Punjab Police Rules vol.3 as applicable to State of Delhi and the same is reproduced as under:

> It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

Thus, the main aim of the investigation is to find out the truth and to discover the actual facts thereof. Duty of the investigating officer is to discover the actual facts, i.e., the evidence and not to create evidence in favour of or against any person. It is one of the cardinal principles of the investigation that "man can tell a lie but not the circumstances". Thus, at the time of investigation, investigating officer should consider all the relevant circumstances to find out the truth.

Merely the fact that an accident has occurred, is no ground to conclude that the same has happened due to the negligence or the rashness of the motorist or of the driver of the heavy vehicle. Certainly, the occurrence of the accident may be a good ground to investigate the matter and to register the FIR but this itself is no ground to arrive at a conclusion that the same has been caused due to the rashness or negligence of motorist or of the driver of heavy vehicle. The investigating officer should not rely blindly on the version of the injured. It is also true that the truth can be discovered only after interrogating both the parties, i.e., injured and accused. Thus, before forming any opinion, the investigating officer should also interrogate the accused to know the circumstances in which the accident has happened because he is one of the relevant persons to disclose the circumstances leading to the occurrence of the accident. This will help the prosecution during the trial, because prosecution will be aware of the probable defence of the accused. Generally, it is seen that prosecution does not feel comfortable when accused adduces defence during the trial as during the investigation, the investigating officer did not prefer to bring the version of accused on record. But simultaneously it should also be kept in minds that both (injured and accused) are

interested persons. Hence, precaution should be taken at the time of analyzing their version, reliance should be placed on the version of particular party only when it is corroborated from other circumstantial facts. On analysis, if the discovered facts show that the alleged accident had taken place due to the rashness or negligence of the motorist or driver of the heavy vehicle, only then he should be charge-sheeted for the alleged offence otherwise investigating agency is not under any obligation to prosecute him.

But unfortunately, the investigating agency always files the charge-sheet against the motorist or the driver of bigger vehicle irrespective of the fact whether there was any rashness or negligence on their part or not. They blindly rely on the version of injured irrespective of the fact whether it is corroborated from the circumstances or not. Practically no opportunity is being given to the accused even to present his version. This is the one of the main reasons of the poor conviction rate in accident cases.

Here are some instances where police misuses its power:

- A bus driver is prosecuted if any passenger falls down from the moving bus, even while trying to get down from the rear gate.
- A bus driver is prosecuted if any passenger falls down from the moving bus while trying to get down from the front gate, without collecting evidence whether said person informed the driver or not or whether driver was aware that the person wished to get down.
- A bus driver is prosecuted even if any person falls down while trying to board the moving bus.
- A bus driver is prosecuted even if any person falls down while boarding or getting down at the red light without caring that the red light has turned to green light.

Law does not permit any person to get down or board in the moving bus or to get down or board the bus at red light. If any person does so, he does it at his/her own risk and in case of his failure, driver cannot be held liable for criminal negligence.

- Similarly, the driver of bigger vehicle is prosecuted even though cyclist, rickshaw puller, scooterist, motorist, etc., cause the accident by jumping the red light signal without caring that the vehicles are coming from the other side on its green light.
- A motorist is prosecuted even if a pedestrian appears all of a sudden on the road from the shadow of bushes/plants and collides with a vehicle even

without collecting evidence whether motorist could watch the movement of the pedestrian or not.

All road users are supposed to obey the traffic rules and if someone violates then he does so at his own risk and motorist cannot be held liable for the negligence of others.

b) Role of Site Plan:

In road accident cases, site plan plays a significant role and can assist the court to ascertain the rashness or negligence on the part of the offender. In fact, site plan should be the mirror of the occurrence. Thus, the investigating officer should take extra precaution at the time of preparing the site plan. But generally, it is seen that the site plan prepared by the investigating officers is too vague to clear anything and at last proves to be a useless document. In cases where no eyewitness is found, investigating officer should prepare the first site plan according to the spot on his own. When an eyewitness is found or the injured is available to join the investigation, another site plan should be prepared. This will give a true picture of the place of occurrence to the court. Precaution should be taken that the name of the person is mentioned in the site plan at whose instance it is prepared and his signature should also be obtained on the site plan. Apart from that, the detail of the site plan should also be mentioned in his statement so that such person can prove the site plan during the trial. The following points must be included in the site plan: -

- the total width of the road.
- the actual width of motor-able road.
- whether part of the road is kacha or is there any encroachment on the road. If yes, its width.
- the total number of the lane and width of each lane.
- the direction of the offending vehicle.
- the lane in which offending vehicle was moving just before the accident.
- the direction of the victim.
- the lane in which victim was moving just before the accident.
- the lane in which the accident occurred.
- the place where the actual collision took place.
- the distance from the right and left side pavement from the place of accident.

- the point where offending vehicle stopped first time after accident and its distance from the spot.
- the point where victim falls after collision and if victim is dragged or thrown to some distance then its distance from the place of accident.
- the position of the eyewitness, if any and the distance from his position and the spot.
- the position of dead body or blood.
- the position of skid marks, if any and its length.
- the maximum speed which is permissible on the said road.
- the spot whether situated in accident prone area.
- the height of right or left side pavement, especially when the vehicle climb over the pavement.
- if the accident occurred at the crossing what was the position of traffic signal at the time of accident and who had, whether victim or offender, violated the traffic signal.
- if the victim was a pedestrian, from where he was crossing the road:

    1. whether there was any bushes, trees, etc.?
    2. Whether he appeared on the road all of a sudden from the shadow of such bushes or trees?
    3. Whether the motorist was capable to see him from the considerable distance?

- Whether the pedestrian was crossing the road from zebra crossing or was violating the rules of the road?
- The width of right and left side pavement whenever it is required.
- If the accident is occurred in night, position of the electric pole and the visibility should also be mentioned to show whether the victim was visible from considerable distance or not.

The above information in the site plan will help the prosecution to assist the court in arriving at a right conclusion to find out the rashness or negligence on the part of accused.

c) Eye Witness:

In *Nageshwar Shri Krishan Ghobe's case*[3] it was held by the Apex Court that:

> In cases of road accidents by fast moving vehicles, it is ordinarily difficult to find witnesses who would be in a position to affirm positively the sequence of vital events during that few moments immediately preceding the actual accident, from which its true cause can be ascertained. When accidents take place on the road, people using the road or who may happen to be in close vicinity would normally be busy in their own pre-occupations and in the normal course, their attention would be attracted only by the noise or the disturbance caused by the actual impact resulting from the accident itself. It is only then that they would look towards the direction of the noise and see what had happened. It is seldom - and it is only a matter of coincidence - that a person may already be looking in the direction of the accident and may for that reason be in a position to see and later describe the sequence of events in which the accident occurred. At times it may also happen that after casually witnessing the occurrence those persons may feel disinclined to take any further interests in the matter, whatever may be the reason for this disinclination. If, however, they do feel interested in going to the spot in their curiosity to know something more, then what they may happen to see there, would lead them to form some opinion or impression as to what in all likelihood must have led to the accident. Evidence of such persons, therefore, requires close scrutiny for finding out what they actually saw and what may be the result of their imaginative inference. Apart from the eye-witnesses, the only person who can be considered to be truly capable of satisfactorily explaining as to the circumstances leading to accidents like the present is the driver himself or in certain circumstances to some extent the person who is injured.

Thus, before relying upon the version of eyewitness if he is not injured, investigating officer should ensure himself whether such person has witnessed

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[3] AIR 1973 SC 165.

the actual collision and able to describe the sequence of events in which the accident occurred or is merely narrating the events on his own assumptions and presumptions.

Though, the availability of an eyewitness in fatal accident cases is a matter of coincidence yet investigating agency rarely investigates accident cases on the basis of circumstantial and scientific evidence. They always prefer to search for an eyewitness, and if it is not available, they even do not hesitate to create an eyewitness. This tendency is also another major factor for the dismay conviction rate in accident cases. Generally, in the statement of an eyewitness it is mentioned that the offending vehicle was being driven on high speed, rashly, and negligently without giving any detail about high speed, rashness or negligence.

'Rashness' and 'negligence' are not mere words but it is to be proved before the court of law by producing the relevant facts, which disclose the rashness or negligence. Thus, the relevant facts that can help in ascertaining the rashness or negligence should be collected during the investigation. Unless these relevant facts are collected during the investigation, prosecution will not be able to stand in the court of law. As and when required, the investigating officer should clarify from the witness what was the rashness or negligence on the part of offender. For instance, whether the offender changed his lane all of a sudden, or overtook another vehicle from wrong side, or overtook another vehicle without giving proper indication, or jumped the red light, or violated any other traffic rules. Once the investigating officer is able to collect these facts disclosing the particular rashness or negligence, it becomes immaterial whether he has mentioned the words 'rashness' or 'negligence' in the statement of the witness or not.

'High speed' is a relative term. Thus, merely a vehicle is being driven at a "high speed" does not bespeak of either 'negligence' or 'rashness' by itself.[4] Thus, the investigating officer should clarify from the witness what was the approximate speed of the offending vehicle at the time of accident. Only the approximate speed can help the court to arrive at a conclusion whether that speed in the given circumstances amounts to any kind of rashness or negligence. If witness is unable to disclose the approximate speed of the offending vehicle and investigating officer thinks that speed was the main rashness or negligence, help of expert should be taken and efforts should be made to find out the approximate speed of vehicles involved in the accident from the damage found on the body of vehicles, or from the injuries caused to the victim, or from the skid marks left by the vehicles on the road.

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[4] *State of Karnataka* v. *Satish,* (1998) 8 SCC 493.

d) Mechanical inspection of vehicle:

In road accident cases, mechanical inspection of vehicles involved in the accident can play a significant role in finding the truth. The main purpose of the mechanical inspection of the vehicle is to find out whether the mechanical functions of the vehicle, especially the brake system, were in order just before the accident or not. If during the inspection it is found that the mechanical system was defective, the duty is cast on the investigating agency to clarify whether that defect occurred due to collision or the collision took place due to that defect. Suppose during the inspection it is found that there is a leakage of brake oil or the brake pressure pump is burst, it becomes the duty of the investigating officer to clarify whether the said defect occurred due to collision or the collision took place due to defective brake. If the leakage or damage in pump is caused due to the collision then the said defects are not significant to ascertain the rashness or negligence but if the said defects developed all of a sudden and due to those defects, driver lost control over the vehicle and caused the accident, it will certainly help the accused to prove his innocence. To prove the guilt of the accused in such a situation, the investigating agency is bound to establish that there was negligence on part of the driver of the vehicle in maintaining the vehicle or that the driver could have detected the said defect by taking reasonable care and precaution.

Another main purpose of the inspection is to find out the damage on the body of vehicle and to connect the damage with the collision. It is the basic 'principle of Force' that whenever two objects collide with each other with some force, both objects will leave their mark on one another. Thus, as and when collision takes place between two vehicles, both leave their identification marks on one another, it may be the colour or something else. That identification mark must be highlighted in the inspection report because this identification mark would establish that both vehicles had collided with each other. It is also important to point out that both vehicles leave their identification marks on one another irrespective of the speed of the vehicle. It may be possible that if speed is quite slow then the identification mark may be quite slight but it leaves its mark any way.

Similarly, during the inspection, all damages that occur due to collision must be mentioned in the report. Damages found on both the vehicles must corroborate the prosecution case. For instance, if the front left side of a bus hits the right rear side of the car, there will be some damage on the front left side of the bus and on the rear right side of the car simultaneously, which will prove that car was hit in its rear right side by the front left side of the bus. It is also important to note that the damages found on the body of bus and car will be at the same height from

the ground, which would further help to prove that both had collided.

As and when heavy or medium transport vehicle or light goods vehicle is involved in the accident, it should be specifically mentioned in the report whether the said vehicle is fitted with mandatory speed governor or not. This will help to ascertain the fact that such vehicle can be driven beyond the permissible speed of 40 kmph or not. If the said vehicle is not fitted with the mandatory speed governor, appropriate legal action should also be taken in accordance with law.

If during inspection any blood stain mark or human body flesh is noticed on any portion of the vehicle including wheels, it should be reflected in the report because it can play a significant role even in hit and run cases.

The investigating officer should get the vehicle inspected from a qualified person. The vigilant investigating officer should record the statement of mechanical inspector in detail. This will help to prove the report during the trial in accordance with law.

In case no eye witness is available, investigating agency should try to find out the approximate speed of the vehicle involved in the accident, from the damage caused to the vehicles during the accident by sending such vehicles to the forensic lab.

e) Seizure memo:

Investigating officer should be vigilant at the time of preparing the seizure memo of the vehicles involved in the accident. In seizure memo, he should mention the damage found on the body of vehicles in detail that occurred due to the collision and should also mention whether the vehicle has left its colour on the another vehicle or not. The damages mentioned in the memo should be corroborated by the report of mechanical inspection report. Signature of witnesses including the drivers of the vehicle involved in the accident should be obtained on the memo. If any blood or human flesh is found on any part of the vehicle, it should also be mentioned in the memo. Details of damage should also be mentioned in the statement of such witnesses so that the seizure memo can be proved in accordance with law during the trial.

f) Photographs:

Photographs can play a significant role in finding the truth. Thus, every place of accident should be photographed at the earliest without tampering the spot. The damage that occurred due to collision should be photographed properly. It should be taken from different angles so that photographs can help the court to arrive at right conclusion. If the offender is present at the spot, he should also be

photographed along with his vehicle so that he cannot take the defence that he was not driving the offending vehicle. If the investigating officer hired a private photographer, he should file the negatives of the photographs with the charge-sheet itself so that other witnesses can prove photographs if that photographer is not available. If there is any skid mark on the road, it should be photographed clearly as the same can prove to be a vital piece of evidence in arriving at right conclusion. In a hit and run case, skid marks can assist the Experts in ascertaining the kind of vehicle and the approximate speed of the vehicle at the same time.

g) Inquest Report:

At the time of preparing the inquest report, investigating officer should be vigilant to mention the injuries on the body of the deceased. He should mention all external injuries in detail in the inquest report and such injuries should be corroborated from the autopsy report. Position of the dead body should also be mentioned in the said report. As per Rule 25.35 of the Punjab Police Rules, the plan of scene of death, inventory of clothing, etc., list of articles on and with the body shall form part of such report. The inquest report should be signed by the investigating officer and by the persons assisting in the investigation.

h) Autopsy:

Man can tell a lie but his dead body always speaks the truth. Thus, the autopsy report has its own significance in criminal cases. In accident cases, it is generally mentioned in the autopsy report that the type of injuries that resulted in death may be possible in vehicular accident. But in the hit and run cases, the investigating officer should specifically ask the expert by which kind of vehicle such type of injuries are possible because the injuries caused by heavy vehicle will be different from injuries caused by light vehicles or two wheelers. This will help the investigating agency in searching the offending vehicle. Thus, the investigating officer should be vigilant at the time of post-mortem on the dead body, especially in hit and run cases.

i) Identity of the accused:

If the accused runs away from the spot after the accident, question arises as to how to prove who was driving the offending vehicle. If there is an eyewitness of the incident and had seen the accused at the time of accident and is capable of identifying him, in such cases after the arrest, accused should be produced before the court for the judicial test identification parade. Precaution should be taken that the alleged eyewitness could not see the accused before the judicial test identification parade. As the offence is bailable, the investigating officer should inform the accused at the time of releasing him on bail, that he is supposed to keep

his face muffled till the completion of identification parade and an undertaking to this effect should be taken from the accused. Generally, at the time of arrest, investigating officer seizes the driving licence of the accused bearing the photograph of the accused. Hence, a clever legal brain can take the defence that the police have shown the photograph of the accused to the alleged eye witness. Thus, the investigating officer should seize the driving licence after the completion of judicial test identification parade to eliminate the said defence.

If the eyewitness could not see the accused at the time of accident or if there is no eyewitness, question arises as to how to establish the identity of the accused? In such case, there are two modes to prove the identity of accused. First, conventional method, by interrogating the owner of vehicle, it can be verified from him who was driving the vehicle at the time of accident. If the offending vehicle is commercial, as per the Motor Vehicle Rules, permit holder is duty bound to furnish the particulars of driver to the transport authority and to display the details of driver along with photographs duly certified by the transport authority in the vehicle itself. This will help the investigating agency to establish the identity of the accused. If the permit holder has not complied with the Motor Vehicles Rules, action should also be taken against him as per law. Proof should also be taken from such owner, that the accused was in fact his driver on the offending vehicle. Such proof may be his pay slip or pay voucher, attendance register or any other thing.

In case of owner-driven vehicles, presumption is that the owner was driving the vehicle unless he shows that he had given his vehicle to some other person. In the latter case, his version should be corroborated from other evidence as in such case the possibility of false implication cannot be ruled out. There are instances where the owner had replaced the actual driver by another person, for instance, if his daughter was driving the vehicle, the owner may say that some other male member of the family or his driver was driving the vehicle. Thus, in such a case the alleged accused should be interrogated in detail about the circumstances leading to the occurrence of the accident. In case of any doubt, the investigating officer should collect conclusive evidence by adopting second method i.e. scientific method to ascertain the identity of the accused by lifting the finger prints from the offending vehicle. This will help the investigating officer to identify the identity of the culprits.

II. <u>Precautions Required During Trial</u>

a) At the stage of cognizance:

Courts should be vigilant at the time of taking cognizance of the offence and should try to go through the charge-sheet before taking the cognizance. A

perusal of the charge-sheet may reveal that there is some inherent defects in the investigation, which may cause injustice, e.g., the site plan is not proper; mechanical inspection report is not on the record; statement of the eyewitness is not recorded properly; accused was not put under test identification parade, if he was not arrested from the spot; etc. In all such cases court should not hesitate to send the matter for further investigation under section 156 (3) Cr.P.C.

For commercial vehicles, it is mandatory that the same should be fitted with speed governors but it is generally observed that investigating officers do not disclose in the charge-sheet whether vehicle is fitted with the speed governor or not and if fitted then whether it was working properly or not. Factum of speed governor may play a significant role during the trial in arriving at the right conclusion. If the vehicle is not fitted with speed governor, appropriate directions should be issued to the investigating officer to take action against the driver as well as the owner of the vehicle for violating the mandatory provisions. This can also be checked at the time of releasing the vehicle on superdari.

b) Compliance of Section 21 of the Motor Vehicles Act:

Under Section 21 of the Motor Vehicles Act if a person had already been convicted for the offence punishable under Section 184 of the Act and subsequently a case is registered against such person for causing death or grievous hurt to any person by driving such class of vehicle, license of such person shall remain suspended for a period of six months from the date of registration of the case and it is the duty of the investigating officer to bring the suspension in the notice of the court. Thus, at the time of taking cognizance, the courts should ask the investigating officer to comply with the provision of Section 21 of the Act, if applicable.

c) At the time of serving notice under Section 251 of the Code of Criminal Procedure:

Generally it is observed that at the time of serving notice under Section 251 of the Code of Criminal Procedure, it is asked from the accused whether he pleads guilty or claims trial and it is recorded: "I plead not guilty and claim trial" but the same is contrary to the provisions of Section 251, Cr.PC. Under this Section, the court should ask the accused as to whether he pleads guilty or has any defence to make. My experience shows that as and when accused is asked to disclose his defence, accused invariably admits two facts, viz., that he was driving the offending vehicle at the time of occurrence of accident and that the accident took place. But simultaneously accused takes the plea that it occurred due to the negligence of the victim. Such plea narrows the scope of trial. Now prosecution has only to prove that the accident was caused due to the rashness or negligence of

the accused and not because of victim as alleged by the accused. This also helps the court in concluding the trial expeditiously.

d) At the time of recording the evidence of eyewitness:

As already stated, the investigating officers generally record in the statement of eyewitness that the offending vehicle was being driven at high speed in a rash and negligent manner at the time of alleged accident without clarifying what the witness understands by the term high speed, rashness and negligence. Consequently, same facts are deposed by the witness without elaborating the same in his deposition. The terms 'high speed', 'rash and negligent' are relative terms. Thus the prosecution is duty bound to produce the facts, which may prove that at the relevant time the offending vehicle was being driven rashly, negligently and at high speed. Courts should be wary to record the statement of such eyewitness and if during his deposition witness fails to clarify what he understands by the term 'rashness', 'negligence', and 'high speed', it becomes the duty of the court to seek clarification by asking questions from such witness. This will certainly help the court in arriving at a right conclusion.

e) Sentence:

After conviction, the main question arises what sentence should be imposed on the convict? What is the purpose of the sentence? Should the courts promote deterrence through effective punishment? The answer is given by the Apex Court in the following words in case *Dalbir Singh* v. *State of Haryana*[5] *:*

> When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any leniency shown to them in that sphere would tempt them to make driving frivolous and a frolic.

The Supreme Court further observed:

> Bearing in mind the galloping trend in road accidents in

[5] AIR 2000 SC 1677.

> India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role, which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles.

Further, courts should also invoke the provisions of Section 357 CrPC benevolently. The purpose of this section is to compensate the person who suffered any loss or injury by the act of convicts. Under Section 357 CrPC, court has two options. One, the court can divert a portion of fine as compensation to the victim, if fine is part of the sentence. Second, if fine does not form a part of sentence, the court can grant compensation to the victim who suffered loss or injury by the act of convict. In former, the compensation cannot be more than the amount of fine but in latter there is no such restriction, court can award compensation as it deems fit.

Moreover, the amount of fine provided for the offences punishable under Sections 279, 337, and 338 of the IPC is quite insignificant. The maximum fine that may be imposed for the offences punishable under Section 279 and 338 IPC is only Rs.1000/- each, and that for the offence punishable under section 337 IPC is only Rs.500/-. The said amount may have had some value in 1860 when the Penal Code was enacted but in the 21st Century certainly it has no meaning. Even under

the amended Criminal Procedure Code, the court of Metropolitan Magistrate is empowered to impose the maximum fine of Rs.10,000/-. Thus, in case of death of any person, court can impose a fine only up to Rs.10,000/- and not beyond that.

In such circumstances, it becomes the duty of the courts to find out ways to make the sentence more realistic so that in future the wrongdoer cannot dare to take the law lightly. Under Section 357(3) CrPC, court has power to grant compensation to any person who has suffered any loss or injury by the act of the accused person provided the fine does not form a part of the sentence. The same is reproduced as under:

> S. 357(3)- When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

Under this section court has unlimited power to grant compensation. Thus, in accident cases, courts should grant suitable compensation to the injured persons under Section 357(3) CrPC instead of imposing token fine provided under the Penal Code.

To make a sentence more deterrent and realistic, courts should also invoke the provisions of Section 20 of the Motor Vehicles Act. The same is re-produced as under:

> Power of court to Disqualify – (1) Where a person is convicted of an offence under this Act or of an offence in the commission of which a motor vehicle was used, the court by which such person is convicted may, subject to the provisions of this Act, in addition to imposing any other punishment authorized by law, declare the person so convicted to be disqualified, for such period as the court may specify, from holding any driving licence to drive all classes or description of vehicles, or any particular class or description of such vehicles, as are specified in such licence.

The effect of this section is that after the expiry of period of disqualification, he has to pass a fresh test to obtain the driving licence to the satisfaction of the licensing authority. This will further deter the persons from driving the vehicle rashly or negligently.

f) Conduct of the accused:

Under Section 134 of the Motor Vehicles Act, a duty has been cast on the driver of the vehicle and on its in-charge that in case of accident they shall take all reasonable steps to secure medical attention for the injured and they shall provide information to the police on demand and if no police officer is present, the driver shall report the circumstances of the occurrence including the circumstances, if any, for not taking reasonable steps to secure medical attention, at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

But it is unfortunate that, in India, the driver of vehicles and its in-charges are not fulfilling their duty. The conduct of the driver of the vehicles after the accident is also one of the relevant factors to ascertain the quantum of sentence on conviction. As and when it is found that the convict had fled away from the spot and violated the provisions of Section 134 of the Motor Vehicles Act, court should deal with such offender with iron hands.

I trust that the above suggestions will help the investigating agency and courts to deal with the accident cases more efficiently.

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GENERAL EXPECTATIONS FROM A JUDGE

Narinder Kumar*

Success of judicial system is one of the salient features of any democratic country. In such a judicial system, court is a temple of justice where Judge presides over and discharges divine function, i.e., dispensing of justice. In case of a temple, a devotee surrenders before the Lord as he has full faith in Almighty. In case of adjudication of matter in dispute, parties seek intervention of someone, in whom they have confidence and for whom they have utmost respect. Similarly, litigants visiting the temple of justice expect justice from Judges. People expect that a Judge would not swerve from the path of justice in any circumstance. Conduct of a Judge inspires much confidence in the litigants.

No doubt, judiciary has earned a reputation of high efficiency, perfect integrity and fearless independence. We should not forget that life of a Judicial Officer is a difficult one. It is expected from every new entrant that he or she would maintain the reputation of Judiciary.

Inside and outside the court, every Judicial Officer has to lead a very disciplined life. Discipline includes and starts with punctuality. Sitting in court in time adds to the dignity of the court and reputation of the Judicial Officer. Sitting in the court late certainly leads to frustration in the minds of litigants, witnesses, and lawyers. Therefore, first of all, you have to be punctual enough so as to preside over the court at 10 a.m. sharp.

You must have the capability to maintain dignity of your court and evoke respect from the people. A Judge is expected to administer justice with even hand, without discriminating between friends, enemies, and one's own relations. It is well settled that justice should not only be done but seem to be done. To do justice, Judge has to provide opportunity of fair hearing to the parties while maintaining purity of administration of justice so as to sustain the confidence of the parties. You will have to decide cases without fear or favour, affection or ill-will, friend or foe. Therefore,you must have the capability to be fair, reasonable, and detached.

Inside the court, you are also expected to conduct yourself in such a way that litigants do not feel you as an unwanted imposition. A Judge is to give decision after considering the material and submissions put forth by the parties

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* Officer of DHJS.

and their counsel. But you must remember that you will have to hear courteously, answer wisely, consider soberly, and then take a decision impartially.

Role of a Judge in controlling the court proceedings is very important. A Judge is not to act as a recording machine or preside over merely as a spectator. Judge is expected to actively participate in the proceedings so as to elicit necessary material from the witnesses at the appropriate context with a view to arrive at a just conclusion.

While presiding over, Judicial Officer must be courteous to litigants, witnesses, and the members of the Bar in discharging judicial functions with all humility at command. Sometimes a member of the Bar or Public Prosecutors or a witness or litigant may address the court in aggressive or offensive posture but it is expected from a Judge that he shall not lose his temper. A Judge has to work ignoring any such offending behaviour. But it is also pertinent to mention that if offensive behaviour persists and it is difficult to continue with the court work, then the Judge is not expected to sit like a spectator. In such a situation, you will have to control the situation and take appropriate steps for necessary action in accordance with law so that dignity of the court is not lowered down. In this way, balance has to be maintained, to be generous and also to be firm, while presiding over the court.

A Judge must learn to hear the counsel and that too with an open mind. A Judge should not interrupt in the middle. It is true that every Presiding Officer is expected to decide a particular number of cases in a month, but he should not exhibit any hastiness in the matter. It would be inappropriate or unnecessary for the Judge to indulge in argument with members of the Bar or Public Prosecutors in open court. Whenever adjournment is sought in a case, counsel should be accommodated only in case of just and reasonable ground. But if the ground put forth for adjournment is frivolous, one has to be firm and refuse the adjournment. While presiding over court, you will have to avoid unnecessary utterances so as to avoid embarrassment not only to yourself but to others as well. One very important aspect is that no Judicial Officer should indulge in loose talk. You have to keep in mind that loose talk may lead to a lot of trouble, resulting in embarrassment and wastage of valuable time which could be used in dealing with cases.

A Judge must possess many virtues and special qualifications like knowledge of sources of law, the law, personal laws, Holy Scriptures, notifications, rules and regulations. You must have at least the commonsense to be able to appreciate the point in dispute and apply relevant law so that you are able to give convincing reasons for your decisions. You would be expected to pronounce verdict only after thoroughly assessing the record of the case. Scarcity

of time expects that the Judge is efficient. You may have to burn midnight oil in going through the record so as to arrive at a correct conclusion.

To discharge his duties efficiently, a Judicial Officer is supposed to possess not only legal knowledge, but also knowledge in administrative matters so that proper control is exercised over the staff attached to the court.

Integrity is one of the essential qualities of Judicial Officer. One does not deserve to occupy chair as a Judicial Officer, if one does not maintain highest standard of integrity. Undoubtedly temperament, personality, education, environment and personal traits of Judicial Officer play vital role in administration of justice. But as a Judge, you are expected to be strong and brave to uphold the Judiciary. You should have the courage to protect even weak citizens from unjustified wrath of the executive authority.

You should not have a particular notion like that police always favour the rich and snubs the poor or that motorists are reckless and always in the wrong. As a Judge, you should not allow extraneous considerations to influence your mind. Anger vitiates the judgment. So a Judge must not be actuated by anger in any circumstance. Therefore, you are expected to be free from emotions which are likely to vitiate your judgment.

One or the other party to the matter before the court may even move false complaints against Judicial Officers. If the Judicial Officer is discharging his duties honestly, he should not bother about any such complaint.

Outside the court, you must have the capability to keep yourself aloof and above suspicion. Therefore, even while maintaining social relations, you will have to exercise restraint, care and caution.

Judge should not have any craze for publicity by the media. In this respect, one must always remember the spirit of Karamyoga as enunciated in Gita, that renunciation of doership in relation to all activities would not bind him who has dedicated all his actions to God.

So, before you preside over as a Judicial Officer, please give a thoughtful consideration to the general expectations from a Judge, then arise, awake, and stop not till the goal is reached.

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BOOK REVIEW

POONAM BAMBA, PERFECT MARRIAGE NOT A MIRAGE: A JOURNEY THROUGH UPS AND DOWNS OF MARRIAGE (2010), PUSTAK MAHAL

Ved Kumari*

PERFECT MARRIAGE NOT A MIRAGE is a reflection on what makes the marriage work and what is responsible for its failure as gleaned from divorce cases the author dealt with as the Additional District Judge in a Matrimonial Court in Delhi. Poonam Bamba captures her experiences from the court room in a non-judgmental style and reflects on them in the light of conversations and exposure from life outside of the court room. She meticulously kept detailed notes and used them to reflect what makes and mars a marriage. This journey led her to delve deeper in her own relationship in marriage also, to analyse what has made it work, what has kept it alive and interesting.

She has focused the various problems arising in marriages from the contextual background of the cases before her. First chapter focuses on comparative issues in arranged and love marriages. How the social issues surrounding caste and class adversely impact on the relational bonds among couples who cross over to break the societal norms of marriage. In chapter two she provides tips from cases in which partners resolved their differences to make their marriage work. Accepting imperfections of your partner as nobody is perfect; ignoring petty matters; sharing; reflection on your own actions and motivations; leaving the past behind each day; giving yourself and life another chance are some of the key mantras for success of marriage. Many a times, compromises are to be preferred for the sake of children.

Chapter three is full of cases in which early detection of the impending separation prevented an inevitable separation or divorce. Silence is the biggest killer and hence, the need for communication before it is too late, has been sufficiently highlighted. The motto of the successful marriage is similar to 'a stitch in time saves nine,' as far as effective communication with your partner is concerned.

The author clears many myths about marriage and helps in breaking the dream world that 'once married, they lived happily ever after' in chapter four. Chapter five brings out clearly that marriages need hard work and lot of caring for

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them to work. Constant reflections on one's own and one's partner's actions, thoughts, and constant communications are important to deal with conflicts.

Chapter six takes a hard look at the abusive relationships and the importance of its non-tolerance. Marriages may have been made in heaven but so are lives. No relationship – even that of marriage needs to be preferred over a safe and happy life.

Chapter seven records some recent trends like late marriages, more settled life styles, less openness to differences, and less felt need of making compromises due to more education and financial independence, long distance marriages, live-in relationships, marriages after divorce. All these have contributed new dimensions to marriage and accompanying issues around it.

The book ends with a brief introduction to the economics of divorces and how they impact the environment too!

Poonam Bamba has achieved all this and lots more without being prescriptive or didactic. The book is written in the style of story-telling while drawing lessons from the stories. It certainly has the stance of being pro-marriage without accepting violence as an essential part of it. The author has referred to instances and researched from the newspapers and internet to bring in comparisons from areas outside of the court rooms. She has carried on conversations with her friends, family, and colleagues to analyse given scenario and to present varied range of perspectives.

The book PERFECT MARRIAGE NOT A MIRAGE cannot be described as a research work as the data has not been collected systematically using research methodology but it surely is a reflective writing analysing one's experience and exposure to wide range and number of divorce cases. The author needs to be commended for sharing her insights arising from the cases she dealt with in her courtroom. The most commendable part of the book is that it shows what goes on in the mind of the judge while she deals with matrimonial cases before her, her agonizing with the miseries of the parties, her desire to bring about amicable settlement and peace in their lives. Each case mentioned in the book has a distinct flavour presenting a new perspective and insight. Her writing style is lucid, interesting, and simple. One may not agree with her insights and analyses in many cases but that does not detract from the value of the work. It is one of those books that has the potential to initiate discussions and therein lies its success.

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ACTIVITIES OF DELHI JUDICIAL ACADEMY: DURING JULY TO DECEMBER, 2010

Alok Agarwal *

In the year 2010 the Delhi Judicial Academy continued to take big strides pursuing its mission of attaining excellence in continuing judicial education. The Induction Programme for new entrants to the Delhi Judicial Service was structured towards grooming fresh law graduates as well informed, efficient, conscientious, and responsive Judges. The new format of Refresher Courses for in-service officers was successful in fostering participative learning and sharing of experience and ideas. The Orientation Programmes conducted for entrants to DHJS from service and from the bar were aimed at drawing from the experience of the participants as Judges and lawyers and helping them adapt to the new role with higher responsibilities.

The Delhi Judicial Academy was the first in the country to conduct a Village Immersion Programme for Induction Trainee Officers, in order that they have a more realistic perception of rural life. The officers were exposed to the problems of poverty, illiteracy, caste discrimination, lack of health care facilities, lack of access to resources etc. faced by the villagers and the initiatives taken by the authorities and the villages themselves to cope with them. The officers studied the topography, demography and environment of selected villages in Kanpur by way of direct observations and concerted interactions with various group of villagers and provided them a platform to discuss and explore viable solutions to the local problems.

The experience of the Ld. Chairperson of the Delhi Judicial Academy Prof. (Dr.) Ved Kumari and the Ld. Director, Ms. Anu Malhotra, DHJS in participating in a three weeks intensive study programme for judicial educators at Commonwealth Judicial Education Institute (CJEI), Canada resulted in various innovative steps like conducting Training of Trainers (TOT) for officers of Higher Judicial Service in two batches and use of new methodology and training tools in all the programmes. The TOTs were highly appreciated and were found very useful by the participants who will be utilizing their enhanced skills as resource persons in the future programmes of the Academy.

Other highlights of the programmes of the Delhi Judicial Academy in the year 2010 were two excursion trips, one conducted for the Induction Trainees and

* Additional Director, Delhi Judicial Academy.

the other for fresh entrants to DHJS, both from the service and from the bar. Both the excursions were aimed at sensitizing the officers towards environment and wild life and promoting bonding and team spirit amongst the officers.

All programmes for Induction Trainees as well as for DHJS entrants from the bar had a special focus on judicial ethics and sensitization to social issues in various fields including gender, physical and mental disabilities, poverty, access to justice and environment. The programmes also concentrated on recognition and minimization of inherent biases. Experts from various fields including some foreign experts were invited to interact with the officers on these issues.

The main events at Delhi Judicial Academy in the second half of 2010 are listed below:-

INDUCTION TRAINING – VALEDICTORY PROGRAMME

The third quarter of 2010 began with culmination of one year training for officers of fresh entrants of Judicial Service, who joined on 03.07.2009.

A Valedictory Programme was held on 02.07.2010 at the Conference Hall, Tis Hazari Courts, Delhi. The Ld. Chairperson Prof. (Dr.) Ved Kumari gave a brief overview of the training and presented the batch after completing of its one year training to the District Judiciary with a hope that by their sheer number and because of the inputs in the last one year, the officers would be able to make a perceivable change in the efficacy of the justice delivery system in Delhi.

Hon'ble Mr. Justice A. K. Sikri, Chairperson of the Judicial Education and Training Programme Committee (JE&TPC) in his welcome address exhorted the officers to live up to the expectations of the consumers of justice. The valedictory address was delivered by Hon'ble Mr. Justice Dipak Misra, Chief Justice, Delhi High Court & Patron-in-Chief of the Delhi Judicial Academy. His Lordship advised the officers to imbibe the virtues of punctuality, patience, impartiality, and judicious thinking as essential aspects in their lives.

Hon'ble Mr. Justice Dipak Misra, Hon'ble Mr. Justice A. K. Sikri, Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Ms. Justice Indermeet Kaur distributed the certificates to all the officers alongwith a memento on behalf of the Delhi Judicial Academy. Two Officers of DHJS, namely, Sh. Ajay Kumar Jain and Sh. Sirandeep Singh Panag, who had completed their orientation programme earlier, were also awarded certificates on this occasion.

The Ld. Director, Ms. Anu Malhotra who had conducted the programme in her inimitable style also proposed a vote of thanks. The programme ended with a group photograph of all the participants with the distinguished guests and high tea.

REFRESHER COURSES

In the year 2010, the Academy adopted a new format of Refresher Courses, each course being of 4 days duration, as compared to 1 ½ day courses being held earlier. Each refresher course was planned for 30 to 35 officers handling the same or similar jurisdiction. Various topics were selected under the broad categories of 'Knowledge', 'Attitude', 'Ethics' and 'Skills' in consultation with all the members of the district judiciary by way of response to a survey questionnaire sent to them in the later part of 2009.

Each course was divided into 16 sessions. Topics under each category were chosen for each refresher course as per the jurisdiction it was meant for and also keeping in mind the preferences given by the officers in response to the survey questionnaire. Two sessions on Judicial ethics and in pursuance to the directions of the Hon'ble High Court in *Pratibha Chopra* v. *UOI (WP (Civil) No. 669812007),* two sessions on Mental Health were made a part of each refresher course.

The participants were supplied a well researched reading material on each topic in a CD in advance. They were divided in groups of 4 to 5 depending upon the total number of participants in the Course. Each group was required to prepare a presentation for about 10 minutes on a topic related to the topic of one of the sessions in the course. Each session had half the time, i.e., about forty five minutes allocated for open discussion, which ensured effective participation and experience sharing by the members. The last session in each course was the feedback session wherein the participants listed the 'Take Home messages' and discussed the new things they had learned during the course and best ways to implement them in their working.

The Refresher Course in Execution in CPC: 22nd to 25th July, 2010

The first Refresher Course in the 3rd quarter was conducted from 22nd to 25th July for 30 Civil Judges. The broad topics category wise are as follows:-

Knowledge	-	Executions in CPC
Skills	-	Reasoning and Judgment Writing
Attitude	-	Law & Poverty, Distributive Justice and Caste, Access to Justice : Legal Aid

The highlights of the Course were the presentations by Hon'ble Mr. Justice Dipak Misra, Chief Justice, Delhi High Court on 'Judicial Ethics', Hon'ble Mr. Justice A. P. Shah, Former Chief Justice, Delhi High Court on 'Distributive Justice' and Prof. Upendra Baxi on 'Impoverishment by Law'. Dr. Usha

Ramanathan highlighted the problems of 'Access to Justice' faced by the marginalized section of the society. Prof. (Dr.) Ved Kumari guided the participants in a structured manner of conducting effective legal research. Hon'ble Ms. Justice Manju Goel, Former Judge, Delhi High Court shared the methods of writing crisp, precise judgments while including all essential ingredients to make the judgment self explanatory. Ms. Anu Malhotra, Director and Dr. Nimesh Desai, Director, IHBAS in separate sessions, acquainted the participants with various provisions of the Mental Health Act, 1987 and International Conventions and Covenants on the aspect of the mentally ill. The sessions on Execution in CPC were addressed by Hon'ble Mr. Justice R. S. Endlaw, Hon'ble Mr. Justice V. K. Shali and Mr. Arun Mohan, Sr. Advocate. The message given by the speakers was to make effective use of all the available provisions in CPC and of the inherent powers of the Court to clarify all the ambiguities before passing of the decree and during execution proceedings so as to have an effective execution process while keeping in mind that it should not adversely affect any third party who had a right to be heard.

Refresher Course on Cyber Law

The next Refresher Course from 19th to 22nd August, 2010 was meant for 29 officers of DHJS. The broad topics were:-

Knowledge	-	Cyber Law
Skills	-	Reasoning and Judgment Writing
Attitude	-	Law & Poverty, Distributive Justice and Caste, Access to Justice : Legal Aid

Sh. Krishna Sastry Pendyala, Asstt. Govt. Examiner, Cyber Forensic Division, Directorate of Forensic Science, Ministry of Home Affairs, Hydrabad and Sh. Vakul Sharma, Advocate, addressed the session on “Scheme and Special Features of IT Act: Jurisdictional Issues”; “Cyber Forensics: Admissibility and Collection of E-evidence” and “Mode of Proof and Appreciation of E- evidence”. One of the sessions was attended amongst others, by Hon'ble Mr. Justice Dipak Misra, Chief Justice, High Court of Delhi. The session on “E-Courts – Critique and Precautions” was addressed by Hon'ble Mr. Justice Badar Durrez Ahmed, Judge High Court of Delhi. His Lordship stressed the fact that the e-courts at the High Court and also one at the District Court were functioning smoothly and expressed the hope that other courts will also soon be converted into paperless e-courts. Hon'ble Mr. Justice A. P. Shah, Former Chief Justice, Delhi High Court, addressed two sessions on “Distributive Justice” and impressed upon the participants to be innovative in their approach to provide legal redress to

marginalized sections of the society.

Refresher Course for 36 Officers of DHJS and DJS from 16th to 19th September, 2010

The broad topics in the next Refresher Course conducted from 16th to 19th September, 2010 for a mixed group of ASJs, ADJs, MMs and Civil Judges were as follows:-

Knowledge	-	Doctrine of Precedents
Skills	-	Court Management, Docket Management, Case Management
Attitude	-	Gender Discrimination

The main highlight of this Course was a very interactive session conducted by Human Rights Activists Ms. Pramada Menon and Sh. Gautam Bhan on the topic "People with 'Other' Sexual Orientation - Discrimination against LGTB, Hizra Community". This was followed by an enlightening address by Hon'ble Mr. Justice A. P. Shah, Former Chief Justice, Delhi High Court on "S. 377 IPC and Naz Foundation Case". The two sessions emphasized that individuals cannot be discriminated against merely on the basis of their sexual orientation. Hon'ble Mr. Justice A. B. Saharya, Former Chief Justice, Punjab and Haryana High Court demonstrated to the participants how the preamble of the Constitution of India and the oath taken by the Judges contain within themselves all the Bangalore Principles of judicial ethics. The value of precedents, the process of identifying a binding precedent and the way to deal with conflicting judgments of superior courts on the same subject matter were addressed by Hon'ble Mr. Justice Pradeep Nandrajog, Judge, High Court of Delhi and Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy. Sh. R. K. Gauba, Ld. ASJ[1] dealt with the topics of Docket Management and Case Management underscoring the importance of prioritization of cases and giving precedence to high priority matters. Conduct Rules as applicable to judicial officers were discussed by Sh. H. S. Sharma,[2] AD & SJ.

Refresher Course for 38 Officers of DHJS and DJS from 25th to 28th November, 2010

The next refresher course was conducted from 25th to 28th November, 2010 for a mixed group of ASJs, ADJs, MMs and Civil Judges. The topics

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1 Now, Ld. District Judge, South, Delhi.
2 Now, Ld. District Judge, New Delhi.

covered were as follows:-

Knowledge	-	Doctrine of Precedents
Skills	-	Court Management, Docket Management, Case Management
Attitude	-	Discrimination on the basis of disability

In this Course the topics on Doctrine of Precedents were dealt with by Hon'ble Mr. Justice A. K. Sikri, Judge, High Court of Delhi and Chairperson, JE&TPC and Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy. Hon'ble Mr. Justice Vipin Sanghi addressed the topic on Bangalore Principles. In this case also, the sessions on 'Disability' were conducted by experts and activists in this field. Ms. Amita Dhanda, Professor at NALSAR, Hyderabad, demonstrated to the participants that persons with physical or mental disabilities were no different from other persons and were, therefore, entitled in law to all the rights and opportunities that were available to the other citizens. Hon'ble Ms. Justice Gita Mittal appraised the participants about "Conventions on Persons with Disabilities and Right to Health under the Indian Constitution". Mr. George Abraham who is himself visually impaired, and Mr. Arun C. Rao whose daughter has a hearing impairment, both activists for the rights of the disabled, jointly addressed the session "From Disabled to Differently Abled". The last session on "The National Trust Act: Critical Issues" was addressed by Ms. Poonam Natrajan Chairperson, National Trust.

Refresher Course for 39 Officers of DHJS and DJS from 2nd to 5th December, 2010

The last Refresher Course in the year 2010 was conducted from 2nd to 5th December, 2010 for a mixed group of DHJS and DJS Officers. The topics covered were:-

Knowledge	-	Use of Computer and Internet in Judicial work
Skills	-	Court Management, Docket Management, Case Management
Attitude	-	Children and Law

Hon'ble Mr. Justice A. B. Saharya, addressed the first session on 'Bangalore Principles'. The topics on 'Court Management' and 'Children in family' were addressed by Hon'ble Ms. Justice Manju Goel. Hon'ble Ms. Justice Mukta Gupta stresed the need for a more considerate approach towards child victims and witnesses. Sh. S. K. Ghosh, Former Faculty Member, LBSNAA, Mussoree and Prof. S. K. Palhan, Advisor to Ministry of Defence, Govt. of India

shared with the participants, technique of Stress Management.

Other Programmes

Orientation Programme for Family Courts, Delhi and Counsellors working with the Family Courts – 17th July, 2010

This one day programme was inagurated by the Hon'ble Mr. Justice Dipak Misra, Chief Justice, Delhi high Court. The plenary session was chaired by Hon'ble Ms. Justice Hima Kohli, Judge, Delhi High Court, Prof. (Dr.) Ved Kumari, Chairperson, Delhi Judicial Academy and Ms. Deepa Sharma, Principal Judge, Family Ccourts. The session on Objects of Family Courts, Role of Counsellers and Psychologists and relevant rules was addressed by Hon'ble Ms. Justice Hima Kohli and Ms. Deepa Sharma. In the second session, Prof. (Dr.) Ved Kumari and Prof. Sanjay Bhatt, Dean and HOD of Delhi School of Social Work, addressed the participants on Aims and Techniques of Counselling. Sh. Kamlesh Kumar, Addl. Principal Judge, Family Courts spoke on "Drafting and Legality of Settlements, arrived at between the Parties as a result of Counseling". The last session was devoted to best practices and ethics and was addressed by Ms. Iti Kanungo, Principal Counseller and Ms. Deepa Sharma.

Orientation Course for 7 Officers of DHJS appointed from the Bar – 16th Aug to 15th Dec. 2010

A four months Orientation Course was conducted by the Delhi Judicial Academy for 7 Officers of DHJS appointed from the Bar, as per the programme for 2010. The Officers were imparted training at the Academy for about eight weeks, were attached with Courts for about six weeks and were sent on field visits for two weeks. They were also taken for an educational excursion for one week.

The Academy training included lectures, exercises, Mock trials, discussions and project reports etc., on a wide range of topics covering all the four aspects of knowledge, skills, sensitisation and ethics. The focus in the knowledge category was on legislations dealt with by subject specific courts like Labour Courts, MACT, CBI, Electricity Courts, TADA/POTA/MCOCA Courts, Land Acquisation Cases Courts, Rent Control Tribunals and Additional Rent Control Tribunals. In 'skills' category, sessions were conducted on Leadership, Court Management, Case Management, Docket Management, Time Management, Stress Management, Legal Reasoning, Legal Research, Judgment and Order writing and Communication Skills. The broad topics covered under 'Sensitization' were Human Rights, Victim Protection, Environment Laws, Women and Law, Children and Law, Gender Discrimination, Disability, Mental Health, Law and Poverty, Distributive Justice and Access to Justice, Judicial

Ethics category emphisized on Banglore Principles, Canons of Judicial Ethics, Principles of Fair Trial, Duties of a Judge, Conduct to be Avoided in Courts and recusal.

The officers were also attached with specialised Courts of MACT, ADJ, ASJ, NDPS, HMA, Labour Courts, Family Courts and High Court for a total of six weeks. The Judicial Officers presiding over the said Courts were requested to give the trainee officers an opportunity to observe various aspects of Court Management, ideal behaviour and conduct in the court and to participate in recording of evidence, framing of charge/issues, judgment and order writing, etc. The trainee officers were asked to submit reports on the inputs gained during the court attachments.

In the field training, officers were attached with the Revenue Department, Medical Hospital, Police Training Institute, NICFS and various branches of the District Courts for first hand exposure to the functioning of the concerned departments.

An excursion-cum-educational out station trip from 12th to 17th Nov' 2010 was also organized for the officers along with 7 other DHJS officers who had recently been promoted and two more officers who had recently completed their four months training at the Academy, with an objective of exposure to environmental issues and to promote bonding and personality development. The officers attended a very informative one day programme at the Wildlife Institute of India, Dehradun. They also visited the Wildlife Institute Laboratory, where various tests including DNA examination are conducted primarily for identification of the species of Wild life products. They also enthusiastically participated in river rafting near Rishikesh and other adventure sports like Trekking and River Crossing at Nainital. The Officers also enjoyed 2 Safari Trips at the Corbett National Park before they returned to Delhi, with strengthened mutual bonds, love for the environment, memories of the pleasant trip and nice photographs.

After the field visits, court attachments and the excursion, Feed back and Reflective sessions were conducted at the Academy for clarification of doubts and also, for boosting their enthusiasm to bridge the gap, if any, between theory and ground reality.

Valedictory Function at the end of the Programme, on 15th December, 2010

A valedictory function was held in the larger Chamber of the Hon'ble Chief Justice of Delhi High Court for the participants alongwith another officer of DHJS Sh. Ramesh Kumar who had also completed his training earlier. The

function was graced besides the Hon'ble Chief Justice, by Hon'ble Members of the Judicial Education & Training Programme Committee, Hon'ble Mr. Justice A. K. Sikri, Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Ms. Justice Indermeet Kaur. All participants were awarded certificates of successful completion of training and were presented mementos on behalf of the Delhi Judicial Academy. The participants also received their posting orders at that time.

Training of Trainers on Teaching Methods for Judicial Educators

With the objective of capacity building of Resource Persons, the Delhi Judicial Academy conducted two 3 - days workshops on Teaching Methods for officers of Higher Judicial Services, who had come as Resource Persons in various Programmes of the Academy. The facilitators for these programmes included Hon'ble Ms. Justice Manju Goel, Former Judge, High Court of Delhi, Hon'ble Mr. Justice A. K. Sikri, Chairperson, Judicial Education & Training Programme Committee, Sh. Sudhir Jain, DHJS, Ms. Santosh Snehi Mann, DHJS, Sh. Pushp Kumar, Assistant Professor Law Faculty, Delhi, Prof. Promila Menon, CIT, Prof. Kamala Shankaran, ILI, Delhi, Assistant Professor Ms. Meena Panicker, Law Faculty , Delhi University and officers of the Academy, namely, Prof. Ved Kumari, Chairperson, Ms. Anu Malhotra, Director, and Mr. Alok Aggarwal, Additional Director. The primary objectives of the Workshops were as follows.

1. To demonstrate various teaching Methodologies to the Judges that are suitable for adult learning.
2. To provide them with hands-on experience of conducting classes using the participatory teaching methods.
3. To demonstrate how to effectively use various teaching tools.
4. The primary objective of the workshop were to expose the Judicial Educators to adult learning theory.
5. To give them hands-on experience in the use of those tools.

The first such programme was held from 3rd Sept to 5th Sept' 2010 and was attended besides 20 officers of DHJS and, by Sh. Rajiv Gupta, Incharge/Director, J&K Judicial Academy.

The Workshop was inaugurated by Hon'ble Mr. Justice Dipak Misra, Chief Justice, High Court of Delhi, who along with Hon'ble Mr. Justice A. K. Sikri, High Court of Delhi also graciously participated in the Ice Breaker session which was aimed at identification of purposes of Judicial Training and of individual learning styles, besides encouraging use of non-verbal communication.

The participants were asked to divide themselves in 8 groups and to prepare a session of about 20 min., on a topic chosen by them, using one or more teaching methods and tools. There were presentations by the facilitators on Adult Learning Theories and Teaching Methods for Adults and on Planning a Class. Prof. Ved Kumari, Ms. Anu Malhotra, and Mr. Alok Agarwal conducted 3 demonstrative sessions using various teaching methods and tools, on the topics of Judgment Writing, Addressing Biases and Judicial Communication. Two sessions were devoted to preparation by the participants with active assistance of the facilitators and in the remaining three sessions, 8 groups presented classes on topics chosen by them.

The second similar Workshop from 24th Sept to 26th Sept, 2010 was attended by 18 officers of DHJS and Sh. B. G. Dave, Dy. Director, Gujarat State Judicial Academy.

Both the courses were received very well by the participants and many of them have at the request of the Academy, volunteered to prepare Modules on various topics for future courses by the Academy. Some of the participants have already put the inputs from the TOT Course to use by using different methodologies and tools when they later conducted sessions at the Academy.

Orientation Programme for DHJS Officers (Promoted from the Bench)

A five day Orientation programme was conducted between 23rd and 28th Oct, 2010 for seven officers of DHJS appointed by promotion.

The first day was devoted to developing an understanding of the Constitutional mandate as applicable in both adjudicating and procedural aspects of Judicial functioning. The sessions on Constitutional Vision of Justice in Civil and Criminal Jurisdiction were chaired by Hon'ble Mr. Justice S. Ravindra Bhat and Hon'ble Ms. Justice Gita Mittal, respectively. Three sessions were conducted on procedural law concerning Appeals and Revisions in Civil and Criminal Courts and one on the important rules of evidence culled out from the Evidence Act and relevant precedents. An overview of the special and subject specific Courts was provided to the participants in respect of MACT, NDPS Courts, TADA/POTA/MCOCA Courts, HMA and Family courts, LAC Courts, Electricity Act Courts, Labour Courts and Industrial Tribunals and Rent Control Tribunals. The participants were also exposed to ADR mechanisms prescribed u/s 89 CPC and other procedures available for amicable settlement of disputes including compounding of Criminal Offences and Plea Bargaining.

In the Personality Development component of the course, Dr. SK Ghosh, Former Faculty Member, LBSNAA, Mussorree conducted two sessions on

Leadership and Team Building. General Administration Skills were also imparted to the participants through sessions on various topics like Departmental Enquiries, Writing of ACRs, Inspection of Courts, Co-ordination with High Court and Accounting and Financial procedures.

Valedictory Function for the DHJS Officer (Promoted from the Bench)

At the end of the programme, a Valedictory function was conducted in the larger chamber of the Hon'ble Chief Justice, Delhi High Court on 28-10-2010. The officers received their certificates of completion of training and mementos on behalf of the Delhi Judicial Academy. The Hon'ble Members of the Judicial Education & Training Programme Committee, namely, Hon'ble Mr. Justice A. K. Sikri, Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Ms. Justice Indermeet Kaur, also graced the occassion and encouraged the participants to continue to work towards ensuring timely and responsive justice to the litigants.

As suggested by the participants of the programme, similar programmes in future are proposed to be of six days duration with inclusion of sessions on Bails, Forensic Science, Judicial Communication and Stress Management.

Sensitization Course for Presiding Officers of MACTs – 28th November, 2010

In order to provide the much needed immediate succour to Road Accident Victims, who earlier had to file claim petitions and wait for award of compensation for years together, at the initiative of the Hon'ble High Court of Delhi, a Claim Tribunals Agreed Procedure was arrived at between the Ministry of Road Transport & Highway, Law and Justice and Company Affairs and the Delhi Police. The procedure aims at pursuing the award of compensation within 120 days of a road accident whether or not, a claim petition is filed by the victim. It has been made applicable in Delhi with effect from April 2, 2010.

To take stock of the actual working of the Agreed Procedure after six months of its enforcement, a special one day programme for eighteen MACT Presiding Officers were organized by the Delhi Judicial Academy on 28th Nov, 2010. The sessions were addressed by Hon'ble Ms. Justice Reva Khetrapal, Hon'ble Mr. Justice J. R. Midha, Mr. Arun Mohan, Sr. Advocate and Dr. Bharat Desai, Medical Suptd, Tirath Ram Hospital, Delhi. The programme was based on experience sharing by the Presiding Officers of MACT and very useful inputs for further improvements were provided by the learned resource persons. Dr. Bharat Desai informed the participants of the current procedure for issuance of disability certificates in case of accident victims .

Induction Training Programme for newly appointed Special Metropolitan Magistrates (Municipal Magistrates – Littering) – 7th to 22nd December, 2010

Three Speicial Metropolitan Magistrates had been appointed by the Hon'ble High Court of Delhi, for trial of offences in relation to littering and causing nuisance in respect of sanitation and public health. In accordance with the schedule projected in the Training Calendar, 2010, they were imparted two weeks training at the Academy from 07-12-2010 to 22-12-2010. In the first two days, the officers were given an orientation on Judicial Behaviour, Ethics and Conduct and overview of the Summary Trial Procedure as contained in the Code of Criminal Procedure. Thereafter they were attached with various Magistrial Courts till 17th December, 2010 to get a first hand experience of holding courts.

After court attachments, further training sessions were held at the Academy for the officers on the applicability of MCD /NDMC Acts, Environmental Protection, Procedures for Issuance of Summons, relevant Delhi High Court Rules and Court Management. On the last day interactive sessions were organized for the officers with the Chief Metropolitan Magistrate, Delhi and other Officers who had earlier worked as Municipal Magistrates.

Training Programme for Nazirs / Naib Nazirs and Bailiffs – 16th to 19th December, 2010

A half day interactive Training Programme was conducted for Bailiffs working in District Courts on 16-12-2010. The first session was devoted to sharing the best practices in execution of warrants of attachment/ possession/ arrest and providing insights into the precautions and safeguard required to be observed. In the second session, the emphasis was on sending proper, legible and unambiguous reports to the Court and on proper behaviour and conduct, both in and outside the court. Sh. H. S. Sharma, AD&SJ, Delhi was the Resource Person in the two sessions.

On a similar pattern, half day sessions were also conducted for Nazirs / Naib Nazirs in District Courts in four batches on 18-12-2010 and 19-12-2010. The topics for discussion in each batch were proper and accurate preparation of warrants of possession /attachment, and report to be submitted to the court and proper behaviour and conduct in and outside the court. The sessions for the four batches were conducted by Sh. Sanjeev Jain, ADJ, Delhi, Sh. Vinod Yadav, CMM, Delhi, Sh. Sanjeev Singh, Admn. Civil Judge Delhi and Sh. Devender Kumar Sharma, Admn. Civil Judge, Delhi.

Planning for the next year

The planning for the calendar for the year 2011 began in the month of August, 2010 with identification of fields covering new laws, amendments in law, problem areas identified during earlier programmes, critical aspects of skills development and social issues requiring attitudinal changes. A thorough consultation was held with the Hon'ble Judges of the Supreme Court of India, High Court of Delhi and all the officers of Delhi Higher Judicial Service and Delhi Judicial Service, through a questionnaire seeking their suggestion on inclusion of topics from the said fields. A consultative meet with District Judges, Academics, Lawyers and Members of the Bar Council was held on 18-10-2010. After finalization of the calendar, nomination for each Refresher Course was also finalized after seeking option from all officers of DHJS & DJS. The final calendar along with nominations for each course was sent to all the officers towards the end of year 2010 to enable them to suitably arrange their dockets well in advance to accommodate the dates of participation in the Refresher Courses.

All the programmes for the year 2011 will continue to have same focus areas, namely, Knowledge, Skill, Attitude and Judicial Ethics. However, programmes are proposed to be made even more learner centred and result oriented. The teaching methodology will be more participatory. Some of the programmes are proposed to be conducted as workshops with defined objectives and concrete outcomes. A short field trip and a movie focusing on depiction of Judges in films are included in all the Refresher Courses. A three days retreat for Stress Management, bonding, and Personality Development is slated for all the officers.

We hope that all participant Judges will find the new format of the courses in the year 2011 still more exciting and their effective participation will make judicial education much more meaningful and fruitful.

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DELHI JUDICIAL ACADEMY

KARKARDOOMA COURTS COMPLEX, DELHI

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