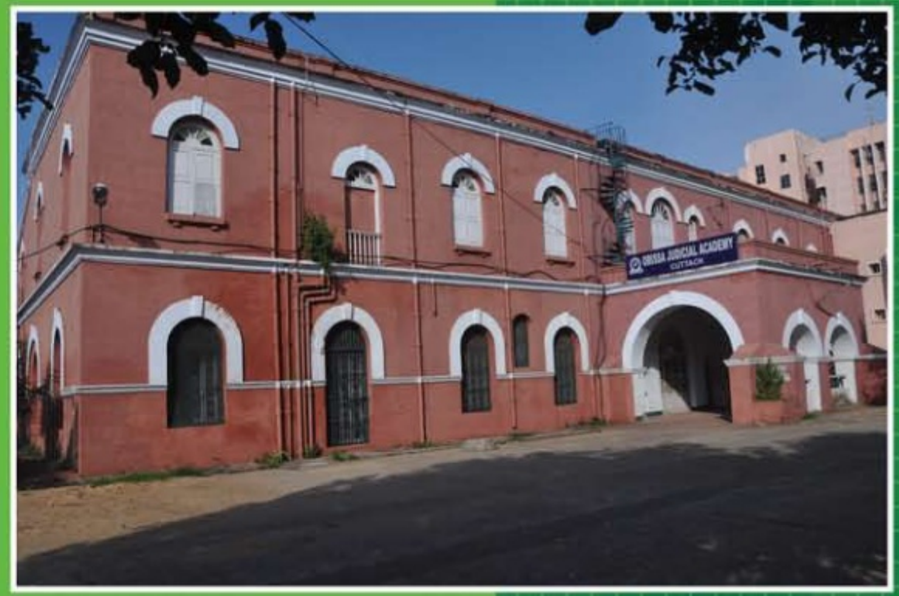
# VIDYA

## NEWS LETTER

A QUARTERLY PUBLICATION Issue No.-3rd (4th Quarter - 2011)


*Grass Root Level Learning Experience Programme*
*Orissa Judicial Academy*




*For Brighter Tomorrow*

**ORISSA JUDICIAL ACADEMY, CUTTACK**

Printed & Published by : **Orissa Judicial Academy**
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March 1, 2012.

## MESSAGE

I am happy to know that Issue No.3 of 'VIDYA', the mouth-piece of Orissa Judicial Academy is ready for release. It show-cases in brief the various programmes undertaken by the Academy during the last quarters to keep the Judicial Officers and staffs connected with the subordinate judiciary and High Court informed about the various aspects of dispensation of justice. Acquisition of law degree is not the only requirement to preside over law courts. Training on some other aspects is very much essential for the Presiding Officers of the Courts to render justice. I am sure, the Orissa Judicial Academy has been successful in imparting the required training to the newly recruited Judicial Officers to dispense justice more effectively.

I hope, the publication will be worth reading.

**( V.Gopala Gowda)**

*Justice Bimala Prasad Das*
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*February 29, 2012*

## M E S S A G E

*I am glad to know that the Orissa Judicial Academy is going to publish third issue of its newsletter Vidya shortly.*

*The Judicial Academy has indeed enhanced the quality of imparting the trainings by conducting seminars and conferences. The Judicial Officers undergoing training under the Induction Programme and Refresher Programme have been enriched with knowledge in substantial law and procedural law.*

*I hope the newsletter Vidya will be much useful to the Judicial Officers of the State to discharge their duties.*

*I wish the publication of the newsletter all success.*

.....
*Justice B. P. Das*

*Dr. D. P. Choudhury,*
*Director,*
*Orissa Judicial Academy,*
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*28th February, 2012*

*Dear Readers,*

*The publication of third issue of 'VIDYA' got delayed because of Seminars and symposiums conducted by the Orissa Judicial Academy in last few months. Recently the Academy organized a National Conference in which Judicial Officers from different States participated. The Seminar was inaugurated by Hon'ble Shri Justice A.K. Patnaik, Judge, Supreme Court of India. Hon'ble Shri Justice A.K. Patnaik, Hon'ble Chief Justice Shri V. Gopalagowda and the senior most Judge Hon'ble Shri Justice B.P. Das deliberated on the subject chosen for the Seminar and the response from the participating Judicial Officers was very encouraging. The Academy intends to have as many Seminars as possible to encourage interaction between the Judicial Officers of State of Orissa and other States. It proposes to hold a Zonal Conference with National Judicial Academy, Bhopal on 30th and 31st March, 2012 and it is expected that the Judicial Officers who may participate in the Conference from Eastern States will benefit from the same.*

*Number of Judicial Officers of the State have contributed articles to be published in the news letter but it has not been possible to publish all the articles. The Academy shall try its best to publish articles contributed by the Judicial Officers in future publications.*

*(Justice L. Mohapatra)*

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# Editorial Note ...

Judicial system in India, although inherited from a colonial past, has gone into being recognised as the bastion of the rights of the people. Good Judges are made rather than ordained by fate; second, however they make themselves through learning rather than being taught.

In spite of its many draw backs in terms of the speed and quality of delivery of justice and the shadow of corruption of it, the judiciary by and large has retained its relevance in the lives of people. The fact , however, now looms large that the justice delivery system has been trying to deliver appropriately to the mass of people, which in many suffers from marginalisation and disabilities which border on being life threatening.

There is need for training for any field of functionaries, even Judicial Officers, is well recognised now and training has been seriously and systematically taken up in the State Judicial Academies and the National Judicial Academy. About training, the Law Commission of India Chaired by Shri Justice D.A.Desai in their 117th. Report observed :-

"The nature and degree of knowledge, skills and ethics of the people on the one hand, and clarity in their appreciation of and commitment to, the objectives on the other, are critical to the internal efficiencies and external effectiveness of organization. If the human resources of an organization thus form a very important part of an organization, it is undeniable that it must remain up-to-date both with regard to changes in the hopes and aspirations of the people, demands from the justice system and contemporary need of the society, research in the field of law, new and revised methods of resolving disputes in the society".

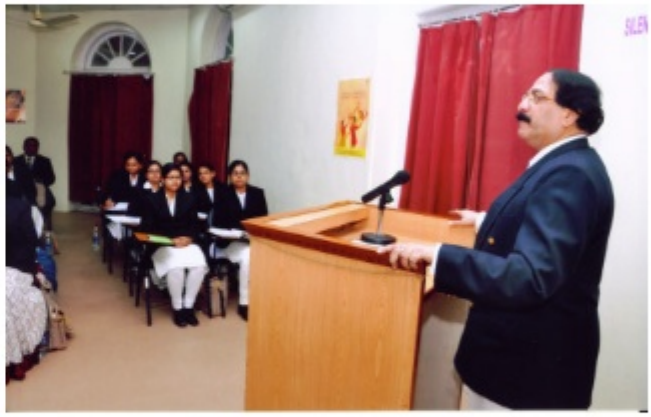
Thus, it is necessary to develop the skills, knowledge, attitude and quality of Judicial Officers while imparting training. From a purely colonial institution operating more or less as a wing of Law and order enforcement machinery, it was to become a sentinel on the qui vive. So, under judicial education, it is imperative to develop knowledge in Law qualitatively so as to cater the need of the hour.

**Director,**
**Orissa Judicial Academy, Cuttack**

Hon'ble Mr. Justice V. Gopala Gowda, Chief Justice, High Court of Orissa & Patron-in-Chief, Orissa Judicial Academy addressing the Judicial Officers under 2nd Induction Training Programme.

Hon'ble Mr. Justice B. P. Das, Judge, High Court of Orissa at Orissa Judicial Academy during Refresher Training Programme – 2011.

Hon'ble Mr. Justice L. Mohapatra, Judge, High Court of Orissa & Chairman, Orissa Judicial Academy, during Refresher Training Programme – 2011.



Hon'ble Mr. Justice B. K. Mishra, Judge, High Court of Orissa addressing the Judicial Officers under 2nd Induction Training Programme.

Hon'ble Mrs. Justice Manju Goel, Former Judge, Delhi High Court addressing the Judicial Officers under 2nd Induction Training Programme.

Dr. Arun Mohan, Senior Advocate, Supreme Court of India addressing the Judicial Officers under 2nd Induction Training Programme.

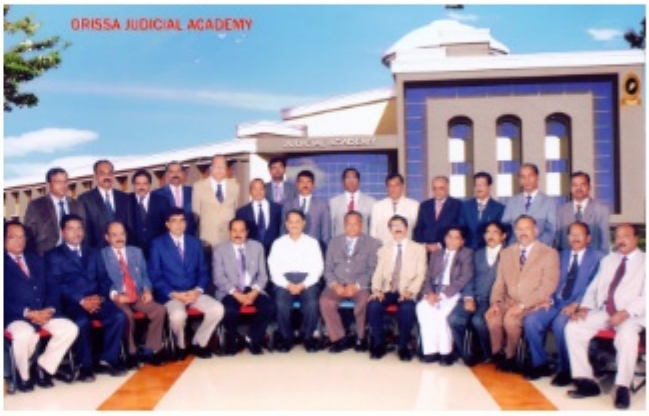
Dr. D. P. Choudhury, Director, Orissa Judicial Academy addressing the Judicial Officers under 2nd Induction Training Programme.

Judicial Officers under 2nd Induction Training Programme inside the Conference Hall.

Hon'ble Mr. Justice A. K. Paricha, Former Judge, High Court of Orissa addressing the in-service Judicial Officers under Refresher Training Programme – 2011.

Dr. Barada Kanta Mishra, Ex-member Secretary, State Pollution Control Board addressing the in-service Judicial Officers under Refresher Training Programme – 2011.

Dr. Dillip Kumar Behera, Tata Consultancy Service, Jamshedpur addressing the in-service Judicial Officers under Refresher Training Programme – 2011.




In-service Judicial Officers with Resource Persons & Director, Orissa Judicial Academy during Refresher Programme - 2011.

# DIAGNOSIS OF DELAYED JUSTICE

**B. C. Rout**
Judge, Family Court, Khurda

Executive, Legislature and Judiciary are three pillars of State. Subsequently, 'Media' has been considered as fourth estate of State. Montesquieu's theory of separation of powers is in vogue in India and independence of judiciary is enshrined under Articles 233 to 237 of the constitution. Administration of justice is managed by around thirteen thousand judicial officers in our country. The ratio of judges in India in comparison to population is very low in the world. Justice delivery system is overburdened with millions and millions of pending cases. Judiciary comes under non-plan budget and as such allocation of fund for judiciary is low. This stepmotherly attitude is highly deplorable. Allocation of paltry amount for this vital organ is as good as too slender a string over bottomless abyss. It is intended to make judiciary subservient which is contrary to the views of founding fathers of constitution. They have contemplated that all the organs of state, like body, should be allowed to grow symmetrically without a particular organ being paralysed. Therefore, gross negligence to judicial organ is tantamount to hatching out criminal conspiracy against the people of the country. Allotment of negligible and meagre fund towards judiciary strikes at the very root of the edifice of judicial administration. Who is to be blamed for this? Last ray of hope of general public is on judiciary. If this vital pillar of state collapses being diseased the superstructure will certainly collapse. The judiciary should not be blamed for heavy pendency. In rastructural facilities and appointment of more judges are positive answer to clear the backlog of cases. Above all the will power of the Government is highly essential at this critical juncture to revitalize the judicial system, make it vibrant, sound and effective to fulfil the long cherished aspirations of country men and dream of 'Rama Rajya' of the father of nation. Unless the elite mass, lawyers, intelligentia and government rise to the occasion to right the wrong at right time the days will not be far off when the system will come to stand-still position and paralyse.

'Justice delayed is justice denied'. Without pondering over the matter some people in a lackadaisical manner throw blame on judiciary for delay in disposal of cases. But it is not a fact. The Bar, Bench and litigant public know well where the shoe pinches. Taking the efficiency and working atmosphere, yard-stick has been prescribed for judicial officers. They are answered to their higher authority and Hon'ble Court if they fall short of out turn. They work like hermit and run like horse. According to apex court they are human beings but their duty is divine. They are toiling and moiling to reach out turn and participate in Lok Adalats and legal literacy camps each month braving all odds, trials and tribulations to deliver justice at the door step of litigants and make them aware of their rights.

Justice delayed is justice denied, justice hurried is justice buried'. Therefore, a judicial officer maintains a balance between the two like an acrobat. Nevertheless, delay in disposal of cases has posed a very crucial and gordian problem for judiciary. Discharging venom against judiciary can not solve the problems of delay is disposal of long pending cases. Several factors, such as, inadequate judicial officers according to population, courts, staffs, efficient prosecuting agency, training institutions,

amenities, basic requirements, etc. are bottle-necks for smooth running of this sacred institution. Even in uncongenial atmosphere some judicial officers are giving more out turn. If their working condition improves with supply of more amenities and facilities more work can be expected from them.

The Hon'ble Apex Court has observed in All India Judges' Association Case reported in A.I.R.1992 SC 165 & A.I.R.1993 SC 2493 and 2510 that judiciary is above administrative executive and judicial service is not service in the sense of 'employment' and members of judiciary exercise sovereign judicial power of the State and hold public office as the members of the council of ministers and members of the Legislature. Now judiciary is a neglected pillar. The observation cf Apex Court went unheard.

'Speedy Trial' is not fundamental right in India but it is fundamental right in U.S.A., Japan and other foreign countries. But the speed must be reasonable and ideal considering Indian road condition (judicial system) and load factor failing which this rash and negligent driving will lead to palm tree justice. Hon'ble Supreme Court has observed in the case of Raj Deo Sharma Vrs. State of Bihar, in the spectrum of Article 21 of Indian Constitution (1998 Criminal 667).

It is the obligation of judge to provide speedy justice to litigants. But this objective has been affected due to upsurge in litigation, upward demographic trend and want of congenial atmosphere and financial independence. Finance will play vital role to tone up and revamp the judicial system which is on the cross-road. Finance oils the wheels of progress and prosperity. In this respect judiciary is crippled.

Lack of pecuniary independence to judiciary contributes to delay in disposal of cases in time. It results in failure of justice ultimately. It will shake the confidence of common man for no fault of judicial officers. Now for example, let us take the case of 'witness batta' and analyse how it plays a dominant role in shaping the fate of case.

Government bears the expenses of witnesses who are generally examined for the prosecution. Witnesses paying from their own pocket come to tender evidence in courts in obedience to summons either through Nizarat or by post or thorough police agency. For attending courts (whether examined or not) they are entitled to get "batta! towards their to and fro expenses and diet as prescribed. But most of the time in a year they are not paid "batta" due to paucity of funds at the disposal of the court. If the witness is not examined for some reason or other he will be reluctant to attend court in obedience to the direction of the court. If court compels his attendance by coercive measures he will suffer from mental agony for no fault of his. There is also no guarantee for payment of his 'batta' on second occasion. Under such compelling circumstances he may not depose faithfully and honestly. He may turn hostile.

At times tribal witnesses cover considerable mountainous and forest tracks on foot to attend court due to want of communication facility but they are returned without "batta". Being aggrieved, at times, they pressurise the judicial officers to make payment. Batta cheque is a stale paper for them. They tear if away before the judge. They do not believe in future payment. It is cumbersome and harassing. Judiciary is heckled for want of finance. Judicial officers are constrained to work under psychological pressure. They are really on trial while trying cases. Delay in trial results in acquittal of the case. Due to inordinate delay the complainant and witnesses change their mind and devefop soft attitude towards accused. Due to long lapse of time in disposal of cases the accused, complainant and witness sail in one

boat drinking, dining and dancing together. But judge toil and moil burning his midnight oil and tightening the balance to rope in the die-hard accused but the accused is acquitted and the judge is condemned for no sin committed.

Delay in examination of witnesses in court breeds corruption. It causes delay in disposal of cases. When the accused fails to apply money and muscle power on witness, he resorts to application of his infallible weapon of delaying the matter. Ordinarily courts never return witnesses. They examine them on first date if not prevented by sufficient cause. Unless the witness toe to the line of accused they are returned from court premises without knowledge of court for serval occasions and time petitions are filed on those dates on behalf of defence. Even if an accused engages a panel of lawyers, a time petition is filed when important witnesses turn up to harass them so that they would not come in future. When accused engages more than one lawyers to defend him presumption is that he intends that they should defend him jointly and severally. Hence, witnesses come and attend the court and return without being examined for several occasions. Such delaying modus operandi should not be encouraged at all as It causes delay in disposal of cases. But for the latches and delaying demarche of accused the public exchequer suffers. Unless this unhealthy and unwholesome practice is done away with it will prolong litigation and negative speedy justice. It is high time to nib the hydra-headed monster in the bud.

The litigants seek undue adjournments to harass other side. If one party is affluent he prefers revision against each order of the Court to keep the other side in straight jacket and hands of the lower courts get tied in disposal of the case in time. Courts should not grant long and liberal adjournments in case of defence evidence, written statement, argument, etc. and fall prey to the vicious circle of delay evolved by the parties.

Several posts in sub-ordinate judiciary are lying vacant since long. Despite mounting pressure on existing judicial officers said posts are not being filled up. What to speak of creation of new posts? The judicial ship has been allowed to sail in limitless ocean without crew. In the mean time more than 1000 fast track courts operating across the country have disposed of 18,875 cases out of 34.290 cases transferred to them over nine months ending February, 2002. It has justified my humble view given in favour of increase of number of Courts and judicial officers in my article "Judicial Mediation: Measure to Settle disputes" (1999 C.LT. 51).

The lawyers are officers of the Court. They should be honest and sincere to their noble profession. Bar and Bench are two wheels of judicial cycle. They should manoeuvre and see that speedy justice is provided to litigant public. More than one lakh is spent from public exchequer to produce a law graduate. So a lawyer owes his moral obligation towards society. It can be compared with doctrine of pious obligation. It is high time for them to rise to the occasion and cooperate with courts to reduce the back log of cases. Without active participation, co-operation and co-ordination of legal practitioners the frail flotilla of social justice can not be set afloat.

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# RIGHT OF AIDS PATIENT TO MARRY

**Dr. D. P. Choudhury, Ph.D.**
Director, Orissa Judicial Academy

**INTRODUCTION :**

Right is an interest, recognised and protected by moral and legal rules. It is an interest, the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the right. In order, therefore, that an interest becomes the subject of a legal right itself to have not merely legal protection, but also legal recognition. The elements of legal rights are that the right is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act and forbear from acting in a manner so as to prevent the violation of right. It is a basic principle of jurisprudence that every right has a corelative duty and every duty has corelative right. But the rule is not absolute. It is subject to certain exceptions in the sense that a person may have a right, but there may not be corelative duty.

**RIGHT TO LIFE :**

Article-21 of the Constitution of India envisages the fundamental rights including right to life. Right to life includes the right to lead a healthy life so as to enjoy all the faculties of human body in the prime condition[1]. In 1994(6) S.C.C.632, R.Rajgopal-Vrs-Tamilnadu the Apex Court has pronounced that right to privacy is within the right of life and liberty guaranteed to the citizen of the country by Article-21. It is a right to be let alone. No doubt right to privacy includes the right to marriage, but that does not mean the right to life is the same as right to marriage.

**BASIC RIGHTS OF AIDS PATIENT:**

An AIDS patient is a human being and he has got every right to life as well as privacy under the Constitution of India. Right to life of a lady with whom the patient was to marry would positively include the right to be told that a person, with whom she was proposed to be married was a victim of deadly disease which is sexually communicable. Since right to life includes right to lead healthy life so as to enjoy all the faculties of the human body, the Doctor by their disclosure that "patient was H.I.V. positive" can not be said to have in any way, either violated the rule of confidentiality or right to privacy. Moreover, where there is a clash between two fundamental rights namely, patient has right to privacy as a part of right to life and his proposed wife's right to lead a healthy life which is her fundamental right under Article-21, the right which would advance the public morality or public interest would alone be enforced through process of the Court, for the reason that moral consideration can not be kept bay[2].

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[1] M. Vijaya Vrs the Chairman, Singareni Collieries & others AIR 2001 (AP) 502
[2] Mr 'X' vrs. Hospital 'Z' (1998) 8. Slfc-296, and Mr 'X' vrs. Horspital 'T (2003)|SCC 500

Section-269 and 270 of Indian Penal Code provide that if a person negligently or unlawfully does not act which he knew was likely to spread the infection of a disease, dangerous to life, to another person, then, the former would be guilty of an offence punishable with imprisonment, for the term indicated therein. Therefore, if a person is suffering from dread disease AIDs knowingly marrying a woman and thereby transmits the disease infection to that woman, he would be guilty of offence indicated in Section-269 and 270 of the Indian Penal Code. The statutory provision thus imposed a duty upon the patient not to marry as marriage would have effect of spreading dread disease which is dangerous to life of woman to whom he is going to marry. Moreover, marriage is the sacred union legally permissible of two healthy bodies of opposite sex. It has to be mental, psychological and physical union. When two souls thus unite, a new soul comes to existence. That is how the life goes on and on on this planet.

Apart from this, mental and physical health is of prime importance in a marriage, as one of the objects of the marriage is procreation of equally healthy children. That is how in every system of matrimonial law it has been provided that if a person is found to be suffering from any including veneral disease, in a communicable form, it will be open to the other partner in the marriage to seek divorce. Instances are, Section-13(1) of Hindu Marriage Act, 1955, Section-2 of Desolution of Muslim Marriage Act, Section-32 of Parshi Marriage and Divorce Act, 1969 and Section-27 of the Special Marriage Act. Thus, there is duty vested to individual AIDS patient not to marry. Moreover, General Medical Counsel of Great Britain in its guidance on H.I.V. infection and AIDS has provided that Doctor may consider it a duty to ensure that any sexual partner is informed regardless of the patient's own wishes. Even if a Doctor has taken hipprocratic oath not to disclose the privacy of a patient, but such oath is exception to duty entrusted to save right to life of the soul of spouse inspite of desire of AIDS patient to marry.

**CONCLUSION:**

Privacy is one of the basic human right, but it is held by the Apex Court that right to marriage in case of AIDS patient is not absolute[1] and is subject to such action as may be lawfully taken for the prevention of the crime or disorder of protection of health or moral or protection of rights and freedom of others. It must be held that right of marriage being right of privacy of AIDS patient being against health hazardous to opposite sex, should be treated as suspended right.

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[1] Sharda Vrs. Dharampal (2003) 25 OCR-153

# CELEBRATING 'LAW DAY'

**Sashikanta Mishra,** OSJS,
Special Judge (Vigilance), Jeypore, Koraput

For the first time, 26th November was celebrated as ' Law Day' across the nation by judges, lawyers and by everyone associated with the judicial system. It was an act of remembrance of the solemn occasion when the Indian people adopted the Constitution, sixty-two years ago. In this context, and particularly, for those associated with the legal or judicial system, it would be useful to remind ourselves of the lofty ideals ingrained in the Constitution so as to have a comprehensive and effective understanding of its different provisions. For this, first of all, we need to have a clear understanding of certain basic concepts like ' law' and ' justice' .

'Law' and 'Justice' - It is not un-often that these two words are used simultaneously and at times, even interchangeably. The common tendency is to view both the words as being intricately connected to each other. In fact, one cannot concieve of law divorced from justice and vice-versa. However, strictly speaking, there is a distinction between the two concepts and it is this distinction that this article seeks to emphasize in the larger context of the topic of discussion.

To the layman, the word 'law' conjures up to the mind, a system of rules, regulations, prohibitions, controls, sanctions and the like. As per Black' s law dictionary, the word 'law' means, "The regime that orders human activities and relations through systematic application of the force of politically organized society or through social pressure, backed by force, in such a society.

It is to be noted that the key words appearing in this definition and relevant to the present discussion, are ' human activities and relations", 'systematic application of force, ' and 'politically organized society.

In a general sense, therefore, 'law' may be taken to refer to those set of rules that are required to be applied for bringing about orderliness and general welfare of human beings living in a civilized society.

Then, the question is- is law an indispensable entity, or can civilized society do away with the myriad of rules, regulations, controls etc. and still maintain its sanctity and orderliness?

The best answer to this can perhaps be given through a counter-question: Which aspect of the universe does law not govern?

A simple observation would reveal that law is the underlying force of every single aspect of the created universe. According to the scientists, the earth revolves round the Sun in exactly 365 days, 5 hours, 48 minutes and 46 seconds and that if this equation be disturbed by even as much as a second, the whole system would collapse. In his lecture titled, 'The Origin and Fate of Universe', the celebrated scientist, Stephen Hawking declares thus: "If the rate of expansion one second after the big bang had been smaller by even one part in a hundred thousand million million, the universe would have recollapsed

before it even reached its present size. On the other hand, if the expansion rate at one second would have been larger by the same amount, the universe would have expanded so much that it would be effectively empty now. " Similar is the case with every single celestial object traversing the vast regions of space. It is also claimed that everyday events on earth are possible because of cosmic conditions existing in galaxies far away from us. Thus, we find that the entire universe itself is governed by inflexible physical laws so as to form an organic whole. In other words, the universe is, as it is, only because of the peculiar laws governing it.

Coming to life on earth, we find that a quadruped like cow, for instance, goes on filling its belly right from dawn to dusk, yet the very same animal, when inflicted by a disease, abstains from even a blade of grass. It instinctively follows a law of its own which prevents aggravation and even brings about a cure of its disease. Even a bacteria lives and dies according to its own biological law. The human body, too, functions according to its own laws at every single moment. These are biological laws common to every living being.

Humans have however, gone a step ahead in that their existence, unlike other living beings, is not only on the biological level but functions also on other levels such as, mental, intellectual, aesthetic, spiritual, emotional, social, cultural etc. Thus, we find that on an abstract level, there are elaborate codes of ethics and moral laws which mankind has prescribed for itself from time to time keeping in tune with the progress of civilization. Above all, there are the divine laws that are said to govern the destiny of mankind.

Thus, it can be easily inferred that law is indispensable, only its source and area of application varies. The question that now arises is, why should it be so? In other words, what do all these laws seek to achieve eventually?

It must be borne in mind that in the present article, we are concerned with the laws of the civil society which has, over time, organized itself into a coherent body that is committed to the highest ideals of mankind. The law of this society, as opposed to the law of jungle, is in creating a foundation whereupon the cherished and time-tested human values can be firmly established. In other words, it aims at creating a system which guarantees the maximum well-being for the maximum number of human beings. Here, the individual gives way to the community' s interest. This state of affairs, if and when exists, is said to pave the way for establishment of the greater goal, called-'Justice'. To the layman, the word ' justice' connotes a sense of right-ness, well-being, truth, etc. That which is right, not according to the personal understanding of an individual, but universally accepted as such at all times, is 'justice'. It is for the attainment of this state that all the laws, be they, penal, physical, biological, moral, social, spiritual etc., have been framed.

Thus, law is not an end in itself, but is a means to the greater end, called justice! And this is the most important distinction between the two.

But then, the concept of justice may vary from person to person. As the saying goes, 'what is food for one, may be downright poison for another'. What is right according to one, may be absolutely wrong

for another. When a man slaps me, I may feel perfectly justified to pay him back in the same coin and even call it justice. I may feel perfectly justified in walking on the road as I please but then, the motorist from the opposite direction may also feel the same way with the result that I may be run over by his vehicle. So, if this be the case with everyone else, then there is bound to be serious conflict of interests between individuals, ultimately resulting in chaos. An 'eye for eye' or 'life for life' may be justified in the jungle but certainly not in a society that takes pride in calling itself civilized. The autocratic and despotic regimes of the world are glaring examples of such conflict of interests and jungle justice where human aspirations and welfare are strangulated into silence, forever.

A politically conscious society that is committed to democratic values can, however, ill-afford to tolerate such an individualistic conception of justice. It must, sooner or later, find for itself a mechanism for the establishment of an order based on the principles of general well-being. In India, this principle has been acknowledged since time immemorial. Right from the hallowed concept of 'Ram Rajya' enshrined in the Ramayana, to the code of social conduct as elaborated in the Manu Smriti, or rules of sound governance as reflected in Chanakya' s Arthashashtra, the need for creating a social order based on the rule of law has been given the utmost importance. The ancient as well as medieval rulers exercised sovereignty over their subjects on the basis of rule of law. And this has continued throughout history, even till date, though in a different form. Of course, the rulers then had a greater degree of discretion in dispensing justice but the basic principle has always remained the same, that is, of serving the interest of the majority over that of the individual.

In the modern age, monarchies have given way to democratic system of governance, as it is considered to be the best of all systems that acknowledges the salutary principle of 'maximum welfare to the maximum number of people'. India, as a modern republic, stands committed to democratic values that are elaborately engrafted in its constitution. The Indian Constitution is the very foundation on which our entire socio-political fabric stands.

The word, ' Constitution' according to Black's law dictionary, means, "The fundamental and organic law of a nation or state, establishing the conception, character and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise" .

Thus, we have come a full circle in our discussion, that is, if law is indispensably required for the attainment of justice then, the Constitution is the machinery that enables this to actually happen! In the constitutional framework, there is application of force, as in the jungle, but it is entirely systematic and consistent with the larger human values. Thus, when a person commits a crime, he is said to do so not only against his victim but against the society at large. He is to be punished, if at all, only in accordance with the procedure established by law and not as per the personal whims or fancies of his victim as happens in authoritarian regimes. And the offender continues to be treated as innocent till he is proved to be guilty with all liberty to defend himself. Under this regime, even a rank trespasser/encroacher can be evicted from the trespassed/encroached property in question only in accordance with law and not by brute force.

It is, therefore, evident that our laws have been framed on the salutary principle that recognizes the distinction between man and the beast. All the higher ideals preached by the great leaders of the world are deeply embedded in our laws, for, it is in the administration of these laws alone that true justice can be attained. Our Constitution, being the source, is the brightest example wherein these time-tested lofty ideals have been given their fullest expression.

The preamble of the Constitution reflects the intention and mind of the framers. Thus, when it reads, ' We the people of India, having solemnly resolved.....to secure to its citizens: Justice-social, economic and political.....' , it reflects the very soul or the quintessence of the philosophy of the Constitution. The elaborate provisions relating to framing of laws on different subjects has the above end in view. It is through the proper working of the Constitution that justice can really and effectively be attained for the citizens through the proper administration of the laws laid down by it.

The lofty ideals of equality as exemplified through Article 14 and the recognition of the ideal of a life with dignity, exemplified through Article 21 are, without doubt, the two shining and guiding lights of the Constitution. It is in the backdrop of these two Articles that every single law of the land is required to be administered. As the mother of all laws, the Constitution serves as a beacon to the law-makers to enact laws in accordance with its spirit. Any law that is inconsistent with the constitutional provisions, is liable to be struck down. It would, therefore, not be incorrect to state that, the constitution serves as the bench mark for all other enacted laws of our country.

The day we adopted the Constitution, that is, 26th November 1949, we, in fact, bound ourselves by a solemn oath to remain committed at all times to the ideals, values and principles enshrined therein. Therefore, the best way to celebrate ' Law Day' would be by keeping in mind its true significance and by consciously applying the values signified by it in our day to day dealings with the various enacted laws so as to create the climate for effective dispensation of justice.

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"Unfortunately, the centuries old Indian caste system still takes its toll from time to time. This case unfolds the worst kind of atrocities committed by the so-called upper caste (Kshatriya or Thakur) against the so-called lower caste, Harijan caste in a civilised country. It is absolutely imperative to abolish the caste system as expeditiously as possible for the smooth functioning of Rule of Law and Democracy in our country."

*— Dalveer Bhandari, J. in State ofU.P. v. Ram Sajivan, (2010) 1 SCC 529, para 1*

# SUICIDE BY YOUTHS : A BURNING TOPIC OF THE DAY

**Shri Sanjaya Kumar Sahoo, M.Sc, M.A., LL.M.,**
Civil Judge (Senior Division), Bhawanipatna, Dist.: Kalahandi

Suicide (Latin Suicidium, from sui caedere, "to kill one self") is the act of intentionally causing one's own death. The word "suicide" in plain English language would mean a person voluntarily putting an end to his life. Suicide is the second leading cause of death among children, teenagers and young adults after motor vehicle accidents. According to the World Health Organization (WHO) India has one of the highest suicide rates Worldwide. The Country's Health Ministry estimates that up to 120,000 people kill themselves every year and almost 40 percent of them are under the age of 30. Suicide in India is slightly above World rate. Of the half million people reported to die of suicide Worldwide every year, 20 percent are Indians. In the last two decades the suicide rate has increased from 7.9 to 10.3 per 100,000 with very high rates in some southern regions. Suicide attempts are ten times the suicide completes. 2008 World Health Organization report ranked India 41st for it's suicide rate but because of it's huge population it accounted for 20% of Global suicides. Poisoning, hanging and self-immolation are the common methods used to commit suicide. (Source :-http://www.google.co.in/)

**REASONS FOR SUICIDE :**

Adolescence is filled with many changes and is a vulnerable time for youth. It is the intermediary stage of growth between childhood and adulthood. There are great changes in physical characteristics, in the way they think, in expectations placed on them, increasing responsibilities and move towards greater independence. On the other hand it is one of the most important developmental tasks for a youth to accomplish. The enthusiasm, rashness etc. associated with people in this period of life. The way youths think is unique and can contribute to suicide. Adolescents are prone to exaggerate the importance or significance of their own thoughts and feelings. This often leads them to believe that they are completely unique, that there is no one like them or no one who has experienced the intensity of their feelings. Some families' communication rules do not permit the suicidal person to state his or her needs openly to others. So adolescents believe that there is no one who can understand them. This often creates a sense of intense aloneness and isolation as they face problems. Adolescents often have few life experiences and poor problem-solving skills. Their thinking is oriented to the present rather than the future. They have needs for immediate solutions. Many adolescents mistakenly believe that suicide is an acceptable solution to problems. Suicide is often committed out of despair or attributed to some underlying mental disorder such as depression, bipolar disorder, schizophrenia, alcoholism or drug abuse. Pressure or misfortunes such as financial difficulties or troubles with interpersonal relationships often play a significant role. Depression is the leading cause of suicide, suicide attempts and suicidal thinking in youth. Depression may be more concealed in the adolescent and viewed as a phase related to the frequent mood swings often experienced by adolescents. When youth experience little or no control in the important events of their lives, they may see themselves negatively. This negative thinking

makes it difficult for youth to face the stresses in their lives and combined with poor problem - solving skills can lead to feelings of depression and hopelessness. Though all depressed youths do not try to commit suicide, but the majority who do attempt to commit suicide experience depression. Alcohol and other drug use can increase the risk of suicide especially if used to escape from pain.

**SOME COMMON WARNING SIGNS OF SUICIDE :**

- sudden change in behavior (for better or worse)
- withdrawal from friends and activities.
- lack of interest.
- increased use of alcohol and other drugs.
- Recent loss of a friend, family members or parent especially if they died by suicide.
- Conflicting feelings or a sense of shame about being gay or straight.
- Mood swings, emotional out brusts, high level of irritability or aggression.
- Feeling of helplessness.
- Preoccupation with death, giving away valued possessions.
- Talk of suicide.
- Making a plan or increased risk talking.
- Writing or drawing about suicide.

**LEGAL AND PHYLOSOPHICAL ASPECTS :**

**Penal provisions under the Indian Penal Code, 1860**

Attempt to commit suicide is an offence under the Indian Penal Code, 1860 and the relevant provision for punishment is Sec. 309 which says that, "Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or fine or with both."

Similarly abetment of suicide of child or insane person is an offence under IPC and the relevant provision for punishment is Sec. 305 which says that, "If any person under 18 years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commit suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life or imprisonment for a term not exceeding 10 (ten) years and shall be liable to fine."

In the similar manner abetment of suicide is an offence under IPC and the relevant provision for punishment is Sec. 306 which says that, "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 (ten) years, and also be liable to fine."

**CONSTITUTIONAL VALIDITY :**

In the case of Maruti Shripati Dubai vs. State of Maharashtra (1987 Cri. LJ 743) the High Court of Bombay held that,Sec. 309 of IPC (attempt to commit suicide) is unconstitutional whereas in Chenna Jagadeeswar vs. State ofAndhra Pradesh (1988 Crl. LJ 549) the High Curt of Andhra Predesh declared the said provision intra vires and Constitutional. In P. Rathinam/ Nagbhusan Patnaik vs. Union of India and another (AIR 1994 SC 1844) a Division Bench of two judges of the Hon'ble Supreme Court considered the validity of the Section. It was contended that the section was violative of Art. 21 of the Constitution inasmuch as right to live includes right to die or right not to live, forced life and the section interferes with that right. It was also argued that the provision was arbitrary, monstrous and barbaric and offends equality clause enshrined under Art. 14 of the Constitution. The Division Bench declared Sec. 309 ultra vires to Art. 21 of the Constitution by holding that the "right to live" includes "right to die". But later on overruling P. Rathinam and Maruti Shripati cases and approving Chenna Jagadeeswar case a Division Bench of three judges of the Hon'ble Supreme Court vide judgment dated 21.3.1996 in the case of Smt. Gian Kaur -vs- State of Punjab ( AIR, 1996 SC 1257) held that, "Sec. 309 of IPC neither offended Art. 21 nor Art. 14 of the Constitution".

**RIGHT TO LIVE :**

Every civilized legal system recognizes right to life. Right to life is also considered to be a duty to live. Ordinarily, therefore, an individual has no right to end his life. He has to perform his duties towards himself and towards the society at large.

**RIGHT TO DIE :**

As a normal rule, every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it. Death is certain. It is a fact of life. Suicide is not a feature of normal life. It is an abnormal situation. In Smt. Gian Kaur's case (supra) the Hon'ble Supreme Court held that "Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Art. 21 to include within it the "Right to die" as a part of Fundamental Right guaranteed therein."

**CONCLUSION :**

**LIFE IS THE GIFT OF GOD:**

Life of a human being is a precious gift given by God. Death is permanent and complete cessation of life. A man is a social animal. As a member of society he has duties towards society, community, neighbors, family and friends. His life is useful not only to himself but to others. Thus, others have also claim over the life of an individual. At the same time however it cannot be overlooked that this life is not intended only for others. Essentially, one's life is for the self and then for others.

**PREVENTIVE MEASURES TO AVOID SUICIDE:**

Most experts believe that many suicides can be prevented. Parents and those interested in youth can act as the first line of defence in stopping this fatal act. The majority of youth who commit, attempt

or think about suicide give signs of their intentions. However, they may give different signs to different people making it difficult to put all the signs together. That is why it is so important to pay attention to any sign that indicate a youth may be having thoughts of suicide. Often it is difficult to determine whether a behavior is typical of adolescence or of serious concern. If one suspects that a youth in his/her family or a friend may be suicidal or experiencing depression, you may feel scared, nervous or anxious which are normal feelings. Following are some general guidelines about "what to do" and "what not to do" when one find concerned about a youth being depressed or suicidal.

**WHAT TO DO :**

- take all threats of a youth for suicide seriously;
- notice signs of depression and withdrawal of a youth seriously and sincerely;
- express your concerns to the youth by being an active listener and showing your support to him/her;
- be direct, talk openly and freely so also ask questions about the youth's intention;
- stay in the close touch with the youth;
- take help from a professional to help the youth.

**WHAT NOT TO DO :**

- discuss about suicidal behavior of a youth.
- ignore verbal and behavioral warning signs;
- be misled;
- assume that the youth will be alright if left alone;
- act shocked at what the youth may say to you;
- leave the means of suicide available to a youth.
- assume because others become involved that the youth no longer needs your help.

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# THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION

**Pradip Kumar Pradhan**
Judicial Magistrate, Second Class, Cuttack

**"Let knowledge , like the sun shine for all"**

Since vedic times, the importance has been given to 'education' life has no value at all without education. We cannot think about 'wisdom' , dream about 'knowledge' without having proper education. Education is a basic human-right . For the success of democratic system of government, education is one of the basic elements. Education gives a person human dignity who develops himself as well as contributes to the development of his nation.

Once a European scholar rightly remarked about our past 'wisdom'. He stated as "how much we surpass the Indians in courage and wickedness and how inferior to them we are in wisdom". Past 'wisdom' achieved by our ancestors is now history. We have lost the past glory. To regain our past 'wisdom' , our children should be properly educated. They should get minimum basic elementary education because they are the future of the nation.

The framer of our constitution realizing the importance of education have imposed a duty on the state under Article 45 as one of the directive policy of state to provide free and compulsory education to all children until they complete the age of fourteen years.

The object behind it was to abolish illiteracy from our nation. To strengthen the mission the Hon'ble supreme Court in Unnikrishnan case declared that, "the right to education for the children of the age of 6 to 14 is a fundamental right and this right to education flows directly from right to life."

Consequently this free and compulsory elementary education was made a fundamental right under Article 21 of the constitution in December, 2002, by the 86th Amendment. In translating this into action, the Right of children to free and compulsory Education Bill was drafted in 2005. This was revisedAa became an Act in August 2009 and came into force from April 1,2010. This was the historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21 -A of the Indian constitution . Every child in the age group of 6 to 14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighborhood.

The prime-minister Dr. Manmohan Singh has emphasized that it is important for the country that if we nurture our children and young people with the right education, India's future as strong and prosperous country is secure. Again he said, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

**The Act in a Nutshell**

Chapter I of this Act contains short title, extent and commencement and definitions.

In Chapter II, under section 3 -Right of child to free and compulsory education has been discussed. Clause (1) of sec. 3 states as - Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Section 4 deals with special provisions for children not admitted to , or who have not completed, elementary education it speaks as follows ?. Where a child above six years of age has not been admitted in any school <t$ though admitted, could not complete his or her elementary education, then , he or she shall be admitted in a class appropriate to his or her age.

Provided that where a child is directly admitted in a class appropriate to his or her age , then, he or she shall, in order to be act par with others , have alright to receive special training , in such manner, and within such time limits , as may be prescribed.

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after 14 years.

Chapter III of this act deals with the duties of appropriate governments , local authorities and parents.

Chapter IV highlights the responsibilities of schools and teachers. Here under section 21 the important aspect of school management committee has also been discussed.

Chapter V speaks about the curriculum and completion of Elementary education.

Chapter VI the most important chapter deals with the protection of right of children where U/s 31 - monitoring of child's right to education, U/s 32- Redressal of grievances, U/s 33 constitution of National Advisory Council, U/s 34 constitution of state Advisory Council have been discussed.

The last chapter deals with the miscellaneous matters where U/s 38 the power of appropriate government to make rule has been discussed. Then schedule highlights the norms and standards for a school.

**Key features of the RTE Act**

1. Every child from 6 to 14 years of age has a right to free and compulsory education in a neighbourhood school till completion of elementary education.
2. Private schools must take in a quarter of their class strength from weaker sections and disadvantaged groups , sponsored by the government.
3. All schools except private unaided schools are to be managed by schools management committee with 75 percent parents and guardians as members.
4. All schools except government schools are required to be recognized by meeting specified norms and standards within 3 years to avoid closure.

**A critical Analysis of RTE Act**

After independence , Article 45 under the newly framed constitution stated that the state shall endeavour to provide, within a period of ten years from the commencement of this constitution , for free and compulsory education for all children until they complete the age of fourteen years.

Now we are living in 21st century and still universal elementary education remains a distant dream. The Act has already been passed but its implementation will speak about the result. The Act itself not free from so may drawbacks .

First, the act does not rule out educational institutions set-up for profit as under section 2(n) (iv) - 'School' means any recognized school imparting elementary education and includes an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority.

P. N. Bakshi, a member of the Law Commission , in his book on the constitution of India says : "Education per se has so far not be« regarded as a trade or business where profit is a motive."

The model Rules and Regulations (R & R) for the RTE , Act say in section 11.1. b that a school run

for profit by any individual , group or association of individuals or any other persons, shall not receive recognition from the government.

However this section will not be binding on the states as it is not a part of the Act. If the government of India were serious about the issue, it should have made this a part of the RTE Act.

Secondly , in all developed countries, a vast majority of children including those of the rich and powerful go to government running schools for 12 years of totally free education. The RTE Act is unconcerned about the four most important years of school education that is from Class IX to Class XII.

This act also fails on many other courts

1. Experience tells us that no government school is likely to function well unless children of the affluent families attend such schools. It is also a fact that private de facto commercial schools provide better training than a government school.
2. Why should un-aided private schools have a system of management with no participation from parents unlike other schools that require the formation of a school management committee in which parents will constitute three fourth of its membership ?
3. 25 percent poor children in private un-aided schools is not sufficient.
4. No method is prescribed for selecting the 25 percent poor students for admission into unaided private schools. Selection by lottery would be ridiculous. In the absence of a via-ble provision, the private unaided (de facto commercial) schools can choose the 25 percent poor children in a way that the choice would benefit the school.
5. There is nothing in the act or its R & R that will prevent unaided private schools from charging students for activities that are not mentioned in the Act or its R & R examples would be laboratory fee, computer fee, building fee, sports fee, fee for stationary, fee for school uniform, fee for extra curricular activities.

**Conclusion**

It is estimated 142 million Indian Children are denied access to primary and secondary education due to inadequate schools or social and family conditions. If all of those 142 million children currently out of school enroll for admission, India simply does not have the school buildings the classrooms, the trained teachers. In spite of these above difficulties the mission is well set to achieve its most cherished goal.

Education creates the Voice' through which rights can be claimed and protected and without education people lack the capacity to achieve valuable functioning as part of the living. For education to be a meaningful right it must be available, accessible, acceptable and adaptable.

To conclude it , it may be said that we the citizens of this great country should joined hands for its efficacious implementation.

**Reference :**


1. (1993) 1 SCC 645
2. (1992) 3 SCC 666
3. The right of children to Free and compulsory Education Act, 2009.
4. Wikipedia
5. The Hindu ( Visak Edition)
6. The Times of India (BBSR Edition)
7. Constitution of India, D.D Basu


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# IGNORED VICTIMS

**D. P. Rath,** LL.B.
Advocate, Talcher

S.545 (1), Cr.P.C, 1898 authorised the Criminal Courts to award compensation to victims of an offence out of the fine amount imposed against the offender on being convicted. The extent of fine to be imposed being limited in law, award of compensation could not exceed the said figure even though the Court was satisfied that the victim deserved higher compensation.

To overcome this situation and to provide reasonable compensation to the victim, provision has been made in the succeeding Act i.e. Cr.P.C, 1973. In the corresponding Sec. 357, Sub-Section (3) has been added authorising the Criminal Court to award compensation of any reasonable amount in favour of the victim payable by the convicted offender where fine does not form part of the sentence. This progressive change in the law was introduced basing on the recommendation made in the 41st report of the Law Commission of India. The Commission further suggested that such compensation should be against any loss or injury, whether physical or pecuniary, and that the Court should have due regard to the nature of loss or injury, the manner in which it was sustained, the capacity of the accused to pay and other relevant factors while awarding the compensation.

Though a Court of law is left with its discretion to award or not to award such compensation, the discretion has to be exercised judicially. The Orissa High Court has appropriately defined in Vol. 37 C.L.T. 629 that a judicial exercise of discretion means that all considerations bearing upon the question must be weighed and the resultant conclusion reached. Non-exercise of discretion at all cannot be justified as a mode of exercise of discretion in the negative. This is against the language of Justice V.R. Krishna Iyer, speaking for the Supreme Court ( A.I.R. 1977 S.C. 202) that an Order may be brief, but it cannot be blank. A Court of law must honour a progressive legislation, intended not only to compensate a victim of crime, but also to prevent him/her from unnecessarily going to Civil Court for the same redress. Besides, how may victims can afford to run to Civil Courts for years for such redress? Therefore a Criminal Court must probe into this aspect also and give its appropriate finding.

But it is regrettable that in practice it is mostly forgotten. In vast number of cases, while convicting the accused, Courts never bother for this and thereby leave the victims ignored. The Supreme Court, as back as 1988, lamented upon such lapses being committed by the Courts and categorised it as their ignorance of the object of such a legislation. In A.I.R. 1988 S.C. 2127, dealing with Sec. 357 Cr. P.C., it has been said -

> "We are concerned with only sub section (3). It is an important provision, but Courts have seldom invoked it. Perhaps due to ignorance of the object of it."

The Supreme Court, in the very same judgement, has further said -

> "This power was intended to do something to reassure the victim that he or she is not forgotten in the Criminal Justice system. XX. It is indeed a step forward to our Criminal Justice system."

Advising the neglecting Courts the Supreme Court has further said therein -

> "We therefore recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. The payment of compensation must, however, be reasonable."

A counter argument may be advanced that where prosecution itself fails to prove the extent of injury or loss sustained by the victim, Court of Law cannot step into its shoes to suo-moto find it out. This may be correct in limited cases, but not in every case. For example, in case of conviction of accused persons in a gang rape case, is it possible to prove, by any standard of measurement, the extent of compensation the victim girl deserves to get ? That is why it has been said by Mr. Phiroze Anklesaria, a Solicitor of Supreme Court of England, (A.I.R. 1976 Journal 119) -

> "A good judge applies the law, a great judge moulds it, he moulds it in the shape of social, economic and political conditions that prevail. By doing so, he breaths into the law a spirit which throbs with life blood."

There are cases where the loss of the victim is apparent on the face of the record. No proof is necessary for the same. In cases u/s. 138, Negotiable Instrument Act the loss sustained by the victim-complainant is the face value of the bounced cheque and the accruable interest thereupon. In how many cases of this nature Courts, while convicting the accused, do award compensation to the victim? Dealing with a case of this nature the Supreme Court (A.I.R. 1999 S.C. 3762) has observed -

> "XX the magistrate in such cases can alleviate the grievance of the complainant by taking resort to Section 357(3), Cr.P.C. It is well to remember that this Court has emphasized the need of making liberal use of that provision. XX. Thus even if the trial was before a Court of magistrate of first class in respect of a cheque which covers an amount exceeding Rs.5000/- the Court has power to award compensation to be paid to the complainant."

Similar view was repeated in A.I.R. 2001 S.C. 567 and 2001 Cr. L.J. 2008 (S.C.) while dealing with cases u/s. 138, N.I. Act. Later the Apex Court reiterated this view in stronger words in its decision reported in A.I.R. 2002 S.C. 681 and condemned the Order of the trial Court who, while sentencing the accused convicted u/s. 138 N.I. Act, imposed a fine of Rs.5000/- and awarded compensation of Rs.3000/-to be paid out of this fine amount to the complainant. The Court observed -

> "XX in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrate that the sentence for the

> offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. XX. The very object of enactment of provision like 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case. Learned Counsel for the respondent contended that the complainant has subsequently filed a Civil suit and attached all properties of the respondent. That is not a ground for lessening the gravity of the offence or to impose a minor sentence chosen by the trial Court."

Basing upon these decisions of the Apex Court, in a similar situation, the Orissa High Court, in exercise of its revisional power, set aside the decision of the trial Court imposing a fine of Rs.50007- and awarding to the complainant compensation of Rs.3000/- out of the fine amount and directed the trial Court to reconsider the question of compensation to be granted to the victim-complainant. [2004 (1) O.L.R. 554 = 2004 (1) C.J.D. (HC) 322].

Even release of accused under the Probation of Offenders Act after his conviction does not stand on the way of awarding compensation to the victim. In the language of the Orissa High Court (Vol.77 C.L.T. 754) direction for compensation on such account is not foreign to the concept of Probation of Offenders Act.

It may be debated as to why exercise of jurisdiction u/s. 357(3) Cr.P.C. is made dependant upon imposing 'no fine' while sentencing the accused. It seems to be a sound debate. The Law Commission had also recommended in favour of awarding compensation "irrespective whether the offence is punishable with fine and fine is actually imposed". But the language of the statute - "When a Court imposes a sentence of which fine does not form part"- restricts exercise of the said jurisdiction. The Supreme Court also confirmed this restricted view (AIR 2002 S.C. 2710) saying -

> "XX where the Court does not award a fine along with a substantial sentence, Section 357(3) comes into play and it is open to the Court to award compensation to the victim or his family".

But award of compensation in every kind of cases must be preceded by a hearing on this question giving both sides an opportunity of placing their respective stand. This is in consonance with the principle of natural justice. A departure in this regard, committed by the Madhya Pradesh High Court, was reversed by the Supreme Court (AIR 2004 S.C. 1280) and the matter was remitted back to the High Court to reconsider the question of compensation after giving opportunity to the parties.

That being the position of law, I call upon my advocate friends that, while appearing to protect the interest of any victim in any criminal case, they should endeavour to place before the Court all available materials in proof of the loss sustained by the victim or his family, as the case may be, and urge for relief u/s. 357(3) Cr. P.C. in the event of conviction.

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# SYMPOSIUM ON LAWS AND ISSUES RELATED TO WOMEN AND CHILDREN FOR JUDICIAL OFFICERS.

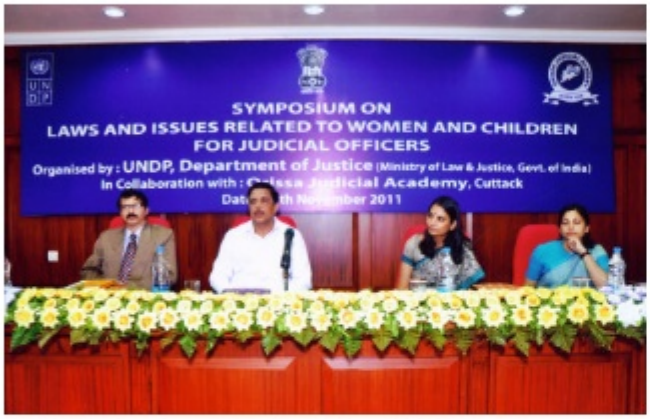
Organised by:
**UNDP, Department of Justice (Ministry of Law & Justice, Govt, of India)**
in Collaboration with **Orissa Judicial Academy, Cuttack.**

**Dated; 13th November, 2011**

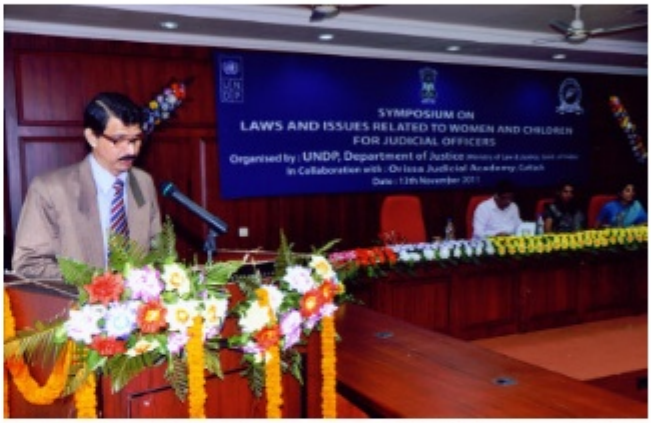
The sole aim of the programme was to prepare a training module for the Judges on laws and issues related to marginalised communities which will be useful as a training aid for the Judicial Academy for both Induction and Refresher Course. On the one day Symposium with the 30 - Judicial Officers from the State held on 13th November, 2011 in the new conference hall of the Orissa High Court, Cuttack to discuss the pre-text and prepare draft module after taking inputs of Judicial Officers. Hon'ble the Chairman of Orissa Judicial Academy had inaugurated the Symposium.

Hon'ble Mr. Justice L. Mohapatra, Judge, High Court of Orissa & Chairman Orissa Judicial Academy illuminating light in the inaugural function of Symposium.


Hon'ble Mr. Justice L. Mohapatra, Judge, High Court of Orissa & Chairman Orissa Judicial Academy addressing the delegates in the Symposium.




Dr. D. P. Choudhury, Director, Orissa Judicial Academy, Cuttack, Hon'ble Mr. Justice L. Mohapatra, Judge, High Court of Orissa & Chairman Orissa Judicial Academy, Mrs. Abhasinghal Joshi, Consultant & Sona Siddiquie, Advocate, Delhi High Court in the dias of one day Symposium.




Dr. D. P. Choudhury, Director, Orissa Judicial Academy, Cuttack, addressing the delegates in the Symposium.

It was highlighted as to how to use the module by the Trainers, Faculty Members & Resource Persons about the Judicial System, need for training with special focus on Judges training. The methodology that adopted may be placed as follows:

- ✔ Lecture & Interactive Session.
- ✔ Case Study.
- ✔ Role play.
- ✔ Film.
- ✔ Filed visits and places.
- ✔ Questionnaires.
- ✔ Evaluation and feedback formats for training session.

For the Training Module reading and references were also discussed. Access to Justice is an imperative need for survival in the case of Marginal Communities. Reading and references were on the following subject.

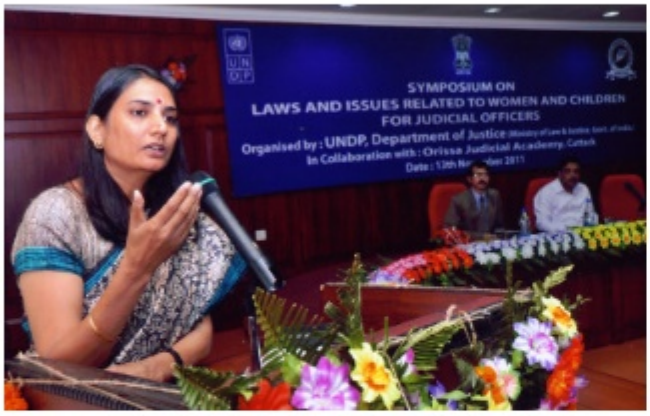
- ✔ Women And Children.
- ✔ Disabled Persons.
- ✔ Social Marginalisation of SC and ST.
- ✔ Rural and Urban poors.

The Criminal Justice System places all those who come within its ambit, in a position of vulnerability, whether they are victims, accused or witnesses. While the entire Criminal Justice System is aimed at the protection of fundamental rights, yet the key lies in the implementation at the cutting edge which is squarely within the purview of the judiciary.

The participants Judicial Officer were divided into four groups and given a case study to discuss among themselves followed by a presentation on the facts and law related to the case i.e.

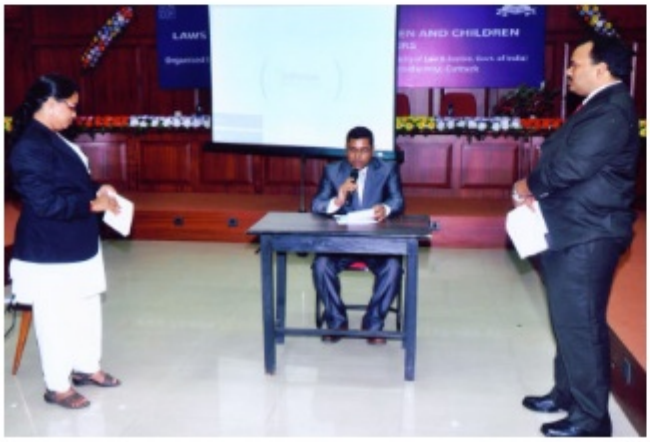
- ✔ Case Study on JJ Act - Age of Juvenile.
- ✔ Case Study on JJ Act - Bail of Juvenile.
- ✔ Case Study on Children's rights to maintenance under different laws.
- ✔ Case Study on Child Labour.

Later on each group have presented their findings on each case studies keeping in view, the key aspect of each case.




Mrs. Abhasinghal Joshi, Consultant addressing the delegates

Delegates in the Symposium.




Participant Judical Officers performing the role play.

In the 2nd Session of the programme, the participant Judicial Officers were again divided into four groups and given a role play to prepare and perform. The outline of the role play was on the following areas of law:

- ✔ Matrimonial Cruelty and Domestic Violence.
- ✔ Rape.
- ✔ Violence and harassment at the workplace.
- ✔ Women's rights under criminal procedure.

The role play was well presented by the participants with the utmost satisfaction.

The participants were requested to fill up the response- questioners on the contents and methodology used in the workshop. Finally, the Director, Orissa Judicial Academy extended the vote of thanks to all and the Symposium became successful.

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# "Grass Root Level Learning Experience Programme" - An overview

**Introduction**

Judiciary floats over the confidence of the people in its probity. Such confidence is the foundation on which pillars of judiciary are built. "Grassroot level Learning Experience Programme" is one of the integral part of training module of the induction training programme for newly recruited judicial officers for a period of three days. The sole aim of this programme is to sent them to remote villege area of various part of the state to learn the process of searching solution to the legal problems they are facing and alleviation of poverty. It is an unique programme to gather field experience for an officer to know about the actual need of poor, downtrodden and the underprivileged section of the society . Various sectors have recognized housing, education, National Social Assistance programme, health, gender bias, Agricultural land reform, PRIs and self employment schemes etc. for their over all development apart from Legal Aid Programmes. The main purpose is to utilize the results to provide true feedback of the present state of implementation of all developmental schemes in the rural areas. The observations made during the study are to provide inputs to help in bringing about changes in the formulation / reformulation /modification of existing implemented programmes for rural development.

**Objectives**

- To examine the current status of the implementation of the various important schemes of the Government of India in selected villages such as:
- National Social Assistance Programme
- Employment Assurance Scheme i.e. MNREGS
- Accelerated Rural Water Supply Programme.
- Centrally Sponsored Rural Sanitation Programme.
- Indira Awaas Yojana
- To assess the inputs and outputs of these important schemes as well as the outcome of these programmes / schemes
- To assess the impact of these various important schemes.
- To assess problems, constraints in the effective implementation.
- To gauge the general opinion of the people towards these schemes, towards the Govt. and towards Judiciary.
- To assess the adequacy of these schemes in solving and providing solutions to problems of rural development.
- To visit to the poor families and have an interaction with them and collect information about various problems faced by them in day to day life, and if possible to aware them about their rights and advice them in legal matters.

**Field Experience**

All 44- newly recruited judicial officers-2010-11 , were divided into three groups and sent to three different places in the state i.e. Gopalpur(Dist.Ganjam),) Astaranga(Dist-Puri and Charbatia(Cuttack).

To visit "Nagar Grampanchayat" in Astarang Block of Puri District,15 judicial officers were selected. They visited all 6 villages, under Nagar Gramapanchayathey ie- Balipantala, Dakhinapantala, Birudipantala, Biha Beghari, River block and Nagar..

Similarly, 15 judicial officers were selected to visit Gopalpur(Dist.Ganjam) and rest 14- judicial officers sent to Charbatia(Cuttack)

They collected data from : Tahasildar, Villagers, Village Panchayat member, Beneficiaries and village elders, PRI members and Members of Gram Sabhas. During course of collecting data many families were interviewed and . they interacted with them and gather knowledge about the developmental programmes carried out by the Government like Antodoya Yojana where people get 35 kgs of rice at Rs2/ - per kgs, Mo Kudia Yojana where people get assistance from the Govt. to built their home, Mo Pokhari Yojana where people get monetary assistance to dig ponds for their personal use in their land. They also knew the working of the Anganwadi kendras. for the welfare of children and women. The most important developmental programme is Mahatma Gandhi National Rural Employment Guarantee Scheme, where the Govt. will provide at least 100 days of work to people in a year. If it could not provide work then it shall pay unemployment allowance to those people.

**Observations**

It was their common observation that the amount of government assistance , too negligible as regards number of beneficiaries/ member of the group and the nature of income generating activity that is taken up. Absence (or insufficiency) of coordination with different authorities and communication was one of the major administrative problems. Lack/ insufficiency of supervisory staff and supervision is also an important reason of failure. Funds were not released in time and activities to be completed in a short span of time. Among the BPL families, education and skill development initiatives are very less.. There is no awareness of the scheme among the people before the implementation of the scheme, so as to have some knowledge about the benefits from it. The BPL & SC's are hardly given any chance. They are mostly deprived of their rights.

People are ignorant about soil conservation benefits. The implementation schemes are either lacking or the authorities have not taken proper steps for awareness generation. People still rely on age-old agricultural practices and use improper tools. No modern technology of Employment Assurance Scheme has been adopted on those regions.

Indeed, they acquired wonderful and memorable experience in visiting such remote areas which will help them during dispensation of justice.

*Compiled by :*

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