



# VIDYA

NEWS LETTER

A QUARTERLY PUBLICATION

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Frontal view of Orissa Judicial Academy under construction



*For Brighter Tomorrow*

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**ORISSA JUDICIAL ACADEMY, CUTTACK**

## ORISSA JUDICIAL ACADEMY, CUTTACK

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Hon'ble Mr. Justice Asok Kumar Ganguly, Former Chief Justice, Orissa High Court, Former Judge, Supreme Court of India, and presently Chairperson of Human Rights Commission, West Bengal in a special Refresher Programme of in-service Judicial Officers.



River side view of Orissa Judicial Academy under construction.

*Justice V. Gopala Gowda*



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**October 17, 2012**

**MESSAGE**

*It is indeed a great pleasure that Orissa Judicial Academy has come up with age and going to publish its 6<sup>th</sup> Issue, 3<sup>rd</sup> Quarter of Newsletter "VIDYA".*

*The Academy has institutionalized, integrated and professionalized the system of judicial education to Judicial Officers, Court personnel, Lawyers and other stakeholders of Judicial Administration by its continuing unerring efforts. I hope this effort must continue with same fervour and vigor in achieving the objectives of creation of Newsletters, i.e., an inherent quality of an Academy.*

*I wish all success of publication of Newsletter "VIDYA".*

*(V. Gopala Gowda)*

*Justice Bimala Prasad Das*  
Judge  
ORISSA HIGH COURT



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October 19, 2012

**M E S S A G E**

*I am happy to know that the Orissa Judicial Academy is going to publish 6th issue of its News Letter 'Vidya'.*

*The News Letter being informative and educative has reached at a distinct level of justifying its own identity in the field of Judicial Training by providing innovative and pragmatic training and infiltrating into the minds of the Judicial fraternity. The News Letter contains useful articles to cater to the needs of the Judicial Officers.*

*I wish the publication of the News Letter all success.*

A handwritten signature in black ink, appearing to be 'B.P. Das'.

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

**Justice L. Mohapatra**  
JUDGE, ORISSA HIGH COURT &  
Chairman, Orissa Judicial Academy



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### **MESSAGE**

*It is a great endeavour on part of the Orissa Judicial Academy for publication of its Newsletter "Vidya" 3<sup>rd</sup> quarter 6<sup>th</sup> Issue.*

*The Newsletter "Vidya" has already received huge accolade from all quarters for its vision and action. The Academy aims not only to provide knowledge but also to foster the desirable values and attitudes particularly competence, honesty & integrity of all stockholders on Justice Administration. It is hoped that this issue of Newsletter "Vidya" will be useful for all the Judicial Officers of the State to render proper justice.*

*I wish all success of the publication of Newsletter "Vidya".*

A handwritten signature in black ink, appearing to read "L. Mohapatra", is written in a cursive style.

**(Justice L. Mohapatra)**

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## ***Editorial Note ...***

Training to the newly recruited Judicial Officers is covered under Induction Training Programme. Since, the newly recruitees are fresh pass outs and have no experience of the Bar or Bench while being recruited to the cadre of Civil Judge (Junior Division), they should be more motivated to discharge the duties of Judicial Officers in the challenging & changed circumstances.

While the Induction Training Programme for the newly recruited Judicial Officers to the cadre of Additional District & Sessions Judge from Bar is conducted, it is also a challenging task in as much as their practice in Court is confined particulars areas, but not with the multiple nature of provisions of law which a Judicial Officer is required to grapple and decide the cases.

For the newly recruited Judicial Officers to the cadre of Civil Judge (Jr. Division), issues are many and challenges are innumerable. Similarly, for Refresher Programme, in-service Judicial Officers need to be sensitized more to open their mindset & to update knowledge in law which is also a challenging task.

  
**Director,  
Orissa Judicial Academy, Cuttack**

# TRAINING

**Justice P.K. Tripathy**  
Former Judge,  
Orissa High Court, Cuttack.

Training is a concept which has been adopted by the human race from the very beginning of the growth of human civilization. Be it the remote or recent past, be it the ancient or the present world, in every walk of life, the people, states, governments and various organizations have acknowledged necessity of training as an important method for improvement and to move forward. In fact, training is a vibrant force to modulate concerned person or personality in any discipline. The object of training as well as the subject thereof is vast and the deeper one goes the better result he obtains. But herein, attempt has been made to only outline on the salient features.

In dictionaries, inter - alia, it is stated that to "Train" means (i) to draw along, (ii) to instruct and discipline (iii) to cause to grow in desired manner etc. Aptly put the above noted meanings in a way are to make one understand meaning of the term but the intrinsic meaning (value) thereof is much more than what the above noted meanings explain. Expansion of the theme thereof, thus, stands as Training' Trainer' Trained' etc.

Education and Training appear to be synonymous but always they do not carry the same meaning. Sometime they go along and in other cases purpose of each of those may be different. There may be training for or during education and may educate himself in course of Training'. Here, however the discussion is imparting training to in-service persons. There may be pre-service training and / or post-service training.

The post-service training is generally classified into 'Induction Training' 'Crash Course' and 'Refresher Course' etc. Induction Training is given to new-entrants in to service and that to during the probation period of service. On the other hand, training on selective subjects or topics to in-service candidates (employees) is termed as Refresher Training and Crash Course etc. Sometimes even seminars, symposium or workshops are organized as a method of training in course of a Training Course'. In the training programmes of any of the above types, the basic idea is to educate, train or sensitize the trainees on job-oriented subjects.

"The Sub-ordinate Judiciary" or the "District Judiciary" in Odisha had adopted a system of imparting training to the ministerial staff. In past 'Registrars' of the District and Sessions court were imparting such training and sometime even the other Judicial Officers in the Judgeships were motivated by District Judges to impart training to the ministerial staff on procedural aspect of court-proceedings and matters related thereto. Such practice was initiated by Orissa High court by imparting instruction through circular letter. Though the newly recruited judicial officers in any cadre were remaining under probation and

taking training but that was in a different method and different manner than what is prevalent in the present days. Then crash courses were organized either at Puri or Gopabandhu Training Institute at Bhubaneswar (which is meant for imparting training to Officers and employees of the State Government or Executive Side). Such training courses during vacation were held irregularly and that to sporadically only for a few years.

In the plenary Sessions of Law Ministers' Conference 1995-96 at Hyderabad, in presence of the (then) Chief Justice of India, Union Law Minister, Law Ministers from different States, Law Secretaries / Legal Remembrancers etc, from different States, inter-alia, it was resolved that each State government should setup Judicial Academy in their respective states to impart training to the Judicial Officers and the Ministerial Staffs of the Civil and Criminal Courts. By then Andhra Pradesh had already a Judicial Academy under direct management and supervision of the Andhra Pradesh High Court. It was voiced there that a few other States had Judicial Academies in budding stages. Odisha had it at a later stage.

National Judicial Academy has become active in imparting training to Judges of all Courts up to the level of High Courts. So far as the Judicial Officers of Odisha are concerned, they do not experience "Induction Course" in the National Judicial Academy Even for 'Refresher' Courses or 'Crash ' courses organized by the National Judicial Academy, the in service officer of any particular level or grade, only get / make symbolic representation of a few selected officers. That becomes an unavoidable compulsion for the High Court because for the sake of imparting training at National Judicial Academy, Court works cannot be allowed to suffer at large. For the self-same reason even in the 'Zonal' conferences organized by the National Judicial Academy, all the officers of any particular grade or level from the organizing or participating states do not get the chance of participation by all the officers of any grade. The level of imparting training by the National Judicial Academy being of super quality, a proposal may be mooted for organizing 'Crash' course, 'Symposium' and 'Seminar' by the National Judicial Academy in Odisha for Odisha Judiciary at least once in a year.

As indicated above, training is meant not only to train but also to improve the quality of work required to be done by the trainees in due discharge of their duties. Thus, it is necessary that the training courses for each category of Judicial Officers or the ministerial staff should be well thought and properly-planned Duration of such training programmes have to methodically and scientifically worked out maintained and managed and the Trainers should be selected only keeping in view as to whether he has the capacity to deliver, because knowledge and wisdom with the trainer / resource person unless successfully communicated to the trainers then that resource remains unutilized or underutilized. For that the Academy should maintain a record to note the assessment made both of the Trainees and Resource Persons and if necessary or desirable the assessment of the Academy should be shared with the concerned person / persons. It must be done as a healthy practice instead of blame giving practice.

Be that as it may, 'the Orissa Judicial Academy' under the active support, continuous superintendence and proper guidance from the Orissa High court and the Judicial Academy Committee are committed to the cause of imparting proper training under direct management of the Director of the Judicial Academy. Be the path of training facilitate all the learned Judicial Officers to achieve the object with efficiency.

# Issues of Human Rights in Criminal Law and Persons under Disability

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

## I. INTRODUCTION :-

Although most observers regard the formation of the United Nations and the promulgation of the Universal Declaration of Human Rights as the beginning of the modern struggle to protect human rights, one can trace the origin of human rights back to early philosophy of the legal theories of the natural law, the law higher than the perspective law of the state. According to these theories individuals were entitled to certain immutable rights as human rights. There are other theories of law like<sup>1</sup> natural law, pure theory of law, the historical school of law and other kinds of theories are there and they recognise laws relating to individuals. On the other hand laws are enacted to protect the rights of individuals. The philosophy behind the right of individuals includes the right of survival, right to develop, right to protect and several other rights of the human being. International human right is the world's first universal ideology. Religious, Political, Philosophical and Economic ideas have adherent in various parts of the world. But Human Rights represents an idea that now has world wide existence.

Magna Carta speaks about nature and character of human being to which he can be adjusted.

From the philosophy of the man's behaviour and nature it is quite clear that man requires dignity and protection and society. Man's personality postulates human right that head protection.

## II. EVOLUTION OF HUMAN RIGHTS :-

The concept of human right is a modern concept and it arose in 17th & 18th century during the struggle of people against feudal despotism. It was English Philosopher John Locke who first propounded the theory that there are certain natural rights which the citizens could claim even against the kind. These rights were first declared as legal right by the French national assembly in the declaration rights of the man in 1789 during the Great French Revolution.

During the late eighteenth and early nineteenth century Government also began to recognise the inherent rights of individuals in their national laws. The American declaration of Independence of 1776 proclaimed the inalienable right of all men to life, liberty and pursuit of happiness. These rights followed from eighteenth century European theories of the individuals as autonomous in nature. The principal inalienable right the people then became rights of self government including the right to determine and change that government. But each individual also retained some of his ,or her original autonomy in the form of rights that even the Govt, could not violate Belief in these retained rights caused individual status to insist on the addition of a Bill of Rights to the United State Constitution in 1789.

The United State and French examples followed in the written constitution of Netherland (1798), Sweden (1809), Spain (1812), Norway (1814), Belgium (1831), Liberia (1847), Sardinia (1848), Denmark (1849) and Prusia (1850). The development of socialism in the nineteenth century expanded the concept of human right to include not only the right to be free from State interference, but also right to have the State redress economic equality. Thus, economic, social and cultural rights were first incorporated in the constitution of Mexico (1917) and Russia (1918).

Following the First World War the principle of self determination became one of the basic components of minorities, treatise administered by the League of Nations. In addition to protecting minorities, the league of nation created a mandate system to guarantee freedom of conscience and religion, in the former colonial territories of Germany and Turkey.

The Human Right' violation of the Second World War made clear the need for the codification of international minimum standards for the protection of human rights. For this purpose the nations of the world responded to the atrocities of the Holocaust in the 'process of forming the United Nations. Soon thereafter regional structures in the American and Europe also established standards for the protection of human right, and organisation for their implementation<sup>1</sup>.

### **III. UNITED NATION AND HUMAN RIGHTS :-**

The United Nations has codified human rights in the International Bill of Rights the persuasion and embarrassment of government that violate human right, and by the use of both aid and technical assistance as human right measures. The United Nation's efforts to codify and implement international minimum standard of human rights protection have played a central role in internationalizing human right and in humanizing international law. The character of United National sought to reaffirm faith in fundamental human right, in the dignity and worth of the human person (and) in the equal rights of men and women and of nations large and small. It was promulgated in 1945 to maintain international peace and security; based on respect for the principles of equal right and self determination and to achieve international cooperation in solving international problem of an economic, social, cultural or humanitarian character. Additionally, the United National seeks to promote and encourage respect for human rights and for fundamental freedom for all without discrimination as to race sex, language and religion.

After formation of United Nations it sought to clarify the international obligation o promote human right by adopting in 1948 with no dissenting voter, the UNIVERSAL DECLARATION OF HUMAN RIGHT ('U.D.H.R.' for short). It was adopted and proclaimed on 10th December 1948. The declaration protects life, liberty and security of the person guarantees freedom of expression, peaceful assembly, association, religious belief and movement, and forbids slavery, arbitrary arrest, imprisonment without fair trial and invasion of privacy. The Universal declaration also confirms protection for economic, social and cultural rights. It has got 30 articles which are stepping stones to frame provisions in constitution of every state to safeguard human right of respective countrymen.

The UN Commission of Human Right drafted the reminder of the International Bill of Right. The International Covenant on civil and Political Rights that International Covenant on Economic, Social and

Cultural Rights and the optional protocol to the Civil and Political covenant. These two covenants make the provisions of the Universal Declaration into legally binding treaties, provide greater detail as to the rights protected and supply implementation procedures which the state parties must follow.

#### **IV. HUMAN RIGHT AND CONSTITUTION OF INDIA :-**

The drafters of Universal declaration also included the following rights in the covenant, People's right to self-determination and to protection of their means of subsistence, to work to the enjoyment of just and favourable condition of work, to form and join trade unions of one's choice, to social security, to an adequate standard of living to be free from hunger, to education, to cultural life, to enjoy the benefits of scientific programme with its application etc., to benefit from the protection of moral and material interests resulting from one's creations and to the according to protection and assistance to the family and to children.

The key for interpreting the legal obligation undertaken by states-parties is provided by Article 2 of the covenant. This lays down that each state-party to the present covenant undertakes to take steps, individually and through international assistance and cooperation especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 4 of UDHR is also directly relevant. It provides that limitation on the enjoyment of rights provided for under the covenant may only be such as are determined by law and in so far as this may be compatible with the nature of those rights and solely for the purpose of promoting the general welfare in a democratic society<sup>2</sup>.

India being party to covenant under Universal Declaration of Human Rights (UDHR) was bound to take step as per Art 2 of UDHR to implement same in its country. So India dealt with fundamental rights in Part - III and Directives of State Policy in Part - IV of Constitution of India.

Equality before law is one of fundamental right of citizen of India as per Art. 14 of the Constitution of India. Similarly, right to employment is another basic fundamental right as enacted in Art. 16 of the Constitution of India, Freedom of speech, assembly and association guaranteed in Art. 19 of the Constitution of India (Part - III), Right of human being to life and liberty has been guaranteed under Art. 21 of the Constitution of India. Similarly, Article 22 of Constitution protects the human right by directing to produce accused within 24 hours of his arrest. No human being can be exploited as per Art. 23 and Art. 24 of Constitution of India for which right of human being is protected. Right to religion, cultural and educational etc., has been enshrined in Art. 25, 26, 29 & 30 of our Constitution of India respectively. Thus constitution of India has taken steps to protect fundamental right of human being.

The human right enshrined in Part - III of Indian Constitution has been made non-derogable under Art. 13(2) and their enforcement has been guaranteed under Art.32 of the Constitution as one of the basic rights<sup>3</sup>.

The Constitution of India is one of the most elaborated constitution of human rights yet found by any statute. Not only provision of UDHR 1948 was reflected in Part - III of constitution of India but also International covenant on Civil and Political Rights are guaranteed under Part - III of Constitution of India as fundamental rights. Infact, Part - III of Constitution of India may be characterized as the Magna Carta of India <sup>5</sup>(Supra)<sup>3</sup>.

The directive principles aim at the betterment of the individual as an integrated component of the society. Elimination of inequality of income, opportunities and status of securing a just social order in the Philosophical foundation of Part - IV embodying the concept of welfare state (Art. 38 of Constitution). The protection of child and youth against exploitation is a fundamental right. The state is enjoined within the limit of its economic capacity and development to provide for receiving the right to work, to education and public assistance in case of unemployment, old age, sickness, disablement and "other cases of observing want" and to rescue just and humanize conditions of work and maternity relief (Art. 42 of Constitution). Art. 43 of Constitution of India provides living wage, condition of work, ensuring a decent standard of life, full enjoyment of leisure and social and cultural opportunities. Primary education has been made out of only free but compulsory until the completion of 14 years of age as per Art. 48 of the Constitution of India. Equal opportunities for securing justice by legal aid is another landmark in the quest of social justice as per Art. 39 of the Constitution of India.

#### **V. HUMAN RIGHTS VIS A VIS CRIMINAL LAW :-**

In order to ensure the political and civil rights of human being, the fundamental right to liberty has been enshrined in Article 21 of the Constitution. On the other hand, Article 21 of the Constitution has been enacted keeping in view the universal declaration of human rights Art. 11(1) of Universal Declaration for Human Rights states :-

*"Everyone charged with a Penal Offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."*

Article - 14(2) of International covenant on Civil and Political rights 1966 States Every one charged with Criminal Offences has the right to be presumed innocent until proved guilty according to law".

Article - 6(2) of European convention on Human Rights States "Every one charged with a Criminal Offence shall be presumed innocent until proved guilty according to law."

Article - 26 of the American Declaration of the rights and Duties of man states "Every Accused person is presumed to be innocent until proved guilty". Article - 8 of American Convention of Human rights states "Every person accused of a serious crime has the right to be presumed innocent so long as his guilty has not been proved according to law."

Article - 7(1) of the African Charter of Human and people's right says "Every individual shall have the right to have his case heard. This comprises the right to be presumed innocent until proved guilty by a constitutional Court of Tribunal."

Article - 66 of U.N. document says "Every one shall be presumed innocent until proved guilty in accordance with law. The onus is on the prosecution to establish the guilty of accused beyond a reasonable doubt. In India also Criminal Jurisprudence reveals that a person is presumed to be innocent until proved guilty."

So the basic characteristic of human rights normally applies to the accused. First of all Sec. 50 Cr.P.C. mandates that every Police Officer or any other Officer arresting any person without warrant shall forthwith communicate to him the full particulars of the offence, for which he is being arrested or other grounds for such arrest. This enabling provision has been kept in the statute to secure his fundamental rights because right to information is a fundamental right under Article - 22 of the Constitution. Not only this but also Sec. - 54 of Cr.P.C. directs the accused to be examined by a doctor if he is found to have sustained any injury. Providing treatment to a person is also under the domain of saving his individual right to get treatment Sec. 57 of Cr.P.C. mandates that no Police Officer will detain any accused for more than 24 hours in the police custody and he is to produce him before the Magistrate within 24 hours. These provisions are only made to secure the civil right of an accused because his human rights cannot be infringed by arraying him as accused. In the case of D.K. Basu Vrs. State of West Bengal<sup>6</sup>, the Hon'ble apex Court was very much perturbed due to rise of custodial violence. When a accused is arrested and taken to custody of police, normally police starts investigation and tries to gather information from him by putting him in the fear of causing hurt. Such practice have been deprecated by the Apex Court by holding in the following manner<sup>7</sup> (supra)<sup>8</sup>.

"However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidents of torture and death in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspaper almost every day carrying reports of dehumanizing torture, assault, rap and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry justice becomes louder<sup>8</sup>. (Supra)<sup>8</sup>

After analyzing all the angles of Article - 20, 21, 22, their Lordship issued the following directives to check the violence of rights of the accused. (Para - 36).

"We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:-

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That, the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respective person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest, in his welfare being informed, 'as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the Police Station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police official in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at the time. The "Inspection memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor or the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tahasil and District as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police central room should be provided at all district and state headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police central room it should be displayed on a conspicuous police board.

It is also made clear in that case that for any custodial violence the arresting officer along with the Government will have to pay the compensation to the victims of such violence. Their Lordship have

followed the ratio decided in a reported decision in Nilabati Behera Vrs. State of Orissa<sup>9</sup>, where Their Lordship have awarded compensation to the mother of the deceased, who succumbed to the injuries under the custody, observing that the prisoners and detainees are not denuded of their fundamental rights under Article - 21 and it is only such restrictions as are framed by law, which can be imposed on the enjoyment of the fundamental rights of arrestees and detainees. Precious right guaranteed by Article - 21 of the constitution of India cannot be denied to the victims under trials or other prisoners in custody. In that case high Court and Supreme Court were found to be competent under-266 and 32 of Constitution of India respectively to award damages or compensations to the victims of the custodial violence without holding any regular trial on the ground that the State is responsible to take care of the detunes and any sort of failure on the part of the employee of the State, the State has vicarious liability to pay compensation. It was also held in that case that the officer will be put to task by the State Government afterwards and may also recover damages from the concerned employee. Those cases are mile stones in the judiciary to ensure right of the accused arrested or detained either in prison or in the Police Hazat or otherwise. At the same time, in case of right of woman victim in any criminal offence like rape, molestation the Apex Court has guarded her right. In the case of Sakahi Vrs. Union of India<sup>10</sup> and others it is held that (1) that a screen or some such arrangements may be made where the victim or witnesses do not see the body or face of the accused (2) the questions put in cross examination on behalf of the accused in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embracing (3) the victim of child abuse of rape, while giving testimony in Court, should be allowed sufficient break as and when required. In earlier occasion also Supreme Court of India has held not to publish the name of victim in any news paper or journal to safeguard her right. There is also provision to pay compensation to the victims.

## **VI. HUMAN RIGHT OF DISABLE PERSONS :-**

There are 600 million persons with disabilities in the world today. 80% of them live in developing countries. A staging 9 million people in India are disabled. Persons with Disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others under all the international treaties. The rights of individual with disabilities have been addressed more generally throughout the development of the international human right law.

Under UDHR, the rights of individual with disability have been taken care of Vide General Assembly Resolution 217 A (hi) on 10.12.48 at first United Nation promoted the right of person with blindness for their rehabilitation. In 1940 and 1950 U.N. focused in promoting the rights of person with Physical Disability. Later on, in 1960 there were re-evaluation of policies for disables in the International Covenant of Civil and Political Rights and International covenant of social economic and cultural rights.

United Nation adopted by General Assembly Resolution No. 2856 dated 20.12.71 to protect rights of mentally retarded persons. Again vide General Assembly Resolution 3447 dt. 09.12.1975 United Nation adopted declaration of right of disabled person. Finally in 1981 United Nation observed International year for disabled person.

Indian Parliament for the first time, has legally endorsed the right of access for the disabled people to education and vocational training; employment practices, travel on public transport and mobility schemes; barrier free environmental and integrated living; information and communication strategies, independence and dignity. The Persons with Disabilities (Equal opportunities, protection of rights and full participation) Bill 1995 was passed in December, 1995 and published in the Gazette of India on Monday 1st January 1996 after receiving assent of President of India. It became enforceable on 7.2.1996. The Act has several provisions to ensure equal opportunities, protection of rights and full participation of disabled people in maintenance activities of the society. The State has been entrusted with the responsibility to prevent disabilities, provisions of medical care, education, training, employment and rehabilitation of persons with disabilities.

As per Section 2(1) of Person with Disability (Equal opportunity, protection of Right and full participation Act, 1995 Disability means (i) blindness (ii) low vision (iii) leprosy cured (iv) hearing impairment (v) locomotor disability (vi) mental illness (vii) Mental Retardation.

It seems definitely the Act does not recognise the international clarification given by the World Health Organisation. Difficulty in speaking, this category of disability is not included in the Act, whereas this category is covered under the scope of disability by WHO in International categorization<sup>11</sup>. Again freedom of speech and expression is a fundamental right, by this one gets to know the importance of the ability to speak. So it is shocking to know that this category of person is not included in Indian Act. Lack of internal organ with human being reduces efficiency of normal human being. When mental retardness, an illness being related to brain could be included. Lack of kidney or any internal organ should be included as man of disables under Indian Act. So Indian Act should be exhaustive and should include various persons having various kinds of disabilities to stand to the reason of International standards so that human right on such category of people can be well implemented. Bureaucrats, politicians also should implement the Act with proper perspective to protect human right.



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# SRIMAD BHAGABAT GITA ON LAW

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Shrimad Bhagbad Gita is the greatest and the holiest on the religious front. It is designed with a touch of sovereignty for the betterment of the entire human kind. Its contents are the succients of all wisdom preached by all sastras and it is therefore not at all wrong to say that like the National Anthem, National Song, National Flower, National bird etc. Srimad Bhagbat Gita should not only required to be declared as the National Religious Book (JATIYA dharmā GRANTHA) but also observance of all its pious preachings should also be honoured as the fundamental duty of every Indian. It is no doubt true that all laws of the land basically come from the Constitution of India. It is also well known that the Constitutional Law of India has been borrowed from various constitutions of the world. Commonness in law is universal and one wonders how come our law on a particular subject is similar to that of another Country? The answer is simple. One has to accept and admit that before codification of various laws through the process of evolution on earth there was something divine with conspicuous existence which governed the entire ancient human behavior. That something is certainly the GOD given ancient law of nature and the modern law which we see now in the present shape(s) is nothing but the new editions only of the very same old natural law.

Here comes the Holy teachings of BHAGABAT GITA at 3/5 and 13/19 and those proclaims :-

**Every action of an individual is bound by Law of nature and the nature alone is the creator of all virtues and all evils.**

The law of nature broadly affirms that the misappropriation of another's property, misbehavior with both male and female, waywardness, immorality, kidnapping, violence, deforestation, animal killing, homicide, genocide etc. are not only branded as sins but considered as punishable crimes and injustice against humanity too. In our modern law we give different names to different crimes/acts under the aforesaid major heads and call those as offences/ excdss against the State or Society or individual (s). GITA in its sixteenth chapter i.e. DAIBASURA SAMPAD BIBHAGAJOGA divides the entire humankind into two categories i.e. firstly the people with godly intelligence (Daibi Sampad/Budhi ) and secondly, the people with notorious intelligence (Asura Sampad/ Budhi). The first category is above everything and above board. They are the firm believers in GOD and they are far away from all worldly desires, crimes and injustice. They are law abiding and virtuous and they stand for non-violence, peace, progress, justice, stability and development and above all no crime and no injustice. Coming to the 2nd. category of people with notorious intelligence (Asura Budhi) one cannot but think of nothing but lawlessness and injustice alone in and around them.

GITA declares at 16/11

Those people with evil mind are always thoughtful over innumerable desires and at times impossible desires too with the sole aim of deriving happiness by collecting enjoyable materials.

GITA again opines at 16/12

These evil men are always angry and are chained in the vicious circles covering hundreds of desires besides being busy in collection and accumulation of illegal wealth.

GITA again proclaims at 16/13

These notorious people always think — today I got these materials, my this desires is fulfilled, wealth is save and in future, my wealth will again increase.

GITA again speaks at 16/14

These evil minded men further think — this enemy of mine is destroyed / killed today, in future I will kill other enemies and I am the almighty GOD with all happiness, all perfection and all strength.

GITA again declares at 16/15

These evil elements further think- I am having wealth and public support, I will perform 'YAJNA, DANA' etc. in future, there is none equal to me and my life is full of pleasure, enjoyment and happiness.

In these ways, these notorious people think they are happy. But in reality, they are neither in peace nor in happiness nor they are in a position to enjoy anything in the true sense because of the inherent criminality in them. The obvious intrinsic message is — GITA prohibits the aforesaid thoughts/acts of an individual with notorious intelligence (ASURA BUDHI). These prohibitions have now taken the shape of modern law with different names. The object is the same and GITA condemns the law breakers at 16/9, 16/17 & 18 —

The said notorious elements are the enemies of entire mankind, their aim is to find fault with others and to put others at loss, they are always wayward and obstinate with the pride of status and wealth derived by corruption and bribery and they deserve and get the harshest punishment.

In modern law, the end is the same i.e. the hardened criminals get harder and at times the hardest punishment.

GITA announces at 4/8

By incarnation and manifestation GOD Himself kills the notorious elements in order to reestablish DHARMA i.e. justice to save the Virtuous .

Capital punishment is not prohibited in GITA and in modern law that punishment is also legal in appropriate cases.

Desire, anger and greed are the roots of all crimes. These evils create criminals who translate their ill desires and at times the impossible desire into action by resorting to all sorts of violence, injustice and crime with the aid of other evils like supermacy or ego, strength and pride in order to quench their lust for more wealth and more power. This is the holy thought of GITA which is believed to have come directly from the lotus mouth of GOD himself. The ex-speaker of India Sri Sivaraj Patil in his recent commentary

on BHAGABAT GITA says that the ego is the cause of all our sorrows, that everybody says 'Mine', 'Mine', 'Mine', & 'Mine' and that we should unfailingly give up our such ego, the greatest enemy. This 'ego' in fact is the cause of all sufferings and it is the mother of lawlessness, injustice and crime. GITA through its great teachings aims at the complete elimination of this perpetual enemy i.e. 'ego' so that the humanity can prosper with non-violence, justice and no crime. BHAGABAT GITA, the divine and nectarian words of GOD himself is designed to take care of everything with a view to attaining crime free situations everywhere in the society—So said Mahatma Gandhi.

GITA proclaims at 16-5/23 :-

While Godly intelligence(Daibi Sampad/ Budhi)gives peace and happiness at present and salvation in the end the notorious intelligence(Asura Sampad/Budhi) puts people in bondage and binds them with the ropes of ego, hatred, greed, jealous, desire and anger which ultimately become the cause of their total destruction and the people who act unwisely and inhumanly without the aid of the wisdom preached by SASTRAS they are destined not to get perfection and happiness at present and no salvation too in the end.

Commission of crime either against the State or Society or individuals being clear injustice is certainly against the SASTRA/ Knowledge/Wisdom and GITA again advises at 18/41-46:-

An individual must perform his duties as prescribed and he shall not meddle with that of the other and the performance of his own natural duty with honesty and confidence is the real puja of GOD.

In other words, the interference of one with another's duty or doing another duty giving up own or dutylessness are forbidden in GITA which further declares at 16/24 :-

It is the direction in the SASTRA which alone decides whether any act or proposed act is duty or not and all human activities need be governed by SASTRA GYANA alone.

In this context and in the field of legal/judicial profession the law books and the law being the NYAYA SASTRA can alone show the right path to distinguish between what is right and what is wrong. Thus the knowledge and wisdom derived from NYAYA SASTRA i.e. the law, CHIKISTCHA SASTRA i.e. the Medical science, SILPA SASTRA i.e. the Engineering science, DHARMA SASTRA i.e. the Vedas, Purans, Upanishads and above all SHRIMAD BHAGABAT GITA and so on can alone enlighten what is ought to be done and what is ought not to be done in the respective fields and that is what GITA precisely teaches. Shri Sibaraj Patil further said in his book-BHAGABAT GITA is sacred, it is the breath of GOD and knowledge from GITA which covers anything and everything need be unfailingly put to practice by one and all GOD Himself said in VARAHA PURANA that with the aid of GITA principles alone He administers the entire universe. SRIMAD BHAGABAT GITA is thus so supreme and great with nothing greater than it and therefore, it becomes fairly conclusive that had there been no nexus at all between GITA and the modern human behavior in general and the law in particular the Allahabad High Court decision would not have attached so much dignity and significance to GITA. The decision is timely, epoch making, far reaching and apt.



# CHILD RIGHTS - LAWS RELATING CHILD SEXUAL ABUSE - PREVENTION AND REMEDIES

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"Whose children were talking about ?

Are they not our children ?

If yes, can we leave them to fend for themselves defenseless, without care, devoid of any right and privileges?

Are not we, the society (men and women) responsible for introducing them to world? Why such apathy?

Is it not a crime?

Child rights and its accordance is the pillar for national construction, a brighter tomorrow.

## INTRODUCTION

The child is the resource of our country. The child for the full and harmonious development of his/her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding. Every child has a right to their childhood-a hopeful existence free from exploitation, violence, neglect and extreme poverty. Children need education, healthservices, love, hope and encouragement.

## CHILD RIGHTS

The convention on the rights of the child defines basic right of the children covering multiple needs and issues.

**Right to Education** - 50% of Indian children between 6 to 18 do not go to schools.

**Right to Expression** - Every child has a right to express himself freely in which ever way he likes. Majority of children however the exploited by their elders and not allow to express.

**Right to Information** - Every child has a right to know his basic right and his position in the society. High incidence of illiteracy and ignorance among the deprived and under privileged children prevents them from having assess to information about them and their society.

**Right to Nutrition** - More than 50% of Indian children are malnourished while one in every five adolescence boys is malnourished, one is every two girls in India is under nourished.

**Right to health and care** - 58% of Indian children below the age of two years are not fully vaccinated, 20% of these children do not receive any from of vaccination.

**Right to protection of abuse** - There are approximately two million child commercial sex workers between the age of 5 & 15 years. About 3.3 million between 15 & 18 years.

**Right to protection from exploitation** - Seventeen million children in Indian works in different industry and establishments. The children were sent to work by compulsion, not by choice, mostly by parents. Poor and bonded families often sale their children to contractors who promise lucrative jobs in the cities and the children end up being employed in brothels, hotels and domestic work. Many run away and find a life on the streets.

**Right to Protection from Neglect** - Every child has a childhood to lead a protected and secured life away from neglect. However, children working under exploitive and inhuman condition get neglected badly.

**Right to Development** - Every child has the right to development lets the child explore his full potential. Unfavourable living condition of under privileged children prevents them from growing in a free and uninhabited way.

- (1) Who is a child?
  - (i) Juvenile justice (care & protection of children) Act 2000 defines (Juvenile or "child" means a person who has not completed eighteen year of age;
  - (ii) Juvenile in conflict with law means - A juvenile who is alleged to have committed an offence and has not completed 18th year of age as on the date of commission of such offence.
- (2) Section 21 of Juvenile Justice (care & protection of children) Act states that prohibition of publication of name etc of juvenile in conflict with law or child in need of care and protection in any proceeding under the Act - no report in any news paper, disclose the name, address or school or any of the particulars calculated to lead to the identification of juvenile or child nor shall any picture of any juvenile or any child be published.
- (3) Section 22 - Any Police Officer may take charge without warrant of a juvenile in conflict with law who has escape from a special home or an observation home or from the care of a person where whom he was placed. The juvenile shall be sent back to the special home or observation home. No proceeding shall be instituted in respect of the juvenile by reason of such escape.
- (4) Section 23 - Whoever, having the actual charge of or control over, a juvenile or child, assaults, abandons, exposes or willfully neglects, assaulted, abandon, causing such juvenile or child unnecessary mental or physical suffering shall be punishable with imprisonment for term which may extent to six months or five or with both.
- (5) Section 24 - (i) Employment of juvenile or child for begging -whoever employers or uses any juvenile or child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine.
  - (ii) Whoever, having the actual charge of or control over a juvenile or the child abets the commission of offence shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine,
- (6) Section 25 - Penalty for giving intoxication liquor or narcotic drug or psychotropic substance to juvenile or child except upon the order of duly qualified medical practitioner or incase of a sickness shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine.
- (7) Section 26 - Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps in bondage and withhold his earning or uses such earnings for his own purposes shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine.
- (8) Section 58 - Transfer of juvenile or child of unsound mind or suffering from leprosy or addicted to drugs - where it appear to the competent authority that any juvenile or the child kept in a special home or a children's home or shelter home or any institution is suffering from leprosy

or is of unsound mind or is addicted to any narcotic drugs or psychotropic substance, the competent authority may order his removal to leper asylum or mental hospital or treatment centre for such period not exceeding the period for which he is required to be kept.

### **Juvenile justice (care and protection of children)**

Rules, 2007 : As soon as juvenile alleged to be in conflict with law is apprehended by the police, the concerned police officer shall inform the designated Juvenile or the child welfare officer in the nearest police station to take charge of the matter.

The parents or the guardians of the juvenile alleged to in conflict with law about the apprehension of the juvenile, about the address of the board where the juvenile will be produced and the date and time whom the parents or the guardians need to be present before the board.

### **Indian Law Child "Legal" Age**

There are several inconsistencies in Indian Law regarding the definition of child and actual scope of child rights. As per criminal law in India, a child is minor who is the below age of 18 years. The age in the Majority Act 1875 stipulates that an Indian citizen shall attain the adulthood, only the attaining age of 18 years, unless otherwise by any personal law. This Act intends to bring uniformity in the applicability of the various Indian Law to people of different religion.

### **Child Abuse**

Now a days, children are abused like anything. There are various abuse of child.

Child Sexual Abuse - All sexual touching between an adult and a child is sexual abuse. Sexual touching between children can also be sexual abuse when there is significant age difference between the children or if the children are very different developmentally or size-wise. Sexual abuse does have to involve penetration, force, pain or even touching. If an adult engages in any sexual behaviour (looking, showing, or touching with a child to meet the adults sexual needs or interest it is sexual abuse. Most often child sexual abuse is a gradual process and not a single event.

Sexual abuse can be stopped - Before a child is harmed adults must take primary responsibility for preventing child sexual abuse.

Child sexual abuse also involve child abusing another child -More than a third of those who sexual abuse children are under the age of 18 themselves. In many instances especially a younger children, a child may not understand that his/her forceful sexual action towards another child are harmful. Child who harms others often have been victimized absolutely does not mean a child will develop sexual abuse behaviours.

Viewing child pornography is child sexual abuse - Child pornography is illegal because it is evidence of a crime and harms all children. Viewing child pornography perpetuates an industry, which harm children. Some people find themselves losing control over their use of pornography by spending more and more time and looking for new and different type of pornography including the images of the children.

### **Laws of preventing Child abuse in India**

Indian Penal Code define the child as being 12 years of age, whereas the Indian Traffic prevention Act, 1956 defines a minor as a person who has completed the age of 16 years but not 18 years.

Section 376 IPC which punishes the perpetrator of the crime of rape defines the age of consent to be below 16 years of age.

Section 82 and 83 of IPC states that nothing is an offence done by a child under 7 years and further under 12 years till he has attained sufficient maturity of understanding the nature of the act and the consequence of his conduct on that occasion. There are few sections under the Indian Penal Code that deal with Child Sexual Abuse.

### **Seme Terrible Home Truth**

The laws for women are extended to include children. The major weakness of these laws is that only penile penetration is considered a grave sexual offence. The crime is considered lesser when it is oral or through penetration with an object.

Although Section 377 IPC dealing with unnatural offences, prescribes 7 to 10 years imprisonment, such cases can be tried in a Magistrate Court, which can impose a maximum punishment of 3 years. If the abuse is repeated several times if affects the children more severely however as yet there is no law for repeated offences against the one child.

Section 354 IPC - Outraging the modesty of women but no law regarding the outraging the modesty of children

Section 509 IPC - The gravity of the offence U/s-509 IPC dealing with obscene gestures is less. Yes even in such cases the child psyche may be affected as severely as in her rape.

There also exist a differential definition for boys and girls. This is clearly seen in a Juvenile Justice Act, which defines a male minor as being below 16 years and female minor as being below 18 years of age.

Even the law mandated with the welfare of the children, the Juvenile Justice Act, does not specifically address the issue of the child sexual abuse. It is difficult to apply the provision of existing laws to any case of child abuse as it is easy for a defense lawyer to make use of legal loopholes to facilitates their clients escape for punishment. Even if some does get convicted under the IPC for rape, the maximum imprisonment for 2 years, we urgently need legislation that specifically addresses child abuse. The legislation must address all forms of sexual abuse including child prostitution and child pornography. But it should also deal with physical abuse, including corporal punishment. Many enacting legislation will not be enough unless this is followed by strict enforcement of the law with accountability. Parents, teacher, judges, intellectuals, politicians, NGOs and others in the community have a vital role to protect children for sexual exploitation and abuse. Children are countries greatest human resources and major of the country social progress lies in the well being of the children.

There are resources through out the country that can help a child and its family through the difficult situation.

### **Prevention**

Crime statistics shows that adult convicted of child sex offences are much less likely to re-offend than those convicted of any other major crime since child sexual abuse affects all members of a family or group, every one including in the adult is likely to be in need of support.



## **RELIEF UNDER O.7, R.7, C.P.C.**

**D. P. Rath**  
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O.7, R.7, C.P.C. emphasises that the plaintiff must specifically state in the plaint the relief sought. The relief so sought may be simple or in alternative. Apart from the specific relief sought in the plaint, there may be 'general or other relief' flowing from such specific relief. This 'general or other relief' need not be asked for in the plaint. Court is competent to give always such 'general or other relief' as if it has been asked for. But in most of the plaints this 'general or other relief' is usually asked for as the last prayer in the plaint almost as under -

"Such other and further relief as deemed proper may kindly be granted to the plaintiff to which the plaintiff is found entitled to."

Such additional prayer made in the plaint is an unnecessary exercise exhibiting ignorance of the true concept of O.7, R.7, C.P.C.

Now question arises as to what could be such 'general or other relief' which Court is competent to grant always, particularly in the context of the settled principle of law that Court can grant lessor relief, but certainly not larger relief, than what has been sought for in the plaint (2002 SAR (Civil) 29). This can better be explained by various illustrations.

- (a) Plaintiff asks for exclusive title in the suit property. Court found that defendant has joint title in the suit property alongwith the plaintiff. Court, while declaring their joint title, can pass a decree for partition of the suit property between plaintiff and defendant, even without amendment of the plaint seeking such partition. See -1977 (1) CWR 121, 1999 (1) OLR 228, 2000 (1) OLR 122, 2000 (11) OLR 29, 2004 (1) CLR 169.
- (b) Plaintiff asks for declaration of title in and confirmation of possession of suit property. Court found that plaintiff, though has title in the suit property, was dispossessed therefrom by the defendant. Court, while declaring the title of the plaintiff in the suit property, can direct recovery of his possessino thereof from the defendant. See - Vol. 39 CLT 975, Vol. 51 CLT 155, AIR 1985 Orissa 126, 1973 (2) CWR 1283, 2000 (II) OLR 128, 2002 (Supl) OLR 59, Vol. 73 CLT 329=Vol.34 OJD (Civil) 397=AIR 1992 Orissa 76.
- (c) Plaintiff asks for a declaration that the deed of adoption of the defendant is void and inoperative. Court can grant decree that defendant has not been adopted. See - AIR 1983 Orissa 199-Vol.56 223.

- (d) Plaintiff asks for exclusive title over a boundary wall. Court can declare joint title of the plaintiff and the defendant over the said wall. See - 1986 (II) OLR - 299-AIR 1986 Orissa 281.
- (e) Plaintiff asks for his exclusive title in the suit property and ejection of the defendant therefrom. Court found that alongwith the plaintiff there are other co-sharers having joint title in the suit property. Since such other co-sharers are not parties to the suit, Court can only grant the prayer for ejection of the defendant from the suit property as that said decree shall enure to the benefit of all co-sharers. See - 1977 (2) CWR 806, Vol. 24 CLT 224.
- (f) Court can modulate the relief depending upon changed circumstances occurring during pendency of a suit to make the granted relief effective. See - AIR 1973 SC 171 (Pr. 27), AIR 1984 SC 143, AIR 2001 SC 996 (Pr. 11), 2006 (I) CLR (SC) 676.

Thus, on the ground of equity, recognised in O.7, R.7, C.P.C., Court is empowered to suo moto grant such general or other relief to the plaintiff which flows from the specific relief sought by him. The plaintiff, therefore, is not required to ask for such general or other relief in the plaint.





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