Cultural programme of National Seminar & Conference from 15-17th February 2013 at Puri

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VIDYA

NEWS LETTER

A QUARTERLY PUBLICATION Issue No.- 8th (1st Quarter - 2013)

For Brighter Tomorrow

ORISSA JUDICIAL ACADEMY, CUTTACK

ORISSA JUDICIAL ACADEMY, CUTTACK

Patron-in-Chief:

The Hon'ble Mr. Justice **C. Nagappan**
Chief Justice

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Asst. Director : **Sri S. Patra**

Editor : **Dr. D. P. Choudhury**

Hon'ble Shri Justice C. Nagappan, Chief Justice, High Court of Orissa administering Oath to the newly recruited 54 nos. of Judicial Officers.

Hon'ble Shri Justice C. Nagappan, Chief Justice and Hon'ble Judges of Orissa High Court on the occasion of Oath Taking Ceremony of the newly recruited Judicial Officers 2012-13.

All the newly recruited Judicial Officers 2012-13 on the occasion of the Oath Taking Ceremony.

Justice C. Nagappan

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MESSAGE

I am delighted to know that the Orissa Judicial Academy is going to publish the 8th issue of its Newsletter **"VIDYA"** covering 1st quarter, 2013.

A day after my assumption of office, I administered Oath to 55 newly recruited Civil Judges (Junior Division) on 28th of February, 2013 and they are undergoing training in the Academy.

The Newsletter contains articles contributed by Judges and academicians and it highlights the activities undertaken by the Academy in imparting training to the Legal Fraternity. I wish all success.

Chief Justice

Justice Indrajit Mahanty

JUDGE, ORISSA HIGH COURT & CHAIRPERSON,
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MESSAGE

Yet again, the Orissa Judicial Academy is bringing out its 8th issue first Quarter, 2013 News letter "VIDYA".

It is a befitting means of expression in envisaging the pivotal role of the Academy in the State. This faithful and judicious exercise of the articles and review of cases that are encompassed in the News letter helps in justice administration system of this State. I am sure that in future, the members of the Bar, Bench and Academicians will maintain the high standard of integrity and quality in fearless disposition of their views through this News letter for the noble objective and goal of the judicial justice.

I convey my warm blessings for the success and achieving the goal judicial justice through our small effort by publishing "VIDYA" of the Orissa Judicial Academy.

Chairperson,
Orissa Judicial Academy.

Editorial Note ...

In a democratic society like India radical transformation is undergoing every day. The Judicial Officers have to be sensitive, responsive and receptive & to be abreast of changing trend both socially and legally. It has now become imperative for judges to continue for periodical judicial training. An integrated approach to judicial education includes both the content and the method of training apart from periodical workshops, seminars, conferences in State and National level as well. Recently, the Orissa Judicial Academy with the aid of 13th Finance Commission Grant organized one day National Seminar on "Land Acquisition Law " and two days conference on "Forest, Environment visa-vis Mining Law" from 15th to 17th February 2013 at temple city Puri, Odisha where Judicial Officers from 18 states including the State of Odisha have participated. The Hon'ble Judges of the Supreme Court, High Court of Orissa and from other States along with the resource persons contributed their valuable thoughts on the subject. Issues they addressed are very necessary for day-to-day judicial activities.

In fact Judicial Officers present in the Seminar /Conference vowed to enhance their capacity building and to be more committed to the cause of environmental justice. It emerged from such mega event that court must interfere when there is nobody to save environment.

Orissa Judicial Academy is committed to the mission of continuing judicial education, basically to improve the quality of judicial performance or judicial productivity. Thus the judicial education is the means of judiciary to reach different aspects of the society.

Director,
Orissa Judicial Academy, Cuttack

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How to be a Good Judge
- Advice to New Judges*

Justice R. V. Raveendran
Former Judge, Supreme Court of India

When do you become a good Judge? How can you be a good Judge? Is it by serving as a Judge for a long period with a clean record? Is it by promptly and regularly deciding the prescribed number of cases to meet the quota fixed by the High Courts? Is it by writing erudite judgments? Is it by being honest all through your career?

Rendering justice, in its larger sense, is giving every person, his or her due, said Aristotle. It is a broad concept that applies to all those who are entrusted with power - power to govern, power to legislate and power to adjudicate. A Judge renders justice, by adjudicating disputes and complaints in accordance with law. He also renders justice by deciding the cases speedily and effectively after due hearing.

Justice in accordance with law does not mean mechanical or robotic justice or disposing of cases for statistical purposes. It means the Judge has to decide the maximum number of cases to the best of his ability, by practising and upholding high ethical standards. The Judge, by his conduct, by his decision making process, and by rendering decisions fairly, equitably and justly, earn the trust and respect for the judiciary from the public and from the members of the bar. For this purpose, he has to develop judicial skills, administrative skills and most important, scrupulously follow judicial ethics.

Judicial Skills :

You require five judicial skills to effectively discharge your functions Judge - as an adjudicator presiding over a public forum.

Firstly, you should have a thorough knowledge of the procedural laws, that is, Code of Civil Procedure, Code of Criminal Procedure, provisions of Statutes dealing with Evidence, Limitation, Court Fees and Stamps, and forensic procedures. This will enable you to have control over the trial and avoid procedural irregularities. Most of the appeals and revisions against interim orders relate to errors committed in procedure. When you have mastery over procedural laws and conduct the proceedings in accordance with them, cases also get decided quickly and effectively.

Secondly, you should have a broad acquaintance with the substantive laws and fundamental legal principles. I am using the words 'broad acquaintance' and not 'thorough knowledge',.as there are too many laws. It is not possible to master all laws before becoming a Judge, or in fact even after becoming a Judge. Each provision of law has different nuances which you will be able to appreciate and understand in the context of specific cases. You will get a chance to study different laws thoroughly as and when legal issues relating to such laws are argued and the lawyers analyse and interpret them in the context of the particular case. If procedural laws help you to control the conduct of the trial, substantive laws help you to render proper and just decisions and prevent injustice.

Thirdly, you have to develop the skill of giving a due hearing. The entire Codes of Civil Procedure and Criminal Procedure are about giving a due hearing and giving effect to the first principle of natural

* Based on several lectures to newly appointed Judges given by him at National Judicial Academy, Bhopal, and State Judicial Academies of Karnataka, Madhya Pradesh, Delhi, Tamil Nadu, Andhra Pradesh, Uttar Pradesh and Punjab & Haryana.

justice - audi alteram partem ('hear both sides' or 'no man should be condemned unheard'). Due hearing is due opportunity to put forth one's case. It involves listening to the parties, considering the grievances, complaints, factual positions and legal contentions and thereafter reaching a decision. This is the main function of a judge. Many Judges, unfortunately, do not cultivate the art of due hearing - listening, absorbing the evidence and following the arguments. You should control and regulate the evidence and arguments by effective interventions, interjections and steer and guide the lawyers, so that they stay on course and do not meander into irrelevancies. Many judges are distracted and disinterested when the evidence is recorded and the arguments are addressed. The result is long and irrelevant evidence and arguments and the Judge failing to follow or understand what is happening in the proceedings. If you have Tieard' the case fully and properly, that is read the pleadings, recorded the evidence and heard the arguments, made proper notes, reaching a correct decision and writing the judgment becomes easy and simple. If the recording of evidence and hearing of arguments is continued on day-to-day basis, there would be no need, for you to spend a long time in reading the files for writing the judgment.

The fourth is the skill of marshalling facts and arriving at findings, applying the legal principles to those factual findings to arrive at the correct decision, and putting the facts, reasoning and conclusions in a lucid, logical, precise and coherent manner, in the form of an order/judgment. The litigants, the lawyers and the appellate/revisional courts should be in a position to understand what you have decided. You should not repeat yourself. You should have clarity in about what you intend to say.

The fifth is the skill to consider and dispose of interim prayers, interlocutory applications and requests for adjournments, effectively and firmly. The legendary 'delays' in Indian Judicial System, is mainly on account of ineffective and inefficient handling of these prayers and requests. You should keep under check any unwarranted sympathy in considering requests for adjournments and interim orders. You should also keep in check the temptation to be a populist Judge. You should be adept at clearing all obstructions, tangential deviations, and camouflages adopted by litigants and lawyers to delay the progress of the cases. You should focus your attention upon deciding the main case. I am not saying that you should not entertain interlocutory applications. I am saying that you should not allow them to bog down the main case. I am not saying that you should deny all requests for adjournments. I am saying that you should be strict in granting adjournments. Statistics show that out of the judicial time spent on each case (from beginning till the end), on an average about 40% of the time is spent on preliminaries, adjournments and interlocutory matters.

If you acquire a thorough knowledge of the procedural laws and a broad acquaintance of the legal principles and substantive laws, and develop the skills of giving a proper hearing and then marshalling the facts to arrive at proper conclusions and put them in the form of a cogent judgment/order, and master the skill of disposing interlocutory applications and controlling adjournments, you can be said to have judicial skills required.

Administrative skills :

Side by side with the judicial skills, you have to develop five administrative skills. Let me describe them briefly.

Time Management. You have about 250 working days (that is about 1250 court hours) in a year. You should know how much time you require for preliminary work, how much time you can allocate for recording evidence, how much time for hearing interlocutory applications and how much time for final arguments. You must conceptualise the entire day, week and month as different units, to manage your time. This will help you to plan the number of cases you can hear and decide in a month and then gradually increase your output. You should also provide time slots for your physical and mental well being (exercise/yoga/meditation) and time for your family.

Board Management. On an average, each of you may have anything between 1000 to 3000 cases pending on your board. You should know how to manage your board. If you post a large number of cases every day, then most of the judicial time will be spent in nonproductive preliminary hearing. You should plan your working day - how many evidence cases you should list, how many argument cases you should list (taking note of the fact that some cases would get adjourned), how many cases you should hear and dispose of without delay. The lesser the number of hearings in a case, speedier will be the disposal of the case and lesser the hassles and harassment for the litigant.

You should not list too many cases for evidence and arguments. There is no point in listing, say twenty cases for evidence or twenty cases of arguments. Whenever a case is listed for evidence, the litigant is expected to be present and be ready to lead evidence. Imagine the time and energy wasted by a litigant in repeatedly getting ready and attending court for evidence. Same is the position regarding listing too many cases for arguments. Each time a case is listed for arguments, the advocate is required to read the file and get ready. If a case gets adjourned repeatedly, parties and lawyers will stop getting ready on the assumption that the case is not likely to be taken up. When ultimately the case is taken up, many a time, the parties and advocates are unprepared, and the result is a request for adjournment or ineffective or defective presentation of the case, requiring subsequent 'repair' by way of recall of witnesses, rehearing arguments, or remands by higher courts.

You should apply case management rules and case flow management rules effectively. You should be pursuasive in referring parties to alternative dispute resolution process. Board management and. time management go hand in hand and even overlap each other and will together ensure that the number of disposals keep up with the fresh filings and pendency.

Registry Management. You have to exercise control and supervision over your court officers, stenographers, clerical and attendant staff, to ensure that they do their work properly and assist you effectively. Particular attention should be given to bailiffs/process servers (to ensure prompt service of notices, summons, effecting attachments/sales, etc.), staff in charge of Record Room (for proper maintenance of records), the staff in charge of Material Room (to ensure that material objects and evidence are properly catalogued and stored safe and secure). Please remember that if the staffs are not efficient, or lack in integrity or courtesy, that will reflect upon the functioning of the court.

Bar Management. Lawyers are officers of the court. Unless you have their cooperation, you cannot dispose of cases, expeditiously or effectively. You should be firm in handling them, and at the same time courteous and diplomatic. You should show uniform courtesy to the members of the bar and litigants. You should be able to earn their respect by your commitment, conduct and behaviour. You should be able to extract work from the members of the bar, without antagonising them. You should carry the Bar with you and avoid unnecessary confrontations with them. Genuine requests for adjournments should be accommodated. Frivolous and casual requests for adjournments should be firmly dealt with. If you grant adjournments merely for the asking, you cannot expect the lawyers and the litigants to be ready. You should dispose applications for interim relief and bail expeditiously. You should not be overly rigid. At the same time you should not grant interim reliefs merely for the asking, so as to be a populist Judge. You should build a reputation that you will not tolerate non-sense and you will not permit unnecessary evidence, lengthy arguments, frivolous submissions, and requests for adjournment, dilatory tactics or misrepresentations. In short, you should mean business.

Self-Management. This means self-discipline, commitment and hard work. This refers to maintaining, good health and being punctual. This means being properly and neatly dressed and groomed.

If you are late to court, you cannot expect the lawyers and staff to be prompt. You should hold court on time. You should not take unnecessary leave. You should be on the seat during the entire court working hours. You should delivery judgments and orders in time.

You should have good health. Unless you have good health, you cannot function effectively. For every five to six hours of work in court, you have to spend a couple of hours on administration and four to five hours at home for reading files and writing/dictating/correcting orders and judgments. You are therefore glued to a chair for more than 12 hours each day. Such sedentary but stressful life invites blood-pressure, diabetes, lower back ache, spondylitis varicose veins and other ailments associated with sedentary life. That will lead to frequent bouts of ill health, constant irritation in court and inability to focus and pay attention in court and perpetual tiredness. Physical exercise, yoga, proper diet and dieting to maintain good health are absolutely necessary, if you want to work effectively and efficiently.

You should be comfortable with technology. You should have a working knowledge of cornputers and Information Technology. It will help you write and correct orders/judgments, research on case law and articles maintain statistics and prepare reports. The days of paperless E-courts, presentation of evidence and arguments through video conferencing are not far away. Get ready to manage and cope up with technology.

The aforesaid administrative skills will make you efficient. The following guidelines under the caption 'competence and diligence' in the Bangalore Principles of Judicial Conduct are relevant:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Judicial Ethics

You are knowledgeable. You are competent. You have judicial and management skills. Will these make you a good judge? This brings us to your conduct as a Judge. This brings us to Judicial Ethics. What are the ethical standards to be followed and practised by a Judge? How should a Judge behave? What should be the demeanour of a Judge? What do people expect from a Judge?

To be a good judge, you have to cultivate and maintain five ethical principles -judicial aloofness and detachment, honesty and integrity, judicial independence, judicial temperament with humility, and impartiality. All of you, as Judges, know about these ethical standards of judicial conduct. The difficulty is in scrupulously and constantly following them. Let us discuss them.

Judicial aloofnes and detachment

What is judicial aloofness? It refers to conditioning your mind to be aloof, maintaining detachment from the arena of contest and rendering justice unmindful of the consequences. You have to dispassionately decide who is right and who isNyrong in accordance with law. Lord Birkett explained it thus (see 'Norman Birkett' by H. Montgomery Hyde published by the Reprint Society Ltd. London, in 1965, page 547):

> "The duty of the Judge to keep complete control of the proceedings before him is an essential part of the administration of justice in all our Courts. He has a duty to intervene by way of question or otherwise at any time that he deems it necessary to do so. He may wish to make obscurities in the evidence clear and intelligible; he may wish to probe a little further into matters that he deems important; and in a score of ways his interventions may be both desirable and beneficial. But it is safe to say that all his interventions must be governed by the supreme duty to see that a fair trial is enjoyed by the parties. His interventions must be interventions and not a complete usurpation of the functions of counsel. But the judge best serves the administration of justice by preserving the judicial calm and the judicial demeanour, aloof and detached from the arena of contention."
>
> (Emphasis supplied)

Of course, there may be cases (as for example, Public Interest Litigation) where a Judge may have to show judicial activism or be mindful of the consequences of his orders and actions. That is dealt with in my article on 'Rendering Judgements - some basics' [published in 2009 (10) SCC Journal Page 1].

Judicial aloofness is not living in ivory towers. It does not mean that you should not be alive to the problems of the society or that you need not understand the day-to-day realities of life. Judges should be able to understand the needs of the society and 'connect' to the problems and difficulties of the weaker sections and provide access to justice to the poor and downtrodden. The rich, the powerful, the capable, the crooked can protest loudly about violation of their fundamental rights, human rights or property rights and protect them by engaging competent lawyers. You should remember that for every rich and powerful, there are hundreds belonging to weaker sections who cannot protest against injustices, nor engage lawyers and assert their rights in a court of law.

At the physical level, judicial aloofness refers to the need for Judges to maintain 'distance.' You should avoid mixing with members of the Bar, politicians or litigant public, except at public functions or at open private events like marriages and deaths. Your smile at a lawyer or a litigant inside a court, your chat with a lawyer or litigant outside your court, share a joke with a politician at a public function, tend to be misunderstood and misinterpreted by the public and the bar. If you meet or mix with them in private, either in your house or their house or places like hotels, restaurants, clubs, you are inviting trouble. Tongues will wag. We live in a world full of suspicion. More so in the case of Judges. Therefore, you should avoid mingling with lawyers and the litigants. Who knows - when Judges and Judiciary get an unshakable reputation for integrity and impartiality, hopefully things will change.

When I give this advice to Judges about maintaining physical 'distance,' I some times get the following query from the members of the Judiciary:

> "You ask us tp maintain 'distance.' But the Legal Service Authorities, require us to hold Legal Awareness Programmes where we have to mix with the public, including lawyers and litigants. We have to take assistance of the district administration, police, elected representatives and members of the bar for organising these functions. How can we maintain distance and independence?

The issue is no doubt difficult and delicate. You are required to wear two hats. One hat is that of a Judge. As a Judge, you are not supposed to mix with lawyers, litigants or take favours from any one. Your

other hat is that of an authority implementing the provisions of the Legal Service Authorities Act, 1987, where you have to interact with litigants/officials/elected representatives. If you are seen talking to someone in public, in a legal awareness programme, no one is going to question your integrity or independence. But if some one sees you in a restaurant or a bar with a lawyer or with a litigant, it will give room for adverse comments. If you keep in mind the distinction between your judicial hat and your legal service hat, you will have no problem.

I agree that Judges should under no circumstances be put in a position where they feel obliged to lawyers or police officers or the district administration or for that matter, any one else, whether it is a connection with legal service functions, or visits of any dignitary, or otherwise. If Judges have to seek and get favours for conducting such functions, the next stage would be for them to return the favour in some manner, which means compromising judicial detachment and independence, which may ultimately even lead to loss of integrity. Judges are not expected to conduct political size meetings or ostentatious functions. Small gatherings, select target audiences and meaningful dialogue are what is needed to spread legal awareness Please have the courage to organise legal service and other court related functions in a spartan manner within the sanctioned budget and avoid big and ostentatious functions.

I may add an unsolicited advise to the Chairmen of Legal Service Authorities. Please ensure that in organising or conducting legal services programmes, Judges are not embarrassed or compromised. In fact it is better if legal service activities are organised by the employees of Legal Service Authorities, who are not judicial officers. Judges should attend such functions only as Guests/Speakers. Personally, I am of the view that spreading legal awareness and enabling access to justice should be the function of the executive. But, if Parliament wants the Judges to take this burden, we have to discharge those duties sincerely. Be that as it may.

The following conduct under the caption "propriety" in the Bangalore Principles of Judicial Conduct (2002) are relevant:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any menner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

Integrity and Honesty

When some one compliments a Judge for being a man of integrity, I feel amused and in fact irritated. In a Judge, honesty and integrity are not special qualities or achievements to be appreciated. They are fundamental pre-requisites for a Judge. They are non-negotiable 'eligibility criteria' for a Judge. A Judge is required and expected to be a man of integrity and there is nothing special about a Judge being honest. If a Judge is not honest or lacks integrity, he has no business to be a Judge.

We have around fifteen thousand judges in the country. Even if there are a few aberrations among them, the public and media have a tendency of tarring the entire judiciary as corrupt. Please remember that if you do something improper, it is not only you, but the entire judiciary that will be seen in a bad light. Judges should be doubly careful in their conduct and behaviour, so as to maintain the high reputation of the Judiciary. Every improper act and every misbehaviour of a Judge is likely to be magnified, reducing the faith and trust of the common man in the Judiciary.

Many accused are rich, powerful and resourceful. Many civil litigants indulge in litigation out of ego, greed, jealousy and hate. These litigants - both criminal and civil -would go to any length to succeed, which unfortunately includes attempts to influence Judges. Therefore the temptations to judges to become corrupt are high. You should be forever on guard against such temptations. You are the last bastion of democracy, rule of law and fight against corruption.

John Marshall said : *"The power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith and confidence of the common man."* If Judiciary loses the trust, faith and confidence of the common man, that will j be the end of rule of law and democracy. There cannot be a strong and vibrant Judiciary unless the Judges are persons of integrity.

Many Judges tend to think corruption as financial dishonesty that is taking bribes with reference to a case to be decided by them. They assume that taking favours generally from a lawyer or a politician, without reference to any pending case, does not affect their integrity. But integrity has several facets. For example, let us say that a Judge borrows a lawyer's car for going on a vacation/tour; or a Judge accepts gifts during functions' in his family" (marriages, naming/birthday celebrations, etc.) from lawyers; or a Judge gets a seat allotted free for his son or daughter from the Management Quota of a Medical College which the college would otherwise 'sell' for Rs. Ten lakhs. Please note that none of the above favours had anything to do with any case to be decided or judgement to be rendered by the Judge. But any act which is likely to affect his integrity in future is also objectionable behaviour, even though there may be no specific quid-pro-quo for the benefit received by the Judge. Receiving any favour or benefit of a discretion, is objectionable, if it is given because you are a Judge. Please remember nothing in this world comes free or without strings attached. Every one expects the return of a favour. Whenever a concession/favour is shown to a Judge (or any Government servant), the person showing the concession/favour has a selfish motive. He considers it as an investment for the future and would demand, or at least expect, a return of the favour in some form. The best way to maintain your integrity is not to accept any favour from any one, when you are a Judge.

You should not only be honest, but seen to be honest. You have to be careful how you deal with others in your private life. You cannot assume: "My conscience is clear. I am not corrupt. I can therefore mix with any politician. I will go for lunch with a lawyer." You may be honest. But, unfortunately, the litigants and the public do not assume that you are honest. A cynical worlds "which has seen dishonesty and corruption everywhere, would assume corrupt motives, if your conduct gives room for it, even though you may be honest. If they see you in the company of a lawyer in a club, they will always assume that some 'deal' is going on. Therefore, to ensure that no improper motive is imputed to you, to ensure that your good name and the good name of Judiciary are not sullied, keep a distance.

The following guidelines in the Bangalore Principles of Judicial Conduct (2002) are relevant :

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Judicial Independence

You are members of the District Judiciary. Use of word 'sub-ordinate' judiciary in the Constitution of India to describe the district judiciary, is not intended to put any fetter on your judicial independence. The word 'sub-ordinate' literally means someone in a lower position than someone else. The Constitution uses the words merely to describe Judges who hold a lower position than the Judges of the High Court, in the judicial hierarchy. But of late, the word 'sub-ordinate' unfortunately is understood by some Judges, as referring to someone who is subservient. The higher courts have power to correct you after you render your judgment, but none can direct you as to how you should decide in the first instance or what you should decide. Your independence to decide in accordance with law is not subject to any restrictions or control (except on an appeal or revision, after you decide by a judicial order). In the exercise of your judicial functions you are not independent and sub-ordinate to any one. The difference between the members of the District Judiciary, and members of the higher courts is only in jurisdiction.

Judicial independence is not a freedom to do what you like or what you consider as just and equitable. You are required to render justice in accordance with law, and not justice as per your convictions or what you consider as just. Justice Cardozo warned :

> "The Judge, even when he is free, is still not wholly free. He is not innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of fairness and justice. He has to draw his inspiration from well consecrated principles. He is not to yield to spasmatic sentiments, to vague and unregulated benevolence. He is to exercise discretion informed by tradition, methodised by analogy, disciplined by system, and subordinated in the primordial necessity of order in social life. Wide enough in all conscience is the field of discretion that remains."

It is said that Judicial independence is not a privilege enjoyed by Judges, but is the reflection of the privilege of the people to rule of law in a democracy. It is a safeguard for the protection of the people against the vagaries of the legislature and the executive. Judicial independence comes with the responsibility to be sincere and conscientious in performing your duties. In Union of India Vs. R. Gandhi, Madras Bar Association [2010 ( ) SCC] the Supreme Court observed :

> "Independence is not the freedom of Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial."

The Bangalore Principles of Judicial Conduct (2002) explain the principle of Judicial Independence thus :

Principle : Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application :

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Humility (Judicial temperament)

Judges are public adjudicators and should not consider themselves as 'VIPs.' In India they are treated as VIPs. They are addressed as 'my lord' and 'your honour.' Everyone bows and salutes them. Everyone shows them deference. Day after day, they decide the fate of litigants. They have captive audiences in the court who lap up every word uttered by them, laugh and smile at every witticism and show appreciation at every remark. It is no wonder that after some time, some of the Judges start feeling that they are very wise, knowledgeable, intelligent, powerful and important, and that their word is law, and their wish a command. Humility is far away from their mind and demeanour. Harold R. Medina warned:

> "A Judge is surrounded by his sub-ordinates, lawyers and litigants who keep telling him what a noble, wonderful, wise and knowledgeable person he is. A Judge believing them, becomes a lost soul ending up as the opposite of all that a Judge should be."

Humility is the quality which makes a Judge realise that he is not infallible, not omnipotent, that he should patiently hear the lawyers who appear in the case as they have studied the facts and researched on the law, and that he should follow the arguments and then decide the matter by deciding all issues by keeping an open mind. Without humility, a Judge becomes arrogant and perverse with a closed mind, believing that the lawyer does not know, that he knows and his decision is always just and right. He tends to showcase his cleverness, knowledge and learning in his judgments and orders, relegating justice to the back seat. In short, he ceases to be a 'Judge'.

You should be more concerned about rendering justice rather than trying to show off your eruditeness, intelligence or power which inevitably leads to injustice. Justice Frankfurter described a 'Judicial humility' as having a mind that respects law, that can change its thinking, that can accept that another view is possible, that can be persuaded by reason, that quests for truth and that which is detached and aloof, and that puts passion behind its judgment and not in front of it.

You should avoid the temptation of jumping to conclusions or taking a 'view' and then refusing to budge from it. If you first decide what should be the result without hearing or without hearing fully and properly, and want to blindly stick to it, then you will be searching for the law and facts to fit your decision, rather than basing your decision on the facts and law. You will also try to ignore or overlook the law and the facts that are inconvenient or contrary to your view. Choosing the facts and law to support a pre-determined decision only demonstrates a desire to show off your intelligence and cleverness, and not any desire to do justice. It is therefore said that many a successful and brilliant lawyer do not make a good Judge, if he is obsessed with showing off his intelligence and knowledge in every decision, rather than render justice.

You should not try to force a compromise or settlement. In fact, you should not even suggest a compromise without knowing the full facts. What happens when you suggest a compromise? In many cases, the party whose case is weak may be eager to agree, while the party with a strong case or a just cause may be reluctant to agree for a compromise. If you suggest a compromise, you would naturally feel irritated with the party who is not agreeing with your suggestion. When you thereafter hear the matter, your resentment against the party who refused to compromise may persist and you may tend to 'teach a lesson' to the party unwilling to listen to your suggestion, ignoring the merits of the case. Of course, that is not likely to happen when judicial maturity is developed with experience. In fact many judges, who genuinely feel that a compromise is appropriate and pursue their suggestion with parties, very fairly rescue themselves from hearing it, if the compromise fails to materials.

You should also not be perturbed or worry about the comments of the media or adverse reaction of any particular group. Neither your judgment nor your actions should be populist. You are not running for a public office. You are not seeking publicity. If Judges should decide in a manner which will please the majority, no justice can be rendered to the minority. If Judges should go by the views of the rich and powerful, no justice can be rendered to the poor and downtrodden.

Common grievance against Judges is that they live in ivory towers, that they do not understand the ground realities, and that their orders are impractical if they go by the rule book. Do not be worried by such remarks. Judges deal with the problems, concerns and difficulties of the common man, every day. They read newspapers and magazines, and watch television. They have access to internet. They have their feet firmly on the ground. In fact, the worry is that many a times, their decisions, particularly in sensational criminal cases, may be affected by the pressure of public opinion. In regard to the second part of the complaint that the decisions are 'impractical', it should be remembered that Judges decide in accordance with law. They do not make law. The legislature makes the law. If there is any rigidity or impracticality, the blame should not be placed at the doors of Judges.

Impartiality (freedom from prejudice and bias)

We now come to the most crucial and special among the qualities of a Judge -impartiality. In fact, to achieve impartiality, you should have all the other four qualities mentioned above - honesty and integrity, judicial independence, aloofness and humility - and something more, that is freedom from bias and prejudice. , You may have honesty and integrity but may still suffer from bias and prejudice. Bias and prejudice in a Judge may be of two kinds - external and internal.

External bias and prejudice.

When a lawyer of your caste or community appears, the case should not swing in his favour by reason of his caste. If there is a dispute between persons belonging to your caste/community and a person belonging to a rival caste, you should not lean towards the litigant belonging to your caste/ community. That will be bias. When a litigant is of another caste/community, you should be, by reason of

his caste/community, being harsh or overly strict. That will be prejudice. Judges should guard against any prejudice and bias based on caste/community.

Sometimes, a friend or distant relative or even mentor (or a person who is a leader or member of the political party of which you may be an admirer or follower) may appear befoi you, as a lawyer or litigant. When that happens, you should curb any inclination or tendency to decide in their favour or to exercise judicial discretion in their favour. If you exercise your discretion in their favour, on the specious ground that what is granted is only an ex parte interim order and that when the other side appears, you will modify the order and be totally impartial, you would clearly be guilty of nepotism.

Some Judges think that it is good to encourage juniors by granting interim orders. This is on a total misconception of what constitutes encouragement. You 'encourage'juniors by giving them a patient hearing, by not being impatient or harsh with them, by allowing them to get over their inhibitions, stutters and stumbles, and by permitting them to argue on another day if they want to research on the case. Giving an interim order in an undeserving case, because a junior appeared, is not encouragement of the junior, but abuse of judicial power causing prejudice to the other party. Such sympathy is not encouragement but unwarranted bias in action.

Let me refer td some other forms of bias and prejudice. There are advocates who are very respectful towards the court, who are always very courteous, who always bow to the Judge when they enter and when they leave a court hall. They sit in the front row in the court hall and smile appreciatively at all jokes and witticisms of the Judges, howsoever foolish or pedestrian they are, and nod approvingly, whenever the Judge expounds legal principles, howsoever erroneous or absurd. When this happens, the Judge starts thinking: "Oh, this lawyer is intelligent and good" and is lulled in a feeling of 'positiveness' towards such lawyers. On the other hand, there are some lawyers who sit in the court with a dour face. •Whenever, the Judge cuts a joke or enunciates some legal principle, they look away disinterestedly or wear an expression implying that they consider the Judge to be shallow or ignorant. The Judge therefore thinks: "This fellow appears to be dumb. He does not appreciate or understand my wit, knowledge and wisdom" and starts developing a 'negativeness' towards such lawyers. After sometime, there is every likelihood of the 'pleasant' lawyer having a better chance of winning a march over the 'dour' lawyer, in getting . some discretionary interim orders. This is bias and prejudice in action. This should be cut short.

There are also other variations. Some lawyers are very reasonable in their submissions. They are precise, respectful and brief. But there are some "cantankerous" lawyers, who will beat around the bush, refuse to come to the point, disagree with the Judge and go on arguing and arguing, testing the patience of the Judge. Whenever the 'reasonable' lawyer appears, the Judge will mentally lean forward and whenever the 'cantankerous' lawyer appears, he will mentally lean backwards. If the very reasonable lawyer has a bad case, and the cantankerous lawyer has a good case, there is a very good chance of the good lawyer with a bad case getting some relief and the bad lawyer with a good case not getting adequate relief. These responses are nothing but bias and prejudice in action. You should always guard against it.

Your dislikes and likes for any lawyer or litigant, or your feeling towards or against particular caste, community, religion, region should not have a bearing on your decision or decision making process. Every one of these external factors/considerations should be kept away. A case should be decided on its merit, and not on the merit or reputation or status or attitude of the lawyer or a litigant.

Internal bias and prejudice:

Let me next refer to 'internal bias and prejudice.' Every Judge has his own perception about what is right and what is wrong, what is just and what is unjust, and what is fair and equitable, which have a bearing on his decision in a case. Such perceptions are based on his personal philosophies, traditional

beliefs, acquired convictions and prejudices which are deeply rooted in his psyche moulded by what he heard, what he read, what he felt and experienced. Over a period of time, these perceptions lead to Judges being type-cast in their decisions. For example, the experiences of a Judge may make him view all police action with suspicion and consequently lead him to believe that most of the accused are framed or falsely/wrongly accused of offences, and innocents should not be made to suffer or that third-degree methods would have been employed to get confessions, and that there is a need to give the benefit of doubt to the accused. He therefore tends to acquit and therefore becomes an 'acquitting judge.' Another Judge may feel that when the police investigate and file a charge-sheet and place evidence supporting the charge, they should not be disbelieved and ignore all discrepancies in evidence on the ground that they are due to human 'error* or 'pressure'. He tends to convict and therefore becomes a 'convicting Judge.' When a 'Convicting Judge" is holding the roster, usually there is 70% to 80% convictions, and every defence lawyer would avoid hearing and decision by such Judge. But when an 'acquitting judge' sits in the roster, and there is 90% to 95% acquittals, the very same defence lawyers will stand in a queue to argue thejr cases. You should be careful to be a neutral judge who is known for deciding cases purely on their merit, without being branded as either as a acquitting or convicting Judge.

Let me give another example. Let us say that there are two similar claims for compensation where the age, income and number of dependants of the deceased are the same. One Tribunal awards Rs. Five lakhs and another Tribunal awards Rs. Six lakhs, as compensation. Both Tribunals may be presided by honest men with utmost integrity. Nevertheless, their personal philosophies enter into their judgements, leading to award of different quantum on similar or same facts. This result in the former being referred to as a 'tight-fisted judge' and the latter being referred to as a 'liberal judge.'Another example: Before a particular Judge, 90% of eviction cases succeed; while in another court, 90% of eviction cases are dismissed. They will be known as 'landlord judge' and 'tenant judge' respectively. Similarly, we have 'pro-management judges' and 'pro-labour judges' in labour matters. Fali Nariman refers to one such Judge was a 'tenant Judge' and 'Pro-labour Judge'.

We cannot have one Judge deciding one way and another Judge deciding another way and a third Judge a third way, on the basis of their personal philosophies. It is true that Judges are not robots or computers to give identical judgments. So long as Judges are human, their personal philosophies will to a certain extent, mould their decisions. But a litigant, who is adversely affected by a judgment, will be perplexed as to why he should suffer because the case came up before a particular Judge when another identical case before another Judge ended differently. It is to avoid the ill-effects of personal philosophies and prejudices; the 'precedent' principle is adopted to ensure uniformity and consistency in decisions.

We should be careful that personal philosophy does not gain upper hand when precedents are available. The litigants are not bothered about the length of the judgement or about the erudition of the Judge. He is concerned only with the result — the relief which the Judge grants or does not grant. Therefore, there should be an effort to achieve consistency and uniformity in decision making. I am not saying that you should give up your judicial independence. Nor can \ say that your personal convictions and views cannot at all play a part in the decision making. All that I say is that if there are precedents, you should follow them and not your instincts or personal philosophies, which show internal bias or prejudice.

You may be from any background, from any religion, from any caste, from any political philosophy. You may be friendly with many and you may be obliged to many - your friends, teachers, mentors, elders and seniors. Whatever maybe your background or antecedents or beliefs or convictions, when you become

a Judge, your allegiance should only be to law and justice and not to your friends and relatives who might have helped you, mentors who might be responsible for your becoming a Judge, or to the Judges of the High Court who selected you, or the political party whose ideologies you identify with. Friendship, loyalty, gratitude, are great qualities by themselves, but not when they are pitted against your allegience to integrity, impartiality and justice as a Judge. You shall truly and faithfully perform the duties of your office without fear or favour, affection or ill-will. Thomas Fuller said: "When a Judge puts on his robes, he puts off his relationships and friendships. He becomes a person without a relative, without a friend, without an acquaintance. In short, he becomes impartial."

The Bangalore Principles of Judicial Conduct (2002) described the quality of impartiality thus:

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court,' maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter of controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, chaste, disability,

age, marital status, sexual orientation, social and economic status and other like causes ('irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

Conclusion

Read the Restatement of Values of Judicial Life (adopted by the Chief Justices Conference of India 1999). Though they are addressed to Judges of High Courts, the principles underlying them apply to District Judiciary also. Study the Bangalore Principles of Judicial Conduct 2002. Let me draw your attention to two of the great values of Judicial life (from the Restatement of Values of A Judicial Life) - (i) Every Judge must, at all times, be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the office he occupies, (ii) The behaviour and conduct of Judges must reaffirm the people's faith in the impartiality of the Judiciary. Justice must not merely be done, but must also be seen to be done. Read the inspiring life stories and writings of great judges.

You ensure the rule of law. You are the interpreters of law. You are the seekers of truth. You are the Tenderers of justice. But you are not a legislator, you are not an administrator, you are not a trader. You have to remind yourself everyday about the onerous nature of your powers and functions; and that every case that comes up before you relates to the fate of a person relating to - the right to survive, the right to livelihood, the right to life, the right to liberty and the right of property.. You have to pray every day to give you the courage and conviction to do justice with humility, wisdom and compassion.

Though you might have studied or known the ethical principles, mere knowledge is not sufficient. It is practice of these principles every moment of your judicial life that will make you good Judges and earn a good name for the Judiciary.

NOTE : Some of you may feel that some things which I have said are impractical, idealistic, far-fetched and not realistic; or that some fears and apprehensions are exaggerated; or that the advice regarding ethical standards are too rigid, and ignores ground realities. May be. May be not. Some aberrations which have recently come to light underline' the need for strong ethical standards. You are at liberty to have a different view as to how to practise and maintain judicial ethics. But let there not be any compromise in regard to the fundamentals of judicial ethics which are constant. Adherence to them should be non-negotiable and non-dilutable. I wish you a meaningful and fruitful judicial service, with courage, commitment, hard work and ethical behaviour.

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AN ANALYSIS OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCE ACT 2012 (POCSA)

HON'BLE MR. JUSTICE M. M. DAS
JUDGE, ORISSA HIGH COURT

The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children.

Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims.

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.

An offence is treated as "aggravated" when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

Punishments for Offences covered in the Act are:

- Penetrative Sexual Assault (Section 3) - Not less than seven years which may extent to imprisonment for life, and fine (Section 4)
- Aggravated Penetrative Sexual Assault (Section 5) - Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
- Sexual Assault (Section 7) - Not less than three years which may extend to five years, and fine (Section 8)
- Aggravated Sexual Assault (Section 9)- Not less than five which may extend to seven years, and fine (Section 10)
- Sexual Harassment of the Child (Section 11) - Three years and fine (Section 12)

- Use of Child for Pornographic Purposes (Section 13) - Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These includes :

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.
- No child to be detained in the police station in the night for any reason.
- Police officer to not be in uniform while recording the statement of the child.
- The statement of the child to be recorded as spoken by the child.
- Assistance of an interpreter or translator or an expert as per the need of the child.
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled.
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- In case the victim is a girl child, the medical examination shall be conducted by a women doctor.
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- Frequent breaks for the child during trial.
- Child not to be called repeatedly to testify.
- No aggressive questioning or character assassination of the child.
- In-camera trial of cases.

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence.

The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.

For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted on the accused. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same

time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year).

The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible.

To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.

The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

Child rights activists say that POSCO, which has helped overcome shortcomings in the Indian Penal Code in dealing with child victims of sexual abuse, has several structure deficits that need to be addressed.

Besides several child-friendly procedures that policemen and judges are to follow with child victims, the POSCO classifies the offences into penetrative sexual assault (seven years to life imprisonment), aggravated penetrative sexual assault (ten years to life), sexual assault (three to five years), aggravated sexual assault (five to seven years), sexual harassment (three years and fine) and lastly, use of children for pornographic purposes (first conviction-five years; second conviction-seven years). But there are complaints that the police make mistakes on charging offenders under the appropriate category.

Bharti Ali of Haq Centre for Child Rights and POCSO does not offer support to persons like counsellors to the child victim and the family at the point where the offence gets registered-the police stations. Presently, the child has to be produced before a Child Welfare Committee (CWC) which will then offer a support person to the victim. She said the POCSO is lacking several important provisions that would have helped bolster the prosecution in such cases. "the recording of the victim's statement before a magistrate under Section 164 of the Criminal Procedure Code happens after 2-3 days now.

That is a crucial period in which the child victim and family can be influenced and threatened to withdraw his/her complaint. This is especially true in cases where accused are known to the victims. The recording of statements under Section 164 should be immediately done. Evidence collection has to improve. Lastly, a victim-protection scheme was badly needed which was not included in POCSO. This would help ensure that the victim does not turn hostile during the trial, " Ms. Ali said.

Presently, the POCSO recommends a punishment of six months imprisonment to a police man who does not record a complaint of sexual offence by a child victim. Ms. Ali said increasing this punishment could backfire. What could end up happening then is that even when cases of elopement are reported policemen will slap the POCSO on the hapless boy. They will be afraid that a stiff sentence could await them if they do not use POCSO in a case involving minors. Sensitisation of police is important to derive the maximum benefit out of POCSO.

Notified in November last year, POCSO is supposed to ensure the victim and her family get immediate interim compensation apart from other kind of support including legal aid and counselling on a sustained basis.

In Indian law, the biggest lacuna was that other than sexual intercourse, which is punishable under section 376 of the IPC, as other acts of sexual assault were covered under section 354, which is outraging a woman's modesty and a bailable offence. POCSO tries to plug this gap and relies heavily on prevailing laws in the USA and UK. There, punishment for sexual assault varies according to the age of the victim and the age of the perpetrator.

Victim families are usually from middle or lower income group and they need money for treatment, court case, meeting the police. It is these obstacles that POCSO tries to streamline. For instance, under this Act, the child victim will be informed about each and everything that happens in the case. The onus is now on the police to update the victim or guardian or the support person regularly.

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"The demand for equal rights in every vocation of Life is just and fair, but after all, the most vital right is the right to love and be loved".

- Emma Goldman

SYNDROME OF LOW CONVICTION RATE

B.C. Rout
Judge, Family Court, Bhubaneswar

"There are countrywide cries.

Rape, murder and burglaries on rise."

Law aims at protecting the people by punishing criminals and law-breakers. In last three years (from 1999 to 2001) 3222 persons have been murdered and so far one person has been convicted. The rate of convictions in our country relating to heinous offences is 6.5%. In Rajdeo Sharma case the Hon'ble Apex Court had ruled that trial of certain criminal cases should be concluded within certain time limit. Recently that ruling has been over-ruled by broader bench of the Apex Court. Their Lordships have observed that there should be no time frame in criminal trial. No accused should be acquitted without being !ried or for delay in trial. If accused is acquitted for delay in trial he will leave no stone unturned to delay the trial. However, endeavour should be made to conclude trial without reasonable delay.

Survey indicates that charge sheet is submitted in 80% of murder cases. Conviction rate is very meagre and nagligible. What are the reasons for this dismal figure in conviction rate? Who are to be blamed for this? Whether the judges, the prosecuting agency, investigating agency, lawyers, government, politicians, prosecution witnesses, accused, money power and muscle power are responsible for more acquittal rate ?

But primafacie a judge is condemned when an accused is acquitted. No doubt delay will contribute for acquittal of accused persons up to some extent. But it seems most of the criminal cases end in acquittal due to defective investigation and hostile witnesses. The police officers in name of law and order problems, V.I. P. and V. V.I. P. duty neglect their primary duty. Investigating officers are hands, legs and eyes of court. Due to want of effective control over investigating officers by the superior authorty over investigation is lackadaisical. The investigation lacks propermonitoring and supervision. Neither the I.OS nor supervising authorities equipped with law and conversant with latest decisions of Supreme Court and High Courts.Therefore errors are bound creep in. Some defects occur due to ignorance of law and some due to cavalier attitude towards investigation. What ought to have been done by the 1.0. is not done with some ulterior motive. The motive is either material or otherwise. If the accused are linked up with high-ups or affluent they can be able to turn the wheels of investigation in their favour. They can exercise influence on the 1.0. either through powerful political leader or higher police official. They can even gain the moon or the sun and what to speak of more about I.O. The political leaders harbour criminals to achieve their selfish ends. In such cases if the 1.0. is not morally sound and strong will succum to the pressure. Extending threat of transfer and action by influencial criminals can turn the table over night.

Legal cells should be constituted consisting of legal experts either at District or Sub-divisional level to impart necessary legal instructions to 1.0s during investigation and monitor investigation at every stage. Honest and impartial police officers should be given due protection by their authorities and Courts if necessary. If investigation is carried on violating the instruction of legal cell the I.O. should be recommended against by legal cell and on its recommendation suitable action as deemed fit should be taken. In such case investigation should be handed over to another impartial police officer & he should be treated as an abettor or an accused for screening evidence. The police officers entrusted with investigations should not be deployed on law and order duty and V.I.P. duty. If the accused is acquitted for defective investigation, this fact should be noted in his service book for consideration at the time of his promotion. This should be ensured and adhered strictly.

It is a matter of gratification that Govt, has appointed some Public Prosecutors and Associate Public Prosecutors on cadre basis in some districts. This process should be completed as soon as possible. The appointment of P.P.s. and A.P.Ps. on party consideration should be done away with without any delay to activise the justice delivery system and secure more rate of conviction. Talents will be attracted if posting is made on cadre basis, Separate Directorate should be established for their accountability and transparency. If system of posting of PPs. and A.P.Ps, on party basis continues it will certainly lead to rampant corruption. They will be more conscious to secure their posts by hobnobbing with their employer, party goons and criminals than performing their job sincerely and honestly to secure justice to the parties on behalf of the State. A. P. P. may not conduct the case of an accused properly if ho belongs to the party of his employer or he may delay the trial on-some plea or other to defeat justice in long run. Therefore, system of appointment of P.P. and APR on political consideration should be abolished Judges play a pivotal role in dispensing justice. They should not be spineless creatures or silent spectators while ttyiny cases. They should remain away from populist policy. Judges never seek election. Their primary duty is to deliver justice to party without fear or favour. No party would elevate him to heaven or throw him to hell. It is his duty which preserves a seat in either of the places according to the quality of his deed. A populist thought or casual approach while deciding cases is very harmful for the system to which we owe our allegiance.

A judge must be vigilant and alive to the game of hide and seek by the accused. When witnesses attend the accused will hide and when none appears he will appear and seek presence of witnesses. He will employ money, power and muscle power to get him acquitted. He wants that the prosecution witness should dance to his tune. He tries his best to delay the proceeding by returning then from Court again and again if he fails to gain over them by adopting infallible weapon. Public mind is forgetful.The accused wants to take advantage out of it. By returning witnesses the accused harasses them financially, mentally and ultimately being disgusted the witnesses do not depose even if they have seen the incident.This can be prevented if the trial courts as well as superior Courts take sincere interest. It is high time for the Govt, to amend the rule denying expenses to witnesses if they are returned without examination in Court for the faults of accused. If more witnesses are in attendance and the Court is preoccupied and is unable to examine any witness he may be called again at the expense of State. The balance of justice should not

tilt in favour of either party. By the fault and negligence of the accused, the complainant should not be denied justice.

Money plays a crucial role in throttling justice. The idea of the common man is that cases are fought and justice is bought. It is true upto some extent. The accused becomes successful upto some extent in gaining over witnesses and delaying proceeding by his money power. The witnesses should be made morally sound not to fall prey in the hands of accused. So also the Court should be vigilant to foil the conspiracy of gagging justice by money power.

At present subordinate Courts in Orissa are manned by only 400 judicial officers. There are about 18 judges for one million population. In All India Judges Association Case the Hon'ble Apex Court has given direction for raising this ratio to 50 judges for one million population Therefore, in Orissa the strength of judges should be about 2000. Deducting existing number i.e. 400, 1600 (Sixteen hundred) judges including Sessions Judges are to be recruited within a span of five years according to the direction of Hon'ble Apex Court. If more Courts are established justice delivery system will be activised and cases can be disposed of early.

In my humble view delay helps the accused flee from jaw of justice up to some extent. Age old laws and related rules and regulations should undergo sea change to revitalise judicial system and to bring more criminals to justice and expedite trial. Happy formalities and ornamental procedures like charge, hearing before charge, accused statement, hearing on question of sentence, etc. should be abolished by way of amendment. After charge sheet or prosecution report cognizance is taken. Particulars of offence or accusations in clear terms would suffice for every offence graver or minor. When evidence is recorded in presence of accused or his counsel the accused statement is empty formality. If it is amended time of Court can be saved. Considering the societal gravity of the offences, evidence o\\ record and facts and circumstances in whicn the offence is committed the cout t sentences the convict. I luai in<j on question of sentence neither improves nor deteriorates the lot of convict. Law requires the accused to remain present on the date of judgement. It there are more accused and some of them appearand it is a case of conviction, judgment can be pronounced u/s. 353(b) of Cr.p.C. to avoid delay in disposal of case. In such case the absentee accused loses his right of being heard on the question of sentence. Then where is the harm if such procedure is applied when a single accused faces trial and remains absent on the date of delivery of judgement and the case in a conviction one? The Legislature should take a pragmatic approach and view. Law should be suitably amended to incorporate simple procedure to ensure speedy justice.

There should be inter-action between officers of sub-ordinate judiciary with High Court judges at frequent intervals for open discussion about the day to day problems faced by subordinate judiciary. Many bottlenecks can be sorted out and solved by this and new methods can be evolved.

If all the above suggestions and guide lines are adhered to investigating machinery can be geared up and speedy trial can be ensured and rate of conviction will escalate gradually.

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THE REPORT OF COURT PROCEEDING BY MEDIA AND THE ADMINISTRATION OF JUSTICE

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There is the fundamental object of freedom of speech and expression. It is for the pursuit of truth that such freedom is given. It is only when there is free expression of ideas that truth reveals itself. Without a relentless pursuit of truth, the great things of heart and intellect might be lost to us. The object of protecting freedom of speech and expression is to ensure that the life of the mind, as lived by members of society, is given full expression.

Article 19(1) of the Constitution guarantees to citizens six freedoms in all. Of these, the first is the right to freedom of speech and expression in article 19(1)(a). This right is subject to the power of the State to make a law imposing reasonable restrictions on the right in the interest of various considerations set out in Article 19(2). The background of this Article 19 is that the Sub-Committee on Fundamental Rights first considered, on March 25, 1947, the rights to freedom of expression, association, assembly and other rights as contained in the drafts of Dr. Munshi and Dr. Ambedkar. Dr. Munshi's draft proposed that ever citizen should have, within the limits of union and in accordance with the law of union, several personal rights safeguarded to hi. These included the rights of freedom of expression of opinion, of free association and combination, of assembling peacefully and without arms, of secrecy of correspondence, and of free movement and trade. Dr. Ambedkar's draft proposed that no law shall be made abridging the freedom of speech, of the press, of association, and of assembly, except for considerations of public order and morality. The freedom of the press which has been proposed as a separate right by Dr. K.M. Munsi's, has not ultimately found a place in the Constitution as a separate right. Thus, the provisions in question have come up to be confined to citizen only.

According to the present position, Article 19 of the Constitution being confined to citizens, foreigners cannot claim any right thereunder and an expression cannot claim citizenship and cannot therefore, claim any right under Article 19 of the Constitution. In the case of R.M.D Chamarbaugwalla-v-Union of India, 1957 SCR Page 930 they hinted at the difficulty that might arise, out of the fact that the corporations are not citizens. In 1959 the Supreme Court in the case of M.S.M. Sharma,-

v-Shri Krishna Sinha, 1959 Supplementary 1 SCR 806 propounded that a non-citizen running a newspaper is not entitled to fundamental right of freedom of speech and expression and therefore, cannot claim the benefit of liberty of press. Thereafter the law was tested in the floor of the Judiciary in innumerable occasions. After analyzing all these factors and judge made laws, the Law Commission of India in their 101 Report suggested to add an explanation to Article 19 in the following manner.

Rule of Law is the basic rule of governance of any civil democratic policy. Our Constitution is based upon the concept of law which we have adopted and given to ourselves. Everyone whether individually or collectively is unquestionable under the supremacy of law. Whoever the person may be, however, high he or she is, none is above the law. Notwithstanding how powerful, how rich he or she may be. For achieving the establishment or rule of law a constitution has assigned the special task to the judiciary in the country. It is only though the courts that the rule of law unfolds the contents and establishes its concept for the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority o the courts have to be respected and protected at all costs. On the other hand interference with dignity of protection of courts amounts to interference with the administration of justice.

At the same time, it has been decided in Indian Express newspaper's case AIR 1996 S.C. 515 that the expression of freedom of press is not being used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would effect interference with the content and circulation of newspaper. There cannot be any interference with that freedom in the name of the public interest. Freedom of press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of press and invalidate all laws for administrative action which interfere with it contrary to constitutional mandate. It is also held by the Apex Court in the Tata Press Limited case in 1995 that the freedom of speech and expression under Article 19(1) (a) of the Constitution can be restricted only on the grounds specified in clause (2) of the Article 19 or in relation to contempt of court defamation or incitement of an offence.

By taking cue from Article 19(2) of the Constitution various laws have been enacted by Parliament. Amongst other laws the contempt of court Act 1971 which deals with the provisions of contempt of court. The Criminal contempt of court has been well defined in section 2© of the Act. The purpose of this Act is not designed to interfere with the freedom of press, but it restricts certain scandalisation or interference with judiciary or prejudices caused to the court if there is

any publication whether by words spoken or written or by sign or visible representation or otherwise of any matter or doing any other Act by which such scandalisation etc. occurs. It will not be out of place to mention that in the case of Arundhati Ray the Apex Court held that under the constitution there is no separate guarantee of the expression, which is conferred on all citizens under article 19(1). Any expression of opinion would, therefore, not be immune from the liability for exceeding limits either under the law of defamation, contempt of court, or the other constitutional limitations under Article 19(2) of the constitution. Here the administration of justice was thwarted by the writer of the Book and there is no repentance from the side of the writer for which the court went ahead in taking up the matter.

The cases of the accused persons being effected by publicity given to their cases by the pressing resulting in public hesitation have come up before the Apex Court and in 1997 the Apex Court expressed his displeasure over the trial by press and the public agitation and held that the court has agreed that a great harm had been caused to the girl by unnecessary publicity and taking out morcha by the public. Even the case, had to be transferred from Kolhapur to Satara under the orders of Apex Court. There is a procedure established by law governing the conduct of the trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and he is to be guided strictly by rules of law. The aforesaid case is of the example of interference with the administration of justice by print media. Similarly, in the case of M.P. Lohia reported in 2005 Criminal Law Journal 1416 the print media was again takes to task by the Apex Court. It has been well maintained by the Apex Court that an article appeared in a magazine called Saga titled Doomed by Dowry written by one Kokila Poddar based on her interview of the family of the deceased giving version of the tragedy and extensively quoting the father of the deceased as to his version of the case. According to the Apex Court these materials given in the book may be used in the forthcoming trial in that case and those articles appearing in the media would certainly interfere with the administration of justice. That is why the Apex Court have deprecated this practice and cautioned the publisher, editor and journalist who are responsible for the said article, against indulging in such trial by media where the issue is subjudice. The Apex Court has held that to prevent any further issue being raised in that regard they treated that the matter has been closed and held that other concerned journalists would take note of this. It is therefore, concern expressed by Their Lordship for interfering with administration of justice.

In recent case of Dr. Rajesh Talwar, the print media and electronic media have made media trial for which the Hon'ble Apex Court have come forward to frame the guideline so as to make

certain principles while publicizing the news with regard to the rights of human being as accused or victim so that there will be least interference with the administration of justice. At the same time the role of the media cannot be denied in the sensational cases like Jeshikalal, Priyadarshini, Matto and Nitish Katra because the media activities in those cases are credited to have pleaded a major role in securing justice to the victims. Of course nobody can guard to the base striking balance between the media's freedom of speech and expression and accused person's right to fair trial. The apprehension in the minds of the media in my opinion a little relevancy because the Apex Court in the recent hearing in the matter of Dr. Talwar have categorically observed that there is no attempt to gag the media, but the media has to be responsible at the same time. It appears the Apex Court has never tried to gag the mouth press, but has only expressed their view keeping in view of the constitutional provisions as enshrined in Article 19(2) of the constitution. The guidelines by the Apex court if formulated can always be respected and in no occasion it would create a doubt in the minds of the public at large.

Even if men and women including Judges and Journalists were angels, there would be no problem of contempt of court. Angels Judges could be undisturbed by extraneous influences and angelic journalists would not seek to influence that. Therefore, it must be observed that if respective pillars of the Constitution will maintain their lakhanrekha, definitely the activities of both judiciary and media will go together so as to ensure the administration of justice to the public and society at large.

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Ubuntu : The Evolution of a Genius

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Ubuntu is named after the Southern African philosophy of ubuntu, which can be translated as "humanity towards others" or "the belief in a universal bond of sharing that connects all humanity. Ubuntu is based on the Debian Linux Distribution. Linux was established as an enterprise server platform in 2004. But free software was still not a part of everyday life for most computer users. That's why Mark Shuttleworth started working with a small team of developers from one of the most established Linux projects - Debian - and set out to create an easy-to-use Linux desktop called Ubuntu.

Ubuntu releases

There is release of a programme of scheduled on a predictable six-month basis. It was decided that every fourth release, issued on a two-year basis, would receive long-term support (LTS). LTS releases are typically used for large-scale deployments. Ubuntu is different from the commercial Linux offerings that preceded it because it doesn't divide its efforts between a high-quality commercial version and a free, 'community' version. The commercial and community teams collaborate to produce a single, high-quality release, which receives maintenance for a defined period. But in Ubuntu, both the release and ongoing updates are freely available to all users.

Ubuntu is created by open-source developers because Ubuntu developers believe that everybody should have access to the best possible technologies. This passionate global community works together to continually evolve the best systems in the world and then make them available to everybody, absolutely free. Ubuntu developers always believe that every computer user should have the freedom to download, run, copy, distribute, study, share, change and improve their software for any purpose, without paying licensing fees and should be able to use their software in the language of their choice. Once Ubuntu is Installed, one can be rest assured that all our software meets these ideals. Plus, Ubuntu is continually working to ensure that every piece of software one could possibly need is available under an open source OS.

Free Software

Ubuntu software is free. Always was, always will be. Free software gives everyone the freedom to use it however they want and share with whoever they like. This freedom has huge benefits. Ubuntu is far more than an operating system. With thousands of applications to choose from, it's completely free and easy to use. Ubuntu gives a broad spectrum of freedom to run the program, for any purpose.

- The freedom to study how the program works and adapt it to your needs.
- The freedom to redistribute copies so you can help others.
- The freedom to improve the program and release your improvements to the public, so that everyone benefits.

Open Source

Open source is collective power in action. The power of a worldwide community of highly skilled experts that build, share and improve the latest software together - then make it available to everyone. The term open source was coined to remove the ambiguity in the English word 'free' and it continues to enjoy growing success and wide recognition. Originally coined in 1998, the term open source came out of the free software movement, a collaborative force going strong since the dawn of computing in the 1950s. The open-source community is thriving and today boasts some of the best brains in the business. The aim has not changed: free systems and software should be available to everybody, wherever they are.

Without open source, many of the systems and applications we take for granted simply would not exist. In the spirit of open source, Ubuntu is absolutely free to download, use, share and improve however and whenever you like. However, there are some core principles of open-source software as follows:

1. Software must be free to redistribute.
2. The program must include source code.
3. The licence must allow people to experiment with and redistribute modifications.
4. Users have a right to know who is responsible for the software they are using.
5. There should be no discrimination against any person or group.
6. The licence must not restrict anyone from making use of the program in a specific field.

7. No-one should need to acquire an additional licence to use or redistribute the program.
8. The licence must not be specific to a product.
9. The licence must not restrict other software.
10. The licence must be technology-neutral.

Licensing

Ubuntu is a collection of thousands of computer programs and documents created by a range of individuals, teams and companies who might not be having any connection with Ubuntu. Each of these programs may come under a different licence. This licence policy describes the process that we follow in determining which software will be included by default in the Ubuntu operating system. The thousands of software packages available for Ubuntu are organised into four key groups or components: main, restricted, universe and multiverse. Software is published in one of these components based on whether or not it meets Ubuntu's free software philosophy, and the level of support that can be provided for it. This policy only addresses the software that you will find in main and restricted, which contain software that is fully supported by the Ubuntu team and must comply with this policy.

Debian

Debian is 'the rock upon which Ubuntu is built'. Debian is a volunteer project that works on developing a GNU/Linux operating system. The Debian project began more than a decade ago and has since grown to comprise more than 1,000 members with official developer status, and many more volunteers and contributors. It has expanded to encompass over 20,000 'packages' of free and open-source applications and documentation.

OS installed by default

When you install Ubuntu, you will typically install a complete desktop environment. It is also possible to install a minimal set of software (just enough to boot your machine) and then manually select the precise software applications to install. Such a "custom" install is usually favoured by server administrators, who prefer to keep only the software they absolutely need on the server.

Ubuntu provides a system based on Debian with frequent, regular releases and a consistent desktop interface. It is backed by Canonical's commercial services and support on both the desktop and the server. It releases critical bug fixes and is never more than six months away from the latest version of anything in the open-source world.

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REVIEW OF CASE LAWS ON Cr.P.C. , 2013 (FEB)

I N D E X

SL.NO	CASE	SECTION / ISSUE
1.	*Sangeet and anr. V. State of Haryana* *AIR 2013 SC 447*	S.432
2.	*Ajay Kumar Parmar v. State of Rajastan* *AIR 2013 SC 633*	S. 164
3.	*Akil @ Javed V. State of NCT of Delhi.* *(2013) 54 OCR (SC) 366*	S.309
4.	*Prasanta Kumar Dash v. State of Orissa* *(2013) 54 OCR (SC) 558*	S.438
5.	*Dhruba Charan Behera v. State of Orissa & another* *2013(I) OLR -234*	S.202

CRIMINAL PROCEDURE CODE

1.S.432

Sangeet and anr. V. State of Haryana. AIR 2013 SC 447

K.S.RADHAKRISHNAN AND MADAN B. LOKUR, JJ.

(I) Issue

Govt.'s power to remit sentence -Prohibition to exercise it for specified period -Cannot be imposed by Court.

An order giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effect injunction the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason.

(II) S. 433 (A)

Issue

Govt.'s power to remit sentence

It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Cr.P.C. cannot be suo moto for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfillment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 of the Cr.P.C. cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this Section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the presiding judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable in as much as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny.

In a sense, therefore, the application of Section 432 of the Cr.P.C. to a convict is limited. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual.

This period is then offset against the term of punishment given to him. In such an event, if he has undergone the requisite period of incarceration, his release is automatic and Section 432 of the Cr.P.C. will not even come into play. This Section will come into play only if the convict is to be given an "additional" period of remission for his release, that is, a period in addition to what he has earned or has been awarded under the Jail Manual or the statutory rules.

Under the circumstances, it appears to us there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Cr.P.C. which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr.P.C.

In the case of a convict undergoing life imprisonment, he will be in custody for an indeterminate period. Therefore, remissions earned by or awarded to such a life convict are only notional. In his case, to reduce the period of incarceration, a specific order under Section 432 of the Cr.P.C. will have to be passed by the appropriate Government. However, the reduced period cannot be less than 14 years as per Section 433-A of the Cr.P.C.

This re-engineered calculation can be made only after the appropriate Government artificially determines the period of incarceration. The procedure apparently being followed by the appropriate Government is that life imprisonment is artificially considered to be imprisonment for a period of twenty years. It is this arbitrary reckoning that has been prohibited in Ratan Singh. A failure to implement Ratan Singh has led this Court in some cases to carve out a special category in which sentences of twenty years or more are awarded, even after accounting for remissions. If the law is applied as we understand it, meaning thereby that life imprisonment is imprisonment for the life span of the convict, with procedural and substantive checks laid down in the Cr.P.C. for his early release we would reach a legally satisfactory result on the issue of remissions. This makes an order for incarceration for a minimum period of 20 or 25 or 30 years unnecessary.

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2. S. 164

Ajay Kumar Parmar v. State of Rajastan. AIR 2013 SC 633

DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.

Issue

Recording Statement -To be only of person produced by police - Person appearing before Magistrate independently on his own volition -Statement recorded without any attempt to indentify him -Is of no credence.

We have considered the rival submissions made by the learned counsel for the parties and perused the records.

A three Judge bench of this Court in Jogendra Nahak & Ors. v. State of Orissa & Ors., AIR 1999 SC 2565, held that Sub-Section 5 of Section 164, deals with the statement of a person, other than the statement of an accused i.e. a confession. Such a statement can be recorded, only and only when, the person making such statement is produced before the Magistrate by the police. This Court held that, in case such a course of action, wherein such person is allowed to appear before the Magistrate of his own volition, is made permissible, and the doors of court are opened to them to come as they please, and if the Magistrate starts recording all their statements, then too many persons sponsored by culprits might throng before the portals of the Magistrate courts, for the purpose of creating record in advance to aid the said culprits. Such statements would be very helpful to the accused to get bail and discharge orders.

In view of the above, it is evident that this case is squarely covered by the aforesaid judgment of the three Judge bench in Jogendra Nahak & Ors. (Supra), which held that a person should be produced before a Magistrate, by the police for recording his statement under Section 164 Cr.P.C. The Chief Judicial Magistrate, Sirohi, who entertained the application and further directed the Judicial Magistrate, Sheoganj, to record the statement of the prosecutrix, was not known to the prosecutrix in the case and the latter also recorded her statement, without any attempt at identification, by any court officer/lawyer/ police or anybody else.

S.190

Issue

Cognizance - Taking of , is judicial function -Magistrate however cannot appreciate evidence at this stage.

The Magistrate, in exercise of its power under Section 190Cr.P.C., can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 Cr.P.C., if any, do not make out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case.

S. 209, 207

Issue

Committal Court - Cannot probe into matter to satisfy itself whether prima facie case is made out - His concern is only to see whether offence triable by Sessions Court is mentioned in police report -Committal Court has no power to discharge accused.

Thus, it is evident from the aforesaid judgment that when an offence is cognizable by the Sessions court, the Magistrate cannot probe into the matter and discharge the accused. It is not permissible for him to do so, even after considering the evidence on record, as he has no jurisdiction to probe or look into the matter at all. His concern should be to see what provisions of the Penal statute have been mentioned and in case an offence triable by the Sessions Court has been mentioned, he must commit the case to the Sessions Court and do nothing else.

Thus, we are of the considered opinion that the Magistrate had no business to discharge the appellant. In fact, Section 207-A in the old Cr.P.C., empowered the Magistrate to exercise such a power. However, in the Cr.P.C. 1973, there is no provision analogous to the said Section 207-A. He was bound under law, to commit the case to the Sessions Court, where such application for discharge would be considered. The order of discharge is therefore, a nullity, being without jurisdiction.

The scheme of the Code, particularly, the provisions of Sections 207 to 209 Cr.P.C., mandate the Magistrate to commit the case to the Court of Sessions, when the charge-sheet is filed. A conjoint reading of these provisions make it crystal clear that the committal of a case exclusively triable by the Court of Sessions, in a case instituted by then police is mandatory.

The scheme of the Code simply provides that the Magistrate can determine, whether the facts stated in the report make out an offence triable exclusively, by the Court of Sessions. Once he reaches the conclusion that the facts alleged in the report, make out an offence triable exclusively by the Court of Sessions, he must commit the case to the Sessions Court.

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3. S.309

Akil @ Javed V. State of NCT of Delhi. (2013) 54 OCR (SC) 366

SWATANTER KUMAR AND FAKKIR MOHAMED IBRAHIM KALIFULLA , JJ.

Issue

Adjournment - Long adjournment of two months for cross-examination of a witness - Need to comply with Section 309, Cr.P.C. in letter and spirit -Court oblivious of specific stipulation contained in Section 309 , Cr.P.C. , which mandate the requirement of sessions trial to be carried on a day to day basis - High Court directed to specifically follow the instructions issued by this Court in the decision reported in Rajdeo Sharma v. State of Bihar.

Prosecution case that at about 6 p.m. three intruders in age group of 20 to 22 years entered the house and that out of three persons two were armed with revolvers and one was possessing a knife - Accused snatched gold ring , locket and cash from deceased and then they demanded keys of almirah and removed sum of Rs. 15,000/- kept in almirah and Rs. 2,50,000/- kept in the locker -After robbing of complainant's cash and jewels and other materials when the appellant attempted to molest the complainant

the deceased stated to have raised a protest and the appellant shot him by the revolver - Three accused left the place with robbed items and cash by locking the door of the house from outside - On arrest, recoveries were made from person of appellant - Two accused remained absconding - Trial court convicted appellant and 2nd accused for offences under Section 302 /34 and 392/34, IPC - They were acquitted of offence under Section 354, IPC - On appeal, High Court confirmed conviction of appellant while acquitting 2nd accused for offence under Section 392/34, IPC - PW. 20 was able to identify appellant as the person who attempted to molest complainant and when deceased raised a protest the appellant shot him and thereafter the deceased fell down - However, trial court in the impugned judgment had stated that such a long adjournment provided scope for manoeuvring - In course of cross-examination P.W. 20 made a different statement as regards the identity of appellant by stating that he was tutored by a police Inspector - Both the Trial Court and the High Court ignored the inconsistency in statement of P.W. 20 as regards the identity of appellant and proceeded to rely upon what was stated by him in the chief-examination while convicting the appellant - Whether conviction of appellant as recorded by Courts below was sustainable - Held, yes.

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4. S. 438

Prasanta Kumar Dash v. State of Orissa (2013) 54 OCR (SC) 558

S.C.PARIJA , J.

Issue

F.I.R registered against the petitioner and other Directors of Seashore Group of Companies under Section 420/120 I.P.C. read with Sections 4,5 and 6 of the prize Chits and Money Circulation Schemes (Banning) Act,1978.- Petitioner appeared before the I.O as per the direction of the Hon'ble Court and furnished written reply to the questionnaire prepared by the I.O.-Petitioner also furnished certain documents to I.O.-No further necessity of custodial interrogation -Case hinges on circumstantial evidence -Distinction between power to arrest and justification of arrest enumerated -Hon'ble Court granted anticipatory bail.

On a perusal of the case diary, it has been seen that pursuant to the direction of this Court, petitioner has appeared before the Investigation Officer and has furnished his written reply to the questionnaire prepared by the investigating Officer and also submitted photocopies of several documents pertaining to the business transaction of the company. As the allegations are with regard to collection of money from the general public, the same can be verified from the records of the company and also the records available with the Registrar of Companies .No material has been produced to justify the necessity of custodial interrogation of the petitioner, especially when the case hinges on documentary evidence, No arrest should be made because it is lawful for the policy officer to do so. The existence of power to arrest is one thing and the justification for the exercise of it is quite another. The police officer must be able to justify the necessary for such arrest apart from his power to do so.

Considering the materials on record and keeping in the view the nature and gravity of the offences alleged against the petitioner, it is directed that in the event of arrest of the petitioner .In Cuttack CID CB.P.S Case No.39 (EWO) of 2012, corresponding to G.R Case No. 2498 of 2012, pending in the Court of Learned S.D.J.M. , Bhubaneswar, he shall be released on bail by the arresting officer on such terms and conditions as the arresting officer may deem just and proper.

It is made clear that the petitioner shall appear before the Investigating Officer as and when required and co- operate in the investigation.

The BLAPL is accordingly disposed of.

Issue urgent certified copy as per rules.

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5. S.202

Dhruba Charan Behera v. State of Orissa & another. 2013(I) OLR -234

C. R. Dash, J.

Issue

The scope of enquiry is to find out the truth by application of judicial mind - During the course of the enquiry the Court has to satisfy himself simply on the evidence adduced by the prosecution whether prima face case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

The scope of the enquiry under Section 202, Cr. P. C. is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the finding that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any, But the enquiry at the stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for absoureding the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code.

Criminal Procedure Code, 1973- Sec. 203- incumbent upon the Magistrate to give reasons for forming an opinion that the complaint petition is liable to be dismissed- Magistrate must apply his judicial mind to materials on which he has to form a judgment and reflect in the order.

While arriving at his judgment, the Magistrate is not fettered in any way except by judicial consideration. He is not bound to accept what the inquiring officer says, nor is he precluded from accepting a plea; provided always that there are satisfactory and reliable materials on which he can base his

judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of inquiry under Section 202, Cr. P.C. and has applied his mind judicially to the materials on record, it would be erroneous in law to hold that he should not consider or discuss the materials available and the statements recorded. A Magistrate is empowered to hold an inquiry into a complaint as to commission of certain offence in order to ascertain whether there was sufficient foundation for it to issue process against the person or persons complained against and such order under section 203, Cr.P.C. should be a speaking one. In other words, when a magistrate intends to dismiss a complaint petition, he has to give reasons.

Section 203, Cr.P.C. consist of two parts, the first part lay down the materials which the Magistrate must consider, and the second part state that if after considering those materials there is no sufficient ground for proceeding, the Magistrate may dismiss the complaint. While exercising such power under Section 203 of the Code, it is incumbent upon the Magistrate to reflect in his order the basis for arriving at the conclusion that there are no sufficient grounds to proceed with the complaint case.

The scope of enquiry under Section 202, Cr. P.C. is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the finding that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at the stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for absoureding the guilt or otherwise of the said accused person. Further the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the code, the Court has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

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REVIEW OF CASE LAWS ON C.P.C, 2013 (FEB)

I N D E X

SL.NO	CASE	SUBJECT / ISSUE
1.	*Bihar State Govt. Secondary School Teachers Association V. Bihar Education Service Association & Ors.* *And* *Bihar State Govt. Secondary School Teachers Association V. Anup Mukherjee & Ors.* *AIR 2013 SC 487*	*Civil S.11*
2.	*Satyabhama Pattanaik v. Bijendra Mohapatra and others AIR 2013 ORI 26*	*O.41 , R.11,17*
3.	*Sadhu Charan Biswal v. Bombay Cardio Vascular & Surgical Pvt. Ltd. Represented through its Managing Director And others.* *2013 (1) CLR – 421*	*order 1 rule 10*
4.	*M/s Virgo Industries (Eng.) P. Ltd v. M/s Venturetech Solutions p. Ltd. 2013 (I) OLR (SC) 290*	*Order 2 ,rule 2 (2) and (3)*
5.	*Kamalakanta Parida and other V. Sri Saroj Badan Parida and others2013 (1) OLR – 412*	*Order 18, Rule 16*

CIVIL PROCEDURE CODE

1. S.11

Bihar State Govt. Secondary School Teachers Association V. Bihar Education Service Association & Ors.

And

Bihar State Govt. Secondary School Teachers Association V. Anup Mukherjee & Ors. AIR 2013 SC 487

SURINDER SINGH NIJJAR AND H.L.GOKHALE, JJ.

Issue

Constitution of India, Art.141 -Precedent -Judgement of Supreme Court -High Court has to accept it -And should not in collateral proceedings write contrary judgement -Controversy over Govt. Resolution-Supreme Court interpreting it one way- Reopening of Controversy by High Court in collateral proceedings - Approach of High Court deprecated -Principle of res-judicata also do not permit re-examination.

In this Case the hierarchy of the Courts requires the High Courts also to accept the decision of this Court, and its interpretation of the orders issued by the executive. Any departure therefrom will lead only to indiscipline and anarchy. The High Court's cannot ignore Article 141 of the Constitution which clearly states, that the law declared by this Court is binding on all Courts within the territory of India. As observed by this Court in para 28 of the State of West Bengal and others Vs. Shivananda Pathak and others reported in 1998 (5) SCC 513:(AIR 1998 SC 2050):-

> "If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment....."

In the same view we may state that when the judgment of a Court is confirmed by the higher court, the judicial discipline requires that Court to accept that judgment, and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. We may as well note the observations of Krishna Iyer, J. in Fuzlunbi Vs. K. Khader Vali and another reported in 1980 (4) SCC 125:(AIR 1980 SC 1730):-

> ".....No judge in India, except a larger Bench of the Supreme court, without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio of the judgment of the Supreme Court."

Much emphasis was laid by the Bihar Education Service Association on the absence of common service rules, to oppose the merger of the subordinate service employees into the State Service Class-II. In this context we must note that the decision to merge the cadre is a matter of policy as held by this Court in S.P. Shivprasad Pipal Vs. Union of India and others reported in 1998 (4) SCC 598:(AIR 1998 SC

1882). It is for the state to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable. As stated earlier, the resolution dated 7.7.2006 is well reasoned and justified, and cannot be called arbitrary or unreasonable to be hit by Article 14. It deserved to be upheld. It is possible that the merger may affect the prospects of some employees but this cannot be a reason to set-aside the merger. Once the State Govt. has taken the necessary decision to merge the two cadres in a given case, the State Govt. is expected to follow it by framing the necessary rules.

This entire discussion leads us to only one conclusion that the learned Single Judge who heard the petition CWJC No.10091/2006, which began the third round of litigation filed on behalf of the Bihar Education Service Association, had no business to re-open the entire controversy, even otherwise. The State Govt. had already passed a resolution dated 7.7.2006 after the order of this Court dated 19.4.2006. While examining the legality of that resolution (which was defended by the State Govt. at this stage before the learned Single Judge) the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles analogous thereto, does not permit any such re-examination, and the learned Judge clearly failed to recognize the same.

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2. O.41 , R.11,17

Satyabhama Pattanaik v. Bijendra Mohapatra and others . AIR 2013 ORI 26

M. M. DAS, J.

Issue

Appeal - Dismissal for non-filing of certified copy of decree along with memo of appeal - Validity -Once an appeal is not dismissed under provisions of R.11 of O.41,appeal is to be admitted and date of hearing is to be fixed and notice of such date of hearing is to be served on respondent -Only provision ,which authorizes appellate Court to dismiss the appeal thereafter is under R.17 for non -appearance of appellant -Appeal admitted and summons issued to respondent -Dismissal of appeal for improper presentation of appeal not proper.

It is, therefore, clear from the provisions of Order - 41 C.P.C. that once an appeal is not dismissed under the provisions of Rule - 11 thereof, the appeal is to be admitted and a date of hearing is to be fixed and notice of such date of hearing is to be served on the respondent. The only provision, which authorizes the appellate Court to dismiss the appeal thereafter is under Rule -17 of Order - 41 C.P.C., which provides in sub-rule(1) thereof that where on the day fixed, or on any other day, to which the hearing of an appeal is adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal is dismissed. In the explanation to this rule, it has been provided that nothing in the said sub-rule shall be construed as empowering the court to dismiss the appeal on merit. When an appeal is dismissed under sub-rule (1) of Rule - 17 the provision for restoration of the appeal commonly called as readmission of the appeal dismissed for default is prescribed under Rule - 19.

In the facts of the present case, the appeal being admitted by the learned lower appellate court and summons having been issued to the respondent, the learned lower appellate court was not authorized

under law to dismiss the appeal on the ground that there was no proper presentation of the appeal, as the certified copy of the decree was not filed along with the memo of appeal.

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3. Order 1 rule 10

Sadhu Charan Biswal v. Bombay Cardio Vascular & Surgical Pvt. Ltd. Represented through its Managing Director And others. 2013 (1) CLR - 421

B.K. MISHRA, J.

Issue

Pendente lite purchaser - Properiety of being impleaded as a party to the suit.

In the instant case, the intervenor petitioner was granted permanent lease of an area Ac.3.60 decimals of land pertaining to revenue Plot No. 332/1882 under Khata No. 619 in Mouza-Chandrashekharpur, Bhubaneswar in the year, 2006 pending in different Civil Courts. After getting the lease of the land the same was mutated in the name of the intervenor petitioner as well as the record of right has also been prepared in the name of the purchaser Dr. R.K. Panda, Managing Director of Bombay Cardiovascular Surgical Pvt. Ltd., who is the present opposite party No. 1 in this writ petition and was also intervenor petitioner in the Court below. Without going into the merits of the cases of the parties and whether the transfer of the property to opposite party No. 1 that is the intervenor petitioner is valid or invalid at this stage for deciding the propriety of the impugned order (Annexure-1), suffice is to say that the intervenor petitioner being a pendente lite purchaser is entitled to be heard in the matter on the merits of the case and is entitled to be impleaded in the suit or other proceedings where his predecessor in the internet is made a party to the litigation. Order 1, Rule 10 C.P.C. enables the Court to add any person as a party at any stage of the proceedings if his presence before the Court is necessary in order to enable the Court to effectively and completely adjudicate upon the settle all the questions involved in the suit. Avoidance of multiplicity proceedings is also one of the object of the said provision in the Code. The plea raised by the present opposite party No. 1 that he was a bonafide transferee for value in good faith is a question to be decided by the Court. If the application for impleadment is thrown out without a decision on the said question it may be that the opposite party No. 1 may come up with a separate suit to enforce his right which means multiplicity of proceedings and therefore it cannot be said that the opposite party No. 1 is neither necessary nor proper party to the suit in question.

I do not find anything wrong in the approach of the learned Trial Court by allowing the prayer of the intervenor petitioner by the impugned order at Annexue-1. The present petitioner, in my humble view, does not suffer from any prejudice and his rights are in no way would be affected when the opposite party No. 1 would be impleaded as a party defendant in Tital Suit No. 753 of 2001. I find the impugned order at Annexure-1 is a speaking order and it cannot be said that such order has been passed in flagrant violation of the principles of law or rule of procedure or there has been gross jurisdiction error. When the impugned order shows that the prayer of the intervenor petitioner was allowed by the learned Court below not only in the best interest of justice but also to avoid multiplicity of proceeding, I am not inclined to interfere with the same.

Issue

Transfer of Property Act. 1882-Section 52-Lispendens purchaser-Rights and liabilities of.

It is the settled legal position that the effect of Section 52 of the Transfer of Property Act is not to render transfers effected ruing pendency of a suit by a party to the suit void but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually determined in the suit. In order words, the transfer remains valid subject of course to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the Court

Accordingly, the writ petition stands dismissed. No costs.

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4. Order 2 ,rule 2 (2) and (3)

M/s Virgo Industries (Eng.) p.Ltd v. M/s Venturetech Solutions p. Ltd. 2013 (I) OLR (SC) 290

P.SATHASIVAM AND RANJAN GOGAI, JJ.

Issue

Two suits -Cause of action for both set of suits same -Maintainability -Two sub rules of order 2 rule 2 contemplates two different situations, namely , where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and secondly where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in a suit -It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded except in a situation where leave of the Court had been obtained.

The object behind enactment of Order II Rule 2(2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, through available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons.

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5. Order 18, Rule 16

Kamalakanta Parida and other V. Sri Saroj Badan Parida and others 2013 (1) OLR - 412

M.M. DAS, J.

Issue

Probate proceeding - Application seeking examination of a witness allowed - Writ - On fulfillment of any of the two conditions, jurisdiction under the said provision can be exercised, the first being where the witness sought to be examined is about to leave the jurisdiction of the Court and the second is where sufficient cause is shown to the satisfaction of the Court with regard to his or her immediate examination - Wide discretion vested on the Court to exercise jurisdiction under Order 18, Rule 16 CPC which is required to be exercised with circumspection and subject to satisfaction in a judicious manner and not just for asking of the same - Court, in order to find out as to whether the second condition is fulfilled in given case, has to record his satisfaction that sufficient cause exists for examining a witness immediately and such sufficient cause must be shown to be existing by the applicant - Held, learned Trial Court has not done so while passing the impugned order, for which, the said order is unsustainable - Order quashed.

The above provision is unambiguous and clearly provides that on fulfillment of any of the two conditions, jurisdiction under the said provision can be exercised, the first being where the witness sought to be examined is about to leave the jurisdiction of the Court and the second is where sufficient cause is shown to the satisfaction of the Court with regard to his or her immediate examination.

In the facts of the present case, fulfillment of the first condition does not arise, as the opposite parties, in their application under Order 18, Rule 16 CPC, have not made out any case that the said Benudhar Pati is about to leave the jurisdiction of the Court . Therefore, the petition was clearly based on the second condition.

From the impugned order, as quoted above, it would be clear that the learned Trial Court has assigned absolutely no reason as to in what manner, the evidence of the said witness Benudhar Pati is relevant for just decision of the probate case and, if he is not examined immediately, there will be no scope for examining such witness by the petitioners at a later stage except stating that the said Benudhar Pati is on the point of death, which fact was not supported by any material, such as, medical documents etc. produced before him. The learned Court has also not given any reason in support of his finding that the said case will become infructuous for non-examination of the said witness while allowing the prayer made under Order 18, Rule 16 CPC. It is seen that the second condition as enumerated above is also not satisfied.

This Court , therefore, is of the view that the wide discretion vested on the Court to exercise jurisdiction under Order 18, Rule 16 CPC, which is required to be exercised with circumspection and subject to satisfaction in a judicious manner and not just for asking of the same and the learned Trial Court has not done so while passing the impugned order, for which, the said order is unsustainable and the same is accordingly quashed.

The writ application stands allowed. All pending Misc. cases stand disposed of.

The interim order passed earlier stands vacated.

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Report of National Seminar on "Land Acquisition Laws"

held at Puri on 15th Feb 2013 Organised by Orissa Judicial Academy

It was a great opportunity to organize a national on 'Land Acquisition Act' by the Orissa Judicial Academy on 15th Feb 2013 at Puri under 13th Finance Commission Grant.

His Excellency Hon'ble Governor M.C. Bhandare inaugurated the national seminar on 'Land Acquisition Act' in presence of Hon'ble Judges of Orissa High court and judicial officers / participants from all over India spanning over 18 states of the Country including the State of Odisha.

On the arrival of **His Excellency Shri M. C. Bhandare**, Governor of Odisha to the National Seminar received by **Hon'ble Shri Justice Indrajit Mahanty**, *Judge, High Court of Odisha & the Chairperson, Orissa Judicial Academy.*

His Excellency Shri M. C. Bhandare, Governor of Odisha inaugurating the Seminar by lighting the lamp in presence of **Hon'ble Kumari Justice Sanju Panda**, Judge, High Court of Odisha & Member, Orissa Judicial Academy.

His Excellency Shri M. C. Bhandare, Governor of Odisha addressing the delegates in the Seminar.

Hon'ble Mr. Justice Bilal Nazki, *Former Chief Justice, High Court of Odisha* addressing the delegates in the Seminar.

Hon'ble Shri Justice M.M. Das, Judge, Orissa High Court addressing the delegates in the Seminar.

Hon'ble Smt. Justice R. Banumathi, Judge, Madras High Court addressing the delegates in the Seminar.

Hon'ble Mr. Justice Suryakant, Chairperson, Chandigarh Judicial Academy addressing the delegates in the Seminar.

Hon'ble Shri Justice B. K. Nayak, Judge, High Court of Odisha addressing the delegates in the Seminar.

Hon'ble Shri Justice C. R. Dash, Judge, High Court of Odisha addressing the delegates in the Seminar.

Hon'ble Shri Justice R. K. Patra, Former Judge, High Court of Odisha addressing the delegates in the Seminar.

The seminar was the brain child of the Hon'ble Chairperson of Orissa Judicial Academy Hon'ble Shri Justice I. Mahanty, Judge, Orissa High Court, His Lordship who conceived the idea in holding on such a burning and pragmatics issue that has affected the populace as well as the Govt. In one way Govt. requires land for development of the people and on the other hand people do not want to lose their land holdings for nothing or a paltry compensation for the loss incurred. In this juncture the role of judiciary in maintaining a balance between the people and the Govt. was urgently urged.

Qn the occasion of inaugurating the seminar Hon'ble Governor, Odisha opined that land is utmost necessary for life and livelihood of the citizens in the Country. Further addressed that simple living won't do, but man must live with peace and happiness. And to achieve that in different projects are taken up for the development of the country and to establish these projects Govt. also acquires land. After acquisit ions of land neither the Govt. nor the owner of the industry remembers the land owner and he suffers immensely .As per the agreement during land acquisition the displaced persons hardly gets the minimum requirement for a safe livelihood like health facility,electricity,, education services, drinking water etc.

Hon'ble Mr. Justice Bilal Nazki, Former Chief Justice of Orissa High Court while addressing the delegates felt that it is very difficult to make legislation and implement the same properly in India. Along with this, to distribute the means equally to the people is another herculean task. At present in India the political situation is at variance in different states. In this situation to establish industry by acquiring land is very difficult on the part of the concerned authority. However in this scenario the Apex Legislating body is taking right kind of note and trying to balancing the interest of each stake holders.

In the beginning Hon'ble Kumari Justice Sanju Panda, Judge, Orissa High Court introduced the guests on the dias and Dr. D.P. Choudhury, Director, Orissa Judicial Academy extended the vote of thanks. In this Seminar Hon'ble Mr. Justice M. M. Das, Judge, Orissa High Court, Hon'ble Mr. Justice P.K. Mishra, former Chief Justice Patna High Court, Hon'ble Mr. Justice R.K. Patra, former Chairperson of Human rights Commission were the guests of honours and Hon'ble Mr. Justice B.N. Mohapatra, Hon'ble Mr. Justice I. Mahanty, Hon'ble Mr. Justice B.N. Nayak, Hon'ble Mr. Justice B.K. Mishra, Hon'ble Mr. Justice C.R. Dash, and Hon'ble Mr Justice B.K. Patel, Judge Orissa High Court & Hon'ble Mr. Justice A.S. Naidu, former Judge Orissa High Court were present in the Seminar. In this Seminar more than 100 Judicial Officers participated as delegates from 18 States of the Country including the State of Orissa .

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Complied by

***Dr. S. K. Pradhan**, Faculty Member*

Orissa Judicial Academy

Report of the National Conference on "Forest & Environment vis -a -vis Mining law"

held at Puri on 16th -17th Feb 2013.

In continuation to the National Seminer,on Land Acquistions Laws a two days national conference was organised by Orissa Judicial Academy at Puri on a interesting topics 'Forest & Environment vis -a -vis Mining law' on 16th -17th Feb 2013.

The national conference was inaugurated by Hon'ble Mr. Justice A.K. Pattanaik, Judge, Supreme Court of India in the presence of Hon'ble Judges of Orissa High Court and Judges of different High Courts and Judicial Officers of 18 States of the Country.

On this occasion while inaugurating the conference Hon'ble Mr. Justice A.K. Pattanaik, addressed that it is the duty of the state to provide pollution free air and water for better living to the people .His Lordship also gave much emphasis that first of all to protect our environment then to go for development without destroying environment. Govt. emphasised on the development of the life of the people who are socially and economically poor.

Hon'ble Kumari Justice Sanju Panda, Judge, High Court of Odisha greets **Hon'ble Mr. Justice A. K. Patnaik**, Judge, Supreme Court of India to the National Conference in presence of **Hon'ble Shri Justice P. K. Mohanty**, Acting Chief Justice, High Court of Odisha.

Hon'ble Kumari Justice Sanju Panda, Judge, High Court of Odisha greets **Hon'ble Mr. Justice V. Gopala Gowda**, Judge, Supreme Court of India, to the National Conference in presence of **Hon'ble Shri Justice P. K. Mohanty**, Acting Chief Justice, High Court of Odisha.

Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India & **Hon'ble Mr. Justice V. Gopala Gowda**, Judge, Supreme Court of India inaugurating the Conference by lighting the lamp.

Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India addressing the delegates in the Conference.

Hon'ble Mr. Justice V. Gopala Gowda, Judge, Supreme Court of India addressing the delegates in the Conference.

Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India, **Hon'ble Mr. Justice V. Gopala Gowda**, Judge, Supreme Court of India, **Hon'ble Shri Justice P. K. Mohanty**, Judge, High Court of Odisha & **Hon'ble Shri Justice Indrajit Mahanty**, Judge, Orissa High Court and the Chairperson of Orissa Judicial AcademyInaugurating the (4th Qr of 7th Issue 2012) Newsletter "Vidya" of the Orissa Judicial Academy.

Hon'ble Mr. Justice Kurian Joseph, Chief Justice, High Court of Himachal Pradesh addressing the delegates in the Conference.

Hon'ble Mr. Justice A. K. Goel, Chief Justice, High Court of Gauhati addressing the delegates in the Conference.

Hon'ble Shri Justice P. K. Mohanty, Acting Chief Justice, High Court of Odisha addressing the Conference.

Hon'ble Shri Justice Indrajit Mahanty, Judge, High Court of Odisha & the Chairperson of Orissa Judicial Academy addressing the Conference.

Hon'ble Shri Justice B. N. Mohapatra, Judge, High Court of Odisha addressing the delegates in the Conference.

Hon'ble Shri Justice B. K. Patel, Judge, High Court of Odisha & the Member of Orissa Judicial Academy addressing the delegates in the Conference.

Hon'ble Shri Justice S. K. Mishra, Judge, High Court of Odisha & the Member of Orissa Judicial Academy addressing the delegates in the Conference.

Hon'ble Shri Justice B. K. Misra, Judge, High Court of Odisha addressing the delegates in the Conference.

Hon'ble Mr. Justice V. Gopala Gowda, Judge Supreme Court of India also viewed that in one hand to acquire land for the development and the other hand the productivity of foodstuffs be enhanced which is not happening. Therefore it should be a balance between the productivity and agricultural products and acquition of land for mining in the process of development. Hon'ble Mr. Justice I. Mahanty, Judge Orissa High Court and Chairperson of Orissa Judicial Academy is introduced the guests and at last Dr. D. P. Choudhury, Director of Orissa Judicial Academy extended the Vote of Thanks. Hon'ble Mrs. Justice R. Banumathi, Judge, Madras High Court. Dr. L. N. L. S. Prasad, Director Central Forest and Environment Department, Dilip Kumar Behera, Senior Scientist of State Pollution Control Board were present in the conference. Hon'ble Mr. Justice B. K. Misra, Hon'ble Mr. Justice B. N. Mohapatra, Hon'ble Mr. Justice P. K. Mishra , Hon'ble Kumari Justice Sanju Panda, Hon'ble Mr. Justice B. K. Nayak, Hon'ble Mr. Justice B. K. Patel, Hon'ble Mr. Justice S. K. Mishra, Hon'ble Mr. Justice D. Maheswari, Rajasthan High Court, Hon'ble Mr. Justice D. Y. Chandarachud, Bombay High Court , Hon'ble Mr. Justice Suryakant , Haryana High Court, Hon'ble Mr. Justice A. S. Naidu, National Green Tribunal were present in the Conference.

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Complied by
Miss Rajlaxmi Dwibedi, Consultant,
Orissa Judicial Academy