VIDYA

NEWS LETTER

A Special Issue

9th Issue 2nd Quarter - 2013

Newly recruited Judicial Officer - 2012 at Integrated Court Complex, Pudducherry, under "Sharing Best Practice" Programme

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ODISHA JUDICIAL ACADEMY
CUTTACK

For Brighter Tomorrow

ODISHA JUDICIAL ACADEMY, CUTTACK

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Hon'ble Mr. Justice C. Nagappan, Chief Justice, Orissa High Court & Patron -in-chief, Odisha Judicial Aacdemy
with Newly recruited Judicial Officers - 2012

Hon'ble Mr. Justice A.S. Naidu, Former Judge, Orissa High Court addressing newly recruited
Addl. District Judges under Induction Training Programme. Dr. D.P. Choudhury, Director, OJA is present.

Hon'ble Mr. Justice B. K. Nayak, Judge, Orissa High Court
along with newly recruited Addl. District Judges
with Dr. S. K. Pradhan, Faculty Member, Dy. Director and Asst. Director.

Justice C. Nagappan

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August 02, 2013

MESSAGE

I am delighted to know that the Odisha Judicial Academy is completing a decade of existence and moving to its new building. It has emerged as a premier institution for continuous legal education.

On this momentous occasion, I congratulate the Chairperson and the Members of the Training Committee for bringing out a Special Issue of Newsletter "Vidya", the mouthpiece of Academy.

(Justice C. Nagappan.)

Justice Indrajit Mahanty
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MESSAGE

It is a matter of delight that the Odisha Judicial Academy which is in its 10th year of serving the Judiciary, is going to bring out its 9th Issue, 2nd quarter, News-Letter "VIDYA".

Continuing Judicial Education is today an integral part of Judicial Life and for growth of mental qualities of Judges. In conformity with its avowed objectives, the News-Letter contains very useful articles in catering to the needs of the Judicial Officers and other Stake Holders. We remain confident that the Academy will achieve excellence in the field of continuing Judicial Education.

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

Chairperson
Odisha Judicial Academy, Cuttack

Justice L.K.Mohapatra.

July 29, 2013.

MESSAGE OF FORMER CHAIRPERSON, ODISHA JUDICIAL ACADEMY

I am informed that the new building of Odisha Judicial Academy will be inaugurated on 10th of August, 2013. I was actively involved in functioning of the Academy and construction of the new building. I will try my best to be a part of the inaugural function for which I waited long while in Odisha.

It all started during tenure of former Chief Justice of Odisha Justice N.Y.Hanumantappa. The Academy initially started functioning in Rdhanath Training College and was subsequently shifted to an old revenue building of Board of Revenue, Cuttack. Hostel Facilities were very poor but our judicial officers coming for training never complained. They all expected that some day the Academy will have it's own building and much better accommodation will be available to them. Finally that day has come. I would thank all our subordinate Judicial Officers for extending their cooperation during the time when the Academy neither had good hostel to offer nor had the financial resources to look after them. The academy is meant for them and is dedicated to them. Now it is their duty to see that the Academy is utilised to it's full extent and in the process make them more able and better law knowing judicial officers.

Since I was a member of the Committee finalising the design of the building, care has been taken to see that those who manage the Academy have a good place to sit, those who come for training, have a good hostel with modern facilities to stay and sit in class rooms which are well equipped. Except a swimming pool, almost all other facilities have been provided for. I am sure our officers after long hours of training in the Academy shall avail other facilities provided therein.

Though physically I am not in Odisha, my good wishes shall always be there with all our officers in the subordinate judiciary and I am sure they will meet the expectations of the Academy and all those who manage it.

I look forward to see Odisha Judicial Academy to be the best in the country where I will feel privileged to take classes after my retirement.

L mohapatra

(Justice L.K.Mohapatra)

Editorial Note ...

Judicial education gains momentum while there is stress laid on knowledge in substantive and procedural law and Judges should be trained on knowledge in Law, Skill, attitude and ethics beside other; matters including information technology for comprehensive capacity building. Considering the necessity of judicial education to be imparted to the Judicial Officers of the State of Odisha, Odisha Judicial Academy was made functional from 20.12.2003 in the Old Building of Board of Revenue. Of course, the site for permanent Building was selected in 2001 but the construction of new Building was started only in 2010. Now the Building has been completed and ready for use by the trainees. The main objective of the Academy is to develop and deliver educational programmes in order to make them available to judiciary as far as possible, further to strengthen value based Society.

Our Academy has made endeavour always to sensitize Judicial Officers about duties and functions. But, in the last three and half years all efforts have been made to address Judicial Officers with substantive law and procedural law. Various programmes as undertaken by National Judicial Academy are also taken up in this Academy. But the mind-set of the Judicial Officers should be promoted to that level by discarding stereotype mind-set. Adding to this, commitment to the cause of justice is also imperative so that the common man can get proper justice.

On the occasion of the Inauguration of the New Building of the Academy, the Newsletter "VIDYA" gets momentum to address the Judicial Officers about their ability to enhance the judicial productivity. For that a State Seminar is scheduled to be organized to take care of the judicial productivity which should be on quantitative and qualitative. I hope and trust that Odisha Judicial Academy will cater to the legal requirements of the people at large in the Society.

Director,
Odisha Judicial Academy, Cuttack

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JUDICIAL INTEGRITY

Justice P.K. Tripathy

At the commencement, I make it absolutely clear that whatever I narrate or mention hereafter is purely my perception and thereby I do not intend to defy, decry, and derecognize any practice or precedents, which are in existence and continuing. I also do not think of, much less, intend or desire to insult or annoy anyone who and whatsoever he or they may be. Whatever I state hereinafter may be considered by the readers as an opinion and if any such opinion finds relevance and acceptability that may only be considered accordingly. As I have experienced from 1973 as a lawyer, from June 1985 as a Judicial Officer and from June 1997 as a Judge of the Odisha High Court. I bear total faith in the existing judicial system and I have utmost respect for the adjudicatory wing.

We may read, research or take the trace of history on the adjudicatory system and one of the things which consistently we find that the litigants, nay the people i.e. the subjects in any sovereign have always cherished mainly three things from the judicial system or adjudicatory system, as you term it. Amongst them one is regarding impartiality in decision making process with proper knowledge of law and prudent thinking, the other is that the dispute should be decided early if not expeditiously and the last one is that the adjudication should be at a cheaper cost. In the above contest the sovereign i.e. the State can modulate and manage litigations at a cheaper cost. On the other two aspects the executive of the State or even the legislative wing respectively cannot and may not find ways and means unless the judiciary itself thinks of that in comprehensive, constructive and methodical manners.

I know for certainty that even if there would be prescription of time for disposal of certain categories of cases be it by any Statue or rules or instructions of the High Court, then also there may be default in that respect for many reasons. One of such reasons may be the apathy, insincerity, negligence, ineffective control of the Court or proceeding etc. from the concerned adjudicatory authority. To achieve the above i.e. providing timely justice by deciding the case beyond reasonable delay, honesty and integrity is the foremost thing. So far as the honesty and integrity is concerned that is personal to every individual adjudicator and in that respect, notwithstanding partial erosion, the adjudicators in Odisha have a better reputation percentage wise.

When I take up 'integrity' of adjudicators as a topic to express my feelings and opinion, I prefer to quote early 20th Century thinker Walt Whitman encompassed in the article in June 1995 by Mr. Wayne Mac Kay, Professor of Law Dal Housce University.

"Great is Justice!
Justice is not settled by legislators and laws-it is in the soul;
It cannot be varied by statutes, any more than love, pride the attraction of gravity, can;
It is immutable-it does not depend on majore tries or what not,
Come at last before the same passionless and exact tribunal.

For Justice are the grand natural lawyers, and perfect judges-it is in their souls;
It is well assorted - they have not studied for nothing-the great includes the less.
They rule on the highest grounds -they oversee all ears States & administrations.

The perfect Judge fears nothing - he {she} could go front to front before God;

Before the perfect Judge all shall stand back - life and death shall stand back

- Heaven and hell shall stand back.

Mere recital of and / or simply understanding the meaning of the above quoted concept is of no use unless the meaning, concept and message is realized and the thought is practiced in justice delivery system. The constitution of India has mandated an independent judiciary. In that context in the case of S.P. Gupta v. Union of India (1981 Suppl. 87), Hon'ble Supreme Court said that "it is the judiciary which is entrusted with the task of keeping every organ of the state within the limits of the law thereby making the rule of law meaningful and effective." During the colonial regime the citizens in this country experienced honesty and integrity mostly in judiciary and not in other organs of the instrumentalities of the state and administration. That perception still prevails with the common man i.e. the public in general. Therefore the system has to sustain its existence like lotus or rose with fragrance.

With the development and changes in social dealings in every aspect of human life, the society has become complex so also perception and problems therein. Everybody speaks that he is right and his deeds are correct or righteous. Seldom anybody wants to compromise on issues and therefore that give rise to litigations. Every litigant wants an order or adjudication in his favour whether on merit or otherwise i.e., by resorting to any other means. To achieve such goal some of them use or misuse any opportunity or create opportunities to secure favourable decisions. Yet everybody wants an honest and impartial judiciary. In such cases, the litigants who, though not entitled to but pursue for a favourable result, also desire that judiciary should be honest and impartial in all other cases except in their cases. Indeed the expectation of honesty and integrity may not be a problem but the manner in which it (honesty and integrity) is conceptualized is the real problem.

My perception is that in any discipline of public administration ten to twenty percent of the people working or involved in that system are die-hard honest and similar percentage of people therein may be absolutely corrupt or run with polluted mind or attitude. The remaining are the bulk i.e. sixty to eighty percent of people. They can be termed as fence-sitter. They modulate themselves according to the facts and situation. If the administrative head or the controlling authorities do not have discipline and proper and effective control in their office or organizations, then the fence-sitters behave accordingly and that may affect his honesty and integrity as well. In such cases, honesty and sincerity of the fountain head of the office, organization or system make no impact when the effective administrative control lacks. When that greater percentage of the employees and officers (fence-sitters) lean towards the wrong side, then erosion in the honesty and integrity starts damaging like the flood water damaging the river banks and the human habitats.

Ineffective control over the administration and de-railing of the discipline may occur due to several reasons. One of the important reasons may be the system of hierarchy in the administration and the

manner in which it is permitted / allowed to function. Having no detail knowledge about the system of administration in other States and their practices and procedure, I may not be competent even to form opinion in general but so far as the judiciary in Odisha is concerned, from the very beginning, it has adopted and followed and systematic but rigid methods have been adopted by the supervisory jurisdiction, as provided in Article 227 of the Constitution. Provisions in the procedural law like Code of Civil Procedure 1908, Code of Criminal Procedure 1973, the General Rules and Circular Orders and instruction imparted through General Letters (G.L.) and Circular Orders add to the systematic method of functioning of the Court and Offices under the Odisha Judiciary. Let me not divert to the above aspect any further unless it is necessary to do so in course of expressing my thought on "Integrity".

We know and we also feel what is honesty and what is integrity. Therefore it is not necessary to quote here the dictionary meaning or academic interpretation of such terms. I remember an incident of 1987, when I had come to Cuttack to participate in the District Judges Conference (which was then regularly held every year). A day before the conference, in the evening, I made a courtesy call on a senior colleague stationed at Cuttack. By then, I was a new entrant to the Judicial service, and I had less than a year's experience as District & Sessions Judge in geographically a vast district which has now been made four Revenue Districts i.e. Koraput. As a well natured person, in course of the gossip, my senior colleague wanted to ascertain, how I was doing my job and whether, I was capable of discharging my duties and responsibilities competently both on judicial and administrative aspects. By then I was striving hard and labouring much to do justice to my position as the District and Sessions Judge. I had also the feeling and confidence that I was attending to all aspects with a near perfection result. Buttered with such feeling, I said that the litigants, members of bar associations and staff members, believe in my honesty, integrity, sincerity and punctuality. The elder brotherly senior colleague, made a sarcastical smile and retorted that, the above are the minimum service conditions according to the Govt. servants conduct rule and therefore, I was doing nothing extra to take the pride. I did not misunderstand him for that criticism. In course of that sitting I realized correctness in his statement and I expressed my gratitude to him to put me in the right track. I realized that every person connected with adjudication of disputes and deciding cases, must bear in mind that the terms and conditions of the appointment includes, all the positive qualities like remaining honest, maintaining the integrity and discharging the duties and responsibilities in best possible manner and not to adopt dubious methods and clandestine courses.

The attitude to remain honest and to maintain integrity is a mental phenomenon. One can learn or adopt it, as a culture from the family, groups or the society. It can also be ensured on a person by keeping him under strict discipline and appropriate surveillance. Impact of catching the wrong doer and imposing punishment also sends message to the 'fence-sitters', to not to resort to corruption. Thus ways and means are there to maintain and monitor the aforesaid aspect while attending to the statutory duties by the competent superior authorities' viz., inspection, periodical meetings, surveillance otherwise or in course of hearing petitions, appeals or revisions. The concern employee or Judicial Officer should not generate or propagate a case of vindictiveness, when, he is caught for misdeeds on honesty and integrity. Similarly the controlling authorities, must possess the mind set to be, not to be vindictive. Such attitude by either of them is absolutely necessary to maintain the equilibrium in the administration.

The system, in which I have worked as a Trial Court Lawyer in District Judiciary, as a Judicial Officer in the lower judiciary and as a Judge of the High Court, (totally for about 37 years), I carry the

impression that amongst all type of officers and employees in the State the position of the employees and officers in Judiciary is most vulnerable. While the general public go with the impression that employees in 'X' category, offices in 'Y' category and both employees and officers in 'Z" category of offices / departments are corrupt or do not bear or respect, sincerity and integrity, they (the general public) carry the impression that Judiciary as an unit is honest, sincere and works with integrity and dignity. Such feeling of the people make them not to tolerate even a bit of de-adherence to the standard norms by any judicial officers. Even if a Judicial Officer, does not do anything affecting his honesty and integrity, yet a particular conduct being perceived as aberration, the affected persons or gossip mongers start spreading news to defame the Judicial Officer. Similarly a person who loses a case or suffer from an order which has been passed against him on proper understanding of law and facts, the allegation of corruption starts building against him. It two different orders in two similar type of cases are passed because of distinguishable facts or circumstances, the looser in one such litigations do not take into account (he may not have the perception to take note) the distinguishable facts and circumstances, and come the easy way by throwing the blame of corruption on the Judicial Officer. In that manner there may be many such circumstances, which culminate in casting aspersion on honest and sincere Judicial Officers.

Thus, my view is that, in all such cases the authorities concerned have to make analysis of the fact and allegations intelligently, dispassionately and without having internal or external influence and thereafter to carry out the course of action prudently.

I repeat what I have said earlier that, whatever I have stated above may be considered as my opinion and it is open to all concern either to consider or ignore the same. I also re-state that the Odisha Judiciary has carried a high reputation so long and I hope and trust that it would be maintained by all concerned in the times to come.

Jay Hind !!!

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ROLE OF JUDICIARY IN THE ADMINISTRATION OF JUSTICE

Justice A.S.Naidu
Former Judge, Orissa High Court

The Preamble of our Constitution speaks of Justice -Social, Economic and Political for We the People. The Constitution framers certainly could not lose sight of the quest of the citizens for justice. It is the truth that-Judiciary has figured an important pillar of our Democracy and has to uphold the Constitution. Justice being very much integral in everybody's life, be an Honourable Judge, or any other still higher dignitary or a common man, Role of Judiciary is administering justice to him whoever seeks it.

The rule of law restrains everybody from taking the law into his own hand. A person meted out with injustice, be it physical, mental, economical or the like, has the only hope of redress by Court of Justice. Even a Judge when he himself is a victim of injustice knocks at the door of justice with the same hope like others. Without Judiciary and administration of justice the entire world will be in chaos.

Confining 'Role of Judiciary in the Administration of Justice, to our country, there has been consistent effort of the Judiciary in administering justice to the best of its ability and resources. There is no denying that people of India have tremendous faith in Judiciary. Because of such faith, huge number of justice-seekers rush to Courts of Justice and cases are piling up. Our Judiciary has earned a name world-wife for its impartiality and fearlessness. With the rapid growth of population and simultaneous increase in the number of cases in Courts there is bound to occur back-log of cases. Such a problem is also there in other countries of the world.

There is a cry as to back-log of cases and delay in dispensation of justice. Justice cannot be administered overnight nor can a case be disposed of with undue haste. A hurried justice may germinate a new case causing more harm to justice-seeker. Therefore the cry of expeditious disposal of cases may not always deliver expeditious good decision. Administration of justice is a sacred service to mankind. It may be possible within a few hours, it may even take years, but justice has to be done as it must appear to have been done.

With all ordeals faced by our Judiciary, still its role cannot go without praise. It strives certainly very hard for quickest dispensation of justice. Even in some cases, dispensation of justice is done at the doors of the litigants, with minimal expenses and with all honesty, integrity and transparency. For deciding a case expeditiously, the Court's hands are necessarily to be strengthened by able assistance and cooperation of all concerned. Craze of the litigants to see a lis comes to an end at the earliest is a must, and the lawyers too who represent their clients should have keen interest to see that the agony of their client is mitigated at the earliest.

To cater to the need of the litigating public, our Judiciary has evolved a number of easy, less-expensive, less time-consuming and transparent systems/schemes and projects. To tell a few, those

are- (1) Alternative Disputes Redressal Forum; (2) Lok Adalat; (3) Plea Bargaining; (4) Fast Track Courts (5) Shift System (6) Case Management and Court Management; (7) Video Conferencing; (8) Training and Orientation Programmes of Judges and Judicial Staff; (9) Arrear Eradication Scheme, and the like.

The disputes in courts and tribunals are adjudicated or resolved through adversarial method with win-lose consequence. This grows animosity among the parties which is not congenial for a society. Introduction of **Alternative Disputes Redressal Forum** has brought about a healthy and peaceful redress in a case. All effort is made to achieve a win-win solution in which both sides feel satisfied and relieved of the headache. No one loses, no one gains victory. The ill-will, emotions and ego among the parties all simultaneously comes to an end.

Through **Lok Adalat,** parties to a case are encouraged to come to compromise and settle their disputes. Conciliation is made. Many alternatives to solve the dispute are suggested to them. The controversies are narrowed down through mediation. Where parties realize that fighting out the litigation in courts or tribunals may be hazardous, they instantly look forward for an escape from that sacrificing their interests a little this side or that side. Case ends.

Basing on recommendation of Malimath Committee, the Code of Criminal Procedure has been recently amended and a new chapter, i.e. XXIA has been added. With such amendment a new approach to criminal cases is aimed, namely, **Plea Bargaining**. By this system an accused is advised or granted liberty to admit the crime alleged against him either in part or in entirety for a specified punishment rather than waiting for trial and running the risk of severe sentence. This system will not only expedite disposal of a case, provision is made for adequate compensation for the victim of the crime who gets a liberty with the prosecutor to bargain with the accused.

On the recommendations of the Eleventh Finance Commission more than one thousand five hundred **Fast Track Courts** have been established in the country. To such courts ready for disposal cases from the regular courts are transferred for expeditious disposal, while the latter courts besides other matters proceed with freshly instituted cases. This has shown quite good result in reduction of pendency of old cases.

Our Judiciary is contemplating to introduce a system of make the courts function in two shifts with the same infrastructure utilizing the services of retired Judges and staff with integrity, ability and high reputation who may be physically fit and mentally sound. With their rich experience they will be able to dispose of cases quickly. This will be **Shift System**.

By **Case Management** techniques the problems of each particular case from its institution till disposal by an individual court are dealt with; while **Court Management** is aimed at looking at the problem from macro level to deal with total pendency of cases in a court and controlling huge back-log. By adopting this system it is possible to have a case for disposal within a specified period of time.

It is common knowledge that many cases go on lingering for pretty long period because of inability of the police/jail authorities to produce the accused in criminal cases in court. Many times also witnesses hesitate to depose in court either to avoid the hazard of considerable expenditure, inconvenience, risk or paucity of time. Recently the Criminal Procedure Code has seen several State amendments providing use of **Video Conferencing** to secure recording of evidence of witnesses who are not local residents or

who hesitate to depose in open court against dreaded or hardened criminals. Such a provision eradicates the aforesaid problems and quickens disposal of cases.

Modern technologies are advancing so fast, that the Judges of different hierarchies are bound to be unequipped to handle cases in a speedy and effective way. To train up the Judges and sharpen the adjudicatory skills regular **Training and Orientation Programmes** are being organized. Judicial Academies have also been set up for different States for the purpose. This takes the judicial reforms and modernization a long ahead.

Arrears Eradication Scheme is contemplated to tackle cases pending for more than two years. It aims at identifying cases which can be summarily disposed of under Section 262 CrPC, petty cases under Section206 CrPC as well as other cases which can be compounded. The Courts that may be constituted under this Scheme will take up hearing of cases day-to-day basis and once a case is posted it shall not be adjourned except under special circumstances and on payment of costs and expenses to witnesses. This will certainly a step to reduce bag-log of cases.

Indian Judiciary has been taking various steps for bringing about reformation in court procedures and amendment of various procedural laws provided in different statutes which create a dent in effectual and efficacious dispensation of justice by courts.

It is a matter of grave concern of the country about the delay in dispensation of justice, bag-log of cases and agony of those remain oppressed or victims being unaware of their legal rights. Bereft of Judiciary, the other pillars of our Decmocracy have to rise to the occasion equally too, and strengthen the hands of Judiciary to cater to the need of the day.

The plight of Indian Judiciary is just like a poor land-tiller whose landlord supplies nothing to sow, but expects bale of sheaves. Indian Judiciary has no financial autonomy. While creation of more number of courts, appointment of more number of Judges and Court staff, providing adequate infrastructure, setting up new and advanced Schemes for speeding disposal of cases, retaining or re-employing capable and honest Judges and Staff in service till they are physically and potentially befitting, providing security for the Judges and providing for other encouraging essentials in speeding up disposal of cases and removing back-logs, Judiciary is expected to show a good turnover.

Judiciary fore-sees the bad days. The more the people become enlightened and aware of their legal rights and remedies, the more will be the number of litigations in courts in future. The back-log of cases talked about today will be floating day by day. The solemn pledge of our Constitution to secure Justice to the citizens has to be fulfilled by the Government first, the role of Judiciary in the administrative of Justice to follow.

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JUVENILE JUSTICE SYSTEM AND LEGAL AID - AN APPRAISAL

Justice B.N. Mahapatra
Judge,Orissa High Court, Cuttack

Who is a 'Juvenile' and 'Juvenile in conflict with Law':-

A 'juvenile' or 'child' means a person who has not completed eighteenth year of age. Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "JJ Act, 2000") has defined "Juvenile" or "child" to mean a person who has not completed eighteenth year of age. Thus, a boy or a girl under 18 years of age is a juvenile.

Section 2(l) of the JJ Act, 2000 has defined the expression "juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

Need for enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000:-

The JJ Act, 2000 was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

Thus, the JJ Act, 2000 was enacted to protect the young children from the consequences of their criminal acts on the footing that their mind at that age would not be said to be matured for imputing mens rea as in the case of the adults.

Constitution of India and United Nations on Children:-

The Constitution of India has in several provisions including clause (iii) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47 imposed on the State a preliminary responsibility of ensuring that all the needs of the children are met and that their basic human rights are fully protected. Apart from that the General Assembly of the United Nations has adopted the Conventions of Rights of Children (CRC) on 20th November, 1989. The CRC has prescribed a set of standards adhered to all parties for securing the best interest of the child. The CRC emphasizes social re-integration of the child victim to the extent possible without resorting to judicial proceeding.

Article 37 of CRC deals with the mode of treatment of juvenile offenders: It provides as follows:

State parties shall ensure that :

(a) No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to main contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

The Government of India has ratified the Convention on the 11th December, 1992.

Supreme Court on Children:-

The Hon'ble Supreme Court of India in Rosy Jacob v. Jacob A. Chakra-makkal, (1973) 1 SCC 840 has observed as follows :

> "Children are not mere chattels, nor are they mere play things, for their parents. Absolute right of parents over the destinies and the lives of their children has in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society."

The Hon'ble Supreme Court in the case of Bandhua Mukti Morcha Vs. Union of India and others, AIR 1997 SC 2218 held as under:

> "Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child... Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally - the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the need of its best development."

What Gabrial Mistral, the Nobel laureate says about Children:-

Gabrial Mistral said "we are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of things we need can wait. The child cannot; right

now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is 'today'.

What Dr. Justice Shivraj V. Patil, former Judge, Supreme Court of India says -

"As a plant needs protection, nourishment and proper environment to grow into a big fruit-bearing tree, a child also needs protection, promotion, nourishment and proper environment to grow into a useful and responsible citizen to serve the nation."

Children are the supreme assets of the nation and potential human resources for social progress.

What is the minimum age below which a person is exempted from prosecution and punishment in our country

Under Section 82 of the Indian Penal Code, nothing is an offence which is done by a child under seven years of age.

Section 83 of the I.P.C. provides that "nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion".

Thus, in India the children between seven and twelve years of age having sufficient maturity and between the age of twelve and eighteen years of age who have committed an offence are liable for their criminal acts. However, for their criminal acts they are not to be treated or sentenced in the same manner as an adult. Such children will be dealt with under the juvenile legislation with object to reform and rehabilitate them.

Need for Legal Aid in Juvenile Justice System :-

The Juvenile Justice System has been established with a view to take juvenile delinquents out of the jurisdiction of criminal courts and to protect them from technicalities of criminal procedures. Efforts have been made to co-ordinate various agencies to make the judicial system more accessible to the community. Emphasis has been made to create a relationship between the judicial system and the members of the community which could help the juvenile court in its decision making process.

The need of the hour is speedy disposal of the juvenile cases. Recognizing such need, the legislature has in the year 2006 inserted Section 14(2) in the JJ Act. Improvement of juvenile justice system is a gradual process. In the said process, the legal aid plays a vital role.

Legal aid has been put on a high pedestal in India by virtue of Article 22 (1) and Article 39A of the Constitution of India and Sections 303 and 304 of the Criminal Procedure Code 1973. Article 22(1) and Section 303 Cr.P.C., grant the right to consult and to be defended by a legal practitioner of one's choice upon one's arrest or being charged with an offence. Article 39A and Section 304 Cr.P.C. make it a solemn duty of the State to provide free legal aid to indigent litigants.

Section 304(1) of the Criminal Procedure Code gives effect to the recommendations of the Law Commission for making legal aid available in all trials before the Court of Session. Under sub-section (3) of this section the State Governments have been given the discretion to extend free legal aid to any other class of trials before other courts in the State.

The Supreme Court on Legal Aid :

Providing legal advice to the juveniles keeps much significance. Legal advice should be available not only prior to their confrontation with law but also after children are released on admonition, on probation or after institutionalization. It is common experience that 70% of the people living in rural areas are uneducated and more than that percentage of the people are not aware of the rights conferred upon them by law. Even educated people do not know what their rights and entitlements are under the law. Juvenile delinquents are generally from lower strata of the society. They are exploited, deceived and deprived of the rights and benefits because of the absence of legal awareness. To prevent children from all sufferings, it is required that legal awareness programme may be conducted in the community especially in a remote area by the people well versed in legal provisions. That is why it has always been recognized as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. The Magistrate of the court should remain under an obligation to inform the parents of the children about their rights to obtain free legal service at the cost of State regardless of their applying for the same (Hira Lal Rathore v. State of M.P. & another, 1988 Cr.L.J. 457).

In Shella Barse v. Union of India, AIR 1986 SC 1773, the Hon'ble Supreme Court issued direction to the State Legal Aid Boards and other Legal Aid Organizations to arrange for the visit of two Advocates to custodial institutions once every week for the purpose of providing Legal assistance to children below the age of 16 years who are confined in the observation homes. Further in the case of Supreme Court Legal Aid Committee v. Union of India, AIR 1989 SC 1278, the Court stressed on the importance of ensuring justice for the juvenile, observing that juvenile delinquents are not capable of initiating their claim for protecting their rights. A Committee of Advocates was constituted and entrusted with drafting of a Scheme for proper implementation of the Juvenile Justice Act. Every State was also directed to appoint adequate number Probation Officers and establish training institutions for imparting child welfare knowledge.

Relevant Statutory Provisions :

1. Every juvenile who has to file or defend a case is entitled to legal aid under Section 12(c) of the Legal Services Authorities Act, 1987. Rule 23-A of the Juvenile Justice (Care and Protection of Children) Orissa Rules, 2000, (for short, Orissa Rules, 2000") provides as follows:

(i) The proceedings before the Board shall be conducted in non-advertisarial environment, but with due regard to all the due process guarantees such as right to counsel and free legal aid. [Rule 23-A(a) of the Orissa Rules, 2000]

(ii) The Board shall ensure that the Legal Officer in the District Child Protection Unit and the State Legal Aid Services Authority shall extend free legal services to all the juvenile in the conflict with law. [Rule 23-A(b) of the Orissa Rules, 2000]

(iii) The Legal Officer in the District Child Protection Unit and the State Legal Aid Services Authority shall be under an obligation to provide legal services sought by the Board. [Rule 23-A(c) of the Orissa Rules, 2000]

(iv) In the event of shortfall in the State Legal Aid Services support, the Board shall be responsible for seeking legal services from recognized voluntary Legal Services Organizations or the University Legal Services Clinics. [Rule 23-A(d) of the Orissa Rules, 2000]

(v) The Board may also deploy the services of the student legal services volunteers and non-governmental organization volunteers in para-legal tasks such as contacting the parents of juveniles in conflict with law and gathering relevant social and rehabilitative information about the juveniles. (Rule 23-A (e) of the Orissa Rules, 2000].

Suggestions :

- Rule 22(6)(b) of the Orissa Rules, 2000 provides that the Board shall take various steps to ensure fair and speedy inquiry. Hence it is the duty of various Legal Service Authorities to provide free legal aid to juveniles and work towards speedy disposal of cases. The term free legal Aid includes not only legal assistances but moral, social and learning assistance to juveniles so that they can lead a dignified life.
- The State Legal Services Authority can help the State Governments to set-up or identify after-care organizations and their functions so that juveniles can lead an honest and useful life.
- The Legal Services Authorities must work for ensuring that juveniles are not made victims of harsh criminal procedures.
- The Legal Services Authorities can also represent the cause of juveniles through the means of public interest litigations.

Law is the instrument of justice. In a country like India where most of the people live below the poverty line, justice should not only be cheap but also be free. So Legal Aid has absolute importance if justice has to go to the tongueless, victimized, uncared, unwanted and exploited children.

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HUMAN RIGHTS VIS-À-VIS HIV/ AIDS

Justice B.K. Patel
Judge, Orissa High Court

"Fight against AIDS is also a fight against fear, against prejudice and against irrational action, born of ignorance and the world should make war against AIDS, and not against people with AIDS" [1].

Introduction

Human rights are broadly concerned with defining the relationship between individuals and the state. International human rights law dictates that governments should not do things such as torture people, imprison them arbitrarily, or invade their privacy. Governments should, however, ensure that all people in a society have shelter, food, medical care, and basic education. The concept of human rights has a long history, but the modern human rights movement dates back to about 50 years when the promotion of human rights was set out as one of the purposes and principles of the United Nations. The key human rights document and the cornerstone of the modern human rights movement is the Universal Declaration of Human Rights (UDHR). Health and government responsibility for health in the context of the HIV/AIDS epidemics is codified in this document in several ways. Human right to the highest attainable standard of physical and mental health appears in some form, and even more importantly, nearly every article has clear implications for health and for HIV/AIDS. Everything from the rights to information and association to the rights to social security or to the benefits of scientific progress and its applications has clear implications for HIV/AIDS and for the work of public health.[2]

Concept of HIV/AIDS and Human Rights

People are affected by HIV/AIDS when their close or extended families, their communities and, more broadly, the structures and services that exist for their benefit are strained by the consequences of the pandemic and as a result fail to provide them with the support and services they need. The effects of discrimination--particularly in the forms of racism, gender-based discrimination, and homophobia--continue to exacerbate the impact of the pandemic on the lives of individuals and populations around the world. It is increasingly recognized that realization of human rights is critical to protecting the rights and dignity of those infected and affected by HIV/AIDS, and to decreasing the relative vulnerability of individuals and communities.[3]

Responsibilities for Human Rights in the Context of HIV/AIDS

HIV/AIDS policies and programs can be improved by a systematic review of how and to what extent interventions are both respectful of human rights and of benefit to public health. The questions described below can be used by policymakers and public health and other government officials to aid in

the development, implementation, and evaluation of more effective HIV/AIDS policies and programs. They can also be used by nongovernmental organizations and other concerned actors as an advocacy tool to hold governments accountable vis-à-vis compliance with their international legal obligations to promote and protect both public health and human rights.[4]

Judicial response

Recommendations of the Global Commission on HIV and the Law (2012)[5]

- Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against 'immoral' earnings, 'living off the earnings' of prostitution and brothel-keeping.
- Take all measures to stop police harassment and violence against sex workers.
- Prohibit mandatory HIV and STI testing of sex workers.
- Ensure the enforcement of anti-human-trafficking laws.
- Enforce laws against all forms of child sexual abuse and sexual exploitation.
- Protect the rights of this marginalized and unfortunate sections of society, like sex workers, who are forced into the trade.
- Avoid as far as possible their criminalization.
- Help them realize their right to live with dignity.
- Recognize their right to take their own decisions.
- Humanitarian approach towards sex workers.
- Deal with them with utmost sensitivity.

In absence of legislation, Courts in India have been very pro - active in upholding the rights of HIV positive people especially in respect of sex workers. With regard to the protection of rights Articles 14 and 21of the constitution can be passed into service. Since this issues relate to right to health, privacy and personal autonomy of individuals.

Experience at Bangkok

All the above issues relating to Human Rights dimensions of HIV/AIDS victims were discussed thread-bare in the judicial dialogue on "UNAIDS Asia Pacific on HIV, Human Rights and the law in Asia" held at Bangkok, Thailand from 2nd to 4th June, 2013. Being nominated by the Court and Odisha Judicial Academy, I attended the International Conference. During different sessions, deliberations were held on topics like judging during epidemic; HIV law and judiciary; enabling legal environment in the context of HIV and drug use; access to life saving treatment; advancement of judicial awareness; and education on HIV related issues and law. Highlight of the dialogue was that apart from Jurists, Judges, Lawyers, Human Rights Activists and Sociologists, representatives of the victim communities like HIV+ persons, sex workers, and homosexuals etc. also actively participated in the dialogue and presented their experience, views and suggestions. There was consensus among the participants that issues relating to Human Rights aspects of HIV/AIDS can be addressed to only by effective legal frame work and judicial intervention.

Discrimination of the high risk victim groups leads to infection and such infection and further discrimination lead to epidemic. Therefore, issues relating to HIV/AIDS victims are not only confined to right to health but also right against discrimination in the matter of education, employment, immigration etc. In essence, all the issues boil down to the issue relating to the basic rights to life, liberty and equality. In such view of the matter, it is essential for the Judicial Academies and Legal Services Authorities to hold regular dialogues among the members of the judiciary to sensitize and educate them on the issues.

Reference

1. Secretary General of the United Nations in his address to the General Assembly on October 20, 1987.
2. Sofia Gruskin, JD, MIA, Daniel Tarantola, MD, François-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health : Human Rights and HIV/AIDS
3. supra
4. supra
5. MOHIT S. SHAH Chief Justice, Bombay High Court, India, : JUDICIAL DIALOUGE ON HIV, HUMAN RIGHTS & THE LAW IN ASIA & THE PACIFIC BANGKOK, THAILAND (2- 4 June 2013).

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MEDIATION AS A TOOL OF ALTERNATIVE DISPUTE RESOLUTION-THE NEED OF THE HOUR

Dr. Justice B. R. Sarangi

Introduction

The population of the country is growing day by day. Necessities of life are also increasing. Consequently, there is conflict of life style in each and every level, which ultimately leads to litigation. Now-a-days, law courts are flooded with litigation, may be, due to development of awareness about the rights of the parties, consciousness of litigation, non-availability of adequate number of law courts in proportion to the population, non-availability of Presiding Officers to adjudicate the matters and above all procedural lingering of the proceedings. As a result, litigations could not be decided as early as possible even though in some enactments time limits have been fixed to resolve the same. Due to inordinate delay in disposal of matters for various reasons, one of such reasons being law courts are struggling with back logs and formal proof is required, which may be costly apart from high court fees, litigant public cannot and could not get immediate remedy even though they have raised the dispute in proper time.

In order to provide immediate justice to the litigant public, Alternative Dispute Resolution Mechanism is adopted, which is actually a tool kit from which the litigant public can use appropriate tool to use as an alternative to litigation. Each dispute consists of three parts, namely, negotiation, conciliation and litigation. When negotiation between the two parties fails, they approach the third party to conciliate or mediate, failing which, they go to the arbitrator as per the agreement or to the Court of law for litigation.

Genesis of Mediation

As against these backgrounds, if it is thought about Alternative Dispute Resolution System, on 1st July, 1940, the Arbitration Act, 1940 was introduced with a view to minimize the commercial disputes but the net result is that it could not achieve the desired goal, rather it doubled the same and became paradise of unscrupulous litigants, thereby, the authorities were compelled to delete the arbitration clause from the respective contracts.

Being fed up with the delay of court proceedings and mischief of such arbitration proceedings, the legislature thought to promulgate a new Arbitration Law following United Nations Commission on International Trade Law (UNCITRAL) to give it international shape. For the sake of internal and global economy, not only land, infrastructure, finance are prime considerations, but also steps for faster dispute resolution system. Laws are different in different countries, but uniform alternative dispute resolution mechanism controlled by the arbitral tribunal institutionally will be much more productive.

Keeping in view the above objectives, the Arbitration and Conciliation Act, 1996 was enacted. Due to promulgation of the Act 1996 different views arose amongst words "Conciliation' and 'Mediation'. The Act formed a separate part of conciliation on the dotted lines of UNCITRAL the conciliation Rule 1980. Apart from the said provision, there is amendment to the Civil Procedure Code, 1908 in the year 2002

which has come into force with effect from 1.7.2002 whereby Section 89 has been introduced under the heading "Settlement of dispute outside the Court" under the Code. For better appreciation, Section 89 of the Code of Civil Procedure, 1908 is quoted below:

"89. **Settlement of disputes outside the Court**- (1)

Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for -

(a) Arbitration;

(b) Conciliation;

(c) Judicial settlement including settlement through Lok Adalat; or

(d) Mediation

(2) Where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of Sub-sec.(1) of Section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act; and

(e) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Looking at the above mentioned provisions, it is found that 'Conciliation' and 'Mediation' have emerged as popular form of alternative dispute resolution. In India there is a long standing tradition for settlement of dispute by 'Conciliation' and 'Mediation'. 'Conciliation' is as old as in the Indian history. In Mahabharat, when both parties determined to resolve the conflict in the battle field, Lord Krishna did make efforts to resolve the conflicts by 'Conciliation' and 'Mediation'. The concept aims to facilitate the development of consensual solution by the disputant with the third party, neutral playing the role of nonpartisan, that is, the 'Mediator' or the 'Conciliator'.

'Conciliation' is a viable procedure for settlement of the dispute. The best example of an individual mediation is of highly political sensitive case of Beagle Channel dispute over the ownership of certain island in the entrance of Chile and Argentina. This was the subject of an arbitral award of 1977 in favour of Chile by a Tribunal of five Judges of the International Court of Justice. The award was totally unacceptable

politically to Argentina. Eventually in 1984, the mediation of Pope, which was not based on law, was successful in settling the dispute.

Mediation as a tool of Alternative Dispute Resolution.

'Mediation' is one of the modes of Alternative Dispute Resolution system, which is basically an informal process in which neutral, unbiased individual, who is trained and conversant with dispute resolution helps in resolving the disputes. And it is done by the third party individual who possesses the above said qualities. The underlying philosophy of Alternative Dispute Resolution system has been quite lucidly brought forth ages ago by Abraham Lincoln that "Discourage litigation; persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time". So, mediation has been around for a long time, but has been statutorily recognized by law through Section 89, C.P.C. with effect from 1.7.2002.

These are those dispute resolution devices, which bear mandate and force of law, hence, such decision and awards made are enforceable on both parties subject to legal provision of review, revision and appeals. In India, it is for the first time that the Conciliation or Mediation proceedings have been recognized by law in accordance with new Arbitration and Conciliation Act, 1996 and subsequently by introduction of Section 89, C.P.C, which got force of law giving ample power for resolving the dispute alternatively by following the process of 'Mediation'. 'Mediation' is an excellent tool of commerce. The business people want to run their business peacefully without any hindrance. Their reputation stands with relationship but not with litigations. They are concerned about cost and time. Business and industry develop the economy of the country. During globalization, if one country lags behind, there will be tremendous impact upon the country. The orthodox systems prolong the litigations and the uncertainty of court proceedings is giving a wrong impression to the business community about investment. To cater to such emergent situation, 'Mediation' acts as a well-founded device to resolve the dispute in an effective manner.

Meaning of Mediation

Question arose what 'Mediation' actually means? It is found that the process of 'Conciliation' and 'Mediation' are synonymous to each other, with major difference being about their end results. The 'Mediator', who is a creation of parties under the agreement, upon hearing and considering the differences put forth by both parties awards on merit, but does not evolve a bottom line of mutual acceptance of parties alike Conciliator. In such position, the Mediation actually comprises of following elements:

(a) Foremost it is a voluntary process whereby the parties submit themselves to a negotiation which makes them voice their views and provide them an opportunity to talk out what they feel and listen to what others want to say;

(b) It is a confidential process, whereby the parties and Mediators can have a free exchange of their thoughts;

(c) It is a method which helps the parties to had control of their own disputes unlike in courts;

(d) Finally it helps the parties to reach the binding agreement among themselves.

In other words, 'Mediation' implies that there is a common friend who is capable of bringing the parties together if they do not want to handle the dispute face to face. 'Mediation' avoids escalation and focuses on the points of agreement rather than the point of disagreement so that parties are brought together soon. This will lead to a winning situation where a settlement is possible and parties could still carry on working together.

Advantages of Mediation

With the above backdrop, question may arise "Why Mediation at all ?" The underlying advantages are the answer to it. In Mediation because of the participation of the parties themselves, it preserves relationships of those involved, which is facilitated only through communications. Secondly, Time' is precious, when in the regular courts it takes years for one to see end of a litigation, in 'Mediation' it is relatively highly efficient as it is the parties themselves who fix up a time frame and can proceed faster towards a quicker settlement. So, Mediation is 'faster'. Apart from the same, mediation has got high success rate as a mutually agreeable settlement is arrived at between the parties, which therefore, avoids the rigorous of court proceedings. The basic future advantage is that 'Mediation' can be more satisfactory in terms of the result because it is the culmination of the dispute between the parties by their own agreement and hence, its results are very satisfying and parties feel happy that they were able to project their cases better in comparison to their other methods. In 'Mediation', it is less expensive hence, it makes more affordable. Apart from the same, Mediation helps mutual agreement between the parties because of the experience in alternative dispute mechanism. Last but not the least, Mediation brings lasting agreement or a lasting solution to the dispute as the parties have given their all to it.

How to effect Mediation

To give effect to the system of mediation, procedure has to be envisaged to follow the same as it is found there is no final frame work or rules as yet that detect as to how the process of the 'Mediation' has to be undertaken. The Mediators clearly will state at the threshold about the agreement that is entered into between the parties that seek for Mediation. Mediators will not tender any legal advice, which the parties are entitled to seek further from their respective legal counsel and that can be put-forth during the process, which remains purely confidential. The procedure undertaken by the 'Mediator' is to gather requisite information by sitting with the parties together or separately and get their views on the dispute and what they expect as solutions or outcome of the dispute. This provides them an opportunity to open out and vent their feelings and expressly communicate in a comfortable secure environment as to what they want and need. Once this is done, half of the job is done. Because the parties feel satisfied that they have represented their part without any fear or contradiction as to what they feel in their case and there is smoothening in the process for easier settlement. Then further part of the Mediators is to identify the crucial issues involved which are the keys in the entire process and thereafter the 'Mediator' is to help both the parties to come with the issues or controversy involved amongst them and in some cases pin point and narrow down the differences that exists among the parties and finally the last phase is to make the parties to objectively to take a look at their own situation and look at an amicable settlement and this can be done by free discussion.

Matters to be decided on Mediation

Once the procedural part is over, finally parties have to reach an "Agreement", which can be drafted by the respective Advocates, the parties themselves or through the Mediators. Once the agreement is signed, it becomes an enforceable contract. If a matter is pending before the court, it can be produced before it and the matter disposed of finally once and for all. Above being the procedure, now question comes what matters can be decided by mediation. Answer to it, mostly property settlement, community dispute, environmental issues, landlord-tenants cases, the land dispute, insurance claims, commercial dispute ranging from small partnership firm dispute to middle party corporate dispute.

Rights and duties of Mediator

To give effect to such mediation, the selection of Mediators depends on what actually one is looking for. Once the mediator is selected he has to undertake the responsibility and discharge his duties and responsibilities to find out the easier methods and resolve the dispute. Basing on the nature of the dispute, parties can appoint one who is well versed in law, Sociology, Psychology or other connected area to the issues in the dispute would be able to creatively contribute to solving the dispute. Therefore, from a professional to a personal friend, it could be any one.

In **Salem Advocate Bar Association versus Union of India**, (2006) 3 SCC 344, the Hon'ble apex Court has been pleased to give a direction for preparation of draft module for Alternative Dispute Resolution and Rules for Mediation under Section 89 (2) (d) of the C.P.C and it is understood that till now though the rule has been drafted but the same has not been notified.

Conclusion

Alternative Dispute Resolution Advices can be used to the benefit of the suffering parties, at any time, even when case is pending before the Court provided there is an agreement of the parties to that effect, which helps considerably in reduction of contentious issues between the parties. It can also be terminated at any stage by one of the disputing parties. Both parties are free to decide about the place, procedure and about the issue of Award. So far it remains the case of the mediation, it is found around the world the success rate is 85% and most of the cases are settled. 'Mediation' is an extremely flexible process, which focuses a long term interests where both the strengths and weakness of the parties are spelled out for mutual appreciation. Before going to courts, clients might soon prefer to go for Mediation and it can work in dispute even when pending in court or either a verdict has been handed out. Therefore, due to piling of cases in the dockets of the registry of the court and to avoid the court proceedings with a minimal expenses if the dispute can be resolved then it can only through 'Mediation' which should be preferred by the parties instead of fighting litigation for years together through process of court.

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English as Universal Language

Shri D.Rout
Former Director Odisha Judicial Academy &
Former Principal Secretary Law Dept., Govt. of Odisha

Let me visit the topic with the wall paper title "English as a Global and Expressive Language next to Sanskrit" since I, like many, believe that Sanskrit is the Mother of all possible languages.

The English Dictionary meaning of the word 'language' is : the system of communication of ideas and feelings by words and sounds, speech, writing, movements, symbols, gestures, and even silence (Mimes)'.

The oriental meaning of 'language' as nearly as possible is µÿæÌæ (Bhasa). "Bhasyati iti Bhasa" goes the grammar meaning. It means that which manifests, reveals and unfolds brilliantly. In our culture, we have certain important and meaningful expressions like 'ଶବ୍ଦ ବ୍ରହ୍ମ', 'ଅକ୍ଷର ବ୍ରହ୍ମ', 'ଶବ୍ଦସ୍ୟ ଆତ୍ମା ଅକ୍ଷରଃ', 'ବ୍ୟୋମଗତ ଶବ୍ଦ ଦୃଶ୍ୟମାନ ଅକ୍ଷର ଚେତନା and more.

A study of these expressions reveals that the manifestation of the unmanifest Brahman either by Sound, Alphabets, thoughts or otherwise through Space, Wind or Heat is 'Bhasa' the substitute of which can, therefore, not be 'language'. However, no discussion of English as a language can be complete without considering the above aspects particularly the expression ଅକ୍ଷର ଚିଦାକାର.

When mind becomes stable, unshaken and unagitatable it is called Chitta or the Chidghana State. Both mind and chitta act through thoughts. That is to say, thinking is an exercise of the mind as also the chitta in the form of some or other Bhasa. When the mind ultimately dies, the unmanifest reveals self in the absence of any Bhasa. Hence, the concept 'ଅବାଙ୍ମାନସ ଗୋଚର'. So, for our purpose, we may just note that our mind acts in patterns of languages. We may stop it here.

We may now proceed with the idea that our mind acts in the form of the language we live with. Mother tongue, therefore, is the greatest influential factor so far as our languages are concerned. It is this stuff with which we build up our language. Therefore, while using any language other than the language that our mother has in her tongue, we have to remain conscious that the second language is to be built up with the building stuff of our mother tongue. So, a thorough understanding of the art of, say for English language, Englishizing; our Odia base materials is necessary.

As we know, English is the most used international language. Today, we have different packages of this language like spoken English, Professional English, Communicative English, Victorian English, etc. In the process of globalisation and liberalisation, English has secured the most covetable position in the whole world. So, we need to master the use of English for all round global excellences.

English is the simplest language in many respects. It has only 26 alphabets as against 49 in Sanskrit. The vowels in English are 5 as against 10 in Sanskrit with three adjuncts important for phonetics.

All the English alphabets are covered by only 19 Sanskrit alphabets. This means, 26 numbers of alphabets in English are equivalent to only 19 alphabets in Sanskrit. Accordingly, those using 49 alphabets should find it easier to master English than to master their own mother language. To put it otherwise, those using a language of 49 alphabets should be able to deliver goods more in quantity and better in quality than those who use only 26 alphabets or less. I will stop it here.

The use of a language is most effective when our knowledge and understanding of the subject of delivery is fairly deep and clear. Our thoughts, feelings, intention, etc. do influence our communicating skills. As we know, language is visible, audible and cognizable or perceptible; visible as alphabets and as the subject matter itself like the flower we see when we speak the word "flower". It is audible as we pronounce it when we speak. It is cognizable inasmuch as we receive much more than what is delivered to us by use of visible alphabets or their audible pronounciation or combination of both.

The science and philosophy of linguistics are beautifully assimiliated in Sanskrit and its genetic languages. In Vedic philosophy nature consists of five mahabhutas, one being Byoma or Space. Corresponding to these five, there are five properties one being Sabda or Sound. It is said space was created first and so also sound in it. The audible sound and visible alphabet both have Tejas or heat element within them. These are more or less common to all languages. In fact, languages are never different in the sense that they are different waves of the same ocean. So, we should master another language by utilising the base of our own mother language, otherwise we will suffer from virtual differences.

With this background, now we may turn to English.

Languages are means of communication. Communication can be verbal, literal, symbolic, gestural and silent. It passes from one to another and is bilateral in nature. There is a speaker and a listener. There is a writer and a reader. There is an Exit and a corresponding Entry. Both should be strong and perfect in the system and should be able to reciprocate each other wholly. So, the teacher of a language is an extremely important person for the worth and growth of that language. The most important role is played by a teacher who teaches a language to children in schools. President Hochimin of Vietnam was, therefore, teaching students in a Junior School everyday for an hour or so, wherever he was and howsoever busy he was. When we discuss the above role of teacher, we should mention a few teachers who can inspire and assure us in this regard. They are Lord Krishna, Maharshi Balmiki, Biswamitra & Sandeepani, Guru Bruhaspati, Guru Sankaracharya, Chanakya, the Guru of emperor Chandragupta and so on and so forth. Some teachers who taught each of us are also some of them. I will rather rush to add the present day mentors of popular TV programme like DID & IBD, etc. in this context.

Learning a language is a part of education which is never for a mere living but it is for life itself and even for whatever remains after life and death.

To cut this article short, I will now mention about certain tips on some dos and don'ts for ready use if considered favourably and approved by readers. Before that, I will try to highlight the importance of languages by merely referring to NASA's project on Sanskrit language and literature about which one can learn more from the Internet. While discovering the great values of Sanskrit through this project, NASA is trying to universalise it in combination with other languages including English. Some of NASA's research findings are noted here. 1) Sanskrit is best as computer language; 2) Learning Sanskrit makes learning Mathematics and Science easier; 3) Sanskrit helps concentration of mind; 4)

Alphabets of Sanskrit (Devanagari) are scientific; 5) Its pronounciation helps clear the voice; 6) It enhances memory; 7) It sharpens imagination; 8) Sanskrit can refine other languages; & 9) Its phonetics is creative and therapeutic.

Therefore, while learning English, we must remain conscious of these aspects since our own language Odia is an offspring of Sanskrit.

Coming to the tips, first some daily exercises :

(1) All students should speak more and more in English in English classes, at home and seminars using English.

(2) In English periods, none should sit tight-lipped nor speak any other language except English.

(3) Very short and nutshell plays using 4 to 5 simple and short sentences only may be enacted in short sessions.

An ex :- Let us visualise, while playing in childhood days, one sister younger to her brother quarrels with him and shouts "I will marry you". The boy shouts "No". The sister repeats it and the brother also repeats the same reply but with varying tempers. Then, he breaks down and cries. The mother intervenes "Why are you crying" ? The boy answers "Why marry ?" The girl goes on with her mischief. The boy lastly wails aloud in frustration and mother takes him away. Here only 4 short sentences are used. One may construct similar plays too.

(4) One may be asked to read out a chosen passage in English in the class.

(5) Participants may be inspired to collect cuttings from news papers or other sources which have interesting good English passages and read in the class room.

(6) They may tell a short story in English for making out which hints or gist may be provided.

(7) They may see a thing and narrate it in the class in English.

(8) Everyone should read a good book for 30 minutes in a day. This will enable him to read 40 books in a year. Thus 40 great books will make one great education.

(9) While reading, the student should be trained in searching scopes for improving the text so read. Other such exercises may be innovated.

Some speaking tricks :

0) Speak for the listener not for yourself.

1) Tell a story with gestures and postures along with words.

2) Say a joke without smiles with a straight face and without any body language.

3) Convey serious news lightly, bad news calmly, good news coolly and so on.

4) While speaking, there should be good eye contact, firm and positive tone, body straight with shoulders back and head up but tone firm and positive.

Listening tricks :

1) See unto the eyes of the speaker rovingly but gratefully.

2) Your posture be gentle and attentive but relaxed.

3) Small doses of paraphrasing by restating the thoughts of the speaker in few words approvingly may make very good listening.

4) While someone is telling a long story, giving a long explanation or making a long speech, one may use chosen body language or gestures to say him to a) continue; b) be louder; c) speed up; d) be to the point; e) slow down a little; f) indicate that you are not able to follow him; g) expand the point addressed; h) indicate that it sounds rubbish; i) indicate that it is bearing; j) convey that the words are offending; k) interact; & 1) end the talk.

This exercise can make a good speaking too.

Reading tricks :

1) Read between the lines and letters.

2) Read anxiously with good length eye - Spanning Ex : Like Pele who sees his football and also ten players in the same go. Like Arjun who could see the bird in the bushy tree.

3) Achieve the best speed of reading.

4) Make the grasping deep and quick. Ex : Like one reading one's own promotion letter lying on the table of the boss in latters very presence silently.

Writing tricks :

1) Write always for the reader while writing for yourself.

2) Prefer short and simple words.

3) Use technical terms with which the readers may have been familiar.

4) Do not use words or expressions whose meaning you may have to explain again in so many words.

5) Do not use over long sentences.

6) Examine the purpose or goal of the writing before using quotes, humour, anecdotes, literature and remarks, etc.

7) Read as an honest and sincere reader before you finalise the draft or manuscript.

English as a language of Law.

Justice is the soul of law and language its life. We hardly remain conscious that the body is derived from our parents; so also the language we speak read, use and write. In fact, we transmute our mother language to another language which we need to learn and apply in course of our living. The pen we write with and the language we use ultimately makes us swim or sink.

We deal with locals and localities. We see them, hear them, speak to them, understand them and rather walk with them along the course of administration of justice. We judge them as much as they judge us, the only difference being we compel them to accept our judgment whereas they live with their judgment on us simply blessing or blaming us in silence. The language we use, therefore, will influence their judgment provided the dead letters and words are able to speak to their hearts and minds within the four walls of their house. Our judgment should be clear to those litigants, their society and the others who may have an interest in it. When we are able to understand their language, both verbal, literal and physical, we can be able to record the facts correctly and see and hear past occurrences and events without any distortion. The incident with all its purity will then lie bare before us for perfect judgment as much as it had taken place at the spot before the society or public at large. The eyes which had witnessed the occurrence, the ears which had heard the sounds of happenings, the facts and issues which lie scattered in the field flow to us in forms of the language which we use throughout the process. Therefore, the submissions which I have made earlier should be able to signify the importance of the language of law, be it English or any other language and how best it can be assimilated to realise the English is a language; but to be a language of law, the Judge must discover the stream with which law loves to flow in it.

(Yatha Nirddistomi)

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PROCUREMENT OF PROSECUTION WITNESSES UNDER LAW

B. C. Rout
Spl. Judge, C.B.I., Bhubaneswar

Apex Court has held that paramours are natural and competent witnesses if offence is committed in a brothel. Similarly if offence is committed in a house the inmates are treated as natural witnesses. Before acceptance of their evidence it must be scrutinised with great care and caution. But how the witnesses can be brought to Court? Citing witnesses in charge sheet is easier than their procurement. Procurement of prosecution witnesses has baffled Nizarat and police agency which are generally entrusted with summons for causing service. More the delay in disposal of cases, more the trouble in causing summonses on prosecution witnesses. At times accused plays a dominant role in delaying the service of summonses on witnesses with an ulterior motive to secure an order of acquittal for him. The Courts and Public Prosecutors Associate or Assistant Public Prosecutors should not take a casual approach to such phenomena and sit as silent spectarors. They should not close the prosecution case in a cavalier and lackadaisical manner.

In the decision reported in 2002 Cri. L. J. 568 (Supreme Court) In the case of Sailendra Kumar Vrs. State of Bihar and others the Hon'ble Apex Court has deprecated closure of prosecution evidence Without informing the investigating officer. Their Lordships have observed that it is sordid and repulsive matter that without informing the police station officer-in-charge, the matters are proceeded by the Court and by the A. P. P. and tried to be disposed of as if the prosecution has not led any evidence. In other words, mere direction to the A.P.P. to produce prosecution witnesses is not enough. It is further held by the Apex Court that it was the duty of Sessions Judge to issue summons to the I.O. if the failed to remain present at the time of trial of the case. The presence of I.O. at the time of trial is a must. It is his duty to keep the witnesses present. If the witnesses did not remain present the Court can issue bailabe or non-bailable warrants as the case may be. Prosecution should not be frustrated and victims of crime can not be left in lurch.

But it so happens that by the time of trial the I.O. might have been transferred from concerned police station. At times that I.O. is transferred to a place outside the State. Therefore, it is difficult to procure his attendance by the Court. In that event the officer-in-charge of the police station where the I.O. was posted earlier (at the time of investigation of the case) should intimate the Court about his subsequent posting so transmitting the summons to I.O. through D.I.G. (Administration) can be avoided as it is dilatory device. Thereafter, Court can be able to issue summons to I.O. to procure witness and remain present in court at the time of trial.

The aforesaid decision does not debar the O.I.C. of concerned PS. to procure witnesses if the attendance of I.O. can not be procured without delay and much expense. The Hon'ble apex Court, in the decision cited above, gave direction to the trial court to give direction to the O.I.C. of concerned PS. to procure witnesses as the I.O. was transferred to some other place beyond the PS. and police district.

Therefore, for sake of convenience the Courts must insist the I.O. to remain present in the court with witnesses at the time of trial if he will be continuing in said PS. and in the event of his transfer the O.I.C. of that RS. shall step into the shoes of I.O. Consequently, the O.I.C. of that police station should be given necessary direction to procure witnesses and produce them in Court instead of giving direction to the 1.0. who has been transferred from said police station and police district. Without such direction Court can not close prosecution case for failure on the part of P.P. or A.P.P. to comply with the direction of Court to procure witnesses. The Apex Court in Rejendra Prasad Vrs. Narcotic Cell (1999) 6 SCC 110) observed as follows :

"After ail function of the Criminal Court is administration of criminal justice and not to count errors committed by parties or to find out and declare who among the parties performed better".

If any Court closes prosecution case merely giving direction to the P.P/A.P.P. the persecution may resort to S.311. Cr. PC. for recalling said arbitrary order.

In All, India Judges Association case the Apex Court has accepted the recommendation of Shetty Commission that a police officer of each police station shall be earmarked to lookafter court matters. The judgement has been pronounced on 21.03.2002 and all State Governments and Union Territories have been duly intimated this judgement of Apex Court. Therefore, it is high time for the State to implement said judgement and earmark one police officer of each police station to act as liaisoning officer between Court and police station.

At times the I.O. or O.I.C. produces prosecution witnesses with much difficulty but after their examination in chief the defence files a time petition to defer cross-examination to frustrate prosecution case. If due to no fault of prosecution, the prosection witnesses could not be cross-examined the defence should be saddled with heavy cost. Such dilatory tactics should be discouraged at any rate as delay defeats justice.

It is a matter of great relief that the I.G. of Police C.I.D., C.B., Orissa, Cuttack has issued a circular bearing No. 23976/CB, PS dt. 17.7.2002 wherein the attention of Superintendents of Police is drawn to P.C.0.244 and strict implementation of the same is insisted upon. In said circular Law Inspectors are directed to maintain liaison with the P.PsVA.P.Ps and to ensure timely attendance of witness.

The Nizarat of each Court causes service of notices and summonses. At times due to vastness of area and large number processes it is difficult on the part of process servers to serve summons in time. Due to paucity of fund they do not get their paltry T. A. Sometimes some process servers return the processes without any movement with false report. In that case they should be dealt severely. With mounting processes, instead of posting new Process Servers at tremendous cost notices and summonses should be served on contract basis at nominal cost. In the due course many Process Servers will retire and contract service will be substituted which will make the public exchequer sound and healthier.

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MANNER OF SENTENCING - IMPRISONMENT FOR LIFE

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Introduction

Sentencing is the process of awarding punishment to a convicted offender. A sentence is an order by the Judge, based on the verdict of the jury within the possible punishments set by state law. In India jury system is removed and Judge has to pronounce judgement. Definitions of "life imprisonment" mean a sentence of imprisonment until death.

Imprisonment for life as a distinct punishment for certain grave offences under the Indian Penal Code(in short 'IPC')was authorised by law with effect from the 1st January 1956, when the Code of Criminal Procedure (Amendment) Act, 1955 came into force. Though this Act was mainly concerned with making extensive amendments in the Code of Criminal Procedure for diverse purposes, it also amended Indian Penal Code in one important respect. The punishment of transportation was abolished altogether and the old punishment of transportation for life was replaced by the punishment of "Imprisonment for life."(1)

Kinds of Punishments

Indian Penal Code provides six types of punishments under section 53 :-

First- Death;

Secondly- Imprisonment for life;

Thirdly - Omitted by Act 17 of 1949

Fourthly- imprisonment, which is of two descriptions, namely:-

(1) Rigorous, that is, with hard labour;

(2) Simple,

Fifthly- Forfeiture of property;

Sixthly- Fine.

"Life imprisonment" is a sentence of imprisonment for a serious crime under which the convicted person is to remain in jail for the rest of his /her life. The various state jail manuals refer to the life imprisonment being a definite period .In IPC nearly about 51 sections are provided punishment with imprisonment for life. There is a debate regarding the exact duration of imprisonment for life.

Various statutes in India dealing with criminal law have laid down provisions relating to life imprisonment. Some of the important provisions are as follows:-

(i) Indian Penal Code, 1860

Section 55: Commutation of sentence of imprisonment for life

In every case in which sentence of [imprisonment] for life shall have been passed, [the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Section 55, I.P.C. provides that when sentence of imprisonment for life has been passed, the appropriate Government may without the consent of the prisoner commute the punishment for imprisonment of either description for a term not exceeding fourteen years. This section empowers the appropriate Government to commute the sentence of imprisonment of life. Exercise of such right is at the discretion of the appropriate government. This section does not lay down that life imprisonment shall be an imprisonment for fourteen years and a prisoner is not to be automatically released after expiry of fourteen years of imprisonment. It is for the appropriate Government to commute the sentence and for this purpose Rules have been framed by the State Government.

(ii) Section 57 - Fractions of terms of punishment

In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [imprisonment] for twenty years.

Section 57 of I.P.C. provides that in calculating fractions of terms of imprisonment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. Section 57 does not say that imprisonment for life shall be deemed to be transportation for 20 years. For all purposes, imprisonment for life must, prima facie, be treated as imprisonment for whole of the remaining period of the convicted person's natural life.

TERM OF IMPRISONMENT FOR LIFE IN INDIA & OTHER COUNTRIES :-

India

Life sentence has been awarded by the Supreme Court with a minimum fixed term of incarceration like 20, 21 and 30 years etc. In some cases the Supreme Court held that the convict was not entitled for release as a matter of course but was required to serve out his sentence till the remainder of his life subject to remissions by the appropriate authority or the State Govt. In other cases while sentencing the convicts to imprisonment for some fixed term like 20 years etc., it was held that they would not be entitled to any remission from this period. In some cases after converting the death sentence to imprisonment for life, it was further directed that he shall not be released till the rest of his life.

USA

In the USA, life imprisonment generally continues till the prisoner dies. Sometimes life terms are given in sentences are disproportionate to the duration the prisoner is expected to live, for example, a 300-year sentence for multiple murders. In actuality, a life sentence does not always mean "imprisonment for life." Once a period of 10 years or more is over, the convict can be set out on parole.

MEXICO

In Mexico, life imprisonment is an indeterminate sentence. Its term may range from 20 years up to a maximum of 40 years.

UNITED KINGDOM

In the UK, "imprisonment for life" means a prison sentence of indeterminate length. In many cases, the Home Secretary sets the "tariff", i.e., the length of the term, for life imprisonment convicts. He has to undergo sentence about 15 years before he can be paroled out.

GERMANY

The German law has fixed minimum time to be served for a sentence of life imprisonment, which is 15 years after which the prisoner can apply for parole.

AUSTRALIA

In Australia, term of life imprisonment is usually 25 years.

Therefore, it can be observed that in most of the countries, duration of life imprisonment is indeterminate but after undergoing imprisonment for certain period, parole can be asked for. (2)

Cases on Life imprisonment

In **Gopal Vinayak Godse v. The State of Maharashtra and ors, (3)** the Constitution bench of Supreme Court of India dealt with plea of pre-mature release and held that life imprisonment means that the Prisoners will remain in the prison for the rest of his life. Credit for remissions given or awarded has a meaning only if the imprisonment is for a definite period. Since, the life imprisonment in for indefinite period, remissions earned or awarded for a certain period are really theoretical. Aforesaid decision was followed in subsequent decisions.

In the aforesaid case, the death penalty was commuted to sentencing of life imprisonment but the Apex Court restricted to apply the power of remission in such case.

In **State of M.P. v. Ratan Singh, (4)** where their Lordship observed in the following manner; "that a Sentence of imprisonment for life does not automatically expire at the end of 20 year including remittance because administrative rule framed under the various jail manuals or under the Act cannot supersede the statutory provisions of the Indian Penal Code." The sentence for imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise the discretion to remit either the whole or a part of the sentence u/s- 401 of the Code of Criminal Procedure, in the aforesaid case; question of remission of sentence was in issue.

In **Shri Bhagaban v. State of Rajasthan, (5)** where their Lordship considered the issue of life imprisonment and remission on the part of the sentence in the offence U/Ss. 302 / 392 / 397 I.P.C. The lower Court awarded the death sentence and it was confirmed by the High Court. In such case, Hon'ble Apex Court was pleased to observe in the following manner;

"Therefore, in the interest of justice, we commute the death sentence imposed upon the appellant and direct that the appellant shall undergo the sentence of imprisonment for life. We further direct that

appellant shall not be released from the prison unless he had served out at least 20 years of imprisonment including the period already undergone by the appellant."

With due respect of such decision, the Court did not consider the release of convict from the prison before completion of 20 years of imprisonment. On the one hand, there is verdict for sentencing convict for life imprisonment. On the other hand, he has not been given liberty to avail remission without incarceration opportunity for 20 years.

In **Md. Munna v. Union of India, (6)** where their Lordship also considered the issue with regard to rarest of the rare cases. Before Act XXVI of 1955 a sentence of transportation for life was being awarded by the Court but after aforesaid Act of 1955 came into force such punishment was transformed to rigorous imprisonment for life for the same duration.

It is specifically observed in that case "life imprisonment is not equivalent to imprisonment for 14 years or for 20 years as contended by the petitioner." So the Apex Court awarded the imprisonment for life basing on such principle.

In **Sangeet & Another vs. State of Harayana,(7)**, where their Lordship observed in the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become Judge-centric sentencing rather than principled sentencing. In the said case the court also observed that aggravating circumstances and mitigating circumstances to determine the question whether the case falls into the rarest of rare cases category because the consideration for both are distinct and unrelated. In other words the "balancing test" is not the correct test in deciding whether capital punishment be awarded or not.

Aggravating Circumstances as pointed out above, of course, are not exhaustive so also the Mitigating Circumstances. In my considered view that the tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the R-R Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society no previous track record etc., the "criminal test" may favour the accused to avoid the capital punishment. Even, if both the tests are satisfied that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is "society centric" and not "Judge centric" that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges. In the aforesaid case a minor girl of 11yrs old was raped and murdered by the accused no. 1, the court was satisfied with rarest of rare case test , criminal test,& crime test but accused has no previous

criminal record for which deadline to accused death penalty. But the reasons as illustrated above can be taken to consideration for sentencing in such type of sensational criminal cases. **(8)**

Manner of award of life imprisonment

Section 31 of Criminal Procedure Code - Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefore which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that--

(a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) The aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

It Is reported in **Sanaullah Khan v. State of Bihar , (9)** para 23 their Lordship observed that ;

"Thus, Section 31(1) Cr.P.C. empowers the Court to inflict sentences of imprisonment for more than one offence to run either consecutively or concurrently. In Kamalanatha v. State of T.N. this Court has held that the term "imprisonment" in Section 31 Cr.P.C. includes the sentence for imprisonment for life. Considering the facts of this case, we are of the opinion that the appellant is liable under Section 302 IPC for imprisonment for life for each of the three offences of murder under Section 300 IPC and the imprisonments for life should not run concurrently but consecutively and such punishment of consecutive sentence of imprisonment for the triple murder committed by the appellant will serve the interest of justice."

With due respect to this decisions, it is found that a person being accused of Section 302 IPC for causing murder of three persons, can be prosecuted for each of such three offences of murder u/s. 300 IPC and can be also sentenced for imprisonment for life consecutively.

In **Sankar Kisanrao khade v. State of Maharastra,(10)** Their Lordship observed in the following manner: in the aforesaid case examine the case by apply the principle of rarest of rare cases .In that

case, the appellant Shankar Kisan Ray Khade and his wife were charge sheeted for the offences under Section 363, 363(a), 376, 202, 201 read with Sec, 34 IPC for having, in furtherance in their common intention to kidnap a minor girl and appellant No. 1 Shankar committed rape on her with several time and committed murder by strangulation. In such cases, the Apex Court discussed many abusing of awarding the death sentencing. The death in recent years has not got much favour but the Provisions of Cr. P.C. so many, consecutive sentence has not been sight of. In order to consider the sentencing we may further proceed in several articles to consider case analysis and it was held that the death sentence awarded to the accused is converted to that of rigorous imprisonment for life and that all the sentences awarded will run consecutively.

In the case of murder, death penalty is also prescribed for the offence u/s 302 IPC. But now- a - days, it is said by section of people that when a civilization puts prospect of even one person getting wrongly executed over hundreds of other instances where a person that deserves death penalty according to prevailing law is spared. The removal of the death penalty is an act of both, but it needs to be rooted in the moral conviction to the society values. It seems the issue of human right is very much glarier while the question of death penalty is raised. Be that as it may, the punishment for death penalty in last 15 years has been discouraged. Of course in the event of diabolical and heinous crime like murder, rape and multiple murder, death penalties are called for. If the philosophy of humanity is trusted upon, the alternative punishment can be thought of to spare that death penalty. Perhaps the recent law of land has taken care of inflicting consecutive sentences in such heinous offences.

Now it is to see how to direct the consecutive sentences of life imprisonment. It is reported in Sankar Khade case (supra) at para 138, "Since imprisonment for life means that the convict will remain in the jail till the end of his normal life, what this decision mandates is that if the convict is to be released earlier by the competent authority for any reason, in accordance with procedure established by law, then the second sentence will commence immediately thereafter."(11)

Again Their Lordship observed in para 142 in Sankar khade's case, (supra) "These decisions clearly suggest that his Court has been seriously reconsidering, though not in a systemic manner, awarding life sentence as an alternative to death penalty by applying (though not necessarily mentioning) the "unquestionably foreclosed" formula laid down in Bachan Singh." (12)

With due respect of this decision, I find the Court may adopt this via media process inflicting life imprisonment consecutively for several offences where the imprisonment for life is prescribed for each of the offences or in one offence.

when the death penalty is not favoured by the society and it has become punishment for rarest of the rare case, it is better to adopt the procedure laid down in the aforesaid case law by awarding sentence for life imprisonment consecutively by the way that one of the life sentences will commence immediately after another sentence for imprisonment for life is over.

CONCLUSION

An accused found guilty under Capital Offences, may attract awarding of death penalty because of the demand of death penalty. On the other hand, Sessions Court may follow verdict of the Apex Court as pronounced in the last 15 years so as to distinguish the number of Cases growing up with principles of rarest of rare Cases. The tendency of awarding death penalty is developing in-as-much-as the crimes of Capital Offences have been accelerated. The judiciary is required to keep some restrain in awarding death penalty as it is a punishment at time raising the issue of Human Rights. But the death penalty should be applied in appropriate cases and should not be taken out of textbook. Since the sentencing policy has not been formulated in India, by going through the recent Judgment of the Apex Court as discussed in this Article, we may adopt the foreclosed formula by awarding life imprisonment consecutively so that issue of Human Rights may not be raised and at the same time, the accused is punished adequately in proportionate to the intensity of crime committed.

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Reference

1. *Law Commission of India -39th report.*
2. *Law Teacher -Imprisonment -Life*
3. *AIR 1961 SC 600*
4. *AIR 1976 SC 1552*
5. *AIR 2001 SC 2342*
6. *2005 (7) SCC 417*
7. *2013(2) SCC 452*
8. *(2013) 5 SCC 546*
9. *(2013) 3 SCC 52*
10. *(2013) 5 SCC 546*
11. *Supra*
12. *Supra*

"GRASS ROOT LEVEL LEARNING EXPERIENCE PROGRAMME" FROM 4TH TO 7TH JUNE 2013 - A REPORT

It is a programme for the civil judges on probation, to acquaint them of the ground reality and life style of the poor. It is a highly practical field training programme arranged for the newly recruited judicial officers of 2012-13 batch to gather experience and know about the actual need of the poor ,downtrodden and underprivileged sections of society. It is an integral part of the induction Training programme, as scheduled under 13th Finance Commission Grant.

In this four days programme from 4th to 7th June 2013, all 55 judicial officers of 2012-13 batch were divided into four groups were sent to different places i.e. Paradeep, Dhenkanal, Puri and Athagarh of the State. For better coordination and success of the programme the Faculty member ,Deputy Director and Assistant Director of the academy were deputed for the purpose. The trainee officers were provided with the instructions and questionnaire to conduct the survey in a synchronised manner . The newly recruited judicial officers after conducting an in depth study of the problems affecting the people of the scheduled areas have submitted detail reports to the academy.

The programme is to examine the legal problems/issues apart from current status of the implementation of the various important schemes of the Government of India such as:

- Legal Awareness Programme
- Legal Aid to poor
- Role of Legal service authority at Dist. And Taluk Level
- National Social Assistance Programme
- Employment Assurance Scheme i.e. MNREGSA

- Accelerated Rural Water Supply Programme.
- Centrally Sponsored Rural Sanitation Programme.
- Indira Awaas Yojana
- National rural employment guarantee Act (NREGA)
- National old age pension scheme
- Swarnajayanti gram swarozgar yojana (SGSY)
- Antyodaya yojana
- Gopabandhu grameen yojana
- Janani suraksha yojana
- National family benefit scheme

Assessing and evaluating the schemes by the trainee judicial officer :

The judicial officers arranged for four days to send them to remote areas of various parts of the State to learn the process of searching solution to their legal problems and alleviation of poverty. The main purpose is to gather knowledge about the present state of implementation of all the developmental schemes in different areas. The observations made during the survey are to provide inputs to help themselves in bringing about changes in administration of Justice.

The study was to

Assess whether the social justice is available to each and every citizen or not.

Learn what are the problems of poor and downtrodden people who are living in abject poverty.

Interact with the marginalised section of the society to acquaint with their needs and obstacles.

Gather experience regarding the cause of impoverished and starvation of underprivileged section of the society.

Search for the solution to the legal as well as social problems, the downtroddens are facing and alleviation of poverty.

Examine the current status of implementation of various important schemes of the government of India in these areas.

Assess the inputs and outputs of these important schemes as well as the outcome of these programmes.

Assess the impart of these various important schemes.

Assess problems ,constraints in the effective implementation.

Assess the adequacy of these schemes in solving and providing solutions to problems of rural development.

Visit to the poor families and have an interaction with them and collect information about various problems faced by them in day to day life and if possible to aware them about their rights and advice them in legal matters.

Know whether democracy is functioning in consistency with the constitutional values or not.

Make these people aware about their constitutional rights.

Gauge the general opinion of the people towards these schemes, towards the government and towards judiciary.

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Compiled by
Sri S. Patra
Asst. Director, OJA

SHARING BEST PRACTICES

Sharing Best Practices is a unique programme under the 13th Finance Commission grant designed to expose the Trainee Judicial Officers to various directions of Judicial Training and practices undertaken by the different Courts of the Country. It is a programme where the Judicial Officers get an opportunity to visit the Courts and Judicial Academy of other States and gain knowledge as to the modalities of their work and at the same time inter charge their ideas as well. The programme is mainly aimed at observation of the individual judicial mechanism developed by different States and to cull out ideas for implementation for effective administration of justice. This year Orissa Judicial Academy sent the Trainee Judicial Officers of OJS, 2012 to Tamil Nadu Judicial Academy under the "Sharing of Best Practices" programme with the following Aim and Objectives.

Newly recruited judicial officers - 2012, at Tamil Nadu Judicial Academy

To share and to gather the practices undertaken by Courts outside the State for getting some help to perform their duties and function properly.

To educate newly recruited judges on related areas and skills useful in discharging their judicial functionality by getting knowledge of judicial system of other States.

By visiting other States and by understanding other State's Judicial Mechanisms they are to recognize problems confronted by the judiciary and to help develop and administer solutions for better access to justice.

To gather knowledge in legal skills and to adopt it for more effective and expeditious dispensation of justice.

On the arrival of the Officers on 08.04.2013 at Tamil Nadu Judicial Academy, they were welcomed by the esteemed Director of the Academy, Shri C.V. Karthikeyan. They were deliberated on the importance

of sincerity, punctuality and judicial conduct. On the same day the Officers had a joint Session with the Trainee Judicial Officers at Tamil Nadu on the subject "Injunctions in Commercial Litigation and IPRS". An Excellent and informative lecture on the subject, was delivered by learned Sr. Advocate of Tamil Nadu High Court, Mr. Arvind P. Datar. At Tamil Nadu Judicial Academy, the officers were provided with pleasant accommodation as well as food.

On the same day after tea session, the officers visited the Museum of the High Court of Tamil Nadu and gathered very useful informations about the heritage of Tamil Nadu High Court. After visiting the Museum the trainee officers were addressed by the Registrar General along with the Additional Registrars till the lunch. After lunch, the trainee Judicial Officers were welcomed to the Chamber of Hon'ble President Justice Smt. Bhanumathi, Hon'ble Mr. Justice S. Mani Kumar, Hon'ble Mr. Justice S. Nagamuthu, Hon'ble Mr. Justice M.M. Sundaresh Hon'ble Mr. Justice G.M. Akbar Ali. The officers were briefed about the glorious heritage of Madras High Court by Hon'ble Smt. Justice Bhanumathi. The Officers spent the whole day by visiting the adjoining Courts inside the premises of Tamil Nadu High Court.

The next day i.e., 9th April 2013 began with a visit to Metropolitan Magistrate Court, Egmore. At Chief Metropolitan Magistrate Court, Egmore, the Officers were warmly greeted by the Presiding Officer and were briefed about very useful information's like the modalities of procuring witnesses and monthly

out turns. Thereafter, the Officers visited the City Civil Court at Saidapet. They visited all the 7 (seven) Metropolitan Magistrate Courts at there and were addressed by the Presiding Officers of the Court. After the lunch, the Officers visited the State Forensic Science Laboratory of Tamil Nadu and gathered useful information's' regarding DNA Type / Profiling Test and its utility in criminal investigation. In the evening the officers were invited to the Cultural Programme conducted at Tamil Nadu State Judicial Academy.

Sri S. Patra, Asst. Director, OJA, with Shri C.V. Karthikeyan Director Tamil Nadu Judicial Academy

On the next day (10th April 2013) began with Valedictory function of the newly recruited Civil Judges (2nd batch) at Tamil Nadu State Judicial Academy. Wherein Hon'ble Mr. Acting Chief Justice , R.K. Agrawal and Members of Board of Governors of Tamil Nadu State Judicial Academy were present. In the second half of the day, the Officers visited the City Courts at Tamil Nadu and observed the proceedings in the Court.

On the next day (11th April 2013) the Officers were on their way to Mahabolipuram and Puduchery. On their way to Puduchery, the Officers visited Mahabolipuram. At Puduchery, the Officers were offered a warm welcome by the Principal District Judge of District Court, Puduchery. At Puduchery, the officers observed Court proceedings in different courts. And after lunch had a meeting with all the Judicial Officers of the District Court, Puduchery and inter-changed their ideas regarding practices and procedure of their respective Courts. In the evening, on their way back to Tamil Nadu Judicial Academy, the Officers had an opportunity of visiting Shree Aurobindo Ashram at Puduchery.

On the next day (12th April 2013) was the last day of the Officers in Sharing Best Practices programme. On the said date, they visited the High Court of Tamil Nadu and had the opportunity of watching the proceedings of different Courts of Hon'ble High Court.

Sharing of best practices is an integral part of Induction Training Programme under the 13th Finance Commission Grant. It is truly a step providing much impetus towards understanding the best practices undertaken by the various Courts of the country.

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Compiled by
Dr. P. M. Samal
Dy. Director, OJA

A SPECIAL SESSION BY HON'BLE MR. JUSTICE A.K. PATNAIK, JUDGE, SUPREME COURT OF INDIA ON THE SUBJECT "JUDICIAL DECORUM" FOR THE NEWLY RECRUITED JUDICIAL OFFICERS IN THE CADRE OF CIVIL JUDGE (JR. DVN.) ON 18.05.2013.

Dr. D.P. Choudhury, Director, Orissa Judicial Academy welcomes Hon'ble Mr. Justice A.K. Patnaik, Judge, Supreme Court of India.

The Trainee Judicial Officers offering flower bouquet to Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India.

Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India addressing the newly recruited Judicial Officers on the subject" **Judicial Decorum".**

A SPECIAL SESSION BY HON'BLE MR. JUSTICE V. GOPALA GOWDA, JUDGE, SUPREME COURT OF INDIA ON THE SUBJECT " CONSTITUTIONAL PROVISIONS VIS-A-VIS-CRIMINAL LAW" FOR THE NEWLY RECRUITED JUDICIAL OFFICERS IN THE CADRE OF CIVIL JUDGE (JR. DVN.) ON 11.05.2013.

Hon'ble Mr. Justice I. Mahanty, Judge, Orissa High Court & Chairperson, Orissa Judicial Academy welcomes Hon'ble Mr. Justice V. Gopala Gowda,Judge, Supreme Court of India.

Hon'ble Mr. Justice I. Mahanty welcomes Hon'ble Shri Justice C. Nagappan, Chief Justice, Orissa High Court and Patron-in-Chief, Orissa Judicial Academy.

Hon'ble Mr. Justice V. Gopala Gowda addressing the newly recruited Judicial Officers.

Hon'ble Mr. Justice C. Nagappan, Chief Justice, Orissa High Court & Patron-in-Chief, Orissa Judicial Academy addressing the newly recruited Judicial Officers and Hon'ble Shri Justice I. Mahanty, Hon'ble Mr. Justice V. Gopala Gowda, Judge, Supreme Court of India, Hon'ble Shri Justice B.N. Mahapatra, Judge, Orissa High Court, Hon'ble Shri Justice S.K.Mishra, Judge, Orissa High Court & Hon'ble Shri Justice B.K. Patel, Judge, Orissa High Court are present.

Hon'ble Mr. Justice I. Mahanty, Judge, Orissa High Court & Chairperson, Orissa Judicial Academy addressing the newly recruited Judicial Officers.

UBUNTU AWARENESS TRAINING PROGRAMME

Master Trainers Shaikh Taj Mohommad & Ms. Anamitra Bhattahorya from West Bengal addressing the Judicial Officers under UBUNTU Awareness Training Programme.

Master Trainers Mr. Saikat Patra, Assistant Director, Odisha Judicial Academy & Mr. Tanmay Mohanty, Civil Judge, Senior Division, Talcher addressing the in-service Judicial Officers under UBUNTU Awareness Training Programme.

Dr. D. P. Choudhury, Director, Odisha Judicial Academy with Master Trainers and Participants Judicial Officers.

Hon'ble Mr. Justice A. S. Naidu, Former Judge, Orissa High Court with the Public Prosecutors.

Sri V. Tyagrajan,
Former IG (Prison)
Address the public presentes

Mr. L. Nato Singh, Scientist, Central Forensic Science Laboratory addressing the Public Prosecutors.

Hon'ble Mr. Justice M. M. Das, Judge, Orissa High Court addressing the in-service Judicial Officers in the Refresher Programme.

Mr. M. K. Chakrovarty, Senior Advocate, High Court of West Bengal addressing in-service Judicial Officers.

In-service Judicial Officers in the Refresher Programme.

REVIEW OF CASE LAWS ON C.P.C & Cr.P.C., 2013

I N D E X

Civil Procedure Code

SL.	NOCASE	SECTION / ISSUE
1.	*Nasib Kaur and Ors. V. Col. Surat Singh (Deceased) Through L. Rs & Ors. 2013 (1) CLR (SC) - 817*	Sec. 100
2.	*G.M. Siddeshwar V. Prasanna Kumar. Air 2013 SC 1549*	O.6 , R. 15
3.	*Debabrata Dash & Anr vs Jatindra Prasad Das & Ors. AIR 2013 SC 1700*	Orissa Superior Judicial Service Rules (1963), Rr. 7,8,9

Criminal Procedure Code

4.	*Arun Kumar Budhia V. State of Orissa and another. 2013 (2) Crimes 186 (Ori)*	Sec. 154
5.	Amitbhai Anilchandra Shah v. The Central Bureau of Investigation & Anr. 2013 (2) Crimes 171 (SC)	Sec 154,220
6.	*Umesh Singh vs State Of Bihar AIR 2013 SC 1743*	S. 154

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Civil Procedure Code

1. Sec. 100

Nasib Kaur and Ors.

Vrs.

Col. Surat Singh (Deceased)

Through L. Rs & Ors. 2013 (1) CLR (SC) - 817

A.K. PATNAIK AND H.L. GOKHALE, JJ.

Issue

Second appeal- Scope of powers

The Case -

Plaintiff-respondent filed a civil suit for declaration that he was the owner and was in possession of suit land – Plaintiff's case was that while he was in joint holding of some land, he sold some land out of his share without specifying any khasra Nos. to defendants 1 to 4 and thereafter these defendants sold the land in pieces to appellants, defendants 5 to 8 in the suit, specifying the Khasra Nos. – According to plaintiffs the specific Khasra Nos. which had been mutated in favour of defendants 3, 4 and 5 were not in accordance with the registered sale deed in favour of defendants 1 to 4 – Suit was partey decreed for correction of mutation entries – Trial Court held that it would in no manner have any effect upon the possession of parties to the suit which would be determined and finalized as and when partition proceedings to be taken up and decided – On appeal, first appellate Court held that plaintiff had not produce cogent evidence that he was the owner of the suit property – Possession of property was handed over to defendants 1 to 4 and they thereafter sold this land to appellants – Appellants were in lawful possession of said areas of land by virtue of two sale deeds – whether High Court was justified in reversing findings of the Trial Court and the first Appellate Court – Held, No.

The plaintiff, however, contended in the second appeal before the High Court that material evidence had not been taken into consideration by the first Appellate Court and the High Court has framed the following substantial question of law :

> "whether the Courts below have failed to consider the material evidence on record?" Having framed the substantial question of law, the High Court should have pointed out in the impugned judgment the material evidence which had not been considered by the first Appellate Court, which if considered, would have established ownership of the plaintiff to the suit property. Instead of pointing out the material evidence which has not been considered by the first Appellate Court, the High Court has made its own

assessment of the entire evidence as if it was the first Appellate Court and held that the plaintiff was the owner of the suit property and was entitled to possession of 17 karams X 45 karams of land depicted in letters EHGF in the site plan Ex. PW – 9/A and that he was also entitled to the relief of permanent injunction restraining the plaintiff from raising any construction in the said property or alienating the said property. The High Court has itself noticed in the impugned judgment that the land. Depicted in the site plan Ex. PW-9/A as EHGF was delivered to Col. Girdhar Singh and his family members at the time of execution of the sale deed by the plaintiff as Attorney of Nanak Singh on 19.07.1979 and the appellants had taken possession of the aforesaid land from Col. Girdhar Singh and his family members in 1987. The appellant were, thus, in legal possession of the suit property and the High Court in exercise of its powers under Section 100 CPC could not have reversed the findings of the Trial Court and the first Appellate Court and decreed the suits for declaration of title and for recovery of possession and injunction in favour of the respondents so as to adversely affect such legal possession of the appellants.

In the result, these appeals are allowed and the impugned common judgment and decree of the High Court is set aside. Considering, however, the peculiar facts and circumstances of the case, the parties shall bear their own costs.

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2.O.6 , R. 15

G.M. Siddeshwar
Vrs.
Prasanna Kumar. Air 2013 SC 1549

R.M. LODHA , J. CHELAMESWAR AND MADAN B. LOKUR ,JJ.

ISSUE

Verification of Pleadings –And affidavit filed in support of pleadings –Are quite different –Affidavit is stand alone document –Not part of verification.

The principal question of law raised for our consideration is whether, to maintain an election petition, it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951. In our opinion, there is no such mandate in the Representation of the People Act, 1951 and a reading of P.A. Mohammed Riyas v. M.K. Raghavan & Ors., (2012) 5 SCC 511 which suggests to the contrary, does not lay down correct law to this limited extent.

Another question that has arisen is that if an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form No. 25 prescribed by the Conduct of Election Rules, 1961, whether the election petition is liable to be summarily dismissed. In our opinion, as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground. However, an opportunity must be given to the election petitioner to cure the defect. Further, merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951.

It seems to us that a plain and simple reading of Section83(1)(c) of the Act clearly indicates that the requirement of an 'additional' affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of pleadings filed under the CPC may be mandatory in terms of Order VI Rule 15(4) of the CPC, the affidavit is not a part of the verification of the pleadings – both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1)(c) of the Act.

Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right in coming to the conclusion that the affidavit not being in the prescribed format of Form No.25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects.

No submissions were made with regard to the striking out, in accordance with Order VI rule 16 of the CPC, of specifically objectionable paragraphs in the election petition. In any event this is a matter for trial and we see no reason to take a view different from that taken by the High Court.

There is no merit in these appeals and they are, accordingly dismissed, but without any costs.

Appeals dismissed.

3. Orissa Superior Judicial Service Rules (1963), Rr. 7,8,9

Debabrata Dash & Anr

vs

Jatindra Prasad Das & Ors. AIR 2013 SC 1700

R.M. Lodha, J. Chelameswar, Madan B. Lokur, JJ.

ISSUE

Orissa Judicial Service (Special Schemes) Rules, (2001), Rr. 4,7 – Inter se seniority – Direct recruits and promotes – Judicial service – Respondents member of Superior Judicial Service (Junior Branch) – Promoted on ad hoc basis to senior branch for posting to Fast Track Court – Promotion cannot be said to be to cadre of senior branch when no substantive vacancy was available in that cadre – Claim of seniority over direct recruits to cadre of senior branch – Not tenable.

These 72 posts of ad hoc Additional District Judges were created under the 2001 Rules to meet its objectives were not part of cadre strength of Senior Branch Service in 1963 Rules nor by creation of these posts under the 2001 Rules, the cadre strength of the Senior Branch of service got increased. The respondents promotion as an ad hoc Additional District Judge pursuant to which he joined the post of ad hoc Additional District Judge, is traceable wholly and squarely to the 2001 Rules, Merely because the writ petitioner was adjudged suitable on the touchstone of the 1963 Rules, it cannot be said that he was given appointment to the post of ad hoc Additional district Judge under the 1963 Rules, As there was no vacancy to be filled by promotion in cadre strength of Senior Branch of the Service under the 1963 Rules on that date. When appellants direct recruits were appointed as Additional District Judges, no vacancy to be filled by way of promotion to the Senior Branch of the service was available either in the cadre or in the ex-cadre. When no vacancy was available against which the respondent could have been brought into the cadre then his claim for seniority in the cadre over the appellants would not arise. It is clear form Rules 3(d), 4,5,7,8 and 9 of the 1963 Rules that a person can become a member of the Senior Branch of the Superior Judicial Service only if his appointment has been made to a post in the service. If there is no vacancy to be filled in by promotion in the cadre of Senior Branch service, there is no question of any appointment being made to the service. The membership of service is limited to the persons who are appointed within the cadre strength by direct recruitment and by promotion. As such until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the service rendered by the respondent in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service, Senior Branch, then, he continued to be a member of the parent cadre, i.e. Superior Judicial Service (Junior Branch). This period cannot be counted for holding that respondent was senior to appellants.

The brief facts leading to the controversy are these: The writ petitioner joined the judicial service in the State of Orissa as Munsiff on probation on 15.07.1981 under the Orissa Judicial Service Rules, 1964. He was promoted to the Junior Branch of the Superior Judicial Service on 19.07.1999. on 05.01.2002, the writ petitioner, who was continuing as a member of Superior Judicial Service(Junior Branch), was appointed, on ad hoc basis, as Additional District Judge in the Fast Track Court. Pursuant to the above order of appointment, on 11.04.2002 writ petitioner was posted as an ad hoc Additional District Judge in the Fast Track Court at Bargarh where he joined on 26.04.2002.

On 13.01.2003, the appellants were appointed in the Senior Branch cadre of Orissa Superior Judicial Service by way of direct recruitment under the 1963 Rules. Pursuant to the posting order dated 22.01.2003, they joined as Additional District and Sessions Judge at Cuttack and Behrampur on 03.02.2003 and 07.02.2003 respectively.

By an order dated 28.05.2003, the tenure of writ petitioner as ad hoc Additional District Judge (Fast Track Court), Bargarh was extended for a further period of one year or 31.03.2004 (whichever was earlier).

By a notification dated 15.12.2003, the writ petitioner was allowed to officiate in the Senior Branch of the Superior Judicial Service on regular basis on account of a vacancy that arose due to retirement of an officer of the Senior Branch on 31.07.2003. The writ petitioner was posted on 19.01.2004 as Additional District and Sessions Judge, Bargarh pursuant to the notification dated 15.12.2003 to which post the writ petitioner joined on 03.02.2004.

Appellant no. 1 was confirmed in the cadre of Senior Branch, Superior Judicial Service with effect from 03.02.2004 while appellant no. 2 was confirmed with effect from 07.02.2004. The appellants were conferred selection grade with effect from 03.02.2008 and 07.02.2008 respectively.

The writ petitioner was substantively appointed in the cadre of District Judge with effect from 17.01.2007 and he was granted selection grade with effect from 22.10.2009.

On 13.11.2009, the writ petitioner submitted a representation to the High Court on administrative side seeking seniority in the cadre of District Judge with effect from 26.04.2002, i.e., the date of his joining as ad hoc Additional District Judge (Fast Track Court), Bargarh. The claim of seniority by the writ petitioner over and above the appellants was based on the ground that the period of his service as an ad hoc Additional District Judge (Fast Track Court) should be included for the purpose of computing his length of service in the cadre of Senior Branch, Superior Judicial Service under the 1963 Rules.

A committee to consider the representation of the writ petitioner was constituted. The committee by majority opined that the writ petitioner's representation was liable to be rejected. On 02.08.2011 the Full Court of the High Court considered the report of the committee. The representation of the writ petitioner was rejected on 08.08.2011. It was this administrative decision of the High Court that was challenged by the writ petitioner before the High Court on the judicial side.

The writ petition was contested by the appellants as well as the High Court on the administrative side and the State of Orissa.

It is not in dispute that immediately before writ petitioner's ad hoc promotion to the Senior Branch of Superior Judicial Service for being posted in the Fast Track Court, he was a member of the Junior Branch of the Superior Judicial Service. There is also no dispute before us that there was no cadre post available on 05.01.2002 or 26.04.2002 under the 1963 Rules. The fact of the matter is that 72 posts of ad hoc Additional District Judges (Fast Track Court) were created out of 11th Finance Commission recommendations and these posts were to be filled up under the 2001 Rules.

In the backdrop of the above factual position, we shall now consider the scheme of the 1963 Rules. Rule 4 of the 1963 Rules provides that cadre of Superior Judicial Service shall consist of two branches; (i) Superior Judicial Service, Senior Branch and (ii) Superior Judicial Service, Junior Branch. There are two modes of recruitment to the Superior Judicial Service in respect of Senior Branch. These two modes prescribed in Rule 5, are, (a) by direct recruitment in accordance with Rule 8 and (b) by promotion of officers from the Junior Branch of the service. Rule 9(1) lays down that whenever a vacancy in the Senior Branch of the service is decided to be filled up by promotion, the government shall fill up the same after due consideration of the recommendation of the High Court in accordance with sub-rule (2). As per sub-rule (2) of Rule 9, the High Court shall recommend for appointment to such vacancy an officer of the Junior Branch of the service, who, in the opinion of the High Court, is the most suitable for the purpose. If the government is unable to accept the recommendation of the High Court, it may call for further recommendations from the High Court to fill up the vacancy. Rule 7 of the 1963 Rules, enables the government to fill up the vacancy in the Senior Branch of the service in consultation with the High Court either by direct recruitment or promotion. As regards the strength of direct recruits in the Senior Branch of the service, a cap is put that their number shall not exceed 25 per cent of the cadre posts mentioned in Rule 4 (2). The direct recruitment to the Senior Branch of the service is required to be made

from the Bar. Rule 8 makes the complete provision about the eligibility of the candidates, reservation and the procedure for filling up the vacancies available to direct recruits to the Senior Branch of the service. Rules 7,8 and 9 of the 1963 Rules are quite significant. The position that emerges from these provisions is this : When a vacancy occurs in the Senior Branch of the service, first a decision is taken whether such vacancy is to be filled up by promotion or direct recruitment. Obviously, while taking such decision, the cap on the number of the direct recruits has to be kept in view. If the vacancy is to be filled up by direct recruitment, Rule 8 comes into play. In case, such vacancy is decided to be filled by promotion, the procedure in Rule 9 has to be followed. In other words, for a vacancy in the Senior Branch of service to be filled by promotion, the High Court makes recommendation for appointment to such vacancy an officer of the Junior Branch of the service, who in the opinion of High Court is the most suitable for the purpose. When such recommendation is made by the High Court for filling the vacancy, either the government accepts the recommendation or if, for any reason the government is unable to accept the recommendation, it may call for further recommendations from the High Court. Thus, in the absence of any vacancy in the Senior Branch cadre of Superior Judicial Service to be filled up by promotion, no appointment to the Senior Branch of service by way of promotion can be made. It is as fundamental as this.

As noted earlier, 72 posts of ad hoc Additional District Judges were created under the 2001 Rules to meet its objectives. These posts were not part of cadre strength of Senior Branch Service in the 1963 Rules nor by creation of these posts under the 2001 Rules, the cadre strength of the Senior Branch of service got increased. The writ petitioner's promotion as an ad hoc Additional District Judge vide Notification dated 05.01.2002 pursuant to which he joined the post of ad hoc Additional District Judge, Bargarh on 26.04.2002 is traceable wholly and squarely to the 2001 Rules. Merely because the writ petitioner was adjudged suitable on the touchstone of the 1963 Rules, we are afraid, it cannot be said that he was given appointment to the post of ad hoc Additional District Judge under the 1963 Rules. As noted above, there was no vacancy to be filled by promotion in cadre strength of Senior Branch of the service under the 1963 Rules on that date.

The essence of the reason given by the Committee is that when appellants were appointed as Additional District Judges, no vacancy to be filled by way of promotion to the Senior Branch of the service was available either in the cadre or in the ex-cadre. When no vacancy was available against which the writ petitioner could have been brought into the cadre then his claim for seniority in the cadre over the appellants did not arise. The above Report of the Committee was accepted by the Full Court and the writ petitioner's representation claiming seniority over the appellants was rejected. There is no legal flaw at all in the decision of the Full Court which is founded on the above view of the Committee. In view of the admitted factual position, the proviso following the main provision in Rule 17 of the 1963 Rules does not help the writ petitioner at all.

In Brij Mohan Lal 14, a three-Judge Bench of this Court, inter alia, considered the Fast Track Courts scheme. In paragraph 10 of the judgment, this Court gave various directions. Direction no. 14 in that para is relevant which can be paraphrased as follows:

(i) No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the scheme.

(ii) The service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre.

(iii) In case any judicial officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.

Learned senior counsel for the writ petitioner heavily relied upon the third part of direction no. 14. As a matter of fact, this part has been relied upon in the impugned judgment as well. It is submitted on behalf of the writ petitioner that on promotion to the Senior Branch cadre of Superior Judicial Service during his tenure in the Fast Track Courts, the writ petitioner is entitled to the counting of the service rendered by him in the Fast Track Court as a service in Superior Judicial Service (Senior Branch). The submission overlooks the first two parts of direction no. 14, one, no right will be conferred in judicial service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the scheme; and two, the service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In our opinion, until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the service rendered by the writ petitioner in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service, Senior Branch. Rather until then, he continued to be a member of the parent cadre, i.e., Superior Judicial Service (Junior Branch). The third part of direction no. 14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules.

We have already indicated above that on 05.01.2002 or 26.04.2002, there was no vacancy in the cadre of Superior Judicial Service (Senior Branch) for being filled up by promotion. Such vacancy in the Senior Branch cadre of the service occurred on 15.12.2003 and from that date the writ petitioner has been given benefit of his service rendered in the Fast Track Court. The administrative decision by the Full Court is in accord with the 1963 Rules, the 2001 Rules and the legal position already indicated above. The view of the Division Bench in the impugned judgment is legally unsustainable. The impugned judgment is liable to be set aside and is set aside.

Appeal is allowed, as above, with no order as to costs.

Appeal allowed.

Criminal Procedure Code

4.Sec. 154

Arun Kumar Budhia
Vs.
State of Orissa and another.

2013 (2) Crimes 186 (Ori)

V.Gopala Gowda And S.K.Mishra , JJ.

Issue

FIR –Writ of mandamus to State to make provision for supply of copy of FIR to accused / his relative and to direct police to upload FIR in their website –Whether at stage of investigation accused had a right to receive information regarding accusation or allegations against him ? Yes.

Articles 21 and 22 provides that the liberty of a citizen cannot be interfered or curtailed lightly by the authorities. So it is to be determined, whether at the stage of initial investigation, the accused has a right of receiving information regarding the accusation or allegation made against him. In this case, learned counsel for the petitioner has relied upon the case of Its own motion through Mr. Ajay Chaudhury v. State, in W.P.(Crl.) No. 468 of 2010, which has been disposed of by a Division Bench of the Delhi High Court. In the said case, Hon'ble Mr. Justice Dipak Mishra, the Chief Justice, as his Lordship was then, has taken into consideration a large number of cases and rules, and has come to the conclusion that the accused is entitled to receive a copy of the F.I.R. even from the police. In this regard, His Lordship has also held after taking into consideration a number of reported cases that F.I.R. is a public document and, therefore, a person, who is in custody of the same, has the liability to give a copy thereof to the person who has interest in the same or whose interest is adversely affected by the same.

In that view of the matter, having gone through the case of Delhi High Court, we are of the considered opinion that similar order should be passed with regard to supply of copies of the F.I.R. to the accused in the State of Odisha also.

Thus, we allow the writ application and direct that :

(i) The accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(ii) An accused who has reason to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/ agent for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the court. On such application being made, the copy shall be supplied within twenty-four hours.

(iii) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Code.

(iv) The copies of the F.I.Rs., unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Odisha Police website or by the district police website, as the case may be, within twenty-four hours of lodging of the F.I.R. so that the accused or any person connected with the same can download the F.I.R and the appropriate application before the Court as per law for redressal of his grievances.

(v) The decision not to upload the copy of the F.I.R. on the website of Odisha police/District police office shall not be taken by an officer below the rank of Deputy Superintendent of Police or Assistant Commissioner of Police, as the case may be, and that too by way of a speaking order. A decision so taken by the DSP/ACP shall also be duly communicated to the Magistrate having jurisdiction.

(vi) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the F.I.R.

(vii) In case a copy of the F.I.R. is not provided on the ground of sensitive nature of the case, the person aggrieved by the said action, after disclosing his identity, can submit a representation with the Commissioner of Police/Superintendent of Police of the District, who shall constitute a committee of three high officers and the committee shall deal with the said grievance within three days from the date of receipt of the representation and communicate it to the aggrieved person.

(viii) The Superintendent of Police shall constitute the committee within eight weeks from today.

(ix) In cases wherein decisions have been taken not to give copies of the F.I.Rs. regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative to file an application for grant of certified copy before the court to which the F.I.R. has been sent and the same shall be provided in quite promptitude by the concerned court not beyond three days of the submission of the application.

(x) The directions for uploading the F.I.R. on the website of Odisha Police shall be given effect from 3lst January, 2013.

A copy of this order be handed over to the Government Advocate for early consideration. Copies of this order shall be circulated to all the Commissioners of Police, all the Deputy Commissioners of Police and all the Superintendents of Police. Registry of the Court is also directed to supply copies of this order to all the cognizance taking Magistrates and District Judges.

The writ petition is allowed with the above observations.

V.Gopala Gowda, C.J. I agree.

Petition allowed.

5.(A) Sec 154

Amitbhai Anilchandra Shah

vs.

The Central Bureau of Investigation & Anr. 2013 (2) Crimes 171 (SC)

P. SATHASIVAM AND DR. B.S. CHAUHAN,JJ

Issue

Second FIR and fresh charge sheet – Violates Article 21 of the Constitution – Not permissible.

THE CASE-

In Narmada Bai case Supreme Court, taking note of the fact that the charge sheet has been filed by the State of Gujarat after a gap of 3-1/2 years and also considering the nature and gravity of the crime, rejected the investigation conducted/concluded by the State Police and directed the State police authorities to handover the case to the CBI.

After investigation, the CBI filed a fresh FIR dated 29.04.2011 against various police officials of the States of Gujarat and Rajasthan and others for acting in furtherance of a criminal conspiracy to screen themselves from legal consequences of their crime by causing the disappearance of human witness, i.e., Tulsiram Prajapati, by murdering him on 28.12.2006 and showing it off as a fake encounter. Though the said FIR did not specifically name any person, in the charge sheet dated 04.09.2012 filed in the said FIR, the petitioner herein was arrayed as A-1. Further, due to lack of jurisdiction, the charge sheet was presented before the 2nd Additional Chief Judicial Magistrate, (First Class), (CBI Court No. 1), Ahmedabad, Gujarat.

Being aggrieved by the fresh FIR dated 29.04.2011 and charge sheet 04.09.2012, the petitioner herein has filed this Criminal writ petition u/Art. 32.

Finding of the Court:

Killings of Sohrabudding, Kauserbi and Tulsiram are one series of acts and part of same conspiracy.

Writ petition allowed.

Apart from the above specific stand, it is also relevant to point out that the CBI filed supplementary charge sheet dated 22.10.2010 in the first FIR which made the following charges:-

"Investigation has also revealed that after the Gujarat Police Officers had eliminated Shri Tulsiram Prajapati on 28.12.2006 in a fake encounter, Smt. Geeta Johri, the then IGP prepared a note sheet on 05.01.2006 mentioning therein inter alia the permission to go to Udaipur to interrogate the aforesaid two associates of Sohrabuddin viz., Sylvester and Tulsiram Prajapati, of whom, she mentioned that Tulsiram Prajapati was encountered by the Police....'

The above extracts culled out from the charge sheet and supplementary charge sheet filed in the first FIR by the CBI would clearly show that killing of Tulsiram Prajapati was a fake encounter and was part of the same series of acts so connected together that they form part of the same conspiracy as alleged in the first FIR. In view of the same, there cannot be a second FIR dated 29.04.2011 and fresh charge sheet dated 04.09.2012 for killing of Tulsiram Prajapati.

This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony (supra), this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph Nos. 19,20 and 27 of that judgment are relevant which read as under:

The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

From the above discussion if follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate nor merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

(B) Sec. 220
ISSUE

Series of acts part of same conspiracy and intricately connected-Have to be tried in one trial.

(C) Sec. 220
ISSUE

Two complaints filed in same series of acts – Could be clubbed together and one charge sheet could be filed – Bar in section 234(1) not applicable.

The findings rendered by us in Narmada Bai (supra) clearly show the acceptance of the contentions raised by the CBI that killing of two individuals and killing of third person viz., Tulsiram Prajapati were part of the very same conspiracy and in the same series of acts so connected together that they will have to be tried in one trial under Section 220 of the Code.

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6. S. 154

Umesh Singh vs State Of Bihar AIR 2013 SC 1743

CHANDRAMAULI KR. PRASAD AND V. GOPALA GOWDA, JJ
ISSUE

Information given to police on basis of hearsay- not liable to be treated as FIR – Treating statement of eyewitness, though recorded later in point of time, as FIR – Justified.

The learned counsel further submits that the dispute regarding the place of incident as contended by the learned counsel for the appellant is factually not correct. In view of the concurrent finding of the High Court regarding the place of occurrence is very much certain as it is said to be at Tungi. PW4 Ashok Kumar Singh in his evidence has categorically stated that he is not an eye-witness but on the basis of hearsay he has informed the police. The I.O. has further stated in his evidence that PW4 is a hearsay witness and therefore his information could not have been treated as FIR. Hence he has requested this Court that there is no merit in this appeal, particularly, having regard to the concurrent finding on the charge by the High Court on proper appreciation of legal evidence and record and affirming the conviction and sentence for charge under Section 302 read with Section 34, IPC. Hence, the learned senior counsel has requested this Court not to interfere with the same in exercise of its jurisdiction.

PW2 Arvind Kumar, who is the cousin brother of the deceased, accompanied him on the date of occurrence of the incident. At that point of time the appellant, along with other accused, surrounded them and it is stated that the appellant shot at the Kanpatti with revolver and other accused persons Binda Singh with the rifle in the stomach of the deceased and Sudhir Singh with rifle in the left thigh. PW7 has stated in his evidence that the aforesaid accused persons fled away at that time Ashok Singh, Damodar Singh, Balram Singh and Shyam Sunder Singh were going to the bazaar who have witnessed the incident. His evidence is supported by the evidence of the other witness namely PW3, who has stated that he has seen Moti Singh and Jaddu Singh catching both hands of the deceased and Moti Singh ordered him to fire and the said witness also spoken about the firings by Awadhesh Singh and Nawal Singh as stated by the PW2. Further, he has supported his evidence that Awadhesh Singh pushed the dead body in the Payeen and also stated that Moti Singh and Jaddu Singh had caught hold of the informant also. PW5 also claimed to have seen Jaddu Singh and Moti Singh catching hands of the deceased and further he has stated that Umesh Singh, the appellant herein, had fired at the temple region of the deceased. Further, he has given categorical statement stating that Binda, Sudhir, Awadhesh and Nawal also had fired at the deceased with their rifles. Therefore, the evidence of PW2 has been supported by PW3, PW5 and PW7. In so far as PW6 is concerned he has given a general statement that he has seen the several persons surrounding the deceased and killing the deceased with rifle and revolver. Therefore, the trial court was right in recording the finding on the charge against the appellant on proper appraisal of the evidence of the eye-witness PW2 supported by PW3 and PW5. The said finding of fact on the charge of Sections 302 read with section 34, IPC against this appellant and others was seriously examined by the High Court and concurred with the same and in view of the evidence of PW2 and PW9 the informant who was eye-witness and the I.O.'s evidence regarding his evidence treating the statement of PW2 as FIR is perfectly legal and valid. Therefore, reliance placed upon the decisions of this Court referred to supra by the learned Senior Counsel in the course of his submission are not tenable in law as they are misplaced.

In view of the concurrent findings by the High Court as well as the learned Additional Sessions Judge and an order of conviction and sentence imposed against the appellant herein is on the basis of legal evidence on record and on proper appreciation of the same. Therefore, the same is not erroneous in law as the finding is supported with valid and cogent reasons. For the foregoing reasons the impugned judgment and order cannot be interfered with by this Court. Hence, the appeal is devoid of merit and accordingly it is dismissed.

Appeal dismissed.

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