



HIGH COURT OF MEGHALAYA

Newsletter

Volume 3 Issue 1



2018



*Hon'ble Justice Mohammad Yaqoob Mir
Chief Justice,
High Court of Meghalaya*

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FROM THE DESK OF THE CHIEF JUSTICE

At the inauguration of the Madras High Court in 1892, Chief Justice Sir Arthur Collins in his reply to Governor Beilby Baron Wenlock had said:

"I fervently hope that long after you and I, your Excellency, have passed away to that undiscovered country, of which, we know so little, there may also continue to be found, men of ability and courage, who will administer the law in these Courts without distinction of class, creed or race".

The High Court of Meghalaya though a relatively small High Court in terms of workload has always been at the vanguard of maintaining high standards of judicial administration. The same, however, would not have been possible without the devotion of Chief Justices and Judges, past and present, who have all endeavored to accomplish, in no unworthy measure, the solemn words of Chief Justice Collins.

The High Court, during these last 6 years, has delicately and sincerely discharged the arduous task of espousing the cause of justice; reiterating the value of individual dignity and upholding fundamental rights of those who seek it, much to the satisfaction of everyone.

It is, therefore, indeed a great pleasure for me to offer my reflections for the third edition of the High Court's newsletter as Chief Justice of this revered institution. I take this opportunity to also express my profound gratitude to my esteemed colleagues on the Bench, learned members of the Bar, and to judiciary, as a whole, in the State of Meghalaya, for the outstanding work done in upholding the rule of law and administering justice, sometimes in difficult circumstances.

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There can be no dilemma in asserting that judiciary is the guardian of the rule of law for without an independent judiciary able to authoritatively declare what the law is, and to independently resolve disputes, the rule of law would just remain an abstract concept. The rule of law, however, cannot be achieved in isolation but through teamwork where each member plays its role.

The role of subordinate Judiciary in the State of Meghalaya, while still in its formative years, deserves accolades. It goes without saying that a trial Judge is an important figure in the hierarchical system of administration of justice since he directly comes in contact with the litigant during Court proceedings. It is he who shoulders the responsibility of building up of the case and it is on his understanding of the matter, the cause of justice is first answered. Suffice it to say that he is the bedrock on which the entire judicial edifice is built.

The quality of judiciary in achieving access to justice, therefore, depends on the quality of judicial education imparted on Judges. Increased awareness among citizens coupled with socio-economic changes has vested Judicial Academies with the difficult responsibility of providing relevant training to the Judges in keeping with the rapid pace of progress in research and training. Bearing this in mind, the Meghalaya State Judicial Academy has been regularly imparting in-service training to Judicial Officers, Public Prosecutors and other stakeholders. To increase awareness on mental health, the Academy had recently conducted a seminar for judicial officers, police personnel, prosecutors, doctors, etc. Besides, a sensitization programme on human trafficking was held in collaboration with the Ministry of Home Affairs.

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The support of the State Government towards justice delivery system by way of infrastructural facilities cannot be ignored.


While the State has a relatively smaller cadre of judicial officers, the process of complete separation of subordinate Judiciary is yet to be achieved in the remaining four districts. Needless to say, the High Court is relentlessly working towards this end. Recently, the High Court has undertaken the exercise of conducting the examinations of filling the five posts in Higher Judicial Service and recruitment to fourteen posts in the Junior Division cadre is also underway.

On the socio-psychological front, the High Court is embracing the cause of abandoned children and those at the threshold of crime with the commissioning of a Juvenile Home in a sprawling campus at Mawdiangdiang, a town near Shillong. Besides, the foundation stone for a School dedicated to these children was recently laid.

I am confident that through perseverance and commitment of each one of us, the High Court and the entire Judiciary in the State is destined to grow from strength to strength.

Lastly, I extend my best wishes to my esteemed brother Judges whose unwavering support has helped in bringing out this Newsletter.

Shillong
18th February 2019


Mohammad Yaqoob Mir



*Hon'ble Justice Sudip Ranjan Sen
Judge,
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Sudip Ranjan Sen
Judge



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MESSAGE


On the cusp of laying down my office, it is with great happiness and a sense of humility that I bask in the accomplishments of this High Court, albeit, with a reminder that a lot more is to be achieved.

It is no ordinary task for this institution to have completed six years of valuable public service. However, even more challenging ahead is to eternally maintain and uphold the rich traditions and heritage bequeathed upon it.

It is my good fortune to have been associated with this High Court, since its inception, as a Judge and Acting Chief Justice, during different tenures, and to have had eminent colleagues both on the Bar and the Bench. The judicial wisdom of the Judges, past and present, and the legal acumen of the learned members of the Bar have only added luster and opulence to this institution.

I am hopeful that the knowledge acquired through judicial processes in areas of constitutional governance, human rights and civil liberties will assist in ushering in a welfare State wherein there will be liberty, equality and social justice as envisaged by the Constitution. But, we would be failing in our duties as upholders of the law if we do not through our actions display qualities of humanity and mercy while rendering justice.

Lastly, I will continue to pray for the progress, growth and prosperity of this High Court in the service of justice. I also extend my heartfelt appreciation to Hon'ble Chief Justice Mohammad Yaqoob Mir in successfully publishing the third edition of this newsletter.

 14/2/19.
(Justice Sudip Ranjan Sen)



Hon'ble Justice Hamarsan Singh Thangkhiew
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H. S. Thangkhiew
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MESSAGE

It gives me immense pleasure to learn that the High Court is releasing the third edition of the Newsletter.

I feel a unique sense of pride and privilege in being given an opportunity to be a part of this High Court, after having first served as an advocate and now, as its Judge.

Though still in its formative years, it is commendable to witness the High Court steadily foray into numerous feats – separation of subordinate Judiciary, an avowed object under Article 50 of the Constitution, is nearly achieved in the State; founding of the State Judicial Academy to cater to the increasing cadre of Judicial Officers; and commissioning of the Juvenile Home, and setting-up of the Juvenile School, for children-in-conflict with law, are just some of the milestones achieved by this High Court.

However, merely evoking our accolades and accomplishments shall be vain if it serves no purpose in cajoling us to feats of greater glory and act as a source of inspiration.

True it is that in our endeavours we will be met with myriad challenges; and the real test for the viability of this institution shall depend upon its acceptability by the people. The challenge, therefore, lies in restoring public faith in the system. We must, therefore, remain resolved in our common goals of ensuring that the High Court acts as the true custodian of the Rule of Law and only grows from strength to strength.

Lastly, I extend my gratitude to Hon'ble the Chief Justice for publishing the third edition of this newsletter and wish the readers a happy reading!

(Justice Hamarsan Singh Thangkhiew)

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SWEARING-IN CEREMONY OF HON'BLE CHIEF JUSTICE MOHAMMAD YAQOOB MIR



Hon'ble Governor of Meghalaya, Shri. Ganga Prasad, administering the Oath of Office to Hon'ble Mr. Justice Mohammad Yaqoob Mir as Chief Justice, High Court of Meghalaya at Raj Bhavan, Shillong on 21.05.2018

In pursuance of notification no.K-13034/03/2018-US. I dated 10th May, 2018 issued by the Government of India, Ministry of Law and Justice (Department of Justice), Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge of Jammu and Kashmir High Court was sworn in as Chief Justice of the High Court of Meghalaya on Monday, 21st May, 2018 by Hon'ble the Governor of Meghalaya, Shri. Ganga Prasad.

SWEARING-IN CEREMONY OF HON'BLE JUSTICE HAMARSAN SINGH THANGKHIEW



Hon'ble the Chief Justice, Mr. Mohammad Yaqoob Mir, administering the Oath of Office to Hon'ble Mr. Justice Hamarsan Singh Thangkhiew as Judge, High Court of Meghalaya on 19.11.2018

In pursuance of notification no.K-13034/02/2018-US. I dated 17th November, 2018 issued by the Government of India, Ministry of Law and Justice (Department of Justice), New Delhi, Mr. Hamarsan Singh Thangkhiew was sworn in as Judge of the High Court of Meghalaya on Monday 19th November, 2018 by Hon'ble the Chief Justice Mr. Justice Mohammad Yaqoob Mir.

Commissioning of Juvenile Home at Mawdiangdiang

7th July 2018 was a red letter day for the State of Meghalaya when the 'Juvenile Home' at Mawkasiang (Mawdiangdiang), New Shillong was commissioned. Suffice it is to mention that, until commissioning of the Home, the children in conflict with law were earlier housed at Cleve Colony, for boys, which was an old wooden structure, and another one for girls at Lower New Colony.

Both these structures were soon found inadequate to cater to the impending needs of the children in conflict with law and, therefore, in keeping with the principles enshrined under the Juvenile Justice Act, coupled with the daunting task of ensuring all round development to the children, construction of the Juvenile Home was afoot under the stewardship of the High Court Juvenile Justice Committee.

The Juvenile Home was commissioned by his Lordship, Hon'ble the Chief Justice, Mr. Justice Mohammad Yaqoob Mir, in the presence of Hon'ble Mr. Justice S.R. Sen, Chairman of High Court Juvenile Justice Committee and several other dignitaries.

Briefly, a one-day inaugural programme, followed by a sensitisation programme on the Juvenile Justice Act on subjects pertaining to Integrated Child Protection Scheme (ICPS), role of police and UNICEF, by various resource persons, was held at the

Juvenile Home at Mawkasiang to commemorate the function.

The Judge-in-charge, High Court Juvenile Justice Committee, Hon'ble Mr. Justice S.R. Sen, in his welcome address, emphasised on the hazardous conditions which a child is exposed to. In order to circumvent certain social evils viz. domestic violence and broken families leading to deterioration in a family and abandonment of child's needs, his Lordship said that children-friendly centres are the need of the hour. His Lordship implored on the role played by the State in ensuring safety and welfare of children with special needs and called upon the State Government to make meaningful policies and schemes for the child.

His Lordship, Hon'ble the Chief Justice, in the presidential address, while setting the theme of the function began by saying that "the beauty of life does not depend on how happy you are, but how happy others can be because of you." In order for the child to attain self-realisation and rehabilitation, his Lordship emphasised that a beautiful home with a beautiful atmosphere is necessary. His Lordship outlined the purpose of the 'Integrated Child Protection Scheme (ICPS)' which was launched in 2009 to save children in difficult situation as well as reduce risks and vulnerabilities. His Lordship further elaborated that ICPS

visualised a structure for providing service as well as monitoring and supervising the effective functioning of child protection system. While lauding the efforts and contribution of every stakeholder, especially the hardwork put in by the Judge-in-charge, High Court Juvenile Justice Committee, into creating a visionary home such as this, his Lordship hoped that the children who will be admitted in these homes for care and protection, God willing, will come out as best citizens of the nation.





Laying of foundation stone of the Juvenile School at Mawdiangdiang

The foundation stone of the "Shillong Juvenile School" was laid on 17th November 2018 at Mawdiangdiang (Mawdiangdiang). The purpose of the School, an initiative of the High Court Juvenile Justice Committee, is to provide formal education for children from Class I to X, besides imparting vocational training. The school is proposed to be built on a land having an area of 22,000 sq.ft at an estimated cost of Rs. 5.66 (Rupees five crore and sixty six lakhs).

Hon'ble Mr. Justice S.R. Sen, Judge-in-Charge of the High Court Juvenile Justice Committee, in his address expressed his appreciation to the Social Welfare Department for taking the initiative of laying the foundation stone of the School despite hurdles faced during the initial stages in acquisition of land. He was also hopeful that the long awaited dream would bring fulfilment in the quest to cater to the welfare of the children.

The Chief Guest, Hon'ble Justice

Mohammad Yaqoob Mir, Chief Justice, expressed hope that the novel purpose with which the school is constructed is achieved through the laying of the foundation stone. His Lordship emphasised that the children are to be nurtured with care, love and also encouraged all those involved in the service of the child protection to be vigilant and careful in delivery of service dedicated to the welfare of the children.



Infrastructural and ICT development

Information & Communication Technology (ICT) plays an important role in Judiciary in enhancing productivity, both qualitatively and quantitatively, and also makes justice delivery system more affordable, accessible, transparent and accountable.

For effective implementation of ICT, infrastructure such as desktops, printers, scanners, networking devices, etc. are provided. With the availability of Video Conferencing facilities, subordinate Courts are brought closer to the High Court and information are being shared quickly and effectively. Mention may be made that in the State of Meghalaya, installation and implementation of Video Conferencing is already complete.

To ensure that infrastructure, hardware and day-to-day issues are taken care of, Computer Committees are in place at the High Court as also at the District Court level. At the District level, the Committees perform overall monitoring of project implementation in the District and also work in close coordination with the Central Project Coordinator. For imparting ICT training, services of the District System Administrator, System Administrator, Technical Officers, Ubuntu-cum-CIS Master trainers and CIS Master trainers are being utilized on a regular basis.

Case details and proceedings of High Court and subordinate Courts are uploaded on a daily basis on National Judicial Data Grid.

For management and maintenance of ICT tools, a dedicated team of technical manpower is available at the High Court as also at the District Court in Shillong. The State Government has sanctioned the post of System Assistants, in temporary capacity, in all the subordinate Courts for better implementation of CIS and recruitment to these posts have completed.

For eCourts-friendly court infrastructure, the State Government have also been requested to incorporate the utilities viz. Computer room, Computer server room, Judicial Service Centre with seamless connectivity and power in the design of permanent Court complexes.

The Registry has also moved the State Government to incorporate Solar Energy in the plans and estimates for construction of all the Court complexes.

Mention may also be made that the 14th- Finance Commission has earmarked Rs 13 crores for digitization of case records in the State of Meghalaya. Towards this end, preparation of tender for scanning and digitisation of case records is in the process.

Recruitment Cell

The Cell, which was constituted in the month of April 2016, currently headed by a Registrar of the High Court, has taken up and successfully conducted several of the recruitment processes. Recently, an 'online recruitment application system' was introduced in the High Court whereby online applications are invited from applicants against the advertised posts; the present system circumvents the arduous task of paper works, bank challans and physical presence of the applicant thus saving time. Besides, application fees are accepted online and instantly credited to the State treasury.

Recruitment under process as on 31.12.2018

Sl. No.	Name of Post	Number of vacancies
1	Grade-I Judicial Officer under the Meghalaya Higher Judicial Service	5
2	System Officer	1
3	Junior Administrative Assistant	4
4	Library Assistant	2
5	Typist	1
6	Electrician	1
7	Driver	1
8	Cook	1

Results and Selections as on 31.12.2018

Sl. No.	Name of Post	Number of vacancies	Remarks
1	Stenographer, Grade-I	4	Result declared. Selection made.
2	Junior Administrative Assistant	2	Result declared. Selection made.

Activities conducted by Meghalaya State Judicial Academy

Judicial Colloquium on Anti Human Trafficking

The Meghalaya State Judicial Academy, in collaboration with the High Court of Meghalaya and, in consultation with the Ministry of Home Affairs, organised the Judicial Colloquium on Anti Human Trafficking on 11th August 2018 in the High Court precincts.

His Lordship, Hon'ble the Chief Justice, Mr. Justice Mohammad Yaqoob Mir, in the presence of Hon'ble Mr. Justice S.R. Sen, inaugurated the Colloquium.

The target group of the session was Judicial Officers, Police Officers, Prosecution wing and officials from the Social Welfare department.

Retired IPS Officer and Professor, Tata Institute of Social Sciences, Mumbai, Shri. P.M. Nair, delivered lectures on the 'dimensions of human trafficking: responses, challenges and innovations' as also on 'justice delivery in crimes of trafficking in women and children for exploitation.' Besides, Smti. Kharbhih of Impulse NGO was requested to speak on the 'role of NGOs in victim protection, rescue, care and support', while, Smti. Iadalin Rapthap Programme Manager, ICPS, spoke on 'role/ programmes of Government in prevention, protection and rehabilitation.'

Shri Muthu, Nodal Officer on Anti Human Trafficking Unit, presented the topic on the scenario of human trafficking in the State of Meghalaya. Judicial Officers, Shri. N. Khan and Shri. B. Joshi, spoke on compensation to victims and constitutional provisions, respectively.



Seminar on Mental Health

A seminar on mental health was conducted by the Meghalaya State Judicial Academy on 1st December 2018 in collaboration with the High Court of Meghalaya.

The seminar was inaugurated by his Lordship, Hon'ble the Chief Justice, Mr. Justice Mohammad Yaqoob Mir, in the presence of Hon'ble Mr. Justice H.S. Thangkhiew.

His Lordship, Hon'ble the Chief Justice, in his keynote address, underlined the theme of the session by stating that without mental health, there cannot be any physical health. His Lordship emphasised that the 5 key barriers which every country needs to overcome in order to provide mental health care service are: lack of public health leadership, inadequate human resources for mental health, lack of integration with primary care, current organisation of mental health service and absence of mental health from the public health agenda.

The session was targeted for Judicial Officers, Police Officers, Public Prosecutors and Doctors. Dr. Syiem, Director of Sanker hospital, deliberated on mental health issues and mental illness; while, Asst. Professor Dr. Arvind Nongpiur delivered his lecture on bridging the gap between clinical and forensic psychiatry. Shri. Tiwari, Asst. Professor of Law at NEHU spoke on the legal provisions concerning mental health persons.



DEVELOPMENT OF LAW: A FEW CATCHNOTES

DIVISION BENCH: JUSTICE TARUN AGARWALA, C.J.(RETD.) & JUSTICE S.R.SEN

SMT. MEENA S. MARAK VS. STATE OF MEGHALAYA & ORS.

WP (C) NO. 213 OF 2014

DECIDED ON 28.02.2018

Constitution of India, Art. 21 – Custodial Death – Negligence of doctors – Payment of compensation – Victim, son of petitioner, illegally detained in police custody and administered 3rd degree torture resulting in his custodial death due to lack of medical treatment – Medical report inconclusive and shoddy as it only suggested absence of fresh injury – Superintendent of Police being in-charge had moral responsibility to produce victim before Magistrate within 24 hours – Victim detained only on ground of suspicion without any written complaint resulting in gross violation of Art. 21 – Victim died on account of injuries caused due to police torture and not attended in time by medical practitioners – Held, a sum of Rs. 15,00,000/- would be just and sufficient as compensation for the death caused to the petitioner's son while he was in police custody.

Delay in trial – Day to Day proceedings – Held, trial Court to conclude the trial against the errand police officials made pursuant to CID report within one year and not to grant undue adjournments.

DIVISION BENCH: JUSTICE MOHAMMAD YAQOOB MIR, C.J & JUSTICE S.R.SEN

SHRI. MEHBOOB ANSARI VS. STATE OF MEGHALAYA

CRL. A NO. 3 OF 2016

DECIDED ON 18.10.2018

Criminal appeal against the conviction under Sections 364A and 302 of IPC – No eyewitness – Case totally hinges on circumstantial evidence – Accordingly, motive of crime assumes significance – Motive attributed is totally without any basis and substance – The chain of circumstances is incomplete and broken – Appeal Allowed.

Appreciation of electronic evidence – Held, in order to prove secondary evidence, requirements of Section 65-B of the Evidence Act must be met.

PATEL UNITY JOINT VENTURE (PUJV)

VS.

NORTH EASTERN ELECTRIC POWER CORPORATION LTD. (NEEPCO)

MC (ARB. A) NO. 3 OF 2017

DECIDED ON 05.06.2018

Limitation Act, 1963 – Section 5 – Condonation of 10 days delay – Sufficient cause – Arbitration and Conciliation Act, 1996 – Filing appeal under – Petitioner not inclined towards filing appeal in national public interest but filed same after respondent herein filed appeal – Held, delay condoned as same constitutes sufficient cause.

Limitation Act, 1963 – Applicability of Law – Interpretation of - Held, law of limitation has to be applied harshly when complete indolence is attributable to the seeker thereof – The words 'sufficient cause' for not preferring the appeal or cross objection well within time has to be construed liberally so as to advance the cause of justice – Every case has its own peculiar facts and features and it is in the same background 'sufficient cause' has to be given liberal construction or strict construction.

SHRI. JOKEN KHARSATI VS. STATE OF MEGHALAYA**CRL. A NO. 1 OF 2017****DECIDED ON 07.09.2018**

Penal Code - Ss. 376 (2)(f), 506 - Child rape - Appreciation of evidence - Sole testimony - Held, testimony of the prosecutrix free from embellishment and exaggeration and unimpeached and inspiring confidence - Incident disclosed for the first time after 7 years of the occurrence - Delay in lodging FIR - Held, not fatal to the prosecution - Statement of victim regarding non-disclosure of occurrence fully corroborated by the mother and the Headmistress - Conviction and sentence upheld.

SINGLE BENCH JUSTICE MOHAMMAD YAQOOB MIR, CHIEF JUSTICE**DHAN MAYA VS. UNION OF INDIA & ORS.****WP (C) NO. 326 OF 2014****DECIDED ON 31.05.2018**

Service Law – Civil Services (Pension) Rules, 1972 – after death of deceased, pension and other benefits were not given to the petitioner (an illiterate widow) by respondent authority i.e. Assam Rifles – on the ground – pension was not granted to deceased – petitioner eloped with someone during active service of deceased – deceased remarried – after nearly 25 (twenty-five) years – Held, the first wife (petitioner) in terms of Rule 7 is entitled to family pension – Petition Allowed.

Marriage Law – Hindu Marriage Act, 1955 – none of the parties had approached any Court for decree of mutual divorce – u/s 13 of the Act – Held, marriage between the petitioner and the deceased subsisted till death of the deceased – Petition Allowed.

Court's appreciation for work done – cause of the petitioner (an illiterate woman belonging to a remote area) – facing acute financial hardship, unaware of her right to pension – espoused by the Executive Editor of 'Sudha' Magazine – Held, social work done aimed at helping the poor, illiterate and old aged people is laudable.

RABINDERJIT SINGH AND SONS ENGINEER AND BUILDERS VS.**CHAIRMAN AND MANAGING DIRECTOR (NATIONAL PROJECT CONSTRUCTION CORPORATION LTD.)****ARB. PETN. NO. 8 OF 2017****DECIDED ON 01.08.2018**

Arbitration and Conciliation Act, 1996 – Section 7 – 'Work order' whether agreement – Arbitration clause incorporated in work order – Work order signed by both parties – Held, signing of work order by both parties in view of the conditions incorporated therein to be adhered to by both parties in essence constitute 'Arbitration Agreement'. **Scope of Section 7, Arbitration and Conciliation Act, 1996** – Held further, scope for interpreting arbitration agreement is wide in terms of section 7 – Petition Allowed.

Conflict between general conditions of contract and special conditions of contract – which one to prevail – Argument advanced by respondent's counsel that clause 4 of work order containing arbitration clause falls within general conditions and thus the special conditions of contract automatically override it – Rejected – Held, special conditions of contract shall override general conditions of contract – Held further, Clause 4 of work order containing arbitration clause falls within special terms and conditions of the contract.

SMTI. MERRY BINA MARAK VS. STATE OF MEGHALAYA & ANR.

A.B. No. 22 OF 2018

DECIDED ON 31.10.2018

Criminal Procedure Code, 1973 – Section 438 – Section 482 – Whether High Court can invoke powers under sections 438 and 482 Cr.PC when the occurrence has taken place in the State of Maharashtra – Held, power to be exercised under sections 438 and 482 CrPC rest with the High Court or Court of Sessions within whose jurisdiction occurrence or part occurrence has taken place. – Held further, accused can invoke jurisdiction of the High Court or Court of Sessions within whose jurisdiction he resides or place where he apprehends arrest however, host of circumstances, including heinousness of crime, have to be taken care of and can't be a matter of routine.

SINGLE BENCH JUSTICE SUDIP RANJAN SEN, JUDGE

TRETON NONGSIEJ VS. STATE OF MEGHALAYA

CRL. PETN. NO. 7 OF 2018

DECIDED ON 11.04.2018

Criminal Procedure Code, 1973, Section 195 – Indian Penal Code, Section 21 – Bar against taking cognizance – Prosecution for perjury – Complaint lodged by Enforcement inspector – Held, is valid since Enforcement Inspector is public servant within meaning of S. 21 of Penal Code.

EMERIS PALE VS. UNION OF INDIA AND ORS.

WP (C) NO. 304 OF 2016

DECIDED ON 13.06.2018

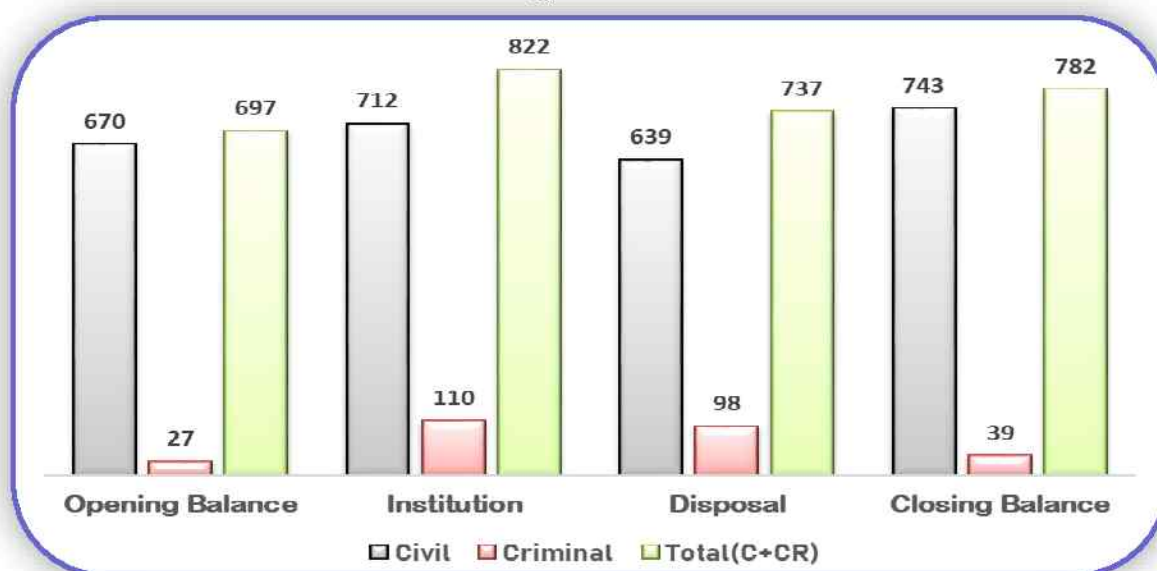
Service Law – Family Pension – Deceased employee married petitioner after he was deserted – First wife died after deserting employee – Held, petitioner (second wife) entitled to family pension upon furnishing succession certificate – Petition Allowed.

AJAY MASTER VS. STATE OF MEGHALAYA AND ANR.

WP (C) NO. 151 OF 2017

DECIDED ON 31.08.2017

Service Law – Advertisement for Appointment - Essential requirements and purpose of - Non-mentioning of cut-off marks/ pass marks in advertisement - Effect of - Held, an advertisement is the initiator of an examination or interview as well as it is a rule which needs to be strictly followed as the guideline of the whole game or whole exercise of appointment - Needs to be transparent and clear, so that ambiguity should not arise in the minds of the candidates appearing for the examination or interview - Petition allowed.

Graph - Pendency/Disposal as on 31.12.2018**High Court****Subordinate Courts**

Inauguration of Court Building at Nongstoin

The permanent Court complex of the District and Sessions Judge at Nongstoin, West Khasi Hills District, was inaugurated on 20th February 2018 by the then Hon'ble Chief Justice, Mr. Justice Tarun Agarwala, alongwith Hon'ble Mr. Justice S.R. Sen, in the presence of several dignitaries.

The Court complex which is located at the heart of Nongstoin boasts of an area of 1648 sq.m (17,733 sq.ft); it is a four-storied building (G + 3) with total floor area of 6592.00 Sqm (70930.00 Sqft).

The building has a total of 8 (eight) Court halls which includes 1 (one) POCSO Court hall, 2 (two) Fast Track Court halls and 5 (Five) main Court halls for District Judge, Chief Judicial Magistrates and Judicial Magistrates. Besides that, here are several rooms in each floor which is well connected by wide passage and corridors, which allows safe and easy passage of people, a lift facility has also been provided for fast and easy access to the upper storied floors. The Court also has a large courtyard at both sides of the building which provides a convenient space for parking of vehicles; besides, it is connected by a wide approach road from the main road.

The child friendly Court room which also functions as POCSO Court has been designed in such a way that it has a congenial and pleasant environment to the child victim. There is a separate compartment in the Court room which has a tinted glass which functions as a dock for the accused in which he can be kept away from the view of the child witness during his deposition. This separate compartment also functions as a platform for identification of accused in which the child victim can see the accused but he cannot see the child. There is a separate waiting room as well as a separate playroom for the child witness with a view to make a child witness comfortable before he/she deposed before the Court.



Inauguration of Court Building at Tura

The permanent Court complex of the District and Sessions Judge at Tura, West Garo Hills District, was inaugurated on 7th April 2018 by the then Hon'ble Chief Justice (Acting) Mr. Justice S.R. Sen in the presence of several dignitaries.

The Court complex is built on an area of 4093.84 sq.m (44,049.22 sq.ft) and has 4 (four) floors with a total floor area of about 7008.00 sq.m i.e. 75,406 sq.ft.

The Complex comprises several rooms including spacious Court halls alongwith attached chambers for the presiding Judges; well equipped Video Conferencing room; ADR Centre for Mediation; Conference Hall and Advocates room, etc. Besides that, the POCSO Court room is designed in such a way keeping the interest of the child victim in mind. It is equipped with a specific room designed for the accused person containing in-camera facilities and one-sided opaque glass; waiting area and a children's room designed for vulnerable witnesses and child victim.



Inauguration of Court Building at Williamnagar

Subordinate Judiciary in East Garo Hills was inaugurated and separated on 27th June 2014 and the Court thereon was functioning from the Deputy Commissioner's office for about two years with three Judicial Officers posted in the District. The Construction of the permanent Court complex began immediately and was completed after two years.

The permanent District Court complex stands tall and majestic with 3 (three) storeys and has about 75 rooms divided into 4 (four) Court rooms along with chambers for Judicial Officers. Besides, provision for server room, canteen, record room, office rooms for establishment and staff, mediation centre, library, conference hall, waiting rooms for witnesses, office rooms for PPs and APPs, Office of DLSA, P.I. Office and the Bar Association etc. is available.

The Court Complex was inaugurated on 7th April, 2018 by the then Hon'ble Mr. Justice S.R. Sen, Chief Justice (Acting), High Court of Meghalaya.



Activities Conducted by the District Legal Services Authorities

THE DISTRICT LEGAL SERVICE AUTHORITY, EAST KHASI HILLS DISTRICT, SHILLONG

In a democracy, where rule of law is supreme; it is essential to ensure that even the weakest amongst the weak, poorest among the poor do not suffer injustice arising out of any abusive action on the part of State or private person. As a way forward, there is need to ensure capacity building for legal aid movement.

This requires strengthening the skills of stakeholders of legal aid, law teachers, lawyers, law students, volunteers such as aanganwadi workers, Members of local panchayat etc; to act as intermediates between rural people and legal service institutions.

The District Legal Services Authority, East Khasi Hills District, Shillong with an aim to render legal guidance and assistance and to strengthen the weaker sections of the society to ensure that

opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, organized Lok Adalats, legal awareness programs, legal literacy classes in schools and colleges and Special Days were observed commencing January, 2018.

With a view to render Legal Services to the inmates of the District Jail, Shillong, from January, 2018 onwards, the District Legal Services Authority, East Khasi Hills District, Shillong, deputed Panel Lawyers and Para Legal Volunteers to attend the Jail Legal Aid Clinic every month. Meetings were convened every month by the District Legal Scrutinizing Committee (DLSC) to scrutinize the applications preferred for legal aid counsels and legal aid counsels were accordingly appointed. The District Monitoring Committee, East Khasi Hills, Shillong convened meetings and the cases taken up by the Legal Aid Counsels were scrutinized

and review meetings of the panel lawyers were also held in which the legal aid cases handled by them were reviewed. The Undertrial Review Committee, East Khasi Hills District and the District Jail Visiting Committee, East Khasi Hills District visited the District Jail Shillong every quarter.

The Legal Services Camps were organized by the District Legal Services Authority, East Khasi Hills District at Smit (Market Area) on 27-01-2018 and the core theme was "Bridging the Gap and Reaching Out" and at Mawphlang Village on 28-04-2018 and the core theme was "Root Out Poverty" by following the newly approved model, issued by the National Legal Services Authority. The camps were publicized in Doordarshan in English and local dialect.

National Lok Adalats were organized by the District Legal Services, East Khasi Hills District in the month of February,

2018 on 10-02-2018 where 38 pre-litigation cases were settled and disposed of and the total settlement amount was Rs. 14,86,867/-

A campaign for enhancing Legal Services to Women inmates for 10 (ten) days was organised in District Jail, Shillong in the month of May, 2018 w.e.f 17-05-2018. During the campaign a team was formed consisting of two women panel lawyers, a psychologist, a lady doctor, an official from the Department of women and child, an official from the Department of Prison, an official from the Department of Education and a representative of Manbha Foundation, an NGO on being nominated by the respective Departments. With a goal to spread legal awareness amongst the School children and the College students, the District Legal Services Authority, East Khasi Hills District organized Legal Literacy Classes at different Schools in East Khasi Hills District during the month of June, July,

August, September and October, 2018 respectively where the resource persons spoke on 'First Information Report', 'Fundamental Rights and Duties', 'Free Legal Aid Services, The Juvenile Justice Act, Child abuse, Laws relating to rights of women and Protection of Children from Sexual Offences Act (POCSO Act), Laws relating to Child Rights and Legal Aid Authorities and its benefit, Prohibition of ragging, Cyber Crime, Prohibition of smoking, Prohibition of child marriage, Prohibition of Child Labour and Domestic Violence and as per the Lesson in Law for the students of Classes IX, X, XI, XII and College students published by the Meghalaya State Legal Services Authority. During the Legal Literacy classes in Schools and Colleges pamphlets on Free Legal Services, Lok Adalat, Mediation, etc were distributed to the students.



**THE DISTRICT LEGAL
SERVICE AUTHORITY,
WEST GARO HILLS
DISTRICT, TURA**

The District Legal Services Authority at Tura had organized Legal Services Camp for the villages in and around Asanang and Selsella C&RD Block during the calendar year.

Besides that, with a view to sensitise the various stakeholders on different topics having societal impact, the District Legal Services Authority had organised International Women's Day on 8th March 2018; Anti Tobacco Day on 31st May 2018 in collaboration with the legal literacy clubs at the Super Market Atrium, Tura with around 500 participants; Child Labour Day on 12th June 2018.



**THE DISTRICT LEGAL
SERVICE AUTHORITY,
SOUTH WEST GARO
HILLS DISTRICT,
AMPATI**

Ever since its initial set up in 2017, the District Legal Services Authority at Ampati has been providing free legal aid services, conducting legal awareness programmes besides holding Lok Adalats.

The District Legal Services Authority has taken up various activities in collaboration with the District administration and various departments within the District.

On the occasion of International Labour Day, a program with the target group of Class-IV employees was held on 1st May 2018. Besides, sensitization programmes on World Day against Child Labour on 12th June 2018; World Mental Health Day on 10th October 2018; Senior Citizens Day on 01st October 2018 was conducted.



**THE DISTRICT LEGAL
SERVICE AUTHORITY,
RI-BHOI DISTRICT,
NONGPOH**

The District Legal Services Authority at Ri Bhoi District, Nongpoh organized various legal awareness programmes such as Rights of Senior Citizens and Women' in the Leprosy Colony, Nongpoh on 30th January 2018; International Women's Day on the 8th March 2018, World Anti Tobacco Day on the 31st May 2018; International Day against Drug Abuse and Illicit Trafficking on 26th June ,2018. Besides, on 28th September 2018 it set up a Help Desk during the Free Medical Campaign at Umran Niangbyrnai in the DTO complex where legal literacy pamphlets were distributed.



THE DISTRICT LEGAL SERVICE AUTHORITY, WEST KHASI HILLS DISTRICT, NONGSTOIN

Under the tutelage of Meghalaya State Legal Services Authority, the District Legal Services Authority (DLSA) of West Khasi Hills District has been vibrant in its efforts to implement all the support and welfare schemes and in organizing Lok Adalats as also spreading legal awareness. DLSA has also appointed 3 (three) Legal Aid Counsels who are providing immediate legal assistance to those prisoners who are not in a position to engage their own counsel. Panel lawyers for taking up matters relating to children and child in conflict with law has been empanelled for West Khasi Hills District.

DLSA has conducted Legal Service Camp on 24.01.2018 in the premises of Joplang School, Shallang. More than 1200 people visited the Camp which had 10 different stalls set up to create awareness on different government schemes and also to sensitise them about their rights and duties. DLSA has organised a planting drive on the World Environment Day and planted saplings in the premises of the District Court.

World Health Day was observed by DLSA, West Khasi Hills District in collaboration with the Office of the District Medical and Health Officer, on the theme of 'Young People and Mental Health in a Changing World' on 10.10.2018 at Civil Hospital, Shillong. Many patients and officers including Medical and Health Officers and Staff Nurses attended the Programme. A wide variety of issues related to the subject, starting from the importance of mental health and facilities available for the patients to the rights of persons with mental illness under the Mental Health Care Act, 2017 were discussed.



DEALING WITH WITNESSES: A HUMAN APPROACH

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"The edifice of administration of justice is based upon witness coming forward and deposing without fear or favour, without intimidation or allurement in Courts of Law. If witnesses are deposing under fear or intimidation or for favour or allurement, the foundation of administration of justice not only gets weakened, but in cases it may even gets obliterated."¹

Introduction:

In India, an adversarial system of trial is adopted which is founded on the twin principles that, firstly, the burden of proving guilt of the accused lies on the prosecution and, secondly, he is presumed to be innocent until proven otherwise. Having adopted these avowed principles, what is essentially provided to an accused is a level playing field that protects him against the entire edifice of the State machinery. Suffice it to mention that in a criminal trial, the prosecution has to first lead evidence and an opportunity is given to the defence to cross-examine the prosecution witnesses in order to test their veracity. On the importance of the right of cross-examination, Hon'ble the Supreme Court in *Nandram Khemraj vs. State of Madhya Pradesh*² observed thus:

"The weapon of cross-examination is a powerful weapon by which the defence can separate truth from falsehood piercing through the evidence given by the witness, who has been examined in examination-in-

chief. By the process of cross-examination the defence can test the evidence of a witness on anvil of truth. If an opportunity is not given to the accused to separate the truth from the evidence given by the witness in examination-in-chief, it would be as good as cutting his hands, legs and mouth and making him to stand meekly before the barrage of statements made by the witnesses in examination-in-chief against him or sending him to jail. Law does not allow such things to happen."

Definition:

In the ordinary sense, "witness" means a person who sees an event, typically a crime or accident take place. On the other hand, Black's Law Dictionary gives the following definition: "In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, 'witness' has acquired the sense of a person who is present at and observes a transaction."

There is no cavil in alluding that a witness is an indispensable element of the entire administration of criminal justice for it is in the quality of his testimony that the outcome of a particular case hangs. Therefore, it is imperative that a witness must depose without fear and pressure and out of his free will and consent.

Importance of witnesses and the many challenges:

Hon'ble the

Supreme Court in *State of Gujarat vs. Anirudh Singh*³ held

that it's the salutary duty of every witness who has knowledge of the offence to assist the State in giving evidence.

However, in recent times, it has become very common for witnesses to turn hostile on account of the looming danger writ large on their life and property or to that of their kindred consequent upon threats or intimidation made by the accused person. It is in this context that Hon'ble the Supreme Court in a catena of judgments⁴ has exhaustively dealt with the subject of 'witness anonymity' and 'witness protection program' and has also stated that Parliament must consider making a law on the subject at the earliest.

In a criminal trial, there are several instances where vital witnesses disappear before or during a trial or he is threatened, abducted or done away with. These incidents invariably happen by design and the net outcome is that in many of these matters, the case of the prosecution inevitably fails resulting in unwanted acquittals that erode public faith in the system and stifle the collective cry of society to a crime that actually happened.

It may be mentioned that, apart from the overt and deliberate

threat a witness may receive from the opposite party during trial, which unvaryingly may happen beyond our control or outside the purview of our knowledge; but, as trial Courts, we ought to remain circumspect while dealing with witnesses and remain alive to the factual matrix of the case at hand in the quest for an otherwise fair trial. There is no denial of the fact that fair trial is an inseparable facet of Article 21 of the Constitution. In *Rattiram and others vs. State of Madhya Pradesh*⁵ speaking on fair trial, the apex Court opined that:

"... Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracize injustice, prejudice, dishonesty and favoritism."

True it is that a trial Court judge in a criminal trial remains center stage and he cannot remain aloof of the milieu surrounding him. Against that backdrop, in *Ram Chander vs. State of Haryana*⁶, while speaking about the presiding judge in a criminal trial, his Lordship (as he then was) Justice Reddy observed that if a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become

¹High Court of Delhi in CrI.W.No.247 of 2002 (Ms Neelam Katara vs. Union of India)

²1995 Cr.LJ 1270

³(1997) 6 SCC 514

⁴NHRC vs. State of Gujarat: [2003(9) SCALE 329]; PUCL vs. Union of India: [2003 (10) SCALE 967]; Zahira Habibulla H. Sheikh and anr. vs. State of Gujarat: [2004 (4) SCALE 375] and Sakshi vs. Union of India: [2004 (6) SCALE 15]

⁵(2012) 4 SCC 516

a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. It has been further held that trial Courts may actively participate in the trial to elicit the truth and to protect the weak and innocent.

It is often argued that one of the ills that plague the criminal justice system is the inordinate delay that takes place in a trial and the deleterious effect it will have on the overall social and moral fabric of a society. The abstract notion of 'fair trial' that encompasses within its realm fairness not only to the accused person but also to the victim and the collective at large would be reduced to a nullity if any element, in that respect, is allowed to claim absolute predominance over the other. It will inevitably set the path for an anarchical disorder in the conducting of trial.

It is worth noting that a Constitution Bench of the Supreme Court in *Iqbal Singh Marwah vs. Meenakshi Marwah*⁷ (SCC p. 387, para 24), though in a different context, had also observed that delay in the prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. Also, in *Swaran Singh vs. State of Punjab*⁸, it was observed as under:

"It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to

get adjournments for one excuse or the other till a witness is worn over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

Further, in *State of U.P. vs. Shambu Nath Singh*⁹, wherein the apex Court while depreciating the practice of a Sessions Court adjourning a case in spite of the presence of the witnesses willing to be examined fully, opined thus:

"9. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

On the need for protection of witnesses from harassment on account of delays, following observations made in *Swaran Singh vs. State of Punjab*¹⁰ are appropriate:

"In the course of the trial, more

than 50 prosecution witnesses were given up having being worn over and the case hinged on the statement of seven witnesses which lead to the conviction of Shamsher Singh and Jagjit Singh by the trial court, and upheld by the High Court and now affirmed by this Court".

In the same case, Justice Wadhwa further observed:

"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required whether it is direct evidence or circumstantial evidence. Here are the witnesses who are harassed a lot. ... Not only that witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him"

The law maker's view:

The Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 lay down a comprehensive legal framework for recording evidence of witnesses in criminal cases.

A perusal of the provisions of the Code of Criminal Procedure and the Evidence Act discloses that the accused has a right of open trial and also a right to cross-examine the prosecution witnesses in open court. However, the same is not an absolute right of the accused person. It in this direction that the Supreme Court¹¹ has declared video-screening techniques can be employed and such a procedure would not amount to violation of his right for open trial. Moreover, the Code of Criminal Procedure contains provision for examination of witnesses in camera which can be invoked in cases of rape

and child abuse. Perhaps, there is, a need for extending the benefit of these provisions to other cases where witnesses are threatened.

The Law Commission while dealing with 'Protection and Facilities to Witnesses' in its 154th Report (1996), in Chapter X, referred to the 14th Report of the Law Commission and the Report of the National Police Commission and conceded that there was plenty of justification for the reluctance of witnesses to come forward to attend Court promptly in obedience to the summons. It recommended, inter alia, as follows:

"6. We recommend that the allowances payable to the witnesses for their attendance in courts should be fixed on a realistic basis and that payment should be effected through a simple procedure which would avoid delay and inconvenience. ... Adequate facilities should be provided in the court premises for their stay. The treatment afforded to them right from the stage of investigation upto the stage of conclusion of the trial should be in a fitting manner giving them due respect and removing all causes which contribute to any anguish on their part. Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality."

7. Listing of the cases should be done in such a way that the witnesses who are summoned are examined on the day they are summoned and adjournments should be avoided meticulously. ... The courts also should proceed with trial on day-to-day basis and the listing of the cases should be one those lines. The High Courts

⁶(1981) 3 SCC 191

⁷(2005) 4 SCC 370

⁸(2000) 5 SCC 668

⁹(2001) 5 SCC 667

¹⁰AIR 2000 SC 2017

¹¹PUCL vs. Union of India: [2003 (10) SCALE 967]

should issue necessary circulars to all the criminal courts giving guidelines for listing of cases."

Then in December 2001, the Law Commission in its 178th Report dealt with hostile witnesses and the precautions the police should take at the investigation stage in order to prevent fabrication by witnesses when they are later examined at the trial. It recommended three alternatives as follows:

"1. The insertion of sub-section (1A) in Section 164 of the Code of Criminal Procedure (as suggested in the 154th Report) so that the statements of material witnesses are recorded in the presence of Magistrates. [This would require the recruitment of a large number of Magistrates].

2. Introducing certain checks so that witnesses do not turn hostile, such as taking the signature of a witness on his police statement and sending it to an appropriate Magistrate and a senior police officer.

3. In all serious offences, punishable with ten or more years of imprisonment, the statement of important witnesses should be recorded, at the earliest, by a Magistrate under Section 164 of the Code of Criminal Procedure, 1973. For less serious offences, the second alternative (with some modifications) was found viable."

It may not be out of place to mention that on an analysis of the various recommendations of the Law Commission, it appears that the key issue of 'protection' and 'anonymity of witnesses', as also the procedure that has to be followed for balancing the rights of the witness, on the one hand, and the rights of the accused person to a fair trial, on the other, were not cogently addressed by it.

Role of the Courts:

In the infamous

Best Bakery case¹², Hon'ble the Supreme Court examined the need for a law on witness protection. It referred to the absence of a statute on the subject, and observed thus:

"No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of opinion that this petition (by NHRC) be treated to be one under Art. 32 of the Constitution of India as public interest litigation."

It was stated further by the Supreme Court in the PUCL case¹³ that the effort of the Court is to strike a balance between the right of the witness as to his life and liberty and the right of the community in the effective prosecution of persons guilty of heinous criminal offences on the one hand and the right of the accused to a fair trial, on the other. It observed:

"This is done by devising a mechanism or arrangement to preserve anonymity of the witness when there is an identifiable threat to the life or physical safety of the witness or others whereby the Court satisfies itself about the weight to be attached to the evidence of the witness. In some jurisdictions, an independent counsel has been appointed for the purpose to act as amicus curiae and after going through the deposition evidence assist the Court in forming an opinion about the weight of the evidence in a

given case or in appropriate cases to be cross-examined on the basis of the question formulated and given to him by either of the parties. Useful reference may be made in this context to the recommendation of the Law Commission of New Zealand."

While elaborating further the need for keeping the identity of the witness a secret, the Court (supra) observed:

"...It is not feasible for us to suggest the procedure that has to be adopted by the Special Courts for keeping the identity of witness secret."

Conclusion:

Law is but the means to an end which, in our context, is the inviolable quest for justice. Law cannot afford to remain stagnant but must respond to the increasing call of society in order to achieve that end. Critics lament that too much dependence on the maxim that "it is better that guilty persons go unpunished than one innocent person suffer" may result in criminal jurisprudence being a mockery if Courts voluntarily assimilate every hunch and every doubt which, by deliberate design of the accused, may tilt in his favour and result in only unwarranted acquittals. Perhaps, the observations of Justice R.C. Lahoti, J (as then he was) in *State of Rajasthan vs N.K. the accused* reported in (2000) 5 SCC 30, may be relevant:

"It is true the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. If the prosecution has succeeded in making out a convincing case for

recording a finding as to the accused being guilty, the court should not lean in favour of the acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females."

An effective witness protection program is the immediate need of the hour that will translate into meaningful participation of the State machinery, the police and the judiciary. The trial Courts must respond with humanity to the discomfort and fear with which a witness approaches the Court to testify in a case. The trial Court judge cannot afford to remain a mute spectator but evince not only cogent testimonies from him but also must inspire confidence in that witness. Lastly, it would only be a travesty of justice if in a society such as ours where Gandhiji's ideals of truth - Satyamev Jayate (truth only triumphs) still reside; the nefarious designs of few powerful people were to prevail over the righteousness of those who dared to testify the truth.

¹²2003 (9) SCALE 329

¹³2003 (10) SCALE 967

SOCIAL IMPLICATIONS OF THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT

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The basic understanding of the aim and objective of the Juvenile Justice (Care and Protection of Children) Act is conducive to the successful implementation of the Act itself. It is therefore necessary to understand that the very purpose of the Act is not to punish a child but to reform him in every way possible. The words 'Care' and 'Protection' confers the commitment of this Act to cater to the basic needs of children who are alleged and found to be in conflict with law through proper care, protection, development, treatment, social re-integration and by adopting child-friendly approach in the adjudication and disposal of matters in the best interest of these children and for their rehabilitation through processes provided and institutions and bodies established.

No man is born a criminal and many factors, such as family and society as a whole, contribute in making a person what he becomes to be. Similarly, the growth of a child, both physical and mental, is dependent upon how he is brought up and cared for right from the time of his birth. In almost all of the cases involving children-in-conflict-with-law, it is in fact the family and society that contribute directly or indirectly in the behaviour of such children. These children-in-conflict-with-law more often than not come from broken families or have abusive and violent parents or are academically weak and hence shunted by the society. Another common factor among these

children is the exposure to technology. Although this factor may appear to be that of positive in nature, unguided technology in the form of smart phones, tablets and such devices can cause irreparable damage to the mind of a child. In almost all cases of offences under the POCSO Act committed by a child-in-conflict-with-law, illicit videos viewed on smart phones is the main cause for the commission of such offence.

That being the case, the entire responsibility therefore rests on the society as a whole to determine the fate and future of our children and ensure a crime-free society. This responsibility is two-fold in nature; one which applies to children in general and one which applies to children-in-conflict-with-law. In the first case, the responsibility is that which is expected from every parent, teacher and those directly involved with a child to enhance the growth of that child in all aspects, including physical and mental growth, in the best possible way. It is the duty of the parents to provide for the material and spiritual welfare of their children and must never neglect to correct their faults as also the responsibility of teachers to impart right education and maintain a positive learning environment.

On the other hand, the responsibility in the second case is more burdensome. To care for a child-in-conflict-with-law is tricky and complicated because we tend to look at

that child as a criminal already which is against the very tenets of the Act itself. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake appropriate measures in case of a child alleged as, or accused of, violating any penal law, including treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth, reinforcing the child's respect for the human rights and fundamental freedom of others and taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. In this regard, to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection and also taking to consideration the standards prescribed in the Convention on the Rights of the Child, the Observation Homes Boys/Girls, Special Homes Boys/Girls and Children Homes at Mawkasiang were opened on 07th July, 2018 to give institutional service to the child-in-conflict-with-law and those in need of care and protection with the intention of securing the best interest of the child. The social rehabilitation of such child begins right from the stay of the child in the Home itself. It is the mandate of this Act for the Juvenile Justice Board to procure a Social Investigation Report (SIR) of the child through

Probation Officer or recognised voluntary organisation and take into consideration the findings of such report before passing an Order.

As a society, we must therefore make every effort to ensure that we inspire our children through our own exemplary life to become a good citizen of this country and a remarkable human being this world.

"Every child is born with the capacity to make positive contributions to society"

"Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and the citizens of tomorrow" – Pandit Jawaharlal Nehru

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