



ISSN - 2455-7242

ILI Newsletter

Quarterly Newsletter published by the Indian Law Institute
(Deemed University)

Accredited with 'A' Grade by NAAC
Granted Graded Autonomy (Grade II) by UGC

January - March, 2019

Volume
XXI
Issue-I

Editorial

The treatment of prisoners of war (POWs) has been an issue of concern for all those engaged in armed conflict for centuries. The rules protecting POWs were specifically, and for the first time, comprehensively identified and incorporated in the 1929 Geneva Convention. After the end of World War II, the 1929 Geneva Convention was subsumed under Geneva Convention III (GC III) of 1949. GC III incorporates an exhaustive list of rights for protection of POWs. This Convention defines POWs' rights and sets down detailed rules for their treatment and eventual release. GC III only applies during international armed conflicts; POWs are generally members of the armed forces of one of the parties in the conflict who fall into the hands of an adverse party. Generally, only persons recognised as combatants in accordance with international humanitarian law are entitled to POW status upon capture by adverse parties. However, GC III is also available to other categories of persons who have the right to POW status or may be treated as POWs. There are important distinctions between prisoners of war and terrorists. The members of armed forces respect the laws of war during the conflict and they are entitled to the rights and protections of POWs if captured by enemy forces. Terrorists violate fundamental international legal norms by targeting civilians for violence and are thus not entitled to protection under GC III, if captured. POWs cannot be prosecuted by the detaining power for taking part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. POWs must be released and repatriated without delay after the end of hostilities. POWs may be prosecuted for war crimes by the detaining power but not for acts of violence that are lawful under IHL.

Under GC III, POWs are the responsibility of the capturing power from the moment of capture, and not of the individual or military units, which actually capture them. POWs must at all times be humanely treated and the GC III provides clear rules in relation to their camps, quarters, food and clothing. The principles embodied in GC III provide a comprehensive framework for the protection of POWs. However, the single biggest challenge to IHL remains the implementation of the relevant principles.

Manoj Kumar Sinha

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SUBSCRIPTION RATES

Single Copy : Rs. 20.00

Annual : Rs. 70.00

The payment may be made by D.D./ Cheque in favour of the "Indian Law Institute, New Delhi" (For outstation cheques add Rs. 20.00 extra) and sent to :

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ACTIVITIES AT THE INSTITUTE

ILI-NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

1. Two Days Training Programme for Prison Officials on Human Rights: Issues and Challenges (January 19-20, 2019)

The Indian Law Institute in collaboration with the National Human Rights Commission organized Two Days Training Programme for Prison Officials on “Human Rights: Issues and Challenges” on January 19-20, 2019 at the Plenary Hall of the Institute. Hon'ble Mr. Justice Deepak Gupta, Judge, Supreme Court of India inaugurated the training programme and presided over the function. While delivering the inaugural address His Lordship emphasised on important issues of Human Rights of the prisoners and the need for the prison officials to be considerate towards the prisoners' rights.

Dr. Sanjay Dubey, Director, NHRC (Administration & Policy) also addressed the participants of the training programme and highlighted the need for increased sensitivity in the prison officials and the importance of the role of prison officials in the realisation of prisoners' rights. Professor (Dr.) Manoj Kumar Sinha, Director, ILI, while delivering the welcome address referred the landmark judgment delivered by Hon'ble Justice Deepak Gupta along with Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice S. Abdul Nazeer in *Re Inhuman conditions in 1382 prisons*.

The first day of the programme consisted of four interactive technical sessions on different themes namely:

- Initiatives of National Human Rights Commission in improving the conditions of Indian Prisons,
- National Policy on Prison Reforms and Correctional Administration,
- Treatment of Women Prisoners and Treatment of Their Accompanying Children *vis a vis* Human Rights,

- Rehabilitation and After Care Service of Juveniles and Youthful Offenders

The speakers included Professor (Dr.) Manoj Kumar Sinha, Director, The Indian law Institute, Dr. Sanjay Dubey, Director, (Administration & Policy) NHRC, Mr. Sunil Gupta, Former Law Officer, Tihar Jail, Ms. Anju Mangla, Assistant Commissioner, Department of Trade and Taxes, Mr. Amod K. Kanth, Former DGP & Chairperson, DCPCR/ General Secreatry, Prayas, Juvenile Aid Centre Society, Delhi.



Hon'ble Mr. Justice Deepak Gupta lighting the lamp at the inaugural session



Hon'ble Mr. Justice Deepak Gupta addressing the participants of the training programme

On the second day of the programme important topics like Protection of Human Rights of Juvenile in Remand Home, Correctional Home with special reference to new Juvenile Justice Act, Overcrowding of Prisons and under trial Prisoners, Gender Sensitization of Prison Officials and Corruption and Criminal Justice System: Rights of Prisoners were addressed by the speakers. Speakers included Mr.

Shashank Shekhar, Former Member, DCPCR, Mr. Sudhanshu Ranjan, DD News, Smt. Chhaya Sharma, DIG, NHRC, Mr. Amit Vashisht, RPFC-II, EPFO.

Mr. Suresh Chandra, Information Commissioner, Central Information Commission was the Chief Guest of the valedictory function. Shri Shreenibas Chandra Prusty, Registrar, ILI addressed the participants of the training programme and Dr. A.K. Verma, Deputy Registrar, ILI proposed the vote of thanks. Certificates of participation were distributed to the twenty seven participants of the training programme.



Participants of the training programme along with Director, Registrar, ILI

Two Days Training Programme for Judicial Officers on Human Rights: Issues and Challenges (February 23 - 24, 2019)

The Indian Law Institute in collaboration with the National Human Rights Commission organized Two Days Training Programme for Judicial Officers on "Human Rights: Issues and Challenges" on February 23-24, 2019 at the Plenary Hall of the Institute.

Shri Dilip Kumar, IAS, Joint Secretary, National Human Rights Commission inaugurated the training programme and presided over the function. While delivering the inaugural address Shri Dilip Kumar emphasised and discussed the role of judicial officers in the realisation of Human Rights. He further added that "Human rights represent the reflection of the rights essential for full realisation of human life and it's potential. However these would have no value in a society where the legal system cannot guarantee these rights and protect against their violations".

Shri Narinder Singh, Professor, Maharishi Law School Maharishi University, Delhi delivered the special address and Dr. T.S.N Sastry, Vice Chancellor Tamil Nadu Dr. Ambedkar Law University, Chennai also addressed the participants of the training programme. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

First day of the training programme consisted of five technical sessions on various themes of Human Rights. Professor (Dr.) M.P. Singh, Visiting Professor, NLU Delhi deliberated on 'Indian Constitution and Protection of Human Rights' and Dr. Anuragdeep, Associate Professor, Indian Law Institute, New Delhi spoke on 'Law of sedition in India and Human Rights Concerns' in the first and second sessions of the training programme. Professor S.N. Singh, Former Dean, Delhi University addressed the participants on 'Role of Judiciary in Protecting Rights of Children' and Mr. Amod Kanth, Former DGP & Chairperson, DCPCR/ General Secretary, Prayas Juvenile Aid Centre Society spoke on 'Role of Judiciary in Protecting Rights of Children' in third and fourth sessions respectively. The speaker for the last session was Dr. G.K. Goswami, IPS, Joint Director CBI who deliberated on 'Forensic Jurisprudence and Human Rights'.

Dr. Jyoti Dogra Sood, Associate Professor, Indian Law Institute, New Delhi delivered a lecture on 'Decoding the Juvenile Justice Act' and Ms. Geeta Luthra, Advocate spoke on 'Protection of Women from Domestic Violence and other atrocities: Facilitating Justice for Victims' on the second day of the training programme. Professor (Dr.) G.S. Bajpai, Professor and Registrar, National Law University Delhi addressed the participants on 'Right of Crime Victims' and Mr. P.K. Malhotra, Former Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India deliberated on 'Role of Judiciary in Protection of Human Rights with special reference to Right to Bail and speedy trial'.

Valedictory address was delivered by Mr. P.K. Malhotra, Former Secretary, Department of Legal

Affairs, Ministry of Law & Justice. Shri Shreenibas Chandra Prusty, Registrar, ILI addressed the participants of the training programme and Dr. A.K.Verma, Deputy Registrar, ILI proposed the vote of thanks. Thirty six judicial officers participated in the training programme and certificates of participation were distributed to them.



Inaugural session of the training programme



Technical sessions of the training programme



Participants to the training programme

3. Two Days Training Programme for Police Personnel on Police and Human Rights: Issues and Challenges (March 30 - 31, 2019)

The Indian Law Institute in collaboration with National Human Rights Commission organized a Two Days Training Programme for Police Personnel on "Police and Human Rights: Issues and Challenges" on March 30-31, 2019 at the Plenary Hall of the Institute.



Inaugural session of the training programme

The training programme was inaugurated by Dr. Alok Srivastava, IAS, Secretary, Department of Justice, Ministry of Law and Justice, Govt. of India. In his inaugural address Dr. Srivastava emphasized on the need to organize such training programme for police personals. Professor (Dr.) D.N. Jauhar, Former Vice Chancellor, Dr. Ambedkar University, Agra Dr. T.S.N. Sastry, Vice Chancellor, Dr. Ambedkar Law University, Chennai and Dr. Sanjay Dubey, Director (Administration & Policy), NHRC addressed the participants of the training programme. Professor (Dr.) Manoj Kumar Sinha, Director, ILI welcomed the participants of the training programme and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

The Two Days training programme consisted of eight technical sessions on various themes namely:

- The Role of NHRC in Protection of Human Rights,
- Human Rights and Police Investigation: Issues and Challenges,
- Human Rights, Terrorism, National Security and Role of Police,

- Role of Police Personnel in functioning of prison,
- Role of Police Officers in Investigating Cyber Crimes,
- Role of Police in implementing laws related to children,
- Constitutional Rights of Persons in Custody,
- Impact of Media during Police Investigation

Speakers of the technical sessions were Dr. Sanjay Dubey, Director (Administration & Policy Research), NHRC, Dr. G.K. Goswami, IPS, DIG, CBI Range, CBI Office, Lucknow, Mr. Amod K. Kanth, Former DGP and Chairperson, DCPCR/ General Secretary, Prayas Juvenile Aid Centre Society, Delhi, Mr. Sunil Gupta, Former Law Officer, Tihar Jail, Mr. Neeraj Aarora, Advocate-on-Record, Supreme Court of India, Mr. Vikram, I-thought, Noida, Dr. Anurag Deep, Associate Professor, Indian Law Institute and Mr. Sudhanshu Ranjan, DD News. In the valedictory session, certificates of participation were distributed to the forty nine participants of the training programme.

One Day International Seminar on Protection of Women and Children Rights: Issues & Challenges (January 12, 2019)

The Indian Law Institute in collaboration with the Rajiv Gandhi National University of Law Punjab, National Law University and Judicial Academy-Assam, Maharashtra National Law University-Nagpur, Maharashtra National Law University-Aurangabad, DCPCR, Govt of Delhi and Law Mantra organised a One Day International Seminar on “Protection of Women and Children Rights: Issues & Challenges” on January 12, 2019 at the ILI.



Inaugural session of the International seminar

The Seminar was inaugurated by Hon'ble Justice Pratibha M. Singh, Judge, High Court of Delhi in the presence of Professor (Dr.). P.S Jaiswal, Vice-Chancellor, RGNUL Patiala, Professor (Dr.) Manoj Kumar Sinha, Director, The Indian Law Institute, New Delhi, Professor (Dr.) Nishtha Jaswal, Vice-Chancellor, Himachal Pradesh University, Shimla, Professor (Dr.) Naresh Kumar Vats, Registrar, RGNUL, Punjab, Mr. Kishor Kumar Mishra, President, Law Mantra. The Valedictory address was delivered by Hon'ble Shri Suresh Prabhu, Minister of Civil Aviation & Minister of Commerce and Industry, Government of India, New Delhi through web in august presence of Shri Deepak Kumar, CEO, Central Adoption Resource Authority, GOI, New Delhi, Shri. Shreenibas Chandra Prusty, Registrar, The Indian Law Institute, New Delhi, Dr. Vijay Pratap Tiwari, Associate Professor of Law, MNLU, Nagpur, Ms Salona Lutchman, Senior Lecturer, Faculty of Law, University of Cape Town, South Africa. More than 250 Participants has participated and 166 papers were presented in 7 different technical session of the Seminar. Vote of thanks was given by Mr. Aditya Mishra, Managing Trustee of Law Mantra.

International Conference on Quality Control in Criminal Investigation (February 22 - 23, 2019)

The Indian Law Institute has continued its research co-operation with the Centre for International Law Research and Policy ('CILRAP'). In August 2017, the Institute hosted and co-organized with CILRAP an international conference on the 'Philosophical Foundations of International Criminal Law'. Eighteen months later, on February 22-23 2019, the Institute has again hosted and co-organized a conference, this time on 'Quality Control in Criminal Investigation'.



Inaugural session of the International Conference

This third leg of CILRAP's broadly-based 'Quality Control Project' concerns the phase that encompasses criminal investigation and case-preparation, that is, between the opening of criminal investigation and start of trial. As with the earlier legs of the wider project – called 'Quality Control in Fact-Finding' and 'Quality Control in Preliminary Examination' – the focus is on core international crimes, but it also includes perspectives from other fact-rich crime such as serious fraud and organised crime (human trafficking).

This third phase is characterised by, *inter alia*, the deployment of substantial resources (including for personnel, missions and evidence handling), interaction of different professional groups (primarily investigators, prosecutors, analysts and forensic experts), fact-centred work-processes, and the prospect of judicial scrutiny of the file. The project is premised on the assumption that all investigation and preparation of fact-rich criminal cases can improve its quality control. This is a common challenge both in international and national jurisdictions. It is a challenge of professionalization.

The concept note of the third phase (referred to as the 'Quality Control in Criminal Investigation Project' or just the 'QCCI Project') has been published as the policy brief 'Towards a Culture of Quality Control in Criminal Investigations' by CILRAP Director Morten Bergsmo, with input from many of the project participants named there. It analyses the substantive agenda of the project.

Apart from the CILRAP Director, the QCCI Project Team consists of Mr. Xabier Agirre (Head of Investigative Analysis Section, Office of the Prosecutor, International Criminal Court), Dr. Simon De Smet (Legal Officers, Chambers, International Criminal Court), and Professor Carsten Stahn (Leiden University), working together with Professor Manoj Kumar Sinha (Director, Indian Law Institute), who was the overall conference chair.

The QCCI Project zooms in on some systemic bottlenecks in relevant work-processes in criminal investigation and case-preparation, and asks whether

we can improve the way we work. These bottlenecks include a) the long duration and high cost of many investigations of core international crimes; b) loss of overview of information and potential evidence; c) lack of clear focus in the building of the case; d) vague formulation of criminal responsibility even after the organisation has in its possession enough potential evidence; e) use of cumulative charges as part of a related precautionary approach; f) excessively long exhibit and witness lists; and g) disclosure to the defence of voluminous materials not clearly related to a central hypothesis of criminal responsibility. The project asks whether work-processes can be developed further to reduce the negative impact of such challenges. It seeks unbiased analysis and new ideas – not boxed in by any one jurisdiction – on how we can work better.

The QCCI conference programme reveals a structured approach with five main parts. Part I concerns 'The Context of Quality Control in Investigations and Case Preparation'; Part II, 'Evidence and Analysis'; Part III, 'Systemic Challenges in Case-Preparatory Work-Processes'; Part IV, 'Investigation Plans as Instruments of Quality Control'; and Part V, 'Prosecutorial and Judicial Participation in Investigation and Case Preparation'. The QCCI Project is particularly concerned with whether the use of existing quality-control instruments such as investigation plans, draft indictments, indictments and pre-trial briefs can be developed, and whether they should be supplemented by additional instruments.

Professor Sinha introduced the main speakers, including 'Honble Mr. Justice Madan B. Lokur, former Judge of the Supreme Court of India who stressed on the fundamental importance of the conference topic, also from an Indian criminal justice perspective. Among the Indian speakers was Professor Usha Tandon who, together with Mr. Shreeyash Lalit, presented on the use of investigation plans in human trafficking cases. There were conference participants from the Indian military police, prosecution services and investigation agencies.



View from the technical session of the international conference

In his keynote presentation at the New Delhi conference, CILRAP Director Morten Bergsmo stressed the importance of developing a continuous knowledge-base at the centre of core international crimes cases that runs like a red line from preliminary examination until the end of trial. He observed that investigation plans are essential in all core international crimes cases that are so large that a team is required. He maintained that the investigation plan must be developed before the opening of an investigation, and that its adoption should be a requirement to open the investigation. He also argued that it is essential to keep an open mind about the use of information-technology to enhance factual analysis and quality-control in the management of case-preparation.

Conference on “A 3-D Perspective on Indian Intellectual Property Distinct, Diverse and Democratic?” (March 5, 2019)

The Indian Law Institute in collaboration with University of Pennsylvania Law School and IDIA organised a Conference on “A 3-D Perspective on Indian Intellectual Property Distinct, Diverse and Democratic?” on March 5, 2019 at the Plenary Hall of the Institute.



Professor (Dr.) Shamnad Basheer addressing the audience

Drawing on the attributes of section 3(d) of Indian IPR Law, the conference (conceptualized by University of Pennsylvania Law School and IDIA) looked into whether other provisions in Indian IP law (in particular, copyright law and plant variety protection law) reflected similar values: of distinctiveness, diversity and democracy. The Welcome Address was delivered by Professor Shyamkrishna Balganesh, Professor of Law, University of Pennsylvania Law School. Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, also welcomed the participants of the programme. The theme was introduced by Professor (Dr.) Shamnad Basheer, Bok Visiting Professor of Law, University of Pennsylvania Law School and Founder, IDIA.

The conference also brought together different stakeholders in the Indian IP ecosystem, including lawyers, industry representatives, civil society activists and policy makers.

Two days National Seminar on “100 years of ILO and Future of Work: Labour Policy and the Law” (March 13 - 14, 2019)

The National Labour Law Association and Indian Law Institute jointly organized two days National Seminar on “100 Years of ILO and Future of Work : Labour Policy and the Law” on March 13-14, 2019 at ILI.

The seminar was inaugurated by an esteemed panel of guests, the panel succinctly introduced the issues that were to be dealt and discussed in the following technical sessions of the seminar. Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, gave the welcome address to the gathering. In his inaugural address Professor Sinha highlighted the importance of celebrating 100 years of International Labour Organization and enumerated the organization's history and pointed out that most of the reasons for the establishment of ILO still exist as important issues for the labour market. This even after 100 years of grappling with those issues we have failed to completely overcome them. Further, he pointed out that ILO was the first specialised agency of the United Nations, established with the mandate of

promoting social justice *via* creation of a healthy and equity based work environment for all. And in this context ILO has been entrusted with one of the most important and complex responsibility.

The chief guest for the inaugural session was Hon'ble Mr. Justice Madan B. Lokur, Former Judge, Supreme Court of India. In his inaugural address His Lordship discussed about the different stages of labor law issues. That is first being before entering getting a job (in terms of skill development and access to opportunities), then while in the job (i.e. issues related equal remuneration for equal work, minimum wages, bonded labour, health benefits, safe working environment), and the stage after one is out of job (i.e. the issue of retirement benefits). While talking about safe working conditions Hon'ble Justice Lokur discussed the unsafe and unsanitary working conditions of manual scavengers and how the authorities have failed to effectively implement the ban on it. Moving further, Hon'ble Justice Lokur also discussed about the future of labor market in the wake of automation and the threat of joblessness looming large on vast section of labor force.



Participants of the Conference

Other panelists included Ms. Jyotika Kalra, Member, National Human Rights Commission (NHRC). Ms. Kalra emphasized the need for creating an equity based work environment for women in order to harness the full potential of other half of the society. She discussed the discrimination and sexual harassment faced by women at the workplace, which discourages women to enter the workforce. Drawing from Prof. Sinha's speech Ms. Kalra also highlighted

how even after 100 years women are still facing similar issues at the workplace.

Professor S.C. Srivastava, Secretary General, National Labour Law Association, New Delhi highlighted the various issues with Labour law and policy. Professor Srivastava drew on his vast experience in the field of labour law highlighted the issues involved in the future of work and labour law. He then referred to the initiatives taken by ILO. He also explained the topics pertaining to labour law reforms, Role of ILO on future of work, social security, Impact of technology on future of work scheduled to be dealt with in the technical sessions for the seminar.

The two-day seminar saw various luminaries in the field of labour law to discuss and deliberate different issues of labour law and labour policies. The panelists included a vast range of stakeholders of the labour law arena. It included speakers from the government, Trade Unions, Employers' Association ILO, academics, and practicing advocates. Together they discussed issues of health benefits, child labour legislations, and various issues surrounding labour laws and policies. Dr. A.K.Verma, Deputy Registrar was the Coordinator of the Seminar.

National Seminar on Children of Incarcerated Parents: Issues and Challenges (March 27, 2019)

The Indian Law Institute and Centre for Comparative Studies in Personal Laws, National Law University, Delhi jointly organized a National Seminar on Children of Incarcerated Parents: Issues and Challenges on March 27, 2019 at the Plenary Hall of the Institute.

The seminar aimed at highlighting different issues related to the "Children of Incarcerated Parents" from human rights perspective and our criminal justice system's initiative to resolve such issues. The half-day seminar consisted of two working sessions: Understanding the Impact of Parental Incarceration on Children and Existing Programs and Policy Effectiveness.



Ms. Jyotika Kalra, Member, NHRC inaugurating the seminar



View from the seminar

The seminar commenced with the introductory address by Director, ILI Professor (Dr.) Manoj Kumar Sinha, where he expressed his concern that the issues that arose in the year 1997 in the case of *Shri Rama Murthy v. State of Karnataka* [(1997) SCC (cri.) 386] are the same which arose in the year 2016 in *Re-Inhuman Conditions in 1382 prisons v. Director General of Prisons, State of Andhra Pradesh* [2016 (10) SCC 17] implying thereby that the problems such as overcrowding, delay in trial, torture, problems related to health and hygiene, etc. which existed almost thirty years back still persist. He further added that that the topic under discussion is a sensitive one and the same implores our attention. Professor (Dr.) Manoj Kumar Sinha mentioned that the topic at hand is a research topic of one of the Ph.D scholars of ILI and he encouraged other research scholars also to organise seminars on their respective topics.

Delivering the inaugural address Ms. Jyotika Kalra, Member, National Human Rights Commission, emphasised upon the miseries of 1,800 children languishing in various prisons along with their incarcerated mothers. She stressed upon the need for a mechanism to maintain a data of such children and of making the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 applicable to them. Touching upon the psychological aspect she said that our's is a society that believes in exclusion. This exclusion and stigmatisation in respect to the children of incarcerated parents, she added, needs to be addressed by spreading awareness.

Dr. Nimesh G. Desai, Director, Institute of Human Behaviour and Allied Sciences (IHBAS) began his special address by congratulating Director, ILI for taking an initiative for addressing the issues related to the children of incarcerated parents. He opined that the most vulnerable of this group were the children of incarcerated individuals who were between the age brackets of 7-18 years because there are no rules, laws and practices that provide for them. He emphasised over the problems of stigmatisation and labelling, parental deprivations, social problems, trans-generational transmission of trauma and lack of empirical research related to this group of children. He talked about a need for creating a right based framework for these children.

Dr. Mahesh Sharma, Chief Probation Officer, Delhi Police, in his address concentrated on the practical aspects related to the issue in hand, in respect to Delhi. He mentioned that during the proceedings of the PIL in the name of *Court On Its Own Motion v. Central Government Through Secretary, Ministry Of Social Justice And Empowerment & Ors* [W.P. (C) 1481/2015] that has been taken up by the Delhi High Court on its own motion in regards to the children of incarcerated parents, it was brought to the court's notice that even the Tihar Jail (largest complex of prisons in South Asia) had no data as to the number of such children. On court's directions such data was collected and it turned out that 749 children had their parents in Tihar Jail. Emphasising on this number he said that there is a need to address the issues of this

group universally. While concluding he urged that there is a need for further research to be conducted by Bureau of Police Research and Development (BPRD) on the plight of these children and especially on the community based correctional services which include non-custodial measures for offenders.

Ms. Sonali Bhattacharya, Assistant Professor, Tata Institute of Social Sciences, Mumbai began her address by extending a hearty welcome to the dignitaries and the august gathering. In her address she highlighted some of the issues which arose while conducting a field based study titled “Health Conditions of Prison Inmates (Women) & their Children Living in *Bacha Barrack* (Pregnant, Lactating and mother Inmates and their Children below 6 years)” in which she was a Fieldwork Supervisor. Restricting her finding to the *Bacha Barrack* in Byculla Prison, she pointed out the lacunas in the existing education system, health facilities, diet, living environment, etc. She concluded her address by enumerating various progressive laws, judgements and recommendations.

The first session on the theme “Understanding the Impact of Parental Incarceration on Children” was chaired by Dr. Mukul Raizada, Assistant Professor, NLU, Delhi and co-chaired by Ms. Sonali Bhattacharya, Assistant Professor, TISS, Mumbai. The speaker Mr. K.R. Raja, Psychiatric Counsellor and Social Worker, elaborated the plight of the children of incarcerated parents and emphasised upon the role our youth can play in empowering the nation. The session ended on a concluding note by Dr. Mukul Raizada, Assistant Professor, NLU, Delhi whereby he flagged certain issues which cropped up during the course of discussion. Five papers were presented in this session.

The second session on the theme “Existing Programs and Policy Effectiveness” was chaired by Professor Anju Tyagi, Executive Director, Centre for Comparative Studies in Personal Law, NLUD. The speaker Mr. Sunil Gupta, Ex. Law Officer, Tihar Jail elaborated the scheme introduced by the Delhi government for the children of incarcerated

individuals “Scheme for Financial Sustenance, Education & Welfare of Children, 2014”. He suggested that the scheme shall benefit the dependant parent's of the prisoners as well and also that it should be extended to the other states of the country. He added that a PIL (as mentioned above) for the same is pending before the Delhi High Court. Eleven papers were presented in this session.

The seminar concluded with a vote of thanks by Professor (Dr.) Anupama Goel, Research Director, Centre for Comparative Studies in Personal Law, NLUD and one of the coordinator of the seminar. She extended special gratitude to the host coordinator Dr. Anurag Deep, Associate Professor, ILI and to the assistant coordinators at the seminar: Mr. Siddharath Dahiya, Assistant Registrar, NLU, Delhi and Ms. Ira Rana, Ph.D Research Scholar, ILI.



Group photograph of the participants of the National Seminar

VAF (Voter Awareness Forum) Programme (January 24, 2019)

The Indian Law Institute organised a Voter Awareness Forum (VAF) Programme on January 24, 2019 for the Employees and students of ILI as per the directives of Election Commission of India.

Training Session on Mendeley: Reference Management Tool

The Indian Law Institute organised a Training Session of “Mendeley: Reference Management Tool” for the

active researchers to understand the research management tools on January 29, 2019 at the ILI.

SPECIAL LECTURES

- ILI hosted a talk on “International Commercial and Transport Law” by Dr. Tabettha Kurtz-Shefford, Swansea University, U.K on January 21, 2019 at the ILI
- Prof. Thomas E. Nanney, University of Missouri, Kansas City delivered a Special Lecture on “Islamic Law” on January 22, 2019 at the ILI.
- Mr. P. K. Malhotra, Secretary General, International Centre for Alternative Dispute Resolution, Former Law Secretary delivered a Special Lecture on the topic “Indian Arbitration Law” on February 01, 2019 at the ILI.
- Prof. Meera Furtado, Head of Law & Social Sciences, University of Sussex, ISC, London, UK & Secretary General, Common Wealth Legal Education Association delivered a Special Lecture on the topic “Impact of Brexit in EU & UK” on February 19, 2019 at the ILI.
- Professor Emeritus, Dr. Virendra Kumar delivered a Special Lecture on the topic “Dynamics of the Right to Privacy Its Characterization under the Indian Constitution” A Juridical Critique of the 9 Judge Bench Judgements in Justice K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1 on February 25, 2019 at the ILI.

COMMITTEE MEETINGS

Building Committee

Building Committee meeting was held on February 15, 2019 under the chairmanship of Hon'ble Mr. Justice Arun Mishra, Judge Supreme Court of India.

BOS & IQAC Committee

BOS (Board of Studies) and IQAC (Internal Quality Assurance Cell) Committee meetings were held on

March 29, 2019 under the chairmanship of Professor (Dr.) Manoj Kumar Sinha, Director, ILI.

EXAMINATIONS

- Result for the LLM (1 year) First Semester examinations was declared on February 28, 2019.
- Ph.D degree was awarded to Gauri V.Nayak on February 28, 2019.

LIBRARY

- The Indian Law Institute procured and installed the Assistive Device- Magic Large Print keyboard for the Visually Impaired. This is a black keyboard with large print white letters to help low vision persons.
- The Indian Law Institute procured and made accessible URKUND: Anti Plagiarism Software.
- Library added 36 Books on Cyber law, Labour law, Corporate Law, Criminal Law, Administrative Law, Constitutional Law and Research Methodology to enrich the library collections.

STAFF MATTERS

Dr. A. K. Verma, Deputy Registrar, ILI and Mr. Ashish Bawa, Chief Accountant, ILI participated in the “National Workshop on Management of University Administration – A Training Programme for University Administrators” held at Tezpur University, Assam from February 6-8, 2019.

Ms. Gunjan Jain, Assistant Librarian, ILI participated in UGC- Sponsored Short Term Course on MOOCs, E-Content Development and Open Educational Resource from CPDHE (UGC- HRDC), University of Delhi, Delhi from March 13 to 19, 2019. She also presented a paper titled *Academic Library Portal: A Gateway for Modern Age Libraries* in the International Conference on “Intellectual

Property Rights: Digital Transformation” held on March 27-29, 2019, at Multipurpose Hall, Sanskruti Bhavan, Directorate of Art & Culture, Patto, Panaji, Goa.

Ms. Sonam Singh, Library Superintendent, ILI, participated in 6th International Conference of Asian Special Libraries (ICoASL 2019) on 'Libraries and Librarianship in Digital Plus Era', jointly organized by SLA Asian Chapter, Institute of Economic Growth, Delhi, Ambedkar University, Delhi and Society for Library Professionals, Delhi on February 14-16, 2019.

Mr. Ambuj Kumar Saxena, Technical Assistant, ILI, attended a one day workshop on Data Capture Format (DCF) and Teacher Information Format (TIF) at Galib Hall, Scope Complex, Lodhi Road, New Delhi on February 8, 2019.

RESEARCH PUBLICATIONS

Released Publications

- ❖ *Journal of the Indian Law Institute (JILI)* Vol 60 (4) (October- December, 2018)
- ❖ *ILI Newsletter* Vol XX, Issue IV (October- December, 2018)
- ❖ *ILI Law Review*, (Winter)

Forth Coming Publications

- ❖ *Journal of the Indian Law Institute (JILI)* Vol 61 (1) (January- March, 2019)
- ❖ The book titled “Bail: Law and Practices in India” edited by Professor Manoj Kumar Sinha & Dr. Anuragdeep
- ❖ The book titled “Dispelling Rhetorics: Law of Divorce and Gender Inequality” in Islam edited by Professor Manoj Kumar Sinha & Professor Furqan Ahmad
- ❖ *ILI Law Review* (Summer)

E - LEARNING COURSES

Online Certificate on Cyber Law & Intellectual Property Rights Law

E-Learning Certificate Courses of three months duration on “**Cyber Law**” (32nd batch) and “**Intellectual Property Rights and IT in the Internet Age**” (43rd batch) was started from January 21, 2019.

66 students were enrolled for the 32nd batch of Online Certificate Course in Cyber Law and 58 students were enrolled for the 43rd batch of Online Certificate Course in IPR.

VISITS TO THE INSTITUTE

- 48 Students from Swami Shukdevanand Law College, Shahjahanpur, UP visited the Institute on January 7, 2019.
- Dignitaries from University of Hong Kong visited the Institute on January 24, 2019.
- 33 students of IMS Law College, Noida visited the Institute on January 29, 2019.
- 101 students from Mulund College of Commerce, Mumbai visited the Institute on January 30, 2019.
- 95 students from Indian Institute of Legal Studies, Dagapur, Siliguri, Darjeeling, WB visited the Institute on February 7, 2019.
- 50 students from Modern College of Law, Mohan Nagar, Ghaziabad visited the Institute on February 27, 2019.
- Students from Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal visited the Institute on March 7, 2019.
- Students from Institute of Legal Studies and Research GLA University, Mathura, Uttar Pradesh visited the Institute on March 7, 2019

- 61 Students from Jitendra Chauhan College of Law, Mumbai visited the Institute on March 26, 2019

FORTHCOMING EVENTS

ILI will host a workshop on “Methodology of Muslim Law Reform and the Role of Islamic Jurist” on May 1, 2019.

FACULTY NEWS

Manoj Kumar Sinha, Director, ILI delivered a talk to participants of Faculty Development Programme (FDP) on “Research Methodology” organised by UPES, Dehradun on January 21, 2019.

Delivered a key note address in the International Conference on 'Comparative Constitutional Law: India and Australia' jointly organised by Amity Law School & University of Adelaide, Noida on February 14, 2019.

Invited to address the participants of R. Gogna Memorial Lecture on “Law, Society and Collective Consciousness” at ILI, New Delhi, on February 15, 2019.

Invited to deliver a talk on “Emerging Issues in IPR Related Disputes” to judicial officers of Bangladesh, organised by Himachal Judicial Academy, Shimla on February 26, 2019.

Delivered a lecture on “Research Methodology” to LL.M and Ph.D. students of National Law School, Himachal Pradesh, Shimla on February 26, 2019.

Delivered couple of lectures on “Research Methodology” to Ph.D. students of Maharashtra National Law School, Nagpur, February 27, 2019.

Delivered welcome address in one day conference on “A 3-D Perspective on India and Intellectual Property” organised by IDIA, University of Pennsylvania law School and Indian Law Institute, New Delhi on March 5, 2019.

Delivered a lecture on the “United Nations and Human Rights” to students of Ansal University, Gurugram on March 6, 2019.

Invited to address in the Valedictory function of a National Seminar cum Workshop on the occasion of International Women's Day” organised by Citizen's Rights Trust, New Delhi on March 7, 2019.

Invited as Chief Guest in the Inaugural function of one day training programme on Human Rights, organised by Swami Vivekanand Subharti University, Meerut on March 7, 2019.

Invited to Judge the Semi final round of the 18th Amity National Moot Court Competition, organised by Amity Law School, Noida on March 10, 2019.

Delivered a special address in two days Symposium on “Constitutional Law” jointly organised by NLIU, Bhopal and India Foundation on March 16, 2019.

Furqan Ahmad, Professor, ILI delivered Lecture on Methodology of Law Reform under Islamic Law in Department of Law, Prestige Institute of Management and Research, Indore on March 9, 2019. He also represented ILI in National Teachers Training Program organized by NALSAR held on Saturday, March 16 & Sunday, March 17, 2019.

Anurag Deep, Associate Professor, ILI on invitation delivered a lecture as a resource person on 'Rule of law' on January 16, 2019 at Haryana Institute of Public Administration, Gurugram. He also delivered lectures on 'Human rights and National Security Concerns' at UGC-HRDC, BHU Refresher Course in Human rights and Law' on January 27, 2019 and HRDC (Academic Staff College), JNU, New Delhi on 'Rule of law and the Supreme Court' on February 6, 2019. He has delivered a lecture on 'Deconstructing Criminal Law – Recent Developments on section 377 and 497 of IPC' on February 28 and March 1, 2019 at Faculty of Law, Nirma University, Ahmadabad. He also co-ordinated a National Seminar on “Children of Incarcerated Parents” on March 27, 2019 at the Indian Law Institute.

Jyoti Dogra Sood, Associate Professor, ILI was invited to chair a technical session in One day National Seminar on Law and Socio-Economic Transformation by Department of Laws, Punjab University on February 16, 2019.

She delivered a lecture on the topic "Decoding the Juvenile Justice Act" to District Judges and Judicial Officers in a Two days training programme organized by National Human Rights Commission in collaboration with the Indian Law Institute on February 23, 2019.

She also gave an overview of the International and Domestic Laws regarding Children to the newly appointed Chairpersons and members of Child Welfare Committees and member social worker, JJBs in a training programme conducted by Delhi Judicial Academy on March 16, 2019.

LEGISLATIVE TRENDS

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (AMENDMENT) ACT, 2019

(Act No.1 of 2019)

The Act was introduced to amend the Right of Children to Free and Compulsory Education Act, 2009. Under the amended act no student can be detained up to class 8th under current provisions of the Act. As per the amendment, it would be left to the States to decide whether to continue the no-detention policy.

NATIONAL COUNCIL FOR TEACHER EDUCATION (AMENDMENT) ACT, 2019

(Act No.2 of 2019)

The National Council for Teacher Education (Amendment) Act, 2019 amended the National Council for Teacher Education Act, 1993. The amended act retrospectively grant recognition to certain institutions running teacher education courses as well as grant retrospective permission to start new courses.

THE CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019

(Act No.3 of 2019)

The Constitution (One Hundred and Third Amendment) Act, 2019, introduces 10% reservation for economically weaker sections of society for admission to Central Government-run educational institutions and private educational institutions (except for minority educational institutions), and for employment in Central Government jobs. The Amendment does not make such reservations mandatory in State Government-run educational institutions or State Government jobs. However, some states have chosen to implement the 10% reservation for economically weaker sections.

THE PERSONAL LAWS (AMENDMENT) ACT, 2019

(Act No.6 of 2019)

The act amended the Divorce Act, 1869, the Dissolution of Muslim Marriages Act, 1939, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956. The Act seeks to remove leprosy as a ground for divorce in these five personal laws.

LEGAL JOTTINGS

Legitimate expectation is not a wish or desire that can be demanded as a right

The Supreme Court in an appeal against Patna High Court's order in which the State of Bihar was directed to provide financial assistance for payment of the arrears as well as current pension to the employees of the Anugraha Narayan Sinha Institute of Social Studies, Patna held that Legitimate expectation is not a wish or desire that can be demanded as a right.

The provision in question was Section 8(1) Anugraha Narayan Sinha Institute of Social Studies Act, 1964 which provides that the State Government is to contribute a sum of rupees two lacs in each financial year or such other sums for research or education

work, publication, buildings and for proper maintenance and development of the Institute. It was argued before the Court that the State Government had been releasing Grant-in-aid including amount towards pension since the Board has passed the resolution in the year 1985. Hence, the contribution towards the amount of pension has created legitimate expectation of the employees of the Institute that they are entitled to pension at par with the employees of Patna University. Thus, the employees have legitimate expectations of receipt of pension from the State Government. Therefore, the order passed by the Division Bench of the High Court does not call for any interference.

The Court, however, disagreed with the said stand and explained the provision by stating:

“Sub-Section (1) of Section 8 of the Act mandates the State Government to contribute a sum of rupees two lacs in each financial year for the maintenance of the Institute, whereas, sub-Section (2) empowers the State Government to contribute from time to time, such additional sums as it may deem fit for special items of research or education work, publication, buildings and for proper maintenance and development of the Institute. Such payment for the special projects, is in discretion of the State Government in view of the object for which the grant is to be disbursed, but sub-Section (2) does not include disbursement of the amount of pension as the contribution is for limited purpose which is not recurring in nature.”

The Bench said that the resolution of the Board of the Institute to implement a retirement benefit scheme from its own resources will not bind the State Government to pay the amount of pension to the employees of the Institute. The employees of such Institute cannot be treated at par with the employees of the State Government nor can the State be burdened with the responsibility to pay pension to the employees of the Institute. Stating that the payment of pension in the past will not confer an enforceable right in favor of the Institute or its employees, the Court

held that the order of the High Court was not legally sustainable.

(*State of Bihar v. Dr. Sachindra Narayan*, 2019 SCC On Line SC 108, decided on January 30, 2019)

Principle of confidentiality in mediation does not apply to matters of child custody

The apex court on the issue relating to custody of a child where the question was as to whether the Counselor's report furnished in the course of mediation proceedings or the Mediator's report in case of mediation, when the process fails, can be used by either of the parties during trial, the bench of Abhay Manohar Sapre and UU Lalit, JJ held:

“Complete adherence to confidentiality would absolutely be correct in normal matters where the role of the court is purely of an adjudicator. But such an approach may not essentially be conducive when the court is called upon and expected to discharge its role in the capacity as *parens patriae* and is concerned with the welfare of a child.”

On general rule of confidentiality in Mediation:

It is true that the process of mediation is founded on the element of confidentiality. In the process, the parties may make statements which they otherwise they would not have made while the matter was pending adjudication before a court of law. Such statements which are essentially made in order to see if there could be a settlement ought not to be used against the maker of such statements in case at a later point the attempts at mediation completely fail. If the statements are allowed to be used at subsequent stages, the element of confidence which is essential for healthy mediation/conciliation would be completely lost. On exception in issue relating to custody of a child:

The Court said that in order to reach correct conclusion, the court may interview the child or may depend upon the analysis of an expert who may spend

some more time with the child and gauge the upbringing, personality, desires or mental frame of the child and render assistance to the court. It is precisely for this reason that the element of confidentiality which is otherwise the basic foundation of mediation/conciliation, to a certain extent, is departed from in Sub-Rule (viii) of Rule 8 of the Family Court Rules.

Statements made by the parents during the course of mediation may not be relied upon on the ground of confidentiality but natural responses and statements made by the minor to the Counselor would certainly afford a chance to decide what is in the best interest of the child as a child may respond naturally and spontaneously in its interactions with the Counselor, who is professionally trained to make the child feel comfortable. Stating that record of such interaction may afford valuable inputs to the Court in discharge of its duties in *parens patriae* jurisdiction, the Court said:

“The intention is clear that the normal principle of confidentiality will not apply in matters concerning custody or guardianship issues and the Court, in the best interest of the child, must be equipped with all the material touching upon relevant issues in order to render complete justice.”

(*Perry Kansagra v. Smriti Madan Kansagra*, 2019 SCC On Line SC 211, decided on February 15, 2019)

CASE COMMENTS

Indian Hotel and Restaurant Association (AHAR) v. The State of Maharashtra

AIR 2019 SC 589

Decided on January 17, 2019

In this case the Court heard three writ petitions together because similar issues and prayers were raised in all three petitions. These writ petitions were filed for issuance of an appropriate Writ for declaring section 33A inserted by way of an amendment to

Maharashtra Police (Second Amendment) Act 2014, unconstitutional. According to the provisions of Section 33 of the Maharashtra Police Act, 1951, the Commissioner of Police has been conferred with the power to frame Rules. The Commissioner of Police can frame Rules for not only licensing and controlling places of public amusement and entertainment but also for taking necessary steps to prevent inconvenience etc. to residents or passers-by or for maintaining public safety and for taking necessary steps in the interests of public order, decency and morality.

These petitions challenged certain provisions of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and also the Rules framed thereunder being the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Rules, 2016, which, as the Petitioners submitted, violate the fundamental Rights of the Petitioners guaranteed under Articles 14, 15, 19(1)(a), 19(1)(g) and 21 of the Constitution of India.

The Government decision to ban dance performances in bars state-wide dates back to August 2005, and prohibited 'any type of dancing' in an "eating house, permit room or beer bar", but made an exception for dance performances in three star hotels and above, and other elite establishments. The State justified the ban by asserting that bar dancing corrupts morals, fuels trafficking and prostitution, and causes exploitation of women bar dancers. Due to the ban, 75,000 women workers became unemployed. On July 16th, 2013, the Supreme Court, in a landmark decision in *State of Maharashtra & Anr. v. Indian Hotel and Restaurants Association & Ors*, (2013) 8 SCC 519, upheld the rights of bar dancers. The judgment affirmed the Bombay High Court decision which found that the prohibition on dancing violated the right to carry on one's profession/occupation under Article 19(1)(g) of the Constitution, and that banning dances in some establishments while

allowing them in others infringed upon the right to equality under Article 14 of the Constitution. The Court in this case held that the section 33A, which was inserted by amending Maharashtra Police act in 2014, was found to be violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution. The Court, when dealing with the morality issue, observed that standards of morality in a society change with the passage of time. A particular activity which was immoral a few decades ago may not be so now. The dance performances, in dignified forms, are socially acceptable; however obscenity is treated as immoral. The Court stated that the State can pass a law prohibiting obscene dances. However, a practice which may not be immoral by societal standards cannot be imposed on the society as immoral by the State within its own notion of morality. The Court also examined another condition which stipulates that the place where the dance is to be performed shall be at least 1 km away from educational and religious institutions. In this regard the Court agreed with the contention of petitioners that such a condition does not take into account ground realities, particularly in the city of Mumbai where it would be difficult to find any place which is 1 km away from either an educational institution or a religious institution. The Court agreed with petitioners that it will be difficult to satisfy this condition in Mumbai, thus no licence would be granted. The Court held this condition is arbitrary and unreasonable and is quashed, with liberty to the state to prescribe a reasonable and workable distance from educational and religious institutions. The Court did not find anything wrong about the prescribed timing of dance performances between 6 pm and 11.30 pm. The Court found that the installation of CCTV camera would amount to invasion of privacy of individual, thus violative of Articles 14, 19(1)(a) and 21 of the Indian constitution. The Court quashed those provisions of the Act and Rules which were found unreasonable and unconstitutional and directed that grant of licence shall be considered objectively by the State government.

This decision, in particular, elevates the constitutional rights to carry on any profession or occupation, and to equality. It also addresses the issue of women's empowerment. The judgment will have huge impacts on hundreds of institutions and thousands of women working as dancers. The Supreme Court upheld the fundamental rights of women workers, and stood for women's empowerment in the face of the government's paternalism and moral policing. This case is also important because the Court largely takes a very active role in protecting and enforcing economic and social rights in India.

Manoj Kumar Sinha

Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.

2019 (3) SCALE 721

Decided on February 18, 2019

Sterlite Industries (India) Ltd. / Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. For its operation the necessary clearance was granted by Tamil Nadu Pollution Control Board along with other requirement such as environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change MoEF. However, the environmental clearances that were granted were challenged before the Madras High Court in various Writ Petitions. On 19.04.2005, the Tamil Nadu Pollution Control Board issued consent to operate, subject to fulfilment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a

show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT on 31.05.2013, allowing the respondent to commence production subject to certain conditions.

Against this, the TNPCB filed Civil Appeal Nos.4763-4764 of 2013, which was disposed of by the Apex court in this judgment. On 08.08.2013, the NGT also set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed before the Apex Court, which again was disposed of by this judgment. Appellants i.e. Tamil Nadu Pollution Control Board herein raised the issue of maintainability of the respondent's appeal before the NGT. The Apex Court set aside NGT order permitting the reopening of Vedanta's Sterlite plant in Tamil Nadu's Tuticorin. The Apex court allowed Tamil Nadu's appeal on the ground of maintainability and said that NGT has no jurisdiction to order reopening of the plant. Court examined various provisions of the environmental legislations such as Air (Prevention and Control of Pollution) Act, 1981; The Water (Prevention and Control of Pollution) Act, 1974; The *National Green Tribunal Act*, 2010 in the instant case. Examining the application of section 16 of the NGT Act the court maintained that:

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act.

On the power of judicial review of NGT *vis-à-vis* judicial review of the High Court the Apex court stated that:

“..it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional

powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction...”

The court further referred to the Gajendragadkar, C.J., in *Re: Special Reference*, (1965) wherein the Judge underlined the distinction between the superior court of Record and Court of limited jurisdiction has stated that:

“We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. “*Prima facie*”, says Halsbury, “no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [Halsbury's *Laws of England*, vol. 9, p. 349]”.

The Apex Court relying on the aforementioned argument and as expounded by Gajendragadkar C.J. stated that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be “judicially reviewed” by the NGT. The Court further stated that following the judgment in *Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.*, (2014) 3 SCC 222; the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Overall, this judgment by the Supreme Court has come as a big victory for the Government of

Tamil Nadu. It is pertinent to mention that the Sterlite Plant has always found itself struggling with the compliance issue as has been consistently flagged by the TNPCB. It is truism that any Industry cannot disregard the environmental concern under the garb of 'development'. The recent violent turn of event at Tuticorin do underline the risk posed to the public when the environmental concerns are relegated.

Supreme Court by setting aside Green Tribunal order has set the stage for further action which would be seen in Madras High Court later this year. It can be said that the fate of reopening of plant hinges on the decision by the Madras High Court. In the instant case Vedanta Group has been given liberty to move Madras High Court with the plea for expeditious reopening of plant. Till then the future of Sterlite plant remains uncertain. NGT by its order on December 15, 2018 has certainly raised eyebrows. This as per environmentalists doesn't augur well for the cause of environmental protection. To be fair, any decision on environment vis-à-vis development is always going to be tough one. In this instant case 'copper' being an important metal is required by many industrial sectors including defense. That being said the alleged contamination of ground water and related pollution resulting in debilitating health and irreparable damage caused by the irresponsible industry cannot be condoned. The time will tell if there could be plausible answer to the problem. The Supreme Court ruling in the instant case has been prudent.

Furqan Ahmad

GN Saibaba v. State of Maharashtra

MANU/MH/0702/2019

Decided on March 25, 2019

G.N Saibaba, a specially challenged teaching faculty in the University of Delhi, was arrested by the police on various serious charges under UAPA 1967. The trial court found evidence of his intentional support to a banned and extremely violent organisation. The court found that he was an active member of a banned organisation and his conduct provided real help in the

diabolical designs of naxal violence. This banned organisation strongly believes in revolution by blood and gun. Therefore, a trial Court in Nagpur convicted him under various provisions of UAPA 1967 and the Indian Penal Code in March 2019. Under section 379 of CrPC 1973, he applied for stay on conviction and release on bail on medical grounds and on merit. The bail application was rejected by the High Court of Bombay on both grounds. This comment is limited to a study of medical grounds which were as under:

(i) The prisoner has medical history. He suffers from many chronic diseases that are progressive and expanding in nature. He needs consistent monitoring and daily medical attention which is not possible inside prison. (ii) He be allowed to keep his medicines in his possession; (iii) He should be treated with best health professionals; (iv) He needs daily physiotherapy (v) The line of medical treatment and follow up be decided by doctors of his choice, (vi) His wife be allowed to go with him to hospital and doctors.

Regarding access to medicine of prisoner, the prison officials admitted that the all prescribed tablets are kept with the prison officials and it was administered to the patient as prescribed. The prisoners cannot be allowed to keep medicines because of real possibilities of misuse of medicines which might be fatal to the prisoner. Regarding access to quality health services for prisoners, the High Court found that jail hospital at Nagpur Central Prison has sufficient medical and para-medical staffs. Everyday 15-16 patients are referred to Government Medical College and Hospital (GMCH). Patients are also treated at Super Speciality Hospital (SSH). On the advice of Doctors, prisoners are also sent in JJ Hospital, Mumbai, KEM Hospital, Mumbai, TATA Memorial Hospital, Mumbai, etc. In other words the prison administration ensures access to expert doctors and access to quality medical facilities.

Whether these facilities were made available to GN Saibaba or not was a crucial question. Though patients are treated in the OPD of the prison hospital, GN Saibaba was treated in his barrack, when

required. Two attendants (inmates) accompanied him day and night in his barrack, to attend him for daily needs, medicines and communicate any trouble to GN Saibaba. From March 7, 2017 to March 27, 2018 the prisoner has been examined on 84 occasions, *i.e* 7 days in each month. The advice of the Doctors of Rockland Hospital, Delhi where he was admitted prior to conviction, was properly followed and necessary follow up was done by prison officials. Doctors of Central Prison were available when required including on emergency. The prisoner was referred to Government Medical College and Hospital. He was also produced in Super Speciality Hospital, Nagpur whenever advised.

The prosecution was able to establish with records and specific dates that the prisoner was taken to Cardiology Department, Neurology Department in Super Speciality Hospital, Nagpur and Orthopaedics Department in Government Medical College and Hospital, Nagpur whenever needed. In addition Chief Medical Officer and Medical Officer attached to Prison conducted regular check ups and treatment. The prison officials admitted that the prisoner, Saibaba was not shifted to any other reputed hospital like J.J. Hospital, Mumbai because no Medical Officer advised to shift the applicant at any point of time. The physiotherapy treatment on daily basis was available in Government Medical College and Hospital and is given to applicant at the said Hospital as and when required. He was provided regular diet, as well as special diet.

Non cooperation

The prisoner Saibaba was non-cooperative in his approach. On more than four occasions he refused to go for his pre arranged appointments in hospital for investigation or tests or consulting doctors. The court declined to go into details of his refusal for medical treatments which may be due to some genuine reasons since Saibaba is an old man. Old persons with serious disabilities are sometime tough to understand and are volatile in their decisions. Had Court made some effort to find reasons, and to write in the judgement, it could have been a more sensitive judicial process.

However, the court has exhibited ample sensitivity at least on three points. On the demand of prisoner, the court allowed his wife to be with him to decide on the nature of medical treatment including surgery and ensured that she and her lawyer be intimated in advance. He was also allowed to be examined by three doctors of his choice. Only one of the three Doctors turned up. Court also made available all medical records right from his arrest so that correct medical treatment may be discussed. According to media reports, the prisoner, GN Saibaba was examined on Dec 26, 2018 as scheduled but only one doctor turned up instead to three. His wife alleged that certain tests were not available at the Hospital. According to Bombay High Court, the prison authority had given due care and medical treatment to the prisoner, when required. There was nothing brought on record that treatment required to applicant was not available in any of these Government Hospitals, though the wife of prisoner (in a media report) as well as prisoner (in a letter) contradicted this claim. Despite such contradiction the prisoner failed to convince his case and the High Court rejected the application of section 389 of CrPC 1973.

Significance of this case lies in the fact that this case found headlines of the news papers and was subjected to severe criticism. A group of media and intellectuals have projected as if the State and judicial process was apparently insensitive and biased. Those who criticised the decision have tried to get the sympathy of public by arguing that GN Saibaba, a 90% handicap person is not being given his medicines in prison and he is not being given essential medical treatment. However, complete facts present a different picture that the rejection of bail application was a well reasoned decision. It is duty of intellectuals and media to criticise the State action and judicial decision but such criticism must be fair and constructive criticism. If the criticism and dissent is selective, they will lose credibility and confidence of common mass which will weaken human rights movement.

Anurag Deep

Union of India v. Ankur Gupta

2019 SCC Online SC 262

Decided on February 25, 2019

The instant case is an appeal by the Union of India and Central Adoption and Resource Agency (CARA), Ministry of Women and Child Development, questioning the division bench judgment. The facts reveal that Ankur Gupta the respondent had migrated to the USA in 2000 and got married there in 2006. He along with his wife (who had been granted American citizenship) returned to India in 2016. They decided to adopt a child in India and submitted an application as Indian Prospective Adoptive Parents on July 19, 2016. They had mentioned in the application that the wife had acquired citizenship of USA.

As per the set procedure mentioned in Guidelines 2015, a Home Study Report had to be prepared. The same was done by Shishu Mandir Agency—a registered special Adoption Agency. Having completed this formality, the parents were put in a queue awaiting referral of a child for adoption. While they were waiting for referral of a child for adoption Ankur Gupta was also granted US Citizenship on December 5, 2016. The couple informed CARA about the latest development. The couple on November 5, 2017 as per advice of CARA, registered as Overseas Citizens of India (OCI) residing in India according to Guidelines 2017, which had come into force by then. A request was put by Ankur Gupta and wife that the seniority for adoption of a child should be continued on the basis of first registration and they were informed that it would be considered with the approval of competent authority, however, the eligibility of the couple for adoption would be in the category of “OCI living in India”.

Baby Shomya was born on September 30, 2017 and was referred to this couple for adoption on January 1, 2018. They visited the baby and since they were anxious that the referral might expire, kept up correspondence for follow up and again met Baby Shomya in March. During the visit they were given the heart breaking news that their request for treating

their case on the basis of first registration was held invalid because of the change of status. They were informed that they would have to wait for another referral.

The couple filed writ petition impugning the above decision. The writ court quashed the aforesaid decision and a further order was given to deal with the first application expeditiously but within 15 days from the receipt of the order. Union of India and CARA filed a writ appeal against the judgment. The division bench affirmed the order of the single judge. The matter finally came before the apex court in appeal, where the order of the single judge and division bench was set aside and it was directed that the competent authority notify the child Shomya legally free for adoption. And in the event “that with sixty days from the date the child (Shomya) is declared as legally free for adoption is not taken by or adopted by Indian Prospective parents, the child Shomya shall be given in adoption to the respondent Nos. 1 and 2 in inter-country adoption.”

What is bizarre about the case is that the very agencies which have the best interest of the child as a paramount consideration perhaps forgot all about and got embroiled in legal technicalities. This is not to undermine the importance of provisions of the Juvenile Justice Act and the concomitant guidelines thereof but one must keep in perspective that all these provisions were made keeping in mind that the child's well being is adequately assured. Given the peculiarity of this case, it should have been kept in mind that procedural law is just handmaid of justice and should not taken entire stage ignoring all other aspects. The parents having a referral visited Baby Shomya and had decided to adopt the baby so those parental instincts and parental love which had blossomed cannot be ignored and lost sight of. The bond is between the adoptive parents and the adopted child and in this case the baby was an infant who didn't know what was going on but such a turn of events definitely does violence to the prospective parent's psyche. What was involved was not a piece of property or a thing but human lives and emotions.

What is most surprising is the litigating attitude of CARA and the Union Government. One may appreciate that since clear cut rules were there, a decision was taken to reject their request. Fair enough. But once the court (single judge) had given a go-ahead should they not side-step and let the process carry on when the home study report was also favourable and all things that matter for the well being of the child were satisfactory. But they, (un)like contentious litigants, doggedly pursued the matter till they got a (un)favourable order.

Was such a course justifiable given the paramountcy of “best interest of a child”? CARA and Union of India must introspect.

Jyoti Dogra Sood

Mohammed Salim v. Shamsudeen

JT 2019(1) SC 385

Decided on January 22, 2019

Children constituted one third of the population and they are treated as the most vulnerable and defenceless section in every society. Children are always subjected to exploitation and considered to be mere 'objects' and the elders exercise every right to do whatever they felt with them. Though there are various constitutional provisions, which protect the rights of children along with plethora of child welfare legislations and policy framework of the government, children are facing various problems and exploitations.

In the present case, though the primary issue was relating to legality of the marriage of a Muslim man

with Non Muslim woman. In the present case, the plaintiff had claimed his share in property of his Muslim father, who had married his Hindu mother. However, the defendants argued that the plaintiff's mother was not the legally wedded wife of Mohammed Ilias and that she was a Hindu by religion at the time of marriage. She had not converted to Islam at the time of her marriage, and thus the plaintiff was not entitled to any share in the property in question. The Court, however, after considering that the marriage in question was an irregular marriage, noticed.

“the legal effect of a fasid marriage is that in case of consummation, though the wife is entitled to get dower, she is not entitled to inherit the properties of the husband. But the child born in that marriage is legitimate just like in the case of a valid marriage, and is entitled to inherit the property of the father.”

The court in this case held that 'any child born out of a fasid marriage is entitled to claim a share in his father's property' and hence the plaintiff was entitled to his share in his father's property.

The Hon'ble Supreme Court as the guardian of Justice always tried to implement the laws made by the legislature for the welfare and developments of the children. This landmark judgment illustrated the active involvement of the Indian judiciary in the development of progressive juvenile justice jurisprudence.

Arya. A. Kumar

Edited, printed and published by Prof. (Dr.) Manoj Kumar Sinha, Director, ILI on behalf of the Indian Law Institute, Bhagwan Dass Road, New Delhi.

Printed at M/s Sudhir Printers, New Delhi. Phone No.9810334493

Registration No.DELENG/2000/2234 Dated 26th October 2000

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