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Institute of Judicial Training & Research, U.P.
Vineet Khand, Gomti Nagar
Lucknow-226 010

Hon'ble Mr. Justice Ferdino Inacio Rebello,
Chief Justice, Allahabad High Court

Justice Ferdino I. Rebello
Chief Justice

HIGH COURT,
ALLAHABAD.

MESSAGE

I am happy to know that the Institute is publishing a Journal which will inspire more judicial officers to contribute articles based on their work and research that they may do. A training institute for young recruits, who have been inducted as Judges and continuous training for those already in service, is important to better equip oneself so as to become aware of the various problems which arise in the course of their judicial career. Refresher courses for Judges already serving, breaks the monotony of everyday work, and helps to learn about new development of law and the advances in law by the Supreme Court and the High Courts on important issues. Journals, help in this thought process.

Examining the syllabus for the training programme, I find it well-designed. In my years as a Judge, I have noted that interactive sessions amongst Judges help in a long way in solving practical difficulties that they face and to answer questions which may not be found in the law books. It also enables the junior members of the judiciary to establish their identity, making them more confident of facing their day-to-day work in the open Court. A Judge, aware of the niceties of law and advances in law is better equipped to deal with his own Court. The Journal will give to our Judges a forum to express themselves on various subjects of law and humanities.

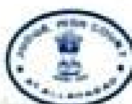
The docket explosion in our Courts, more so the judiciary at the district and Taluka level, is mind-boggling. In the State of Uttar Pradesh, figures made available to me show that there are over 40 lacs criminal matters and about 12 lacs civil matters pending in the subordinate judiciary. This work has to be done by about one thousand officers of the level of Civil Judges (Junior & Senior Divisions) and about the same number of other Judges in the District judiciary. That our Court system functions, in spite of such huge arrears, is a tribute to our Judges who man the system and maintain the Rule of Law.

I congratulate the Institute for publishing a Journal, which has well researched articles contributed by my colleagues, academicians and students of law. I convey my best wishes to the Judicial Officers of the State and the Institute for all success in future.

(Justice Ferdino I. Rebello)

Hon'ble Mr. Justice Amitava Lala
Senior Judge, Allahabad High Court

JUSTICE AMITAVA LALA
SENIOR JUDGE



MESSAGE

I am extremely happy to know that the Institute of Judicial Training and Research, Uttar Pradesh is likely to publish XXXII Issue of JTRI Journal, the first part of which contains its Annual Report of the year 2009-2010 which, I am informed, is being published for the first time to ensure the dissemination of authentic information regarding composition, functioning, achievements and future plans of the Institute. The second part contains various articles on subjects of contemporary relevance contributed by my brother Judges and academicians.

I am happy that the Institute has successfully conducted induction training of about 240 probationers of Civil Judge (Junior Division) during the year 2009-2010 besides organizing refresher courses, special trainings, workshops, seminars, conferences, symposium, publication of digest etc.

I hope and trust that the Institute, which has a glorious past, will keep on adding new pages and march ahead day by day to attain greater heights. I extend my heartiest congratulations and wish the Institute and its Journal all success.

(Justice Amitava Lala)

Hon'ble Mr. Justice Pradeep Kant,
Senior Judge, Lucknow Bench

Justice Pradeep Kant **Lucknow**

FOREWORD

Uttar Pradesh has a total pendency of about fifty five lac cases of Civil and Criminal sides in the District Courts. It is often said by some people that our judicial system has either collapsed or is fast collapsing. I do not share this perception. Though no system can be perfect, yet I believe that we have a time tested system which is one of the finest judicial systems in the world. Our judiciary is highly respected all over for its fairness and independence, credibility and learning. Our constitutional goal is to achieve justice – social, economic, and political. Access to justice would only be meaningful if the judicial system works fairly and expeditiously.

The greatest challenge before the judiciary in the face of tremendous explosion of docket is of providing timely justice. The courts are flooded with cases resulting in huge pendency at all levels. It is an indication that despite all efforts the Courts have not been able to dispose of cases speedily for variety of reasons. On the other hand, the situation also depicts unflinching faith and trust of the people in the system. It is imperative that we evolve new techniques for speedy dispensation of justice. I believe that there is a scope for improvement.

The judges of subordinate courts have to play a pivotal role in this great task. Educating judges on judicial functions and training them how to judge properly is the best way for improvement in justice delivery system. There is a genuine requirement for undertaking programmes of providing Judicial Education meant for specific problems and needs. The role of a judge depends mainly on the nature and variety of his functions. The conventional functions are assuming new dimensions with expansion and diversification and changes in the expectation of the society. The object of training is to charge ones awareness, knowledge, skills and behaviour and continued legal education is beneficial for the judicial officer manning the District Courts. Sensitized judges can take a more pro-active role in the proceedings of cases rather than be silent spectators to what is presented by the lawyers. They can exercise their discretion to assess the process as the Judges have the ultimate control over the process as they decide what evidence can be given under the provisions

of Evidence Act. However, utmost restraint and caution should be observed in exercising the diverse judicial functions.

It has been the endeavour of the Institute of Judicial Training & Research, U.P., Lucknow to lay the foundation of the best judges. I am glad that the Institute of Judicial Training and Research, U.P. is doing its best in providing training to Judicial Officers of the State through Induction Training, Refresher Courses and Special Training Programmes. The Institute also through the specially designed workshops and classes is trying its level best to sensitize the Judicial Officers for early and timely dispensation of justice. In addition to it, the efforts of the Institute are also focused on sensitizing the officers towards issues concerning women, children, underprivileged etc.

The Institute organized a workshop on "Strengthening Justice Administration: Challenges Before District Judiciary" in which all the District Judges of the State were nominated to discuss and deliberate upon the themes identified by the Institute relating to practical difficulties faced by the officers manning the Subordinate Courts. Through an exhaustive questionnaire prepared by the Institute individual views of all the Judicial Officers of the state were solicited. The unanimous recommendations concerning the difficulties and their possible solutions have been submitted to the High Court through an interim report. This exercise will go a long way to find practical solutions to the difficulties of Judicial Officers of the District Courts.

To provide assistance to the Judicial Officers in early disposal of matters involving complex legal questions the Institute has launched Judicial Helpline which is the first of its kind in the country. Any judicial officer may send his/her legal query without disclosing the names of the parties and facts of the case and I am told that all the queries are answered within three days to the officer concerned. This novel idea has been widely appreciated and has provided immense help to the Judicial Officers.

The Institute has been providing quality training to the Judicial Officers. The reading material being supplied to the judicial officers is of great utility and is regularly updated.

The Institute has been engaged in imparting Induction training to the newly recruited about 240 probationers of Civil Judges (Junior Division) cadre. The one year long Induction Training of the 1st Batch of 120 officers concluded on 3rd May, 2010. The one year long duration of Induction Training of the Second Batch will also conclude on 17th August, 2010. Year 2010 – 11 will also be an extremely busy time for the Institute as

various trainings almost continuously are proposed during this year. I am happy that the Institute has been striving to design and execute its training programmes in a systematic manner with added emphasis on need based programmes for learning and developing better efficiency. **"Delay Reduction Strategy"** is the most significant research area in which the Institute is presently engaged. I trust the hard work and dedication of the faculty of the Institute will bear fruits.

I am happy that the Institute is publishing its Annual Report for the year 2009 – 10 for the first time in this Six Monthly JTRI Journal. Annual Report will place the true picture of the affairs, developments and achievements of the Institute during the said period. The article section of the Journal contains some very good articles contributed by the Hon'ble Judges, Academicians and Judicial Officers.

I trust that the high standards of Judicial Education and Training will be maintained in future also, and the Institute will keep on receiving co-operation of the Judicial Officers of the State.

(Justice Pradeep Kant)
Senior Judge, Lucknow Bench
& Judge Incharge Judicial Education

DIRECTOR'S PAGE

It is my proud privilege to present XXXII issue of JTRI Journal to our esteemed readers.

The first part of the Journal contains Annual Report 2009 - 2010 of IJTR which is being published for the first time. The purpose behind preparation of the report and its incorporation in the Journal is to provide authentic information about the composition, objectives, functioning and achievements of the Institute. The second part of the Journal is as usual articles section which contains valuable and some extremely good and informative articles by Hon'ble Judges of Allahabad High Court, Academicians, Faculty Members and Judicial Officers.

We are deeply indebted to Hon'ble the Chief Justice and all the Hon'ble Judges of the Allahabad High Court (including Hon'ble Judges of Lucknow Bench) who have been constant source of inspiration, encouragement and guidance to the Institute. I express my deep gratitude to Hon'ble Mr. Justice Ferdino Inacio Rebello, Chief Justice, Allahabad High Court for providing an inspiring and thought-provoking message for the Journal. I also express my sincere thanks to Hon'ble Mr. Justice Pradeep Kant, Senior Judge, Lucknow Bench and Judge Incharge Judicial Education for writing an elaborate and wonderful Foreword for the Journal.

I also express my sincere gratitude to Hon'ble Mr. Justice Amitava Lala, Senior Judge, Allahabad High Court who during his tenure as Acting Chief Justice provided all-out support and encouragement to the Institute. We also express our sincere thanks to His Lordship for providing an inspiring message.

We are highly obliged to Hon'ble Mr. Justice Yatindra Singh, Judge, Allahabad High Court, Hon'ble Mr. Justice Sunil Ambavani, Judge Allahabad High Court, Hon'ble Mr. Justice Kamleshwar Nath, Former Judge, Allahabad High Court and Hon'ble Mr. Justice A.K. Srivastava, Former Judge, Allahabad High Court, renowned academicians Dr. Ali Mehdi, Professor of Law, Law School, B.H.U., Dr. P.K. Shukla, Asstt. Professor, MLIU, Bhopal, Dr. Shri Prakash Mishra, Reader, Law Department, ACPG College, Varanasi, Dr. A.B. Jaiswal, Lecturer, Department of Law, Kanpur University and Judicial Officers for their valuable contributions to enrich the journal.

The last one year has been full of continuous activities for the Institute. During this period the Institute conducted Induction Training (IT-1) of one year duration from 4.5.2009 to 3.5.2010 of 120 newly recruited

Civil Judges (Junior Division) first batch of 2006. Thereafter the Institute completed yet another Induction Training (IT-1.) of almost 120 Probationers of Civil Judge (Junior Division) second batch of 2006 from 18.08.2009 to 17.08.2010. At present, the Institute is engaged in conducting Induction Training of 60 probationers of third batch. During the trainings the emphasis has been on imparting practical and need based training to the officers with special emphasis on exercises on judgment and order writing. During this period, significant improvement has been made in the standards of training and quality reading material has been provided to the trainees, which is in great demand.

Apart from conducting Induction Trainings, the Institute also conducted Refresher Courses for the officers of 1982, 1983 and 1984 batches of HJS cadre, incidentally some of whom had not undergone any Refresher Course ever since they joined the service around 28 to 30 years back. The Institute has completed refresher training of almost all the officers of HJS cadre. It is our resolve that every judicial officer should be called for refresher training or special training at least once in a span of three years.

Many improvements have been attempted during the period under review. The conference hall, kitchen of the mess, guest rooms and about 50 rooms of the Officers' Hostel have been renovated. A new beautiful lounge adjacent to the reception and a park in front of Officers' Hostel have been developed.

Boarding and Lodging facilities have been improved considerably. Trees and plants have been planted to provide a better ambience to the campus.

The Institute organized many workshops and seminars on subjects of relevance during the year 2009-10. A North Zone Regional N.J.A. Conference on "Enhancing Timely Justice: Strengthening Criminal Justice Administration" was organized by the Institute in which Judicial Officers of six Hon'ble High Courts participated. Hon'ble Supreme Court Judges, Hon'ble Judges of Allahabad High Court and other Hon'ble High Courts addressed the participants in various sessions. The Director, National Judicial Academy and participants appreciated the efforts of the Institute in organizing the workshop. Another important workshop on "Strengthening Justice Dispensation: Challenges before District Judiciary" was organized by the Institute in which the Hon'ble Court nominated all the District Judges of the State and also nominated an elite panel of Hon'ble Judges of the Court to supervise and guide the discussions and deliberations. The workshop was a great success and the initiative and efforts of the Institute was widely appreciated.

The Institute has undertaken a new Research project with the object to identify the practical difficulties in the working of District Courts in Judicial, Non Judicial and Administrative sides and also relating to

infrastructural set up and relations with Bar and other agencies. It is proposed that possible solutions to some of them may be placed before the Hon'ble Court and the State Government. In this perspective responses to the questionnaire prepared by the Institute were obtained from all the Judicial Officers of the State individually and also collective views of all the Judgeships of the State were obtained. After the Institute conducted a sample analysis of the responses of more than 60 Judgeships a two days workshop of all District Judges was organized. The unanimous and other important recommendations were incorporated in the Interim Report prepared by the Institute under the guidance of the elite panel of the Hon'ble Judges and submitted to the Hon'ble Court. A copy of the Interim Report submitted is being reproduced in the journal. After complete analysis of all the individual responses the final report with suggestions based on the study will be submitted to the Hon'ble Court and the State Government.

The Institute will be engaged almost continuously for the next 5 years in various training programmes including conducting Induction Training for the third batch of probationers of Civil Judge (Junior Division), Direct Recruits to HJS and also in organizing special training programmes under the 13th Finance Commission scheme for all the Judicial Officers of the State at least once in every year. In addition to it, the Institute will be conducting Special Training Programmes on Legislative Drafting and Parliamentary Affairs, special training for Members of Consumer Forum, Judges Family Courts, Judges of J.J. Board etc.

The Institute proposes to undertake the construction of 500 seating capacity auditorium, a dispensary, Sports facilities Air-conditioning of the dining hall and all the rooms of the officers' hostel, furnishing of the Administrative Block, renovation and modernization of class rooms and tutorial rooms and purchase of a new bus is also proposed out of the budgetary grants sanctioned by the 13th Finance Commission during the next five years. It is also proposed that Online Software and books be provided to all the Judicial Officers. Study tours and foreign tours are also proposed.

We are confident that under the able guidance of the Hon'ble Court and with the cooperation of the faculty members and Judicial Officers, we would accomplish the tasks ahead successfully and march forward to take the Institute to newer heights.

In the end, I take this opportunity to request our esteemed readers to contribute their valuable articles for publication in the next issue of JTRI Journal.

V.K. Mathur
Director, JTRI

Sept., 2010

Annual Report of IJTR 2009-2010

ANNUAL REPORT OF IJTR 2009-2010

It is our proud privilege to present the Annual Report of the Institute of Judicial Training & Research, Uttar Pradesh, Lucknow for the year 2009-2010. The purpose behind the preparation of this Report and its incorporation in the JTRI Journal, June, 2010 is to ensure the dissemination of authentic information about the composition, objectives, functioning and achievements of the Institute. The idea for providing Induction and In-service Training to the Judicial Officers of the Subordinate Courts of the Country, was mooted in the conference of the Chief Justices of High Courts which was also attended by the Chief Ministers and Law Ministers of the States in 1985. This requirement was also strongly advocated in the 117th Report of the Law Commission of India under the Chairmanship of Hon'ble Justice D.A. Desai, former Judge, Supreme Court of India.

This idea saw its insemination for the first time in Uttar Pradesh where the initiative of the State Government was readily agreed to by the Hon'ble High Court of Judicature at Allahabad. One of the most important moving factors for this dream having turned into a reality was the undying zeal and efforts of Hon'ble Mr. Justice S.N. Sahay, the then, Law Secretary to the Government of Uttar Pradesh. By 1986, i.e. within a very short span of time after the idea had been mooted, the Institute of Judicial Training & Research, U.P., came into existence and became functional on 25th April, 1987, with Hon'ble Mr. Justice K.N. Goel as its first honorary Director.

The details regarding the Institute, Organizational Structure, Faculty, Objectives, Achievements and Training etc. can be seen on the website of the Institute "*ijtr.nic.in*". The Institute is governed by the Rules and Regulations made by the Government of U.P. for its departments and Institutes, from time to time. Hon'ble Mr. Justice K.N. Goel, Former Judge, Allahabad High Court became the first honorary Director of the Institute. Thereafter, Sri J.K. Mathur, Sri I.S. Mathur, Sri A.B. Hajela, Sri M.L. Singhal, Sri D.P. Varshney, Sri D.P.Gupta, Sri Allah Raham and Sri Ved Pal served the Institute as Directors. It is worth mentioning that Sri J.K. Mathur, Sri I.S. Mathur, Sri M.L. Singhal, Sri D.P.Gupta, Sri Allah Raham and Sri Vedpal were elevated to the Hon'ble Allahabad High Court. Hon'ble Mr. Justice U.C. Srivastava and Hon'ble Mr. Justice A.N. Gupta were Chairman of the Institute.

Sri Vinay Kumar Mathur, a senior District Judge of U.P. is the present Director of the Institute.

Objectives:-

The Institute has been established to pursue the following objectives:-

1. To give induction training to new appointees to the Judicial and Prosecution services.
2. To conduct in-service training / refresher courses for the Judicial Officers of U.P.
3. To conduct research work in the field of law to make the legal system more effective.
4. To find out ways and means for expeditious disposal of cases.
5. To improve knowledge and skill of Judicial Officers so that they can perform their duties more effectively and efficiently.
6. To foster the initiatory & creativity amongst Judicial Officers & to help prevent manpower obsolescence.
7. To provide the participants a wider awareness, an enlarged skill & enlightened altruistic philosophy, and make enhanced personal growth possible.
8. To impart induction trainings to new appointees in the district judiciary and the prosecution officers with the objective to inculcate in them skills, expertise and ethics so as to perform their duties effectively and efficiently.
9. To conduct in-service trainings/refresher courses for the judicial officers in order to update their legal knowledge, skills and techniques.
10. To conduct study, analysis and research relating to legal education and practical problems in the working of District Courts.
11. To organize Seminars/ Workshops on current legal issues.
12. To author and publish journals, digests and brochures of law and distribution thereof to the judicial officers of the State.

Vision

The Vision of the Institute is ceaseless up-gradation of skills and appropriate attitudinal reorientation through induction level and in-service

training in consonance with the imperatives of national and global environment.

Institute's Logo

The Institute is committed to improve knowledge and skill of Judicial Officers and to facilitate them to perform their duties effectively and efficiently by providing induction training to new appointees to the Judicial and Prosecution services and conducting in-service / refresher courses and also conducting research work in the field of law with a view to find out ways and means for expeditious disposal of cases. The motto of the Institute as inscribed in its Logo is "योगः कर्मसु कौशलम्". These golden words which have been borrowed from the 50th Verse of the 2nd Chapter of Bhagwat Geeta simply mean "Adroitness in Human Action is Yoga"

Faculty

The faculty of the Institute consists of judicial officers on deputation from the cadre of H.J.S. and U.P. Judicial Service. The Hon'ble High Court posts the Judicial Officers in the Institute after taking into consideration their reputation, qualifications, experience and aptitude. All the faculty members are required to undergo Management of Training (MoT) and Designing of Training (DoT) programmes, organized by Department of Personnel and Training, Government of India to develop skills as Trainers. Besides this, the Institute also invites guest speakers such as Hon'ble sitting and former Judges of High Court, well-known academicians, Senior Members of Bar, experts of medico-legal, forensic sciences, management, psychology and information technology etc. taking into consideration the needs of the training.

I.J.T.R. Faculty

At present the faculty of the Institute consists of following officers of U.P. Judiciary and U.P. Finance & Accounts Service-

1. Sri Vinay Kumar Mathur, HJS
   Director.
2. Dr. Murtaza Ali, H.J.S.
   Addl. Director (Trg.).
3. Sri Faiz Alam Khan, H.J.S.
   Addl. Director (Research).
4. Sri P.K. Srivastava, H.J.S.,
   Addl. Director.
5. Dr. Rajesh Singh, H.J.S.,
   Addl. Director (Admn.)
6. Sri S.N. Rao,
   Additional Director (Finance)
7. Sri Mahendra Singh IV, P.C.S.(J)
   Deputy Director.
8. Sri Rajiv Maheshwaram, P.C.S.(J)
   Deputy Director.
9. Sri Akhileshwar Mishra, P.C.S.(J),
   Asstt. Director
10. Sri Ravindra Kumar Dwivedi, P.C.S.(J),
    Asstt. Director and
11. Sri Haridwar Prasad,
    Asstt. Director (Accounts)

Land & Buildings

Campus:

The Institute is located in sylvan and tranquil surroundings, away from the din and bustle of the city in Vineet Khand, Gomtinagar, Lucknow at a distance of about 25 Kms. from Amausi Airport and 13 Kms. from main Charbagh Railway Station and 15 Kms. from Aalambagh Bus Stand. Public Transport Service is available from Airport, Railway Station and Bus Stand to the Institute. The total area of IJTR Campus is around 32 acres.

(A) Training Wing:

1. Lecture Theaters and Tutorial Rooms:

The Training wing comprises of four lecture theaters of a total seating capacity of 180 trainee officers and 8 tutorial rooms each having a seating capacity of 20 trainee officers. Two lecture theaters are fully furnished, are air-conditioned and are equipped with L.C.D. projectors, white boards, sound systems and close circuit cameras. The other two lecture theaters and tutorial rooms are not fully furnished and equipped with training aids. The lecture theaters and tutorial rooms are located in the main two storied building of the Training wing of the Institute.

2. Conference Hall:

A conference hall with a seating capacity of 130 trainee officers is also located in the Training Wing. Renovation of the conference hall was undertaken recently in which in place of old worn-out carpet, tiles have been fixed and all the revolving chairs have been replaced and new curtains have been fixed. Eight new air-conditioners of two tons each have been installed. After renovation the over all getup and look of the conference hall has greatly improved.

A view of the new lounge of the Institute

3. Lounge:

The old cultural room which was being used for organizing cultural programmes, had a seating capacity of hardly 40 persons. Due to increase

in the number of trainees in all the batches this cultural room was in disuse for this purpose and was being used only as passage for the conference room and had practically no utility. The old cultural room was renovated by fixing tiles on the floor and converting it into a beautiful lounge. Sofa sets with bright tapestry have been placed and carpets, centre tables, paintings etc. have been added. Two new air-conditioners each of two tons capacity have also been installed in the lounge. This effort has been greatly appreciated. A separate opening has been provided for entrance to the conference hall. This lounge is used when the number of guests and dignitaries is large.

4. Reception:

The old reception has been partially renovated. Chairs and sofa sets have been placed. To give a face-lift to this portion of the building it is proposed that in the two adjoining halls separated by a counter instead of old tiles of Kota stone, vitrified/granite tiles may be fixed, so as to improve the grandeur of the building.

5. Guest Rooms:

The two guest rooms for the guest speakers and visitors have been renovated with change of flooring and replacement of old sofa sets etc.

6. Computer Lab:

The computer lab has twenty systems. The lab is air-conditioned and adequate furniture has been provided. All the computers were based on old Celeron technology. The upgradation work for conversion of existing defective systems into core 2 duo systems has been undertaken. Almost half old systems have been upgraded and the performance level has increased considerably.

7. Library:

The library of the Institute is housed in beautiful ambiance in three spacious halls in the training wing. Two of the halls have been air-conditioned recently. It is proposed that the third hall be also made air-conditioned during this financial year. The total number of books, journals, reference books, commentaries etc. is around 35 thousand. The Institute is subscribing 22 journals every month. It is also subscribing All England Reports. During the current financial year many new text books, commentaries, biographies and other books have been purchased. SCC Online has been provided in Library for the use of the trainee officers. The entrance of the library which was towards the back of the building has been shifted and connected directly with the training wing. It is also proposed that software for converting the library into digital mode will be purchased very soon.

(B) Administrative Block

The Administrative block of the Institute which is a three storied building has the office of the Director, with which a small conference room of a total seating capacity of 35 persons is attached. This conference room has been recently renovated and three new air-conditioners of the capacity of two tons each have been installed. Besides this the chambers of all the faculty members and their staff, main office of the Institute, one big yoga hall, gymnasium, a brochure room wherein all the publications by the Institute from the starting such as brochures, digests and journals, books and reading materials have been kept. Apart from this, a room for photocopier and the office of Judicial Helpline are also located in this block.

(C) Officers Hostel:

All training courses are residential. The Officers Hostel of the Institute is located at a distance of about 150 meters from the training wing. The hostel has 114 rooms and has three floors. Almost fifty rooms of the hostel have been renovated by fixing tiles or wall – to – wall carpet in the rooms. The floor and sanitary fittings of the toilets of the renovated rooms have also been replaced. However, due to budgetary constraints renovation of all the rooms could not be undertaken. It is proposed that the remaining rooms will be renovated soon and all the rooms will be made air-conditioned during the current financial year. The trainee officers who stay in the hostel are provided neat and clean linen, blankets etc. Recently, one clock and one table lamp has been provided in all the rooms under occupancy. Geysers have been provided in all the bathrooms. Special attention is being paid for the proper upkeep of the hostel. New furniture has also been provided in the renovated rooms.

(D) Mess and Dining Hall:

The mess of the Institute which is attached to the Officers Hostel has been provided new crockery and the floor of the kitchen attached to dining hall has been replaced by fixing tiles. Special attention is being paid for maintaining proper hygiene in and around the mess. The dining hall is large enough to accommodate around 300 persons at a time. The old mosaic floor of the dining hall has been changed and vitrified tiles have been fixed therein. It is proposed that the dining hall be made air-conditioned in near future.

(E) Park:

There was absolutely no place for the trainee officers to sit in the campus. Therefore, a park in an area of almost two acres has been developed in front of officers' hostel. Some benches have been placed in the park and a fountain has been built. Focus lights and halogen lights have been fixed. Flower beds, hedges and lawns have been developed and now the park is being used by the trainee officers for strolling and passing time of leisure.

Hon'ble Mr. Justice C.K. Prasad, the then Chief Justice, Allahabad High Court, and other Hon'ble Judges and dignitaries being led by the Director to the newly established Park after the inaugural session of NJA Regional Workshop

(F) Play Ground

A play ground near the main entrance has been developed where the trainee officers can play cricket, football etc.

(G) Gymnasium

A new Gymnasium for the members of staff and trainee officers has been established on the second floor of the Administrative Block. A home gym, commercial cycle, jogger, abdominal crunch bench, dumb-bells and

exercise balls have been provided. It is planned that many new items will be added soon.

Training

The Institute conducts various training programmes mainly on legal and judicial orientations for the judicial officers of the State. The Institute has conducted various training programmes for the Judicial Officers of other States in the past before judicial academies in all the States were established. However, after establishment of judicial academies in almost all the states the training activities are confined to the Judicial Officers of the State and officers of Government departments and corporations etc.

The Institute undertakes Induction Training for newly recruited Probationers of the Civil Judge (Junior Division) cadre and also for Direct Recruits to Higher Judicial Service. Refresher courses for Civil Judges (Junior Division), Civil Judges (Senior Division), Judges of F.T.C., Additional District Judges, Judges Family Courts and District Judges, are also organized. In addition to it Special Training Programmes are also undertaken when the Judicial Officers are on the verge of promotion/ elevation. It may be worth mention that in the recent past the emphasis has been on providing need based training. The Institute has recently undertaken special trainings of Civil Judges (Junior Division) likely to be promoted as Civil Judges (Senior Division) (ST-1), of Civil Judges (Senior Division) likely to be promoted as Judges F.T.C. (ST-3), of Judges F.T.C. likely to be promoted as Additional District Judges (ST-4) and also of Senior District Judges likely to be elevated to the Hon'ble High Court (ST-5).

Induction Training: ***Civil Judges (Junior Division).***

IT-1

The Institute, during the current financial year was engaged continuously in conducting Induction Training for the newly recruited probationers of *Civil Judge (Junior Division)*. The duration of the training for the said probationers is one year. In 1st and 3rd phases of the training the officers undergo Institutional Training while in the 2nd phase they are attached for 60 days with various Courts and offices at their places of postings and for remaining almost 4 months they are required to hold independent courts. The Institute has completed the Induction Training of 1st batch of 2006, numbering approximately 120 probationers. Thereafter the Institute completed yet another Induction Training (IT-1.) of the Second Batch of almost 120 Probationers of Civil Judge (Junior Division) second batch of 2006 from 18.08.2009 to 17.08.2010. At present, the Institute is engaged in conducting Induction Training of 60 probationers of third batch.

Hon'ble Mr. Justice Pradeep Kant, Senior Judge/ Judge Incharge Judicial Education has been very kind to spare his valuable time and has always been providing guidance to the Institute liberally.

Hon'ble the then Chief Justice Mr. Justice C.K. Prasad (presently Judge, Supreme Court of India) very kindly spared some moments out of his precious time to visit the Institute and address the probationers and also gave audience to the probationers.

Hon'ble Mr. Justice Amitava Lala, the then Acting Chief Justice, Allahabad High Court also very kindly visited the Institute and showered his blessings upon the probationers. His Lordship during his tenure as Hon'ble Acting Chief Justice took keen interest in the activities and development of the Institute.

Hon'ble Mr. Justice F.I. Rebello Chief Justice, Allahabad High Court addressing Probationers of Civil Judge (JD) 1st Batch

Hon'ble Mr. Justice F.I. Rebello Chief Justice, Allahabad High Court Inspecting the IJTR Library

Hon'ble Mr. Justice F.I. Rebello Chief Justice, Allahabad High Court
Interacting with Probationers of Civil Judge (JD) 1st Batch

Hon'ble Mr. Justice Ferdino Inacio Rebello, Chief Justice, Allahabad High Court during his first official visit to Lucknow very kindly spared some moments out of his extremely busy schedule and visited the Institute. His Lordship during his visit addressed the probationers of Civil Judge (Junior Division) 2nd batch of 2006 and also interacted with them.

All the Hon'ble Judges of the High Court have always been very kind and whenever approached have provided guidance and support to the Institute.

Assessment of Trainees:

The assessment of all the probationers is personally undertaken by all the senior Faculty Members, who devote on an average 1 to 1½ hours per probationer in correcting their judgments and orders and providing guidance for improvement in judgment and order writing. A test is also held at the conclusion of the training. All efforts are made to provide genuinely good, honest, hardworking, disciplined, knowledgeable judicial officers to the system.

The syllabus of the Induction Training for probationers of Civil Judge (Junior Division) as approved by Hon'ble High Court is as follows:

SYLLABUS FOR
THE INDUCTION TRAINING & QUALITY ENHANCEMENT PROGRAMME OF CIVIL JUDGES (JD)

A. Judicial ethics, personality development and roles and responsibilities of a Judicial Officer-

1. Role & Profile of a Judicial Officer.
2. Manners & Etiquette.
3. Motivation-Perception, Judicial Discretion & its exercise.
4. Communication, Stress & Time Management & Personality Development. Yoga
5. Judicial Decision Making.
6. Government Servant Conduct Rules & Manual of Govt. orders.
7. Protection available to judicial officers under law
8. How to consult the Library.
9. Value based programmes on Attitudinal Change
10. Behaviour with Litigants and the Members of the Bar
11. Behaviour with sub-ordinate staff, colleagues, District Judge and the officers of other departments, such as District Magistrate, Superintendent of Police etc.
12. Moral and Ethical Values
13. Do and Don'ts by Judicial Officers

B. Law, society & justice.

14. Indian society and culture.
15. Glimpses of Indian History-Political, Social & Legal System & Geographical Sketch.
16. Economics, Globalization and Liberalization- Its impact on Indian Legal System.
17. Market Economy and Globalization and their impact on Law & Justice.
18. Political Economy & Development.

C. Rule of Law, Judicial Process and Constitutional Government-

19. Rule of Law.

20. Principles of Natural Justice.

21. Comparative study of legal systems of different important Countries.

22. Basic features of the Constitution

23. Languages under Indian Constitution, and use of Hindi in Courts.

24. Disciplinary Proceedings under Article 311

25. Law of Precedent

26. Interpretation of Statutes.

27. Judicial Discretion & its exercise.

28. Concept of Rights, Duties & Remedies.

29. Human Rights.

D. Judicial functions, Court and Office Management

30. Working of Munsarim, Nazir & Reader.

31. Registers maintained by the Nazir of Civil Courts.

32. Listing of cases and maintenance of diary

33. Monthly, quarterly and annual inspections of courts and general control over court officials

34. Duties and responsibilities of officer-in-charge, Nazarat, copying section, record room and library.

35. Disposal of old cases, circular letters of High Court.

36. Maintenance and Management of Court Files

37. General Rules (Civil)

38. Consignment of Records

39. Control of Proceedings in Court

40. General Rules (Criminal)

41. Manual of Govt. Orders

42. Judges notes & maintenance of records.

43. How to expedite disposal of cases-Practical Guidelines.

44. Financial Hand Book- Relevant provisions: T.A., Advances, G.P.F., Leave etc..

45. High Court Circular Letters.

46. Civil Courts Accounts & Repayment Applications.

47. Court & office management – Registers, Periodical Returns, Self Assessment Form and Representation to Hon'ble High Court.

48. Compliance of order of Higher Courts.

49. Maintenance of Files with exercise.

50. L.R. manual & Working of Law Departments.

51. Administrative Correspondence and writing of DOs.

52. Inspection of office and court.

E. Finance & Accounts

53. Leave Rules

54. Loans and Advances

55. TA.DA and LTC Rules

56. Retiral Benefits and Family Pension Rules

57. GPF and GIS Rules

58. Annual Increments and Fixation of Pay Rules

59. Store Purchase Rules

60. Tender and Auction Rules.

F. Administration of Justice: Procedural Law (Civil) and other relevant enactments

61. Tortuous liability and Civil Liability

62. Hierarchy of Civil Courts.

63. Organization of Civil Courts & their functioning.

64. Jurisdiction of Civil Courts vis-à-vis Revenue Courts.

65. Framing of suit-pleadings.

66. Institution of civil suits & Munsarim's report & Return & rejection of plaint & Exercise thereon.

67. Summons/Notices- service of summons/notices.

68. Survey Commission

69. Exercise on disposal of the Report of Survey commissioner.
70. Necessary & proper parties; mis-joinder and Non-joinder.
71. Filing of W.S.-consequences when not filed.
72. Discovery of documents & interrogatories.
73. Examination of parties/counsel under order 10 Rules 1 & 2 & Exercise thereon.
74. Framing of issues, additional issues & Disposal of Preliminary issues & exercise thereon.
75. How to Exhibit documents, private & public & exercise thereon.
76. Representative suits under Order 1, Rules 8 & Section 91 C.P.C. & exercises thereon.
77. Suits by or against government & exercises thereon.
78. How to control adjournments under O. 17 Rule 1, 2 & 3 C.P.C..
79. Temporary Injunction & exercises thereon.
80. Exparte hearing & restoration of suits & exercises thereon.
81. Suits by or against minor & exercises thereon.
82. Substitution & abatement & exercises thereon.
83. Appointment of Receiver & exercises thereon.
84. Compromise & withdrawal of suits & exercises thereon.
85. Sections 10 & 11 C.P.C. & exercises thereon.
86. Admissions, rejection & return of documents & exercises thereon.
87. Consolidation of suits under Order 4A and Section 151 C.P.C..
88. Preliminary Decree.
89. Final Decree and Orders.
90. Attachment & Arrest before judgment & exercises thereon.
91. Execution of decree in General & objections U/s 47 C.P.C. & exercise thereon.

92. Review of Judgments/Orders (Civil) & exercises thereon.

93. Exercises on suits by or against indigent persons – Assessment.

94. Inherent Powers of Civil Court U/s 151, 152, 153-A, 153-B C.P.C..

95. Onus and Burden of Proof in civil matters.

96. Consolidation of Holdings Act

97. ZA&LR Act

98. Public Money (Recovery of Dues) Act

99. The Limitation Act

100. The General Clauses Act

101. The Easement Act

102. Transfer of Property Act

103. Oaths Act and Affidavits

104. The Suits Valuation and Court Fees Act

105. U.P. Act 13 of 1972

106. Indian Succession Act

107. Issue of Succession Certificate

108. Muslim Succession

109. Marriage and Divorce in Muslims

110. Law of Gift and Will

111. The Guardianship and Wards Act

112. Small Causes Court Act

113. Land Revenue Act

114. Succession of Agricultural Land

G. Administration of Justice : Procedural Law (Criminal)

115. Criminal Justice system in general & Hierarchy & constitution of criminal courts.

116. Investigation, Further Investigation, Investigation by C.B.I., C.I.D. and powers of Magistrate.

117. Cognizance & bar to taking cognizance.

118. Charge sheet, final report & protest petition.

119. Committal proceedings & exercise thereon.

120. Statement/Framing of charge and Sec. 294 of Cr.P.C. & Joinder/Misjoinder of charges.

121. Law of arrest & handcuffing.

122. Identification of persons & Property.

123. How to write judgments/orders & exercises thereon.

124. Discussion & Exercises on how to write judgments in criminal cases- Assessment.

125. Maintenance U/s 125 Cr.P.C. & order writing.

126. Summons Trial/Summary Trial, Warrant/Sessions Trial.

127. How to regulate examination & cross-examination.

128. Disposal of property in criminal cases with exercise.

129. Jurisdiction of Criminal Court vis-a-vis Court Martial.

130. Handwriting science & forgery in documents.

131. Compounding of offences.

132. Law of Bails & judicial and police custody remand & exercises thereon.

133. Recording of statements/confessions U/s 164 Cr.P.C. & exercises thereon.

134. Power to proceed against other persons U/s. 319 Cr.P.C. & exercise thereon.

135. Withdrawal of criminal cases.

136. Theories of punishment and probation of offenders Act.

137. SC/ST Act.

138. Summary procedure U/s 340,345 & 346 Cr.P.C. & exercises thereon.

139. Onus and Burden of Proof in criminal matters.

140. Trial of cross cases, Statement U/s 311, 313 Cr.P.C. & exercise thereon.

141. (Investigation) FIR with reference to S. 156(3) Cr.P.C. & processes to compel appearance of Accused with reference to S. 82 & 83 Cr.P.C.

H. Criminal Justice System and Crime Control

142. Offences under I.P.C. (Triable by Magistrate)

143. General Exceptions

144. Common object and Common Intention

145. Sentencing Policy and Victmology : Role of the Judge

146. Arms Act

147. Excise Act

148. Juvenile Justice Act

149. Contempt of Courts Act

150. Food Adulteration Act

151. Offences under M.V. Act

152. The Gambling Act

153. NDPS

154. Cow Slaughter Act

155. Forest Act

156. The Police Act

157. The Shops Act

158. The Weight and Measurement Act

159. Law of Explosives and Explosive Substance

I. Evidence-

160. Burden of Proof

161. Recording of Evidence

162. Appreciation of Evidence-

1. Child witness
2. Expert Opinion
3. Dying declaration
4. Evidence of Co-accused

5. Confession and Admission

6. Estoppel & Acquiescence

7. Hostile Witness

163. Human Anatomy and Medico Legal Jurisprudence.

164. Examination - in - chief, cross-examination and re-examination of the witnesses

165. Exercise of Powers u/S. 165 of the Evidence Act

166. Law of handwriting science and finger prints science

167. Evaluation of evidence of DNA test

168. Kinds of injuries and post mortem report

169. Medical jurisprudence

170. Circumstantial Evidence

171. Injuries and Medical Evidence.

172. Finger Print Expert Evidence.

J. Special Laws/Acts-

173. Intellectual Property Rights.

174. Human Rights Act

175. Right to Information Act

176. Benevolent Laws

177. Environmental Law

178. Psychology of Child

179. HIV/ AIDS

180. The Control of National Highways (Land and Traffic) Act, 2002.

K. Alternative Dispute Redressal

181. Conciliation, Arbitration and Mediation

182. Functioning of Different Courts such as Family Court, Labour Court, MACT

183. Legal Services Authority Act and ADR

184. Lok Adalat

185. Free Legal Aid

L. Gender Justice - Concept and Constitutional Scheme

186. Role of District Courts while dealing with matters relating to Gender Justice

187. Offences against women under I.P.C.

188. Maintenance under Section 125 Cr.P.C.

189. Domestic Violence Act

190. Immoral Traffic Act

191. Muslim Women (Protection on Divorce) Act

192. Matrimonial Offences

193. Dowry Prohibition and Dowry Death

194. Personal Laws, Mediation and Reconciliation

M. Computers, modern technology, scientific developments and Administration of Justice-

195. Introduction of Computers: Hardware, overview of I.T. Act.

196. Cyber Offences & Penalties & practical exercises.

197. Communication: Internet & NICNET.

198. District Court Information System (DCIS).

199. I.T. Act: with reference to Evidence Act & I.P.C.,

200. Case Laws Searching JUDIS.

N. Practical Exercise:

201. Judgment Writing in Civil Cases

202. Order Writing in Civil Cases

203. Judgment Writing in Criminal Cases

204. Order Writing in Criminal Cases

O. VISIT

1. Hospital
2. Jail
3. Forensic Science Laboratory
4. Police Station
5. Local Visit

IT-2 For Direct Recruits to the Higher Judicial Service

During the Induction Training of Direct Recruits to the Higher Judicial Service the Institute proposed that the officers should be sent for field training for a period of one month, so that, they may have exposure of the working of various subordinate courts and offices in the judgeship. The Hon'ble Court was pleased to approve this proposal and the probationers were sent for field training in batches of 8 to 10 at bigger judgeships where they completed the training by attachment which ultimately proved to be very beneficial for them. This training was specially designed keeping in mind, the various types of judicial and administrative tasks, which they come across during discharge of their duties. The training also included a visit to Hon'ble High Court to have a first hand experience of working of the administrative set up of the Hon'ble Court. The then Chief Justice of Allahabad High Court, Hon'ble Mr. Justice H.L. Gokhale (Presently Judge Supreme Court) was kind enough to grant audience to the newly recruited Judges. The Institute feels very proud that it has contributed in some way for better functioning of these officers as the feedback received from the Districts does say that these officers are making their mark felt with good work.

The methodology for training apart from delivering lectures has been interactive sessions, group discussions, presentations, extensive exercises of order and judgment writing etc. Audio and visual aids were also used in imparting training. The Institute apart from the Faculty Members also invites Hon'ble Judges of the High Court sitting as well as retired, academicians, experts of Medico-legal branch, eminent lawyers, Finger Print and Handwriting Experts, Management experts and various other experts of different fields to deliver talks/lectures to the trainees. Seminars, workshops and symposiums are also organized at regular intervals.

The syllabus of the Induction Training for Direct Recruits of Higher Judicial Service as approved by Hon'ble High Court is as follows:

SYLLABUS FOR TRAINING PROGRAMME OF DIRECT ADJS

A. (Judicial side—Civil)

1. Civil Appeals
2. Civil Revisions
3. Execution of decrees
4. MACP Cases & Execution of Awards

5. Important Rules in G.R. Civil
6. Amendments in CPC w.e.f. 1.7.2002 and their effect?
7. Interim stay orders & their extension etc.
8. Exercises on judgment writing in—
   (a) Civil Appeals
   (b) Civil Revisions/SCC Revisions
   (c) Appeals & Revision under Act No. 13/1972
   (d) MACP
9. ADR, Lok Adalats etc.
10. Misc. Subjects—
    (a) Vakalatnama
    (b) Processes to parties & hearing in civil matters
    (c) Recall of orders, correction of judicial mistakes etc.—Duty of courts
11. Syllabus suggested by Hon'ble High Court
12. Matrimonial Cases
13. LA Cases
14. Sec. 92 CPC
15. Guardian & Wards Act
16. Election Petitions
17. Revisions under U.P. Panchayat Raj Act
18. Probate
19. Arbitration Act
20. Family Courts Act

B. (Judicial side—criminal)

1. Session Trials
2. Framing of Charges
3. Appreciation of Evidence in Criminal Trials
4. Criminal Appeals

5. Criminal Revisions

6. Law of Bails

7. Issuance & execution of processes to accused and witnesses with reference to GR (Criminal)

8. Principles of Sentencing & Probation of Offenders

9. Adjournments, speedy trial etc.

10. Sec. 311, 313 & 319 Cr.P.C.

11. Ballistics, Finger Prints & Hand Writing

12. D.N.A., Narco Analysis

13. Recall of witnesses for further cross-examination

14. Exercises on judgment writing in—

    (a) STs

    (b) Criminal Appeals

    (c) Criminal Revisions

    (d) Exercises on order writings like

        (i) Bail Orders

        (ii) U/s. 319 Cr.P.C.

        (iii) U/s. 311 Cr.P.C.

        (iv) U/s. 313 Cr.P.C.

C. (Judicial side—Special Acts)

1. NDPS Act, 1985

2. SC/ST (Prevention of Atrocities) Act, 1989

3. Prevention of Corruption Act, 1988

4. EC Act

5. Protection of Human Rights Act, 1993

6. Juvenile Justice (Care & Protection of Children) Act, 2000

7. U.P. Gangsters & Anti-social Activities (Prevention) Act, 1989

8. Electricity Act, 2003

9. Syllabus suggested by Hon'ble High Court

(Non judicial side)

1. Overall service conditions of Judicial Officers
2. Conduct in general of Judicial Officers—relevant Circular Letters
3. Moral & ethical values & attitudinal change
4. Benevolent Fund—Membership of – Health caution
5. Protection to Judicial Officers against FIR, arrest, prosecution etc. and Supreme Court pronouncements thereon.
6. Leave Rules- LTC, HTC, M.L., E.L., Encashment
7. Maintenance of personal files/record regarding
   (i) Pay Bill Register
   (ii) GPF Pass Book
   (iii) CL/St. Leave file
   (iv) Medical Leave file
   (v) Earned Leave file
   (vi) Property statement- Dowry Declaration
   (vii) Other files
   (viii) File of different allowances
8. How to deal with class III & IV employees of court
9. How to deal with the members of Bar
10. Inspection of Sub-ordinate Civil and Criminal Courts on behalf of District Judges.
11. Inspection/surprise inspection of court/offices
12. Judicial Restraint—strictures
13. Speaking & reasoned orders
14. Court & Time Management
15. Preparation of formal orders, decrees, monthly & quarterly statements—Relevant Circulars Letters
16. Duty of ADJ/ASJ as incharge of other courts- incharge allowance

17. Correspondence with
    (i) High Court
    (ii) District Judge
    (iii) Jr. Judicial Officers
    (iv) Addl. District Judges
    (v) Officials
    (vi) Police- SHO, SSP, Doctor, D.M., Jail Authorities
    (vii) with outsiders/other departments etc.
18. Writing comments on transfer applications of cases/complaints
19. Income Tax Return
20. Various Registers—Fine register, P.O. Diary, Readers' Diary etc.
21. Functioning of Nazarat, Store Purchase Rules, Bill Section, Administrative Office and the establishment of District Judiciary.
22. Important Circular Letters regarding
    (a) Bails
    (b) Cr. Trials
    (c) Quantum of work
23. Final enquiries
24. Addressing public gatherings on occasions like 2nd Oct, 15th Aug, 26th Jan, 10th Dec, Legal Literary Camps, Farewell parties of Judicial Officers.
25. Financial matters of District Courts, Preparation of Repayment orders—Duty of ADJ
26. Recruitment of class III & IV employees of District Court & the relevant Rules, Circular Letters, G.Os. etc.

Refresher Training:

The Institute noticed that most of the Judicial Officers of 1977, 1979, 1982, 1983 and 1984 batches whose Induction Training had taken place at ATI Nanital had not undergone any Refresher Training though they have completed almost 24 to 30 years of Judicial Service. Surprisingly

many of them had no occasion to visit IJTR. Therefore, it was decided that these officers of Higher Judicial Service be given Refresher Training at the earliest. We are glad that we have achieved this target and the refresher courses of all the officers of 1977, 1979, 1982, 1983 and 1984 batches have been successfully completed. The officers of 1982, 1983 and 1984 batches were imparted refresher training during the current financial year. Through the Refresher Courses the knowledge of the experienced Judicial Officers has been updated.

The following are the various induction trainings, refresher courses and special training programmes which the Institute undertakes along with respective training codes which have been allotted by the Institute for the first time:-

INDUCTION TRAININGS

Sl. No.	Training Code	Name of Training Programme
1.	(IT- 1)	Induction Training Programme for Civil Judges (J.D.)
2.	(IT- 2)	Induction Training Programme for A. D. Js (Direct Recruits)
3.	(IT- 3)	Induction Training Programme for A.P.Os

REFRESHER TRAININGS

1.	(RT- 1)	Refresher Training Programme for Assistant Prosecution Officers/ Prosecution Officer
2.	(RT- 2)	Refresher Training Programme for Civil Judges (J.D.) / Judicial Magistrates
3.	(RT- 3)	Refresher Training Programme for Civil Judges (S.D.) / Chief Judicial Magistrates
4.	(RT – 4)	Refresher Training Programme for Addl. District Judges
5.	(RT - 5)	Refresher Training Programme for District Judges

SPECIAL TRAININGS

1.	(ST- 1)	Training Programme for Civil Judges (J.D.). likely to be promoted as Civil Judges (S.D.).
2.	(ST- 2)	Training Programme for Civil Judges (S.D.). likely to be promoted as Additional District Judges (Regular Side)
3.	(ST- 3)	Training Programme for Civil Judge (SD) likely to be promoted as Judges, FTC
4.	(ST - 4)	Training Programme for Judges. FTC likely to be promoted as Additional District Judges (Regular Side)
5.	(ST - 5)	Training Programme for Senior District Judges likely to be elevated to the Hon'ble High Court
6.	(ST - 6)	Training Programme on Financial and Office Management for District Judges / Senior Addl. District Judges
7.	(ST- 7)	Training Programme on Land Acquisition and Motor Vehicle Compensation
8.	(ST - 8)	Training Programme for Members of District Consumer Forum
9.	(ST- 9)	National Level Training Programme on Legislative Drafting and Parliamentary Affairs
10.	(ST- 10)	Training Programme for Officers of Stamp & Registration Department
11.	(ST - 11)	Training Programme for District Government Counsels(Civil)
12.	(ST - 12)	Training Programme for Officers of Labor Department
13.	(ST - 13)	Training Programme on Office Management for Senior Administrative Officers / Sadar Munsarims of Civil Courts

During the current financial year, the following courses/ programmes were undertaken by the Institute. The details of programmes/ training, duration and number of participants have been shown in the chart below. It goes to the credit of the Institute that more than 550 Judicial Officers of the State were trained during this period which is almost 1/3rd of the total working strength of the District Judiciary:

Training Programmes & Workshops/ Conferences Organized by the Institute during Financial Year 2009-10

S. No.	Name of the Training / Workshops/Conference	Duration	No of Trainees
1.	Induction Training Programme for Newly Appointed Civil Judges (Junior Division) of U.P. Judicial Service (First Batch) (Phase -I)	04.05.2009 to 03.08.2009	118
2.	Induction Training Programme for Newly Appointed Civil Judges (Junior Division) of U.P. Judicial Service (Second Batch) (Phase-I)	18.08.2009 to 17.11.2009	118
3.	NORTH ZONE JUDICIAL CONFERENCE on "Strengthening Timely Justice: Criminal Justice Administration" organized by National Judicial Academy, Bhopal in collaboration with Hon'ble Allahabad High Court.	26.09.2009 to 28.09.2009	100
4.	WORKSHOP on "Strengthening Justice Dispensation: Challenges before Judiciary" for all District Judges of the State.	12.12.2009 to 13.12.2009	62
5.	Refresher Training Programme for Additional District Judges of 1982, 1983 & 1984 batches	11.01.2010 to 15.01.2010	43
6.	Refresher Training Programme for Additional District Judges of 1982, 1983 & 1984 batches	18.01.2010 to 22.01.2010	52

S. No.	Name of the Training / Workshops/Conference	Duration	No of Trainees
7.	Refresher Training Programme for Additional District Judges of 1982, 1983 & 1984 batches	20.01.2010 to 30.01.2010	66
8.	Induction Training Programme for Newly Appointed Civil Judges (Junior Division) Group 1 (Third Phase)	04.02.2010 to 03.05.2010	113

Seminar/Workshops-

The Institute has organized various seminars on the important topics of eternal value/burning topics of the day. To mention few are as follows:-

1. N.J.A. Regional workshop on enhancing timely justice: Strengthening Criminal justice Administration.
2. Workshop on strengthening justice dispensation: Challenges Before District Judiciary.
3. Workshop on domestic violence.
4. Workshop on gender justice.
5. Workshop on juvenile justice
6. Workshop on Cyber Crimes

Recent Events

N.J.A. North Zone Judicial Conference on "Enhancing Timely Justice: Strengthening Criminal Justice Administration"

A three day *NORTH ZONE JUDICIAL CONFERENCE* on "*Enhancing Timely Justice: Strengthening Criminal Justice Administration*" was held from 26.09.2009 to 28. 09.2009 at the Institute. The conference was organized by the National Judicial Academy, Bhopal in collaboration with the Hon'ble High Court of Allahabad and the IJTR. Around one hundred delegates from 6 High Courts namely Allahabad, Delhi, Jammu & Kashmir, Himanchal Pradesh, Punjab & Haryana, and Uttrakhand participated in the conference.

Hon'ble Mr. Justice C.K. Prasad, Chief Justice, Allahabad High Court
Presently Judge, Supreme Court arriving at the Inaugural Session

Hon'ble Mr. Justice C.K. Prasad,
Chief Justice, Allahabad High Court Presently Judge, Supreme Court welcoming
Hon'ble Mr. Justice S.B. Sinha, Former Judge, Supreme Court on his arrival

Hon'ble Mr. Justice Uma Nath Singh,
Judge Allahabad High Court, Lucknow Bench arriving to attend the Conference

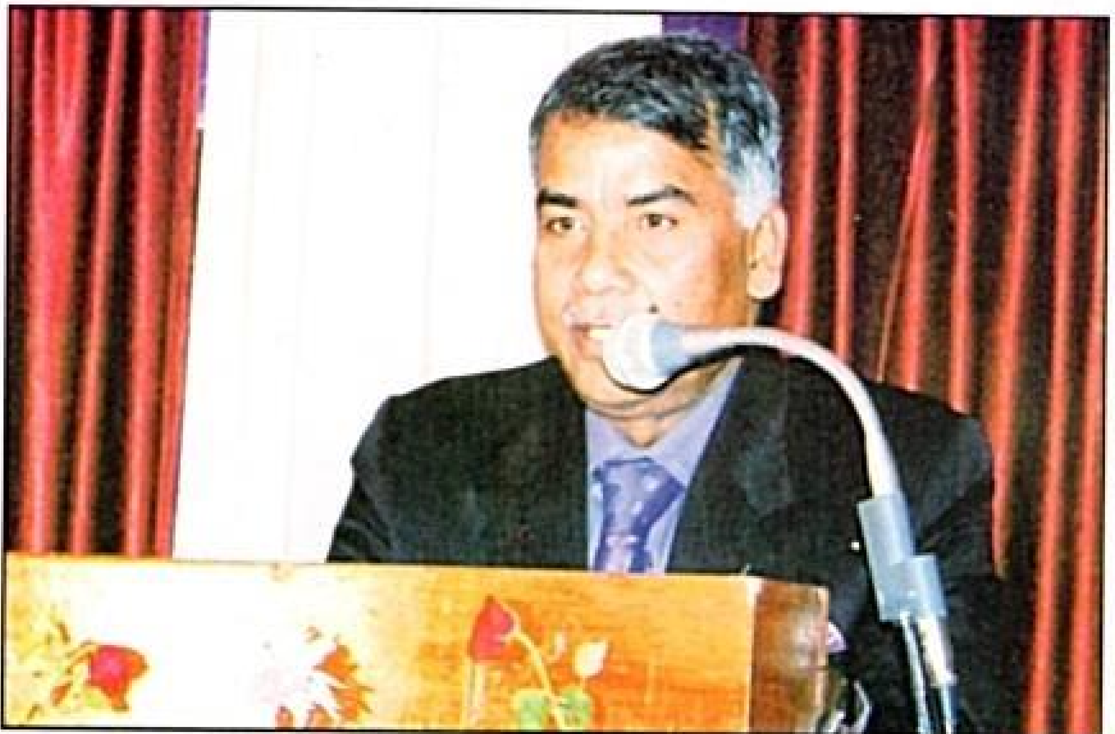
V.K. Mathur, Director IJTR, welcoming
Prof. Mohan Gopal, Director, NJA on his arrival

Hon'ble Mr. Justice C.K. Prasad, Chief Justice, Allahabad High Court Presently Judge, Supreme Court & **Hon'ble Mr. Justice Pradeep Kant,** Senior Judge, Lucknow Bench lighting the lamp

V.K. Mathur, Director IJTR presenting bouquet to **Hon'ble Mr. Justice C.K. Prasad**, Chief Justice, Allahabad High Court (presently) Judge, Supreme Court

A view of the inaugural session of Regional Workshop

Hon'ble Mr. Justice B.S.Chauhan, Judge, Supreme Court of India addressing the participants in the North Zone Regional Conference



Hon'ble Mr. Justice C.K. Prasad
Chief Justice, Allahabad High Court (presently Judge, Supreme Court)
delivering Inaugural Address

Hon'ble Mr. Justice Pradeep Kant,
Senior Judge, Lucknow Bench Addressing the participants

Hon'ble Mr. Justice S.B. Sinha
Former Judge Supreme Court Addressing the Participants

Prof. Mohan Gopal, Director, National Judicial Academy
Addressing the Participants

Prof. Balraj Chauhan Vice Chancellor Dr. Ram Manohar Lohia National Law University Addressing the Participants

A view of the dais. Seen in the photograph are **Hon'ble Mr. Justice S.B. Sinha,** Former Judge Supreme Court, **Hon'ble Mr. Justice B.S.Chauhan,** Judge, Supreme Court & **Prof. Mohan Gopal,** Director, NJA

A view of the conference hall. Seen in the photograph are participants from various States of North Zone

Hon'ble Mr. Justice Devi Prasad Singh,
Listening the deliberation

Prof. B.B.Pandey delivering talk during the conference. Listening to him on the dais are **Hon'ble Mr. Justice S.N. Shukla & Hon'ble Mr. Justice S.B. Sinha**

The Conference was inaugurated by Hon'ble Mr. Justice Chandramauli Kumar Prasad, Chief Justice of the Allahabad High Court. Hon'ble Mr. Justice Pradeep Kant, Senior Judge and Judge Incharge Judicial Education was Guest of Honour.

Hon'ble Mr. Justice Uma Nath Singh, Hon'ble Mr. Justice S.N. Shukla, Hon'ble Mr. Justice R.M. Chauhan, Hon'ble Mr. Justice Vishnu Sahai, former Acting Chief Justice, Hon'ble Mr. Justice R.K. Rastogi, Former Judge, Allahabad High Court; Prof. Balraj Chauhan, Vice Chancellor, Dr. Ram Manohar Lohiya National Law University and many eminent personalities were present in the Inaugural Session.

Hon'ble Mr. Justice Pradeep Kant, Senior Judge, delivered a talk on Planning and Management for Timely Justice in the 1st Working Session. Thereafter the participants were divided into break-out groups and they deliberated upon the theme *Key Challenges Facing Criminal Justice Administration*. The presentations by break-out groups were guided by elite panel of Hon'ble Justice S.B. Sinha , former Judge Supreme Court and Hon'ble Mr. Justice Vishnu Sahai.

On 27th September, 2009, three working sessions were held. The 1st Session was presided over by Hon'ble Mr. Justice B.S. Chauhan, Judge

Supreme Court and Hon'ble Mr. Justice S.B. Sinha, and Prof. Mohan Gopal. Director, NJA. The panelists also addressed the participants on the theme of the session *Role and Response of Subordinate Courts in the context of Current Challenges and Constraints afflicting Criminal Justice System.*

The Second Session of the second day on the theme *Safeguarding Consistency, Objectivity and Certainty in Judicial Decision Making in Criminal Justice System* was guided by Hon'ble Mr. Justice B.S. Chauhan, Judge, Supreme Court, Hon'ble Mr. Justice S.N. Shukla, Judge, Allahabad High Court, Prof. Mohan Gopal, Director, NJA and Prof. B.B. Pandey, former Dean, Delhi University. Views for and against the theme were expressed by eminent jurists and speakers but the thrust of the NJA was on consistency and certainty in decision making in criminal matters at all levels.

The Last Session of the day was presided over by Hon'ble Mr. Justice Devi Prasad Singh, Judge Allahabad High Court, Lucknow Bench. Prof. Mohan Gopal and Prof. Mrinal Satish on *Sentencing.*

On the concluding day of the conference an extended session was held on *Safeguarding Constitutional Rights in Criminal Justice Administration.* The deliberations were guided by Hon'ble Mr. Justice B.S. Chauhan, Judge, Supreme Court, Hon'ble Mr. Justice S.B. Sinha, Former Judge, Supreme Court and Hon'ble Mr. Justice R.B. Mishra, Acting Chief Justice, Himanchal Pradesh High Court.

The entire expenses of the conference were borne by Hon"ble High Court of Allahabad. A dinner was also organized on this occasion.

The efforts made by the IJTR in organizing the important event were appreciated by Hon'ble the Chief Justice and also Director, NJA and the participants.

WORKSHOP on "Strengthening Justice Dispensation: Challenges before District Judiciary" for all District Judges of the State.

In continuation of the theme of North Zone Regional Conference on "Enhancing Timely Justice : Strengthening criminal Justice Administration" held under the aegis of National Judicial Academy, Bhopal and in view of the fact that the Institute had been receiving feedback from the Judicial Officers of the State that many practical difficulties were being faced by them in Judicial, Non-Judicial and Administrative Sides and also some difficulties relating to inadequate infrastructure and the role of the Members of Bar and other agencies had been highlighted. In this backdrop the Institute decided that all these difficulties should be deliberated and discussed firstly at the level of District Judges in a workshop for further improvement in the functioning of District Judiciary. A proposal for organizing a workshop on "*Strengthening Justice Dispensation: Challenges Before District Judiciary*" on 12th and 13th December, 2009 was submitted to the Hon'ble High Court. The Hon'ble Court was pleased to nominate all the District Judges of the State.

The Institute prepared a questionnaire containing 82 questions in all divided into five segments namely:-

1. Difficulties on Judicial Side
2. Difficulties on Non-Judicial Side
3. Improvement in Infrastructure
4. Reforms in Administrative Set Up
5. Role of Bar and other Agencies

A questionnaire was prepared by the Institute containing 82 questions and was sent to all the District Judges inviting their individual views and the views of all Judicial Officers posted under their administrative control. The questionnaire was also sent to all the Judicial Officers in the State posted in various departments on deputation. It was expected that the views of the Judicial Officers should reach the Institute before the commencement of the workshop. The Institute also decided to prepare a research paper by including suggestions of the Judicial Officers. It was also decided that more workshops on this subject will be organized in future at the level of Civil Judges (Junior Division & Senior Division).

The Hon'ble Court was pleased to nominate a panel of 5 Hon'ble Judges of Allahabad High Court namely Hon'ble Mr. Justice Yatindra Singh, Hon'ble Mr. Justice Sunil Ambwani, Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice Dilip Gupta and Hon'ble Mr. Justice Alok Kumar Singh for

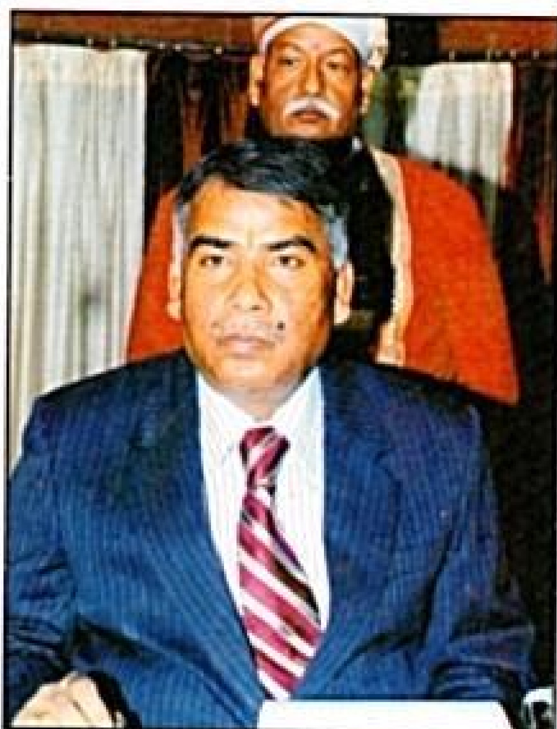
guiding the project. However, Hon'ble Mr. Justice Yatindra Singh could not attend the workshop due to other pressing engagements.

The Institute on receipt of responses on the questionnaire from various districts conducted a sample analysis of the responses of more than 60 judgeships, before the workshop. On 12th and 13th December, 2009, the workshop was held at IJTR which was inaugurated by the then Hon'ble Chief Justice Hon'ble Mr. Justice Chandramauli Kumar Prasad. The session was also addressed by Hon'ble Mr. Justice Pradeep Kant, Senior Judge, Allahabad High Court, Lucknow Bench. Most of the District Judges of the State participated in the Workshop including Principal Secretary (Judicial) & L.R., Govt. of U.P., the Registrar General, Hon'ble Allahabad High Court, The Registrar, Lucknow Bench of Allahabad High Court, Member Secretary, State Legal Services Authority, The Chairman, Transport Appellate Tribunal, and the Chairman, Administrative Tribunal.

The discussions on all the identified 5 themes were held by Break-out Groups in 5 working sessions which were presided over by Hon'ble Mr. Justice Sunil Ambwani, Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice Dilip Gupta and Hon'ble Mr. Justice Alok Kumar Singh on rotational basis. The suggestions by 4 Break-out Groups i.e. A, B, C & D were recorded and placed in the joint session of all the 4 groups by their representatives. In addition to the questions included in the questionnaire, other suggestions were also taken up and discussed by the groups.

After conclusion of the workshop the Institute recorded all the suggestions and views expressed by the Break-out Groups and placed them before the Hon'ble Judges of the Panel. Hon'ble Mr. Justice Sunil Ambwani and Hon'ble Mr. Justice Alok Kumar Singh after going through the unanimous views and other recommendations, through their valuable suggestions guided the Institute in formulating a draft of proposed actions as also identified the respective implementing agencies. Under the valuable guidance of Hon'ble Judges the Institute has prepared the Interim Report in tabular form noting the proposed action and also mentioning the implementing agencies for kind consideration and necessary action by the Hon'ble Court. The Interim Report has been sent to the Hon'ble High Court on 4.3.2010. The Hon'ble Panel after considering the interim report, has endorsed it unanimously and has submitted the same to the Hon'ble Court with the proposed recommended action.

It may be added that individual responses received from the Judicial Officers are being analyzed by the Institute and after completing the study the final research paper will be submitted to the Hon'ble Court and Government for further action.



Hon'ble Mr. Justice C.K. Prasad,
Chief Justice, Allahabad High Court Presently Judge, Supreme Court

Hon'ble Mr. Justice Pradeep Kant,
Senior Judge, Lucknow Bench

Hon'ble Mr. Justice Sunil Ambwani
Judge, Allahabad High Court

Hon'ble Mr. Justice Ashok Bhushan
Judge, Allahabad High Court

Hon'ble Mr. Justice Dilip Gupta
Judge, Allahabad High Court

Hon'ble Mr. Justice Alok Kumar Singh
Judge, Lucknow Bench

A view of the Confrence Hall, Seen in the Photograph are **Shri Dinesh Gupta**, R.G.; **Shri S.V.S. Rathore** the then Registrar, Lko Bench & **Shri S.M.A. Abidi** the then L.R. & other participant Distt. Judges

The Interim Report submitted to the Hon'ble Court is being reproduced herein below:

RESEARCH:

A Zonal Judicial Conference on "Enhancing Timely Justice : Strengthening Criminal Justice Administration" was hosted by the Hon'ble High Court of Allahabad on September 26th to 28th, 2009 at the Institute of Judicial Training & Research, U.P., Lucknow as part of the Training Programme of National Judicial Academy in which Judicial Officers of 6 High Court of North Zone participated. The Conference was a great success. In furtherance of the theme and considering the fact that the Institute has been receiving feedback from the Judicial Officers of the State that many practical difficulties are being faced by them in Judicial, Non-Judicial and Administrative Sides and also some difficulties relating to inadequate infrastructure and the role of the Members of Bar and other agencies have been highlighted. In this backdrop the Institute formed the view that these difficulties should be deliberated and discussed by the District Judges in a workshop for further improving the functioning of District Judiciary. Consequently, a proposal was submitted to the Hon'ble Court for organizing a Workshop on "Strengthening Justice Dispensation: Challenges Before District Judiciary" on 12th and 13th December, 2009 of all the District Judges of the State, so that, the experiences regarding

challenges being faced by the District Judiciary in dispensation of justice may be identified and their possible solutions, if any, may be suggested for the betterment of the system. The Hon'ble Court vide its letter No. 573/Ar(S)/2009 dated 16th No., 2009 has been pleased to approve the proposal and all the District Judges of the State have been nominated for the Workshop.

Following 5 themes were identified by the Institute for discussions by breakout groups of the District Judges:

1. Difficulties on Judicial Side
2. Difficulties on Non-Judicial Side
3. Improvement in Infrastructure
4. Reforms in Administrative Set Up
5. Role of Bar and other Agencies

Consequently, a questionnaire was prepared by the Institute containing a few questions and was sent to all the District Judges inviting their individual views and the views of all Judicial Officers posted in their district. The questionnaire was also sent to all the Judicial Officers in the state posted in various departments on deputation. It was expected that the views of the Judicial Officers would reach to the Institute latest by 6th December, 2009. The Institute also proposes to prepare a **research paper** by including suggestions of the Judicial Officers. For this purpose, in future, on this very theme, the Institute may think to organize workshops of Judicial Officers of different cadre in the State and some Eminent Jurists, Professors of Law, Social thinkers, NGO's groups and selected lawyers.

By 8th of December, 2009, the response of as many as 36th Judgeships were received by the Institute. The Institute carried out a sample analysis of the views of all the 36 Districts. At the time of the commencement of the workshop responses from 25 more Districts were received. In all almost 1800 views were received from the Judicial Officers of various levels. A study and analysis of all the views received so far by the Institute is in progress and a report containing views, discussions, suggestions and resolutions will be prepared and will be submitted to the Hon'ble High Court and the State Government in due course. Meanwhile an Interim Report containing the recommendations of the break-out groups of District Judges on issues on which unanimity was arrived at has already been submitted through the panel of Hon'ble Judges nominated by the Hon'ble Court to the Hon'ble High Court for consideration and appropriate action. The Interim Report submitted by the Institute is being published for information of all the judicial officers of the State.

INTERIM REPORT

In view of the fact that the Institute had been receiving feedback from the Judicial Officers of the State that many practical difficulties were being faced by them in Judicial, Non-Judicial and Administrative sides and also some difficulties relating to inadequate infrastructure and the role of the members of Bar and other agencies were being felt, the Institute decided that these difficulties should be deliberated and discussed firstly by the District Judges in a Workshop for further improvement in the functioning of the District Judiciary. Consequently a proposal was submitted to the Hon'ble Court for organizing a Workshop on "**Strengthening Justice Dispensation: Challenges Before District Judiciary**" on 12th & 13th December, 2009 of all the District Judges of the State, so that, challenges being faced by the District Judiciary in dispensation of justice may be identified and their possible solutions may be suggested for the betterment of the system.

The Hon'ble Court vide its letter No. 573/AR(S)/09, dated 16th November, 2009 was pleased to approve the proposal and all the District Judges of the State were nominated for the workshop.

Following 5 themes were identified by the Institute on which discussions were held by breakout groups of the District Judges:

1. Difficulties on Judicial Side
2. Difficulties on Non - Judicial Side
3. Improvement in Infrastructure
4. Reforms in Administrative Set Up
5. Role of Bar and other Agencies

A questionnaire was prepared by the Institute containing in all more than 80 questions divided into 5 above referred segments. The questionnaire was sent to all the District Judges inviting their individual views as well as views of all the Judicial Officers posted in their districts. A questionnaire was also sent to all the judicial officers of the State posted in various departments on deputation. The District Judges were required to hold a meeting in their respective judgeships and after discussing the various difficulties were requested to record the considered views of the judgeship besides recording their own views. The individual views of the Judicial Officers including those of the District Judges and considered views of the Judgeships were received by the Institute. Thus by this exercise each and every judicial officer of the State was involved in the process and their views were obtained.

The Institute proposes to prepare a research paper by including suggestions of all the Judicial Officers. It is also proposed that workshops of judicial officers of different cadres be organized in future in which

eminent jurists, academicians, social workers, N.G.Os. and representatives of Bar Associations and Bar Council may also be invited.

The Hon'ble Court on the request of the Institute was pleased to nominate a panel of 5 Hon'ble Judges of Allahabad High Court namely Hon'ble Mr. Justice Yatindra Singh, Hon'ble Mr. Justice Sunil Ambwani, Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice Dilip Gupta and Hon'ble Mr. Justice Alok Kumar Singh for guiding the project. However, Hon'ble Mr. Justice Yatindra Singh could not attend the workshop due to other pressing engagements.

The Institute on receipt of responses on the questionnaire from various districts conducted a sample analysis of the responses of more than 60 judgeships, before the workshop. On 12th and 13th December, 2009, the workshop was held at IJTR which was inaugurated by the then Hon'ble Chief Justice Hon'ble Mr. Justice C.K. Prasad. The session was also addressed by Hon'ble Mr. Justice Pradeep Kant, Senior Judge, Allahabad High Court, Lucknow Bench. 62 District Judges of the State participated in the Workshop besides District Judges working on deputation which included the Principal Secretary (Judicial) & L.R., Govt. of U.P., the Registrar General, Hon'ble Allahabad High Court, The Registrar, Lucknow Bench of Allahabad High Court, Member Secretary, State Legal Services Authority, The Chairman, Transport Appellate Tribunal, and the Chairman, Administrative Tribunal.

The discussions on all the identified 5 themes were held by Break-out Groups in 5 working sessions which were presided over by Hon'ble Mr. Justice Sunil Ambwani, Hon'ble Mr. Justice Ashok Bhushan, Hon'ble Mr. Justice Dilip Gupta and Hon'ble Mr. Justice Alok Kumar Singh on rotational basis. The suggestions by 4 Break-out Groups i.e. A, B, C & D were recorded and placed in the joint session of all the 4 groups by their representatives. In addition to the questions included in the questionnaire, other suggestions were also taken up and discussed by the groups.

After conclusion of the workshop the Institute recorded all the suggestions and views expressed by the Break-out Groups and placed them before the Hon'ble Judges of the Panel. Hon'ble Mr. Justice Sunil Ambwani and Hon'ble Mr. Justice Alok Kumar Singh very kindly devoted much time and after studying the recommendations wherein unanimity was reached by all the groups and other useful suggestions guided the Institute to formulate draft of proposed actions and identification of respective implementing agencies. Under the valuable guidance of Hon'ble Judges the Institute has prepared the Interim Report in tabular form noting the proposed action and also mentioning the implementing agencies for kind consideration and necessary action by the Hon'ble Court.

It may be added that individual responses received from the Judicial Officers are being analyzed by the Institute and after the study is completed the final research paper will be submitted to the Hon'ble Court for further action.

INSTITUTE OF JUDICIAL TRAINING & RESEARCH, U.P., LUCKNOW

Workshop of District Judges of the State of U.P.

On

"Strengthening Justice Dispensation : Challenges Before District Judiciary"

INTERIM REPORT

DIFFICULTIES ON JUDICIAL SIDE				
Q.NO.		**Suggestions**	**Proposed Action**	**Implementing agency**
	Do you feel some ambiguity and vagueness in the division of jurisdiction of Civil, Revenue and other courts is also a factor for delay in disposal of civil suits? If yes, suggest measures to solve the problem.	**Unanimity** All the four Groups of the District Judges are agreed that there is much ambiguity regarding the jurisdiction of civil and revenue courts. The suggestions made are- (i) Ambiguity needs to be resolved by legislative or judicial intervention. (ii) The IJTR should prepare a digest covering the controversy as to jurisdiction and the same should be provided to all the judicial officers of the State of U.P. (iii) Sec. 331, UPZA & LR Act, 1950 should be suitably amended so as to confer	- (ii) The IJTR to prepare a digest covering the controversy as to jurisdiction which should be provided to all the judicial officers of the State of U.P. (iii) Sec. 331, UPZA & LR Act, 1950 requires amendment so as to confer jurisdiction on civil courts in the matters of title disputes relating	**Institute of Judicial Training & Research, U.P.** Proposal be referred to **U.P.State Law Commission** for consideration and recommendation for suitable amendment in Sec. 331 UPZA&LR Act

		jurisdiction on civil courts in the matters of agricultural land too. (iv) There have been dissenting views amongst the four Groups regarding conferment of power on revenue courts as well for granting injunctions like civil courts in the cases involving agricultural land.	to agricultural land.	1950
2.	What are your suggestions for timely service of processes of courts through courier agencies and modes like Fax, E-mail etc. as provided under Or. 5 of the CPC w.e.f. 1.7.2002?	The suggestions made by different four Groups on the subject are as under- (i) Parties to proceedings should be required to mention their telephone Nos. (in their petitions etc.) (ii) Record of transfers of public servant witnesses like Doctors and Investigating Officers should be maintained in their departments and the same	(i) Parties may be required to mention their telephone Nos. (in their petitions etc.) (ii) Record of transfers of Doctors and Investigating Officers be maintained by the District Headquarters and uploaded on websites. All transfers be notified to the D.J.	**High Court** Rules Committee u/S.122/123 CPC for consideration to amend General Rules (Civil) & General Rules (Criminal) accordingly **High Court,** Registrar General to take up the matter with (i) Principal Secretary, (Home) (ii) Principal Secretary, Medical and

		should be provided to the District Judiciary as well and posted on Internet too.		Health Govt. of U.P.
		(iii) Proper control over the process-servers needs to be exercised.	(iii) Proper control over the process-servers needs to be exercised.	**High Court.** Registrar General to prepare proposal for issuing circular by High Court (AC) to District Judges
		(iv) Private agencies providing courier services should be approved by the Hon'ble High Court.	(iv) Reputed private agencies providing courier services be approved by the Hon'ble High Court.	**High Court.** Registrar General to prepare proposal for issuing circular by High Court (AC)
		(v) Parties should be required to provide their E-mail and Fax addresses.	(v) Parties having e-mail addresses and fax facilities be required to provide their E-mail and Fax addresses.	**High Court** to amend General Rules (Civil) & General Rules (Criminal) accordingly
		(vi) Due compliance of the provisions u/s. 294 & 296 Cr.P.C. should be ensured.	–	
		(vii) Two modes of service of processes should be adopted simultaneously	(vii) Two modes of service of processes should be adopted simultaneously.	**High Court:** to refer to Rules Committee constituted u/S.122/123 C.P.C
			–	

		(viii) Local SP/SSP should be assigned the task of service of processes in criminal matters within or beyond the district. (ix) A separate cell for service of processes in criminal cases too should be constituted under the direct control of the District Judges.	(ix) Separate cell for service of processes in criminal cases be constituted under the direct control of the CJM.	**High Court:** Registrar General to take up with Principal Secretary (Judicial)
		(x) The existing rules in G.R. (Civil) and G.R. (Criminal) for service of processes should be suitably amended by the Hon'ble High Court.	(x) Existing rules be amended	**High Court:** Rules Committee constituted u/S.122 C.P.C.
		(xi) In cases where the Government is a party, service of process should be made only through E-mail and Fax.	–	
		(xii) DGP should provide to the District Judiciary the up-to-date E-mail and Fax address of the police	(xii) DGP be asked to provide up-to-date E-mail and Fax address of the police personnel.	**High Court,** Registrar General to take up the matter with the Principal Secretary, (Home)
			(xiii) Investigating Officers and doctors to provide their cell numbers	**High Court,** Registrar General to take up the matter

		officials. (xiii) Mentioning their Phone and Mobile Nos. on charge-sheet by Investigating Officers and on injury report and post mortem report by Doctors should be made compulsory.	on charge sheet, injury report and post mortem report.	with (i) Principal Secretary, (Home), Govt. of U.P. (ii) Principal Secretary, Medical and Health, Govt. of U.P.
3.	Identify the difficulties and record your suggestions for timely execution of Recovery Certificates issued by Tribunals to the Collectors in M.A.C.P. cases?	Different suggestions made by all the four Groups are as under- (i) Monthly quota should be prescribed for Amins of the Collectors executing Recovery Certificates issued by Tribunals in MACP Cases and the Government should be moved for issuing suitable directions for the purpose. (ii) Owners of vehicles should be required to furnish their Telephone and Mobile Nos. at the time of registration and transfer of their vehicles so that during the execution of RCs there is no difficulty in tracing their addresses. (iii) Monitoring of execution of RCs should be done into two ways i.e. (i) by	(i) Government be asked to prescribe monthly quota for Amins of the Collectorate executing Recovery Certificates of Tribunals. (ii) Transport department be asked to issue instructions to owners of vehicles to provide their Telephone and Cell Nos. at the time of registration or transfer. -	**High Court** Registrar General to take up matter with Principal Secretary (Revenue) and Chairman, Board of Revenue. **High Court** Registrar General to take up matter with Principal Secretary, Transport and Transport Commissioner.

		monitoring the execution proceedings in the same district and (ii) in other districts as well. (iv) Government should be moved for creating special cell in Collectorates for monitoring of the execution of RCs and fixing responsibility in the event of laxity and latches. (v) Report regarding delayed execution or non-execution of RCs should be sent to Government through the concerned Collectors. (vi) Problems of non-execution or delayed execution of RCs should be raised with the Collectors in the monthly meetings of the Monitoring Cells.	- - (vi) Monitoring of execution of Recovery Certificates be taken up in the monthly monitoring cell meetings with District Magistrate	**High Court.** Registrar General to prepare proposal for issuing circular by High Court (AC)
4.	What measures can be adopted to contain the frequent practice of lawyers moving Transfer applications, on frivolous grounds to delay the disposal of cases?	Different suggestions made by the Groups to curb the menace of frequently moving applications for transfer of cases are as under- (i) The transfer application must be supported by affidavit.	(i) Filing of affidavit with transfer application be made compulsory by amending Sec. 24 CPC (ii) Personal	**High Court: Rules Committee** constituted u/S.122/123 C.P.C. for proposing Amendment in Sec. 24 CPC **High Court:**

		(ii) The applicant moving the transfer application must be present in person before the court and such applications should not be allowed to be moved through lawyers so that it may be ascertained whether the transfer application has really been moved by the applicant or the same has been manipulated by his counsel.	presentation by applicant be made mandatory by amending Sec. 24 CPC.	**Rules Committee** constituted u/S.122/123 C.P.C. for proposing Amendment in Sec. 24 CPC
		(iii) The applicant moving the transfer application should be required to furnish some security so that if the transfer application is found to have been moved on false and frivolous grounds, the security may be forfeited in favour of the State Government. Necessary Rules need to be framed accordingly.	(iii) The applicant moving the transfer application should be required to furnish some security so that if the transfer application is found to have been moved on false and frivolous grounds, the security may be forfeited in favour of the State Government. Necessary Rules need to be framed accordingly.	**High Court: Rules Committee** constituted u/S.122/123 C.P.C. for proposing Amendment in Sec. 24 CPC
		(iv) Transfer applications moved on false and frivolous grounds should be rejected with exemplary costs.	(iv) Amendment in S. 407 (7) Cr.P.C. by enhancing the amount of compensation to Rs. 20,000/-	Proposal be referred to **U.P.State Law Commission for consideration** and recommendation for suitable amendment in S. 407(7) Cr.P.C.
		(v) Comments of the Presiding Officer	-	

		concerned upon the transfer application should not be called for in routine manner and the same should be called for only when there are serious allegations against the Presiding Officers. (vi) Expeditious disposal of transfer applications must be ensured. (vii) Unless there is order staying the further proceedings of the court, the proceeding should not be kept stayed and should be allowed to proceed further. (viii) Some action in law must be taken against the applicant moving transfer application if the same is found to have been moved on false, frivolous or vexatious grounds.	- (vii) Proceedings should not be stayed unless specifically stayed by Order -	**High Court Registrar General** to prepare a proposal for issuing circular by High Court (AC)
5.	Do you feel any constraint in granting ex-parte ad - interim injunctions? Enumerate causes.	The suggestions by various Groups are as under- (i) Presiding Officers must record reasons for not granting ex-parte ad-interim injunctions. (ii) Rules and provisions coming in the way of non issue of ad-interim	(i) Order 39 R.3 CPC be amended to the effect that reasons should also be assigned where it is proposed not to grant any injunction without giving notice. (ii) District & Sessions Judges be asked to	**High Court:** Rules Committee constituted u/S.122/123 C.P.C. for proposing amendment in O. 39 R.3 CPC. **High Court** Registrar General to take up matter with District Judges

		injunctions should be suitably amended. (iii) The Presiding Officers should not be apprehensive against grant of ex-parte ad-interim injunctions in suitable cases but they must ensure that the disposal of the injunction application on merits is not delayed and the ex-parte injunction is not abused. (iv) Judicial Officers do not grant interim injunctions particularly exparte ad-interim injunctions for fear of complaints by the parties or their counsel and consequent action against them. Granting ex-parte injunctions should not be taken against the Presiding Officers.	review these issues in monthly meetings with Magistrates. (iii) District & Sessions Judges be asked to review these issues in monthly meetings with Magistrates. (iv) District & Sessions Judges be asked to review these issues in monthly meetings with Magistrates.	**High Court** Registrar General to take up matter with District Judges **High Court** Registrar General to take up matter with District Judges
6.	Do you feel any constraint in the exercise of discretion in the matter of grant of bails?	(i) Magistrates should not reject the bail applications involving petty offences as it burdens the Sessions Court. (ii) Merits of the bail application must be considered. (iii) Judicial Officers should freely exercise their discretion in the matters of grant of	(i) Merits of the bail application must be considered. - (iii) Judicial Officers should freely exercise their discretion in the matters of grant of bail and	**District & Sessions Judges** should review these issues in monthly meetings with Judicial officers – High Court to issue necessary circular **District & Sessions Judges** should review these issues in monthly meetings

		bail and they should not feel any sort of fear in relation thereto. (iv) Judicial pronouncements regarding grant of interim bail and same day bail by Magistrates should be followed. **Note:** Sri A.P. Singh, Ld. District Judge, Moradabad quoted his personal experience / instance by saying that he had to suffer a lot for grant of bail in a particular matter and got very narrow escape from action in that matter.	they should not feel any sort of fear in relation thereto. (iv) Judicial pronouncements regarding grant of interim bail and same day bail by Magistrates should be followed.	with Judicial officers – High Court to issue necessary circular **District & Sessions Judges** should review these issues in monthly meetings with Judicial officers – High Court to issue necessary circular
7.	Suggest at least 5 measures to ensure 'speedy justice'?	(i) Parties must be required to file their all documents with the plaint and W.S. and production of documents at later stages should be permitted only on very heavy cost. (ii) Summary procedure of trials should be adopted in civil and criminal cases both. (iii) In criminal cases involving petty offences, summons to accused should be sent u/s. 206 Cr.P.C. and they should be permitted to deposit the proposed fine in Banks and send the	- - (iii) Amount of fine in petty cases should be permitted to be deposited in banks -	**High Court** for consideration of Standing committee for amendment in General Rules (Criminal) accordingly

		receipt to the court concerned. (iv) Mobile courts for trial of cases involving petty offences like under M.V. Act and others should be introduced for trial on spot.	-	
		(v) Scope of ADRs should be expanded. (vi) Procedure for plea bargain should be simplified so that the same may be effective.	(vi) Simplified and effective procedure be suggested so that the same may be effective.	**High Court** may ask the **JTRI** to make research and make suggestions
		(vii) Depositions of witnesses should be recorded on computers.	(vii) Depositions of witnesses should be recorded on computers	**High Court.** Registrar General to prepare proposal for issuing circular by High Court (AC) Standing Committee for amendment in GR(C) & G(Cri)
		(viii) Report of stayed cases should be compiled in the office of the District Judges and the District Judges should inquire about such stayed cases from the Registry of the High Court.	(viii) Inquiry regarding stayed cases should be made by the District Judge and not by courts separately.	**High Court.** Registrar General to prepare proposal for issuing circular by High Court (AC)
		(ix) Unless necessary, the record of the subordinate courts should not be summoned by the superior courts.	- -	
		(x) Lengthy arguments by Advocates should be controlled by the Presiding Officers.	(xi) Date of conclusion of arguments	**High Court.** Registrar General

		(xi) After the conclusion of the arguments, judgment should be pronounced at the earliest. (xii) Lap-tops should also be provided to all Stenographers. (xiii) Stenographers having knowledge of computers should be recruited and the existing rules in this regard should be suitably amended.	should be clearly mentioned on the top of the Judgment – (xiii) Service rules be amended	to prepare proposal for issuing circular by High Court (AC) **High Court** Registrar General to prepare proposal for Rules Committee for consideration
8.	Do you comply with the provision of O. X R. 2 C.P.C.? Does it help in speedy disposal of cases?	Recording of statements of parties under Or. X, r. 2 CPC helps towards speedy disposal of cases.	–	
9.	Suggest measures to check adjournments?	(i) Frequent moving of adjournments applications should be controlled by awarding heavy costs and by fixing early dates. (ii) 50% of the cost awarded on adjournment applications should be deposited in civil court account and should be utilized for development of infrastructure of the district courts. Rules in this regard should be suitably amended. (iii) Adjournment applications should be strictly examined	(i) Number of adjournments should be curtailed. (ii) 50% of the cost awarded on adjournment should be deposited in civil court account to be utilized in development and maintenance of infrastructure. –	High Court. Registrar General to prepare proposal for issuing circular by High Court (AC) with reference to Supreme Court/ Allahabad High Court Rulings. High Court for consideration of amending General Rules (Civil) & General Rules (Criminal) accordingly

		and adjournment should not be granted in routine manner. (iv) Group practice by lawyers should be promoted. (v) Frequent change of lawyers by parties should not be allowed.	(iv) Frequent change of lawyers by parties should not be allowed	**High Court Registrar General** to request Bar Council to issue directions to the advocates to obtain no – objection from the previous counsel before filing fresh vakalatnama.
10.	Any other suggestions?	Different Groups are unanimous in their views that Sec. 89 CPC and other modes of Alternative Disputes Resolution Mechanism presently in practice are satisfactory.		

		DIFFICULTIES ON NON – JUDICIAL SIDE		
1.	Will it be practicable to hold courts in shifts in your judgeship? Give reasons in support of your proposal.	**Unanimity** All the four groups agreed that it will not be practicable to hold courts in three shifts in the Districts. However group C was of the view that courts may function in one addition shift of three hours duration for disposal of petty cases only. **Reasons (Against)–** 1. Existing man power and infrastructure inadequate 2. Non availability of	IJTR be asked to conduct a detailed study regarding feasibility of holding courts in three shifts in districts and thereafter prepare a project report	**IJTR**

		conveyance for litigant coming from remote areas. 3. Security problem 4. Non-availability of lawyers. 5. Uncertainty of power supply. **Reasons-(For - Group C)** 1. Cases involving plea bargaining and confession may be taken up on rotational basis 2. Only those cases should be fixed where both the parties give consent. 3. Regular staff and officers who will work in addition shift be provided incentives and relaxation in Quota. 4. Services of retired judicial officers may be taken.		
2.	Do you think that posting of judicial officers according to the ratio of pendency in a particular district will help in early dispensation of justice? (For District Judges only)	**Unanimity** All the four groups agreed that posting of judicial officers according to the pendency in a particular District will help in early dispensation of justice.	For early dispensation of justice it was felt that judicial officers be posted according to the pendency in a particular District.	**High Court** The Registrar General to prepare a chart of pendency to be considered at the time of transfers and monitor the position six monthly.
3.	Do you feel that frequent transfer of cases from one court to another contributes towards delayed	A. Resolved that zigzag posting for the courts of JSCC, CJM, Civil Judge (SD), and ACJM'S should be discontinued	Zigzag posting for courts excepting courts of JSCC, CJM, Civil Judge (SD), and I ACJMs dealing with economic	**High Court.** Registrar General to prepare a proposal for issuing circular by High Court (AC)

	disposal of cases? Your suggestions in this regard. Comment on the Zigzag posting system.		but may continue for presiding officers of the other courts.	offences, may be discontinued.	
		B	No Change is required in the existing system. Frequent transfer should be avoided.		
		C	1. In Criminal Cases pending in the courts of Magistrates case no. should not be changed in case of transfer of cases to other courts.	-	
			2. Part-heard cases should only be transferred when the court is vacant.	2. No transfer of Part-heard cases except in the condition of the court falling vacant may be permitted.	**High Court.** Registrar General to prepare a proposal for issuing circular by High Court (AC)
			3. In the annual chain only designation of the courts should be changed and no actual change should be effected.	3.Only designation of the courts be changed in annual chain.	**High Court.** Registrar General to prepare a proposal for issuing circular by High Court (AC)
		D.	Barring postings of the parent courts the policy requires review. Transfer of cases should be avoided as far as possible.		
4.	Whether there is a need to reconsider language policy for the District Courts?		<u>**Unanimity**</u> All the four groups agreed that bilingual stenographers having knowledge of computers should be recruited for the courts of Additional District Judge and		

			above. Use of English and Hindi languages should be permitted. **Suggestions-** 1. Recruitment Rule should be amended to provide knowledge of short hand and typing of both Hindi and English languages and also of computers compulsory.	(1) Recruitment Rules be amended to provide compulsory knowledge of short hand and typing of both Hindi and English and computers as requisite condition for eligibility.	**High Court** Rules Committee for consideration of amendment in Recruitment rules.
			2. Government may be moved for relaxing the requirement of delivering judgments in Hindi only for the officers up to the Civil Judge (SD).	(2) State Govt. may be approached to suitably amend provisions of U.P.Act 17 of 1970 .	**High Court** Registrar General to put up a proposal before the Hon'ble Administrative Committee for considering the desirability of exempting District Judges and Addl. District Judges from delivering judgments in Hindi only. Thereafter the State Govt. may be moved to amend U.P. Act no. 17 of 1970.
5.	Do you feel, non – turning up of Advocates is also a reason of delay? Suggest solutions for this problem.	A.	-		
		B.	-		
		C.	1. Resolved in the affirmative 2. In Criminal case if the accused is absent and counsel is present provision for proceedings with the case be made even if no exemption is	(2) In the absence of accused provision for proceeding with the case be made if he is represented by a lawyer.	**High Court.** Registrar General to prepare a proposal for consideration by Administrative Committee for issuing circular.

			sought. 3. If the court is on leave provision for examination of the witness by the link court or incharge court should be incorporated.	(3) In the event of absence of presiding officer provision for examination of the formal witnesses by the link court or incharge court be incorporated.	**High Court.** Registrar General to prepare a proposal for consideration by Administrative Committee for issuing circular.
		D	-		
6.	Should a request be made in the administrative side to the Hon'ble High Court to take up contempt cases referred by Judicial Officers on priority basis?		**Unanimity** All the four groups agreed that request be made in the administrative side to the Hon'ble court to take up contempt cases referred by Judicial Officers on priority basis **Suggestions-** 1. A special Bench of Senior Judge be nominated to deal with these cases.	1. A proposal be placed before Hon'ble the Chief Justice for considering constitution of a special Bench of Senior Judge to deal with contempt cases referred by judicial officers.	**High Court** Registrar General to prepare a proposal and put up it before **Hon'ble the Chief Justice of Allahabad High Court**
			2. On Administrative side Senior Judge of the Hon'ble Court may be designated to monitor the cases.	2. A proposal be placed before Hon'ble the Chief Justice for consideration to nominate Senior Judge to monitor the cases.	**High Court** Registrar General to prepare a proposal and put up it before **Hon'ble the Chief Justice of Allahabad High Court**
			3. While accepting apology of the contemnor the view of the court which referred the		

No.	Question	Group	Response	Recommendation	Action
		matter should also be obtained.			
7.	What in your view are the expectations of the Judicial Officers in tackling the incidents of unruly behaviour and unbecoming acts of the lawyers in the District Courts?	A.	-		
		B.	-		
		C.	1. In cases of damage to government property FIR should be lodged.	1. District Judges be asked to ensure that an FIR is promptly lodged in cases of damage to government property.	**High Court.** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular.
			2. In case of interference of normal working District Judges should be directed to take stern action according to their wisdom.	-	
		D.	-		
8.	Do you think that a direction is required for preparation of copies of Case Diaries through photocopier to reduce the pendency and curtail delay in the commencement of the trial?	Unanimity All the four groups resolved in the affirmative. Suggestions- 1. To cope up with the heavy pendency of civil and criminal copying departments - distinction of urgent and ordinary copying application be discontinued. All copies of civil copying department be prepared through photocopier machines which will save manpower.		1. All copies may be prepared through photocopier machine irrespective of the distinction of urgent or ordinary.	**High Court.** Registrar General to prepare a proposal place before the Administrative Committee for issuing circular.
		2. Statement of witnesses should be recorded on computer and copies be issued to the parties.		2. Provision for recording of evidence on computer in the court my be made and copies	**High Court.** Registrar General to prepare a proposal place before the Administrative Committee for

			thereof be permitted to be issued to the parties.	issuing circular.
9.	What is total number of statements which are sent to the High Court from the Judgeship? Identify if some of them have become unnecessary, if yes, name them supported by reasons?	**Unanimity** All the four groups resolved that number of statements should be cut down as a number of statements required are unnecessary. **Suggestions-** 1. Statement as provided under C.L. No. 8 alone is sufficient. 2. Six monthly statements should not be demanded.		
		3. Statements should be directed to be made available online.	(3) Statements of District Court be uploaded and made available online.	**High Court.** Registrar General to prepare a proposal for issuing circular by High Court (AC)
		4. A committee be constituted to study the requirement of only necessary statements to be furnished by Judgeships.	(4) Hon'ble the Chief Justice be requested to constitute a committee to study the requirement of preparation of list of necessary statements required to be furnished by the District Courts	**High Court** Registrar General to prepare a proposal and put up it before **Hon'ble the Chief Justice of Allahabad High Court**
		5. It should be mandatory that all the statements be sent on e-mail.	-	
10.	Suggestions for formulation of policy against frequent recording of strictures and condemnations against judicial	A. -		
		B. -		
		C. Passing of strictures should be avoided.	Passing of strictures should be avoided	**High Court.** Registrar General to prepare a proposal and place it before the Administrative

	officers adversely affecting their morale and career despite repeated disapproval by Supreme Court ?			Committee for issuing circular highlighting all the judgments on the subject.
		D. -		
11.	Whether the timing of morning courts during summers should be changed to 8:30 A.M. to 02:00 P.M. for improving the productivity and efficient working of the courts?	**Unanimity** All the four groups resolved in the affirmative. **Suggestion of Group D** If they are to be retained timings should be from 7.30 a.m. to 1.30 p.m.	Timings of morning courts may be changed .	**High Court.** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular for change of timings of morning courts.
12.	Should 'Online' service of important journals like AIR, SCC etc. be provided to the judicial officers at their residences through internet?	**Unanimity** All the four groups resolved in the affirmative.	Online service of one important journal such as AIR/ SCC may be provided to the Judicial Officers.	**High Court** The Registrar General to take up matter with the Library Committee which may assess costs and place the proposal for special grant.
13.	Do you feel any difficulty in deciding Criminal Cases of lawyers involved in serious in the district of your posting and do you suggest for transfer of such criminal cases of lawyers to other districts?	**Unanimity** All the four groups agreed that criminal cases involving local lawyers should be transferred to other districts. **Suggestions-** 1. Civil cases involving lawyers should also be transferred to other districts. 2. If the District Judges request	Cases involving local lawyers may be transferred to other districts. **Suggestions:** 1. Civil cases involving lawyers may also be transferred to other districts. 2. The request of District Judge for transfer of a case	**High Court** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular. **High Court** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular. **High Court** Registrar General to prepare a

		High Court for transfer of cases involving lawyers his request may be treated as a petition.	involving lawyers be treated as a petition.	proposal and place it before the Administrative Committee for issuing circular.
14.	Do you think that formal proof of papers like charge sheet, FIR, GD and medical reports & postmortem report etc. should be dispensed with and such witnesses should be summoned only at the discretion of the Court?	**Unanimity** All the four groups resolved in the affirmative.	A study be conducted by IJTR to evolve measures so that formal proof of papers like charge sheet, FIR, GD and injury reports and postmortem report etc. may be dispensed with.	**IJTR** to conduct study and prepare a report.
15.	Whether the present mode of inspection of courts and the offices is ineffective? If yes, make your suggestions.	**Unanimity** All the four groups agreed that present system is effective. **Suggestions-** 1. C.C. TV Camera be installed in the office and court room not only to have check of the working in the offices but also to have effective control over unduly behaviour and misconduct of lawyers. 2. Frequency of surprise inspections should be increased. 3. Instead of present frequency of recording quarterly inspections six monthly inspections may be conducted.	- - (3) Six monthly inspections may be conducted by the presiding officers instead of quarterly inspections.	- **High Court** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular. **High Court**

		4. There should be annual verification of records.	(4) Annual verification of records be conducted by all courts.	Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular.
16.	Whether non – judicial work assigned to the judicial officers like conducting legal literacy camps, NREGA, inspection of hotels, dhabas etc. is consuming judicial time?	**Unanimity** All the four groups resolved in the affirmative. **Suggestions-** 1. Asking for other work than judicial work from the Judicial Officers should not be prescribed by other agencies like NREGA instead request be routed through Hon'ble Court. 2. Non-judicial work of other agencies should not be taken from the Judicial Officers. District Judge may be directed to nominate a single officer to discharge such function after court hours.	1. Only on request by agencies like NREGA to the Hon'ble Court, a suitable decision may be taken. 2. Ideally Non-judicial work of other agencies should not be taken from the Judicial Officers without permission from the Hon'ble Court.	**High Court** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular. **High Court** Registrar General to prepare a proposal and place it before the Administrative Committee for issuing circular.
17.	Whether distribution of work by District Judge and CJM is adequate and equitable?	**Unanimity** All the four groups agreed that the present system of distribution of work by District Judge and CJM does not require any change. However there must be equitable and proper distribution amongst all of courts.	-	-
18.	**Any other suggestions?**	A. Provisions of s. 173(7) Cr.P.C. should be enforced as is the case in Madhya	Provisions of s. 173(7) Cr.P.C. should be enforced as is the case in Madhya	**High Court** for consideration of amending General Rules (Civil) & General

			Pradesh Police officers may be directed to submit legible copies of case diaries and other documents along with charge sheet for providing them to the accused at the earliest opportunity.	Pradesh. Police officers may be directed to submit legible copies of case diaries and other documents along with charge sheet for providing them to the accused at the earliest opportunity.	Rules (Criminal) accordingly
		B	:		
		C	:		
		D	:		

		IMPROVEMENT IN INFRASTRUCTURE		
1.	Do you feel that there is an urgent requirement of a big auditorium, sports complex, swimming pool and other facilities for the Judicial Officers in the IJTR?	**Unanimity** All the four groups resolved in affirmative. State Government may be requested accordingly.	The matter of construction of an auditorium, sports complex, swimming pool and other facilities for the Judicial Officers at the IJTR in accordance with the approved plan for IJTR should be taken up with the State Government	**High Court** Registrar General after obtaining necessary directions from Hon'ble the Chief Justice may take up the matter with the State Govt.
2.	Kindly express you views whether outsourcing for maintenance and upkeep of District Courts will be feasible and helpful?	**Unanimity** All the four groups resolved in affirmative. **Suggestions-** 1. Keeping in view the requirement of the particular judgeship funds should be made available.	1. State Govt. may be approached to permit outsourcing for the maintenance and upkeep of residential and	**High Court** Registrar General after obtaining necessary directions from Hon'ble the Chief Justice to take up the matter with the State Govt.

		2. Provision be made authorizing District Judges to monitor the construction work assign to the construction agency.	nonresidential buildings of the Judgeships. 2. Provision be made authorizing District Judges to monitor the construction work assigned to the construction agency.	Necessary estimates be obtained from different Judgeships **High Court** Registrar General -after obtaining directions from Hon'ble the Chief Justice may approach the State Govt.
3.	Whether the neatliness, hygienic and other living conditions & amenities of the residential colonies of the Judicial Officers are satisfactory? If not, mention the major problems along with your suggestions for the remedy.	**Unanimity** All the four groups resolved in the affirmative that the neatliness, hygienic and other living conditions & amenities of the residential colonies of the Judicial Officers are not satisfactory in general due to timely non availability and paucity of funds. **Suggestions-** 1. Demand for repair and maintenance of residences should be sent in time for allocation of budget.	(1) All Demand for repairs and maintenance of residences should be obtained by the Hon'ble Court and consolidated figure may be demanded from the State Government.	**High Court** Registrar General to require all the District Judge to send demands with estimates prepared as per revised schedule of PWD to the Hon'ble Court and after preparation of appropriate proposal and obtaining necessary directions approach the State Govt.for

		2. Contingency funds should be provided in each financial year to carry out repairs where they are required urgently.	-	allocation of budget.
4.	Whether the court buildings, residential accommodations of Judicial Officers and the Staff and infrastructure and required amenities in the newly created judgeships are sufficient? If not, has any proposal been made to the State Government?(For District Judges of Newly Created Judgeship only)	**Unanimity** All the four groups agreed that the infrastructure in the newly created Judgeships is not adequate. **Suggestions-** 1. Proper and Adequate infrastructure must be assured before posting of the judicial officers in the newly created judgeships. 2. Proposals for court buildings, requisition of land and maintenance of existing structure if any as well as for residential buildings should be prepared according to established norms and current PWD rates in prescribed proforma of finance department before establishment of	1. No judicial officer be posted unless proper and adequate infrastructure has been provided by the state Govt. in the newly created judgeships. -	**High Court** Registrar General to bring the proposal to the notice of the Hon'ble Committee headed by Hon'ble Mr. Justice Amitava Lala, Hon'ble Mr. Justice Alok Kumar Singh and Hon'ble Mr. Justice D.K. Arora as members

		new Judgeships.		
		3. For maintenance (Annual white washing and minor repairs) proposal should be submitted by each judgeship on regular basis in the prescribed proforma of finance department in advance so that it may be submitted to government in time for sanction of budget.	3. All the District Judges be required to send estimates for annual white washing and minor repairs on P.W.D. rates on the prescribed proforma of finance department in advance so that it may be submitted to government in time for sanction of budget.	**High Court** Registrar General to issue directions to all the District Judges accordingly
		4. Out lying courts should be established only after creation of proper and complete infrastructure including residences.	4. Out lying courts should be established only after creation of proper and complete infrastructure including residences.	**High Court** Registrar General to place the proposal before appropriate committee.
		5. The proposal for creation of out lying courts should be supported by commitment of government to provide funds for creation of proper infrastructure.	5. All proposals for creation of out lying courts should be supported by commitment of government.	**High Court** Registrar General to take up the proposal with Hon'ble the Chief Justice
		6. Provisions be ensured for the furnishing of the court buildings.	6. Provisions be ensured for the furnishing of the court buildings.	**High Court** Registrar General to take up the proposal with Hon'ble the Chief Justice
		7. Government should be insisted for proper and adequate budget in the beginning of the	7. Governmen t should be insisted for providing proper and adequate budget in the	**High Court** Registrar General to take up the proposal with Hon'ble the Chief Justice

		financial year.	beginning of the financial year.	
5.	**Any other suggestions?**	A. Library - Unanimously resolved that a post of librarian should be created for all the judgeships.	Library- The posts of qualified librarian may be demanded for the Judgeships where the number of courts is more than 30	High Court Registrar General to take up the matter with the Library Committee.
		1. Up-to-date Bare Acts, Text Books, Journals on important Civil and Criminal laws should be provided to each District Court.	1. IJTR to study the requirement of supply of Up-to-date bare Acts, Text Books, Journals for each District Court.	1. IJTR 2. High Court On receipt of the report Registrar General to place the proposal before the Library Committee
		2. Each District Court should also be supplied software of SCC/AIR online.	2. IJTR to study the requirement for supply of Up-to-date software of SCC/AIR online.	1. IJTR 2. High Court On receipt of the report Registrar General to place the proposal before the Library Committee
		3. Revised editions of Bare Acts Text Book and Manuals etc. should be supplied for the judicial officers or in the alternative software of all the latest/amended versions may be provided.	3. IJTR to study the requirement of supply of up-to-date editions of Bare Acts Text Book and Manuals etc. or in the alternative software of all the latest/amended versions may be provided.	1. IJTR 2. High Court On receipt of the report Registrar General to place the proposal before the Library Committee
		4. Allocation of funds for library be made without any condition or year marking of any Journal. It should be left to the discretion of the District Judiciary to select	4. Judicial Officers be permitted to select journals of their choice for the library.	High Court Registrar General to take up the matter with Library Committee

			and purchase the Journals according to their specific need.		
			5. One online law Journal such as SCC or Manupatra or AIR be provided for the Library of Judgship.	–	
			6. For the home library one journal should be provided at the choice of the officer concerned.	6. One journal should be provided at the choice of the officer for home library.	High Court Registrar General to take up the matter with Library Committee.
			7. Attention be paid for proper up keep of the library. Proper space for reading and expansion should be insured.	–	
			8. Latest edition of manuals and Local Acts should be provided for the library.	8. Latest editions of Central Acts and Local Acts be provided for each library of the Court and residential library of the judicial officers.	High Court Registrar General to take up the proposal with Hon'ble the Chief Justice
			9. For the newly created districts adequate budget should be provided for establishing library	9. Special grant be provided for establishing library in newly created judgeships	**High Court** Registrar General to take up the matter with the Library Committee.
			10. Post of Librarian should be created in all the judgeships.	Already discussed	
			Infrastructure 1. In most of the District courts there is shortage of space.	–	

			Proposals for expansion should be expedited	-	
			2. There should not be any discrimination in allocation of funds for construction, repair and maintenance of houses for the judicial officers vis-à-vis pooled houses of the executive officers.	-	
			3. Adequate Maintenance Allowance should be allocated. State Government allocates only rupees 2.33 crores for the annual maintenance. This amount was fixed long back which requires to be raised suitably.	3. State Govt. be requested to enhance allocation of budget for maintenance of Court buildings so that non-residential and residential buildings may be properly maintained.	**High Court** Registrar General to take up the matter with Hon'ble the Chief Justice
			4. For the construction of new court buildings an amount of 15 crore was fixed in 1990 which also should be enhanced. The planning commission should be moved for expediting 10 years prospective plan for District Courts.	4. State Govt. be requested to move the Planning Commission for enhancement/ allocation of amount for construction of non-residential buildings.	**High Court** Registrar General to take up the matter with Hon'ble the Chief Justice
			5. Cap on minor works/repairs should be enhanced from Rs. 1 lac to Rs. 2 lacs.	5. Permissibility for spending funds for minor repairs by District Judges be raised to Rs. 2 lacs.	**High Court** Registrar General after obtaining approval of Hon'ble the Chief Justice to move the State Govt. for release of the funds/ necessary amendments.
					High Court Registrar General

					after obtaining approval of Hon'ble the Chief Justice to move the State Govt. for issuance of necessary directions.
			6. In respect of major repair works payments should not be released from PLA without obtaining certificate of satisfactory completion of work from the Judgeship.	6. No amount from PLA be permitted to be withdrawn without obtaining certificate of completion from the District Judge.	**High Court** Registrar General after obtaining approval of Hon'ble the Chief Justice to move the State Govt. for release of the funds.
			7. The old Air-conditioners provided in some districts are not functioning properly. New Air-conditioners be provided in their place in phases.	7. Budget for replacement of old Air-conditioners be demanded from the State Govt.	**High Court** Registrar General after obtaining approval of Hon'ble the Chief Justice to move the State Govt. for release of the funds in phases.
			8. Most of the staff cars are old, outdated and unreliable they should be replaced by providing new cars in phases	8. Budget in phases for replacement of old outdated staff cars be demanded from the State Government.	
			9. Allocation of grants should be increased and rational distribution should be ensured for repair and maintenance.	-	
			10. The repairs and maintenance should be made by out sourcing.	-	High Court. Registrar General to place a proposal before the Administrative Committee
			11. Amount of maintenance grant	11. Amount of maintenance grant be released	

		may not be deposited in PLA account of the agency. Instead District Judge should be authorized to release the amount periodically after obtaining satisfactory report of completion of work.	directly to the District Judges who may periodically release the amount on satisfaction of the work to the concerned agency.	**High Court** Registrar General to place the proposal before Hon'ble the Chief Justice for place the demand after obtaining estimates.
		12. For Judicial Officer colony separate contingency fund should be provided for the maintenance.	12. Provision for a separate fund for immediate repairs is most urgently required for Judicial Officers' colony.	**High Court** Registrar General to place the proposal before Hon'ble the Chief Justice for placing demand for the sanction of the posts.
		13. Government should be moved for sanctioning of the posts of electrician, plumber, pump-operator for Judgeship.	13. Government should be moved for sanctioning of the posts of electrician, plumber, pump-operator for Judgeship.	High Court Registrar General to place the proposal before Hon'ble the Chief Justice for placing the demand for allocation of necessary budget for replacement of AC Cars in phases.
		14. District Judge should be provided Air-conditioned cars.	14. All District Judges should be provided Air-conditioned cars in phases.	**High Court** Registrar General to take up the matter with the Chief Secretary/ Principal Secretary (Finance) for

		15. Wages for part time sweepers should be raised suitably and the budget be released timely.	15. Part time sweepers be paid a minimum Rs. 4400/- per month like wages of persons working on contract.. Presently the sweepers are getting only Rs. 2000/- per month and in some case only Rs. 750/- which is less than the minimum wages prescribed by the State Govt.	issuing necessary Government Order for enhancement of wages. **High Court** Registrar General to take up matter with Principal Secretary (Home) Govt of U.P.
		16. All the District Judges should be issued identity cards by the High Court.	-	**High Court** Registrar General to take up matter with Principal Secretary (Home) Govt of U.P.
		Security of the Judicial Officers		
		1. Security provided for the District Court should not be withdrawn under any circumstance and it should be kept at the disposal of the District Judge.	1. Withdrawal of security from the District Court be not permitted and it should be kept at the disposal of the District Judge.	**High Court** Registrar General to take up the matter with the Director General of Police
		2. The present system is that police personnel remain on duty from 10 a.m. to 5 p.m. it was recommended that either the government should provide 24 hours security or the alternative it may be out sourced for the courts.	2. 24 hours security to courts or the alternative outsourcing be permitted.	**High Court** Registrar General to take up the matter with Principal Secretary (Home)Govt. U.P. / Director General of Police U.P.
		3. Directions for providing security	3. State Govt. be	

		in court campus and colony of judicial officers are not being complied with. Registrar General of the High Court should be asked to write to the government for ensuring strict compliance. 4. The DGP should be directed to post young and able bodied police man for security of district courts. Every policeman deployed should be issued identity card by the District Judge. 5. There should be provision for security camp or police chouky at the judges' colony.	asked to provide proper security in court campus and colonies of judicial officers in compliance of the directions of the courts and G.Os. 4. Only fit police personnel should be deployed for the security of the district courts -	

		REFORMS IN ADMINISTRATIVE SET UP		
1.	Do you think that by minimizing Mid term transfers of officers working on deputation and their continuance till the annual transfer chain will be helpful in curtailing the frequent changes of courts in the judgeships and consequent disturbance in	**Unanimity** All the four groups agreed that mid term transfers should be avoided.	Period of deputation should coincide with annual transfer chain and midterm transfers may be avoided	**High Court** **Registrar General** to place the proposal before **Hon'ble the Chief Justice**

	work?			
2.	Do you subscribe to the view that annual transfers should be made in the month of April instead of June? Assign reasons in support of your answer.	**Unanimity** All the four groups agreed that the timing of annual transfer be pre-poned from June to April.	Annual transfers should be pre-poned from June to April primarily because of early start of the Educational Sessions.	**High Court** **Registrar General** to prepare and put up the proposal before the Administrative Committee for issuing necessary circular.
3.	Should there be a change in the term of Hon'ble Administrative Judges according to the Financial year instead of August to facilitate proper recording of the Annual Confidential Remarks of the officers?	**Unanimity** All the four groups resolved in the affirmative in work interest.	Proposed that change in the term of Hon'ble Administrative Judges according to the financial year may be considered to facilitate proper recording of the Annual Confidential Remarks.	**High Court** **Registrar General** to place the proposal before **Hon'ble the Chief Justice**
4.	Do you feel the need of recruitment of stenographers who are proficient in Hindi, English and Computers?	**Unanimity** All the four groups resolved in the affirmative.	Already discussed in Q. No. 4 of difficulties relating to Non-Judicial Side.	
5.	Do you subscribe to the view that the summer recess to the Sessions Judges / Additional Sessions Judges should also be extended to all other judicial officers and courts should	A. Resolved in the affirmative.		
		B. Summer vacations be extended to 10 days to officers of the all ranks and remaining 20 days both civil and criminal works be undertaken.	10 days Summer recess be permitted to all judicial officers and for the remaining 20 days both civil and criminal court should transact regular work. Necessary	**High Court** Registrar General to place a proposal before Hon'ble the Chief Justice.

	transact work on both the sides (Civil & Criminal) in the month of June for the remaining period?		amendments be proposed relating to vacation department in the Financial Handbook and Bangal, Assam Civil Court Act	
		C. Yes		
		D. -		
6.	(A) Whether there is need of the post of Registrar in the District Judiciary to carry out the administrative matters? (B) Whether the post of Finance Officer is required in the District Judiciary?	**Unanimity** (A) All the four groups agreed that the post of Registrar be created for performing administrative work. (B) All the four groups agreed that a Finance Officer be appointed for dealing with the financial matters.	(A) A post of Registrar be created for each judgeship for performance of Administrative Work. (B) A post of Finance Officer be created for each judgeship to deal with the financial matters.	**High Court** Registrar General to prepare a proposal and place it before Hon'ble the Chief Justice **High Court** Registrar General to prepare a proposal and place it before Hon'ble the Chief **Justice**
7.	Whether appointments of class III and class IV employees of the District Judiciary need to be assigned to expert recruitment bodies like Staff Selection Board etc.?	**Unanimity** All the four groups agreed that selection of class III employees be simultaneously made in the whole state by one centralized agency and the candidates be appointed on the basis of their merits and preferences. Suitable amendments be made accordingly. **Suggestions-** In case the district	Recruitment of Class III employees be simultaneously made in the whole state by a centralized agency and candidates may be appointed on the basis of the merits and preferences. -	**High Court** **Registrar General** to prepare a proposal and place the same before **Hon'ble the Chief Justice** for obtaining necessary directions.

		judge is to hold examination it should be monitored or by the High Court or some centralized agency.			
8.	What is the pendency and clerk ratio in the office of your court? Is it sufficient? If not, what are your proposals?	A.	-		
		B.	Justice K.L. Sharma's report should be implemented for creation of required posts for the staff in the District Courts. After studying the report it be sent to the government for implementation.	IJTR should study the requirement of pendency and clerk ratio in district judiciary and prepare a report.	**IJTR**
		C.	-		
		D.	-		
9.	Is the present quota system practical & rational or it needs to be re – looked? If yes, should the present quota system be replaced by 'Points System'?	A.	No Change suggested.		
		B.	Standard of work in respect of old criminal and civil appeals should be enhanced suitably.	Standard of work in respect of more than 7 years old criminal and civil appeals may be suitably enhanced.	**High Court Registrar General** to prepare a proposal and place the same before **Hon'ble the Chief Justice**
		C.	1. Quota system should be reviewed with greater emphasis on decision of the suit and trials and not on applications. 2. Quota of miscellaneous work should be confined to 25%	– –	

			of the total work. 3. The Quota in following disposals should be increased- a. Regular Civil Appeals b. Criminal Appeals c. Criminal Revisions d. Criminal Revisions against final orders including cases u/ss 125, 133, and 145 Cr.P.C.	3. Quota for disposal of regular Civil Appeals, Criminal Appeals, Criminal Revisions u/ss. 125, 133 and 145 Cr.P.C. may be revised.	**High Court** **Registrar General** to prepare a proposal and place the same before **Hon'ble the Chief Justice**
		D.	There should be increase of quota for disposal of bail and arbitration matters		
10.	Do you feel that posts of Principal Judge, Family Court and Presiding Officers of Labour Court etc. should be filled up by an officer of District Judge level to increase promotional avenues?	A.	Present system may continue. There is no separate cadre of District Judge there is only one cadre of HJS. If a District Judge is appointed Principal Judge Family Court he may be junior to District Judge which may create ego problem.	-	
		B.	Principal Judge Family Court should be District Judge.	Proposal be placed before Hon'ble the Chief Justice	**High Court** **Registrar General** to prepare a proposal and place the same before **Hon'ble the Chief Justice**

		C.	Principal Judge Family Court should be District Judge.	-	
		D.	Principal Judge Family Court should be District Judge.	-	
11.	Express your views regarding constitution of Indian Judicial Service?	Unanimity All the four groups agreed that there is need to constitute Indian Judicial Service at the earliest.		Need for early creation of Indian Judicial Service may be emphasized before the Central Govt.	**High Court** **Registrar General** to prepare a proposal and place the same before **Hon'ble the Chief Justice**
12.	**Any other suggestions?**	**Pay Revision** **Unanimity** All the four groups agreed that until a final decision on the recommendations of Shetty Commission is taken pay scales of 6th pay commission be provided to all the judicial officers of the State as an interim measure at the earliest. **Other Suggestions** 1. Revision of T.A. & D.A. rates be made at the earliest. 2. Sumptuary, Residential Office Allowance and other allowances should be revised. 3. To avoid over listing of cases limit for giving dates within		State Government be requested to provide at least the scales of 6th Pay Commission to all the Judicial Officers as an interim measure at the earliest and thereafter consider providing scales as per recommendations of the Sheety Commission. - - 3. To avoid over listing of cases limit for giving dates within 90 days should be	**High Court** Registrar General to take up the matter with the State Government through Principal Secretary (Judicial)/ Chief Secretary **High Court** to prepare and put up the proposal before the Rules Committee for consideration of the destrability of

		90 days should be extended to 180 days. 4. The diary of the presiding officer should be maintained through computer.	extended to 180 days. –	amending General Rules (Civil) & General Rules (Criminal) accordingly.

	ROLE OF BAR AND OTHER AGENCIES			
1.	Can a suggestion be made to the Bar Council asking them to introduce 3 months compulsory Induction Training before enrollment as an Advocate?	**Unanimity** All the four groups agreed that induction training should be imparted to the new entrant Advocates by the Bar Council. **Suggestions-** 1. Bar Council should hold a qualifying examination before enrollment. 2. District Judges should be given power to regulate entry of erring lawyers by amending General Rules (Civil) & General Rules (Criminal).	1. A suggestion be sent to Bar Council of India and Bar Council of U.P. for incorporating a provision in the rules for holding a qualifying examination before fresh enrollments. 2. Genral Rules (Civil) & General Rules (Criminal) be amended to give empowerment to the District Judges for regulating entry of Lawyers who indulge in activities whereby proceedings/ functioning of courts are disrupted or of those lawyers who have been convicted in	**High Court** Registrar General to prepare and put up a proposal before Hon'ble the Chief Justice **High Court** **Registrar General** to prepare and put up the proposal before the Rules Committee for consideration of the desirability of amending General Rules (Civil) & General Rules (Criminal) accordingly.

		3. IJTR should organize seminar/meetings of Bar Council and representative of District Bar Associations to impress upon them the need for introduction of induction training after enrollment. 4. As a long term measure government should be move to bring suitable amendments in the Advocate Act 1961 to restore power to the High Court to take disciplinary action against the misconduct of the lawyers.	criminal contempt cases. - 4. A proposal be sent to the Central Government to consider amendment in the Advocates Act 1961 for restoration of power of High Court to take disciplinary action against the misconduct of the Lawyers	**High Court** Registrar General to prepare a proposal and put up the same before Hon'ble the Chief Justice.
2.	Propose appropriate measures for improvement of relationship and mutual faith for reduction of tension and stress between the Bench and the Bar?	**Suggestions-** 1. Members of Bar may meet the District Judge with their complaints. 2. System of designating senior Advocates in the district court should be introduced. 3. District Judge may constitute grievance redressal committee to deal with genuine complaints of Bar.	- 2. System of designating senior Advocates in the District Courts may be introduced. - 4. A committee consisting of 5 Senior Judicial	**High Court** Registrar General to prepare a proposal and put up the same before Hon'ble the Chief Justice **High Court** **Registrar**

		4. A committee consisting of 5 Senior Judicial Officers should be nominated by the District Judge including himself to discuss with senior members of bar and office bearers. Such meetings should be held on any Saturday of each month and problems and suggestions for improvement may be discussed. 5. Officers should refrain from discussing other officers of the Judgeships with the members of the Bar. 6. Mutual respect for each other should be developed.	Officers may be formed by the District Judge to discuss with senior members of Bar and office bearers, once in each month problems and measures for improvement. - -	**General** to prepare and put up the proposal before the Administrative Committee for issuance of circular
3.	Suggest measures to tackle the gradually increasing confrontationist attitude between the Bench and the Bar?	A. -		
		B. -		
		C. Such matters should be reported to the bar Council and the High Court.		
		D. 1. Rules may be amended for banning the entry of lawyers who have been convicted in criminal contempt cases. 2. On the death of a prominent	- 2. On the death of a prominent practising	**High Court** Registrar General to prepare a

			lawyer, on after receiving a resolution of Bar the District Judge should hold a reference after lunch and court should be closed.	lawyer on receipt of resolution of Bar association District Judge should hold a reference after lunch break and courts may be closed thereafter.	proposal and put up before Hon'ble the Chief Justice
			3. Roll of advocates with their photograph, telephone number, address should be maintained in the office of District Judge.	-	
4.	Whether there is need for re-examination of the Advocates Act 1961 and Bar Council of India Rules 1975 for controlling undesirable, unprofessional and unethical attitude of the lawyers by restoring the old practice of grant of licence to the pleaders by the District Judges? Whether there is need to move to necessary for a like the Government, the High Court and the Legislature for making suitable amendments in law providing	A.	-	-	
		B.	-	-	
		C.	Yes	-	
		D.	Yes	-	

	the required authority to the District Judges?				
5.	Despite all prohibition, the strikes of Bar have not been controlled. What is the course of action adopted by you when a resolution comes? Is it circulated to you formally or informally?	A.	1. There should be provision for cameras and video recording during strike 2. During the Strike trial judges should hear the under trials in person. 3. Liberal view should not be taken for condoning the delay in filing of Revisions/Appeals etc. on the ground of strike by the Bar. 4. On the report of the presiding officers to the effect that certain lawyers prevented functioning of the court such lawyers should not be appointed oath commissioners, general commissioners and amicus curiae etc.	1. CC Camera should be installed in the offices and courts. Video recording during strike may be permitted at the discretion of the District Judge 2. All the Judicial Officers be directed to hear the under trials and litigants of Civil Cases in person 3. delay in filing revisions / appeals etc. on the ground of strike by Bar no liberal view be taken for condoning the delay 4. Erring lawyers should not be appointed as Oath Commissioners, General Commissioners and amicus curiae etc. against whom reports of presiding officer is received to the effect that they	**High Court** Registrar General to prepare and put up a proposal before Hon'ble the Chief Justice **High Court** Registrar General to prepare and put up a proposal before the Administrative Committee for consideration **High Court** Registrar General to prepare and put up a proposal before the Administrative Committee for issuing a circular **High Court** Registrar General to prepare and put up a proposal before the Administrative Committee for issuing a circular

				were instrumental in preventing functioning of the Court.	
		B.	Situation should be handled tactfully in the light of the pronouncements of the Apex Court and High Court.	–	
		C.	–	–	
		D.	The District Judges should not accept resolution of the bar beyond one day.	–	
6.	Should the Police administration requires to be asked to preserve duplicate Case Diaries so that in case of loss of record it may be used for reconstruction?	**Unanimity** All the four groups resolved in the affirmative.		–	
7.	Do you feel any difficulty in deciding Criminal Cases of lawyers involved in serious offences and therefore in the district of your posting and do you suggest for transfer of such criminal cases of lawyers to other districts?	Views already recorded in Answer to Question No. 13 under head difficulties on Non-Judicial Side.			
8.	Any other suggestions?	A.	1. There should be complete ban on strikes by lawyers.	–	

			2. No engagement of PO in working hours for other duties. 3. Officers should in no way abet lawyer's strike. 4. Work done on Strike should not be set-aside and Rules be made accordingly. 5. Presiding Officers should have no relations with lawyers.		
		B.	-		
		C.	1. Any unauthorized charge on filing of Vkalatnama or pleadings should be reported to the High Court and report be lodged with the police under the relevant sections of the I.P.C. 2. A circular should be issued by the High Court regarding unauthorized charges. The matters of indiscipline committed by any individual advocate or by a section of the members of the Bar should be compiled and if possible it should be mentioned on the order sheets of the concerning	1. District Judges be directed to report any unauthorized charge on filing Vakalatnama or pleadings to the High Court and report may be lodged with the police under the relevant sections of I.P.C.	**High Court** Registrar General to prepare and put up a proposal before Hon'ble the Chief Justice

			cases and the compilation should be sent to the High Court and Bar Council.		
		D.			

Publication

The Institute has so far published 29 books and 230 brochures on different Law topics and other fields of general importance.

It is an age-old fact, that the best way to disseminate knowledge to one and all is through printed publication. The Institute not being oblivious of this aspect of human wisdom, has been consistently bringing out publications of varied nature. Some of these publications are on a regular basis and few are based on any special project/research work undertaken by the institute.

The hallmark of the publication of the Institute is its journal which is published every 6 months. The journal which was published in June, 2009, saw, important contributions being made by Senior eminent Judges, academicians, faculty members of the Institute and students of eminent, National Law Colleges/ Universities of the Country. Highlight. of these contributions were articles by Hon'ble Mr. Justice Amitava Lala, Senior Judge, Allahabad High Court, Hon'ble Mr. Justice Pradeep Kant, Senior Judge, Lucknow Bench, Allahabad High Court, Hon'ble Mr. Justice Yatindra Singh and Hon'ble Mr. Justice Sunil Ambwani, Judges Allahabad High Court.

The Institute is also publishing a "Quarterly Digest" containing notes on the reported judgments of the Hon'ble Supreme Court and the Hon'ble Allahabad High Court regularly.

The Digest and the Journal are distributed amongst the Judicial Officers of Uttar Pradesh free of cost. "JTRI Journal" is also sent to the Hon'ble Judges of Supreme Court, Allahabad High Court and Chief Justices of other Hon'ble High Courts in addition to all the Judicial Officers of the State.

The topics selected for the journal cover a wide spectrum of constitutional, Civil, Criminal, Cyber and procedural laws as also the social, economic and political role and impact of the judicial pronouncements.

Reading Material for the judicial officers at all levels working in the subordinate Courts, who participate in the refresher training programmes and Induction Training programmes conducted by the Institute are specially prepared according to the requirements of particular target group. Reading material running into almost 250 pages containing up-to-date case laws and other material was provided to the Direct Recruits of H.J.S. along with compressed diskettes containing circular orders, General Rules (Civil) & (Criminal) etc. The reading material contained topics such as Appreciation of Evidence in Civil & Criminal cases, Judgment and Order

Writing, Disciplinary Proceedings, Law of Maintenance, Law on NDPS, Law of Charges, Law of Bails, Dowry Death, Rape, Murder, Amendment of Pleadings etc.

The probationers of Civil Judge (JD) 1st batch were provided reading material in five volumes running into almost 500 pages on various useful topics such as Appreciation of Evidence in Civil and Criminal cases, Law of Arrest, Law of Bails, Amendment of Pleadings, Substitution of Parties, Service of Process, Court Fees and Suits Valuation Act, Judgment & Order Writing, Execution of Decrees & Orders , Law on Vakalatnama etc.

The Institute publishes only limited copies of reading material for the trainee officers of a particular batch. Thereafter, for the next batch, fresh material is prepared after revision and updation of the earlier material. There has been great demand of the *reading material* prepared by the Institute during the current financial year from the Judicial Officers of the State as well as from the Judicial Officers of the other States. All the faculty members of the Institute have contributed greatly in preparation of the reading material.

Other Activities:

JUDICIAL HELPLINE FOR JUDICIAL OFFICERS OF U.P.

The object of the Institute of Judicial Training & Research, U.P., Lucknow has been not only to provide judicial education and skill but also to shorten and minimize the difficulties faced by the Judicial Officers in their day to day working.

Keeping in view the demand of the judicial officers of different cadres of the District Judiciary in U.P., a need was felt to start *'Judicial Helpline'* at the Institute of Judicial Training & Research, U.P., Lucknow. It has often been noticed that the judicial officers do not get the required judicial help in the district judiciary with regard to latest position of law and amendments in various laws with the result that much difficulty is caused to them in arriving at the decisions in the cases before them. To help the judicial officers to overcome the difficulties and delay faced by them in searching the relevant laws and the latest judicial pronouncements on the subject in question, the Institute of Judicial Training & Research, U.P. Lucknow has launched a *'Judicial Helpline'*.

The Judicial Officer can convey their legal problems / difficulties to the Institute of Judicial Training & Research, U.P. Lucknow on Telephone, Cell – phone, Fax or E-mail particulars of which are given below. The Institute attempts to furnish the required judicial help at the earliest-possibly within 3 days from the date of receipt of the query. The judicial officers have been advised to convey their judicial problems to the Institute

in a clear and precise manner without disclosing the facts and the names of the parties. They have been further advised to apply the laws or the judicial pronouncements suggested by the Institute keeping in view the principles of ratio deciendi and the facts of the case before them.

'Judicial Helpline' is a unique endeavour of its kind introduced for the first time in our country and the idea has been greatly appreciated and acclaimed by other academies, judicial officers, jurists and others. The response has been encouraging and the novel idea is working extremely well.

The judicial officers are requested to send their views/suggestions for further improvement of the *'Judicial Helpline'* so as to make it more effective and useful.

(a) Phone number of *'Judicial Helpline'* : 0522-2300545

(b) Fax: 0522-2300546

(c) E mail : jtri_up@sify.com

(d) Phone numbers of the Faculty Members of the IJTR, U.P. Lucknow:

Name of Officers	**Office**	**Residence**
Sri V.K.Mathur Director	2300545 FAX: 2300546 9415114092 E-mail: jtri_up@sify.com Web-site: ijtr.nic.in	2391131 2391387
Dr. Murtaza Ali, Addl. Dir. (T)	9415114095	-
Sri Mohd. Faiz Alam Khan, Addl. Dir. (R)	9415114097	
Sri P.K. Srivastava, Addl. Dir.	9415114098	2725994
Dr. Rajesh Singh, Addl. Dir. (Admn.)	9415114093	2303357

Sri S.N. Rao., Addl. Director (Fin.)	9415114096	2302088
Sri Mahendra Singh, Dy. Director	9415112805	2306773
Sri Rajiv Maheshwaram, Dy. Dir.	9415112806	2720572
Sri Akhileshwar Prasad Mishra, Asstt. Dir.	9415114094	-
Sri Ravindra Kumar Dwivedi, Asstt. Dir.	8004921048	-

Internship:

Time to time students of National Law Universities approach for internship. They are given assignment in the Institute which they complete under the guidance of members of faculty and submit a project report. On the submission of the report and after making assessment thereof, a certificate is issued under the signature of the Director.

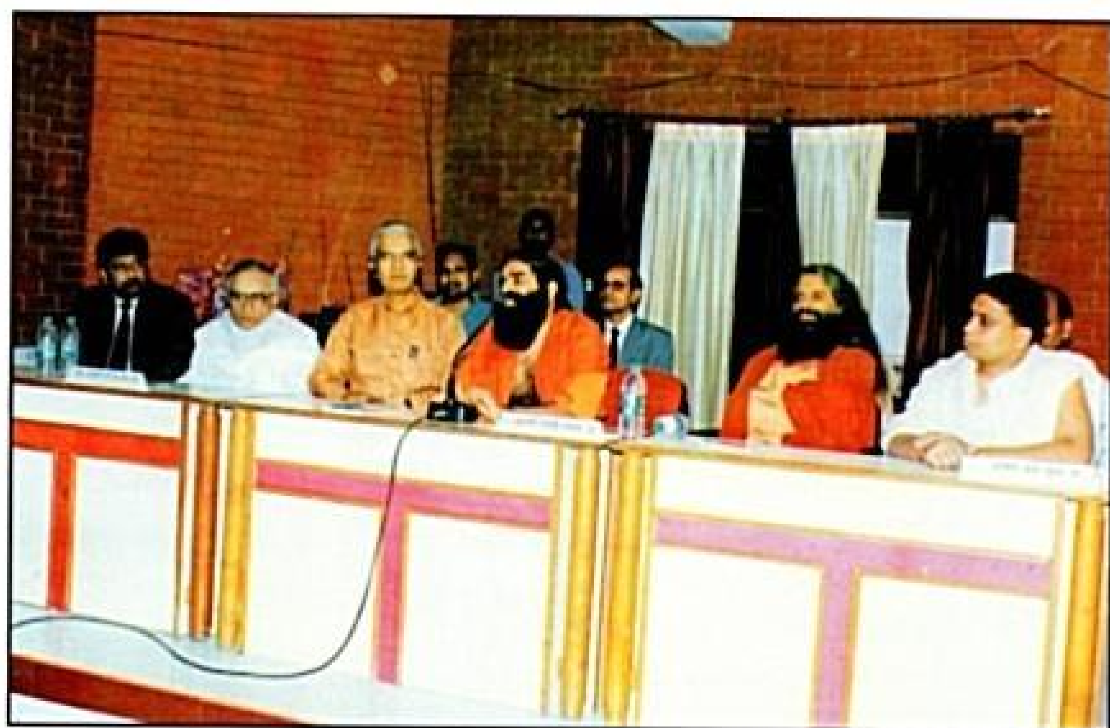
View of Blood Donation Camp

Blood Donation Camp

A voluntary blood donation camp was organized at the initiative of the probationers Civil Judge (Junior Division) 1st batch of 2006 during their last phase of training at the Institute. Blood Bank Unit of Dr. Ram Manohar Lohiya Hospital Lucknow facilitated the organization of the camp by providing their services and assistance. In all 23 probationers including many lady officers donated blood in the camp. Perhaps, this is for the first time that Judicial Officers any where in the country collectively have taken such an initiative and donated blood in such large numbers.

Sports, Yoga & P.T. :

The Yoga and P.T. exercise is imparted on regular basis by experts. The Institute was fortunate enough to have certain very famous personalities during the year. The most notable amongst them was Guru Ramdev, who, in recent times, has popularized Yoga at the international level. During his visit Swamiji addressed the Civil Judges (Junior Division) who were undergoing Induction Training on "*Physical and Mental wellbeing of the Judicial Officers*". This session was also attended by Hon'ble Mr. Justice D.V. Sharma, Judge, Allahabad High Court, Lucknow Bench. On another occasion, the well known exponent of stress management Awadhoot Baba Shivanand conducted a session on Stress Management.



Yoga Guru Baba Ram Dev addressing Probationers of civil Judge (J.D.) 2006 Batch on stress Management. Also seen in the phtograph is Hon'ble Mr. Justice D.V. Sharma

A view of the conference hall during talk delivered by Baba Ram Dev

To evince interest in games and sports amongst the Judicial Officers a competitive sporting activity in the events of Badminton, Cricket, Volleyball, athletics, chess, table tennis, etc. was also conducted during the Induction Training of Civil Judges (Junior Division). In recognition of their excellence, prizes were distributed amongst the winners and runners of these events.

Future Plans

The Institute has drawn up a road map of infrastructural developments and mechanism of ensuring best possible training modalities to the judicial officers of the State. The programme drawn , amongst other things includes-

1. Construction of an Auditorium with a seating capacity of 500 people.
2. Air conditioning of rooms in the hostel, which in the first stage will cover 50 rooms.
3. Fully equipped kitchen
4. Renovation of the class rooms.
5. Relaying of the roads in the Campus.

6. Large scale computerization with facility of Video conferencing.
7. Purchase of 2 buses for the Institute
8. Purchase of 2 Large four wheelers
9. Purchase of books for the library
10. Providing all the Judicial officer with any well recognized journal form amongst Manupatra/SCC/AIR/ from 1950 to date
11. Establishment of a dispensary in the campus with a pharmacist
12. For providing medical facilities to the participating judicial officers, outsourcing the services of a panel of Doctors.
13. Outsourcing of security.
14. Coordination with judicial academics of other states for training on exchange basis.
15. Tagging up with reputed institutes of law, management etc. for training of the judicial officers.
16. Recruitment of staffs of the 4th grade on a contractual basis for maintenance of the campus upkeep of the buildings etc.
17. Outsourcing the Service of the best possible resource persons for lectures, workshops, seminars etc.

The major challenge before the Institute in the context of the great responsibility that is being cast on it, is not on how it is going to utilize the huge fund that is going to be at its disposal, but the challenge is as to how the concern of the common people can be met , by better equipping the judicial officers with the requisite knowledge so that they are able to provide quality speedy justice to one and all without fear or favour.

Journal Section

Journal Section

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GODS ARE DREAMS OF MEN:
The Story of Darwin, Creationism, Evolution and Law Courts

By: **Hon'ble Mr. Justice Yatindra Singh**
Judge, Allahabad High Court

Summary: This article is a tribute to Charles Darwin on his bicentennial birth anniversary and 150th year since publication of 'On the Origin of Species'. It talks about his life, origin of species, objections of the creationists, and the cases banning teaching of 'Origin of Species' or requiring the schools to teach Creationism/ Intelligent Design.)

Don't be misled by the title of the article: it is tribute to Charles Darwin, origin of species, objections of the creationists, and the cases banning teaching of 'Origin of Species' or requiring the schools to teach Creationism/ Intelligent Design.

The title is a quotation: it is not mine. It is of Carl Sagan, a well known scientist, who, perhaps, has popularised science more than anyone else in the last century. This phrase was used by him in the most popular thirteen episode science TV serial of 80's – 'Cosmos: A Personal Voyage'. Later a book, based on this TV serial entitled 'Cosmos' was also published. By this phrase, Carl was describing the most dominant religion in our lives - Hinduism. An obvious question,

'Why have I used it as the title in this article?'

I have used it, as it epitomises the life and theory of Darwin. And perhaps this is the reason that his theory – the Origin of Species - is so controversial. It is so controversial that the latest British film 'Creation', based on Darwin's life has not been able to find a film distributor in US. They are afraid of protests, demonstrations by creationists.

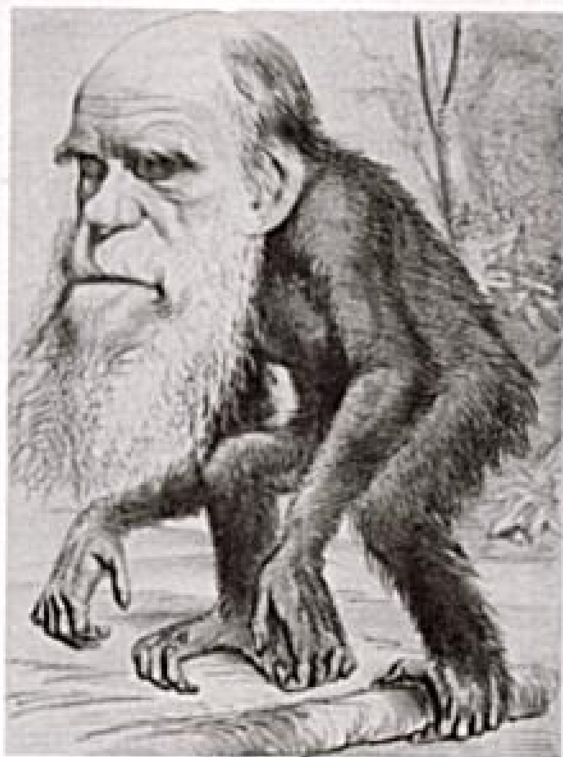
Creationists - who are they?

Broadly, creationism refers to religious beliefs that Universe, life, species were created by a supernatural power. Jews, Christians, Muslim accept the old testament, Book of Genesis and the story of Adam and Eve. Parsis and Iranis are Zoroastrians and they believe in Ahura Mazda, who created the primal man Gayomaerd from whose seed the first couple Mashya and Mashyoo were born. There are many stories regarding creationism in Hinduism but shlok number 32 of the first chapter of Manusmriti says, 'Dividing his own body, the Lords became half male and half female: with that (female) he produced Virag'. (For details see

Appendix-1). Creationism is there in all religion. Evolution negates it. It is for this reason that Darwin's theory is debatable, controversial.

DARWIN'S EARLY LIFE

Charles Darwin was born on February 12th, 1809 at Shrewsbury. He lost his mother at the young age of eight. His father was a medical practitioner. He thought of following his father's footsteps but soon realised that he could not stand blood and he dropped it.



("A Venerable Orang-outang", a caricature of Charles Darwin as an ape published in The Hornet, a satirical magazine on 22 March 1871)

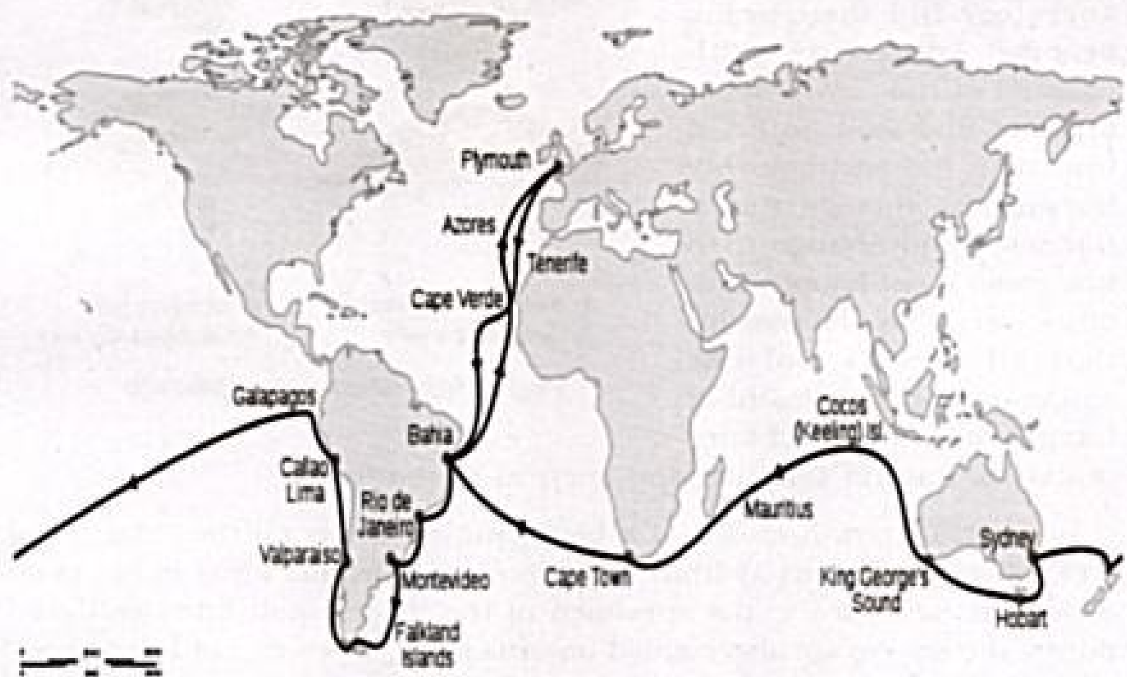
On the advice of his father, Darwin started studying theology and wanted to become a cleric. Then he dropped that as well.

Darwin was interested in Natural History and started studying it under the supervision of his Botany Professor John Stevens Henslow.

In 1831 at the age of 22, Darwin was a young man without any career: his future in ruins. It is at this time that he received a letter - courtesy Henslow - inviting him to sail around the world on HMS Beagle as a naturalist. This not only changed Darwin's world but the World too.

(HMS Beagle in the seaways of Tierra del Fuego, painting by Conrad Martens during the voyage of the Beagle (1831-1836), from The Illustrated Origin of Species by Charles Darwin, abridged and illustrated by Richard Leakey ISBN 0-571-14586-8.)

Beagle's Sea Voyage



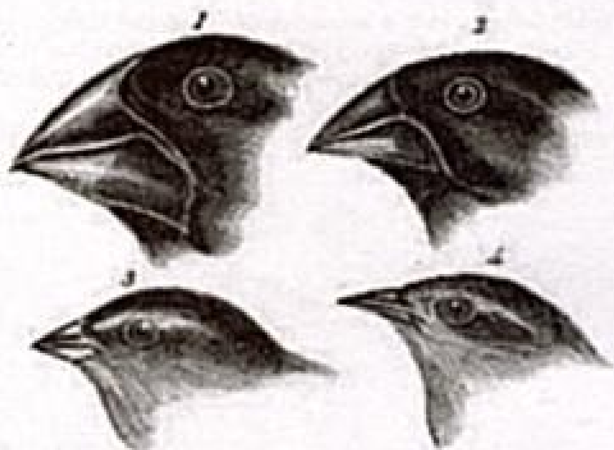
The sea voyage was to take two years starting on 27th Dec 1831 but took about five years and ended on 2nd Oct 1836. During the sea voyage Darwin was traditional and often used to quote the Bible but as the journey

was coming to an end, he started loosing faith in the Bible. He started doubting the story of creation in the 'Book of Genesis' in the Bible. This belief took such a strong hold on him that in his later life, he stopped going to church.*(The voyage of the Beagle)*

Darwin returned from the sea voyage with some astonishing facts. A new theory, about the origin of species, started taking shape in his mind. It was against the Book of Genesis. It was so revolutionary that he could not bring himself to publish it. After all, at some point of time in his life he wanted to become a cleric and his wife was a devout Christian.

During the sea voyage, Darwin also went to Galápagos Islands. They are in the Pacific ocean and are about 972 Kilometers from Ecuador. The birds and animals found there, were different from those found in the rest of South America but there were important similarities too. Here, Darwin collected some specimen of birds. It was later found that all of them were finches but their beaks were different.

Darwin started thinking about how did this happen? Was it possible that these finches had a common ancestor? Did their beaks become different with passage of time? Was it, in order to find food, to be in tune with the environment? Darwin also thought that if finches could change then why could it not happen with other species? Was it possible that all species had one common ancestor? Did it happen because of chance mutation, natural selection and survival of the fittest.



1. Geospiza magnirostris 2. Geospiza fortis
3. Geospiza parvula 4. Certhidea olivacea

Finches from Galapagos Archipelago

In 1838, Darwin also read a book entitled 'Essay on the Principle of Population' by Thomas Malthus. This book put definite ideas in his mind about the new theory; the specimen of the insects and birds collected during the sea voyage also pointed towards it but he could not bring about to publish it. It is only when he received a letter on 18th June 1858 that he changed his mind.

LETTER RECEIVED BY DARWIN – ORIGIN OF SPECIES

The letter received by Darwin on 18th June 1858 was written by Alfred Russell Wallace. He talked about the same principle regarding origin of life that was arrived at by Darwin but he did not have evidence to justify it. The evidence was with Darwin: he had collected them during his sea voyage on the Beagle.

(Alfred Russel Wallace)

Ultimately, a paper explaining the origin of life, was read in the joint name of Darwin and Wallace on 1st July 1858 in the Linnean Society of London. Broadly, it stated that evolution is a result of chance mutation and natural selection, where survival of the fittest played crucial role. His book 'On the Origin of Species' was published on November 24, 1859. Initially its full title was 'On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life'. It was later on shortened (for the sixth edition of 1872) to the present title.

Darwin was a man of character. It was quite easy for him to hide the letter of Wallace and publish the theory with the facts and evidence in his name alone. But he chose not to do so. It shows his greatness; unlike many other scientists he was not wicked.

Slavery was common those days. However, Darwin was opposed to it. In Brazil he was enchanted by the beauty of greenery of the jungles but slavery pained him. After leaving the country, he wrote

'I thank God I shall never visit slave country.'

Robert FitzRoy, Captain of the Beagle, approved slavery. Darwin criticised him and nearly lost his job as naturalist on the ship.

The origin of species did create enemies; strongest amongst them were the upholders of orthodox religious beliefs. If the theory of evolution was true then the account of creation in the Book of Genesis was incorrect; and if evolution worked automatically, there was no room for divine guidance. So controversial was Darwin's theory of evolution that the first edition of his book 'Origin of Species' was sold out within 24 hours of its publication. A record yet to be equaled.

It was about this theory that most talked about debate of all times took place between Bishop Samuel Wilberforce and Thomas Henry Huxley. It was held on 30th June 1860 at the meeting of the British Association for the Advancement of Science at Oxford University. Bishop Samuel thought that this gathering presented an opportunity to squash the 'dangerous' new evolutionary theory.

(Caricature of Wilberforce published in Vanity Fair in 1869)

Huxley sat quietly while the bishop spoke 'with inimitable spirit, emptiness and unfairness.' There is no written record of the debate but Bishop Wilberforce made the fatal error of voicing an offensive personal inquiry about Huxley's simian ancestry, whereupon Huxley murmured to his neighbour,

'The Lord has delivered him into my hands.'

Soon Huxley was called out for the reply, which he did with devastating effect,

'If . . . the question is put to me, would I rather have a miserable ape for a grandfather or a man highly endowed by nature and possessed of great means of influence, and yet who employs these faculties and that influence for the mere purpose of introducing ridicule into a grave scientific discussion—I unhesitatingly affirm my preference for the ape.'

(Caricature of Huxley published in Vanity Fair in 1871)

OBJECTIONS OF CREATIONISTS

Broadly, creationism says that Universe and life was created because of super natural power through some intelligent design. However, if Darwin's theory of evolution is correct then, there is no need for the creator, no need for any super natural power. This is the basic conflict between the two. Creationists have two basic objections against Darwin's principle.

(i) In case there was a common ancestor then where is that common ancestor at this time. Where is the missing link. What is the evidence of that common link.

(ii) Evolution violates the second law of Thermodynamics.

The First Objection —Missing Link

Evolution does not take place in one life time. It takes millions of years to happen. it cannot be seen in one life time. But this does not mean that it is not correct. One does not have to see in order to prove correctness. No one has seen that earth goes round the sun but this does not mean that it is not true. It is correct because, only if sun is taken to be centre of the solar system then the movement of planets can be explained. This is the basis for accepting any principle or fact in science.

Palaeontologists study fossils. These fossils are also kept in the museums. They contain the evidence of the missing link. DNA testing of the animals shows that life is connected with each other.

The age of a fossil can be found out by carbon dating. This is the standard form to find out the age. It shows many fossils to be millions of years old - much older than the life created under the book of Genesis.

The Second Objection - Violation of the Second Law of Thermodynamics

The second law of Thermodynamics states:

'In a closed system, entropy always increases.'

Broadly, it also says that things proceed from order to dis-order. In evolution life has progressed from lower life form to the higher life form i.e. towards more ordered form. It means that entropy is decreasing. According to creationists, it cannot happen: evolution violates the second law of Thermodynamics.

The second law of Thermodynamics is true for a closed system and not otherwise. Light and heat from the sun have a special role to play in origin of life. If there was no sun then there would have been no light, no heat and the life would not have evolved. Sun is producing light and heat by converting mass into energy. This is increasing entropy. This is much more than the decrease in entropy on earth. If both are taken together then entropy is increasing and not decreasing.

CASES IN LAW COURTS

The Monkey Trial

The Christian fundamentalist do not accept Darwin's theory regarding

origin of species. They are most vocal in US. They got anti evolution law enacted in most of the states in US. In March 1925, the Tennessee legislature almost unanimously (75 is to 5) passed a law:

'which declared unlawful, teaching of any doctrine denying the divine creation of man as taught in the Bible.'

It banned the theory of evolution as propounded by Darwin.

John T. Scopes was a high school teacher at a government public school at Dayton. He decided to violate it as a test case and the Civil Liberties Union promised to defend him free of cost. Scopes was arrested and indicted by a grand jury for teaching the theory of evolution. His trial attracted World-wide attention and has come to be known as 'The Monkey Trial'.

William Hennings Bryan led the prosecution side and Clarence Darrow the defence side. Bryan opened the case with the remark,

'The trial uncovers an attack on religion. If evolution wins, Christianity goes.'

Darrow retorted with,

'Scopes is not on trial, civilization is on trial.'

During the trial, the courtroom echoed with laughter, applause, and demonstration. There were chances that the floor might give way. The judge ordered the trial to be transferred to the court house lawn. The Judge, Jury, and counsel were seated on the raised platform and below the platform tables were set out for newspaper, telegraph and radiomen. The lawn was filled with 5000 spectators. It is in these surrounding that 'The Monkey Trial', described as the most amazing court scene in Anglo Saxon history by the New York Times, took place.

(William Jennings Bryan (seated at left) being interrogated by Clarence Darrow, during the trial of State of Tennessee vs. John Thomas Scopes)

The defence was prevented by the judge from producing any expert to prove the authenticity of the theory of evolution. At this stage, Darrow asked his adversary if he would like to testify as an expert on the Bible. The offer was accepted and Bryan, the chief prosecuting counsel entered the witness box. But by doing so, he invited his own doom. During cross-examination, Darrow tore him apart. The next day the judge ruled to strike out Bryan's entire testimony on the ground that it was not relevant. This sealed the fate of the defence case. It was admitted that Scopes had taught the theory of evolution. He was convicted and fined one hundred dollars. Bryan died a day after the judgement. Many say he could not withstand Darrow's cross-examination.

The matter did not end there. An appeal was taken to the Tennessee Supreme Court. Five judges heard the case. It took a year for the decision to come. By the time one of them had died. Only four delivered the judgement. The decision was unanimously reversed. Surprisingly, it was not set aside on the merits but on a technicality. The Supreme Court of Tennessee held that the conviction was illegal as the judge, instead of the jury, had fixed the amount of fine. Only one judge held that the anti-evolution law was unconstitutional; two of the judges had held that it was constitutional. The fourth judge had held the law to be constitutional but it neither barred the teachers to teach Evolution theory nor it applied to the Scopes case.

Anti Evolution Law—Illegal: The Eperson Case

In most of the States of US, Anti-evolution Law continued. Arkansas is also one such State. Ultimately Susan Eperson challenged this law and it was unanimously so declared. (Eperson V Arkansas: 393 US 97: 21 LEd 2d 228). The Court, on 12.11.1968, held that:

'Arkansas' law cannot be defended as an act of religious neutrality. Arkansas did not seek to excise from the curricula of its schools and universities all discussion of the origin of man. The law's effort was confined to an attempt to blot out a particular theory because of its supposed conflict with the Biblical account, literally read. Plainly, the law is contrary to the mandate of the first, and is violation of the fourteenth, Amendment to the Constitution.'

(See Appendix-2 for the first and fourteenth amendment to the US Constitution. Apparently the first amendment applies to the Congress and not to the States' legislatures. The discussion in Appendix-3 may be seen why first ten amendments to the US constitution are applicable to the States.)

The Edwards Case

Louisiana enacted a law known as 'Balanced Treatment for Creation-Science and Evolution-Science Act'. Broadly it states that Darwin's evolution theory should not be taught in the schools. In case it is taught then creationism should also be taught. This was challenged by a teacher called Donald Aguilard. This law was held to be ultra vires not only by the Louisiana Supreme Court but also by the Supreme Court of US (Edwards V Aguillard, 482 US 578 96 L Ed 2d 510). The Court, on 19.6.1987, held that:

'The Louisiana Creationism Act advances a religious doctrine by requiring either the banishment of the theory of evolution from public School classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety.

The Act violates the Establishment Clause of the First Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose.'

The Tammy Case

The religious fundamentalists did not accept defeat. They had published a book entitled 'Of Pandas and People'. This talks about creationism but uses the word, 'Intelligent Design' for the same. Broadly, it asserts that Universe, life, species are best explained by an intelligent cause and not by undirected process natural selection. It is a refined version of creationism – without identifying the nature or identity of the designer. They also saw that the Dover Area School Board of Directors pass a resolution that:

Students will be made aware of gaps/ problems in Darwin's theory and of other theories of evolution including, but not limited to, intelligent design.

Subsequently, it was also announced that teachers would be required to read the following statement to students in the ninth grade biology class:

The Pennsylvania Academic Standards require students to learn about Darwin's Theory of Evolution and eventually to take a standardized test of which evolution is a part.

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence. A theory is defined as a well-tested explanation that unifies a broad range of observations.

Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, 'Of Pandas and People', is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves.

With respect to any theory, students are encouraged to keep an open mind. The school leaves the discussion of the Origins of Life to individual students and their families. As a Standards-driven district, class instruction focuses upon preparing students to achieve proficiency on Standards-based assessments.

This was challenged in Tammy Kitzmiller V Dover Area School District. The Court held on 20.12.2005,

'A declaratory judgement is issued in favour of Plaintiff ... that Defendant's [School's] policy violates the First Amendment of the Constitution of the United States and Article 1& 3 of the Constitution of the Commonwealth of Pennsylvania.

... Defendants are permanently enjoined from maintaining ID Policy in any school within Dover Area District.

The religious fundamentalists have not accepted defeat. Laws to teach creationism/Intelligent Design were proposed in Alabama, Florida, Michigan, Missouri and South Carolina but were not passed and became dead in 2008. However Louisiana did pass a statute known as 'Science Education Act'[1] (see Appendix-5) in June 2008. Will this Act reopen this debate in law courts. Will similar laws be enacted in other countries? Religious fundamentalism is on the rise: you never know what the future holds.

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1. See here:
http://www.legis.state.la.us/billdata/streamdocument.asp?did=503483

CREATION - RELIGIOUS STORIES

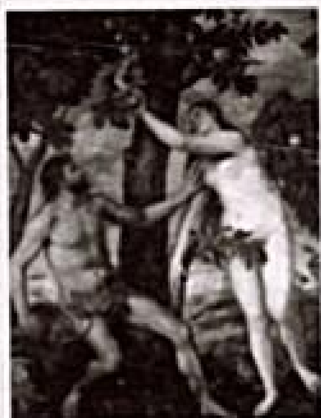
Jews, Christians, and Muslims

Abraham (Ibrahim) was one of the three sons of Terah (Aazar). They used to live in Mesopotamia (presently Iraq). He is said to be the 10th generation from Noah (Nooh) and 20th generation from Adam. Abraham (Ibrahim) had two sons

(i) Ishmael; and

(ii) Isaac.

It is said that followers of Abraham (Ibrahim)-Ishmael became Muslims and the followers of Ibrahim (Abraham)-Isaac became Jews.



Jews believe in God who is almighty but is formless. Unlike Hindus, they do not believe in reincarnation of God. They accept 'Old Testament': it contains many books. One of them is 'Book of Genesis'. It talks about creation of Universe and life. It also talks about the story of Adam and Eve and their expulsion from heaven.

Jesus Christ was a Jew. His teachings are contained in the 'New Testament'. His followers became Christians. The religious book for Christians is the Bible that contains the old as well as the new testament. He called himself son of God, reincarnated in the human form. He was charged for blasphemy by the Jews and was crucified.

Saint Muhammad lived around the seventh century AD. According to Muslims, God sent his message through him. According to the Muslim faith,

- This message of God superseded the prior message contained in Zabur (Psalms) (Hebrew bible) (old testament) (teaching of saint Daud (David)), Tawrat (Torah) (religious book of Jews), and Ingil (New Testament) (religious book of Christians).
- The new message given by God is in Quran: this is God's final word; it is to be accepted and followed.

Broadly, the starting point for these religions is the same and so is their story of creation of Universe and life. They believe in the story of Adam and Eve.

Zoroastrians

About 1300-1700 BC (there is some doubt regarding age)" there was a saint by the name of Zoroaster (Zortosht) (Zorathushtra). The followers of Zoroaster are called Zoroastrians.

About a thousand years ago, Zoroastrians were prosecuted in Iran and fled. They settled in India. They are known as Parsis. Many Zoroastrians fled afterwards and are known as Irani.

Like Jews and Muslims, Zoroastrians also believe in formless worship of God. They refer to their God as Ahura Mazda. He is the one who has created the Universe and diverse forms of life. He created his helpers, called the Amesha Spentas, before creating Universe. He created Gayomaerd, the Primal man from whose seed the first human couple Mashya and Mashyoo were born. Ahirman is Satan who wants to destroy everyone. After 9000 years of this creation, three holy men will come and defeat Ahiram: darkness will vanish, corruption will end, peace will return, and Earth will become heaven.

According to all of the aforesaid religions (Judaism, Christianity, Islam, and Zoroastrianism), God has created this Universe and species. They exist in the same form as they were created; there has not been any change. It means that there is no place for evolution. According to them, this creation is not old and is within 10,000 years.

Hindu Religion

Hindu religion is much older. It talks about many stories regarding creation of Universe and life.

One of the stories is that the universe is under infinite number of creations and destructions. Carl Sagan, Ph.D. in Astronomy, was a well known person. He has made a TV serial called 'Cosmos'. It was about evolution of universe and civilization. Subsequently a book by the name of 'Cosmos: Story of Cosmic Evaluation, Science and Civilization' was also published. In this book Carl says (page 285)

The Hindu religion is the only one of the world's great faith dedicated to the idea that the Cosmos itself undergoes immense, indeed an infinite number of deaths and rebirths. It is the only religion in which the time scales correspond, no doubt by accident, to those of modern scientific

cosmology. Its cycles run from our ordinary day and night to a day and night of Brahma, 8.64 billion years long, longer than the age of the Earth or the Sun and about half the time since the Big Bang. And there are much longer time scales still.

There is the deep and appealing notion that the universe is but the dream of the god who, after a hundred Brahama years, dissolves himself into a dreamless sleep. The universe dissolves with him - until, after another Brahma century, he stirs, recomposes himself and begins again to dream the great cosmic dream. Meanwhile, elsewhere, there are an infinite number of other universes, each with its own god dreaming the cosmic dream. These great ideas are tempered by another, perhaps still greater. It is said that men may not be the dreams of the gods, but rather that the gods are the dreams of men.

How long is the period of creation and destruction? There is a puzzle that explains it.

It is said that Brahma created a temple. In this temple, there are three rods of diamond. In one of the rods, there are 64 golden plates of different sizes, the biggest one is at the bottom and the smallest one is on top. There is a priest and his job is to transfer the plates from one rod to the other so that in the other rod plates are placed in the same fashion. In this process he can use the third rod but he has to obey the following conditions:

(i) Only one plate can be moved at a time; and

(ii) The bigger plate cannot be kept over the smaller plate.

The day all plates are transferred to the other rod, the universe will come to an end and the process for creation will start.

If you think this will take a short time then you are mistaken. In case, it takes one second to transfer one plate to another rod then it will take 5×10^{11} years about five hundred billion (British) years or half billion (American) years. The total number of moves is $2^{64}-1$ or 18,446,744,073,709,551,615.

Fritjof Capra, Ph.D. in Physics from Vienna University, has also popularised science. He has written a book entitled 'The Tao of Physics'. In this book, he says, (page 256-259).

The Eastern mystics have a dynamic view of the universe similar to that of modern physics, and consequently it is not surprising that they, too, have used the image of the dance to convey their intuition of nature.

...

The metaphor of the cosmic dance has found its most profound and beautiful expression in Hinduism in the image of the dancing god Shiva. Among his many incarnations, Shiva, one of the oldest and most popular Indian gods, appears as the King of Dancers. According to Hindu belief, all life is part of a great rhythmic process of creation and destruction, of death and rebirth, and Shiva's dance symbolizes this eternal life-death rhythm which goes on in endless cycles.

...

The Dance of Shiva symbolizes not only the cosmic cycles of creation and destruction, but also the daily rhythm of birth and death which is seen in Indian mysticism as the basis of all existence. At the same time, Shiva reminds us that the manifold forms in the world are maya – as he keeps creating and dissolving them in the ceaseless flow of his dance.

...

For the modern physicists, then, Shiva's dance is the dance of subatomic matter. As in Hindu mythology, it is a continual dance of creation and destruction involving the whole cosmos; the basis of all existence and of all natural phenomena. Hundreds of years ago, Indian artists created visual images of dancing Shivas in a beautiful series of bronzes. In our time, physicists have used the most advanced technology to portray the patterns of the cosmic dance. The bubble-chamber photographs of interacting particles, which bear testimony to the continual rhythm of creation and destruction in the universe, are visual images of the dance of Shiva equalling those of the Indian artists in beauty and profound significance. The metaphor of the cosmic dance thus unifies ancient mythology, religious art and modern physics.

Perhaps this may be the reason that there was no objection against Evolution: atleast Jawarlal Nehru thinks so. This is what he says in his book 'The Discovery of India' published by Oxford University Press page 116.

'Nevertheless the Old Indians, unlike the other ancient nations, had vast conceptions of time and space. They thought in a big way. Even their mythology deals with ages of hundreds of millions of years. To them the vast periods of modern geology or the astronomical distances of the stars would not have come as surprise. Because of this background, Darwin 's and other similar theories could not create in India the turmoil and inner conflict which they produced in Europe. The popular mind in Europe was used to a time scale which did not go beyond a few thousand years.'

According to another story from the Hindu religion, one does not know how the universe was created and even its creator might not be

knowing. This is contained Shlok number 129 from the 10th Chapter of Rigved. It is as follows:

नासदासीन्नो सदासीत्तदानीं नासीद्रजो नो व्योमा परो यत्।

किमावरीव कुह कस्य शर्मन्नम्भः किमासीद्गहनं गभीरम्।।1।।

Neither there was non-existent; nor there was any realm or region. How could there be existing this unfathomable profound plasma?

न मृत्युरासीदमृतं न तर्हि न रात्र्या अह्न आसीत्प्रकेतः।

आनीदवातं स्वधया तदेकं तस्माद्धान्यन्न परः किं चनास।।2।।

Neither there was death nor at that period immortality. There was no indication of day or night. That breathless one breathed upon as if by its own automation. Apart from that one, there was nothing else whatever.

तमं आसीत्तमसा गूळहमग्रेऽप्रकेतं सलिलं सर्वमा इदम्।

तुच्छ्येनाभ्वपिहितं यदासीत्तपसस्तन्महिनाजायतैकम्।। 3।।

Darkness there was; covered by darkness, a plasmic continuum, in which there was nothing distinguishable. And thence, an empty (world), united under a causal covering came out on account of the austere penance (of that Supreme one).

कामस्तदग्रे समवर्तताधि मनसो रेतः प्रथमं यदासीत्।

सतो बन्धुमसति निरविन्दन्हृदि प्रतीष्या कवयो मनीषा।।4।।

In the beginning, there was the Divine Desire, which was the first seed of the Cosmic Mind. The sages, seeking in their hearts, have discovered by their wisdom the bond that operates between the existent (the manifested) and the non-existent(the unmanifested).

तिरश्चनो विततो रश्मिरेषामधः स्विदासी३ दुपरि स्विदासी३त्

रेतोधा आसन्महिमान आसन्त्स्वधा अवस्तात्प्रयतिः परस्तात्।।5।।

Their controls (rays or reins) were stretched out, some transverse, some below and others above. Some of these were shedders of the seed and the others strong and superb the inferior, the causal matter here, and the superior, the creator's effort there.

को अद्धा वेद क इह प्र वोचत्कुत आजाता कुत इयं विसृष्टिः।

अर्वाग्देवा अस्य विसर्जनेनाथा को वेद यतं आबभूव।।6।।

Who really knows, who in this world can declare it, whence came out this (manifested) creation? Whence was it engendered? Whence will it end? Nature's bounties came out much later, and hence who knows whence this creation came into manifestation?

इयं विसृष्टिर्यत आबभूव यदि वा दधे यदि वा न।

यो अस्याध्यक्षः परमे व्योमन्त्सो अङ्ग वेद यदि वा न वेद॥7॥

He from whom this creation arose" verily He may uphold it or He may not (and then of course, none else can do so). The one who is the sovereign in this highest heaven, He assuredly knows, or even He knows not (and then none else would ever know the secrets).

(Sanskrit Shlok and English translation is from 'RGVEDA SAMHITA' written by Svami Satya Prakash Sarasvati and Satyakam Vidyalankar Volume XIII page 4635-4637).

Some years ago, Doordarshan had made a TV serial based on the book 'Discovery of India' written by Jawahar Lal Nehru. It is titled as 'Bharat ki Khoj'. The title song of this serial is Hindi translation of this Shlok and perhaps it captures the meaning in its true spirit.

सृष्टि से पहले,

सत नहीं था,

असत भी नहीं,

अन्तरिक्ष भी नहीं,

आकाश भी नहीं था।

छिपा था क्या, कहाँ,

किसने ढका था

उस पल तो अगम, अतल जल भी कहाँ था।

सृष्टि का कौन है कर्ता

कर्ता है वह अकर्ता

ऊँचे आकाश में रहता

सदा अदृश्य बना रहता

वही सचमुच में जानता

क्या नहीं है जानता,

है किसी को नहीं पता, नहीं पता

नहीं है पता, नहीं है पता।

Perhaps, this may be closest to the truth regarding creation of Universe.

Nevertheless, one of the stories in Hindu religion is similar to one in other religions. In chapter 9 and 11 of Geeta shlok 18 and 32 are as follows:

गतिर्भर्ता प्रभुः साक्षी निवासः शरणं सुहृत्।

प्रभवः प्रलयः स्थानं निधानं बीजमव्ययम्।।18।।

(I am) the goal, the upholder, the lord, the witness, the abode, the refuge and the friend. (I am) the origin and the dissolution, the ground, the resting place and the imperishable seed.

(Sri krishna showing his true form to Arjun during Mahabharat (Geeta) – Picture from TV serial Sri Krishna)

कालोऽस्मि लोकक्षयकृत्प्रवृद्धो लोकान्समाहर्तुमिह प्रवृत्तः

ऋतेऽपि त्वां न भविष्यन्ति सर्वे येऽवस्थिताः प्रत्यनीकेषु योधाः।।32।।

Time am I, world-destroying, grown mature, engaged here in subduing the world. Even without thee (thy action), all the warriors standing arrayed in the opposing armies shall cease to be.

The Sanskrit version is taken from the Geeta published by Geeta press Gorakhpur. Its English translation has been taken from 'The Bhagavadgita (With an Introductory Essay, Sanskrit Text, English

Translation and Notes) by S. Radhakrishnan (Published by HarperCollins Publishers India) (Chapter IX para 18 page 245).

Shlok number 31 and 32 of the first chapter of Manusmriti says:

लोकानां तु विवृद्ध्यर्थं मुखबाहूरुपादतः।
ब्राह्मणं क्षत्रियं वैश्यं शूद्रं च निरवर्तयत्॥31॥

But for the sake of the prosperity of the worlds, he caused the Brahmana, the Kshatriya, the Vaisya, and the Sudra to proceed from his mouth, his arms, his thighs, and his feet.

द्विधा कृत्वाऽऽत्मनो देहमर्धेन पुरुषोऽभवत्।
अर्धेन नारी तस्यां स विराजमसृजत्प्रभुः॥32॥

Dividing his own body, the Lords became half male and half female; with that (female) he produced Virag.

(Sanskrit Shlok has been taken from Manusmriti published by Arya Sahitya Prachar Trust. Its English translation is from the book 'The laws of Manu' by G Buhler edited by F. Max Muller page 13-14).

However the creation in other religion is within 10,000 years but this creation in the Hindu religion took place billions of years ago.

Arthur C. Clarke has also popularised science in the last century. He has written many books. One of the books is entitled 'Profiles of the Future'. It has a chapter 'About Time'. Here, he says (page 138):

Time has been a basic element in all religions ... Some faiths (Christianity, for instance) have placed creation and beginning of Time and very recent dates in the past, and have anticipated the end of the Universe in the near future. Other religions, such as Hinduism, have looked back through enormous vistas of Time and forward to even greater ones. It was with reluctance that western astronomers realized that the East was right, and that the age of the Universe is to be measured in billions rather than millions of years – if it can be measured at all.

Irrespective of many stories about creation in Hindu religion, the creationism is there also: it is a common link in all religions. The reason is not far to seek: perhaps it was the easiest way to explain the origin of life.

Note: The photgraph of Lord Krishna has been taken from the popular TV Serial Sri Krisna. The photograph of Scopes trial on the lawns was taken on July 20, 1925, by Watson Davis, Managing Editor of Science Service, and is courtesy Smithsonian Institutional archives (http://siarchives.si.edu/research/scopes.html). The remaining photographs have been taken from Wikipedia.

The Relevant Provision of the Constitution of United States of America are as follows. How 1st amendment came to be applied to the States, see note after the 14th amendment.

1st Amendment [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

14th Amendment (1868)

1. All persons born or naturalised in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

2. Representatives shall be apportioned among the several States according to their respective number, counting the whole number of person in these State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representative in Congress, the Executive and judicial officers of a State, or the member of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in the rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be Senator or Representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State who, having previously taken an oath, as a member of Congress, or as an officer of the United States or as a member of any State Legislature, or as an Executive or judicial officer of any State, to support the Constitution of the United States shall have engaged in insurrection or rebellion against the same, or given aid or conform to the enemies thereof. But Congress may by a vote of two-third of each House, remove such disability.

4. The validity of the public debt of the United States, authorised by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

1st amendment to the US Constitution binds the States

US Constitution was ratified on June 21, 1788. Except for some provisions, it did not have protection for traditional liberties. This protection has been recognised in the first ten amendments that were ratified on December, 15, 1791. But are they applicable to the States?

Except for the first and the seventh amendment, the remaining amendments did not specifically refer to the Federal agencies. Nonetheless, the US Supreme Court in Barron Vs Baltimore 7 pet. (243 (1833)) (Where applicability of the fifth amendment to the State was involved) held:

'The constitution was ordained and established by the people of the United State for themselves, for their own government, and not for the government of the individual states.'

Fourteenth amendment was ratified, immediately after American Civil War (1861-1865), on July 9, 1968. It ensured that the States could not deprive any person of life, liberty or property, without due process of law. But are the liberties described in the first ten amendments or more specifically in the first amendment included in the word 'liberty' used in the fourteenth amendment?

It was through property-oriented, substantive due process passage that these liberties came to be included in the fourteenth amendment. After Meyer Vs Nebraska (262 US 128 (1923)) and Pierce Vs Society of Sisters (268 US 510 (1925)) were State action was invalidated, the US Supreme Court in Gitlow vs. New York 268 US 6 (1925) observed,.

'For present purpose, we ... assume that freedom of speech and of the press ... protected by the 1st amendment from abridgement by Congress—are among the fundamental personal rights and "liberties" protected by the due process clause of the 14th Amendment from impairment by the States.'

In this case, the appellants, members of left wing section of the socialist party, were convicted under the State law for causing criminal anarchy. They had challenged the legality of the Statute. It was held to be valid.

In Cantwell vs Connecticut (310 US 296 (1940)), the appellants—members of Jehovah's Witnesses (a Christian denomination)—were seeking converts on public road in a pre-dominant Roman Catholic area. Some of them were convicted for inciting breach of peace; the case of some was

sent back for retrial. The US Supreme Court holding the freedom of religion in the first amendment to be binding on the States, reversed the conviction. The court held:

'The fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendments.'

Everson vs. Board of Education (330 US 1 (1947)) was the first case, when the court to examined the state-religion relationship in the context of establishment.

The State law had authorised local School district boards to frame rules for making contract of transportation of children to and from schools. The school board authorized reimbursement of payment of money spent by parents in sending their children on the public transport. This included parents of those children, who studied in a Catholic School imparting—religious instructions conforming to the Catholic faith along-with secular education. The appellant, a taxpayer, challenged its validity. The Court held that:

'Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the States.

...

The "establishment of religion" clause of the first amendment means atleast this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another ... No tax in any amount ... can be levied to support any religious activities or institution ... Neither a state nor the federal Government can ... participate in the affairs of any religious organisation or groups ... [T]he clause against the establishment of religion by law was intended to erect a wall of separation between Church and State'

The court held that the wall between religion and the State was not breached in this case.

The Relevant Provision of the Constitution of India

The Constitution of India

Preamble

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens:

Justice, social economic and political:

Liberty of thought, expression, belief, faith and worship;

Equality of status and opportunity; and to promote among them all.

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.

RIGHT TO FREEDOM OF RELIGION

Freedom of conscience and free profession, practice and propagation of religion.-

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II-In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable 29 purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

Freedom as to payment of taxes for promotion of any particular religion.- No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.-

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

CULTURAL AND EDUCATIONAL RIGHTS

Protection of interests of minorities.-

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. Right of minorities to establish and administer educational institutions.- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, 30 referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Act No. 473

Senate Bill no 733

To enact R.S. 17:285.1, relative to curriculum and instruction; to provide relative to the teaching of scientific subjects in public elementary and secondary schools; to promote students' critical thinking skills and open discussion of scientific theories; to provide relative to support and guidance for teachers; to provide relative to textbooks and instructional materials; to provide for rules and regulations; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 17:285.1 is hereby enacted to read as follows:

§285.1. Science education; development of critical thinking skills

A. This Section shall be known and may be cited as the "Louisiana Science Education Act."

B.(1) The State Board of Elementary and Secondary Education, upon request of a city, parish, or other local public school board, shall allow and assist teachers, principals, and other school administrators to create and foster an environment within public elementary and secondary schools that promotes critical thinking skills, logical analysis, and open and objective discussion of scientific theories being studied including, but not limited to, evolution, the origins of life, global warming, and human cloning.

(2) Such assistance shall include support and guidance for teachers regarding effective ways to help students understand, analyze, critique, and objectively review scientific theories being studied, including those enumerated in Paragraph (1) of this Subsection.

C. A teacher shall teach the material presented in the standard textbook supplied by the school system and thereafter may use supplemental textbooks and other instructional materials to help students understand, analyze, critique, and review scientific theories in an objective manner, as permitted by the city, parish, or other 32 local public school board unless otherwise prohibited by the State Board of Elementary and Secondary Education.

D. This Section shall not be construed to promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion.

E. The State Board of Elementary and Secondary Education and each city, parish, or other local public school board shall adopt and promulgate the rules and regulations necessary to implement the provisions of this Section prior to the beginning of the 2008-2009 school year.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

Enhancing Quality of Adjudication

Transparency and Accountability for Quality: Measurable Indicators of Quality

By Justice Sunil Ambwani
Judge, Allahabad High Court

(Note: This paper was presented by Hon'ble Mr. Justice Sunil Ambwani, Judge, Allahabad High Court in the N J A Regional Judicial Conference on "Enhancing Quality of Adjudication "at Chandigarh from 24th to 26th September, 2010. The Institute is extremely grateful to His Lordship for having given his consent to publish it in IJTR Journal)

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1. INTRODUCTION

The Indian Judiciary is constantly working to achieve constitutional goals. The traditional role of the judiciary of passive adjudicator of disputes, has changed to an active dispenser of justice, reducing inequities and injustice in society.

The subordinate judiciary with 14096, out of 16881 sanctioned posts of judges and with 27275953 cases as backlog as on 31.12.2009, is facing a great challenge. The capacity of the judiciary has not increased substantially for several decades. We are confident that under the able leadership of our present Chief Justice of India, not only the sanctioned strength of judges at each level, but also the capacity of the Indian Judiciary by providing the required infrastructure, to be optimised with modern means of management and e-governance, will be adequately enhanced, to face the challenge.

The pendency of the cases has exposed the judicial functioning to public criticism. A number of schemes and ADR mechanisms put into motion with emphasis on new techniques in deciding cases, training and good governance have resulted into considerable success. The results, however, are overshadowed by far greater number of cases coming to the courts on account of increasing faith of the people in the system, new legislations, and poor governance in the States.

The emphasis on minimum standards and increase of judicial infrastructure, is indispensable, but is not sufficient. The disposal of

cases, however, quicker or larger in number, is not a long term solution to the problem, unless the quality of adjudication and responsiveness of justice delivery system is enhanced. The present conference aims to study the standards and measurements of adjudication with a view to strengthen the system.

2. THE QUALITY OF ADJUDICATION:

The quality of adjudication is not reflected only in quality of final order or judgment delivered by the Judge. It has to be measured at every stage of dispensation of justice beginning with access to justice; filing of the cases; processes through which a case has to pass through before it is finally heard including availability of the courts, quality of pleading, evidence, issues/charges, disposal of various applications, availability and responsiveness of the revisional and appellate courts in deciding the matter and effective execution procedures. On criminal side the quality of adjudication includes the accountability of various other agencies such as the investigation agency, the prosecution responsible for collection and production of evidence, forensics, witness protection, jail conditions and procedures, probationary officers and protective homes; the impartiality, neutrality and integrity of the judicial officers and court staff, the use of information and communication technology (ICT) in reducing the procedural delays, transparency of the process and accountability at each level. The competence and cooperation of Bar is also an important factor, without which such quality cannot be ensured.

3. JUDICIAL REASONING

The reasons and reasoning for arriving at a finding after statement of facts is called the opinion of the Judge. There is no rigid rule as to how a finding may be recorded. The Judge, however, should give good, sufficient and legally valid reasons to agree with the argument and to decide an issue, or to give his findings on a charge. An elaborate argument does not always require elaborate answer.

Like all human being a Judge possesses personal preferences and predispositions. With experience the Judge takes liberties to adopt new methods and to innovate. The logical reasoning, however, must follow in reaching to a conclusion. The process of arriving at a conclusion involves (i) syllogistic or deductive process, (ii) inferential process, or (iii) intuitive process. "Syllogism' means, a deductive scheme of a formal argument consisting of a major and a minor premise and a conclusion. In syllogistic process the Judge adopts a deductive process in which he accepts an argument on a major premise, which over weighs the minor premise to draw his own conclusion. In case of inferential process the Judge relies upon the evidence and reaches to a conclusion. In the intuitive process,

the Judge adopts psychological process by which the conclusion is arrived at more by intuition rather than reasons. In such a method the Judge may believe a witness in part or whole and then draw the conclusion by justifying it from the reasoning supplied by him either by belief or experience. In both the methods, in case what is being done is to arrive at a truth, the method may be justified.

A Judge is not free from partiality and bias. There may be personal pecuniary or official bias, and sometimes a lurking or sub-conscious bias, which may not be known to the Judge himself and may affect the judgment. The bias may have arisen on account of any factor, which ordinarily affect the life of the human being. The Judge may be influenced by the subjective preferences or biases in an unacceptable way. With experience a Judge may identify such bias and may sanitise himself and win over it. The best way to overcome the judgment to be affected by such outside and unknown factor, is to follow logical reasoning.

The quality of judgment also depends upon its structure, simple and plain language and clarity of expression. A legally valid, effective and conclusive decision does not leave anything to be brought back to the Court.

4. OBJECTIVITY

The judicial functioning should be measured against a set of norms, which have to be judged by something more than the notions of correctness. A Judge deciding cases must possess, not only the knowledge of law, but also the understanding of the social conditions, the principles of law, and the constitutional goals, in deciding cases. The policy of the courts spelled out by the Supreme Court, guiding the entire judiciary, must always be kept in mind. A Judge often comes in conflict with morality and law. He should, however, be able to stay clear of his own understanding and notions of morality and law, and be objective towards the goals set out in the Constitution of India in resolving conflicts in society.

5. NEUTRALITY AND IMPARTIALITY

There is a difference between neutrality and impartiality. Impartiality requires cool reason, uncontaminated thinking without being influenced by personal commitments, biases and preconceptions. The neutrality on the other hand means the Judge is non-aligned. A Judge may begin being neutral and continue to be so in the process of the trial, but at the end of it he has to decide the case in favour of either of the parties without any partiality. Impartiality requires a Judge to rise above all values and perspectives.

6. TRANSPARENCY AND ACCOUNTABILITY

The judicial functioning is not a private affair. The stakeholders include the litigants, the legal profession, the appellate courts, the society, and the students of law. Every judgment, however, insignificant it may be has a precedential value, either for litigant or for others. The judicial process must be open, transparent and should allow the law to prevail, and justice resulting from every action of the court process. The open public hearing of the cases, the availability of the records and judgments for inspection & scrutiny, are necessary to provide confidence in the judicial system. The quality of adjudication demands transparency in the judicial functioning, without confusing it with a liberal or free exercise of judicial discretion. A Judge must be able to control the proceedings in his Court and manage the progress of the case. He should be able to rationalise his discretion both during the process of the case, including adjournments, and in the final decision.

7. PROCESS AUTOMATION

The use of information and communication technology optimizes the use of human resources and brings about change management by harnessing the potentiality of the available information to its fullest extent. The objective is to enhance judicial productivity both qualitatively and quantitatively as also make the justice delivery system affordable, accessible, cost effective, transparent and accountable. After the implementation of the e-Committee Project almost all the Districts and Taluka courts have been provided with the hardware and system software. The home libraries provided to the Judges including the data base on CD roms have empowered the Judges to optimize the use and to fine tune the change management. The ICT applications change the attitude, work culture, and transform the process and quality of adjudication.

8. JUDICIAL ETHICS

It is said that a Judge is accountable only to the law and to the Judges conscience. It is a simple way of expressing the essential character of the judicial function. The judicial ethics not only include the integrity but also accountability to the people for the due performance of the judicial functions. A delicate balance has to be struck between judicial accountability and judicial independence. The autonomy of a decision making brings in a responsibility and accountability to the stakeholders.

The source of judicial power is the law but in reality the effective exercise of judicial powers originate from public acceptance of the authority and the integrity of the judiciary. The Judges have to honour the judicial office which they hold as a public trust. Their every action and their every

word spoken or written in their judgments must show and reflect correctly that they hold the office as a public trust and they are determined to strive continuously to enhance and to maintain people's confidence in the judicial system.

9. MEASUREMENT OF QUALITY OF ADJUDICATION

To measure means to choose or to control with caution, strain, to regulate by a standard; to estimate or appraise by a criterion. According to the context, to measure also means an adequate or due portion; the dimensions, capacity or amount of something ascertained or amount of something ascertained by measuring.

Just like body temperature is measured by thermometer, and the speed of a moving motor vehicle is measured by speedometer, the disposal of cases may be measured by its numbers. The quality of adjudication, however, does not have a fixed measuring indicator. We have to find out a uniform standard for measuring quality of adjudication, for dispensation of justice to achieve optimum results.

In the High Court at Allahabad, the quick disposal of writ petitions was sought to be achieved by directing representations to be decided by the executive. That brought back the same cases to the High court after a contempt action, to challenge the final order. The anxiety of disposal of the writ petitions, without ensuring effective adjudication resulted into filing of three cases instead of one, unnecessarily adding to the burden of the Court. A quick decision of the case, without taking care to the quality of the process and the final decision, results into a dissatisfied litigant, increased number of revisions and appeals and complicated execution process. A decision of the Court without the quality of adjudication is thus counter productive to the effort, however, sincere it may be, and adds on to the numbers, with which the judiciary is already overburdened.

An appropriate measurement of the quality of adjudication should take into account the areas, where the justice delivery system needs more attention and improvement of the administration of justice.

10. INDICATORS OF MEASUREMENT:

In order to measure the quality of justice some standards have to be applied to be utilised by the District Judges, and the Administrative/ Inspecting Judges, to be collected and discussed in regular meetings.

The satisfaction of the litigants is also one of the indicators to be taken into account while measuring the quality of justice. In one of the studies carried out by a retired judicial officer of District Court, by way

of opinion poll of the litigants, it was found that uncooperative attitude of the court staff was found to be most disturbing factor in judging the level of satisfaction. The litigant was not so much concerned with the ultimate outcome of the case, than the attitude of the court staff, which he has to face on day to day basis, during the process of the case.

Apart from the integrity of the judicial officer, which cannot be compromised at any cost, his attitude towards Bar and the litigants while sitting in court and passing orders in various stages of the case, is an important indicator, which has to be taken into account in measuring the quality of adjudication.

The following factors may broadly be taken into consideration for measuring the quality of adjudication and for its correct appreciation, for identifying areas, which need giving immediate attention and improvement:

1. The access to justice
    - (a) Quality of legal aid provided by the Bar or the Legal Services Authority
    - (b) The availability of the Courts, which includes Judges and court staff
    - (c) The distance of the residence/ business place of the stakeholders from the Court
    - (d) The reasonableness of the court fees, and filing procedures
2. The effectiveness of process of service of notices/ summons/ warrants
3. The availability and the integrity of the Court staff in carrying out surveys; inspections and in discovery, inspection and maintenance of records.
4. The availability of effective ADR mechanisms attached to the court
5. The quick disposal of interlocutory applications and management of adjournments
6. The expeditious settlement of issues in civil cases; and committal proceedings and framing of charge in criminal cases
7. The reasonableness of time given for arguments
8. The appropriate case and case flow management
9. Friendliness of the Court atmosphere and the staff of the court

10. The effective and purposive use of information and communication technology
11. The quality of orders and judgments
12. The impartiality and neutrality of judges
13. Transparency of the court system
14. The responsive and efficient revisional and appellate forums
15. The effective procedures for execution of the judgment and decrees.

All the aforesaid factors should be given equal importance and may be measured on a model, on a graded scale of 1 to 10, on the basis of reasonableness, time factor, satisfaction of the Bar and the litigants.

The measurement of these factors, will reflect the measurement of the quality of adjudication, which will in long term enhance the value and utility of the judiciary in the country.

RIGHT TO INFORMATION : NEED FOR STATE SUPPORT

By: **Justice (Retd) Kamleshwar Nath.**

Appreciating the Peoples' aspiration to get informed about governance for active participation in a vibrant Democracy coupled with support of the Supreme Court to right to information from 1974 up-to-date, the Parliament enacted Right to Information Act 2005. Today, the Act stands on a firm footing. Experience shows that the Act needs support of Central and State Governments to become truly purposeful within the four corners of the Act, i.e. without its amendment. The reason is that the authorities concerned, PIOs & Information Commission, are tempted to travel beyond the scope of the Act subverting a simple statutory obligation into a complex exercise of non-existent powers.

A plain reading of the Act shows that the field of functions is very small, viz., simply to furnish information to the applicant, if it exists in government records. The only restrictions are confmed to Exemptions under Section 8 and exclusion of information held by certain departments detailed in Second Schedule read with Section 24. Both these provisions are quite clear and do not need much 'brainnstorming'; the exclusions under Section 24 expressly ensure that information relating to corruption and human rights violations must be furnished.

The citizen is entitled, under Section 3, to get all sorts of information, except those covered by Sections 8 and 24. He need not give reasons for requiring information vide Section 6(2), need not be present personally to make the application and can even use electronic mode vide Section 6(1) which further obliges the PIO to help him to make the application in case of inability to make a written application. The Act does not require applicant's presence in any proceeding. Indeed Rule 7(2) of Central Information Commission (Appeal Procedure) Rules, specifically says that he need not be present during hearing of Appeal.

Despite simplicity of the statute, operators of the Act are making it difficult. No information is furnished before the maximum permissible period of 30 days under Section 7, thousands of cases remain pending for months, even years, adjournments are too frequent and adjourned dates are several months apart! That this situation should prevail also at the stage of State Information Commission is simply tragic. Apart from the general complaint that the Commissioners do not devote their whole time (lOAM to 4 PM, with a lunch break) to the work, their decisions show that they are persuaded to travel beyond the jurisdiction conferred upon them by the Act. Their powers and functions are specifically set out in Chapter IV of the Act.

Section 18 defines powers in Complaint made to the Commission. The grounds of complaint are specified in clauses (a) to (e) of S. 18(1). They all relate to the making of application for information and their disposal by PIOs - nothing more, nothing less. The residuary clause (1) too provides for 'any other matter relating to or obtaining access to records under the Act'. So, no issue can be raised on any matter which is not directly connected with the making of information application and its disposal: and yet the Commission enters into questions of rights and/ or title involved in subject matter of information sought. An unfounded impression prevails that S. 18(2) contains powers beyond S. 18(1). Subsection (2) confers power "to inquire into the matter"; the word "matter" cannot mean 'any matter' outside the scope of Subsection(I). Indeed, the residuary clause (1) specifically deals with "any other matter relating to requesting and obtaining access to records". That is it. Every matter which the Commission desires to inquire into must be shown to relate to a motion for obtaining information or records. Travelling beyond those limits, complicates the case for nothing, leading to uncalled for inquiries and adjournments and is without jurisdiction.

Extension of powers of Civil Court under Subsection (3) of S. 18 to the Commission is limited to processes set out in clauses (a) to (1), for "inquiring into any matter under this Section"; and those matters are none other than ones relating to application for information and its disposal by the concerned authority.

Section 19 defines the powers of the Commission in 2nd Appeals, i.e, Appeals against the order of departmental Appellate Authority. It is plain that in 2nd Appeal under Subsection (3), the Commission deals only with the motion for information as dealt with by PIO or by departmental Appellate Authority. The powers of the Commission are specifically set out in and limited in Subsection LID. These powers are confined to matters only of furnishing or refusing to furnish information or records sought by the Applicant. They also empower the Commission to compensate the Complainant for loss and impose penalty provided under the Act. This power of imposing penalty is contained in S. 20, and extends to Complaints as well as Appeals. But, in every situation, penalty can be imposed only if the PIO has defaulted in performing his duty in dealing with the application for information; the Commission has no power over areas outside the application for information (or records).

It is a settled law that all Statutory bodies must function within the four comers of the Statute creating them. If any power is purported to be exercised but that power is not conferred by the Statute, the exercise is ultra vires. The Commission has no 'inherent power' vested in Civil Court; the Commission is not a Court. Thus the Commission cannot convert a

Complaint into an Appeal or vice-versa, cannot remand a case to PIO or departmental Appellate Authority for reconsideration. It cannot pass any order which cannot be made clearly within the four corners of Sections 18, 19 & 20. Yet, such illegalities are being committed. The question is, how to curb these illegalities or irregularities. Here comes in the Rule-making power of the State Government and Governor under S. 27 and 28 respectively.

All PIOs and departmental Appellate Authorities are Government Servants governed by Service Rules framed under Article 309 of the Constitution of India. Every Appointing Authority is competent to take disciplinary action against a Government Servant who commits misconduct, misbehaviour, negligence etc. In matters arising out of RTI Act, this general power of Appointing Authority is curtailed in as much as it is for the Commission, while deciding any Appeal or Complaint, to hold and recommend under Subsection (2) of S. 20, that a disciplinary inquiry be instituted against the Government servant. Once a recommendation is made, the Appointing Authority is bound to institute a disciplinary inquiry, proceed in accordance with the Service Rules and take the issue to its logical end.

Constituents of Information Commission are not Government Servants; they are statutory appointees and are governed by the terms of RTI Act. The State Information Commission is constituted under Part IV of the Act. The State Government constitutes the Commission under S. 15(1) consisting of Chief Information Commission and Information Commissioners under S. 15(2). The eligibility criteria for CIC/IC are set out in Subsection (5). It is laid down that they "shall be persons of eminence in public life " It is widely reputed that most of the Information Commissioners in UP are not persons of eminence in public life. The Issue of January 2009 of a monthly magazine entitled SACHCHI-MUCHCHI published from Kapoorthala, Aliganj, Lucknow contains a brief note of CIC and 8 Information Commissioners then in position. Apparently, there is nothing of 'eminence in public life' about the Naval Officer (Retired in 1992), a medical practitioner enrolled as Advocate in 1992, and 4 Advocates of High Court (Lucknow Bench) since 1992, 1994, 1996 and 2000 in the absence of definition of the expression 'eminence in public life'. This lacuna needs to be filled by the State Govt. by framing appropriate Rules under S.27 which should set out the criteria and also indicate the test of 'wide knowledge and experience'. A screening Committee of experts in the fields mentioned in Subsection (5) can be constituted under Rules laying down norms and procedure for recruitment, whose recommendations could go before the Selection Committee set out in Subsection (3). It is not necessary to say anything about the Selection Committee because it is not proposed in this paper to amend the Act.

Now, about Monitoring of functions of Information Commission. Section 25 has a heading "Monitoring and Reporting". The text of the Section lays down a system of 'reporting' but nothing about 'monitoring'. It only provides for an Annual Report by the Commission on its own operations during the previous year, and the only action contemplated is to lay the Report before the Parliament or Legislature. This does not signify any monitoring; the Commission, of course, cannot be 'a judge in its own cause'. To monitor means 'to observe', 'to keep track of', 'to keep watch', 'to regulate' (vide Govt. of India Ministry of Law's Legal Glossary). According to Chambers Dictionary, it includes 'admonition'. Clearly S. 25 does not provide for any of these actions. It is also plain that it cannot mean 'supervision' in the sense of 'correction' or 'variation' like High Court's supervisory jurisdiction under Article 227 of the Constitution. The order of the Commission is final under S. 19(7) & cannot be varied by any Executive Authority. But in the absence of some sort of 'watch' etc. over the functioning of the Commission, the powers of the Commission are capable of misuse and abuse. Failure to keep working hours, exercising powers in excess of jurisdiction, misbehaviour etc go unchecked. This impropriety can be controlled by monitoring through Rules framed by State Government under Section 27 or by Governor as 'Competent Authority' under S. 28 to "carry out the provisions of this Act". Governor is the Appointing Authority under S. 15(3), and he is expected to keep watch in matters mentioned under S. 17(3). A Monitoring Cell of two or more officers can be constituted under S. 27 with Chief Secretary or Principal Secretary of Administrative Reforms Department or under S. 28 with Principal Secretary of Governor at the head to keep monthly watch over the working of the Commission and draw the attention of the Commission to improprieties etc. in their functioning. The High Court's extraordinary writ jurisdiction under Article 226 of the Constitution to remedy the wrongs by the Commission need not be invoked every time by the common man at considerable expense of resources and time if the State can keep watch through Rules.

JUSTICE - FOR WHOM ?????

Justice A.K.Srivastava
Former Judge of Delhi High Court

Kanu, a man of simple means stayed with his wife and three teen-aged children in a house built by his father. His neighbour who was a rich man with political clout wanted to expand his house and for that he needed adjoining house of Kanu. He tried to lure Kanu to sell his house to him but Kanu said that this was his ancestral house and the only possession he had for a roof over his head. When this failed , the neighbour made a plan to grab the house by exploiting the loopholes in legal-judicial-enforcement system and with the connivance of corrupt officials manning them. He was also sure that people with low morals will help him in his evil design. With his money and political power he got a false FIR registered against Kanu and got him arrested.

Kanu's misery and a long chain of wows started from there. The family engaged an Advocate for bail. Due to total strike in courts for few days on flimsy grounds the bail application came up for hearing after four days. Bail was granted on two sureties of Rs. 10,000 each. The Advocate managed the sureties but the family had to pay non refundable amount of Rs. 20,000/ for the sureties as they were commercial sureties. The total expenses incurred were around Rs. 40,000/. For no fault of his, Kanu remained in jail for six days. While that FIR was still hanging over him another false FIR was got registered against him and he was again arrested. The same ritual of approaching the court and seeking bail had to be repeated but at a higher cost of Rs. 60,000/. It was represented that the bail was difficult as this was his second offence . Kanu's family had to manage the money despite their limited means to secure his release. Though both the cases were false but Kanu was charge sheeted in both of them. The witnesses, though not inimical to Kanu, were telling total lies. Why? Kanu has yet to find an answer.

Kanu had to engage an Advocate to defend him in both the criminal cases. He had to shell out huge money on every date of hearing to be given to the Advocate and the staff of the courts. He was getting dates after dates. One fine morning he was arrested as he failed to appear on a date when Advocates were on strike and therefore no work was carried out in the courts on that date. He had to take bail for the third time. He was totally shocked and bewildered as to why he was marked absent when actually it was his Advocate only who did not appear in the court due to strike of the Advocates. Kanu could not fathom as to why Advocates go on strike and against whom. They are neither workmen nor employees.

Their strikes jeopardize the interests of their own clients on whose money they live so lavishly.

Almost two years passed but the criminal cases did not come up for active hearing. Dates after dates were given. Kanu's expenses on the cases kept on spiraling upwards. The neighbour thought that the iron was now hot to negotiate. Further allurements were given to Kánu but he did not yield as he had no other place to live. The neighbour then took his second step. He filed an injunction suit against Kanu on totally false facts in respect of the open land of Kanu's house and got ex parte injunction decree against him .Thereafter on a day when Kanu and his family were not there, the neighbour forcibly occupied the open land of Kanu's house and enclosed it in his house by building a boundary wall. Kanu, on his return and seeing the scenario , lodged an FIR at the local police station against his neighbour but got no relief as his neighbour had already taken an ex-parte injunction decree against him from a civil court in respect of that very open land. The police refused to intervene because of the civil decree. Then Kanu approached a civil Advocate. After inspection of the records, it was found that Kanu had been falsely reported as served with notices in that suit. Finding little room to manoeuvre, he moved an application for setting aside the ex-parte injunction decree and as per legal advice also filed a civil suit for possession of his open piece of land by paying full ad valorem court fees.

In his suit for possession the court staff, in connivance with the neighbour, did not serve notice on the neighbour on one or the other grounds. The court , therefore, ordered for service by registered post. It returned not served with the endorsement "left" though Kanu was seeing his neighbour every day. The court then ordered service by publication in two newspapers having circulation in the locality. This amounted to expenditure in thousands of rupees and finally notices were published in the newspapers. The misery for Kanu was that he was not properly advised to serve the neighbour in the court in which the neighbour's suit for injunction against Kanu was pending. Kanu himself did know that procedure of service. The neighbour still did not appear. The case proceeded ex parte. It took almost five years to get ex parte decree of possession entailing huge expenses on Advocate's fee and on court staff on each date of hearing. On most of the dates of hearing, either there were strikes or the case was not heard or the P.O was on leave or was away on administrative duties. Ultimately the suit was decreed ex parte. Despite having spent huge money and having lost so much of time Kanu was very happy but he never knew that execution of a decree was more tedious. Execution application was moved and the Court ordered for parwana of possession but the Court Amin was too busy. The clerk of the Advocate advised him to approach the Court Amin. Kanu accepted the terms imposed

by the Court Amin. A date for execution of the decree was fixed. But the neighbour was watchful throughout. He had already moved an application in time for setting aside the ex parte decree and had managed to obtain an ex parte stay of execution. He showed the order to the Court Amin when he arrived at the site to execute the decree. Kanu's all monetary and physical efforts were reduced to a naught.

In the criminal cases that were already there against Kanu, repeated dates were being given and now began the slow and non ending civil suit filed by him for possession over his land. The neighbour had a false medical certificate given by a doctor practicing in another town to contend and press before the Court the argument that he was out of town when the notices were published in the news papers. He easily got the ex parte decree of possession against him set aside. Kanu was totally broken and shattered. He lost whatever respect he had for the doctors.

The suit for possession started afresh though a period of more than five years was lost in the process. With the mischievous design, his neighbour started constructions over the disputed open land. Kanu moved an application for stay of constructions but that application was disposed of by an order that the constructions may be made but the same shall be subject to the result of the suit. This type of order is pretty common as it does not require application of mind. It is the applicant who suffers. The appeal against that order was dismissed as the appellate Judge did not find any irreparable injury having been caused to Kanu. At the appellate stage also there was no application of mind and effort to understand Kanu's plight.

Kanu then approached an Advocate of High Court who was having a reputation of being very friendly with the Judges. The Advocate assured Kanu with all success and took hefty fees from him. Kanu with all hopes eagerly awaited for the results but one day he got a postcard from the clerk of the said Advocate that the appeal had been dismissed. He asked the Advocate for a copy of the order which he never got. Kanu was later informed by someone, rightly or wrongly, that the second appeal was never filed as his Advocate had been managed. Only inferences may be drawn in that regard.

By that time Kanu was totally exhausted and he had already spent a huge sum in litigation of the criminal and civil cases. There was a serious drain on his financial resources. Due to money crunch he had to let out a portion of his house on rent which caused great inconvenience to his growing children. But there was no way out. Entire rent and a part of Kanu's earnings were being spent on litigation. His neighbour finding that the iron was hot again approached Kanu through a middleman. Even though Kanu had received several setbacks in the Courts but he refused

to sell his house to his neighbour. This shows that Kanu still had some faith in the systems that had let him down.

The four criminal and civil cases remained pending. With time Kanu's responsibilities changed and he had to marry his daughter for which he needed money. He took loan from a Bank by mortgaging his house. Since the interest on the loan was compoundable, the loan amount with interest swelled in leaps and bounds. Kanu, due to litigation and other expenses, could not manage to repay the loan. One day he received notice under the Securitization Act from the concerned Bank. He filed appeal against that notice by again spending on Advocate's fee, court fees and other miscellaneous expenses but did not get relief as the legal provisions for recovery of Bank dues are very stringent. The Bank took possession of Kanu's house and put it on sale. Kanu applied to the bank for permission to sell his house himself and repay the loan as according to him the value of the house was much more than the outstanding dues but the Bank refused to oblige. Kanu then moved an application before the concerned Debt Recovery Tribunal with the same prayer. It was strongly opposed by the Bank. Kanu again lost.

In the sale proceedings, Kanu's said neighbour purchased Kanu's house for a very paltry sum in conspiracy with the Recovery officer and the Bank officials. The balance of the loan liability is yet outstanding and recoverable from Kanu.

The end of the story is that the neighbour of Kanu purchased Kanu's house for a song and has extensively extended his own house. The civil suits got dismissed having become infructuous. The criminal cases are still lingering though Kanu and his family are on the road completely broke without any fault of theirs. The only silver lining is that Kanu will get acquittal in those criminal cases as the witnesses are likely to become hostile to the prosecution as the very dishonest design of Kanu's neighbour has been fulfilled.

The only relief measure available for Kanu is to file a suit for damages for malicious prosecution but he should be well advised not to do so as the costs of the suit and cost of the recovery proceedings would be more than the expected quantum of decreed damages.

DEATH SENTENCE CONSTITUTIONALITY AND SENTENCING

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> *"Protagonists of the "an eye of an eye" philosophy demand death". The 'Humanists' on the other hand press for the other extreme viz. "death-in-no-case". A synthesis has emerged in 'Bachan Singh v. State of Punjab[1] wherein the "rarest-of rare-cases" formula for imposing death sentence in a murder case has been evolved by this court. Identification of the guidelines spelled out in 'Bachan Singh' in order to determine whether or not death sentence should be imposed is one of the problems."(The Supreme Court of India in Machhi Singh vs. State of Punjab)[2]*

There has been constant campaign in the civilized world for and against capital punishment. Some countries like Britain and Germany have expressly abolished death sentence. Some countries like Belgium though have retained it but have never used it. Countries like India and America come into entirely different category that have retained death sentence to be imposed for exceptional crimes and for special reasons. Latest statistics show that 138 nations have now abolished the death penalty in either law or practice (no executions for 10 Years). Our own neighbours, Nepal and Bhutan are part of these abolitionist nations while others including Philippines and South Korea have also recently joined the abolitionist group, in law and in practice respectively.[3]

Death sentence necessarily results in total deprivation of one's life, a life which has been protected by Article 21 of the Constitution. It is why the constitutional validity of death sentence was time and again challenged on the ground of contravention of the right to life under Article 21 and the right of equality under Article 14 of the Indian Constitution. The main grounds of attack have been that death sentence contravenes the protection of life under Article 21. It does not serve any social purpose and it is so rarely executed that it has completely lost its deterrent effect and it deprives the close relatives of their right of company with the executed

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1. (1980) 2 SCC 684
2. (1983) 3 SCR 413
3. Santosh Kumar Sitishbhushan Bariyar vs. State of Maharashra, (2009) 6 SCC 498 at page 544

person. Moreover, the mode of executing death sentence is barbarous and inhuman and many times, it is confirmed only because of the financial or other disabilities of a person who may not have been able to have a recourse before the superior courts. All these grounds were considered in **Bachan Singh** and the Supreme Court upheld the constitutionally of the death penalty and laid down that it should be awarded in 'rarest of the rare' case and for special reasons. This Judgment came after the new Code of Criminal Procedure, 1973 which produced a new legislative scheme in the form of Section 354(3) on this point.

OFFENCES FOR WHICH DEATH SENTENCE IS PRESCRIBED UNDER INDIAN PENAL CODE

The Indian Penal Code provides death sentence for following offences:-

1. Waging or attempting to wage war or abetting the waging of war against the Government of India (Sec. 121)
2. Abetment of mutiny, if mutiny is committed in consequence thereof (Sec. 132)
3. Giving or fabricating false evidence with intent to cause any person to be convicted of a capital sentence and if an innocent person is thereby convicted and executed. (Sec. 194)
4. Murder (Sec. 302)
5. Murder by a person under sentence of imprisonment for life. (Sec. 303)
6. Abetment of suicide committed by child or insane person or an idiot (Sec. 305)
7. Attempt of murder by life convict if hurt is caused. (Sec. 307 Part-III)
8. Kidnapping for ransom. (Sec. 364-A)
9. Murder in dacoity. (Sec. 396)

It is clear that in above mentioned offences, only S.303 Indian Penal Code prescribes mandatory death sentence.

SAFEGUARD UNDER CRIMINAL PROCEDURE CODE

The new Criminal Procedure Code which came into force in 1973 introduced a new scheme for awarding capital sentence and made it mandatory for the trial court to record special reasons for giving death penalty. Where death penalty has been awarded, it has to be confirmed

by the High Court before it is executed. Sec. 354(3) of the Code reads as follows:-

> "*When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.*"

Sec. 366(1) of the code requires the record of such case to be submitted to the High Court for confirmation. It provides:-

> "*When the court of sessions passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.*"

Constitutionality of Death Sentence

The issue of constitutionality of death sentence was raised before the Supreme Court for the first time in *Jagmohan Singh vs. State of U.P.*[4] where, upholding the constitutionality, Paleker, J. remarked:

> "*........capital punishment cannot be described as unusual because that kind of punishment upto the present day though the number of offences for which it can be imposed has continuously dwindled. The framers of our constitution were well aware of the existence of capital punishment as a permissible punishment under the law.*"[5]

Therefore, he took the view that deprivation of 'life' was permissible under Article 21 if done according to procedure established by law.

The validity of death sentence was again upheld in *Rejendra Prasad vs. State of U.P.*[6] The Supreme Court however pointed out that death penalty finally deprives the person concerned of his life and various other fundamental rights and therefore, its validity must be tested in view of Articles 14, 19 and 21 of the Constitution. Thus, speaking for the majority, Krishna Iyer J. remarked:

> "*The only correct approach to read into section 302 IPC and section 354 (3) Cr.P.C., the human rights and humane trends in the constitution. So examined, the right to life is deprived when he is hanged to death, his dignity is defiled when his neck is strangled.*"[7]

4. AIR 1975 SC 947
5. Id. At 952
6. AIR 1979 SC 316
7. Id. At 934

The view of the learned Judge was that the constitutional validity of death sentence was well-settled after *Jagmohan* and the issue was only of '*channelisation of sentencing discretion in competing situation and it requires tangible guidelines*', constitutional and functional. In view of logical, criminological and human context impregnated with constitutional values, the extinction of human life could be permitted only where the accused is a 'social gangrene' and nothing else but only his execution could serve the penological pursuit. Considered thus, death penalty could be inflicted only for white collar offences, anti-social offences and nothing else but only his execution could serve the penological pursuit. Considered thus, death penalty could be inflicted only for white collar offences, anti-social offences and against hardened criminals[8]. *Iyer J.* took the view that even imposed after '*intensive individualization with a sense of reverence to human life.*' The sphere of death penalty, therefore, must be juristically limited to these 'special reasons' lest it becomes unconstitutional.

The issue of constitutional validity of death sentence came before the court more specifically in *Bachan Singh vs. State of Punjab*,[9] where the majority upheld the validity with the rider that it must be imposed in 'rarest of the rare cases. '*Bhagwati, J.* however, in his minority view, held that death sentence under Section 302 IPC as an alternative of life imprisonment is violative of Article 14 and 21 as there is no legislative guide line when life should be permitted to be extinguished by imposing death sentence.

Bhagwati, J. held death penalty as unconstitutional and in violation of Article 14 and 19 because it is destructive of the right to life in Article 21, it is inhuman and cruel and it is excessive and disproportionate to the offence. Moreover it totally rejects the reformative purpose of punishment and has no rational nexus with any legitimate penological goal. Further more, death penalty is arbitrary and there is no legislative policy or guidance for imposing death sentence. According to him-

> *"The only yardstick which may be said to have been provided by the legislature is that life sentence shall be the rule and it is only in exceptional cases for special reasons that death penalty may be awarded but it is no where indicated by the legislature as to what should be regarded as special reasons justifying imposition of death penalty."*[10]

So in the matter of choosing between life sentence and death penalty, the court has got discretion with a rider of 'special reasons' formula in

8. Id. At 320
9. AIR 1980 SC 898
10. Id. At 1385

case death sentence has to be given. This exercise of discretion absolutely depends upon the value system and the social philosophy of the judges. What may appear 'special reasons' to one judge may not so appear to the other and thus the life of the individual will become a play thing. Applying *Furman v. Georgia*,[11] he held that judicial discretion not guided by any standard or norm could degenerate into judicial caprice and in a highly sensitive area involving a question of life and death, unregulated sentencing discretion would be arbitrary and violative of not only Article 14 but also Article 21 being unjust and unfair. *Bhagwati opinion*, however, is distinguishable with *Furman*. The former declared section 302 IPC unconstitutional in absence of legislative guidelines and not the death sentence itself whereas Furman declared it to be an anachronism, degrading to human dignity and unnecessary in murder crime. It is differentiable with the *Rajendra* holding,[12] where the effort was to provide constitutional basis to the capital punishment if at all it has to survive in relation to certain specific offences and the central theme of *Rajendra* holding was to '*to canalize the sentencing discretion in its integral perspective*'. Had the spirit of *Rajendra* been carried through plurality in *Bachan*, it would have perhaps, not been a judicial compulsion for *Justice Bhagwati* to declare section 302 IPC unconstitutional while dissenting in *Bachan*.

Bachan Singh held the death sentence constitutional if provided as an alternative punishment. It however restricted the imposition of death sentence to the 'rarest of rare' cases and that too was made subject to recording of special reason. In arriving at a conclusion the nature and the circumstances of the crime and the criminal have to be considered and after preparing a balance sheet of mitigating and aggravating circumstances and considering all the mitigating circumstances in favour of the accused if the court comes to the opinion that no other punishment but only death sentence would be adequate sentence, it can award death sentence.

'Rarest of the rare' dictum explained

In *Bachan Singh*, although the Supreme Court restricted the imposition of death sentence to 'rarest of rare cases' yet very like the doctrine of 'basic structure' left the expression 'rarest of the rarest cases' undefined. The court did not formulate any objective standard or guideline for awarding capital punishment[13]. In *Machhi Singh vs. State of Punjab*[14], the Supreme Court tried to explain, define and identify the meaning of 'rarest of the rare' dictum as propounded by *Bachan Singh* case in the following manner-

11. (1972) 405 U.S. 238
12. See supra note 301
13. See B.L. Hansaria, Right to life and liberty under the Constitution (1993) page 42-43
14. Supra note 1

1. When the murder is committed in an extremely brutal, grotesque diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house, (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death, (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

2. When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust. (c) a murder is committed in the course for betrayal of the motherland.

3. When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them or, make them with a view to reverse past injustices and in order to restore the social balance.

4. In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the take of extracting dowry once again or to marry another woman on account of infatuation.

5. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

6. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) a person vis-à-vis whom the murderer is in a position of domination or trust, (d) a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similarly reasons other than personal reasons.

Despite the broad category laid down by *Machhi Singh*, subsequent decisions of the Supreme Court show that there remained a lot of uncertainty and variation in selection of the sentence. Most of the cases

in which the death sentence was confirmed by the Supreme Court were of such nature where any person of ordinary prudence might categorize the same as rarest of the rare case. Ranga-Billa case of 1981, Indira Gandhi murder case of 1988, General Vaidya murder case of 1993 and Rajiv Gandhi murder case belong to that category. But in *Amrit vs. State of Maharashtra,*[15] where the accused killed his wife and six year old daughter due to her unfaithfulness, the Supreme Court converted the death sentence into life imprisonment. On the contrary, in *Darshan Singh vs. State of Punjab,*[16] the death sentence was confirmed as the accused had committed murder of his niece and one more person. In *Kehar Singh vs. State, Delhi Administration*[17], death sentence was confirmed on the ground that the accused persons who were deputed for the security of the Prime Minister Indira Gandhi killed her.

In *Shanker vs. State of Tamil Nadu*[18], the Supreme Court insisted on striking a balance between aggravating and mitigating circumstances and laid down that death sentence should be imposed only when the accused has become dangerous for society and no other option is available. Subsequent attempt to challenge the constitutional validity was further rejected by the Supreme Court on the basis of *Bachan Singh* holding[19]. In *State of Maharashra vs. Sukhdev Singh*[20], the death sentence was confirmed as the accused person in order to press their demand for Khalistan, killed General Vaidya in a planned way and confessed it as if, it was an act of bravery. On the other hand in *Nirmal Singh vs. State of Haryana*[21], the accused was in imprisonment for ten years for the offence of rape and after being released from jail, he along with other accused persons was involved in the killing of five persons. The Supreme Court reduced the death sentence to life imprisonment on the ground that he simply assisted the commission of crime and he was not the main culprit. Similarly, in *Om Prakash vs. State of Haryana*[22], seven persons were killed but sentence was reduced because the accused was an army man having no criminal history and there was possibility of his being reformed.

State of Tamil Nadu vs. Nalini[23] was the Rajiv Ghandhi murder case. Seven accused persons were awarded death sentence. The Supreme Court

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15. AIR 1983 SC 629 see also Ranjeet Singh vs. union territory of Chandigarh, AIR 1983 SC 45, Murti vs. state of Tamilnadu AIR 1988 SC 1245
16. AIR 1988 SC 747
17. AIR 1988 SC 1883, see also Shanker vs. State of Tamilnadu.
18. AIR 1989 SC 2083 also State of M.P. vs. Shyam Sunder Trivedi, AIR 1995 SC 2793
19. Allauddin Mian vs. State of Bihar, AIR 1989 SC 1456, also see Jumman Khan vs. State of U.P., AIR 1991 SC 345, Shashi Nair vs. Union of India, AIR 1992 SC 395
20. AIR 1992 SC 2100.
21. 1999 Cr.L.J. 1836 (SC), see also Rajindra Rai vs. State of Bihar, 1999 Cr.L.J. 1448 (SC) where the sentence was reduced in double murder case.
22. 1999 Cr.L.J. 2044 (SC) see also Kumudi Lal vs. State of U.P., 1999 Cr.L.J. 2523 (SC) where sentence reduced in case of rape and murder.
23. 1999 Cr.L.J. 3124(SC)

reduced the sentence of three accused persons and confirmed for the remaining accused persons. On the point of confirmation of death sentence of Nalini, *Thomas J.*, expressed a dissenting opinion on the ground that she was women and had given birth to a daughter during trial and was simply an instrument in the offence. The majority however did not agree to it. It needs mention that the mercy petition of *Nalini* was allowed later on, on the same humanitarian grounds which were expressed by Thomas J.

Thus, it is clear from the judicial behavior that except those cases where there was sharp public reaction in media and news papers, normally the death sentence was reduced to life imprisonment. In doing so, no objective standard was laid down for it. It gives an impression that in awarding and confirming punishment a lot depends upon the personal perception of a judge. Consequently, a liberal judge may convert the death sentence into life imprisonment, whereas, a strict judge may not. If in one case of murder and rape death sentence is confirmed, why in other case of murder and rape it should be reduced? It is true that judicial conclusions can not be drawn in a mechanical and computerized manner. But in absence of any objective standard, the criminal justice system may turn to be based on luck and chance.

Mandatory Death Sentence: Whether constitutional?

In *Bachan Singh*, the Supreme Court clarified that death sentence is constitutional only when it is alternative punishment along with life imprisonment. The majority speaking through *Sarkaria, J.* in *Bachan Singh* made it clear that Section 302 IPC providing for death sentence is valid mainly because it provided death sentence as an alternative to the sentence of life imprisonment and special reasons have to be stated if death sentence is imposed. *Sarkaria, J.* referred to section 235(2) Cr.P.C. which provides for mandatory hearing on the point of sentence and '*if the court has no option save to impose the sentence of death, it is meaningless to hear the accused on the question of sentence and it becomes superfluous to state the reason for imposing the sentence of death*'.

But the constitutionality of a law providing for mandatory death sentence was not in issue before the court in *Bachan Singh*. This issue came for consideration before the Supreme Court specifically in *Mithu v. State of Punjab*.[24] The Constitutional validity of Section 303, IPC was challenged before the court. Section 303 IPC prescribed a mandatory death sentence for the offence of murder committed by a lifer. The view of the court was that in laying down computerized sentence of death the legislature failed to provide any scientific reason and there was no rational

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24. (1983) 2 SCC 277, AIR 1983 SC 473

base for classifying between a murder committed by a lifer and a murder committed by ordinary person and such a classification was based on irrelevant considerations having no nexus with the object of the statute. The court illustrated instances where a lifer may be compelled to commit murder in or outside the jail while on parole or bail under grave and sudden provocation or even in exercise of his right of private defence. Therefore the court held that a law which deprives the court of its discretionary power in choosing between life sentence and death sentence without regard to the circumstances in which the offence was committed can not but be regarded as harsh, unjust and unfair.

In *Mithu Singh*, the court referred to all the three situations where a lifer can commit murder i.e. where he is in jail or where he is on bail or parole. The court pointed out that there is no *'rational distinction between a person who commits a murder after serving out the sentence of life imprisonment and a person commits a murder while he is still under death sentence'* and observed,

> *"Thus, there is no justification for prescribing a mandatory sentence of death for the offence of murder committed inside or outside the prison by a person who is under the sentence of life imprisonment. A standardized mandatory sentence and that too in the form of a sentence of death, fails to make into account the facts and circumstances which constitute a safe guideline for determining the question of sentence in each individual case."*[25]

This writer, though has no particular objection to the view that section 303 stands in contravention of Article 14 and 21, would like to submit that the fear of the court that Section 303 IPC does not consider the circumstances of murder is based on some initial defects. Section 303 prescribes mandatory death sentence in case a lifer is found to be guilty of committing murder and causing death under grave and sudden provocation or in exercise of private defence would not amount to murder in view of Section 299 and 300 of IPC and for the same the lifer cannot be held guilty under Section 302 IPC.

Mithu holding not only rendered section 303 IPC unconstitutional, but, it also settled the law that mandatory death sentence which takes away discretion of court in choosing between life imprisonment and death sentence will not be permissible and will be invalidated by the court. Soon after this decision, in *Ranjit Singh vs. Union Territory of Chandigarh*,[26] the Supreme Court reduced the death sentence to life imprisonment of

25. Id at 292
26. (1984) 1 SCC 31

a person who was under going life imprisonment and committed murder of a person when he was on parole.

But recently the Supreme Court appears to have made a shift and in *Saibanna vs. State of Karnataka,*[27] it viewed the murder by a life convict on parole form an entirely different angle. In this case the accused killed his earlier wife and was sentenced to life imprisonment. He was released on parole and then he killed his subsequent wife and his one and half year old daughter. He was awarded death sentence by the Sessions judge. While confirming the death sentence, the High Court found it to be the rarest of the rare case best suited for inflicting death sentence. The reason was that the accused was a lifer who committed murder of not only his wife but also of his innocent child with pre-planning when the victims were helpless and in asleep. Furthermore no extenuating circumstance in favour of the accused was either pleaded or proved. The Supreme Court upheld the death sentence and remarked,

> *"A prisoner sentenced to life imprisonment is bound to serve the remainder to his life in prison unless the sentence is commuted or remitted and that such sentence could not be equated with any fixed term. If that be so, there could be no imposition of a second life term on the appellant before us as it would be a meaningless exercise. In the teeth of Section 427(2) of the Code of Criminal Procedure, 1973 it is doubtful whether a person already undergoing sentence of imprisonment for life can be visited with another term of imprisonment for life consecutively with the previous one* [28]*."*

The upholding of death sentence might have been correct in the circumstances, but, the analogy for doing so that it was useless to impose a second life term imprisonment in such cases, is not in consonance with the judgments in *Bachan Singh* and *Mithu Singh* case.

SENTENCING DEATH SENTENCE

Once the issue of constitutionality was settled by the Supreme Court, it was the sentencing discretion on which many judgments came from the apex court. *Bachan Singh* holding laid down 'rarest of the rare' principle for awarding death sentence and *Machhi Singh* holding tried to define this principle by laying down certain category of cases which may come within the ambit of this dictum. In subsequent cases the Supreme Court simply applied these principles to uphold death sentence or to reduce it into life imprisonment. *Bachan Singh* holding demonstrates a real concern

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27. (2005) 4 SCC 165.
28. Id at 172.

for the dignity of human life, postulates resistance to taking a life through legal instrumentality and lays down that it ought to be done in the 'rarest of the rare' cases and that too when the alternative option is foreclosed. A critical analysis of this formulation shows that this dictum imposes restriction on award of death punishment which can only be imposed on satisfaction of twin condition namely, that the case belongs to the 'rarest of the rare' category and the alternative punishment of life imprisonment will not be sufficient in the facts of the case. The 'rarest of the rare' dictum operates as a guideline which enforces section 354(3) Cr.P.C. and makes it clear that life imprisonment is the rule and death penalty is exception. The courts are expected to first identify the aggravating and mitigating circumstances relating both to the crime and criminal and then to strike a balance between the two in arriving at a conclusion. The expression 'special reasons' in this context means 'exceptional reasons'.[29]

In *Jagmohan Singh vs. State of U.P.*[30], Palekar J., mentioned the need of discretion in sentencing as inherent feature and observed,

> *"The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the judges with a very wide discretion in the matter of fixing the degree of punishment........ The exercise of judicial discretion on well-recognized principles is, in the final analysis, the safest possible safeguard for the accused"*[31].

Brutality and cruelty in commission of offence

Although, *Bachan Singh*[32] holding laid down in clear terms that in awarding sentence the court must analyze the aggravating and mitigating circumstances with open mind relating to crime and criminal irrespective of the gravity and nature of crime, yet, the trial courts in the country have been mostly casual in their approach and in choosing between life imprisonment and death sentence, the brutality aspect in commission of crime has been given greater weight in awarding death sentence. In *Machhi Singh*[33] it was observed by the Supreme Court that some times, the motive, manner and anti social or abhorrent nature of crime shocks the collective conscience of the community in such a way that it may expect '*the holders of judicial power centre to inflict death penalty irrespective*

29. Santosh Kumar Satish Bhushan Bariyar vs. State of Maharastra (2009) 6 SCC 498 at page 528
30. (1973) 1 SCC 20
31. Id at 35
32. Supra
33. Supra

of their personal opinion as regards desirability or otherwise of retaining death penalty'[34]. The court found the death sentence justified when the murder is committed in an extremely brutal, grotesque diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house, (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death, (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner. This was further endorsed and emphasized in *Ravji vs. State of Rajasthan*[35], where the Supreme Court held that it is only characteristics relating to crime, and not to criminal, which are relevant for sentencing. The Court observed as follows,

> *"The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry to justice against the criminal'."*[36]

Ravji holding has been followed by the Supreme Court in many subsequent cases[37] as an authority on the point that in heinous crimes, circumstances relating to criminals are not pertinent. This view seemingly is in opposition with the view propounded in *Bachan Singh* where the court specifically laid down that while making the choice of sentence, the court should not confine its consideration merely to circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

Heinous Nature of Crime and Social Reaction

Bachan Singh holding requires that the court should consider the

34. Supra note at page 431
35. (1996) 2 SCC 175
36. Id at page 187
37. See Shivaji vs. State of Maharastra, AIR 2009 SC 56, Mohan Anna Chavan vs. State of Maharastra (2008) 7 SCC 561, Bantu vs. State of U.P. (2008) 11 SCC 113, Surja Ram vs. State of Rajasthan (1996) 6 SCC 271, Daya Nidhi Bisoi vs. State of Orrisa (2003) 9 SCC 310 and State of U.P. vs. Sattan (2009) 1 SCC 736

mitigating and aggravating circumstance with open mind relating to the crime and the criminal and after analyzing them it should be determined what sentence, whether life or death, would be appropriate. In coming to a decision the court must ensure that the rigor and fairness should be given primacy over sentiments and emotions. *Machhi Singh* however tried to explain the 'rarest of the rare' dictum in terms of community standard and conscience which may be adverse to the accused because of gravity and socially abhorrent nature of crime. Sentencing however is not a process which can be governed by any single isolated factor and multiple factors have to be taken in account. Heinous nature of crime, brutal manner, social necessity involved in getting rid of the accused, community expectation and the like are different factors which can be considered but none alone can be the sole justification for death sentence. Therefore the courts in the country some times downplay the heinous nature of crime relying upon the mitigating circumstance to impose sentence for life and some times overplay some factors relevant to crime to impose sentence for death. For instance, in *Panchhi vs. State of U.P.*[38], the victims of murder included one little child and therefore four accused persons were convicted and sentenced for death. The Supreme Court converted the same into life sentence as '*brutality of the manner in which a murder was perpetrated may be a ground but not the sole criterion*' and that '*every murder is brutal, and the difference between one from the other may be on account of mitigating or aggravating*' circumstance[39]. In *Om Prakash vs. State of Haryana*[40], *Ravji* proposition that the punishment must respond to the society's cry for justice against the accused was negated by *K.T. Thomas, J.*, who tried to balance it with the mitigating and aggravating circumstances and that would depend upon fact and situation of each case. In *Dharmendra Singh vs. State of Gujarat*[41], among the victims two children were also killed and the court found the offence very 'heinous and unpardonable'. But reduced the sentence considering multiple mitigating factors like the motive of crime, the manner of assault, the impact on the society as a whole, the personality of accused and his previous criminal history, circumstances and facts in which crime was committed, whether committed to satisfy any kind of lust, greed or in pursuance of anti-social activity or way of organized crime, drug trafficking, vulnerability of the society for similar criminal act and the like and remarking that the 'Judges should never be bloodthirsty', concluded,

> "...... *The offence was obviously not committed for lust of power or otherwise or with a view to grab any property nor in pursuance of*

38. (1998) 7 SCC 177
39. Ibid. See also Vashram Narshi Bhai Rajpara vs. State of Gujarat, (2002) 9 SCC 168, where a similar view was taken.
40. (1999) 3 SCC 19
41. (2002) SCC Criminal 859

any organized criminal or anti-social activity. Chances of repetition of such criminal acts at his hands making the society further vulnerable are also not apparent. He had no previous criminal record."[42]

Public Opinion: Impact on Sentencing

Whether the courts should be guided by the public opinion and social reaction in choosing between sentence for life and death sentence? In *Bachan Singh*, this issue was addressed and the Supreme Court very clearly said that public opinion and perception is not relevant for conviction and sentencing. It is neither an objective circumstance relating to crime nor to criminal and therefore public opinion will not come within the 'rarest of rare' category. The Judicial opinion does not necessarily reflect the moral attitude of the people and Judges should not take upon themselves the responsibility of becoming spokesman of public opinion. The function of assessing the public opinion should be left with the elected representatives of the people. The Supreme Court remarked,

> *"When judges, acting individually or collectively, in their benign anxiety to do what they think is morally good for the people, take upon themselves the responsibility of setting down social norms of conduct, there is every danger, despite their effort to make a rational guess of the notions of right and wrong prevailing in the community at large and despite their intention to abide by the dictates of mere reason, that they might write their own peculiar view or personal predilection into the law, sincerely mistaking that changeling for what they perceive to be the community ethic. The perception of 'community' standards or ethics may vary from Judge to judge."*[43]

In U.S.A. one of the dissenting views on this point in Furman case[44] was that '*the assessment of popular opinion is essentially a legislative and not a judicial function*' and the constitutional role of the judiciary is to keep the individual rights at a higher pedestal than majoritarian aspirations. Therefore fundamental rights relating to life, liberty and freedom of person neither can be submitted to public vote nor can be made dependant on the out come of elections.[45]

Although the public opinion is not determinative in a court, the views on sentencing held by people are always important for the criminal

42. Id at 695-697 and 751
43. See Supra Note 2 at 726,741-742
44. See Supra Note 10 (Powell, J.)
45. West Virginia State Board of Education vs. Barnette, 319 U.S. 264 (1942)

justice system. The people do not possess sufficient knowledge of actual sentencing practice and their views may differ according to their knowledge of fact and the publicity in media. People's sweeping impressions and public cynicism may not and should not form base for judicial conclusion. But some times judgments not corresponding to public opinion may reduce the public confidence in the judicial system and the judiciary may be attacked for increasing crime index. At least in media this impression may be created. But the difficulty is that public opinion or views of media has no evidentiary value and the court can not consider it being bound by the rule of law and constitutionalism. But the fact remains the same that media trial is a reality in modern times and consequently sentencing by media can not be ruled out.[46]

Personal Perception of Crime

The dissenting opinion in *Bachan Singh* emphasized that in the matter of choosing between life imprisonment and death penalty, 'special reasons' formula permits the exercise of discretion absolutely depending upon the value system and the social philosophy of the Judges. In *Swamy Shraddananda (2) vs. State of Karnataka*,[47] the Supreme Court admitted its failure to evolve a uniform sentencing policy for capital punishment and noted the disparity in sentencing[48]. Pointing out that 'the question of death penalty is not free from the subjective element and the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the Judges constitution the Bench'. *Afatab Alam* , *J.*, speaking for the court observed,

> *"The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court is giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal justice system."*[49]

46. See Andrew Ashworth & Michael Hough, "Sentencing and the Climate of Opinion" (1996) CRIM. L. REV.
47. (2008) 13 SCC 767
48. Aloke Nath Dutta vs. State of W.B., (2007) 12 SCC 230
49. Id. at Page 790

In this case the appellant was convicted for the offence of murder and was awarded death sentence by the Session Judge and the death sentence was confirmed by the Karnataka High Court. The matter came before the Supreme Court in appeal where a bench of two Judges unanimously upheld the conviction but expressed a different view on the punishment. *S.B. Sinha, J.*, felt it to be a fit case for life imprisonment where as *M. Katju, J.*, was in favour of death sentence.[50] The matter came for consideration before the larger Bench of the Supreme Court.

The Supreme Court referred to *Bachan Singh*[51] and *Machhi Singh*[52] to hold that death sentence could only be awarded in 'rarest of the rare case' on recording special reasons and in doing so the court should put itself in the position of the 'community' whose collective conscience is so shocked that it will except the court exercising judicial power to inflict death penalty. *Machhi Singh* very carefully crafted the categories of murder in which the society may demand death sentence. The Supreme Court however made it clear that *Machhi Singh* criteria even though useful but looking to the long gap passed after that judgment, it can not be absolute or inflexible. Referring to *Aloke Nath Dutta vs. State of W.B.*[53] and other cases[54] which were relied upon by *Sinha, J.*, to take the view that the most glaring deficiency of the criminal justice system is the lack of consistency in the sentencing process which is evident even in the judgments of the Supreme Court and '*courts in the matter of sentencing act differently although the fact situation may appear to be somewhat similar*'[55], the Supreme Court with the help of *Jayawant Dattatraya Suryarao vs. State of Maharasthra*,[56] and *Nazir Khan vs. State of Delhi*,[57] observed,

> *"............. this Court modified the death sentence to imprisonment for life or in some cases imprisonment for a term of twenty years with the further direction that the convict must not be released from prison for the rest of his life or before actually serving out the term of twenty years, as the case may be, mainly on two premises; one, an imprisonment for life, in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for the rest of life of the*

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50. Swamy Shraddananda (1) vs. State of Karnataka, (2007) 12 SCC 288
51. Supra
52. Supra
53. (2007) 12 SCC 230
54. Dalbir Singh vs. State of Punjab, (1997) 3 SCC 745, Subash Chander vs. Krishna Lal, (2001) 4 SCC 458, Shri Bhagwan vs. State of Rajasthan, (2001) 6 SCC 296, Prakash Dhawal Khairnar (Patial) vs. State of Maharasthra, (2002) 2 SCC 35, Ram Anoop Singh vs. State of Bihar, (2002) 6 SCC 686, Moh. Munna vs. Unior of India, (2005) 7 SCC 417.
55. See Supra PP 279-287
56. (2001) 10 SCC 109
57. (2003) 8 SCC 461

prisoner and two, a convict undergoing life imprisonment has no right to claim remission"[58].

Emphasizing that there is no law whereunder a sentence for life imprisonment can be automatically treated as a sentence for a definite period and without any formal remission by appropriate government it will mean an imprisonment for the whole of the natural life of the convicted person, *Aftab Alam., J.*, further observed,

> *"................. the unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.*[59]*"*

The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. Some times the court may feel that the case falls short of the rarest of the rare category and death sentence should not be confirmed. But at the same time, considering the nature of the crime, a sentence of life imprisonment for a term of only fourteen years would be grossly inadequate and will amount to no punishment at all. Endorsing the life sentence to mean a sentence for whole natural life, Aftab Alam, J., remarked,

> *".......the formalization of special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution bench decision in Bachan Singh*[60]*, besides being in accordance with the modern trends in penology.*[61]

Shradhananda Swamy holding marks a judicial innovation on the point of sentencing without making any interference with the constitutional provisions and sovereign powers of state regarding commutation, remission etc. Extending the life imprisonment to full span of life and minimum to twenty years will not only serve the purpose of sentence but also will

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58. Supra Note 37 at page 795. To arrive at this conclusion reliance was placed on the decisions of the Supreme Court from Gopal Vinayak Godse vs. State of Maharastra, AIR 1961 SC 600 to Mohd. Munna vs. Union of India, (2005) 7 SCC 417
59. Id at 804
60. Bachan Singh vs. State of Punjab, (1980) 2 SCC 684
61. Supra note 37 at 805

strike a balance between abolitionist view and retentionist view. To end up with imprisonment of fourteen years or to impose death sentence for a similar fact situation, are two extreme approaches and they need to be harmonized. *Shradhanand Swamy* holding did the same things.

Santosh Kumar Bariyar **case.**[62]

It was a case of Kidnapping and murder for ransom. Four accused persons including the appellant *Santosh Kumar Bariyar* were involved in the commission of crime. One accused was made approver by police and other three were tried and convicted. Only *Santosh Kumar Bariyar* was awarded death sentence and other two accused persons were sentenced for life. The conviction and sentence was confirmed by the High Court. *Santosh Kumar Bariyar* filed an appeal against the judgment whereas a cross appeal was also filed by State for enhancement of sentence against other two accused persons who were sentenced for life. The main argument of the appellant was that the conviction was based on approver's evidence and circumstantial evidence and the quality of evidence was not such for which death sentence could be imposed.

Regarding grant of pardon to the approver, the Supreme Court found no illegality in it. The Court then proceeded to consider the validity of the death sentence on the touch stone of 'rarest of the rare' theory propounded by *Bachan Singh* case. The Supreme Court accepted that determination as to what would be the 'rarest of the rare' case is a difficult task and different legal principles are applied for it. The trial court had already awarded sentence for life to other two accused persons and the case of the appellant was not much different. The idea of kidnapping was of the appellant but the whole crime was executed with the equal involvement of all the accused persons. Their age was similar. They had no criminal history. All were unemployed and were searching job and they did the crime to collect money. Therefore the Supreme Court was of the view that looking to the factual similarity between the accused persons, there was no need to award death sentence to the appellant alone. *Sinha, J.*, who delivered the judgment did not agree to the contention that death sentence could not be awarded in a case based on circumstantial evidence. He however said that in such cases the circumstantial evidence must be such which leads to an exceptional case in view of *Bachan Singh* holding. Invoking 'prudence doctrine' and reducing the sentence to that of life imprisonment, *Sinha, J.*, observed,

> "..... *in a case of this nature where the entire prosecution case revolves round the statement of an approver or is dependent upon*

62. Santosh Kumar Satish Bhushan Bariyar vs. State of Maharastra,(2009) 6 SCC 498

the circumstantial evidence, the prudence doctrine should be invoked. For the aforementioned purpose, at the stage of sentencing evaluation of evidence would not be permissible, the courts not only have to solely depend upon the findings arrived at for the purpose of recording a judgment of conviction, but also consider the matter keeping in view the evidences which have been brought on record on behalf of the parties and in particular the accused for imposition of a lesser punishment. A statement of approver in regard to the manner in which crime has been committed vis-à-vis the role played by the accused, on the one hand, and that of the approver, on the other, must be tested on the touchstone of the prudence doctrine."[63]

Referring to various decisions on the point, particularly *Bachan Singh* and *Mithu, Sinha, J.*, reiterated the view that death sentence is constitutional if provided as an alternative punishment. Thereafter he considered the sentencing principles elaborately and emphasizing on need of objectivity in the choice of punishment and enough information should be provided to the court to help it in the selection of penalty. But in all cases the 'selection of penalty must not require a judge to reflect on his/her personal perception of crime'[64]. He emphasized on full-fledged hearing for recording special reasons in case of death penalty and laid down that 'quality of evidence' and circumstance not pertinent in conviction such as probability of reformation and rehabilitation of the accused can play an important role and the State must show by evidence that there was no such probability existing.

Ravji[65] holding, followed in a series of decisions by the Supreme Court, laid down that in cases of atrocity, brutality and enormity of the crime warranting public abhorrence and in cases of heinous crime, it is only the circumstance of crime and not the circumstance of criminal are relevant factor and in such cases death penalty can be awarded. *Sinha, J.*, however quoting *Bachan Singh* and concluding that circumstance of crime and criminal both are relevant factor, remarked that *Ravji* view was rendered per incuriam. This he did with the help of *Panchhi vs. State of U.P.*[66] and *Vashram Narshi Bhai Rajpara vs. State of Gujrat*[67] in which the view of the court was that brutality of the manner in the commission of crime can not be the sole ground for imposing death sentence and it must depend upon the balance sheet of mitigating and aggravating features surrounding the murder. He therefore took the view that social necessity

63. Id at 559
64. Id at 526
65. Supra
66. (1998) 7 SCC 177
67. (2002) 9 SCC 168

and brutality can not be a sole justification for death sentence[68]. Considering the role of public opinion and social reaction, *Sinha, J.*, realized the danger of media trial and sweeping public reaction and emphasized on strict adherence to balancing of mitigating and aggravating circumstances and laid down,

> *"Capital sentencing is one such field where the safeguards continuously take strength from the Constitution, and on that end we are of the view that public opinion does not have any role to play. In fact, the case where there is overwhelming public opinion favouring death penalty, would be an acid test of the constitutional propriety of capital sentencing process."*[69]

The learned Judge very rightly pointed out the distinction between the manner of killing and the manner of disposing of the dead body and remarked that the later will not come in the category of 'rarest of rare' case.[70] *Sinha, J.*, also considered the issue of proportionality and gave over it primacy to the principle of prudence as enunciated by *Bachan Singh* and in view of the fact that the state had not given any evidence to show that the accused was incapable of being reformed, he declined to decide the sentence on the ground of proportionality alone.[71]

Santosh Bariyar holding has been referred with approval in *Dilip Prem Narayan Tiwari vs. State of Maharastra*[72] on the point that *Ravji* holding was rendered per incuriam and the view that where the offence is heinous in nature and has been committed with extreme brutality, the circumstance of crime and not of the criminal should be considered for selecting the sentence is not correct. *Sirpurkar, J.*, reducing the sentence to that of life imprisonment for 25 years clearly held that multiple murder itself would not be sufficient for imposing death sentence and selecting the sentence the nature of crime, background of criminal, his mind set in the commission of offence and social status are relevant factors.

Subsequent decisions show that the Supreme Court is following the *Shradhanand* pattern and death sentence is being substituted in life imprisonment for rest of life. For instance, in *Sebastian vs. State of Kerala*[73] where the accused was previously convicted for the offence u/s 354 and further for the offence u/s 363, 376, 379, 302 and 201 IPC for the rape and murder of young child and was awarded life imprisonment and he was facing trial for the murder of several children, was awarded death

68. Supra note 52 at page 532-533
69. Id at 538-539
70. Id at 558
71. Id at 557
72. AIR 2010 SC 361
73. (2010) 1 S.C. C. 58

sentence and his sentence was reduced to life imprisonment for rest of life on the ground that the case was based on circumstantial evidence and the accused was a young man of 24 years at the time of incident. In *Vikram Singh vs. State of Punjab*[74], three accused persons were awarded death sentence for kidnapping and murder for ransom, the Supreme Court upheld the sentence in respect of two accused persons and converted the sentence into life for the third accused. In *Mulla vs. State of U.P.*[75] the Supreme Court emphasized that the sentence should be proportionate and befitting crime and capable of deterring other potential offenders. Finding that the accused persons belonged to extremely poor background and they committed murder of five innocent persons for ransom, the court remarked that criminals who commit crimes due to economic backwardness are most likely to be reformed and therefore converted the death sentence to life sentence for rest of life. *P. Sathasivam, J.*, who delivered the judgment made it clear that death sentence should be awarded only when no other option is available and in such cases the brutality aspect should be considered along with other mitigating factors. He also pointed out that where death sentence has been substituted by life sentence, the courts are free to extend the sentence to rest of life.

SUBMISSION AND CONCLUSION

India is one of those countries which chose to continue with death sentence along with life imprisonment. Death penalty is permissible only when it is optional and therefore a law prescribing for mandatory death sentence such as Section 303 of Indian Penal Code cannot sustain to the constitutional requirement. The choice of death sentence too has been restricted to 'rarest of rare' category further qualified by exceptional and 'special reasons'. What will be 'rarest of rare' category and will amount to special reasons has been no where defined and they have to be worked out considering the mitigating and aggravating circumstances of a case. The mitigating circumstances[76] have to be looked into with all weight in

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74. (2010) 3 SCC 56
75. (2010) 3 SCC 508
76. Bachan Singh, Supra Note 1 at page 750. Following **mitigating factors** have been stated and it has expected that in exercising discretion the courts shall take into account the following circumstance-
   (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
   (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
   (3) The probability that the accused would not commit criminal acts of violence as would consitute a continuing threat to society.
   (4) The probability that the accused can be reformed and rehabilitated
   The State shall by evidence prove that the accused does not satisfy Conditions (3) and (4) above.
   (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
   (6) That the accused acted under the duress or domination of another person.
   (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

favour of the accused and after doing so only after coming to a conclusion that the death sentence would be the appropriate punishment; the court can award the same.

The doctrine of 'rarest of rare' case and the requirement of 'special reasons' signifies the wide range of sentencing discretion vested in the courts. For effective compliance of S.235(2) Cr.P.C. i.e. hearing on sentence and S. 354(3) Cr.P.C. i.e. 'special reasons' for awarding death sentence, sufficient discretion has been given to the trial courts. Strict channelisation of discretion would be always against the requirement of criminal justice system. Mechanical Standardization in the name uniformity preventing courts to consider variations in culpability might tend to sacrifice justice itself. Then, law does not prevent such standardization of discretion and confers power on the court to consider the fact and situation of each case (crime) and each individual (criminal). The affirmative response to constitutionality of capital sentence actually presented a bigger and complicated challenge relating to the administration of death sentence. The issue therefore is how to maintain consistency, uniformity and transparency in awarding a sentence? Very recently the Supreme Court has itself opined that India seriously lacks any sentencing policy[77]. But Bachan Singh, so far as death sentence is concerned, laid down a policy prescription on sentencing by treating it an exceptional penalty to be awarded in 'rarest of rare' category and by giving weightege to the mitigating factors in favour of the accused. The Sentencing discretion is a judicial discretion and the purpose is to do justice in a case. Therefore, justice must be the first virtue of the law of sentencing and a sentencing court must consider itself to be a 'forum of principles'. '*The central idea of such a forum is its continuing commitment to inhere a doctrinal approach around a core normative idea. "Principled reasoning" flowing from judicial precedent or legislaticn is the premise from which the courts derive the power. The movement to preserve substantial judicial discretion to individualize sentences within a rang of punishments also has its basis in the court's ability to give principled reasoning.*'[78] Principled exercise of sentencing power is very important to the independent and impartial image of judiciary. There is a basic relationship between the legitimacy of the sentence awarded and the justification given by a court for the same. It relates to the fair and equal distribution of punishment amongst similarly situated convicts. To test the validity of the sentence, Art. 14 of the Constitution may become significant which stands against unfair exercise of power. Fairness requires fair and equal distribution of punishment between like offenders and appropriate criteria for the punishment. In the matter of awarding

77. State of Punjab vs. Prem Sagar (2008) 7 SCC 550
78. Supra Note 62 at page 546

capital punishment, fairness and equality play a very important role because of the peculiar nature of punishment, a punishment which once executed, cannot be recalled back. No doubt death sentence is constitutional and it does not violate right of equality under Art. 14 and the right to life under Art.21of the Constitution. But if the sentencing suffers from an element of ingenuity, arbitrariness, and unfairness, the very award of death sentence has to face the challenge of Art.14 and Art.21.

Apart from the fact that the death sentence has been held constitutional, yet another factor for continuing it is the social sanction and acceptance behind it. The society at large wants to continue with it. The reason may be several and varying. Society has its own reaction against the crime and criminals and it becomes more evident in case of a person who has faced crime. If we have decided to continue with the penalty of death, it is necessary to prepare a pool of 'rarest of rare' category cases and to identify the special reasons for it. *Santosh Kumar Bariyar* holding laid emphasis on rehabilitation and reform of accused and laid down that in all cases where death sentence has to be confirmed, the state must establish this fact by evidence. In the submission of this writer laying emphasis on this single aspect will make difficult for the trial courts to inflict death sentence in any case. It will be equally difficult for the state to give evidence to establish this fact. Therefore, a criteria should be laid down to the effect that out of seven mitigating factors referred in Bachan Singh case, if four are fulfilled death sentence could be justified. Insisting on any one of the criteria like 'rehabilitation and reform' may render the death sentence an impossibility and will result in complete abolition of death sentence. The fact is that capital sentence is a live penalty in India; we should strive to tune the practice to the evolving standards of a maturing society. The normative thresholds attached thereto and evolving constitutional sensibilities dilemma arising from the fact that the Constitution prohibits excessive punishment borne out of undue process; but also permits, and contemplates that there will be capital punishment arising out of an exercise of extremely wide discretion. This dilemma is inherently difficult to resolve. And we should refrain from enforcing any artificial peace on this landscape. While choosing for one option or the other, these constitutional principles must be borne in mind. The nature of capital sentencing is such that it is important that we ask the right questions[79] and only then we can reach to right conclusion. So long as a common pool for awarding death sentence is not establish, *Shradhanand* formula of awarding life imprisonment for rest of life can be a potent guide in choice of the sentence.

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79. Id at 553, 554 (See Sinha, J., view)

Surrogacy and Legal Status of the Surrogate Baby in India

Dr. Ali Mehdi[1]

India may have been a booming centre of 'reproductive tourism' or 'reproductive outsourcing' for several years, but the law hasn't managed to keep pace with the burgeoning baby industry. The practice of surrogate motherhood, though not unknown in previous times, came to international attention in the mid seventies of the twentieth century for reduction in the number of children of choice available for adoption and more conceivably on account of the increasing specialization of techniques in human embryology made such methods a viable alternative to end childlessness or get rid of lengthy and uncertain adoption procedures. Surrogacy is considered and accepted as modern techniques to bear a child for someone who otherwise has not been capable of. The present paper attempts to examine surrogacy as a legally justifiable mode of having a baby to a medically incapable couple or person.

In the year 1978, the scientific discoveries saw birth of the first "test tube baby," conceived in vitro (in glass) under laboratory conditions. In vitro fertilization normally begins with the extraction of an ovum, or egg, and the fertilization of the ovum in a laboratory dish. The fertilized ovum is then introduced into the uterus, where it develops normally. In itself, in vitro fertilization is not particularly problematic, since it can and often does involve simply fertilizing an ovum from the woman who will carry the child. It becomes problematic, however, when the woman is a surrogate mother.

The term Surrogate is derived from Latin word Sorrogatum which means a thing put in the place of another; a substitute. Surrogate mother is a person acting the role of mother or a woman who bears a child on behalf of another woman, either from her own egg fertilized by the other woman's partner or from the implantation in her womb of a fertilized egg from the other woman. According to the Black's Law Dictionary surrogacy means the process of carrying and delivering a child for another person. Surrogacy is a practice in which a woman (the surrogate mother) bears a child for a couple unable to produce children in the usual way, usually because the wife is infertile or otherwise unable to undergo pregnancy. Depending upon the methodology adopted, surrogacy has been classified as:

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(i) Gestational Surrogacy, and

(ii) Traditional Surrogacy

In gestational surrogacy, an egg is removed from the intended mother or an anonymous donor and fertilized with the sperm of the intended father or anonymous donor by in vitro fertilization (IVF). The fertilized egg, or embryo, is then transferred to a surrogate who carries the baby to term. The child is thereby genetically related to the woman who donated the egg and the intended father or sperm donor, but not the surrogate. Some lesbian couples may find gestational surrogacy attractive because it permits one woman to contribute her egg and the other to carry the child. In traditional surrogacy, a surrogate mother is artificially inseminated, either by the intended father or an anonymous donor and she carries the baby to term. Traditional surrogacy is more controversial than gestational surrogacy, in large part because the biological relationship between the surrogate and the child often complicates the facts of the case if parental rights or the validity of the surrogacy agreement are challenged. In either procedure, the surrogate gives up all parental rights and the intending couple becomes the legal parents of the child.

In addition to these types of surrogacy based on the option of conception, the surrogates may also be motivated to carry either by offering consideration in lieu of or by reason of helping the childless couple to become child bearing couple; former being the commercial surrogacy and the later is called as altruistic surrogacy. Commercial surrogacy is a form of surrogacy in which the gestational carrier is paid to carry a child to term in her womb and is usually taken care of by the economically better but infertile couple. Financially induced surrogacy is predominantly practiced in India due to availability of poor surrogates, better medical facility against the minimum expenses. Commercial surrogacy, though recognised mode, has sometimes been referred to by the emotionally charged and potentially offensive terms like "womb for rent", "outsourced pregnancy" or "baby farming". Altruistic surrogacy is a situation where the surrogate receives no financial reward for her pregnancy or relinquishment of the child although usually all expenses related to conception, monitoring and maternity etc. are born by the intended parents.

Thus a surrogate mother is a woman who carries a child on behalf of another woman, who will become the child's social mother. The social mother will also be the child's genetic mother if she donates the ovum. The problem is that three roles normally borne by one woman—genetic mother, childbearing mother, and social mother—are now divided between two—genetic mother and the surrogate mother. In addition, the sperm may come from the husband of one of the women or from another man. Because of these complications and the emotional strain on both mothers

(and potentially the child), commercial surrogacy has been made illegal in some countries. In others, it is becoming institutionalized, and laws are being changed in order to define precisely the rights and obligations of parents and children in this situation.

Surrogacy is another viable practice, developed in late last century, in the process of having a child in addition to the already recognised practices of acknowledgement, adoption and fostering. Such practices have been the ordinary practices of having a child of his/her own by the intending parents in case of having no child bearing capacity.

Fostering is the practice of using a parent or set of parents to care for someone else's child on a long-term basis. Often the child's own parents have died or have been declared legally unfit to look after him or the child himself is abandoned, and there is someone who needs a child. Modern government social services and some private agencies place such children with families they believe will give them good homes. In such cases the legitimacy of child is not in question and the child gets all the rights to maintenance as well as inheritance by declaration of the deceased foster father/ mother. Parents – child relationships are ascertained by the existing circumstances and situational facts (son made) and do not require niceties to be observed and complied mandatory.

Privy Council's observations, "whatever may have been the original position and status of the thirteen types of sons, all of them except the legitimately born and the adopted son (i.e., *Aurasa*, and *Dattaka* son) are long since obsolete[1]. Adoption is another old but popular technique of "taking of a son as a substitute for the failure of a male issue". It is a transplantation of a son from the family in which he is born to another family where he is given by the natural parents. The adopted son is thus taken as having been born in the new family. He acquires all the rights and status in this new family and his ties with old family eclipses. The concept of adoption came into existence to fulfill the religious and social needs of the couple/person particularly in the Hindu community. The religious motive behind the adoption is evident from the text that reads as – "I take thee for fulfillment, of my religious duties. I take thee to continue the line of my ancestors".[2] The practice of adoption is rooted in the presumed duty that every one owes to his ancestor to provide for the continuance of the line and the solemnization of the necessary rites[3]. Persons being sonless were also motivated by the consistent Priest's preaching as it was absolutely necessary for every sonless man's salvation both on the earth as well after death. This kind of firm belief convinced

1. *Nagin Das v. Bachoo Hur Kishen Das*, 43 IA 56.
2. *Baudhayana* II, 7-19.
3. *Amerendra v. Sanatan* AIR 1953 PC 153.

its followers that by leaving a male child in this world, he can secure himself from the torments of the next world as also to the secular desire for the perpetuation of the family names. The view has also been vindicated by the Privy Council's observation: "that the substitution of a son of the deceased for spiritual reasons is the essence of the thing and the consequent devolution of property a mere accessory to it"[1].

The adoption being significant on two counts, i.e. worldly and spiritual, it required to be accomplished by undergoing due performance of the religious ceremonies as prescribed under *shastras*.[2] Contrary to it the Modern Hindu Law on adoption captioned as Hindu Adoption and Maintenance Act, 1956 (Adoption Act) incorporates only the secular aspect of adoption, as baby girl can also be adopted as a daughter and the law does not ask for performance of certain religious ceremonies at the time of adoption. Thus the conditions and legal formalities of adoption under the amended and codified law transplant male or female child into the desiring family and confer all the rights that of a natural born child. Adoption has not been recognised in any other personal laws. There is no provision of adoption in Mohammedans nor is it recognised by the English or the Parsi law.[3]

The Adoption Act, therefore, applies *simpliciter* to any person, who is Hindu or to a person who is not a Muslim, Christian, Parsi or Jew by religion[4]. It also lays down the eligibility of the child, *interalia*, any child, legitimate, or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh[5]. Once the adoption is validly made, it cannot be cancelled either by the adoptive father or mother or any other person nor can the adopted child renounce his or her status as such and return to the natural family[6]. The Adoption Act prohibits payment or other reward, whatsoever, or promise of like nature, in lieu of handing over of the child in adoption and makes contravention punishable with imprisonment which may extend to six months, or with fine, or with both[7]. Adoption of an Indian baby by the foreigners, in absence of statutory law, is regulated by the guidelines laid down by the Supreme Court of India[8].

The concept of adoption is socially and legally accepted, and its practice is a viable alternative to fill up the vacuum otherwise not possible in the

1. Chandrasekhara v. Kulandaivelu, (63) ASC 185,193.
2. P.N. Sen: Hindu Jurisprudence, 240.
3. U.P.D. Kesari: Modern Hindu Law, 161.
4. Section 2 (1) (a) and (c), Hindu Adoption and Maintenance Act, 1956.
5. Ibid, Explanation (bb)
6. Section 15.
7. Section 17.
8. Lakshmikant Pandey v. Union of India AIR

natural course, it, however, still lacks the emotional and biological connectivity between the adoptive parents and the adopted one. For the reason, many childless couples do not opt for adoption, and are not interested merely to safeguard their property after death, and allow law of the land to operate and take care.

Under Muslim law, paternity of a child is established by marriage between its parents, either by direct proof or by indirect proof, by presumption drawn from certain facts, i.e. from acknowledgment of legitimacy in favour of a child as appears from the following passage in the judgment of the Privy Council:

> *"By the Mohammedan's law a son to be legitimate must be the offspring of a man and his wife or of a man and his slave; any other offspring is the offspring of zina, that is illicit connection and cannot be legitimate. The term "wife" necessarily connotes marriage; but as marriage may be constituted without any ceremony of a marriage in any particular case may be an open question. Direct proof may be available, but if there be no such, indirect proof may suffice. Now one of the ways of indirect proof is by an acknowledgment of legitimacy in favour of a son[1]."*

Under the Mohammedan's law fact and time of marriage between the parties is the criterian to confer legitimacy on the child. If these two essentials, however, could not be ascertained, and the alleged marriage is a matter of uncertainty, that is, neither proved nor disproved, doctrine of acknowledgment applies in such limited cases to establish legitimacy. It is not a mere rule of evidence, but part of the substantive law of inheritance[2].

An acknowledgment need not be express, it may be presumed from the fact that one person has habitually treated another as his legitimate child. Since the acknowledgment not only confers legitimate status on the child but also extends to recognize the mother of such child as wife of the acknowledger, therefore, the child acknowledged must not be known to be the child of another man or the offspring of *zina*, i.e. adultery, incest or fornication as his mother could not possibly have been the lawful wife of the acknowledger at any time when he could have been begotten.

The doctrine of acknowledgment, thus, relates more to identify the legal status of the mother of the child acknowledged rather than being a device to have a son/daughter for the inheritance purposes. Nevertheless, it is a recognized mode of having an issue for issueless father, though the possibility of having a child with such strict conditions is very remote.

1. *Habibur Rahman v. Altaf Ali* (1921) 48 I.A. 114, 120.
2. *Muhammad Allahdad v. Muhammad Ismail* (1888) 10 All. 289, 330.

Legitimacy of a child is an important phenomenon attached to the legal and social relationship between his father and mother. An illegitimate child is a *filius nullius* (son of no man- without relatives). Union between opposite sexes are designated as lawful marriages, and a man of importance, agreeing to his daughter's marriage, would insist on her having the status of legal wife rendering paternity, in the legal sense, easier to establish than in the absence of a lawful marriage. The common law of England, for example, presumes in favour of legitimacy when the child is born in lawful wedlock, even if the biological facts may be otherwise. Civil law systems, derived from Roman law (Romano-Germanic law), have been less absolute than the common law; they provide ways of legitimating a child, such as through subsequent marriage of the parents or through an act of recognition by the father. Modern statute law has brought the positions in different systems closer together and removed some of the worst features of the doctrine of legitimacy. Legitimacy is a concept of diminishing importance in modern law, and even countries that still retain it have modified it. The focus is on parentage rather than on a legally valid marriage and giving rights of intestate succession to children born out of wedlock. By the legal devices of legitimating and adoption and by other means, the difference between the legal status of a legitimate and that of an illegitimate child has been narrowed. [1]

Section 112 of the Indian Evidence Act, 1872, provides for the continuance of marriage as conclusive proof to the legitimacy of child. It says:

> *"The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten. (Emphasis added)"*

The aforesaid law is applied uniformly irrespective of the religion of the parties to the wedlock. It only requires that the marriage must be valid, and in absence of contrary evidence, parties had access to each other. The time of conception is not the deciding factor to determine the legitimacy, rather the date of birth shall determine the legitimacy is it during the married life, or within two hundred eighty days in the event of breakdown of marriage. The letter and spirit of the law leans in favour of legitimacy of the child.

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1. *Encyclopaedia Britannica.*

Illegitimacy is associated with poverty for the reason of tendency to exclude the child by law and social circumstances from what the community regarded as a customary and respectable family structure. The illegitimate child has usually lacked the financial support available in the conventional family group. Sometimes the laws have been designed to prevent the cost of support from falling on those not biologically responsible for the birth. The thrust of modern law-reform proposals, in general, is that the welfare of all children should be a matter of honest and effective public concern and made mandatory by statutory provisions.

After having a review of the existing relevant laws, the concept of surrogacy, it is apparent, does not find place therein, and therefore, raises two pertinent questions; firstly, whether surrogacy is legal, and secondly, a baby born out of surrogacy is legitimate one. Family formation is the foremost significant feature of civilised society and, therefore, law has also endorsed the rights of the people in this regard. Article 16.1 of the Universal Declaration of the Human Rights, 1948 says, *interalia*, that "men and women of full age without any limitation due to race, nationality or religion have the right to marry and found a family". Reproductive right of human beings has also been recognised by the Indian judiciary as basic right. Andhra Pradesh High Court upheld, "the right of reproductive autonomy of an individual as a facet of his "right to privacy"[1]. Recently (July 2009) the apex court[2] in a case, reversed the decision of the Punjab and Haryana High Court and observed very categorically that right to conceive and carry is the right of every woman, even if, she is mentally challenged, illegitimately conceived but willing to deliver.

Therefore, if reproductive right gets constitutional protection, there appears no reason to deny a surrogate mother to bear the child and her right should also be protected under the same provision of law. Surrogacy provides an alternative to the known modes of procedure of having a child devoid of any biological linkages, with genetically linked procedure for child bound with emotions and blood relation. Its prohibition on the other side, on vague moral grounds is irrational, particularly when infertility, a medical disability is a huge impediment and supersedes the great desire of begetting a son.

India has the reputation of providing the world's second *in vitro* fertilization baby successfully on Oct, 03, 1978, just two months after such first baby born in Great Britain. England in order to control the surrogacy, has two legislations, namely, The Surrogacy Arrangement Act, 1985, and the Human Fertilization and Embryology Act, 1990, legitimizing

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1. *B.K. Parthasarthi v Government of Andhra Pradesh* AIR 2000 AP 156.
2. A grown woman but 7-9 years of mental age raped by the security guards of *Nari Niketan* in Chandigarh got pregnant and declined to terminate the pregnancy.

the surrogacy arrangement and empowering the court to issue parental orders similar to adoption orders. In India, unfortunately, there is no statutory law[18], so for, regulating the surrogacy except the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics, 2005. It lays down that a surrogate mother carrying a child biologically unrelated to her cannot be the legal mother, and the birth certificate shall be in the name of the genetic parents. The first draft bill of its kind to control and monitor cases of surrogacy in the country, captioned as Assisted Reproductive Technology (Regulation) Bill, 2008 has been drafted by the Ministry of Health and Family Welfare, along with the Indian Council for Medical Research (ICMR). ICMR posted the draft Bill to invite public comments. The Law Commission of India underlining the need of legislation on the topic has also recommended for a comprehensive law[19].

A brief statement of the recommendations and proposed law in India follows:

I) The Assisted Reproductive Technology (Regulation) Bill, 2008, legalises commercial surrogacy treats the surrogacy agreements at par with other contracts under the Indian Contract Act, 1872. It makes the contract enforceable stating that the surrogate mother may receive monetary compensation for carrying the child in addition to health-care and treatment expenses during pregnancy.

II) The surrogate mother will relinquish all parental rights over the child once the amount is transferred and birth certificates will be in the name of genetic parents.

III) The prescribed age-limit for a surrogate mother is between 21- 45 years. No surrogate mother can undergo embryo transplantation more than three times for the same couple.

IV) Single parents can also have children using a surrogate mother.

V) All foreigners seeking infertility treatment in India will first have to register with their embassy. Their notarised statement shall be handed over to the treating doctor. The foreign couple will also state whom the child should be entrusted to in case of an eventuality such as a genetic parent's death.

VI) Child shall be presumed to be legitimate of the couple or single person as the case may be. If there is divorce or separation after surrogacy arrangement the child shall remain legitimate.

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1. *Baby Manji Yamada v. Union of India JT 2008 (11) SC 150. By the decision of the Supreme Court of India, it is, however, certain that the surrogacy cases have got legal status and surrogacy is recognised.*
2. 228th Law commission of India Report, 2009.

VII) Under the Guardian and Wards Act, 1890, declaration of guardian may be sought.

Legal position of the various recognized modes, prevalent in different communities, of getting a child have been undoubtedly, without any reservation, in practice. These modes, however, are followed to fill up the religious and social aspiration only and are devoid of instilling psychological satisfaction and maintaining hereditary relation with the desiring couple or the person. Surrogacy places an option to beget a child with a feeling of own-ness clubbed with other social and religious cravings. The legitimacy of the surrogate baby for intending Hindu couple under the modern Hindu Law does not raise any doubt as child is born during the wed lock through an advance technique which is legally recognized and accepted. The Muslim community has accepted all the medical discoveries[1] for the betterment of the human beings, there seems no reason to discredit the technique of surrogacy as *batil* (invalid). As the intention of the desiring party is fair enough to get a baby through a technique that is optional, viable, legally permitted and resorted at last, it does not suffer the vice of immorality nor unethical. Surrogacy may also be looked as a social device to prevent the couple from parting with and breaking the matrimonial bond to get another partner who can bear and begot a baby. It gets the estranged relations reunited.

On the issue of selecting altruistic or commercial surrogacy or both, it is relevant to understand the social and economic condition of the surrogate woman. Altruistic surrogacy may be possible within the family or close family friends as one may be motivated considering various factors which may not convince beyond such proximity or the affinity. Commercial surrogacy, on the other hand, is the only option for intending couple to arrange for a surrogate baby on non- availability of the altruistic surrogate. Law does not operate in vacuum, it responds to the social needs and therefore must be drafted looking into the realities as well as the viability of its acceptance by the people for whom it was intended. The levels and degrees of public knowledge and opinion about law as social facts need to be discovered and recorded. The attitudes tend to be seen as measurable data comparable with the content and policy of the legal provision[2].

In order to effectuate the concept of surrogacy, therefore, it is to be accepted as such without classifying as altruistic and commercial surrogacy. Because if the commercial surrogacy is prohibited, it shall remain confined to the concept level and the law in this regard be subject to gross violation. Some parts of the western India are known as 'surrogacy

1. For example- Blood transfusion, organ donation and organ transplantation.
2. Roger Cotterrel: The Sociology of Law, p. 138, (2007).

hub' drawing attention of the intended couple from abroad as well as the fellow citizens due to the cost of surrogacy being one third of the amount required in the western world and availability of the potential surrogates, explicitly reveals that the alternative mode of getting baby by the assisted reproductive technology has now been accepted, and therefore, requires to be regulated by the law only. Earlier the law comes better is the regulation and compatibility with the on going practice of surrogacy in India. Some suggestions on the basis of above descriptions may be incorporated in the proposed Bill as below:

1) There should be an authority at the state level empowered to give permission to the intended persons after due consideration of all the relevant facts acting in coordination with the Assisted Reproductive Technology (ART) Clinics.

2) The ART Clinics should be recognized and specially authorized in this regard by a Government Notification.

3) The option of surrogacy should be open only to married couple not to the single person.

4) The terms of agreement should be regulated not by the law of contract but by the law of surrogacy itself.

5) On death of the intended couple during surrogacy the surrogate mother may have option to retain the custody of the baby.

"Jural interpretations of the Dynamics of social exclusion and inclusion in matters relating to Gender in India-Some Reflections over judicial decisions of laws of rape, abortion and sex.-selection

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INTRODUCTION

The sociological jurisprudence subsumes law as an instrument of social progress. To transact this process social postulates are the necessary aids. Exclusion and inclusion are, likewise, two social postulates being progressively evolved, defined and applied by the societies through their formal and informal methods and means. Law comes into being as a vital agent in adjusting the notions of exclusion and inclusion in social good governance. It can be emphasized that exclusion and inclusion are not only indicators of preferential approval / disapproval of facts in a respective society but also narratives of socially organized value-oughts or temporal necessities resulted due to innumerable national and transnational factors and without addressing which the progress of the civil society will be adversely affected. The twin significations of exclusion and inclusion can be analyzed sociologically as well as jurisprudentially. There can be a relationship traceable between their sociological and jurisprudential dynamics however it is not necessarily possible that the sociological explanations are the same as the jurisprudential ones or in other words the society addresses to phenomena of exclusion or inclusion in the same manner as it is addressed by the legal system. In this paper an attempt is made to reflect upon jural interpretations of exclusion and inclusion in matters relating to gender-specifically laws of rape, abortion and sex-selection and an analysis is undertaken to find out whether the sociological and jural interpretations of exclusion and inclusion in the respective subject matter are the same, or different. To substantiate the comparative study , references are made to landmark judicial decisions of the Supreme Court of India and High Courts, that have been instrumental or responsible for bringing about exclusionary or inclusionary impacts on legal reforms.

Social Exclusion and inclusion in the process of Jural progression of Rape Law.

Quite pretty a good time back while Mathura[1] was excluded by judicial process, it made a point to contemplate over the adequacy of rape law in India. The ensuing facts were that Mathura who was about to leave the police station, the police constable had secluded her into privacy and raped her. The very fact that this victim of rape was detained in police custody on the complaint of her brother that she was kidnapped by one Ashoka with whom she was in love,[2] was indeed an act bringing about devastation of her confidence in the state instrumentality of police. In other words, for this specific case this was the beginning of a story of the jural dynamics of the twin concepts of social exclusion and inclusion. It deserves mention that this story of justicing on exclusion and inclusion had passed through the three fold judicial labyrinth i.e. trial court, High Court and the Supreme Court of India which decided against the poor victim Mathura letting free the culprits, in other words excluding Mathura and not less than including the rapist in the qualification of otherwise good citizens, as like the multitude who are not criminals, and therefore no question of exclusion. In this backdrop some very interesting following questions crop up for a pensive thought:-

The Social concepts of exclusion and inclusion in jural dynamics have specific meanings as follows (Explanation desired with help of Mathura case for example:-

(a) The Court adjudicating not in favour of Mathura excluded her from the march/path of justice.

(b) The Court in (a) can be stated to have included the offenders in regular realm of law and justice, particularly in terms of affirming the innocence of the offenders in public knowledge.

(c) As per (b) the offenders were included after the judgment in the normal pattern (acceptability process) of the legal civilization as the criminal jurisprudence does not necessarily consider the offenders as worthy of exclusion until the verdict of the Court.

(d) The (c) does not ignore this fact that although, the offenders were howsoever socially considered to be deserving exclusion, juridically they were not so characterized with such demerit.

1. See Tukaram v. state AIR 1979 sc 185 in which Mathura aged 15 years detained in police custody was dragged, taken to a toilet and raped. Following this another constable Tukaram attempted to rape her but being too heavily drunk, could not perform it.
2. Coincidently the facts involve a two fold aspects of exclusion-firstly the societal reprobation of right to free choice for a girl-albeit in this case a minor girl, and secondly the exclusionary treatment rendered to her ultimately in the judicial process.

All that the criminal law and procedure wanted that they be put under the acid tests of procedural examinations so that the truth could be ascertained. However the initial lebelling of accusation in the formalism of ' legal charge' can not be said to be one tantamount to socially not excluded or not excusable.

(e) But the facts of crime in Mathura may be socially so emboldened that it warrants excluding of offenders but juridically the same is belittled through the procedural whirlpools of formalistic requirements of charge that requires meticulously that it be legally baked to the point of excluding every extra legal / metalegal /alegal matters (truth may be some time alegal / metal legal /extra legal also), testimony and proof beyond reasonable doubt (the social facts cannot be insulated from the probability of reasonable doubts), so far the criminal jurisprudence is concerned.

(f) Thus the (e) poses a very significant question into determining the relationship between jurisprudence and sociology of exclusion and inclusion.

(g) The (f) evokes a question whether the social truth is short of truth for law, especially law in adjudication ?

(h) If so, what was being done by the three pedestals of justicing ? Were they merely experimenting with the self-constrained and self-determined definitional paradigms of crime (rape) as substrate and procedural requirements of truth as reagents. The result of this reaction (combination of substrate and reagent) as if in Mathura was marked by uncertainty i.e. whether the judgment was done on the basis of a jural neutrality i.e.(the offenders were only alleged but not proved to be guilty whereas Mathura was a loser that she initially being morally surcharged to take recourse to criminal justice was none the less neutralized on basis of jural technology.

(i) Is (h) not suggestive of a possibility of the following interpretations in reference to jural neutrality?

 (i) That social truths are not neutral truths whereas jural neutrality subsumes a very contradistinguishable status of neutrality.

 (ii) If saying that social truths are not neutral but fact and ideology/morality based; then whether jural neutrality

bespeaks an amoral / extra moral or meta moral perspective ?

a. If the (ii) is an assumption, how could it be worth meriting that law is a social phenomenon as a social phenomenon like law necessarily would have a moral relation with society ? (although it is a different matter as to how law in a complex society may not always be moral only).

b. The (iii) also calls attention for deciding the definitions of social morality and legal morality for purposes of utility/welfare/justice/happiness & systematic & institutional solidarity) of society.

In *Mathura case* it may be presumed that the social morality was concerned with punishing the offenders and thereby excluding them socially however the adjudication by the apex court was quite contrary to this as if being virtually neutral.

1- The adjudication in Mathura involves following several referral points to the sanctity of interpretation.

A. If the trial court, being the fact ascertainment court decided the case in favour of Mathura, whether it was nothing else than deciding case on merits and which could very well be stated that the judgment was in consonance with the spirit of the social morality of exclusion of rapist?

B. If given against the (i) where the High Court, being first pedestal of interpretative justicing, decides against the verdict of the trial court, whether it may mean that the High Court decided the facts and law in a way that the truth & brunt of social facts and social morality were tailored according to independent wisdom, vision and perception of the presiding judge /judges in their interpretations?

C. In view of the fact that the highest court, being the omnipotent, omnipresent and omniscient court decided the matter against the view of the High Court, can it be stated to have taken yet another independent interpretation of law and justice in the case, which (as with the acquittal of the offenders being the ultimate ruling on jural dynamic justice) was howsoever not palatable to societal judgment of exclusion of offender, for they had shaken the public faith and confidence in custodians of law, the police persons stationed on duty on a very sacrosanct situation of law and society - a Police Station.

2- The difference of jural interpretation of the fact of rape in the case, between the High Court and the Supreme Court may be stated to be suggestive of the following :-

A. Whose interpretation is the real one ?

(j) Whether social reality in this context is one different from adjudicated delivery ?

(k) Given differing opinions about jural translation of reality in adjudication by the different courts it could very well be said- that there is uncertainty mounting in the delivery of justice in relation to a social fact /cognisance of criminality and offendership.

(l) If the court ultimately acquits the offenders, does it mean that justicing process is merely a mechanical process of applying system of rules without taking note of the fact that an individual fact turning into a social fact(in the matter an individual act / omission attracts public attention and concern) deserves a very close scrutiny ascribing to the fundamental rule that social wrath and exclusion are not to be disrespected ?

3- Had the Judgments of the High Court and Supreme Court been congruing, but different from the lowest court, would it tantamount to saying that the lowest court having decided upon facts & the next two superior courts deciding upon law, judicial delivery on gravitated concerns of fact differs from judicial delivery on necessitated concerns of law ?

4- The above (l) adds a possibility of three situational answers.

a. Social facts should be given predetermined preference upon the specialized artifices of legal craftsmanship, because law is essentially a product of social craftsmanship.

b. The law treats social facts into its sifting mechanism and whatever is the outcome of this process is the matter to be accepted as social fact.

c. Law being only one type of social craftsmanship should not discard possible impacts of social facts until and unless the same wreaks ruin friction and waste to the society.

5- It is remarkable to state that the ultimate decision in Mathura did responsibly evoke a call for amendment in rape law. A likewise cognizance in this or other regard in state machinery depicts nothing but social transformation of law (rape law in this instance). This

social transformation may have several aims and objectives, one of which, it appears is bringing the instrument of law in place so that it could cater to socially held strong and convincing convictions of exclusion and inclusion as methods of social engineering. It would not be exaggerating to state that without addressing to this important task law would not be called as an instrument to usher satisfaction of maximum of societal wants so that friction, pain and misery in the administration of justice could be meaningfully reduced or avoided.

The above discussion from (a) to (n) brings home the following consequent inferences (1) that the social concepts of exclusion and inclusion are interpreted differently in jural parlance particularly the adjudicative parlance.

i. That it also happens that in a case the adjudicative law goes particularly against the coherent but general notions of social exclusion and inclusion in a specific instance or instances, it contributes to create an entropy in social consciousness suggesting a timely and effective treatment lest the law in itself may become an entropical outcast.

ii. To remove the above situation the designated authorities to bear upon legislative formation, i.e. the Law Commission of India, the High Court or the Hon'ble Supreme Court, ministry of law and justice, other concerned ministries of governments and over and above all not without any exception the state and central legislatures as well as jurisprudence, and intelligentia may press the demand for bringing law near the concept of social exclusion and inclusion.

iii. Sometime the socially held concepts of exclusion and inclusion, are however, bad, as against respect for individual's right and dignity, and therefore law comes in as an intervention or educative tool to translate individual morality into social morality.

Numerous examples are available to support this social exercise, e.g. Untouchability offences Act., Acts to extirpate the practices of manual scavenging, and anti-prostitution rules and regulations etc. to name few.

(5) The gap between social practices of exclusion inclusion and jural non conformity is important for both purposes, viz

(i) To remove bad customs, usages and practices of society by bringing a law, or amending it.

(ii) To make law if it has a void incapacitating the instrumen-

talities of legal system to address to the socially held concepts of exclusion and inclusion.

(iii) The above (i) and (ii) present a perspective of comparative value assessment programming of law in relation to exclusion and inclusion concepts and in application of the said process reference is made to foreign legal systems to justify the lawmaking as if by tenets of universal principles of good governance and civil society.

D. The translation of comparative value assessment programming of law, into a system of a domestic law, gives birth to jurisprudence-sociological jurisprudence in particular.

(6) This it can be validly stated that the social concept of exclusion and inclusion add to developmental jurisprudence or social action jurisprudence,. Accordingly these two concepts are the masters of jurisprudence- i.e. they being striving to establish relation between laws and society.

Exclusion and inclusion in the Medical termination of pregnancy Act 1971 (herein after referred to as MTPA.

In light of the above observations I intend to examine the relevance of the twin concepts of exclusion and inclusion in the MTPA. This Act was passed in 1971 as an exception to section 312 of the Indian Penal Code, 1860. (hereinafter referred to as IPC).The section of 312 of IPC is a penal provision according to which whoever miscarries a woman with child will cause a non cognizable non-bailable non-compoundable offence deserving a penal servitude up to three years or a fine or both. An absolute proscription loomed large in the law's application-no one including the woman herself was permitted to transgress upon natural course of pregnancy except in case when induced miscarriage was permissible in order to avert danger to pregnant woman's very life. This provision was, however practised much in breaches than observances. Millions of illegal abortions were reported with high mortality and morbidity incidences posing problems to individuals, families as well as public health system. Back-street clandestine abortions took place in hands of inexperienced doctors or quacks and a game of illegal practices of illegal, unsafe and fatal abortions was on the way. In the nerves of social consciousness, abortions were phenomenal and which suggested that multitudes of people were excluded by section 312 of IPC-without no social moral gain. The Shantilal Shah Committee constituted by the Government to look into this serious matter suggested that section 312 needed to be adequately amended. In accordance with the same the MTPA was brought into being. The responsible legislature proclaimed that the Act was meant to

emancipate women folk from the burden of un wanted pregnancy. This objective clause and the medical termination of pregnancy (MTP) entitlement provisions under the MTPA

(Sec.3) make following very interesting matters to explicate :-

(1) MTPA is an instrument to translate an inclusive policy of all those women who were excluded from exercises of a kind of liberty or right (right to privacy).

(2) MTPA was a resultant outcome of social pressures of rejecting the total prohibition regime of IPC.

(3) MTPA evinces the statement of fact that the jural concepts of liberty or morality are cogent products of social exclusion and inclusive policy. In other words, the social concepts of exclusion and inclusion are nothing but organized notions of individual rights, liberties or morality and such social concepts are best determiners of progression in law and jurisprudence. This progression may be either a positive, or contributory (e.g. validating a social concept as a right or liberty) or a negative or sanctional (e.g. proscribing an act or omission relating to the social concept).

The concepts of exclusion and inclusion do not stop with the passage of a legislation to have translated them. The relevant and apt example in this case is Sushil Kumar Verma v. Usha[1] ..). The facts of the case were that Usha had undergone MTP within MTPA exercising her solitary legally valid right to claim MTP and her husband's grudge was that he would have not permitted it and he had not willed it. As the MTPA does not give husband any right to consent in MTP matters, and the registered medical practitioner as specified is the best samaritan friend of the claimant woman, MTP was transacted in this case in the tripartite frame of reference-the MTPA, the claimant woman and the justice-lancer registered medical practitioner. But this trio did very much offend as if the very patriarchic mind set of the husband and he filed a petition under s.13 of the Hindu Marriage Act 1955 claiming that the act of MTP amounted to cruelty on her part as a consequence of which divorce could be granted. In my opinion, the facts can be restated in terms of exclusion and inclusion as follows:-

The husband's claim rested on the mind set that the inclusion of a woman in the emancipative zeal of the MTPA was a tyranny to husband; and accordingly husband would prefer to exclude her if she exercised such tyranny.

1. AIR 1987 Delhi 86

or

The MTPA gusto of including the process of emancipating woman is good and welcome if the husband so desires

or

The emancipation within the MTPA is to be interpreted in reference to the terms 'unwanted pregnancy"-pregnancy being a joint venture it is the husband also whose opinion about its wantedness or unwantedness is equally important.

or

The terms 'unwanted pregnancy' need to be construed excluding husband from the decision-making process under the MTPA.

or

A wife's duty to involve husband in deciding upon MTP is as much desirable socially as legally for the reason that they are part and parcels of the institution of marriage.

or

If a wife excludes husband from decision making process under the MTPA the husband being frustrated is left to exercise his choice for excluding her by way of divorce

or

If the woman is so unmindful to the unborn that she prefers to exclude it for her liberty, and law plays the role of abetment, husband finds it a case of moral distraught and deceit for which he will prefer to exclude the wife from the circumspherence of wedlock so that such morally wretched anti-unborn occurrences are not possible to recur.

The aforementioned alternative statements are value saturated slices of argumentation possible in the case. This much needs to be added that in case husband would legally and validly be getting any woman as his wife through marriage after the divorce granted to him and per chance she is an alter ego of Usha, she should translate her legal right to MTP and create hardships for husband if he does not change any patriarchal mind set against the emancipative directives of the MTPA. May this not happen !

Let us look at how the court (the Honourable Delhi High Court as per justice Mahindra Narain disposes of the petition.! The court citing *Deepak Kumar Arora V. Sampuran Arora*[1] wherein it was observed that if a wife

1. (1983)1 DMC 182

underwent abortion with a view to spite the husband then it might in certain circumstances be contended that the act of getting herself aborted had resulted in a cruelty; observed that aborting the foetus in the very first pregnancy by a deliberate act without the consent of the husband would amount to cruelty. On this basis a decree of divorce against Usha was granted under section 13 (1)(a) of the Hindu Marriage Act 1955.[1]. The after effect of the exercise of emancipatory largesse of MTPA was that recipient Usha was victimized to be poor victim of law within Hindu Marriage Act. In this context it deserves mention that there could be a possible remark that the Hindu Marriage Act, 1955 and this MTPA 1971 differ conspicuously with regard to parameters of social concepts of exclusion and inclusion, and accordingly the constructions upon these legislations will have differentials about practical implications of exclusion and inclusion.

Exclusion and inclusion in the Pre-conception and Prenatal Diagnostic tests and techniques (Prohibition of Sex Selection Act 1994.hereinafter referred to as PNDT Act).

The PNDT Act has a special status as regards the comparative paradigms of the concepts-social exclusion and inclusion. The speciality is like this : the IPC provision (section 312) talking about an absolute exclusion of the liberty of abortion that was later turned down by the MTP Act (i.e. liberty of abortion included in the jurimetrics of the above social exclusion as per the Indian Penal Code in matters of gender was further subjected to inclusion i.e. the PNDT Act excluded the misuse of MTPA for sinister purposes of female feticide as it was found that practices of female foeticide were resorted generally due to advent of sex-selective medical tests and techniques in vogue. This backdrop of the progressional genesis of MTPA and PNDT is a responsible translation of the evolution of law to cater to social demands as well as practices-good and bad-of exclusion and inclusion of public and individual mores.[2] Such demands and practices bear upon moral configuration of legislative processes and any legislation is not an untouchable in the dynamics of social exclusion and inclusion.

Talking of a possible understanding of implications of exclusion and inclusion in judicial interpretations in the following relevant judgments will reveal some interesting points to note :-

(A) The case of Vinod Soni and another v. Union of India,[3] the facts of the case were that a writ petition was filed by a married couple who sought to challenge the constitutional

1. AIR1987 Delhi 86 at p.89
2. AIR1987 Delhi 86 at p.89
3. 2005Cr.L.J.3408 (Bombay High court)

validity of the PNDT Act on two grounds (a) it violated (equality as a matter of fundamental right) and (b) it violated Article 21 of the constitution of India (Right to life or personal liberty) in as much as it prohibited sex selection at pre-conception stage. At the time of argument however, the petitioners did not prefer to agitate the challenge on the ground of Article 14. Thus the matter was centered round right to liberty being violated by the PNDT Act and therefore PNDT Act being unconstitutional and ultravires.

Hon'ble Justice V.G.Palshikar and Hon'ble Justice V.C.Daga dismissing the petition observed that right to liberty as per Article 21 of the constitution can not be stated to be violated by the PNDT Act as much as it proscribed sex-selection at pre-conception stage. The unborn was the frame of reference and in the opinion of the learned judges the very meaning of right to life or personal liberty would be frustrated if the unborn was excluded absolutely from the exercise of such liberty, which no human civilization would justifiably and benevolently permit. In words of the judges "........ the right to life or personal liberty cannot be expanded to mean that the right to personal liberty includes the personal liberty to determine the sex of a child which may come into existence................." So far as the interpretation of Article 21 in relation to procreative freedom was concerned, the court observed as follows-

> *(1) "......the right to personal liberty cannot expand by any stretch of imagination, to liberty to prohibit coming into existence of a female foetus or male foetus which shall be for the nature to decide. To claim a right to determine the existence of such foetus or possibility of such foetus come into existence, is a claim of right which may never exist. Right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself be a right........"*[1]

> *(2) ".......The Article 21 is now said to govern and hold that it is a right of every child to full development. The enactment namely Sex Selection Act of 1994 is tactfully enacted to further this right under Article 21, which gives to every child right to full development whatever be the sex of that child ...."*[2].

(B) The case of Vijay Sharma & Another v. Union of India & other[3].

Quite akin to the above case, there came a case before Bombay

1. 2005 Cr.L.J. 3408 at P. 3410
2. 2005 Cr.L.J.3408 at p.3409
3. AIR 2008 Bombay 29

High Court (*Vijay Sharma & Another v. Union of India & another*[1] in which the petitioners challenged the constitutional vires of some of the provisions of the PNDT Act. The petitioners were a married couple having two female children and therefore they were desirous of expanding their family provided they were able to select the sex of the child. According to them they were eager to enjoy love and affection of both son and daughter, simultaneously and their existing children would enjoy the company of their own brother provided they were allowed to select and have a male child. Their experience with clinics for treatment for the selection of the sex of the foetus was sad as the clinics did prefer to abide by the rule of total prohibition of PNDT Act in this regard. Thus they were before the court with advocacy of equality jurisprudence within Article 14 of the Constitution Of India in reference to PNDT Act and the MTP Act in the matter that the MTPA provides liberty of termination of pregnancy whereas PNDT Act puts an absolute restriction upon liberty to sex-selection; thereby creating difficulties which need to be removed. The Court comprising Mr. Swatenter Kumar C.J. and Smt. Ranjana Desai, Judge stated that the two Acts addressing to different aims and objections could not possibly be compared and a comparative study of the two Acts would reveal that the provision of the PNDT Act in matter of ban on sex selection at preconception stage or thereafter could not be called discriminatory and therefore violative of Article 14 of the constitution of India. The judicial interpretations in the above two cases can be paraphrased sociologically also by employing the key concepts of exclusion and inclusive policy. Below cited are the possible responsible paraphrases.

(i) While the MTPA was an inclusive policy of libertine jurisprudence of right to privacy in matter of induced abortion against the century/odd old exclusionary backdrop of the Indian Penal Code proscribing & punishing miscarriage or induced abortion, the effect of such inclusive policy of the legislature was obtained in the flagrant misuses of the provisions of the MTPA even to the extent of practices of sex-selection leading to female feticide. This posed a crisis of social morality which was corrected by yet another incursion into the inclusive policy of the MTPA. This was nothing but an indicator of social indexing of law and morality, or in other words a reflection of the non-stop continuum of a cyclic process of societal cognitive phenomena of exclusion and inclusion both being based on pressure groups initiatives and practices .

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1. Ibid

(ii) It is interesting to note that in jural concepts like liberty (i.e. abortion, prenatal diagnostic test and techniques), the social factors contribute to write exclusion or inclusion and accordingly the dimension of social justice is induced.

(iii) Thus it could be stated that the concepts of exclusion and inclusion are the tools of the development of practical jurisprudence in a civil society. Due to this reason it sounds great sense to iterate that there always remains differences between the social concepts of exclusion & inclusion and their jural individuation, which is the march of sociological jurisprudence impinging on the strand of thought or theory that law is but only one means to achieve social purpose and therefore the enterprise of law will always be an exercise or programming in societal perspective although evermore subjected to the frameworks of morality, welfare and justice.

(iv) Rewriting *Vinod Soni & other v. Union of India* sociologically in matters of importing exclusion and inclusion in planned parenthood process of (age-old unplanned parenthood has become an exception only, not a rule of the go of the parentage), the interesting aspect of including unborn as an absolute to respect except for the nature to have an ultimate course of justice dispensed at its option, simply suggests that the processes of exclusion and inclusion do not necessarily for all purposes refer to tangible facts only but also to communitarian good of ideas & ideologies unborn being an idea and ideology indisputably. Yet unborn is reported to be a poor victim of exclusionary temperament of partners of marriage, and even wealthy status does not make any difference is a big ghastly episode of the ill-conceived exclusionary behaviouralism in parenthood.

E.CONCLUDING OBSERVATIONS

In light of the foregoing discussions of jural interpretations of social exclusion and inclusion, the following concluding observations are possible to be put up :-

(i) The concepts of social exclusion and inclusion are very relevant for legislation, however not necessarily so for adjudication. This finding lends support to the differential between the legislative and judicial functions in a civil society the former being a representative of the society strives to translate social aspirations and moral oughts, whereas the latter being a formalistic institution need not be directivity

governed by social concepts until and unless the same is the express or implied intention of the legislature as well as there are enabling provisions in the statute in this regard. Moreover it can not be denied that judicial mind is generally not insensitive to the concepts of social exclusion and inclusion and in cases the ends of justice are not subserved by reference to literal constructions of the law but the social concepts of exclusion and inclusion may be adhered for necessary guidance and help-although very much within the limitations of judicial power of interpretations of statutes. In other words judiciary generally does not prefer to legislate indirectly in light of social exclusion and inclusion, which is the function of the legislature. Jurisprudentially also a separation of powers between the judiciary and the legislature is a desirable practice, which good governance ardently expects.

(ii) The social concepts of exclusion and inclusion transmit the organized reaction of people. Such reactions may or may not be just, fair and reasonable. It is therefore required that the surfaced reactions be treated juridically by agencies of competent jurisdictions within the enforceable jurisprudence with a valid space for adaptations for international law and global sociology.

(iii) Talking specifically in reference to approaches of exclusion and inclusion of woman's special status in some gender laws like law of rape, abortion and prenatal diagnostic tests, very interesting inferences can be drawn.

a. Social reactions against the apex court's verdict excluding Mathura from socially held criminal justice (society expected the police constable to be punished) were responsible for reform in rape law evincing the impact of social exclusion and inclusion on law reform.

b. Similar is the contributory role of exclusion and inclusion in the realm of abortion law in India. While society had practiced more breach than observance of the restrictive abortion law for pretty a long period of time of about more than a century this aspect of social exclusion was the compelling force for liberalizing abortion law in 1971 again a landmark reform in gender law.

c. The prenatal diagnostic test law of 1994 is a replica of yet another face of the impact of social exclusion and

inclusion. Ever since the advent of the liberal abortion law in 1971 while the misuses of this law through sex selection & female foeticide became rampant endor- sing steeping falls in the female –male ratio in society, this posed a compelling state interest to arrest the exclusionary trend of doing death to unborn by a law for total prohibition on sex-selection, bringing home the narrative that an inclusionary interplay of safe- guarding unborn's sanctity deserved to be carved into exclusionary stance of the MTPA. This transformation depicts a cyclic process involving exclusion and inclusion interdependence in evolution of gender law relating to planned parenthood in India.

(iv) Last but not the least, it attracts mention that the social phenomena of exclusion and inclusion are central to the dynamics of jurisprudence, as law cannot dishonour them for the reason of practicality that the transformation from law on books to law in society depends in volumes on the behavioural patterns of exclusion and inclusion, necessitating the urge that living law in a civil society would always be evolving only after legal metamorphoses of social exclusion and inclusion relating to a subject matter for a recipient section of society. For this reason social exclusion and inclusion would ever be jural matrix in a free and liberal democracy.

Socially Immoral and Legally valid Concept of Live in Relationship: An Analysis

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Live in Relationship, they say, is the manifestation of the individualism of the 19th century. Benthem and James Mill enunciated it in 19th century form and it received its fullest expression about the middle of the century in the works of John Stuart Mill and Herbert Spencer. However from 1880 onwards its authority began to wane and by the end of the century it had been largely superseded by the absolutist theory of the State.[1] Jone Stuart Mill opined that Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

This concept (live-in-relationship) is also justified on the conviction of Benthem that since men were fundamentally selfish each man could be trusted to look after his own interest. J.S. Mill emphasized that freedom of conduct is one of the principle ingredients of human happiness and quite the chief ingredients of individual and social progress. He claims complete freedom of conduct for the individual in all matters not affecting the community. However he concedes that in matters which do effect the community, the community has a right to coerce the individual if his conduct is prejudicial to its welfare.

Any theory does not remain vital for every age to come. Individualism in its modern form differs quitely from the old concept and underlines that group and not the individual is the unit of society for political purposes. Prof. Laski thus writes that, our liberty means the consistent expression of our personality in media where we find people like minded with ourselves in their conception of social life. The very scale of civilization implies collective plans and common effort.[2]

An individualistic philosophy, which certainly plays a large part in modern reform proposals, postulates the individual right to happiness. People should be able to live out their lives as joyfully as is possible, under conditions which enable them to develop their personal capacities and potentialities. This means the right to correct errors, the right to cast off a burden that has become intolerable and may lead to the sapping of vital energies and the moral fibre of the affected parties.[3]

1. C.E.M. Joad -Introduction to Modern Political Theory, p. 2
2. Political though in England, Locke to Benthem, 1955, p. 203.
3. Law in a charging Society W. Friedman, 1972, p. 239.

That individualism prefers the joys and responsibilities of parenthood to the greater material comfort and freedom of movement of childlessness.[1]

The proponents of live in Relationship try to give a philosophical basis to this concept underliving the fact that the relationship is based on the theory of existentialism. Thus Heidegger is of the view that the individual is to struggle for his existence in a world into which he is thrown and he can choose his ways of such living as will enable the individual to over come his loneliness by realizing himself in a hostile world. However, Jespers, one of the philosophers of this school negates this theory and underlines that the evolution of the legal order is not nearly an external compulsion imposed by a hostile world upon the individual, but Law and legal order on the other hand is source of his self realisation. Thus the learned philosopher mentions that just as nature cannot be denied without man destroying himself so men cannot reject society, profession, state, marriage and family, without being blown to the winds, and he can find himself only if he enters into them. Thus he reminds us of the fact that the individual, however, much he may struggle with the realisation of his self, can do so only within the framework of a social order. We have to remember this basic fact that the role of Law, as Professor Pound has already told us, is to reconcile between conflicting interests. There is inevitable tension between individual and community claims and the function of the Law is to mediate between them. The live-in-relationship is a part of that very phenomena which encourages tension between individual conduct and social more.

The Law is there to maintain a delicate balance between the individual freedom of conduct and social function of submitting the society to accepted norms.

Marriage is social institution which provides a status to the husband and wife. It is a status in which the state has also got a vital interest. A status is a social stratification based in social recognition rather than any kind of material power. It is the particular powers standing in the law, which determines his rights and duties in particular context. As far as Hindu way of life is concerned marriage is a sanskar. The impact of western culture has deeply penetrated among the new generation of our country. The result is that instead of entering in the institution of legal marriage in legal way, the new generation has started to prefer live-in relationship, as an alternative to the married life. This generation thinks that the marriage is the burdensome process, the process of divorce demands vexus obligation, while live-in relationship is an easy way to get rid of any of the spouse at his or her sweet will after the biological needs

1. Idid, p. 288

are fulfilled. This live-in relationship is an escape route to marriage, which enables the parties of such relationship to part away whenever the relationship becomes sour. Though emerged as new facet of Institution of the marriage in the modern techno-aerosputnic era, it is a rape on this institution as such.

It is strange that our legislature has also paved the way for such relationship. Thus section 2 (f) of the Domestic Violence Act, 2005 while defining 'domestic relationship' says that domestic relationship means a relationship between two persons who live or have at any point of time, lived together in shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption, or family members as living to set her as a joint family.

Apart from this Maharastra Government approved a proposal in Oct. 2008 that a woman involved in such a relationship for a 'reasonable period' should get the status of wife and 'wife' under Section 125 of Cr.P.C., be amended to include a women living with a man like his wife for a reasonable period of time. The intent of the legislation is to provide strong foothold to the women so as to achieve 'women empowerment' in practical terms. At present the women involved in such relationship cannot seek alimony or a share of property or child maintenance. Therefore in order to protect the pecuniary interests of the women the aforesaid Bill was put forth. Both this legislative and executive proposals are meant for empowerment of women. How the interest of women will be protected in a traditional rituals ridden society like ours is an important question to be answered. The Hindu Marriage Act, though permits the divorce, yet provides many safeguard so that reconciliation rather the dissolution of the marriage is made possible. The live-in relationship does not guarantee the process of reconciliation, the pain and suffering of the departed pairs of such relationship will be unutterable.

As far as judicial approach is concerned, in this regard it is not in consonance with Indian tradition, culture and even with intention of the Hindu Marriage Act. The court has held that such live-in relationship may be immoral but not illegal. Thus in *Payal Sharman v. Nari Neketan*[1] The Court observed that in the opinion of the court men & women even without getting married can live together if they wish. This may be regarded as immoral by society but not illegal. Again in May 2009 Hon'ble Mr. Justice Arijit Pasayat ruled in a case before him that the dowry prohibition act will apply to live-in relationship also. Earlier in Jan. 2009 the Court ruled that long live-in relationship is a valid marriage and a children born out

1. AIR 2001, All 254

of such relations will no more be called illegitimate. They will enjoy the same status as that of any other child born out of a marriage. Thus the rulings of the court also go in the directions of boosting the process of live-in relationship.

Dakhash Sharma has very aptly written that- "It would be pertinent to point out that the purpose and concept of marriage is procreation whereas it is. an exception, rather than the rule that, progeny is contemplated in live-in relationships. A man and woman in such relationships will never consider procreating as a necessity. A solemnised marriage gives legitimacy to the children born out of the marriage. A married couple gets a respected status in the society and is considered to be its responsible citizens. Since time immemorial the institution of marriage epitomises love, tolerance, patience, responsibility and concern. It, in turn paves the way to another important social institution called 'Family'. Therefore it is considered to be one of the pillars of society whereas live-in relationship is a transient arrangement which has emerged in the modern age wherein a couple stays together only as long as they wish. This practice has found favour with the so called educated and enlightened sections of our society who want to live in accordance with their own whims and fancies without making compromises and adjustments. By its very nature a live-in-relationship is temporary and since these relationships are temporary in nature, they are bound to breakup even from its very inception due to lack of commitment. Also the concept of live-in relationship is not an accepted practice in our society. Surely therefore the commission of such an act would strain the relationship of an individual with his/her parents and the community. Although, in today's era women have achieved an independent status in the society but the fact cannot be denied that they are still way behind when compared with their male counterparts who still play a dominant role in a marriage relationship, their unruly behaviour and the social dogmas. The social status of women in India is not so strong that they can indulge in such casual live-inrelationships. They would be looked down upon and would face social criticism every-where. So this practice of live-in relationships threatens the security and stability of women in India. The sole motive of the individuals involved in such relationships is to experience the pleasure but not pain; whereas contrary to this, marriage encourages long term emotional investments in the relationships and provides stability and permanency to the individual's life. It makes him/her dutiful towards the society. As stated by Barnett Brickner, a social analyst- "Success in marriage does not come merely through finding the right mate but through being the right mate". Therefore in comparison

with the sacred bond of heavenly wedlock, live-in relationship suffers from myriad flaws and faults.[1]

Though the live-in-relationship has been imitated from western notions of social relationship, the courts there do not approve such relationship, as it would disturb the social fabric. Thus in *Ferrand v. Ferrand*[2] the court has observed that 'marriage means more than some word between two contracting parties then having meretricious relations with each other and must be followed by public recognition of marriage relationship after mutual pronouncements thereof.

In *Balanti v.. Stimen Coal Cake Company*[3] The court said the mere living together in ostensible relation of husband and wife do not constitute a marriage. Again in *Differari v. Terry*[4] it has been held that a meretricious cohabitation when there was never any kind of marriage either cermonial, statutory, or common law, does not constitute a marriage.

It is clear therefore that even the western society does not give importance to such relationship because such relationship encourages illicit association and has a bad effect on the public morality. The Institution of Marriage intends to assume the relation of husband and wife the live-in relationship does not have such intention. Even in the slave custom, prior to the invent of the civic society living together did not constitute a marriage. Why the state alongwith the judiciary is bent upon giving recognition to such relationship is beyond our comprehension. We must remember that immorality can't be sustained through law enforcing machinery. It is true that individual has got a right to determine his rights and duties at his free will but as N.E. Simmonds points out.[5] On this type of approach, therefore, legal rights may be thought of as a variety of moral rights. They are the moral rights that we have as a result of the existence of legal institutions such as bodies of publicly ascertainable rules and courts committed to the principle of formal justice.

The phenomenological Jurist Scheler has also underlined that values are real objective and autonomous essences which can be intuitively experienced and apprehended by men and therefore constitute a source of obligations. He thus concludes that moral values have a more general quality than sense and lust experiences.[6]

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1. Live-in-Relationship- A threat to the Institution of Marriage, A.I.R. 2009, Journal Section, pp 131-139
2. 240 N.Y.S. 65, 67
3. 200 A. 226-37
4. 99 S.W.2D 290-293
5. Central Issues in Jurisprudence Justice, Law and Rights, pp. 140
6. Friendmenn Legal Theory, 5th ed.pp. 197-98

In this context the doctrine of social essence has to be taken into account, this doctrine means that:

3. It is wrong to think that individual can be understood, without reference to the social relations in which he participates.

Thus it is most desirable that state must come forward to interfere because in the preservation of the Institution of the marriage state is also vitally interested. In order to preserve it, state is entitled to use its law when the limits of tolerance is reached. A set of minimum standard of life must be maintained. Such conduct give a feeling of indignation and disgust in the mind of the fellow citizen. The law cannot undertake not to interfere. Thus, the US Supreme Court upheld in *Reynold v. US*[1] and in *Mussa v. Utah.*[2] Laws against polygamy, notwithstanding, the provision in the Constitution that congress shall make no law in respect of establishment of religion or prohibiting the free exercise thereof.

Thus taking over all view of the Indian culture and tradition there is a strong need to save the Institution of Marriage being reaped by such semi-marriage act.

Dias has rightly pointed out that another reason is that social existence depends upon co-ordination, which in turn requires restraint in individual action. Such restraint may spring from laws imposing duties to limit liberties, or it may spring spontaneously from moral sense. Freedom and duty are Jurally opposite, each beginning where the other ends. Accordingly, legal restrictions may only be relaxed safely when there is a sufficient degree of self control bred from moral discipline. This has hitherto been linked to religion, but today religion is fast losing its former appeal and with this the influence of its moral teaching. To relax legal restraints at a time when there is less and less assurance of self-discipline is the path to social destruction; which is why the reinforcement of moral discipline by law must continue.[3]

Lord Devlin has advocated that the law should continue to support a minimum morality.[4] In a lecture to the British Academy, Lord Devlin, criticised the Report of the Wolfenden Committee, which had advocated lifting the ban of the criminal law from homosexuality between consenting adults. He maintained that the law should continue to support a minimum morality. His case rests on the fact that each society has evolved certain moral institutions which form part of its own particular fabric. Marriage, for instance, is an institution of societies generally; but monogamy is not

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1. 145 (1878)
2. 333 US 95 (1948)
3. Jurisprudence 4th ed. 1976, pp. 143
4. The enforcement of moral, Maccabaeon Lecture in Jurisprudence, 1959

essential to every kind of society though it is to Christian societies, and is thus a part of their particular fabric. Just as most institutions of a society are interrelated and interdependent, so also is its particular morality; one cannot pluck one strand without puckering the whole.

Since as some moral ideas are part of the fabric of a given society, that society is entitled to preserve them, and thus itself, against anything capable of destroying them; which is why Lord Devlin compares contravention of this morality to treason. The law cannot undertake not to interfere. For such moral institutions are like the legs of a chair; if one is pulled out, the chair may not necessarily topple over, but it will be more prone to do so. From this comparison it will be evident that he does not seek to preserve moral ideas against change. What he urges is that responsible persons should be slow to change laws protecting them.

George Bernad Shaw warned 60 years ago[1] that institutions of family and marriage must be preserved at every cost. The live-in relationship should not be encouraged and marriage is the only mean to constrain the unhealthy, unsocial and illicit relations. Thus, those who argue for the development of live-in-relation in the name of individual freedom must remember that individualism is good but social essence is better.

It is submitted with due respect to the Supreme Court, that it must adhere to its own dicta that such relationship has to conform to social norms as well.[2]

However, we must not forget that enforcement of morality is the responsibility of the State. Our constitution does not ask us to ponder over what has been but it stresses upon what may be the effect with the changing times. New conditions are brought in to existence and the right of privacy must be examined in the context of other rights and values. Mr. Justice Mathew is quite right when he says that if right to privacy is a fundamental right then the question would be whether a state interest is of such paramount importance as would justify an infringement of the right. Obviously, if the enforcement of morality were held to be a compelling as well as a permissible state interest, the characterization of a claimed right as a fundamental privacy right would be of far less significance.[3]

The learned judge has also made it clear that the right to privacy in any event will necessarily have to go through a process of case by case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from

1. The Arms and The Man.
2. Chetan Das vs. Kamala Devi (2001) 4 SCC, 250
3. Govind vs. State of M.P. (1975) 2 SCC, 148

them which one can characterize as a fundamental right, we do not think that the right is absolute.

Therefore it is imperative on the part of state to come forward to safeguard social and cultural essence of Indian way of life. With respect, it is submitted that to accord recognition to children born of such relationship, or to make such women entitled to get maintenance under section 125 of Cr.P C as if she is a wife, by the Judiciary is against the judicial sentinel. It is accepted legal principle that state is empowered to step in where, What J.S. Mill calls 'injury to other occurs'. The concept of live-in relationship is socially immoral, our judiciary accepts it.[1] Therefore to term this socially immoral relation legally valid is against the Judicial tradition. Professor C.K. Allen, long ago asserted that our judges have always kept their fingers delicately but firmly upon the pulse of the accepted morality of the day.[2] "The Law of England", asserted Lord Mansfield, "prohibits everything which is contra bonos mores".[3] We have also the opinion of Viscount Simonds of House of Lords in Shaw Vs Director of public prosecutions[4] that immoral activities are a conspiracy to corrupt public morals and that judiciary has residual power where no statute has yet intervened to supersede the common law to superintend those offences which are prejudicial to the public welfare. Thus the functions of the judiciary is to ease the tension between social morality and individual ethics and social morality and legal order. Live in relationship is a conspiracy to corrupt the moral fabric of society, and is to encrouage unlawful sexual intercourse. Such co-habitation encourages the illicit relation that is a relation outside the marriage.[5] This should be discouraged at all cost if our highly modernized society is to endure for long. It is the legal duty of the Judges, lawyers, academicians and the enlightened sections of the society to use against this practice and to save the society from going to the path of disintegration.

1. Payal Sharma v. Nari Nikatan, AIR 2001, All 254
2. Legal Duties, p. 201
3. Jones vs. Randal (1774) 1 Cowp. 17 at 39
4. (1962) AC 220
5. R vs. Champman (1959) I.Q.B. 100

CYBER CRIME-CHALLENGES TO THE CRIMINAL JUSTICE SYSTEM

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The germ of criminal jurisprudence came into existence in India' from the time of Manu. In the category of crime, Manu recognized assault, theft, robbery, false evidence, slander, criminal breach of trust, cheating adultery and rape. In western jurisprudence, the real notion of crime percolated from Roman law. In modern times, crimes have multiplied to an extraordinary degree. It has revolutionized the concept of criminal law. Various statutes have been enacted imposing different kinds of duties, liability and restrictions, on individuals.

The definition of crime has always been regarded as a matter of great difficulty. It is a general principle of criminal law that a person may not be convicted for a crime unless the prosecution has proved beyond reasonable doubt that:

(a) He has caused a certain event, or responsibility is to be attributed to him for the existence of a certain state of affairs, which is forbidden by criminal law; and

(b) He had a defined state of mind in relation to the causing of the event or the existence of the state of affairs.

It is one of the principle of the English criminal law that a crime is not committed if the mind of the person doing the act in question be innocent. It is said that *actus non facit reum, nisi means sit rea,'* (the intent and act both must concur to constitute crime).[1] However, intention, motive, *mens rea*, knowledge, innocence, mistake of fact, mistake of law, are some of the mental elements that play a significant part in criminal law.

The word *actus* connotes a 'deed', a physical result of human conduct. The *actus reus* includes all the elements in the definition of the crime except the offender's mental element. It is not merely an act but may consist in a state of affairs not including an act at all. A well known definition of *actus reus* is "such result of human conduct as the law seeks to prevent".[2]

1. Ratan Lal & Dhiraj Lal, 'Indian Penal Code, 1860'.
2. J.C. Smith and B. Hogan, 'Criminal Law', 31-36, (1988), (ed.10th)

The *actus reus*, then, is made up generally, but not always of conduct, and sometimes it's consequences and also the circumstances in which the conduct is relevant. Sometimes a particular state of mind on the part of the victims is required by the definition of the crime. If so, that state of mind is a part of the *actus reus* .

The element of *actus reus* in Internet crimes is relatively easy to identify, but is not always easy to prove. The fact of the occurrence of the act that can be termed as a crime can be said to have taken place when a person is:

1. trying to make a computer function.
2. trying to access data stored on a computer or from a computer which has access to data stored outside.
3. if he or she uses the Internet to attempt to gain access, signals pass through various computers. Each of these computers is made to perform a function on the instructions which the person gave to the first computer in the chain. Each such function can be said to constitute *actus reus*.
4. attempting to login, even if those attempts fail. This is because most hackers have an automated system of trying passwords, the very running of which can be considered to be a function being performed.

The second essential constituent of a crime is what is often called "a guilty mind", also know as *mens rea*. Until the 12th century, a man could be held liable for a harm simply because his conduct caused it, without proof of any blameworthy state of mind, whatsoever, on his part. However, this interpretation underwent a gradual change until modern Common Law came to regard a guilty mind of some kind or some other such mental element as always being necessary. *Mens rea* may comprise a number of different mental attitudes including intention, recklessness and negligence.[1]

Intention is a state of mind consisting of desire that certain consequences shall follow from party's physical act or omission. It may be that in doing a particular act a man may have more motives. Motive is something which prompts a man to form an intention. The Supreme Court in *Basdev v. State of Pepsu*[2] observed:

> *"We have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and*

1. See for a detailed discussion on these aspects of mens rea, J.W. Cecil Turner (Ed.) Kenny's outlines of Criminal Law, 31-36, (1962), (18th Edn.).
2. AIR 1956 SC 488

knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things."[1]

An essential ingredient for determining *Mens* rea on the part of the offender is that he or she must have been aware at the time of causing the computer to perform the function that the access intended to be secured was unauthorized. There must be, on the part of the hacker, intention to secure access, though this intention can be directed at any computer and not at a particular computer. Thus, the hacker need not be aware of which computer exactly he or she was attacking.[2] Further, this intention to secure access also need not be directed at any particular or particular kind of programme or data. It is enough that the hacker intended to secure access to programs or data *per se*.[3] Thus, there are two vital ingredients for *mens rea* to be applied to a hacker:

(a) The access intended to be secured must have been unauthorized;

(b) The hacker should have been aware of the same at the time he or she tried to secure the access.

The second ingredient is easier to prove if the accused hacker is a person from outside who has no authority whatsoever to access the data stored in the computer or the computers; however, it is difficult to prove the same in the case of a hacker with limited authority.

In *Daya Singh Lahoria* v. *VOI*[4] it was held that a fugitive criminal, if extradited into India under an extradition decree, could be tried only for the offences mentioned in the extradition decree and for no other offences and the criminal courts of India would have no jurisdiction to try such fugitive for any other offence.

Computer crimes generally and crimes committed through the Internet in particular are extremely challenging because of their sophistication and variance from crime in the ordinary sense. Crimes on the Internet are characterized by the high technological innovation, anonymity, distance from the scene of crime, extent of its reach and most important, the

1. Id. 490.
2. This suits the prosecution in matters relating to unauthorized access on the Internet, because it is often complicated to prove that a person intended to login to a particular computer.
3. Gringras, 'The Law of Internet' 221, (1997)
4. (2001) 4 SSC 516

unusual profile of the criminal, many times a juvenile. The challenge posed to law enforcement with the advent of Internet is two fold:

(a) New crimes and new kinds of delinquent behaviour using the Internet and computers, for example, hacking, spamming, logic bombs, etc;

(b) New methods of committing traditional crimes, for instance, commission of a bank fraud using the net or defamation through e-mail.

The difference between crime on the internet and a crime with another modern technology like the telephone is the importance of the first variety. While crimes are rarely directed against a telephone as an instrument, computers often become the victims of attack. Nature of crime on the computer is challenging and requires new definition and understanding and a restatement of accepted norms of criminal conduct and punishment because of several reasons. Computer apart from being costly equipment is also the repository of immense amount of data. This data can sometimes contain valuable scientific inputs, purely personal matter, study works, e-mails, and official work. Tampering with this data or stealing it is much more harmful than stealing the computer. This requires recognition of data as a special form of property, data as a privacy right.

Clearly, with the development of new technology, and with the realization that such technology affects human life and relations and the peace and order a proprietary rights in society, laws must be framed to regulate conduct accordingly. Let's take for instance theft of passwords. Passwords are central to the operation of computers. These are nothing but keys to gain entry into computers systems and nothing but a combination of alphabets and numbers. Stealing a password or unauthorized access using someone else's password must be recognized as the beginning of crime. Similarly, networks need to be recognized as highways for movement of information and communication and not for cranks to dig holes or put up impediments. Networks, as private roads, can be entered into only by authorization. Web pages as private property akin to display in shops, can be browsed, but not tampered with or destroyed. Law enforcement can be divided in two parts: (a) prevention and (b) detection.

As far as the law enforcement agencies are concerned, prevention of crime is more important and one of priority than the detection of one after it has occurred. In the physical world, the police prevents crime through techniques like patrolling, rushing on emergency calls, presence in important functions, fairs festivals, rallies, guarding of vital installations and providing security to VIP's, collection of intelligence on suspects,

surveillance, warning minor offenders are also important aspects of crime prevention. The question is, are these techniques used by police in the real world for the prevention of crime desirable or practical in the wired world. Are they sufficient or should new and innovative methods of prevention be used. Another concern facing us is that, many of the social norms and ethics, which act as a deterrent to the commission of crime in the real world, are either non-existent or undeveloped for conduct over the Net.

If Internet is accepted as a medium of communication and publication and exchange of ideas, the caution here must be that any form of preventive measures should be minimal and least obtrusive. Otherwise, preventive methods may run into difficulties of "prior censoring", "violation of privacy, " which would never be acceptable in a democratic country. Prevention of crime online definitely needs a different approach than in the real world, some of which are discussed below.

1. **Deterrence as a means of prevention**: - Neal Katiyat[1] in his article argues that increasing the costs of commission on cyber crime is an important method of prevention. He argues that cyber crimes when compared to real world crimes are cost effective and less risky which makes it more attractive to commit. Such crimes are also difficult to detect because the offender alone with the aid of his computer is involved in its commission. The element of conspiracy is noticeably lacking making detection difficult and costly. These are adequate reasons to increase the risks of commission of such crimes and to make their commission more costly. If similar acts are committed online and offline, Katiyal argues that online crimes must bear more punishment and more fines. His argument for increase in costs is also based on the ground that most criminals on the Net are youngsters who are always short of cash. He also argues that sites that cater to illegal material, for example, those which supply hacking tools, must compulsorily be made pay sites. He bases these arguments on the ground that, if Napster were a pay site, the number of people downloading music from it would have been much lesser than what was.

2. **Technology as aid to prevention**: - High technology crime must be prevented using high technology. Rather than relying on social pressure or legal sanctions, Lessig explains how physical and electronic barriers can prevent harmful acts.[2] In real space, installing lights on street corners can prevent muggings and other forms of street crime, and placing concrete barricades near inner-city highway

1. Neal Kumar Katiyal, "Criminal Law in Cyberspace", 149 U. Pa L. Rev 1003, 1009 (April 2001).
2. Lawrence Lessig, 'Case and Core Law of Cyberspace, 53-60 (1999), Ct. op. ibid.

ramps can prevent suburbanites from quickly driving in and out to purchase drugs. In cyberspace, Internet browsers can be configured to prevent repeated password entry attempts for sensitive websites or could be coded to prevent certain forms of encryption. Larry Lessig contends that cyberspace can be regulated through law and programming code.

This form of regulation using the architecture appears to be an effective an unobtrusive form of regulation. A good example of the beneficial uses of technology is the uses of filters by parents to protect their minor children from online pornography, of course, a closer security also raise the issue of under power in the hands of Internet service providers or governments to lay down ground rules of conduct. While technological inputs like virus detectors or filters to keep away certain kinds of pornography is helpful, this is conferring power on some agency to examine contents over the Internet, inviting dangers of censorship.

Encryption is another way by which Crime can be prevented. Encryption is a system or technique that renders a message unintelligible by anyone other than intended recipient of the message. Encryption while being a boon to prevent crime has also the demerit of being used by criminals, terrorists, narcotic smugglers, and child pornographers to conceal their crime. Encryption was a major controversy during the early days of telegraph too.[1]

3. **User Awareness**: - Since computers which are the subjects of crime are in the possession of victims, making them aware of security measures is one of the best means of preventing crime on the Internet. The following quote attributed to James Barksdale, CEO of Netscape underlines the necessity to build awareness, "in the mind of those with large financial stakes in the development of electronic commerce and money, security is to the Internet what safety is to the airlines. The greatest security threat to computer systems is from insiders. Studies reveal that over 70% of all computer theft is committed from within organizations. Keeping a check on one's own employees is a means to prevent such offences. But the problem here is that some of the means of monitoring like, keystroke monitoring checking logs of usage, etc. may be in conflict with privacy rights.

Some of the ways in which security can be protected are - access control through use of secure passwords, cryptographic tools making communications secure, shielding of emissions, firewall technology to screen traffic.[2] Organizations stand to gain a lot by training their employees in safe practices and threats to security.

1. See generally, Tom Standage, the Victorian Internet 100-107 (1998)
2. A hardware and or software system that process an internal system or network from the outside world or protects one part of the network from another.

PRIVATE VIOLENCE, PUBLIC WRONG AND HUMAN RIGHTS: RECONCEPTUALIZING DOMESTIC VIOLENCE IN INDIA

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Introduction

Violence is a fact of every woman's life. Her condition seems to be defined by the violence she faces, be it in the home, at the workplace or anywhere else; be it from strangers, intimate partners or armed forces of the State; be it in the public or in the so called "private" domain; be it by exclusion or by inclusion. This makes violence against women systemic, pervasive and of epidemic proportions in our societies.[1] Obtaining legal redress for victims of domestic violence has been a grave challenge for women in India, as existing laws are inadequate to protect against many forms of violence against women.[2] Domestic violence legislation in India has historically been directed towards dowry related violence, thereby excluding the myriad of cases involving domestic violence for reasons unrelated to dowry demands. Due to these limited characterization, perpetrators of domestic violence unrelated to dowry demands have escaped prosecution, contributing to a pervasive societal attitude tolerant of other forms of violence against women[3].

Domestic violence in India is a function of the status of women in society and cultural notions regarding gender roles. Even before birth, women face glaring gender discrimination[4]. This pervasive gender discrimination is deeply rooted in the notion of patriarchy, endorsed through a woman's life, from her childhood through death. Even in contemporary Indian society, women are viewed as property of men and measured by their ability to produce male children[5]. For women, marriage

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1. Indira Jaising, *"One Step Closer to Equality for Women, the Prevention of Domestic Violence"* 3658 at 36 in : NJA's Education For Educators Programme on "Effective Implementation of the Law Against Domestic Violence : Role of the District Judiciary", Aug. 24-26, 2007.
2. Indira Jaising, "Domestic Violence and the Law", (2002) *1 Journal of National Human Rights Commission*, at 72. Cited in : Pami Vyas, "Reconceptualizing Domestic Violence in India : Economic Abuse and the Need for Broad Statutory Interpretation to Promote Women's Fundamental Rights". (2006-07) *13 Michigan Journal of Gender & Law*, at 178.
3. Pami Vyas, referred in *Ibidem*, at 179.
4. *Ibid*, at 184.
5. Laureal Remers Pardee, "The Dilemma of Dowry Deaths : Domestic Disgrace or International Human Rights Catastrophe?" (1996) *13 Ariz. J. Int'l & Comp. Law*, at 502. Cited in *Id.*, at 185.

imposes additional familial expectations such as dowry practices, assimilation into a joint family and increased responsibilities of wife, mother and daughter-in-law. Despite such contributions, however women's formal work participation rates are still lower than men[6].

Domestic violence is prevalent among women regardless of age, education level, socio-economic class and family living arrangements.[7] Eighty-five percent of men surveyed by the International Centre for Research on Women (ICRW) admitted that they had engaged in some forms of domestic violence in the past year[8]. Furthermore, 70% of female domestic violence victims in India believe that "wife-beating" is justified by at least one reason[9]. Such alarming statistics signal the ubiquity of patriarchy in Indian society. Essentially, men commit domestic violence to exhibit a form of control and power over their wives or partners[10]. Statistics further indicate that while physical violence declines as a woman's socio-economic status rises, other types of violence, including emotional and sexual abuse, either remain constant or increase among women of different socio-economic statuses[11]. Against this background this article explores the linkage between the private violence as a public wrong in the context of Human Rights norms and analyzes the legislative as well as judicial efforts in protecting women from domestic violence. It also analyzes the efficacies and shortcomings of the legal regime in India.

I. Concept of Domestic Violence

Domestic violence is one of the numerous forms of violence against women that have been identified worldwide[12]. The United Nations defined the term "violence against women" in a 1993 declaration as "Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life"[13]. The declaration further notes that violence

6. Pami Vyas, *Id*, at 185-186.
7. International Centre for Research on Women, *"Domestic Violence in India"*, Available at : http://www.icrw.org/docs/Indiainfobulletin.pdf (Accessed on 07-04-2010).
8. International Centre for Research on Women, *"Men, Masculinity and Domestic Violence in India"*, [Hereinafter ICRW Report : Masculinity] Available at : http://www.icrw.org/docs/DV_India_Report4_52002.pdf. (Accessed on 07-04-2010)
9. Pami Vyas, *Supra* n. 2 at 187.
10. Lori Haise, Mary Ellsberg, Megan Gottemoeller "Ending Violence Against Women", (1999) 27No4 *Population Report*, at 5.
11. ICRW Report : Masculinity, *Supra* n. 8 at 61, 78.
12. Andreea Vesa, "International and Regional Standard for Protecting Victims of Domestic Violence", (2004) *12:2 Journal of Gender, Social Policy & the Law*, 309-360, at 312.
13. Article 1, Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, UN GAOR, 48th Sess., Supp. No. 49 at 217, UN Doc. A/ 48/49 (1993), Available at : http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/a.res.48.104.en(Accessed on 07-04-2010).

against women can occur within the family or within the general community and that it may be condoned or perpetrated by government officials[14]. Having included domestic violence as a form of violence against women, the United Nations further explained that:

> *"The term 'domestic violence' is used to describe actions and omissions that occur in varying relationship. The term is used narrowly to cover incidents of physical attack, when it may take the form of physical and sexual violations... The result of such physical violence can range from bruising to killing; what may often start out as apparently minor attacks can escalate both in intensity and frequency... "Domestic Violence"... [also] include[s] psychological or mental violence, which can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial and personal resources"...*[15].

Whereas talking in Indian perspective the domestic violence legislation, i.e. the Protection of Women from Domestic Violence Act 2005 (hereinafter PWDV Act) gives a wide definition of 'Domestic Violence'[16]. Apart from physical abuse, it also covers sexual abuse, verbal, emotional and economic abuse. Any act or omission or commission or conduct which harms, injures, endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so. Physical abuse means any act which is of such nature as to cause bodily pain, harm and danger to life or health or impair the health or development of aggrieved person. It also includes assault, criminal intimidation and criminal force. Sexual abuse includes any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. Verbal and emotional abuse includes insult, ridicule, humiliation, name calling and insult or ridicule specially with regard to not having a child or a male child. It also includes repeated threat to cause physical pain to any person in whom the aggrieved person is interested.

So far as economic abuse is concerned it includes deprivation of all or any economic or financial resource to which the aggrieved person is entitled under any law or custom or disposal of household effects, alienation of assets whether movable or immovable in which aggrieved person has an interest or is entitled to use by virtue of domestic relationship. Thus

14. Article 2, *Ibidem*, (stating violence in the family may include battery, sexual abuse and marital rape while violence in the general community may include rape, sexual harassment at work and trafficking in women).
15. UN Office at Vienna, Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence : A Resourse Manual* (1993).
16. Section 3, The Protection of Women from Domestic Violence Act 2005.

the scholars in India and at the international level have confirmed that "gender-based violence, such as... domestic violence, involves some form of physical assault or intrusion. As a result, these forms of violence inherently violate the rights of bodily integrity and security of the person"[17]. However, others point out that "extensive and continually expanding research literature supports the assertion that domestic violence is associated with the wide range of traumatic psychological reactions..."[18]. Thus such kind of violence, violating the rights of bodily integrity and security of persons, becomes a serious Human Rights problem.

II. Domestic Violence as a Human Rights Issue

"The concept of Human Rights is one of the few moral visions ascribed to internationally." Domestic violence violates the principles that lie at the heart of this moral vision: the inherent dignity and worth of all members of the human family, the inalienable right to freedom from fear and want and the equal rights of men and women[19]. The aim of Human Rights movement is to enforce State's obligations in this regard by denouncing violations of their duties under international law[20]. The concept of State responsibility defines the limits of a governments' accountability for Human Rights abuses under international law[21]. Traditionally, the idea of vicarious liability for such acts is perfectly acceptable one. Such responsibility flows from the authorized acts of agents of the State or persons acting with the apparent authority or condonation of the State. In the traditional Human Rights practice, States are held accountable only for what they do directly or through an agent, rendering acts of purely private individuals, such as domestic violence crimes, outside the scope of State responsibility.

More recently, however, the concept of State responsibility has expanded to include not only actions directly committed by States, but also State's systematic failure to prosecute acts committed either by low-level or para-state agents or by private actors. In these situations, although the State does not actually commit the primary abuse, its failure to prosecute the abuse amounts to complicity in it[22].

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17. *Supra* n. 12 at 313.
18. Ela Grdinic, "Application of the Elements of Torture and Other Forms of Ill Treatment, as Defined by the European Court and Commission of Human Rights to the Incidents of Domestic Violence". (2002) 23 *Hastings International & Comparative Law Review*, at 232. Cited in : *Ibidem.*
19. Dorothy Q. Thomas, Michel E.Beasley, "Domestic Violence as a Human Rights Issue", (1993) *15 Human Rights Quarterly*, 36-62, at 37. (Published by The Johns Hopkins University Press.)
20. Riane Eisler, "Human Rights : Towards an Integrated Theory for Action", (1987) 9 *Human Rights Quarterly*, at 287.
21. *Supra* n .19 at 41.
22. *Ibidem.*

The test of the State's responsibility for any act differs depending upon whether the actor is the State or a private individual. To hold the State accountable for the actions of State actors, one of two things must be shown: (1) The State explicitly authorized the act (i.e., a senior official committed or authorized it); or (2) The State systematically failed to prosecute abuses committed by its agents, whether or not these acts were ordered by senior officials[23].

The test is different when the actors are private. For example, systematic non enforcement of laws against armed robbery by private actors alone is not a human rights problem; it merely indicates a serious common crime problem. Non-prosecution of the crimes of private individual becomes a human rights issue (assuming no State action or direct complicity) only if the reason for the State's failure to prosecute can be shown to be rooted in discrimination along prohibited lines, such as those set forth in Article 26 of the Covenant on Civil and Political Rights[24]. There are rights to bodily integrity in international Human Rights law which armed robbery appears to violate[25]. However, these are rights against the State, not rights that States must enforce against all other persons.

The State's international obligation with regard to the acts of private individual is to ensure that where it does protect people's lives, liberty and security against private depredations, it must do so without discrimination on prohibited grounds[26]. Therefore, there would have to be systematic, discriminatory non enforcement of the domestic criminal law against murder or assault for domestic violence to constitute a human rights issue, not merely for showing that the victims' lives ended or their bodies were harmed[27].

The expansion of State responsibility to include accountability for some acts of private individuals as described above is one of the factors necessary to permit analysis of domestic violence as a human rights violation. The inclusions within the limits of State responsibility of failure to prosecute human right abusers, whether by State agents or private individuals, is not, in and of itself , enough to position domestic violence within the human rights framework. Evidence of a State's failure to prosecute is not sufficient unless a pattern can be shown that reveals the failure to be a gender discrimination and thereby a violation of the internationally guaranteed right to equal protection of the law[28].

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23. *Ibid.* at 42.
24. *Id.*
25. Article 3: UDHR, Article 3,6 : ICCPR.
26. Article 26 : ICCPR.
27. *Supra* n. 19 at 43.
28. Article 2, 26 : ICCPR.

III. International Responses to Domestic Violence

(A) UN Efforts for the Protection of Women's Rights:

Domestic violence is a deeply rooted problem that exists in every country in the world. For the most part, however, the international community has yet to create effective legal standards that exclusively address domestic violence[29]. The UN addressed the issue of violence against women as part of its general ban on gender-based discrimination. Shortly thereafter, the 1993 World Human Rights Conference confirmed that women's rights are human rights[30], and States could then be held accountable for condoning and/or failing to prevent domestic violence and, thus, failing to protect their female citizens in general. A Platform for Action was established in 1995 at UN Fourth World Conference on Women in Beijing, China[31]. The Beijing Declaration which accompanied the 1995 Platform for Action, solidified the world community's resolve to, *inter alia*, "ensure the full enjoyment by women and the girl child of all human rights and fundamental freedoms,... take effective action against violations of these rights and freedoms"[32] and Prevent and eliminate all forms of violence against women and girls[33].

The 1995 Beijing Declaration and Platform for Action were the first steps towards showing a strong commitment at the international level to combat violence against women (domestic violence included). In order to ensure that such commitment was maintained, UN General Assembly decided to convene a special session entitled "Women 2000: Gender Equality, Development and Peace for the Twenty First Century" better known as Beijing +5[34].

At this session, member States adopted a Political Declaration[35] and an Outcome Document entitled "Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action"[36]. The Political Declaration reaffirmed the goals of the 1995 Beijing Declaration and

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29. *Supra* n. 12 at 310.
30. *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Chapter II, Part B, Section 3, UN Doc. A/CONF. 157/24 (1993).
31. Beijing Platform for Action, Fourth World Conference on Women, UN Doc. A/CONF. 177 20, Ch.1 (1995). Available at: http:// www1.umn.edu/humanrts/instree/e5dplw.htm (Accessed on 07-04-2010)
32. *Ibidem*, at para 23.
33. *Ibid.* at para 29.
34. *Id.*, at ch.4, para 114 (a). (encompassing violence that occurs in the family, such as battery, sexual abuse and marital rape).
35. G.A. Res. S-32/2, UN GAOR, 23rd Special Sess., UN Doc. A/RES/S-32/2 (2000). (reaffirming commitment to goal and objectives of the Beijing Declaration and Platform for Action as well as the implementation of the Platform for Actions critical areas of concern). Available at : http://www.un.org/womenwatch/daw/followup/ress232e.pdf (Accessed on 07-04-2010).
36. G.A Res S-23/2, UN GAOR, 23rd Special Sess., UN Doc. A/RES/S-23/3 (2000). Available at : http://www.un.org/womenwatch/daw/followup/ress233e.pdf (Accessed on 07-04 2010).

Platform for Action, including the eradication of violence against women (as well as domestic violence)[37].

The 1995 Beijing Declaration and Platform for Action as well as the 2000 Political Declaration and Outcome Document carry political weight but they are not, on their own legally binding instruments[38], unless they are seen as embodying notions of customary Human Rights law, which has a legally binding effect upon States[39].

(B) Human Rights Instruments and Domestic Violence:

Despite this unfortunate void, that the international community has yet to create effective legal standards that exclusively address domestic violence, the rights of battered women may be asserted under international and regional human rights conventions that are legally binding upon ratifying States. The International Bill of Human Rights comprised of the Universal Declaration of Human Rights (UDHR)[40], the International Covenant on Civil and Political Rights (ICCPR)[41], and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[42], sets forth general human rights standards that victims of domestic violence may invoke against their State of citizenship. That is, battered women who have exhausted all domestic remedies and who still find that the State has failed to adequately address their grievances may hold the State liable if that State is a party to the above instruments. The same can be done under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[43] together with its Optional Protocol[44] and under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[45]. Likewise, regional instruments may offer protection for battered women. The European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR)[46], the American Convention on Human Rights (ACHR)[47],

37. *Supra* n. 35 at paras 1-2.
38. *Supra* n. 12 at 3-8.
39. *Ibidem.*
40. Article3,5, 25 (1) of UDHR, Available at: http://www1.umn.edu/humanrts/instree b1udhr.htm. (Accessed on 07-04-2010).
41. Article 6 (I), 7 of ICCPR. Available at : http://www1.umn.edu/humanrts/instree/b3ccpr.htm (Accessed on 07-04-2010)
42. Article 12 of ICCPR. Available at http://www1.umn.edu/humanrts/instree/b2esc.htm (Accessed on 07-04-2010).
43. General Recommendation No. 19 of CEDAW. UN Doc. A/47/38(1992). Available at: http:/ www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm (Accessed on 07-04 2010).
44. Optional Protocol to CEDAW, Oct.6. 1999. Available at: http://www1.umn.edu/humanrts instree/cedawopprot-2000. html (Accessed on 07-04-2010)
45. CAT. Dec. 10, 1945. Available at: http://www1.umn.edu/humanrts/instree/h2catoc.htm (Accessed on 07-04-2010)
46. Article 2,3,14 of ECHR. Available at : http://www.hri.org/docs/ECHR50.html. (Accessed on 07-04-2010)
47. Article 4,5 of ACHR. Available at: http://www.oas.org/juridico/English/treaties/b-32.html (Accessed on 07-04-2010)

together with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Inter-American Convention on Violence Against Women)[48] and the African Charter on Human and Peoples' Rights (African Charter)[49] are the major regional human rights documents that may be invoked by victims of domestic violence.

The former UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, various scholars, non-governmental organizations, such as members of the World Organization Against Torture (WOAT)[50] and Amnesty International[51] have all concluded that, in certain circumstances, domestic violence could qualify as torture. Amnesty International indicates that "the severity of harm inflicted upon women by private individuals can be just as damaging as that inflicted on women who are tortured by agents of the State" and that, in both cases, abuses are internationally inflicted[52]. Amnesty International interprets CAT to impose responsibility upon States to not comply, consent or acquiesce in[53] such private forms of torture as well as "to exercise due diligence and to provide equal protection in preventing and punishing such abuses by private individuals"[54].

Professor Rhonda Copelon found striking similarities between the elements of torture listed in Article 1 of CAT and aspects of domestic violence: physical and psychological pain are present in both instances[55], the general intent required in torture cases is also often present in episodes of domestic violence when abusers plan their attacks upon women[56] and pain is inflicted with a specific purpose in mind in both situations[57].

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48. Article 1,3,6 of Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, Available at : http://www1.umn.edu/humanrts instree/brazil1994.html. (Accessed on 07-04-2010)
49. Article 4, 5, 16 (1) of ACHPR. Available at : http://www.hrcr.org/docs/Banjul/afrhr.html (Accessed on 07-04-2010)
50. WOAT. (providing information about the largest international coalition of NGOs fighting against torture, summary execution, forced disappearances and all other forms of cruel inhuman and degrading treatment) Available at : http://www.omct.org (Accessed on 07-04-2010)
51. Amnesty International: *Stop Violence Against Women*. (When States fail to take the basic steps needed to protect women from domestic violence or allow these crimes to be committed with impunity, States are failing in this obligation to protect women from torture Available at: http://www.amnestyusa.org/stopviolence/factsheets/violence.html. (Accessed on 07-04 2010)
52. Amnesty International Report 2000, "*Broken Bodies, Shattered Minds : Torture and Ill Treatment of Women*" at 5. Available at: http://web.amnesty.org/library/index/engact40001200l (Accessed on 07-04-2010)
53. CAT, *Supra* n. 45, at Article 1, para 1.
54. AI 2000 Report, *Supra* n. 52 at 6.
55. Rhonda Copelon, " Recognizing the Egregious in the Everyday : Domestic Violence as Torture."(1994) 25 *Columbia Human Rights Law Review*, at 311-19. Cited in : *Supra* n . 12 at 335. (describing various methods of abuse including beating, burning, raping, starving, depriving of sleep and threatening the victim or the victim's family or friends).
56. *Ibidem* at 327 (observing that male batterers plan their abuse).
57. *Ibid* at 329 (detailing purposes such as eliciting information, punishment, intimidation, discrimination, destruction of personality and reduction of capacities).

Professor Copelon explains that while in cases of torture, State involvement must be established, such a requirement is not the *sine qua non* of the definition of torture as a human rights violation[58].

IV. Domestic Violence Legislation in India

(A) Legislative History:

Historically, Indian law concerning domestic violence has focused primarily on the dowry context[59]. Section 498A, IPC, also known as the 'Anti-Cruelty Statute', criminalizes a husband or relative of the husband (in many cases a father or mother-in-law) for (a) "any willful conduct... likely to drive the woman to commit suicide or to cause grave injury... of the woman" or (b) "harassment of the woman where such harassment" is due to a demand of dowry[60]. The statute thus criminalizes cruelty upon wives, including physical and mental cruelty[61]. For a long time, however, police refused to register cases under the provision unless some form of dowry demand was involved[62]. The second statute, section 304B, IPC known as the 'Anti-Dowry Statute', criminalizes the husband or relatives of the husband when his wife dies under abnormal circumstances within seven years of marriage and it is shown that she was "subjected to cruelty or harassment by her husband" or his relatives in connection with a demand of dowry shortly before her death[63]. Since this law deals specifically with dowry demands, it is ineffective in punishing other types of domestic violence. Since these laws often proved to be an insufficient means to prosecute incidents of domestic violence not having to do with dowry demands, domestic violence has remained rampant without any means of criminalizing abusers of such incidents. Thus, a desperate need was felt for an Act which could specifically cater to this cause and help women attain a dignified status, and henceforth the bill was passed by the legislature in 2005 and it was brought in application in 2006[64].

(B) Creditable Features of the Act:

An important advance made by the Act in understanding the nature of domestic violence has been in the combination of civil and criminal remedies. While civil remedies can be tailored to meet the circumstances

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58. *Id.* at 341.
59. Indira Jaising, "Domestic Violance and the Law", (2002)1 *Journal of National Human Rights Commission*, at 74.
60. The Criminal Law (Amendment) Act, No. 46 of 1983, IPC : Section 498 A (a)-(b).
61. *Ibidem*, Section 498A of IPC
62. Jaising, *Supra* n. 59
63. IPC : Section 304 B (I).
64. "*Protection of Women from Domestic Violence Act 2006- Was it worth the effort?*" Available at : http://www.legalserviceindia.com/article/1150-Protection-of-Women-from-Domestic-Violence Act.html (Accessed on 07-04-2010)

of each case, criminal sanctions provide a greater deterrent effect among perpetrators[65]. Punishment under this Act is provided only for the breach of protection order. In the case of **Dr. Vinod Parashar & others vs. State of UP**[66] it was held that proceedings under the Act are essentially civil in nature and it is only for the purpose of cutting down the procedural delay the power has been conferred on judicial magistrate for the enforcement of right under the provisions of Cr. P. C[67].

(C) Definitions:

The preamble to this Act reads like a definition and covers the entire subject matter of the Act. Apart from stating that the Act is intended to effectively protect the rights of a woman and to give them a decent and dignified status, it stresses on the need of an 'aggrieved women' to seek immediate relief, compensation and also rehabilitation[68].

i) Aggrieved Person & Respondent:

This Act has been passed to provide more effective protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Under Sec. 2 (a) of the Act "Aggrieved Person" means any woman who is or has been in domestic relationship with the respondent and has been subjected to any act of domestic violence by the respondent. It also covers those women who are sisters, widows, mothers, single woman, or living with abuser and are entitled to legal protection under the Act.

Whereas, for the purpose of this Act, "respondent" can only be an adult male person who is or has been in domestic relationship with the aggrieved person. Complaint under this Act can be filed by aggrieved wife or a female living in a relationship in nature of marriage against the relative of husband or male partner [Sec.2(q)]. The word "relative" has not been defined in the PWDV Act. Hence the ordinary meaning will have to be assigned. The example of relatives would be father, mother, sister, uncle, brother etc. of the respondent. The ordinary meaning of word relative will include female relatives also[69].

ii) Domestic Relationship & Shared Household:

Domestic relationship is a relationship between two persons who live or at any point of time lived together in a shared household and they

65. *Ibidem.*
66. 2008 (3) ALJ 324.
67. Rekha Agnihotri, "Fair Sex and PWDV Act", *UTR Brochure -1 (B.No. 227/09): Reading Material for Induction Training Programme IT-2 of Newly Appointed Direct Recruits to H.J.S.*, at 168.
68. *Supra* n. 64.
69. Rekha, *Supra* n. 66 at 168-169.

are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or a family member living together as joint family. One important expression "relationship in the nature of marriage" has been used in the definition of domestic relationship. This expression refers those relationships where there is no marriage between the parties, in the sense of solemnization of marriage under any law. Yet the parties represent to the world that they are couple and there is stability and continuity in relationship.

So far as **shared household** is concerned, it is a household where the aggrieved person lives or at any stage has lived in domestic relationship either singly or along with the respondent and whether the household is owned or tenanted either jointly by the aggrieved person or the respondent or owned or tenanted by either of them in respect of which the aggrieved person and the respondent or both jointly and singly have any right, title, interest or equity and also includes such household which belongs to joint family and respondent is the member of joint family. In *S. R. Batra vs. Smt. Taruna Batra*[70] Hon'ble Supreme Court held that Shared Household would only mean that the house belonging to or taken on rent by the husband or the house which belongs to the Joint Family of which husband is a member. Exclusive property of the mother of the husband cannot be called a shared household. Definition of shared household in Section 2(s) of the Act is not very happily worded. The Court has to give it an interpretation which is sensible and which does not lead to chaos in society[71].

iii) DIR:

Domestic Incident Report is a report made in prescribed format on receipt of a complaint of domestic violence from an aggrieved [Sec.2 (e)]. The format of DIR is provided in Form I of the PWDV Act. It is to be used for recording complaints of domestic violence brought by aggrieved person to the protection officer or service provider. It is a record of the fact that an incident of violence has been reported. It has to be signed by protection officer or service provider who fills it[72].

(D) Jurisdiction:

The court of judicial magistrate first class or metropolitan magistrate, as the case may be within the local limits of which the aggrieved resides or carries on business or respondent resides or cause of action has arisen shall have jurisdiction. In *M. A. Mony vs. M. P. Leelamma*[73] Kerala High

70. 2006 (8) Supreme 1002
71. Rekha, *Supra* n 66 at 169.
72. *Ibidem.*
73. 2007 Cr. L.J. 2604

Court held no civil court or family court has jurisdiction to deal with the petition under section 12 of the Domestic Violence Act. If overlapping claims have been made before the judicial magistrate or family court, option to claim identical relief elsewhere vesting in her would not oust jurisdiction of judicial magistrate. In *Smt. Neeetu Singh vs. Sunil Singh*[74] it was held that application for maintenance filed before the family court under section 12 of Domestic Violence Act is not maintainable because Family Court is not competent to entertain it.

(E) Procedure Followed By The Court:

Though the PWDV Act is civil in nature but all proceedings under the Act shall be governed by the provisions of the Code of Criminal Procedure. Court can also lay down its own procedure for disposal of application under Sec. 12. (Sec.28). Sub rule 5 of rule 6 provides that the application under Sec. 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of Cr. P. C..

So far as service of notice is concerned rule 12(c) provides that notices under Sec.13 or any other provision of the Act, the provisions under Order V of Civil Procedure Code or the provisions under Chapter VI of the Code of Criminal Procedure as far as practicable may be adopted. Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of C.P.C. or Chapter VI of Cr.P.C. respectively[75].

A DIR is meant to be a faithful record of what the woman says. This means that all complaints must be recorded in a non biased manner as long as the act complained of falls within the purview of the PWDV Act. If a woman is not able to narrate her story then the protection officer may call upon her on separate occasions to fill in the DIR.

The DIR is to be forwarded to the Judicial Magistrate by the Protection Officer. A copy of DIR is to be forwarded to the police officer incharge of Police Station in the jurisdiction. The service provider recording the DIR may forward it to the Protection Officer and the Judicial Magistrate[76].

The Judicial Magistrate should preserve it for the purpose of maintaining the record. It may be referred to in the cases where application is directly filed by the aggrieved person. It may be used in cases where an application is filed by an aggrieved person with the assistance of a Protection Officer along with a DIR. An aggrieved woman can file an application for reliefs without filling DIR. There is no need for a DIR at

74. 2008 (2) ALJ (NOC) 359.
75. Rekha, *Supra* n 66 at 170.
76. *Ibidem.*

the stage when an application is filed in court as stage for DIR is over and its purpose (i.e. Recording the history of violence) does not exist. Once an application is filed in the court, the Judicial Magistrate may order the Protection Officer to conduct a home visit or any other report under rule 10(1), if the circumstance so requires[77].

(F) Application for Obtaining Relief:

Aggrieved person, protection officer appointed under sec. 8(1) or any other person on behalf of aggrieved person may file an application under section 12 to obtain relief. An application under Section 12 may be presented by aggrieved person through protection officer. An aggrieved person can also file a complaint directly to the Judicial Magistrate concerned. It is the choice of aggrieved person to directly approach the magistrate or approach protection officer in case of emergency. In *Milan Kumar Singh and Another vs. State of U.P. and Another*[78] it was held that it is the choice of aggrieved person to file complaint directly to the magistrate concerned. She can approach protection officer in case of emergency. Where an application under Sec.12 is filed directly to the magistrate it is not necessary to call for domestic violence report, because Sec.2 (e) provides that DIR means a report made in the prescribed form on receipt of a complaint of domestic violence from aggrieved person whereas Rule 2(b) provides that complaint means any allegation made orally or in writing by any person to protection officer. From the bare reading of Sec. 2(e) and rule 2(b) it is clear that when an aggrieved person approaches to protection officer and makes a complaint then DIR should be filled. When an aggrieved person approaches to the judicial magistrate directly then, magistrate, if circumstances require under rule 10 (a) direct the protection officer in writing to conduct a home visit of shared household premises and make preliminary enquiry if the court require clarification, in regard to granting *ex parte* interim relief to the aggrieved person[79].

(G) Reliefs under the Act:

i) **Protection Order (Sec.18):** Under Sec. 18 Magistrate may pass a protection order in favour of aggrieved person and prohibit the respondent from committing any act of domestic violence, aiding or abetting any act of domestic violence, entering the place of employment of aggrieved person attempting to communicate in any form with aggrieved person alienating any asset operating bank lockers, accounts causing violence to the dependents of the aggrieved person.

77. *Ibid*
78. 2007 (5) ALJ 679.
79. Rekha, *Supra* n 66 at 171.

ii) **Residence Order (Sec.19):** Under this act it is provided that every women in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. *In Vimla Ben Ajit Bhai Patel vs. Vatsala Ben Ashok Bhai Patel*[80] it was held that Sec.17 & Sec.20 of Act, 2005 provides for higher rights in favour of wife. She not only acquires a right to be maintained but also acquires there under a right of residence which is a higher right but this right extends only to joint family properties in which husband has a share. In *S.R. Batra vs. Smt. Tarun Batra*[81] it was held by the Hon'ble Supreme Court that exclusive property of the mother of the husband cannot be called as shared household. While disposing application under Sec.12 Magistrate may pass an order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from a shared household. Court can also direct respondent to remove himself from the shared household or restraint the respondent or any other relatives from entering any portion of the shared household. Court can also restraint the respondent from renouncing his right in the household except with the leave of magistrate or alienate his share or encumber.

iii) **Monetary Relief (Sec.20)**: Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include the loss of earning, medical expenses, loss caused to the property, maintenance under Sec.125 of Cr.P.C.[82].

iv) **Custody Order (Sec.21):** Magistrate may, at any stage of the hearing of application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf.

v) **Compensation Order (Sec.22):** The Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries including mental torture, emotional distress

80. 2008 (4) SCC 649.
81. *Supra* n 69.
82. Rekha, *Supra* n 66 at 171.

caused by the acts of domestic violence. Where a decree for any amount as compensation or damages has been passed by any court in favour of aggrieved person, the amount if any paid or payable in pursuance of the order made by magistrate under this Act shall be set off against the amount payable under such decree and the decree shall be executable for the balance amount if any left after such set off [Sec.12(2)].

vi) **Power to Grant Interim and *Ex Parte* Orders (Sec.23):** Where the magistrate is satisfied that an application *prima facie* discloses that respondent is committing or has committed violence and there is likelihood that respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of affidavit of aggrieved person[83].

(H) Breach of Protection Order :

Breach of protection order or an interim protection orders by the respondents shall be cognizable and non-bailable offence and shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend up to Rs. 20,000/- or with both.

Rule 15 provides that an aggrieved person may report a breach of protection order to the protection officer who shall forward a copy of such complaint with a copy of protection order of which a breach is alleged to have taken place to the concerned magistrate. The aggrieved person may, if she so desires, make a complaint of breach of protection order directly to the magistrate or the police. Rule 15(8) provides a breach of protection or interim protection order shall immediately be reported to the local police station and shall be dealt with as a cognizable offence. When charges are framed under Sec. 31 or in respect of offences under Section 498-A IPC or any other offence not summarily triable, the court may separate the proceedings of such offence to be tried in the manner prescribed under Cr.P.C. and proceed to summary trial of the offence of breach of protection order under Section 31 in accordance with the provisions of Chapter 21 of Cr.P.C.[84]. It is a special Act and upon the sole testimony of the aggrieved person, the court may conclude that an offence under section 31(1) has been committed by the accused.

(I) Evidence of Domestic Violence:

Since, the relief sought under PWDV Act is civil in nature, proof will be tested on the balance of probabilities and proof beyond reasonable doubt is not required. It must be remembered that domestic violence is

83. *Ibidem* at 172.
84. *Ibid.*

a unique offence as it takes place within the privacy of home where no outside witnesses are likely to be present. If it happens within the joint family then, although the relative of the husband witness the violence it is unlikely that any relatives of the husband will support the woman. The woman, therefore, will be the primary witness under the PWDV Act. When no eye witness evidence is available and there is only the statement of woman, circumstantial evidence is considered to arrive at a conclusion on the facts of the case.[85]

(J) Appeal:

An appeal to the court of Session shall lie within 30 days from the date on which the order made by the magistrate is served on the aggrieved person or the respondent as the case may be, whichever is later (Section 29).

(V) Use, Abuse or Misuse of the Act: A Critical Assessment

In the grab of providing protection, this legislation in fact, strikes at the very foundation of marriage by promoting intolerance and encouraging a unnecessary litigation even for petty domestic disputes. The law is based on a wrong notion and assumes men as the sole perpetrators of domestic violence. This is altogether a wrong impression and only confirms the gender bias in favour of women created by this law. Giving of such sweeping legal powers to women, while withholding protection to male victims, is tantamount to systematic legal victimizations of men. The law is wholly gender specific and rules-out any possibility of domestic violence against a man. The law confers right in a woman without imposing any liability, while a man is overburdened with discriminative liabilities with total denial of rights.[86]

The slack drafting of this law will allow cunning and unscrupulous women to teach a lesson to any of her male relative at her sole behest. Moreover any such frivolous complaint will be treated as words of god or gospel truth by virtue of this law. This has virtually empowered all women to punish men at their will. This law not only recognizes but also gives legal sanctions to apprehensions no matter how insignificant and fizzy, they are. The mere belief of a person, even a stranger will be sufficient for reporting the matter to the protection officers. It can very easily become a weapon for women to extort money,as in such cases usually the police arrests the husband and in-laws. This arbitrary decision of the police to favour the daughter-in-law is a newfound ethic, to protect the rights and liberalization of women, even though it violates the principles of natural

85. *Id.*
86. *Supra* n 64

justice. A bizarre aspect of this act is that it does not distinguish between actual abuse and threat of abuse and gives equal weightage to even a likelihood of abuse. Also in regards to the notion of "emotional abuse, insults and verbal abuse," enshrined in the Act, the terms in itself are extremely relative and subjective, often depending on one's mindset and shockingly, the husband does not have any recourse in case of any abuse by the wife.

Unlike other women protection laws, the Act almost gives the legal sanction to extortion of money by women under the guise of economic abuse. Refusal to pay any sum of money for whatsoever reason will attract the provisions of this law. Non-payment of rental related to the shared household will also constitute economic abuse even if the husband himself is devoid of sufficient resources or even if he is in jail. Another pertinent laxity that can be pointed out also as recently reiterated by the Hon'ble Supreme Court is that the definition of "shared household" as mentioned in the Act is vague and laid that the parents independent property in which the husband does not have any share will not amount to "shared household".

Another substantiation of the Act being unreasonable and excessive is that in relation to the right of residence wherein by including the divorced wives, former girlfriend and former live-in partners in the list of women facing domestic violence, this Act gives enough leeway to women to harass innocent men and turn the heat on their former partners. Now even a traitorous woman cannot be thrown out of house as she can easily threaten her husband or in-laws of false domestic violence charges as the Act expressly mentions that in case of absence of any other evidence, her sole testimony shall be relied upon by the magistrate in deciding the existence and extent of violence. The Act almost gives a legal sanction to any relationship, which is not at all socially acceptable like the live-in relationship. In addition to this the respondent is totally deprived of his legitimate rights over his property as he cannot alienate or dispose it off if an order is passed under the Act. On the contrary there is an added liability on his part to arrange for an alternate accommodation or pay the rent for the same[87].

Another certain home breaking implication of this Act is that as consanguinity is a necessary aspect of marriage, and as matter of fact a ground for separation under the marriage laws, one of the provisions of this Act bars the husbands from even asking, leave apart pressurizing, their wives for sex. Another perturbing feature is that as a protective measure or more so a biased feature conferred by this Act in the form of

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87. *Ibidem.*

prohibition of any sort of communication to be made by the husband if there is a *prime facie* case.

An unusual oddity in this enactment is that the magistrate has been entrusted with unaccountable power as he is invested with the responsibility to take cognizance of the case and also for executing his own orders in favour of the aggrieved women even without being approached for their execution. An additional disturbing aspect is that the magistrate trying the case to evaluate not the individual incidence of violence, but the overall circumstances as well.

The major inappropriate implication would be that it would shut down the chances of reconciliation in future. On the one hand the Act punishes a man for forcing her wife to leave job while on other it provides maintenance to the very same wife. But the law does not provide for any such remedy to a male in any similar circumstance[88].

All the provisions of this Act, however, do not serve the purpose of effective implementation as the above examples, sometimes due to lack of resources or due to extraneous factors Sec.12(4) for example, is a laudable provision, which makes it mandatory for the magistrate to hear a case within three days of the complaint being filed. The idea of prompt relief is carried on in Sec.12(5) which directs the magistrate to finish hearing the case within six months of its reaching court. However, the overcrowding of cases in courts makes it difficult to see if they can be practically disposed off.

A further criticism of the Act is with respect to Sec.14 which may prescribe counselling for either of the parties, and delay proceedings up to 2 months. As has been discussed earlier, addressal of domestic violence has always tended to focus on conciliation between the perpetrator and the victim, even within the criminal justice system. This is due to the judicial perceptions regarding the importance of preserving the family units, even to the jeopardy of a victim of domestic violence. In recognition of this fact, a provision such as Sec.14 can be counterproductive in two ways. Firstly, it might jeopardize speedy disposal of the case, and secondly it may also convince the aggrieved to continue in that situation without taking any further action.

The Act makes provision for the appointment of protection officers. Protection officers as per the Act, are a group of officers whose duty is to assist the aggrieved party with the processing and completion of the domestic violence proceeding. The institution of protection officer is a usual one, as emphasizing the need for societal intervention in order to

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88. *Ibid.*

prevent domestic violence, by directly addressing from an external standpoint the relationship of power and control in an abusive relationship. The problem however lies with the resources required for the creation of such a rung of officers[89].

Conclusion

The Act presently is heavily in favour of women. Chances of it being misused and scandalously abused are enormous. It can therefore, be well stated here, that this act could become a pawn in the hands of the "so called aggrieved" who can easily manipulate it for her advantage which can be well supported by these statistical researches, the most alarming of it being that in case of married couples, the male to female suicide ratio 63:37 thus confirming that men are the ultimate targets. This Act should have ideally included stringent penal provisions for curtailing the instances of abuse and mishandling, but herein, instead various opportunities have been made available which can ultimately lead to its grave misuse and can thus act as a catalyst for breaking homes. Thus, this Act does not contain any provisions for creating awareness or for strengthening and preserving family as an institution or even providing chances for reconciliation or even scope for improvement to "the husband". The main beneficiaries of this Act will obviously be women of propertied upper class. But there is no doubt that given the hypocritical, patriarchal and insensitive nature of the society, this Act would definitely be instrumental in putting an end to all the degradation and brutality meted out to women[90].

The human rights approach to domestic violence may also have the effect of improving international protection for women. Although, until recently, "women's issues" have been seen as marginal to the "real" issues of human rights, placing domestic violence within the mainstream of the theory and practice of international human rights draws attention to the extent and seriousness of the problem. This not only points out the past failure of the human rights community adequately to counter the problem, but brings to the light the urgent need for the international human rights system to function more effectively on behalf of women[91].

It is eventually, the neo-collectivist and neo-socialist approach which is needed in the society that can essentially free both men and women from shackles of brutality and ultimately put them on an equal pedestal in all respects. Women, who have for decades been silent victims of

89. *Id.*
90. *Id.*
91. *Supra* n. 19 at 62

oppression and enslavement will now have a better chance of fighting the injustice without slightest hesitation and it can be well summed up with the quote by Karl Marx that equal laws cannot be applied to unequal people. Thus, any enactment, which forcefully subjects a section of society to conduct and serve the other section at its willful pleasure, would only enhance the level of oppression in the society and leave incurable marks on the face of the most democratic society[92].

92. *Supra* n 64.

Legal Education in India: Challenges and Prospects*

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Introduction

Education plays an important role in the process of social change. It is very potential instrument, a powerful medium of bringing changes in the society. It is an all round drawing out of the best in the body, mind and spirit of child and man. It is concerned with enabling an individual to understand and reflect upon knowledge and processes and to act in a critical and responsible manner.

Legal education, being a species of main stream education involves not only the study of law but a study which also inculcates the ability to make use of law, to analyze it, and to criticize it as a member of the legal community. Similar to that of education, it focuses on the synthesis of individual and social aims which include emphasis on the growth of individuality and freedom and laying stress on the development of society, its solidarity and strengthening of rule of law. According to Gajendragadkar Committee[1], " *the aim of legal education would be to make the students of law good lawyer who have absorbed and mastered the theory of law, its philosophy, its functions and its role in a democratic society.*" In other words, the aim of legal education is not only to prepare legal professionals practicing in courts of law but also good citizens including legislators, judges, policy makers, public officials, civil society activists having altruistic feelings and sense of social service.

Changes taking place at international and national levels in the field of world order, economy and governance have also affected education including legal education. The impact of globalization and coming up of foreign universities in India have compelled the policy makers and academicians in India to think about the viable solutions for these pressing challenges. Thus, there is need to make the legal education and legal profession more competitive and market oriented.

In this backdrop, this paper aims to discuss the development of legal education in India, deficiencies of existing legal education and the new challenges before legal education in India.

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1. Report of the Committee on the Reorganization of Legal Education, University of Delhi, 1964

Development of Legal Education in India

The concepts of dharma, in the Vedic period, can be seen as the concept of the legal education in India. Although there is no record of formal training in law, the dispensation of justice was to be done by the king on the basis of a self-acquiring training. Justice was also administered by the King through his appointees who in turn were persons of known integrity and reputation of being fair and impartial. The guiding force for the King or his appointee was the upholding of the dharma[1].

The pattern of legal education which is in vogue in India was transplanted by the English; after the establishment of their rule in India. The Anglicization of the indigenous legal profession began in 1832 and English replaced Persian language which was necessary for Vakalat. Formal legal education in India came into existence in 1855 when the first professorship of law was established at the Government Ephistone College. As majority of the population was rural and illiterate, and all laws and proceedings were in English, the need was felt to bridge the gap between the existing law and the uneducated masses crying for justice, by rendering importance to formal legal education, initially it was coupled with arts. In the year, 1857 legal education was introduced as a subject for teaching in three universities in the presidency towns of Calcutta, Madras and Bombay. Thus, a beginning of the formal legal education started in the sub continent[2].

For almost a century from 1857 to 1957 a stereotyped system of teaching compulsory subjects under a straight lecture method and the two year course continued. The need for upgrading legal education has been felt for long. Numerous committees were set up periodically to consider and propose reforms in legal education. The University Education Commission, was set up in 1948-49, popularly called Radhakrishnan Commission, reported that '*our secondary education remained the weakest link in our educational machinery and needs urgent reform*' and diagnosed various deficiencies in legal education, viz., no uniformity in legal courses admission at intermediate. e.g. in Bombay and after graduation at other places; mostly teachers were part timer; law was pursued by students not as the sole subject of study but usually as a subsidiary course along with Master's course in some other subject. In the year 1949 the Bombay Legal Education Committee was set up to promote legal education It

1. See generally, R.K.Mookerji, Ancient Indian Education: Brahmanical and Buddhist, Motilal Banarasi Das Publication Ltd, Delhi, 1989;Rama Jois, Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights-Bhatiya Values, Eastern Book Corporation, Lucknow, 2000
2. See K.L.Sharma, **Sociology of Law and Legal Profession**, Rawat Publications, 1984, pp 39-54; see also, Justice A.R.Lakshmanam, Legal Education in India, **Banaras Law Journal**, vol.34, 2005, pp 1-5

stressed on the need for reorienting legal education and reported that, '*there is no real antimony between the professional and cultural aspects of law. A lawyer will be a better lawyer and judge a better judge, if he has studied the science of law. A thorough grounding in the principles of law is absolutely necessary in the make up of a real lawyer.*[1]

The All India Bar Committee made certain recommendations in 1951. In 1954, XIVth Report the Law Commission (Setalvad Commission) of India discussed the status of legal education and recognized the need for reform in the system of legal education. It depicted a very dismal picture of legal education and lamented[5]: "*portal of our law-teaching institutions-manned by part time teachers - open even wider and are accessible to any graduate of mediocre ability and indifferent merits. It is not surprising that in this chaotic state of affairs in a number of these institutions there is hardly pretence at teaching... This character is followed by law examinations held by the universities many of which are mere test of memory and poor ones at that, which the students manage to pass by cramming short summaries published by enterprising publishers. The result, plethora of L.L.B. half baked lawyers, who do not even know the elements of law and who are let loose upon society as drones and parasites in different parts of the country.*"

It further observed, "*the main purpose of university legal education seems hitherto to have been not the teaching of law as a science or as a branch of learning, but merely imparting to students a knowledge of certain principles and provisions of law to enable them to enter the legal professionals.*[2]"

The report highlighted many *defects* in the legal education system, viz., part time nature of legal education, overcrowding, lack of motivation for a legal career and lack of earnestness in teaching. Most of the colleges lack buildings or libraries of their own, and the student without motivation of learning choose law as a last resort. The colleges were mainly manned by part time teachers.[3]

It was only from 1938 that many universities switched over to three year law degree courses and by 1967, it became onerous task for the three year law colleges to include procedural subjects into the curriculum of their law school. Poona seminar on legal education, 1972 recommended that law classes should not he conducted in Arts, Commerce and other colleges but only in separate and independent institution[4]. **The Ahmadi**

1. K. L.Sharma, note 3
2. Dr.Justice A.S.Anand, Legal Education in India-Past, Present and Future, **(1998)3SCC(J)**, pp 1-9 at 3
3. S.K.Verma, Legal Education, Research and Social Change in S.P.Verma (ed.) **Indian Judicial System: Need and Directions of Reforms**, IIPA, New Delhi, 2004, pp 321-331 at 322
   7 ibid
4. For comprehensive study see generally, A.N.Karia, Legal Education in India, **Delhi Law Review**, vol.2, 1973, pp 207-222;A.Batra, A Plea for Liberal Legal Education, **Delhi Law Review**, vol.2, 1973, pp 201-03

Committee[1] noticed general degradation in legal education in colleges. Syllabus of the law colleges was very unsatisfactory, the teaching standards were equally unsatisfactory and that there was lack of discipline in the law colleges and suggested that there should be an entrance examination and only students with high percentage of marks should he selected for admission to a law college. Permission to start new law colleges should not he given without proper evaluation of teaching faculty and other facilities. There should be proper evaluation of the answer scripts in the examination. The students should be trained to draft pleadings at the college level. The standard of English should also he improved[2]

The Committee also realized and accepted that to improve the standards of legal education, there is need to have law teachers, well trained, well paid and dedicated to the cause. Law being the mirror of the total life of society, those who are engaged in its teaching have more serious duty and additional responsibility to discharge. A law teacher has to be aware that he is entrusted with the delicate duty of producing future law makers[3].

Challenges before legal education in India

The emergence of new economy, globalization[4] privatization and deregulation has thrown up new challenges before legal education through out the world. There are revolutionary changes in information, communication and transportation technologies which require corresponding changes in the legal system. The opening of trade and capital markets as a result of globalization and the retreat of the state from traditional role have raised new legal issues concerning ways in which poor and marginalized section can protect them from further impoverishment. The very nature of law, legal institution and law practice are in the midst of paradigm shift.[5]

What are the expectations of the country and the people from law and legal services in the coming years, given the process of globalization and transformation in the role of the state? What is the best strategy to

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1. Report on Reforms in Legal Education and Entry into Legal Profession, 1994.
2. Justice A.S.Anand, note 5,pp 5-6
3. Ibid
4. See generally, S.Padmavathi, Indian Legal Education and Legal Profession: Keeping Pace with Globalization, in J.L.Kaul et al (eds.) **Human Rights and Good Governance: International and National Perspectives**, Satyam International, New Delhi, 2008, pp 32-42
5. 184th Report of Law Commission, 2002, pp 55-56; Report of National Knowledge Commission, 2007, available at www.knowledgecommison.gov.in; For comprehensive study on global legal issues see generally, Fiona Cownie (ed.) **The Law School Global Issues, Local Question**, Darmouth Private Company Ltd, 1999; see also, A.K.Kaul et al (eds.) **Legal Education in India in 21 Century : Problems and Prospects**, AILTC, Faculty of Law, University of Delhi, 1999

strengthen professional legal education while promoting wider instruction in law as a liberal academic discipline? If training in skills and ethics is to be accomplished within the law school curriculum what is the appropriate model to achieve this end? How does one assess the social relevance and justice content of law teaching and. what can be done to maximize those goals? What ought to be the supervisory and control mechanism to ensure accountability on the part of professional schools of law in maintaining standards of teaching, research and extension activities? [1]

To be able to address these questions one must have an awareness of the challenges involved and the changes taking place in contemporary times. These relate un-met legal needs of different sections of society, delay and cost in accessing justice, impact of globalization on equality and human rights, vast technological changes especially in information and communication, the relative incapacitation of the state by market domination and the role of professions in justice[2], peace and development. In all these changes law and lawyers play a decisive role of facilitation, moderation and control. Law without justice is an empty shell. It is the nature of and access to institutions and procedures which make justice possible. In structuring the institutions and procedures, particularly in periods of transition, lawyers will have to assist communities, interest groups and governments keeping in mind the requirements of equity, justice and fairness[3].

Following are some of the challenges facing legal education in the country

1) Physical infrastructure and financial resources

The law schools in India have to recognize that there is a need for creating sound physical infrastructure. There should be more funds for this and for developing research projects and other initiatives to encourage faculty members[4] Generally, the infrastructure of the national law schools is better than what exists in the law departments of traditional universities. Improvement in infrastructure should be across the board, including in universities which still produce most of the law graduates. University campuses should be places that can inspire students and the faculty so that they are involved in reflecting upon the various problems that confront society. Academic freedom to think and contribute cannot

1. N.R.M. Halting progress of legal education, The Hindu, October 23, 2001
2. Generally, N.L.Mitra, Trade in Legal Services: Opportunities and Contraints, 10 NU, 1998, p 32
3. Ibid
4. C.Rajkumar, Improving Legal Education in India, The Hindu,2007

be ensured if universities lack the necessary physical infrastructure and financial resources.

2) Lack of philanthropic initiatives in promotion of Legal Education

Philanthropy in legal education is rare. It by and large remains a state-sponsored endeavour or an unimpressive commercial enterprise devoid of high academic standards. There is an urgent need for encouraging philanthropic initiatives in promoting excellence in legal education and research in the country. Recently, the National Knowledge Commission report noted the following with regard to philanthropic contributions: "*It is clear that we have not exploited this potential. In fact the proportion of such contributions in total expenditure on higher education has declined from more than 12 percent in the 1950s to less than three percent in the 1990s....*" Philanthropy in legal education is essential for its growth and development. Every effort ought to he made by all stake holders, including the law schools, the Bar, the Bench, the law firms and corporations for promoting philanthropic initiatives in legal education and research[1].

3) Lack of good teacher and researcher

Lack of good teacher and researcher in the law schools is a great threat to legal education who can motivate the students and impart good legal education, including clinical legal education Young talents do not prefer to choose teaching as profession or those who are in these fields are switching towards other jobs. The reason is poor financial incentives.

4) Privatization of legal education

Privatization of legal education in India led to mushrooming of law colleges which helped a lot in the degrading of Indian image of legal education at international level. It has not been able to raise academic standards in terms of either the quality of the faculty and students or the promotion of research within institutions and has become mediocre commercial ventures.

5) Globalization:

Globalization has thrown up new challenges to legal profession[2]. It may be defined as the process by which a given local condition or entity succeeds in expanding its reach over the globe and by doing so, develops the capacity to designate a rival social condition or entity as local under its impact[3] The main agents of economic globalization-IMF, World Bank,

1. Ibid; see also, C. Raj Kumar, Legal education and global philanthropy, The Hindu, 2007 12/3 1
2. C. Raj Kumar, Globalization and legal education, Th Hindu. www.thhindu.com /2007/08/06
3. B.C.Nirmal, Globalization and International Human Rights Law, Souvenir and Conference Paper of Intern ational Conference on International Law in the New Millennium, 2001, ISIL, New Delhi, pp 575-612 at 577

WTO, TNCs and Banks and investment firms have been successful in spreading the message across the globe that globalization offers a host of opportunities for optimum utilization of resources, availability of capital and finance, maximization of consumer welfare and acquiring knowledge and technology for economic development[1]. It enhances economic growth through expanded markets for goods, services and capital. The emphasis of globalization induced market oriented reforms is on competitiveness, foreign investment, capital intensive high technology production, privatization and disinvestment of public sectors and if the benefits of globalization are to be reaped competition, efficiency, excellence and quality as against subsidy, inefficiency, protectionism and. mediocrity should be pursued with full vigour[2].

Globalization undermines some deep rooted assumptions of modern legal thought. First, it makes it increasingly difficult for legal study to be contained within the territorial boundaries of national legal systems. To understand the operation of formal Slate law, we have to take into account the proliferation of supranational sources of law such as those emanating from the European Union or W.T.O. The obverse of this is that at the international level, sovereignty[3] is being undermined by greater acceptance of interference in the internal affairs of states. e.g. through the doctrine of humanitarian intervention. Second, while traditional jurisprudence focused exclusively on municipal and public international law, globalization requires notice of other forms of legal ordering, such as the *sue generis* legal order of the EU. But not all have a formal pedigree. One prominent example is transnational *lex mercatoria*, which regulates interactions between global commercial firms outside official law through practices such as international arbitration. Other types not readily slotted into standard categorizations include Islamic law, which operates across national boundaries, sometimes in opposition. A third challenge addresses how globalization may be undermining the cultural specificity of law and asks whether in response, we can construct a theory of law that reaches across legal cultures. In other words, can we develop a conceptual language that can make sense of the relations between national and supranational, forma and informal, sub-state and non-state contexts?[4]

In this context a reformulated comparative project can provide students with a helpful account of 'law in the-world'. Such thinking involves a more serious theoretical engagement with issues of comparison, and could provide maps for navigating between different types of law, such as Scots

1. Id
2. Id at 578
3. For comprehensive study on sovereignty in International law see, B.C.Nirmal, Sovereignty in International Law, **Soochow Law Journal**, vol.iii, July, 2006, pp 1-51, at 38
4. S.Veitch, et al, **Jurisprudence: Themes and Concepts**, Routledge, London, 2007, pp 200-01

law, Islamic law, Chinese law, and EU law. Another important task may be to expand the list of concepts included in general jurisprudence to provide more apposite terminology e.g. group, dispute, institution, process, function, decision, regulation, efficiency, effectiveness etc. for enhancing understanding across legal cultures.[1]

To combat the challenges of globalization, the type of lawyer we need today has to be some thing more than his conventional counterpart. He has to have a vision of emerging zeal to serve the cause of justice and the ability to forge new tools and techniques appropriate to the changing needs and times. Legal education as it obtains today is totally inadequate to the tasks ahead. This requires an all out effort by taking stock of past attempts and chalking out the future cause of action.

6) Coming of Foreign Universities and legal professionals in India

Coming of Foreign Universities and legal professionals in India have also posed serious problem before legal education because the question arises that when in the same expense foreign degrees can be obtained why a student should study in Indian law schools. Similarly, the avenues of legal professionals in India will he obtained, by foreign professionals. Therefore while taking note of this serious problem along with other challenges before legal education the Chairman of the Law Commission of India, M. Jagannadha Rao[2] said the legal education curriculum in the country is in need of a major improvement in the context of the global economic changes. He named eight subjects which are important from the angle of transnational practice of Law, Information Technology and Cyber law, Intellectual Property, Corporate Law, human Rights, Environmental law, Commercial Law, Women Rights and Alternative Dispute Resolution. He said, "Our aim should be to produce lawyers who will be most sought after professionals to appear in foreign countries. When multinationals establish firms in India, they too will require the services of lawyers whose competence is comparable to the best anywhere."

Further, he said the law schools in the country should also have special topics dealing with the Corporate, Taxation and Bankruptcy laws of different countries. The curriculum should be designed to equip the students for handling problems that involved more than one legal system. The students should combine language skills and cultural familiarity with rigorous and direct legal training.

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1. S.Veitch, et al, **Jurisprudence: Themes and Concepts**, Routledge, London, 2007, p 190; See also, W.Twining, Globalization and Legal Theory, London, Butterworth's, 2000.
2. Legal education in need of revamp' www.hinduonnet.com/the hindu/2002/12/29

7) Use of internet technology at transnational level

The internet technology in combination with globalization poses more formidable challenge to territorial sovereignty than even before[1]. The decentralized nature of world wide phenomenon accessible from all parts of the globe makes control of free flow of information across the globe very difficult[2]. As noted by Henry H Peritt, Jr. "Because of its packet switching rather than circuit switching character, it is far more difficult to impose physical border controls on the internet than on other terrestrial wire or terrestrial micro- based technologies." In the world of the cyberspace it is difficult even for the communicators let alone the authorities of the concerned from which and to which the communication is directed, to know that their messages are actually crossing territorial borders. 'Cyber torts', 'Cyber racism' and 'Cyber crimes' not only undermine our understanding of territorial state as the ultimate final authority within its borders but raise a number of issues relating to prevention, investigation and trial of the offenders[3]. Therefore, in these circumstances when concept of sovereignty requires re-look and use of computer technology has become general, there is necessity of reformulation in legal education as well in India.

Conclusion

Legal education may serve the society by imparting to law students general and cultural education making them good law abiding citizens. The aim of legal education is to bring out among students the aptitude, interest, commitment, skills and knowledge necessary to perform variety of roles in society including works for socially excluded people and the poor at the local level, to espouse the cause of Justice.

The position of legal education in India before independence was dismal and even degeneration continued, after independence as well but because of continuous and concerted efforts of government and academicians, changes took place. Debates on teaching methods, introduction of clinical legal education and focus on continuing education along with infrastructural developments became tools of quality legal education. But one thing which actually helped in ensuring high pedestal to legal education, in India is removal of sense of complacency from the thinking process of society regarding law as a career not as a last resort. Similarly, the opening of avenues to legal professionals in various areas also enhanced the craze of subject.

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1. B.C.Nirmal, Sovereignity in International Law, Soochow Law Journal, vol.III, July, 2006, pp 1-51, at 38
2. Id, at 39
3. Ibid; For comprehensive note on legal education and techno-science challenges see, A.Lakshminathan, Legal Education, Research and Pedagogy-Ideological Perceptions, Journal of Indian Law Institute, vol 50:4, 2008, pp 606- 628, at 620-21

Globalization and the changing dimensions of the Indian economy and polity have thrown up new challenges of governance[1]. Rule of law in all its dimensions remains the single most important challenge the country is facing. The criminal[2] and civil justice systems are under severe stress. The role of law schools in imparting legal education and developing lawyers who are rational thinkers and social engineers is central to the future of legal education and the development of a knowledge economy in India. This can be done only if the law schools are able to attract some of the best and the brightest lawyers to make a lifelong commitment to teaching, learning, and research so that they are able to inspire generations of students to work towards establishing a rule of law society in India.

But we should not worry with the growing impacts of globalization because India is a unique country with unique characteristics and at the same time at international level globalization is retreating and demands of foreign professionals are also declining which is apparent from the warning of President Barak Obama to the companies where he asked them to stop outsourcing otherwise they will have to loose their funding and facilities. Therefore, we should focus on value oriented legal education in addition to market oriented so that best citizenry and human beings can he produced.

In order to make legal education more effective and legal profession more competitive and value oriented following suggestions may be taken into consideration:

1. Global or transnational curriculum should be developed keeping in view the challenges of globalization; high technology crimes and changing concept of sovereignty.

2. Teaching methodology should be the combination of lecture method, case method and Socrates method along with tutorials and other modern techniques of imparting legal education e.g. power point, audio-visual, video conferencing etc. The Socratic Method refers to the teaching style used by most law professors. Instruction by lecturing is quite limited and more often takes the form of directed questioning. Put simply, the professor will "invite" one student to give a thorough and detailed summary of one of the assigned cases. The professor then questions the student on omitted details or unresolved issues.

1. For comprehensive study on good governance and human rights see generally, B.C.Nirmal and Prakash C.Shukla,Sustainable Development, Human Rights and Good Governance in J.L.Koul et al (eds.) Human Rights and Good Governance:International and National Perspectives, Satyam International, New Delhi, 2008,pp 1-31

2. For detail study on Indian criminal justice system see generally, B.C.Nirmal and Prakash C.Shukla, Sentencing Policies and Practices in India: A Need for Reform, Soochow Law Journal, 2007, pp 1-71

Afterward, the professor may slightly alter the facts of the case in order to allow the students to come to a different decision than that reached by the court. Together, these two methods sharpen critical thinking skills and the ability to distinguish between subtle underlying principles of a certain area.

3. Further, there is need for original and path breaking legal research to create new legal knowledge.

4. Our lawyers must be trained to specialize in international trade practices, comparative law, conflict of laws, international human rights law, environmental law, gender justice, space law, bio law, bio-ethics, international advocacy etc., They must also acquire a general knowledge of American, French, German, Chinese and Japanese law. For example, in South Korea, in the last 10 years, the curriculum has been expanded to include not only the above subjects, but also International Business, International Contracts, International Civil Procedure and laws of England, America, France and Germany.

5. Law schools have to improve their libraries; the students and faculty must be able to draw regularly from the internet. Use of computers and internet must be made compulsory in all law schools.

6. The law students are further required to enhance the ability to argue, explain and convince points of law. Command over spoken and written language, effective oral skills, diction and extensive reading are pre-requisites that go without saying. Knowledge of a foreign language is important to be a lawyer in the global economy. Law students should be provided with the opportunity to learn a foreign language of their choice. Lawyers, solicitors, legal executives all need good intellectual ability, the ability to assimilate and analyze facts quickly. Law students hence need to develop their ability to distinguish the relevant from the irrelevant, screen evidence, and apply the law to the situation under scrutiny.

7. In order to retain good teachers in the law school who are the backbone of legal education facilities and incentives should be given. This may include, career development opportunities within the law schools; development of research infrastructure including the resources to organize and participate in national and international conferences, and undertake serious research; a harmonious environment that fosters mutual respect; governance of the law schools in a transparent fashion; and, above all, faith in the leadership of the institution that excellence will not only be promoted as a general policy, but affirmative efforts will be taken to encourage and support excellence.

8. The task of a teacher is not only to fill in the students with contents of his narration but to bring out the hidden talent in the students. The students and teachers have unlimited potential for collaboration in exploring any aspect of a subject. Thus, there is need of continuing education for the law teachers and to infuse in them the desire to do research work. Most of the law teachers join the law schools having high degrees but no practical experience of the courts. Such teachers impart theoretical knowledge to students which makes students half-baked. Therefore, proper means must he devised so that the law teacher can go to the law courts to gain the practical experience. Similarly, law teachers should also be allowed to practice in the courts of law. In this way his experience, knowledge and proficiency may be used in proper manner and this avenue will attract many good students towards legal profession.[1]

9. Legal education must be socially relevant and justice oriented. This concept of justice education in the field of legal education means that the law school curriculum should entail certain programs like Lok Adalats, Legal Aid & Legal Literacy and pre-legal training.

10. The end-semester examination should be problem-oriented, combining theoretical and problem oriented approaches rather than merely test memory.

11. Clinical legal education[2] should be given more emphasis, so that students can learn the law through experience and experience the role of law and legal system in society along with acquiring professional skills.

12. Autonomy, flexibility and freedom should be given to law schools, particularly departments in Universities.

13. There is need to actively seek and encourage philanthropic initiatives in the field of legal education. The system of creating endowments both individual and corporate has to be significantly promoted.

14. Financial supports should he provided by Governments to law colleges etc.

15. Internship and externship facilities should be arranged at law schools.

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1. For Comprehensive study on legal profession see generally, Jonathan Grosvenor (ed.) The Legal Profession, Blackstone Press, Oxford, 1990.
2. For comprehensive study, see generally, N.R.M.Menon, Clinical Legal Education, Eastern Book Corporation, Lucknow, 2003;A. Lakshminathan, Legal Education, Research and Pedagogy-Ideological Perceptions, Journal of Indian Law Institute, vol 50:4, 2008, pp 606 628, at 618-620; see also, Brayne Huge, Duncan Nigel and Grimes Richard, Clinical Legal Education, Active Learning in Your Law School, Oxford University Press, 1998.

Finally, the aim of legal education in India should be to produce legal professionals of such caliber as Bradley says:

> *".......in order to be an accomplished lawyer, it is necessary, besides having knowledge of the law, to an accomplished man graced with at least a general knowledge of history, of science, of philosophy, of useful arts, of the modes of business and of everything that concerns the well being and intercourse of men in society. He ought to be a man of a large understanding; he must be a man of large acquirements and rich in general information; for he is a priest of the law, which is the bond and support of civil society and which extends to and regulates every relation of one man to another in the society, and every transaction that takes place in it. Trained in such profession, and having these acquirements, and two things more, incorruptible Integrity and a high sense of honour..."*[1]

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1. Supra