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Editorial

The present issue, in its conceptual essence, is an exposition of 'diversity'. More than 2500 years back, Heraclitus said, "men who love wisdom should acquaint themselves with a great many particulars". The said saying has gained more significance in today's phenomena, for in our day to day living, as Ernest Holmes would put it, "we encounter infinite variety in all things". Behind the diversity there need not be a sense of uniformity, but definitely there is an inevitable thrust on unity of thought, expression, ideas and the eventual perception.

Importance of legal literacy has always been emphatically stated by the National Legal Services Authority. The sphere and the sweep of the legal literacy cover quite a range of fields commencing "Lok Adalat" to "Permanent Lok Adalat" and imparting of education to people to inculcate themselves in the culture of settlement. There is also focus on settlement through conciliation which is sometimes institutionalized and on other occasions has the informal stamp. But the ultimate result is the same: propagation of an amiable atmosphere through amicable settlement. There is accent on the mechanism of legal aid which has become an integral part of every legal system. Access to justice for the needy and the impecunious subserves the very purpose of pivotal goal of justice, for it enshrines principles of equality, that encapsules equality of access to justice. The legal aid clinics in law colleges are unified by the commonality of an idea. And it should never be forgotten that an idea cannot be fructified into action unless there is a mover. The propellers are the authorities under the Act but the role of teachers in this regard, if ignored, it would amount to brushing aside the obvious.

Right to be educated in a democratic set up, as perceived by the academicians, includes the right to be informed and instructed and also continuous efforts for expansion of the horizons of education. It also helps in developing the "scientific temper". In a progressive civilized society, growth of scientific temper is imperative. Article 51A(h) of the Constitution of India stipulates that it shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform. The concept of "scientific temper" is to be broadly understood and, in fact, it is meant to be practised by all, and, therefore, endeavour has to be made by all concerned to spread the same in the society.

In the modern society, problem relating to the arena of looking after elderly and older people has become a matter of grave concern. Cultural traditions and social customs have not been able to cope up and, therefore, the Parliament has enacted Maintenance and Welfare of Parents and Senior Citizens Act, 2007. One may in a first blush think that in a country embedded with such high traditions, such a situation should not have arisen, but, a significant one, when it has arrived and the legislation has come into existence being reflective of the legislative wisdom, it becomes the duty of everyone connected with the legal aid, education and sociology to make people aware of their rights. Awareness of rights is not only a ray of hope, but also it is the sunshine in a cloudless sky. One knows he is protected by law and he has a right to assert in law. It is extremely significant.

With the progress of law in many a field, one has to show concern about the environment, intellectual property rights, needs of the society in praesenti and such other aspects. The attempt of "Nyayadeep" is to focus on the variety of subjects so that the readers not only get acquainted with the same but spread the thoughts and ideas amongst the people to sensitise them to the relevant issues. That apart, the effort is also to expand the horizon in many a sphere and ignite such thoughts amongst the readers to feel a sense of belonging having the urge of participation.



[Dipak Misra]
Judge, Supreme Court of India

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Domain and Sweep of Lok Adalat and Legal Liferacy : An Indian Perspective

Law & We, the people of India

Law which is not rooted in the contemporaneous societal ethos and aspirations, finds rough weather in its acceptance by the people. German jurist and legal historian Friedrich Karl von Savigny (1779-1861) has described law as a reflection of the spirit of the people who evolve it. As per this theory, all laws are manifestation of common consciousness.¹ Somewhat in the same spirit, WE, THE PEOPLE OF INDIA, ... IN OUR CONSTITUENT ASSEMBLY on twenty-sixth day of November, 1949, adopted, enacted and gave to OURSELVES THIS CONSTITUTION. Though, India had achieved independence on 15th August, 1947, on 26th January, 1950, the Constitution of India, came into force and, as an independent country, India became a Republic. 26th November, 15th August and 26th January is celebrated, Law Day, Independence Day and Republic Day respectively every year.

Expanding horizons of Article 39-A

In terms of Article 39-A of the Constitution, a duty has been cast on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and that State shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Even justice in the preambulatory tone has been depicted in varied proliferated forms such as political, economic and social. By now, it is not clear that social justice includes rule of law and justice in legal sense as well.

* **Judge, Punjab & Haryana High Court, Chandigarh.**

¹ Friedrich Karl von Savigny wrote, "*Law is no more made by lawyers than language by grammarians. Law is the natural moral product of a people... the persistent customs of a nation, springing organically from its past and present. Even statute law lives in the general consensus of the people*", quoted in Wilmot Robertson's *The Dispossessed Majority* (1981).

Judicial system in ancient India

Even in ancient times, the justice delivery system was well developed as finds mention in our Dharamsastras i.e. Vedas, Shruties and Smrities. To answer different needs and expectations of the contemporaneous society and to solve varied social and economic problems of the times, the domain and scope of the justice delivery system had also been experiencing the evolutionary mutations. There was supremacy of law and highest duty of the King was protection of the people of his regime through the justice delivery system. Judicial procedure in ancient Indian legal system was simple and was rather attuned to quick delivery of justice. It changed in Mughal and British period. Modern system is borrowed from Western political and legal thought.

Judicial system in independent India

In independent India, soon we found that legal system was failing to give quick relief to the litigants and pendency of the cases was increasing. Main aim and object of judicial system of independent India was to provide justice to the poor, down-trodden and under-privileged, and that too quickly, but it was not happening. Delay in decision of cases was disturbing. Many pitfalls were noticed. Many overlappings and missing links were apparent. People started feeling disenchanted with the justice delivery system. They were becoming disillusioned.

Justice delayed is justice denied

It is said that 'justice delayed is justice denied'. Such delay apparently was due to long winding procedure provided in the Code of Criminal Procedure and in the Civil Procedure Code. In addition, due to increase in number of fresh cases, increase in jurisdiction of the Supreme Court and of the High Courts, ill-drafted legislation, inadequate number of Judges, unfilled vacancies and long winding oral arguments etc., pendency of cases continued increasing; there was no let up.

Swaran Singh Committee on Constitutional Amendments

After submission of report of the 'Swaran Singh Committee' on Constitutional amendments, which had studied defects in the existing judicial system causing delays as also avoidable inconvenience to the litigating parties, on recommendations of this

Committee, Articles 323-A and 323-B were added to the Constitution which provided for establishment of Administrative Tribunals for determination of disputes regarding recruitment and conditions of service of employees etc. Thereafter, the Administrative Tribunals Act, 1985 was legislated by the Parliament. In *S.P. Sampat Vs. Union of India*², constitutional validity of the Administrative Tribunals Act, 1985 was challenged on the ground of exclusion of jurisdiction of High Courts under Articles 226 and 227. Section 6(1) (c) of the Act was held unconstitutional by the Supreme Court in this case. Similarly, in *State of Orissa Vs. Bhagaban Sargir*³ and in *L. Chandra Kumar Vs. Union of India and others*⁴, it was held that clause 2 (d) of Article 323-A and clause 3 (d) of Article 323-B are unconstitutional as they violated the power of judicial review, a component of basic structure⁵ of the Constitution. Thereafter, Malimath Committee in its report observed that the Tribunals had not inspired confidence of the masses.⁶

Popularity of Lok Adalats

People's courts (Lok Adalats) were experimented for speedy justice. Mutual settlements were the heart and soul of the Lok Adalats and became the main acceptable mode to end the disputes. Till then, there was no legal basis for functioning of these Lok Adalats. Government of India later constituted a Legal Aid Committee on 27th October, 1972 with **Justice V.R. Krishna Iyer** as its Chairman. The Committee submitted its report on May 27, 1973. It was titled '*Procedural Justice to the People*'. Except for adding Article 39-A in the Constitution of India, nothing concrete emerged.

National Juridicare: Equal Justice – Social Justice, 1977

In 1976, Government of India appointed a Committee under the Chairmanship of **Justice P.N. Bhagwati** to examine the issue. The Committee submitted its report titled '*National Juridicare: Equal Justice – Social Justice (1977)*'. In this report, the Committee

² (1987) 1 SCC 124

³ 1995(1) SCC 3999

⁴ AIR 1997 SC 1125

⁵ Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (1973) 4 SCC 225

⁶ Dr. J.N. Pandey, Constitutional Law of India, 594 (2000).

suggested that funds for free legal aid must come from the State and recommended creation of conciliation cells with legal aid committees. Some suggestions were invited for legal services, reduction of court fee, procedural and substantive legal reforms, providing of legal aid particularly to working classes, women, scheduled caste and scheduled tribes and other weaker sections of the society. The Committee also recommended creation of infrastructure for administration of legal aid programmes.

Constitutional Obligation to effect speedy justice

The Supreme Court of India in its landmark judgment of *Hussainara Khatun and others Vs. Home Secretary, State of Bihar*⁷, to advance the concept of free legal aid for the poor people, had observed as under:

“The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under constitutional mandate to ensure speedy trial and whatever necessary for this purpose had to be done by the State.”

Committee for implementation of Legal Aid Schemes (CILAS)

With the object of providing free legal aid and to galvanize the judicial system oriented in the spirit of Article 39-A of the Constitution, the Government had passed a resolution on 26.9.1980 appointing “*Committee for implementation of Legal Aid Schemes*” (CILAS) under the chairmanship of **Justice P.N. Bhagwati** as he then was. This Committee was required to monitor and implement legal aid programmes for the country as a whole.

The Legal Services Authorities Act, 1987

Efforts of this Committee became the germination point for legislation of the Legal Services Authorities Act, 1987 (hereinafter mentioned as the Act). It received the assent of the President of India on 19.10.1987 and came on the statute book. The Act, except Chapter-III thereof, came into force on 9.11.1995. If we go by the objects and reasons, this is an Act to constitute legal services authorities to provide free and competent legal services to the weaker

⁷ AIR 1979 Supreme Court 1369

sections of the society, to ensure that opportunities for securing justice, are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

In another historic judgment of *Khatri and others Versus State of Bihar and others*⁸, Hon'ble Supreme Court observed as follows:

"It is unfortunate that though this Court has declared the right to legal aid as fundamental right of the accused person by process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and not provided legal services to a person, accused of an offence. The State of Bihar cannot avoid its constitutional obligation to provide legal service to poor accused by pleading financial or administrative inability."

Multitier machinery has been envisaged in this Act to support and sustain primarily the poor and the downtrodden, who cannot afford the costs of litigation. Many others genuinely interested for settlement by mutual consent have greatly been helped by this vibrant and potent enactment.

Hierarchy of authorities under the Act:

1. The National Legal Services Authority (NALSA) at the central level;⁹
2. The State Legal Services Authority (SLSA) at the State level; and,¹⁰
3. The District Legal Services Authority (DLSA) at the district level.¹¹

There is Supreme Court Legal Services Committee and on the same pattern, there is Legal Services Committee at the level of each High Court. At the cutting edge level, there are Legal Services Committees at the Taluka level. These Authorities and Committees exist all over India. These authorities are funded by means of grants from the Central and State governments.

⁸ AIR 1981 Supreme Court 928

⁹ Section 3 of the Legal Services Authorities Act, 1987

¹⁰ Section 6 of the Act *ibid*.

¹¹ Section 9 of the Act *ibid*.

Benefits of Lok Adalats

For sometime now, Lok Adalats are being constituted at various places in the country for disposal of cases through the process of mutual settlement between the parties. Not only the cases are decided expeditiously but the parties have also to spend lesser costs. In addition, no challenge can be made to the Award of Lok Adalat. There remains no rancour between the litigating parties. They depart as friends and not as foes.

The institution of Lok Adalats, which hitherto, had been functioning as a voluntary and conciliatory agency without any statutory backing for its decisions, got statutory backing and legal support when under this Act, the Awards rendered by Lok Adalats were taken to be decrees enforceable at law by execution thereof. Statutory support which became available to Lok Adalats has not only galvanized the judicial system resulting in reduction of arrears of cases in regular courts, but has also helped the system to take justice to the doorsteps of the poor and disadvantaged people suffering from many wants, and the needy, while making justice quicker and less expensive as also without any further winding towards appeals or revisions.

Nature & components of Lok Adalats

Lok Adalats are multi-member forum for decision of disputes of the parties. There is no fixed interval of time or place for organizing Lok Adalats. Section 19 (1) of Chapter-VI (Lok Adalats) deals with organization of Lok Adalats as under:

“Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluka Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.”

So far as jurisdiction of a Lok Adalat is concerned, Sub-section 5 of Section 19 is relevant and for ready reference is appended as below:

“A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a

dispute in respect of –

(i) any case pending before it; or,

(ii) any matter which is falling within the jurisdiction of and is not brought before, any court for which the Lok Adalat is organised : Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law."

When a serving judicial officer heads a Lok Adalat, it is normally termed as judiciary guided or judiciary sustained Lok Adalat. Presence of serving member of judiciary modulates the psyche of Indian litigants who take such judicially supported and sustained Lok Adalat, to be more effective.

This distinction whether Lok Adalat is headed by a serving or retired judicial officer with other members also contributing their mite, has lost its relevance because Award of each and every Lok Adalat, is treated on the same pedestal qua its execution and enforcement.

Legal position of Award passed by Lok Adalat

Before we proceed further, it is necessary that a reference is made to legal sanctity of Award of Lok Adalat as is provided in **Section 21 of the Act which also makes such Awards to be final and binding on the parties as no appeal has been provided against any Award of Lok Adalat.** Section 21 of the Act, dealing with the subject, is as under:

21. Award of Lok Adalat. - "(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870.

(2) Every award made by a Lok Adalat shall be final and binding on all the parties

to the dispute, and no appeal shall lie to any court against the award."

Cognizance of Cases by Lok Adalats

So far as matters referable to a Lok Adalat are concerned, Section 20 of the Act is of significance. For quick reference, the said provision, is also appended, as below:

"20. Cognizance of cases by Lok Adalats. (1) *Where in any case referred to in clause (i) of sub-section (5) of section 19 –*

- (i) (a) *the parties thereof agree; or,*
- (b) *one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or,*

(ii) **the court is satisfied that the matter is appropriate one to be taken cognizance of by the Lok Adalat;**

the court shall refer the case to the Lok Adalat;

Provided that no case shall be referred to the Lok Adalat under sub clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

- (2) *Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under subsection (1) of section 19 may, **on receipt of an application from any one of the parties** to any matter referred to clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, **refer such matter to the Lok Adalat, for determination;***

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

- (3) *Where any case is referred to a Lok Adalat under sub-*

section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and **arrive at a compromise or settlement between the parties.**

- (4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and **shall be guided by the principles of natural justice, equity, fair play and other legal principles.**
- (5) Where **no award is made** by the Lok Adalat on the ground **that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court,** from which the reference has been received under sub-section (1) for disposal in accordance with law.
- (6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.
- (7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)''

Any dispute, before being referred to the Lok Adalat, needs consent of the parties to the litigation wherein, it is guided by the principles of justice, equity, fair play and such other legal principles.

In case of no settlement coming the way of Lok Adalat, in a matter under litigation, the same is to be sent back to the court where the litigation is pending and in other matters, Lok Adalat advises the parties to seek remedy in a court.

Revolutionisation of the concept of Permanent Lok Adalats-Adjudicatory Body

A sort of revolution has come on introduction of Chapter VI-A dealing with pre-litigation, conciliation and settlement vide Amendment Act, 37 of 2002. It came into effect on 11.6.2002.

It is to be noticed that establishment of Permanent Lok Adalat in terms of Chapter VI-A is a distinctive feature of the Act for which the relevant provision is Section 22-B. Permanent Lok Adalat established under this provision is distinct, different and set apart from any other Lok Adalat organised under Section 19 of the Act.

Permanent Lok Adalat for Public Utility Service

In short, when we refer to a permanent Lok Adalat, it is taken to be one established under Chapter VI-A for settlement of matters **concerning “public utility service”, which means any –**

- (i) transport service for the carriage of passengers or goods by air, road or water, or,**
- (ii) postal telegraph or telephone service; or,**
- (iii) supply of power, light or water to the public by any establishment; or,**
- (iv) system of public conservancy or sanitation; or,**
- (v) service in hospital or dispensary; or,**
- (vi) insurance service,**

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes or this Chapter.”

Though permanent Lok Adalat constituted under this Chapter VI-A is also a multi-member body comprising of judicial and non-judicial members with an objective that the legal technicalities do not impede conciliatory and adjudicatory proceedings,¹² it has adjudicatory powers as well.

¹² Bar Council of India v. Union of India AIR 2012 SC 3246.

Whether Permanent Lok Adalat is a court?

Needless to state that permanent Lok Adalat is distinct and different from a court. Proceedings before it are initiated on a conciliatory note with non-adjudicatory inputs. It is worth notice that if the parties fail to reach an agreement by conciliation or mutual settlement, such permanent Lok Adalat incarnates itself into an adjudicatory body but even when, it decides the dispute by adjudication, it does not become a court.¹³ While deciding a dispute on merit, permanent Lok Adalat is neither bound to follow the Code of Civil Procedure, 1908 nor the Indian Evidence Act, 1872 and rather is to be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice.

Cognizance of Cases by the Permanent Lok Adalats

So far as cognizance of cases by the permanent Lok Adalat is concerned, any party to a dispute may before the dispute is brought before any court, by making an application, invoke the jurisdiction of permanent Lok Adalat for the settlement of dispute. There are only two restrictions. These are:

- (i) Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence which is punishable under any law; and,
- (ii) Such Adalat shall not have jurisdiction in a matter where the value of the property in dispute exceeds 10 lacs of rupees. However, Central Government has been given power to increase such limit by way of a notification in consultation with the Central authority.¹⁴

Strict Regime of Permanent Lok Adalat

It is very soothing to note that after an application is made invoking jurisdiction of permanent Lok Adalat by any party, no party to that application shall invoke jurisdiction of any court in the same dispute. After procuring attendance of the parties, conciliation proceedings start between them on the subject matter of application but on failure thereof, such permanent Lok Adalat is free to proceed to adjudicate the matter.

¹³ J.T. 2011(8) SC 106.

¹⁴ This limit has been increased to Rs.1 crore w.e.f. 20.3.2015.

Difference between Lok Adalat under Section 19 & Permanent Lok Adalat under Section 22B(1) of the Act

There is huge difference of power and procedure. When the matter is before a Lok Adalat organized in terms of Section 19 of the Act, it has no adjudicatory powers, which is available to a Permanent Lok Adalat established under Section 22 B(1) of the Act. The burning issue is the applicability of Section 22 (C) (8) of the Act, which mandates the Permanent Lok Adalat, by using word 'shall' to decide the dispute of Civil nature even on merit of the case, where the parties are no longer interested to settle such dispute by mutual consent. Thus, notwithstanding the disinclination of the warring parties to a pre-litigation Civil dispute to go for settlement, the Permanent Lok Adalat is still empowered to decide the lis before it on merits. Sequel, in that eventuality, it will transform itself and would perform the role of a full fledged Civil Court, having all the traces, which a civil court is possessed of even though it does not become a court thereby. But the notable shift is that in such an eventuality, it is no more bound by the provisions of the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872, because as per Section 2 (d) of the Act, Lok Adalat is guided by the principles of fair play, justice and principle of natural justice.

However, it is made clear that as per Section 22 (C)(8) of the Act, Permanent Lok Adalat is not competent to decide criminal compoundable cases at pre-litigative stage on their merits. Thus, in short, the Permanent Lok Adalat can decide only Civil disputes on merit at a pre-litigative stage, where the value of subject matter of dispute does not exceed Rs.10 lacs. Of course the Government which is competent to enhance this limit, has already made it Rs.25 lacs.

Constitutional validity of main provisions of Chapter VI-A

Hon'ble Supreme Court of Indian in case "*Bar Council of India v/s Union of India*"¹⁵ found an opportunity to interperate the provisions of Section 22A to the Section 22 E of Chapter No. VI-A of the Act and gave an authoritative finding that Appeal is the creature of a Statue and merely for want of this provision, the statute cannot be declared *ultra vires*. It was further ruled by the Hon'ble Apex Court that establishments of Permanent Lok Adalats

¹⁵ 2012 AIR (SC) 3246

to decide the disputes relating to Public Utility Services are in addition to and not in derogation of fora provided under various other statutes. It was thus held that the provisions under Section 22A to Section 22D of the Act are constitutionally valid and are not contrary to the rule of law.

By now, it is thus clear that power of Permanent Lok Adalat to decide the disputes pertaining to public utility service of the Act on merits, is not *ultra vires*.

Settlement Vs. Adjudication

Again Hon'ble Supreme Court in case "*Inter Globe Aviation Ltd. v/s N. Satchidanand*"¹⁶ has removed the mist by holding that ordinary Lok Adalat organized under Section 19 of the Act, discharges only conciliatory functions vis-a-vis, the Permanent Lok Adalat established under Section 22B (1) of the Act, which exercises jurisdiction in respect of Public Utility Services, having both conciliatory and adjudicatory functions.

However, Punjab & Haryana High Court in "*Parmod v/s Jagbir Singh & others*"¹⁷ gave a ruling at a time when new amendments had not come on the statute book wherein the concept of Permanent Lok Adalat had been envisaged. In that case, the matter for consideration before the court was as to whether the objection petition against the order of Lok Adalat, is maintainable by the Court by invoking the provisions of Section 151 CPC?

In the back drop of the said poser before Punjab and Haryana High Court, the provisions of Sections 19 to 22 of the Act, came up for consideration, which essentially deal with the power of Lok Adalat. In the said citation, the precedent of Division Bench of Punjab & Haryana High Court in case "*Shyam Lal Sharma v/s State of Haryana & Ors.*"¹⁸ was also quoted, wherein it was held that Lok Adalat cannot assume the role of a regular court de hors "compromise or settlement". It was held that neither power nor jurisdiction had been conferred on the Lok Adalats to decide the cases on merits and only compromise could be recorded, keeping in mind the principles of justice, equity and fair play and other allied legal principles.

¹⁶ 2011 AIR SC (Civil) 2761

¹⁷ (2003-1) PLR 365

¹⁸ (2002-1) 131 PLR 188

The Award of Lok Adalat is to be treated as final and binding between the parties and no appeal is statutorily provided. A very pertinent question answered by the High Court was as to what remedy is available to a litigant if the Lok Adalat transgresses its power and authority. It was ruled that objections cannot be entertained under Section 151 CPC against the Award of Lok Adalat. However, the Award can be challenged before the High Court in exercise of supervisory powers under Section 227 of the Constitution of India because High Court has power of superintendence and control¹⁹ over subordinate Courts and proceedings before Lok Adalat are judicial proceedings, therefore, Lok Adalat shall be deemed to be the civil court and Award of Lok Adalat shall be deemed to be decree of a civil court.

As per Section 22E of the Act, where, a Permanent Lok Adalat passes an Award either by virtue of a compromise or on merits, then as per sub-section 3 of Section 22E of the Act, the Award is required to be passed by the majority of members constituting Permanent Lok Adalat. Where, Permanent Lok Adalat or for that matter ordinary Lok Adalat does not pass any Award by majority decision, then of course such Award can be challenged by way of a writ petition under Section 227 of the Constitution of India.

In case "*Anita Chauhan v/s State of Haryana & Ors.*"²⁰ Punjab & Haryana High Court has held that where the Award of Lok Adalat does not give an indication that consent was given by the State of Haryana a litigating party before it, in that eventuality, the Award is nothing else but adjudication of the controversy on merits by the Lok Adalat and it was beyond the scope and jurisdiction of Lok Adalat.

In that case, it was held that the entire Chapter VI (A) including provisions of Section 22C and 22E would be attracted to conciliation of pre-litigative cases and would have no application to the dispute, which is already pending in any Court of law and has been referred to Lok Adalat by the order of the court. In para No.11 of the judgment, the following observations were made which are apt to be quoted for clarity of the concept:-

¹⁹ Article 235 of the Constitution of India

²⁰ (2003-1) PLR 185

“It is thus apparent from the perusal of the various provisions of the Act that whereas the Lok Adalat has been constituted under the Act, the entire purpose of the constitution of such Lok Adalat was to induce settlement between the parties and to make such efforts which may reach to a compromise. However, if such reconciliation, settlement or compromise is not arrived at between the parties in spite of the best efforts made by the Lok Adalat, then the Lok Adalat has no other role to play and at that stage, shall send back the record of the case to the court from where the case was received, for adjudication in accordance with law. However, in the present case the Lok Adalat without making any effort for getting the matter settled or compromised chose to adjudicate upon the controversy on the ground that the said matter was fully covered matter by two Division Bench judgments of this court. It may also be noticed that the stand taken by the respondents in the written statement was not even noticed by the Lok Adalat while adjudicating upon the controversy. In any case, since the sine-qua-non for taking cognizance of a dispute by the Lok Adalat is the settlement between the parties or a compromise on the basis of which an Award can be rendered by the Lok Adalat, therefore, the order dated October 8, 2001 passed by the Lok Adalat is totally without jurisdiction.”

In the said authority, the observation made by Division Bench of Punjab & Haryana High Court in case *“Kamal Mehta v/s General Manager, Rajasthan Roadways Transport Corporation and another”*²¹ were also quoted and it was ruled that the Lok Adalat have been conceptualized as agents of the courts and if the matter cannot be amicably compromised and settled by mutual agreement, then Lok Adalat can not deal with the case and the Lok Adalat must divest itself of the controversy and must itself refer or advise the parties to approach the court where the matter, before being referred to the Lok Adalat was pending.

²¹ FAO No.798 of 1999

Conclusion

The Lok Adalat constituted under the Act has primary duty to settle the matter by reconciliation and settlement between parties to the dispute. It has no authority to adjudicate the matter itself; it should send the case back to the Court from where it was received. However, the Permanent Lok Adalat can pass the Award either by compromise or on merits. The Award is to be made by majority of its members. High Courts have power of superintendence and control over the proceedings conducted before the Lok Adalats or Permanent Lok Adalats. If Lok Adalats transgress their power and authority, High Courts have power to interdict in supervisory capacity under Article 227 of the Constitution of India and thus aggrieved person is not left without remedy though generally no appeal is permissible against an Award of a Lok Adalat.

Due to poverty, illiteracy and their disadvantageous position, the downtrodden and underprivileged neither know the laws nor the legal system and thus remain ignorant of their rights as also of the ways and means to enforce those. Sequently, the violations of their rights go unnoticed and unredressed. Legal literacy which means basic knowledge of laws is necessary for legal empowerment of the masses. Dessimination of information would make them empowered and legally sound. We have to improve the whole generation.

Conciliation: A Unique Mode to Settle the Disputes

*“Discourage litigation persuade your neighbour to compromise
whenever you can.*

*Point out to them how the normal winner is often a loser in fee,
expenses, cost and time.”*

Abraham Lincon

1. Introduction

The word ‘*conciliation*’ is derived from the Latin word ‘*conciliate*’, which means to bring together, make friendly or to win over, to sooth the anger of, make friendly, to overcome the differences or hostility of, to pacify, to mollify, to gain esteem, goodwill or favour of, to make compatible or reconcile.¹

According to *Webster Encyclopaedia Unabridged Dictionary of English Language*, the meaning of phrase “*conciliate*” is as follows²:-

- (i) To win over; sooth the anger; to make friendly; placate
- (ii) To gain (regard, favour, goodwill, esteem etc.) by friendly acts.
- (iii) To reconcile; make consistent.

Conciliation is by no mean an alien to the Indian society for the resolution of disputes. Indian culture has been based on peace, with respect and justice for all. Conciliation is as old as the hills. While differences and disputes are inevitable among human beings and have been there since time immemorial, along there has been a process of resolution of disputes in the form of reconciliation. While the shape and form of conciliation process may have changed from time to time or may have varied with individuals or situations, the conception is as ancient as our *Vedas*.

There is a long standing tradition for settlement of disputes by way of conciliation and mediation since ancient times.

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¹ Patil, B.R, “Conciliation in India”, (1977), p. 15.

² Webster Encyclopedia Unabridged Dictionary of the English Language, (1994), p. 305.

Conciliation is as old as Indian history. In *Mahabhartawhen* both parties had determined to resolve the conflict in the battle field, conciliation efforts were made by *Lord Krishna* to resolve the conflict and he went to *Kaurvas* to avoid the war.³ In *Manu Smriti*, *Manu* has also emphasised on the importance of conciliation. *Manu* has described four methods of disputes settlement for the ruler i.e. *Sama* (conciliation), *Dana* (winning over by gifts or presents), *Bedha* (creating division or splits) and War. According to *Manu* the ruler should prefer the first method, that is conciliation of the above four methods. The King should resorts to the other methods only if the conciliation method fails.⁴

2. Legislative Provisions and Conciliation in India

The legislative history of conciliation in India is not very old. Although the concept of conciliation was there in the Indian culture from very ancient times but it got the legal sanctity at a very later stage. It was in the British period that, some provisions regarding conciliation were laid down in some Acts. Conciliation may trace its lineage to the Code of Civil Procedure, 1908, where it gets a passing reference only and after that, in the Trade Disputes Acts, 1927. But, after independence, conciliation has been inscribed in Industrial Disputes Act, 1947, The Hindu Marriage Act, 1955 also. However, conciliation is accorded pride of place by sharing honour as equal partner in the title and being accorded an entire part in the Arbitration and Conciliation Act, 1996.

Legal provisions regarding conciliation under the Indian legal system can be discussed as under:-

- A. Civil Procedure Code, 1908 (Section 89)
- B. Industrial Disputes Act, 1947 (Section 3, 4 and 5)
- C. Special Marriage Act, 1954 (Section 34)
- D. Hindu Marriage Act, 1955 (Section 23)
- E. The Family Courts Act, 1984 (Section 9)
- F. The Legal service Authority Act, 1987 (Chapter VIA)
- G. Arbitration and Conciliation Act, 1996 (Section 61-81)

³ Bansal, A.K, "Conciliation : Quick Settlement of Disputes" , Arb. LR, 1999, P. 22.

⁴ Jois, M. Rama, "Ancient Indian Law (Eternal Value in Manu Smriti)", (2004), p. 122.

A. Conciliation and the Civil Procedure Code, 1908

Parliament inserted section 89 (as also order 10 Rule 1-A, 1-B and 1-C) in the Code of Civil Procedure, 1908 to ensure that *alternative dispute resolution* was resorted to before the trial of a suit. The provisions of this section are based on the recommendations made by the Law Commission of India and the Malimath Committee.

(i) Settlement of Disputes Outside Court

The Civil Procedure Code, 1908 casts a duty on the courts. It provides that when a case is brought before the court for adjudication and the court is of the opinion that there are elements of settlement in that particular case which may be acceptable to the disputing parties. The court in such a case shall formulate the terms of settlement and give them for the observation of the parties to the dispute. After receiving the observation of the parties, the court may reformulate the terms of the settlement. After the court has formulated the terms of a possible settlement, it shall refer the matter to arbitration, conciliation, judicial settlement including through Lok Adalat or for mediation.⁵

(ii) Order 10 Rule 1-A, 1-B and 1-C : Civil Procedure Code, 1908

These Rules were inserted in the Civil Procedure Code, 1908 by the Code of Civil Procedure (Amendment) Act, 1999. The newly added Rule 1-A enables the court to explore the possibility of alternative methods of dispute resolution as provided in section 89 of the Code, which are conciliation, arbitration, judicial settlement or settlement through Lok Adalat. The court can direct the parties to opt any of the above modes under Order 10 Rule 1-A. Order 10 Rule 1-B provides for the appearance of the parties before the conciliation forum as directed by the court under Order 10 Rule 1-A. Order 10 Rule 1-C provides that where the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then he shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by the court.

⁵ Civil Procedure Code, 1908, Section 89.

(iii) Suits Relating to Matters Concerning the Family

The Civil Procedure Code, 1908, provides some special provisions for the resolution of family disputes. Order 32-A which was inserted in the Civil Procedure Code, 1908 by the Code of Civil Procedure (Amendment) Act, 1976 makes provisions in this regard.

(a) Duty of the Court to Make Efforts For Settlement

Under Order 32-A a duty is cast upon the court to make an endeavour at first instance, where the court thinks it is possible to make a compromise with the nature and circumstances of the case and to every case and proceedings to which this order applies to assist the parties in arriving at a settlement in respect of the subject matter of the suit.⁶ If, during the trial of any suit or proceedings at any stage it appears to the court that there is a reasonable possibility of a settlement between the parties, the court may at its discretion adjourn the proceedings for such period as it thinks fit so as to enable itself for attempts to be made to effect conciliation between the parties.⁷

(b) Assistance of Welfare Expert

The Act also makes provisions for the assistance of a welfare expert. The court can secure the services of such person as the court may think. For the purpose of the appointment of such person as a welfare expert, it is immaterial that such person is related to the parties or not. While the court is taking the assistance of a person to affect conciliation between the parties, it should prefer to appoint a woman as expert where it is possible. The court can also engage a person who is professional in the matter of promoting the welfare of the family. The court may avail the service of such person for the purpose of assisting the court in discharging the functions imposed by Order 32 Rule 3.⁸

B. Conciliation and the Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 provides for different methods for the settlement of industrial dispute and the course of conciliation proceedings is the most preferred one. For the purpose

⁶ *Id.*, Order 32-A, Rule 3(1).

⁷ *Id.*, Order 32-A, Rule 3 (2).

⁸ *Id.*, Order 32-A, Rule 4.

of settlement of the industrial disputes through conciliation, the Industrial Disputes Act, 1947 provides for the constitution of the following authorities:

- (a) Works Committee (Section 3)
- (b) Conciliation Officer (Section 4)
- (c) Board of Conciliation (Section 5)

(a) Works Committee

Works committee is constituted by the employer who employs or has employed hundred or more than hundred workmen on any day of the preceding twelve months. The works committee consists of equal number of the representatives of both the employers and the workmen engaged in the industrial establishment. The representative of the workmen is to be selected amongst the workmen in consultation with the trade union, if there is a trade union in the industry.⁹

(b) Conciliation Officer

The conciliation officer is appointed by the appropriate Government by notification in the official gazette. The appointment of the conciliation officer may be made either permanently or for a limited period. The number of conciliation officer to be appointed, is also decided by the appropriate Government. A conciliation officer may be appointed for a specific area or for a specified industry in a specified area or for one or more specified industries.¹⁰

(c) Board of Conciliation

The Board of Conciliation is constituted by the appropriate Government to promote the settlement of the industrial disputes by way of conciliation. The conciliation board consists of a chairman or two or four other members as the appropriate Government may think fit. The chairman is an independent person and the other two or four members are appointed to represent the parties to the disputes. Each party appoints equal number of person to represent themselves.¹¹

⁹ Industrial Disputes Act, 1947, Section 3.

¹⁰ *Id.*, Section 4.

¹¹ *Id.*, Section 5 (4).

(i) Binding Nature of Settlement Through Conciliation

A settlement arrived at in the course of conciliation proceedings under the Industrial Dispute Act, 1947 is binding on the following category of persons:¹²

- (a) All the parties to the industrial disputes;
- (b) All other parties summoned to appear as parties to the disputes, unless the board, arbitrator, labour court tribunal or national tribunal as the case may be, records the opinion that they were so summoned without proper cause.
- (c) Where a party referred in clause (a) or clause (b) is an employer his heirs, successors or assignees in respect of the establishment to which the dispute relates;

Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment.

C. Conciliation and the Special Marriage Act, 1954

The Special Marriage Act, 1954 casts a duty upon the courts to make efforts for reconciliation before a decree is awarded by the court under this Act. The Act also lays down the procedure to be followed by the court while the court makes the reconciliation efforts.

a. Reconciliation In Family Disputes

The Special Marriage Act, 1954, casts a duty on the court to make every endeavour to bring about reconciliation between the parties. When the court is of the opinion that reconciliation is possible between the parties keeping in view the nature and circumstances of the case, the court shall try to strive reconciliation between the parties. The Act provides that before granting any relief, which is recognised under this Act, the court should try to persuade the parties for reconciliation. This duty is a consistent duty of the court to make efforts for reconciliation between the parties. It means that the court should not only try to persuade

¹² *Id.*, Section 18.

the parties for reconciliation at the time when the petition is brought before the court but the court can make such efforts at any stage of the proceedings, where the court finds it possible so to make in the nature and circumstances of the case.¹³

b. Procedure for Conducting Reconciliation Proceeding

The Act also lays down the procedure for the purpose of bringing about reconciliation between the parties. The Act provides that if the parties so desire and the court thinks it proper so to do, the court may adjourn the proceedings for a reasonable period of time, not exceed fifteen days. After the adjournment of the proceedings, the court shall refer the matter to any person named by the parties in this behalf and if the parties fail to name any person then the court can nominate any person on behalf of the parties.¹⁴

D. Conciliation and the Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 contains some vital provisions of considerable importance relating to conciliation in family disputes. Section 23 of the Hindu Marriage Act, 1955 provides for the court's duty for reconciliation.

a. Court's Duty For Reconciliation

The legislator has imposed a duty on the courts under section 23(2) of The Hindu Marriage Act, 1955. This section provides that before granting any relief under this Act, courts must first make efforts to bring about reconciliation between the husband and the wife. If the courts order a party to file an objection without first trying for reconciliation as it should, the order would be erroneous. The court has to go for reconciliation irrespective of the result, howsoever serious or estranged the relations of the husband and wife may be. When the efforts of the courts at reconciliation fails it should enter into the merits of the case within an open mind and without the slightest prejudice against either party for the stance taken by him or her during the court's efforts for reconciliation. The Hindu Marriage Act, 1955 authorizes the courts to take the assistance of a third person for effective reconciliation between the parties.

¹³ The Special Marriage Act, 1954, Section 34 (2).

¹⁴ *Id.*, Section 34 (3).

E. Conciliation and the Family Courts Act, 1984

The Family Courts Act, 1984 provides for the amicable settlement of family disputes through conciliation in the family disputes. Under the Family Court Act, 1984, a duty is cast upon the Family Courts to make efforts for the amicable settlement of disputes by way of conciliation. The Family Courts Act, 1984, provides that in every suit or proceedings under this Act, when a case is brought before a family court, and the family court is of the view that in that case a settlement is possible keeping in view the nature and circumstances of the case. The court shall in such case try to make an endeavour to assist the parties in arriving at a settlement in respect of the dispute. For the purpose of making the settlement, the court can adjourn the proceedings for such period as it may deem fit.¹⁵

F. Conciliation and the Legal Service Authority Act, 1987

The primary aim of enacting the Legal Service Authority Act, 1987 was to organise Lok Adalat to ensure that justice to the poor section of the society is made accessible. But, the Act was amended in the year 2002 and by this amendment a new chapter under the head "*Pre-Litigation Conciliation and Settlement*" was inserted in the Legal Service Authority Act, 1987, which provides for the establishment of the permanent Lok Adalats and to ensure settlement through conciliation.

a. Establishment of Permanent Lok Adalats

The Legal Service Authority Act, 1987 directs the Central authority and the State authority to establish permanent Lok Adalats. The central or the state authorities shall also determine the places at which the permanent Lok Adalats shall be established. The permanent Lok Adalats so established shall be notified by the central or the state authority as the case may be. The area and the jurisdiction of such permanent Lok Adalats shall also be specified by the central or the state authority as the case may be.¹⁶

b. Cognizance of Cases by Permanent Lok Adalat

The Act lays down the area on which the permanent Lok Adalat shall have the jurisdiction to deal with the cases. It provides

¹⁵ The Family Courts Act, 1984, Section 9.

¹⁶ The Legal Service Authority Act, 1987, Section 22B (1).

that any party to a dispute may, before the dispute is brought before any court, can make an application to the Permanent Lok Adalat for the settlement of dispute. However, the area of the permanent Lok Adalat is limited by adding three provisos. The *first proviso* provides that the permanent Lok Adalat shall not have jurisdiction in respect of the matter, which is of a criminal nature and such offence is not compoundable under any law. The *second proviso* lays down that the permanent Lok Adalat shall also not have the jurisdiction to deal with the cases where the value of the property in dispute exceeds ten lakh rupees. The *third proviso* lays down that the central Government may by notification in the official gazette, increase the limit of ten lak rupees specified in the second proviso after consultation with the central authority.¹⁷

c. Conciliation by the Permanent Lok Adalat

After all the statement, additional statement and reply, if any, have been filed to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties who has made the application for the settlement of their dispute, in such manner as it thinks appropriate taking into account the circumstances of the dispute.¹⁸ During the conciliation proceedings when a Permanent Lok Adalat, is of the opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties to the dispute for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned. Every award made by the Permanent Lok Adalat under this Act shall, be deemed to be a decree of a civil court and shall be binding on all parties and all the persons claiming under them.¹⁹

G. Conciliation and the Arbitration and Conciliation Act, 1996

Before the enactment of the Arbitration and conciliation Act, 1996, there was no separate law on conciliation. It was for the first

¹⁷ *Id.*, Section 22C(1).

¹⁸ *Id.*, Section 22C (4) and Section 22C (5).

¹⁹ *Id.*, Section 22C (7).

time in this Act, that the law relating to conciliation was codified. In the present Act, conciliation has been assigned an entire chapter. Chapter III of the Arbitration and Conciliation Act, 1996 is devoted to conciliation, it consists of 20 sections from section 61-81.

(a) Commencement of Conciliation Proceedings

The proceedings of conciliation can be initiated by any party, by sending an invitation in writing to the other party to conciliate a dispute. The conciliation proceedings shall commence only when the other party to the dispute accept in writing the invitation of the initiating party. While invitation to conciliate and its acceptance amounts to an agreement between the parties to conciliate the identified dispute, other party can walk out of the agreement at any stage of the conciliation proceedings. The thread of voluntariness runs through the entire process of conciliation.²⁰

(b) Appointment of Conciliators

The appointment of the conciliators is also made by the disputing parties. In conciliation proceedings with one conciliator, the parties may agree on the name of sole conciliator. In conciliation proceedings with two conciliators, each party is required to appoint one conciliator and the third conciliator is to be appointed by both the parties and he is to act as the presiding officer. The Act also makes the provisions for the alternative modes of appointment of conciliators. Instead of appointing the conciliator themselves, the parties can entrust this task to an institution or to a third person.²¹

(c) Procedure Followed by the Conciliator

After his appointment, the conciliator may request each party to submit to him a brief written statement indicating the general nature of dispute and the point at issue. Each party is also required to supply the copies of their statements to the other party. Additional detailed statements supported by any documents or other evidence which a party may deem necessary in respect of one's respective cases may also be called for.²² The Conciliator is not bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. The obvious purpose of this provision under is to liberate

²⁰ The Arbitration and Conciliation Act, 1996, Section 61.

²¹ *Id.*, Section 64.

²² *Id.*, Section 65.

the institution of conciliation from the clutches of procedural laws. In performing his function, the conciliator shall be guided by the principle of objectivity, fairness and justice.²³

As and when it appears to the conciliator that an amicable settlement of the dispute is possible, he may formulate the terms of possible settlement and submit them for the observation of the parties. After the parties observe the terms formulated by the conciliator, the terms may also be reformulated in the light of the observations that the conciliator receive. If the parties accept the terms of the settlement, they can themselves draw up and sign the settlement agreement. If the parties request the conciliator to draw or assist in drawing up the settlement, the conciliator may assist the parties in drawing up the settlement. The agreement becomes final and binding on the parties and so also persons claiming under them on signing by both the parties. The conciliator shall authenticate the settled agreement and furnish a copy to each of party.²⁴

(d) Termination of Conciliation Proceedings

The Act provides for the termination of conciliation proceedings in the following four ways:²⁵

- i. By the signing of the settlement agreement, on the date of the agreement; or
- ii. By a written declaration of the conciliator to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or
- iii. By a written declaration of both the parties addressed to the conciliator indicating that the conciliation proceedings are terminated, on the date of such declaration; or
- iv. By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of such declaration.

²³ *Id.*, Section 66.

²⁴ *Id.*, Section 73.

²⁵ *Id.*, Section 76.

3. Conclusion

In the Indian legislative history, conciliation gets the legal sanctity for the first time in the Civil Procedure Code, 1908. In this Act provisions were made for the first time for the resolution of disputes by arbitration, conciliation, judicial settlement and mediation. The Industrial Disputes Act was passed in 1947. This Act specifically, makes provisions for the resolution of industrial disputes by conciliation. After India got independence, the Government of India passed a number of legislations, in which provisions relating to conciliation were made. Until 1996 the settlement through conciliation was regulated by the above mentioned Acts, there was no separate law on conciliation. But with coming into force, the Arbitration and Conciliation Act, 1996 we have a separate legislation on conciliation. The Arbitration and Conciliation Act, 1996 makes and define the law relating to conciliation. This Act provides for the settlement of every dispute by conciliation except those which cannot be submitted to conciliation by virtue of any other law for the time being in force. The most important provision of the law of conciliation is that the settlement agreement has been given the same status and effect as if it is an arbitral award. The settlement can be enforced in the court in the same manner as if it were a decree of the court.

At present the conciliation has emerged as a better mode to resolves the disputes between the parties instead the ordinary litigation process of the courts. The court process of dispute's settlement is expensive and time consuming while in conciliation if the parties are willing, disputes can be settled with nominal costs and that too in a very short time. Keeping in view the pendency of cases in our judiciary from the bottom to top, conciliation certainly has the capacity to decrease this workload from the judiciary. **Finally**, it is suggested that in every dispute efforts should be made to settle the dispute by conciliation and only those matter should be referred to courts where no element of conciliation exists.

Inquiries into the Foundations of Legal Aid

A government founded on anything except liberty and justice cannot stand.¹ All the nations that have passed away furnish a note of warning that no nation founded upon injustice can stand.² Thus, justice accords the legitimacy and rationale to the very existence of the state and its everlasting perpetuity. History is replete with examples when the tyrant, autocratic and unjust empires could not withstand the fury of the oppressed and the exploited people. Justice can be said to be the true and ultimate test of every civilization and every government. The basic object of justice is to establish a social order in which everyone has equality of justice and equal opportunity. It also aims at to distribute the resources and opportunities equally and according to the individual needs and claims justifiably sought. The legal system of a given society bestows every citizen with certain rights in the rubrics of fundamental rights or human rights for his optimum and multifaceted development and to usher into any lawful pursuit for his progress and growth. The legal system guarantees that the rights given to the citizens are not subject to violation and of political vicissitude. To ensure that the rights are not violated the legal system also provides for the remedial mechanism for their redressal. However, the socio-economic inequalities have substantiated the fact that all the citizens cannot have an easy access to the remedial mechanism in the event their guaranteed rights are violated or a legal claim is denied *mala fide*. This factual matrix calls for protective legislative mechanism to extend leverage in the form of legal aid at the state cost when there is denial of justice to the “*legally handicapped*” constituents of the society who are constrained by the socio-economic disabilities, corruption and cultural inhibitions to invoke recourse to judicial mechanism for the redressal of their rights. The rationale for this preferential and protective treatment of one against the other is

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¹ Robert Ingersol, quoted in VR Krishna Iyer, *Law Versus Justice* (1981), p. 16.

² *Ibid.*

based on the presumption that the social and economic inequality is the result of the social process of impoverishment and the impoverished has been brought to that level in consequence of a systematic and deliberate artificial process.³ Therefore, the object is “not merely to achieve some perfectly just society or social arrangements, but about preventing manifestly severe injustice”⁴ through assertive and corrective measures. While justice requires that every person should be able to invoke the judicial machinery for the redressal of his grievances and can assert his claim to the material resources of the society on the basis of equality and equal opportunity and reverse the situation of injustice. This can be possible only when a legal system has a well developed system of legal aid as its integral part.

CONCEPT OF LEAL AID

Every legal system is based on the assumption that all persons are equal and capable of invoking appropriate remedies before the courts of law to get justice according to law and nothing prevents them from seeking justice if their rights are violated. Another notion of the administration of justice is that parties to the litigation shall be treated equally. However, of late the actual functioning of the judicial administration has disproved it, especially in view of the plight of the people suffering from social and economic constraints in seeking justice. Theoretically, the law regime bestows equal rights and equal opportunities to all irrespective of ones socio-economic existing but despite the guarantee of equal justice, the legal system operates differently and harshly to the poor who are devoid of resources to ignite it, for in the adversarial system the “*throw of dice*” matters for admission in the judicial system to seek justice and consequently the poor suffers the situation of justice denial.⁵ This situation of legal incompetence to seek justice strongly justifies the provision of legal aid to overcome this imbroglio of the poor in effectively igniting the legal system to protect their interests. The idea of legal aid includes within its ambit various measures such as legal assistance in litigation, legal literacy to enhance the awareness

³ See Upendra Baxi, *Law and Poverty: Critical Essays* (1988), p. vi.

⁴ Amartya Sen, *The Idea of Justice*, Penguin Books (2009) p. 21.

⁵ See, 128th Report of the Law Commission of India on Cost of Litigation, (1988).

of rights, remedies and processes, legal advice, preventive legal aid etc. to facilitate equal and effective access to justice.

The legal aid needs of the poor become urgent to address on three counts. First, the legal system comes up with all its maze and mystique of the technical and formal statutory law regime. Secondly, the innate and objective relation of law and justice accords recognition to the provision of legal aid to the poor, who cannot have access to justice by reason of social disability and economic destitution. Thirdly, to provide an effective access to justice on the basis of equal opportunity to claim the equitable distribution of resources and opportunities to reap the benefits of social justice. The technicality and formality of the vast legal rules makes it very difficult for an ordinary person to ascertain his stand in law, which makes it indispensable for him to seek expert assistance of a lawyer, which in turn requires the payment of fees besides other fringe expenses of litigation that a poor cannot afford. This situation of helplessness calls for the affirmative action on the part of the state to extend legal aid to enable the poor to seek justice. If legal aid is not given to the population suffering from socio-economical disabilities then the entire purpose of the law regime will be redundant and justice will be a mirage to them. Law fails in its purpose if it altogether fails to realize justice to the consumers of justice belonging to the invisible and ignored bracket of the society engrossed in poverty, illiteracy, ignorance and squalor. Thus, legal aid to the poor gives a rationale to the legal system itself if it is at all concerned with equal justice to all.

Poverty is a global phenomenon, therefore, the mechanism of legal aid has become an integral part of every legal system. The legal system that does not embrace legal aid as its essential component fails in its purpose to dispense justice to the poor, who is comparatively in greater need of law than the rich to stake his claim for social justice as a right against poverty and deprivation. The legal system that provides a strong and effective machinery of legal aid can only guarantee the dispensation of justice to the poor. Without the provision of legal aid the theoretical notions of justice are of no meaning to the poor until and unless he is empowered to assert his rights through state leverage. Therefore, legal aid is a *sine qua non* to every democratic society based on equality, justice and rule of law.

JURISPRUDENTIAL FOUNDATIONS OF LEGAL AID

The object of law and every legal system is to establish a just social order which can facilitate the achievement of its ultimate pursuit-dispensation of justice on the anvil of equality. The basic notions of jurisprudence primarily and individually cater the philosophical base and justification as to how these notions can help in organizing a just society and how justice can be dispensed to different “justice constituencies” of the society. And, if any particular segment of the society is deprived of justice by the “politics of law”, then how they can seek justice. This paper embarks upon a humble attempt to trace the jurisprudential notions that buttress the cause of legal aid. The concept of legal aid is founded on the jurisprudential notions of justice, equality, fair opportunity of equality, equality of access to justice, social justice, distributive and corrective justice, Critical Legal Studies, feminist jurisprudence, prioritized ranking of right to legal aid, theory of social engineering etc. Therefore, it becomes imperative to discuss each of the notions separately to get a clear understanding as to how they constitute a substratum for legal aid.

(A) CONCEPT OF JUSTICE

The concept of justice is pregnant with various diverse notions of right, morality, welfare, happiness, liberty and equality.⁶ Justice is considered the primary goal of welfare state whose very existence rests on the parameters of justice.⁷ The conventional definition of justice is underlined in the maxim, *summ cuique tribuere*, to render each person his or her due.⁸ However, the concrete concept and content of justice has eluded the jurisprudential wisdom. Hans Kelsen has his own way to posit:

“The longing for justice is man’s eternal longing for happiness. It is happiness that man cannot find alone, as an isolated individual and seeks in society. Justice is social virtue and it can be guaranteed by a social order.”⁹

The notion of justice was recognized by the earliest Egyptian and Hebrew laws, which contained injunctions to the

⁶ RK Gupta, Justice: Unequal but Inseparable, 11 JILI 1969, p. 57.

⁷ CK Allen, Aspects of Justice (1958), p. 28.

⁸ David Miller, Social Justice, (1976) p. 20.

⁹ Hans Kelsen, What is Justice?, (1957) pp. 1-2.

judges “to administer the law impartially” and “to hear the small as well as the great.”¹⁰ Even these explicit injunctions could not ensure the dispensation of impartial and complete justice since the impartial application of laws might be unequal. Therefore, differential treatment required justification in terms of relevant differences.¹¹ Each society has to identify, at each stage in its history, the groups of people that need this unequal but inseparable treatment.¹² Institutions are just when no arbitrary distinctions are made between persons in assigning of basic rights and duties and when the rules determine a proper balance between competing claims to the advantages of social life.¹³ The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.¹⁴ This paved the way for removing arbitrary discrimination such as those based on race, colour, religion and sex. Further, the notion of impartiality was extended by applying it to a wider range of rights and duties.¹⁵ Thus, there was a movement from equality in political rights to equality in social and economic rights. Therefore, the modern approach looks at the notion of justice from the point of view of the individual to whom just treatment was due. Honore maintains that in applying the notion of justice emphasis is now laid on demand for just treatment rather than on duty to act justly.¹⁶ Thus the essence of the notion of justice lies in the “recognition of each person as an autonomous moral individual, with claims as a person equal to those of another person, equally free and responsible for his own life, work and affairs.”¹⁷ Del Vecchio has succinctly explained the notion when he observed that “it demands the equal and perfect recognition, according to pure reason, of the equality of personality in oneself as in all others, for all the possible interactions among several subjects.”¹⁸ The notion of justice has

¹⁰ Morris Ginsberg, *On Justice in Society*, Penguin Books, England, (1965), p. 65.

¹¹ Julius Stone, *Human Law and Human Justice*, NM Tripathi, Bombay, (1965), p. 9.

¹² RK Gupta, *Justice: Unequal but Inseparable*, 11 JILI (1969) p. 57, at 77.

¹³ John Rawls, *A Theory of Justice* (1972), p. 5.

¹⁴ *Ibid*, p. 7.

¹⁵ *Ibid*.

¹⁶ AM Honore, *Social Justice*, (1968) p. 62.

¹⁷ RW Baldwin, *Social Justice*, (1966), p. 15.

¹⁸ Giorgio Del Vecchio, *Justice*, University Press, Edinburgh, (1952), p. 116.

another facet of confronting injustice. As Edmond Cahn said that “justice is not a collection of principle on criteria”, but it is “the active process of preventing or repairing injustice.”¹⁹

Justice has been the highest urge of mankind that directed the earliest laws that justice be done alike to rich and poor. The idea of justice received its classic embodiment and statement in the fortieth paragraph of *Magna Carta* that reads “*nulli vendemus, nulli negabimus, aut differemus, rectum aut justiciam*,” which was a first step in this direction. The notion of freedom and equality of justice has been incorporated almost in every modern constitution. “Right to freedom and equality of justice...was...the most important of all because on it all the other rights, even the rights to life, liberty, and the other pursuit of happiness, were made to depend.”²⁰ Therefore, it must be possible for the humblest to invoke the protection of law, through proper proceedings in the courts, for any invasion of his rights by whomsoever attempted, or freedom and equality vanish into nothingness.²¹ The inequalities in the administration of the law are produced, if only indirectly, by economic and social inequalities. As Max Weber noted:

“Formal justice guarantees the maximum freedom for the interested parties to represent their formal legal interests. But because of the unequal distribution of economic power, which the system of formal justice legalizes, this very freedom must time and again produce consequences which are contrary to the substantive postulates of religious ethics or of political expediency.”²²

Inequalities in the administration of law result into the disadvantages to the poorer sections of the society. Therefore, to seek protection of legal interests in view of the social and economic inequalities “democratization of remedies” becomes urgent and indispensable for the poor who cannot afford to seek justice because of the high cost of litigation. Justice requires dispensation of justice through impartial and even-handed administration of

¹⁹ Lenore L Cahn, (ed) *Confronting Injustice*, (1962), p. 381.

²⁰ Stimson, *Federal and State Constitution*, p. 10 quoted in RH Smith’s *Justice and the Poor*, p 4.

²¹ RH Smith, *Justice and the Poor*, (1926), p. 5.

²² Max Weber quoted in Ross Cranston, *Legal Foundations of the Welfare State*, p.48.

law without any distinction. This makes it imperative to adopt the modality of legal aid to advance the ultimate goal of every legal system. The instrumentality of legal aid can ensure easy and inexpensive access of the poorer sections of the society to justice. Therefore, it saturates that the jurisprudential foundations of legal aid are deeply rooted in the concept of justice. For in the absence of legal aid the very foundations of justice will be non-existent for the people suffering from social and economic handicaps.

(i) SOCIAL JUSTICE

The concept of social justice is best understood as forming one part of the broader concept of justice in general.²³ Social justice came to be regarded as an attribute which the 'actions' of society, or the 'treatment' of individuals or groups by society, ought to possess.²⁴ The expression has a definite meaning, describes a high ideal, and points to great defects of the existing social order which urgently call for correction.²⁵ Social justice is the right of the weak, aged, destitute, poor, women, children and other under-privileged persons to the protection of the state against the ruthless competition of life,²⁶ proper balancing of the competing claims²⁷ and concerns the distribution of benefits and burdens throughout the society, as it results from the major social institutions.²⁸ The principle of social justice is the concomitant of a just state,²⁹ which strives to establish a just social order to subserve the common good of the people. Social justice demands the abolition of all sorts of inequalities which result from inequalities of wealth and opportunity, race, caste, religion and title and harmonise the rival claims and interests of different groups and sections.³⁰ The concept of social justice, thus, takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities.³¹ Social justice is the strong claim of the people against the state for the

²³ David Miller, *Social Justice*, 1976, p. 17.

²⁴ FA Hayek, *Law, Legislation and Liberty*, Routledge & Kegan Paul, London & Henley, p.62.

²⁵ *Ibid*, p. 66.

²⁶ K Subbarao, *Social Justice and Law*, (1974), p. 2-3.

²⁷ John Rawls, *A Theory of Justice*, (1972) p. 10.

²⁸ David Miller, *Social Justice*, (1976), p. 22.

²⁹ RG Chaturvedi, *Justice-Natural, Social, Political and Economic*, (1990), p. 12.

³⁰ SMN Raina, *Law, Judges and Justice*, (1979), p. 28.

³¹ PB Gajendragadkar, *Law, Liberty and Social Justice*, (1965), p. 78.

equitable distribution of the resources and opportunities. According to David Miller, "social justice" is "the social and economic claims...directed towards providing minimum standard of decent living for each person."³²

The 'end' of social justice can only be realized to the marginal sections of the society by 'means' of legal aid, since "legal aid is the delivery system of social justice."³³ Legal aid as a juridical right is not totally related to the traditional political right to approach the courts for securing justice but intimately related to modern struggle against poverty, thereby ameliorate the condition of the poor by securing them social rights like right to adequate diet, to decent housing, to medical care and to merit based employment. Right to legal aid comes to the category of modern social right.³⁴ The use of law for reducing economic and social inequalities and promoting social justice by affirmative state action provided a new rationale for legal aid in most developing countries...It can mitigate structural imbalances in the legal system functioning against the poor, it can be an essential input in developmental planning and social justice administration.³⁵ Therefore, an effective legal assistance programme is not only essential to the maintenance of the democratic way of life and the rule of law but it is also...a socio-economic necessity.³⁶

(ii) DISTRIBUTIVE JUSTICE

The notion of distributive justice deriving from *Nicomachean Ethics* aims at the distribution of goods among individuals on the basis of their relative claims.³⁷ According to Aristotle, distributive justice "is manifested in distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution"³⁸ and is based on the principle that "there has to be equal distribution among equals."³⁹ According to him

³² David Miller, *Social Justice*, p. 79.

³³ *Hussainara Khatoon v State of Bihar*, AIR 1979 SC 1369, 1377.

³⁴ Cappelletti and Gordley, *Legal Aid: Modern Themes and Variations*, 24 *Stan L Rev* 347 (1972).

³⁵ NE Madhava Menon, *Legal Aid and Justice for the Poor*, in Upendra Baxi's (ed) *Law and Poverty: Critical Essays*, (1988), p. 341.

³⁶ *Report of Legal Aid Committee (Govt. of Gujarat) 1971*, p. 12.

³⁷ Aristotle, *Nicomachean Ethics*, Oxford University Press, Reprint, 1986, p. 111.

³⁸ *Ibid*, p. 111.

³⁹ *Nicomachean Ethics V*, 3.

“injustice arises when equals are treated unequally, and also when unequals are treated equally.”⁴⁰ But he justifies the violation of equality rule when he said that “distribution must be according to merit.”⁴¹ Nicholas Rescher opines that “distributive justice embraces the whole economic dimension of social justice, i.e., the entire question of the proper distribution of goods and services within the society.”⁴² Rawls formulated the principle of distributive justice on the basis of equality but qualifies it with the “difference principle”, when he says that “all social primary goods-liberty and opportunity, income and wealth, and the bases of self-respect-are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored.”⁴³

The notion of distributive justice is concerned with the distribution of the economic resources and has an innate relation with the concept of social justice; therefore, the apparatus of legal aid becomes imperative for the poor suffering from social and economic impediments to stake his claim to social justice according to the notions of distributive justice to ameliorate them from the quagmire of poverty and want.

(iii) CORRECTIVE JUSTICE

Corrective or remedial justice, for Aristotle, is essentially the measure of the technical principles which govern the administration of law. In regulating legal relations a general standard of redressing the consequences of actions must be found, without regard to the person.⁴⁴ For him justice is transactions between man and man is a sort of equality and injustice a sort of inequality.⁴⁵ Corrective justice seeks to restore equality when this has been disturbed by wrongdoing, which assumes that the situation that has been upset was distributively just.⁴⁶ Here comes the role of the courts to restore equality. “The function of the courts is that of applying justice in its corrective sense according to specific rules relating to the application of corrective justice. In a fair legal system procedural rules afford each party an equal opportunity of

⁴⁰ Nicomachean Ethics, p. 10.

⁴¹ Ibid, p112.

⁴² Nicholas Rescher, *Distributive Justice*, Bobs-Merrill Co., New York (1966), p. 5.

⁴³ John Rawls, *A Theory of Justice*, (1972), p. 303.

⁴⁴ W Friedmann, *Legal Theory*, 5th Ed, (1967), p. 10.

⁴⁵ Aristotle, *The Nicomachean Ethics*, p. 115.

⁴⁶ RWM Dias, *Jurisprudence*, (1985), p. 65.

presenting his case...Detailed application of such rules may involve the provision of legal aid...for the sake of equal representation"⁴⁷ to correct injustice, unequal treatment etc.

Corrective justice is to rectify the unequal treatment of the past resulting into unequal pedestals of life, which was calculated and deliberate. The aftermath of the consequential socio-economic disparities has resulted into the "legal incompetence" of the "legally handicapped" population. Therefore, to ensure the dispensation of justice in all its manifestations to this "justice constituency" preferential opportunities to realize the resources and state leverage in the rubrics of legal aid becomes indispensable. The notion of corrective justice inheres an obligation in the state to correct the injustices through the affirmative action by extending due leverage to the deprived to get justice. Therefore, corrective justice can be said to offer a rational justification for the provision of legal aid.

(B) EQUALITY PRINCIPLE

Equality is the basis of all systems of jurisprudence and administration of justice.⁴⁸ The notion of equality as an aspect of justice has two phases, namely, equality as a means of doing justice, and equality as an end of justice.⁴⁹ The concept of equality cannot be defined in absolute terms in view of the variables in a given society such as place, person, time etc. The concept has multifaceted connotations and contents, as aptly remarked by Justice Mathew:

"The claim for equality is in fact a protest against unjust, undeserved, and unjustified inequalities. It is a symbol of man's revolt against chance, fortuitous disparity, unjust power and crystallized privileges."⁵⁰

The concept of legal aid is the very spirit of equality and is dedicated to the principle of equal justice. Equal justice is the fair treatment within the purview of judicial process. It implies an easy access to courts and other governmental agencies on the basis of equality.⁵¹ Therefore, it is the first obligation of the state to ensure

⁴⁷ PJ Fitzgerald, Salmond on Jurisprudence, 12th Ed., P. 62.

⁴⁸ 14th Report of the Law Commission of India, 1958, p. 587. See also RH Smith, Justice and the Poor, (1926), p. 3.

⁴⁹ RK Gupta, Justice: Unequal but Inseparable, 11 JILL, (1969), P.57.

⁵⁰ State of Kerala v NM Thomas, AIR 1976 SC 490, 513.

⁵¹ SS Sharma, Legal Aid to Poor, 1993, pp 6-7.

justice to all citizens on the anvil of equality principle not as an end in it but the principle of equality is invoked as a “means” to achieve justice as an “end”. The notion of equality presupposes that justice should be dispensed equally among equals. But when justice is to be dispensed among “unequals”, the equality principle shall justify unequal treatment⁵² between the “equals” and “unequals” by allowing a tilt or leverage in favour of “unequals”. Fairness, the other side of justice principle, demands separate and different treatment depending on the variable socio-economic structure of the society. To meet the demand of justice the state has to devise different modalities to serve the objectives by extending the differential treatment and legal aid is one of these measures to ensure the equality of status and representation before the court of law when a poor person is involved in litigation against a rich opponent.

(i) FAIR EQUALITY OF OPPORTUNITY

The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.⁵³ Rawls in his theory of justice propounds two principles of justice. First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.⁵⁴ The first principle envisages the provision of equal liberty to all in a just society. The second principle applies to the distribution of income and wealth, which “must be to everyone’s advantage” and “positions of authority and offices of command must be accessible to all.”⁵⁵ The justice principle demands that in the situations of inequalities springing up from the social and economic inequalities, when they are undeserved inequalities of birth and natural endowment, incapacitating the unequals in asserting their claims, the state must guarantee the fair treatment for the redressal of these

⁵² John Rawls, David Miller, Aristotle and HLA Hart justify unequal treatment if the subjects are unequals.

⁵³ John Rawls, *A Theory of Justice*, Clarendon Press, Oxford, (1972), p. 7.

⁵⁴ *Ibid*, p. 60.

⁵⁵ *Ibid*, 61.

inequalities. Rawls addresses these inequalities when he observes that “in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and those born into less favourable social positions.”⁵⁶ According to him “the difference principle” is the justification for “the principle of redress”, when he convincingly observes that “unredressed inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for.”⁵⁷

Thus, the philosophy of the Rawlsian theory of justice argues that when a person is not able to address the unredressed inequalities of birth and natural endowment, the state must compensate by extending leverage and remove the access barriers. Therefore, in the event of denial of justice resulting from access barriers in the form of destitution, illiteracy and ignorance, the Rawlsian theory of fair equality of opportunity justifies the foundation and rationale for the mechanism of legal aid to the unequals since it affords an equal and fair opportunity to have an access to the courts of law to stake his claim to justice by removing the access barriers. In the absence of the provision of legal aid to the poor he would not have an opportunity to present his case to realize the legitimate claims guaranteed by the law.

(ii) EQUALITY OF ACCESS TO JUSTICE

The notion of access has been of central concern to political theory and science as well as to jurisprudence.⁵⁸ Access connotes generally ability or means to participate or a permission or liberty to do so or to approach or communicate. Access to justice inheres two basic purposes which are intended to be served by providing access to justice are, to ensure that every person is able to invoke the legal processes for redressal, irrespective of his social or economic status or other incapacity; and that every person should receive a just and fair treatment within the legal system⁵⁹ but the right to relief becomes practical only if there is necessary apparatus

⁵⁶ Ibid, p. 100.

⁵⁷ Ibid.

⁵⁸ Upendra Baxi, Access, Development and Distributive Justice: Access Problem of Rural Population, 18 JILI (1976), p. 375.

⁵⁹ S Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice, 2004, p. 1.

available for the helpless members of the society to seek redress.⁶⁰ It is not enough that law treats all persons equally, but the emphasis should be on equal access to courts. Equality of access means effective access to process claims or to redress grievances. "Illiteracy, destitution, economic and social bondages, cultural inhibitions, and bureaucratic and political corruption seriously impaired the accessibility and assertiveness of the poorest of the poor resulting often in total denial of justice to them.⁶¹ Consequently, the poor occupy the low visibility area to the insensitive and formal legal system, where they are portrayed as accused and defendants and hardly appear as complainants and plaintiffs to seek their just entitlements and redress their grievances.

The concept of "access to justice" visualizes a social order in which justice will be brought within the reach of all, both, those blessed by their wealth and those depressed by their poverty. Underlying the concept is the notion that justice should be accessible to all equally and effectively, and conversely that no one should suffer an injustice simply because he cannot afford to have or is deterred from seeking due access to justice.⁶² Thus, "access to justice" is "a function of government in a civilized society to provide and maintain an adequate and effective machinery...to which all citizens can have access on an equal basis for the impartial resolution of their disputes."⁶³ On equal access EJ Cohn observes that "law is made for the protection of all the citizens poor and rich alike. It is, therefore, the duty of the state to make a machinery work alike for the rich and the poor."⁶⁴ Equal access to justice is the specific jurisprudential notion that works as a bulwark for the mechanism of legal aid to those who cannot have access to courts because of various impediments.

(C) CRITICAL LEGAL STUDIES

Critical Legal Studies⁶⁵ is an overtone of dissatisfaction over the "formalism" of law and inherent bias and prejudices of law

⁶⁰ VRK Iyer, Foreword to S Muralidhar's, *Law, Poverty and Legal Aid-Access to Criminal Justice*, 2004, p. v.

⁶¹ NR Madhawa Menon, *Legal Aid and Justice for the Poor in Upendra Baxi*, (ed) *Law and Poverty-Critical Essays*, (1988), p. 345.

⁶² H Jacob, "Access to Justice in England" an essay contributed to *Access to Justice: A World Survey* (ed) M Cappalletti & B Grath, p. 427.

⁶³ *Ibid.*

⁶⁴ EJ Cohn, *Legal Aid for the Poor*, *Law Quarterly Review*, Vol 49, p. 256.

⁶⁵ CLS grew out of dissatisfaction against unjust laws and structures of governance perpetuating injustice to the individual.

and structures and institutions oppressive, unjust and exploitative to the individual. One of the principal advances of CLS is to demonstrate the need to integrate legal theory with social theory.⁶⁶ CLS theorists were of the view that social “reality is not a product of nature, but is socially constructed.”⁶⁷ The innovative attempt was to identify the role played by law in the processes through which a particular social order comes to be seen as inevitable and concerns the basic terms of social life.⁶⁸ The exponents of CLS hope to emancipate the individual by overturning the existing forms of “legal consciousness”. “By demonstrating that social life is much less structured and much more complex, much less impartial and much more irrational, than the legal processes suggests, the interests served by legal doctrine and theory will surface.”⁶⁹ To counter this grim reality and emancipate the individual Roberto Unger suggests the creation of “*immunity rights*” which establish the “nearly absolute claim of the individual to security against the state, other organizations and other individuals”; “*destabilization rights*” which entitle the individual to demand the disruption of established institutions and forms of social practice that have achieved ‘insulation’ contributing the crystallized plan of social hierarchy and division that the constitution wants to avoid”; “*market rights*” which give a “conditional and provisional claim to divisible portion of social capital”; and finally “*solidarity rights*” - the entitlements of communal life - which fosters, *inter alia*, communal responsibility.⁷⁰

In his other writings⁷¹ Unger strongly advocated “opportunity for discovery and self-expression”, “empowerment by self-assertion” and demand for “participatory government”. He is of the conviction that “society belongs to us, and so do its laws.

⁶⁶ Lloyd’s, Introduction to Jurisprudence, p. 1051.

⁶⁷ See P Berger and T Luckmann, The Social Construction of Reality, (1966). See also Upendra Baxi when he says that this is the decisional perpetuation of injustice. Law and Poverty-Critical Essays, 1988, p. vi.

⁶⁸ See R Unger, The Critical Legal Studies Movement, (1983) 96 Harvard L Rev, p. 561.

⁶⁹ A Hutchinson and P Monahan, The Struggle Between Individuals was Halted and Truce Lines were Drawn Up, (1984) 36 Stanford L Rev, 199.

⁷⁰ Roberto Unger, The Critical Legal Studies Movement, (1983) 96 Harvard L Rev, p. 600.

⁷¹ Social Theory: Its Situation and Task, (1986); Politics: A Work in Constructive Social Theory; Passion: An Essay on Personality (1984).

We are not constrained by so-called meta-physical foundations and so can change society. There is nothing to stop our changing or reshaping society and its laws",⁷² which in turn demand "radical democracy", if law is going to be changed by those who feel oppressed by it.⁷³ The CLS is the rejection of the injustice and bias inherent in the existing structure operating against the individual in the form of oppression, exploitation, deprivation and denial of justice⁷⁴, therefore, the "crits" vehemently opposing the structure and laws with the inherent bias and prejudice against the individual at the social and economic margin of the society and arguing for the radical change in the structures of governance and the laws. The mechanism of legal aid is viable route to settle scores with the situations of oppression, exploitation, deprivation and denial of justice. Moreover, the instrumentality of legal aid can be and has been invoked for the institutional and law reform that perpetuate injustice to the poor. The mechanism of legal aid would empower every member of the society to challenge the inherent functional bias and prejudice of law and legal institutions against the poor.

(D) FEMINIST JURISPRUDENCE

Feminist jurisprudence inquires into the politics of law, but its particular focus is on the "law's role in perpetuating patriarchal hegemony."⁷⁵ The goal is to inquire into the impact of legal system on women, challenge the structure of male specific legal thought and seeking radical changes. Liberal feminists' pursuit was equality connoting equal opportunity, radical feminists sought affirmative measures to challenge inequalities, cultural feminists emphasize gender difference and use the rhetoric of equality to advocate change that supports the "caring and relational values" of this difference and, postmodern feminists conceive equality as a patriarchal social construct and seek for the feminist reconstruction of equality for the benefit of women.⁷⁶ Feminist jurisprudence

⁷² Lloyds, Introduction to Jurisprudence, 2001, p. 1054.

⁷³ Ibid.

⁷⁴ The Critical Legal Studies gives the impression that these critical studies, attacking the formal laws and structures of governance with inherent bias against the individual, initiated by a group of legal scholars from the west. They were motivated by their common commitment for a more egalitarian society by reshaping the unjust laws and structures of governance.

⁷⁵ H Wishik (1985) 1 Berkeley Women's LJ 64.

⁷⁶ Lloyd's Introduction to Jurisprudence (2001), p. 1125.

challenges the masculinity of law and legal institutions and the goal is to reconstruct the legal system in tune with the neutrality norm. Irrespective of the wide area of legal discourse that feminist jurisprudence covers, claims for affirmative measures to be taken for her equal status and entitlement to all the benefits and opportunities renders legal aid indispensable for this vulnerable group. The feminine studies critical of the “maleness” of the existing law and legal institutions is a new but strong jurisprudential justification for the provision of legal aid to the women to assert their rights against the patriarchal order.

(E) PRIORITIZED RANKING IN THE HEIRARCHY OF RIGHTS’ REGIME

Natural rights are abstract versions of claims, liberties and immunities.⁷⁷ They are inherent, fundamental and sacred rights which can neither be taken away nor be restricted by any authority.⁷⁸ The doctrine of natural rights passed into the realm of practical reality and formed the part of the bill of rights and constitutional law with the purpose “to establish them as legal principles to be applied by the courts.”⁷⁹ Legal system of a society guarantees certain rights under various strands of constitutional and statutory laws to its citizens but for the deprived population the entire rights’ regime remain redundant and a teasing illusion since they have no means to enforce those rights in the event of their infraction. “Law is inoperative, a futile exercise of legislative power, unless the machinery of justice provides life to law and makes it potent by active implementation.”⁸⁰ Therefore, right to legal aid is a right precedent to other human rights, for it gives operational dimension to the whole corpus of human rights in their realization. The emergence of the right of access to justice as “the most basic human right” was in recognition of the fact that possession of rights without effective mechanisms for their vindication would be meaningless.⁸¹ The right of access to justice is universal and most fundamental of all rights.⁸² The right to justice is fundamental to the rule of law and so we have made social

⁷⁷ RWM Dias, *Jurisprudence* (1985), p. 501.

⁷⁸ CK Allen, *Legal Duties*, p. 111.

⁷⁹ *West Virginia Board of Education v Barnetts*, 319 US 624.

⁸⁰ The Report of the Legal Aid Committee (Govt. of Gujarat) 1971, p. 4.

⁸¹ M Cappelletti and B Garth, ‘Access to Justice – The Worldwide Movement to Make Rights Effective: A General Report’, *Access to Justice – A World survey*, 1978, pp 8-9.

⁸² SB Sinha, *Access to Justice, Nyaya Deep*, Vol VI (2005), p 58.

justice an inalienable claim on the state, entitling the humblest man to legal literacy and fundamental rights and their enforcement a forensic reality.⁸³ Legal aid has become an integral part of enforcement of human rights. Providing legal representation to interests that historically, have been unrepresented and underrepresented in the legal process, is essential if equal access to justice and to the judicial system is to be made available to every person who needs it.⁸⁴ Legal aid makes it possible for the poor and the underprivileged access to justice and to use the judicial system effectively for redressal of wrongs and enforcement of human rights.⁸⁵ The operative dimension of right to legal aid accords this right the status of the “most basic human right”⁸⁶ in the prioritized ranking of the hierarchy of human rights jurisprudence.

(F) SOCIAL ENGINEERING THEORY

The aim of the theory of social engineering, propounded by Roscoe Pound, is to build as efficient a structure of society as possible, which requires the satisfaction of maximum of wants with the minimum of friction and waste.⁸⁷ According to him the ultimate object of law is justice, which involves the balancing of competing interests. For this purpose interests were defined as ‘claims or wants or desires, which men assert *de facto*, about which law must do something if organized societies are to endure.’⁸⁸ According to him, law is a means for balancing and reconciling the conflicting interests in the society. The social interest in the individual life is that “the claim or want or demand involved in social life in civilized society that each individual be able to live a human life therein according to the standard of the society”⁸⁹, which implies that their satisfaction should be ascertained in the social structure. Their assertion and restoration demands heavily an inbuilt mechanism of legal aid within that legal system to enable and

⁸³ VR Krishna Iyer, Foreword to S Muralidhar’s, ‘Law, Poverty and Legal Aid- Access to Criminal Justice, 2004, p v.

⁸⁴ Sujata Manohar, Balancing the Scales for the Poor, *Nyaya Deep*, Vol V (2004), p 76.

⁸⁵ *Ibid*.

⁸⁶ M Cappelletti and B Garth, ‘Access to Justice-The Worldwide Movement to Make Rights Effective: A General Report’, *Access to Justice-A World Survey*, (eds M Cappelletti and B Garth, Vol. I(1978) pp. 5.

⁸⁷ Roscoe Pound, *Interpretations of Legal History*, p. 156.

⁸⁸ Roscoe Pound, *Jurisprudence III*, P. 235-36.

⁸⁹ Roscoe Pound, *Survey of Social Interests*, 57 *Harv L Rev*, 26 at 33 (1943).

empower the members of the weaker sections of society to realize their claims. If the legal system does not provide the apparatus of legal aid to the poorer members of the society then this segment of the society will have no option but either to forgo their legitimate claims or to seek justice in the streets, which would corrode the very foundations of the society and endanger the very existence of democracy based on the principle of equality and rule of law.

SUM UP

The need of legal aid emerged in the legal horizon along with the quest for justice. The provision of legal aid in every legal system is indispensable to ensure easy access to justice. The innate relationship of law and justice is a strong bastion for legal aid because the end object of law is to dispense justice on equal basis irrespective of ones socio-economic existing in the society. Again, equality of justice is a prerequisite for a just legal order and is one of the strongest foundations of legal aid, since equality of justice cannot be achieved without the guarantee of equality of access, which envisages that the impediments coming on the way of seeking justice such as destitution, illiteracy and ignorance shall be overcome by means of legal aid. The notion of social justice brings within its wide sweep welfare and economic rights. Right to social justice is a strong claim of the weaker sections against the state for the equitable distribution of national resources. Therefore, to make these claims substantial and meaningful the processual arm of legal aid becomes indispensable. The concept of distributive and corrective justice can only be realized to the low brackets of the social hierarchy through the judicial process that can be ignited by the poor through the apparatus of legal aid. The Critical Legal Studies and the Feminist Jurisprudence support the need of legal aid to challenge the law and legal institutions with inherent bias and prejudice against the individual resulting into oppression, exploitation, deprivation and injustice. The foregoing notions of jurisprudence are the anchor-sheet for the justification of the provision of legal aid. It is not an exaggeration to say that the entire edifice of jurisprudential philosophy would collapse for majority of people at the socio-economic margins of society if legal aid is not made available to them to enforce and realize their legitimate claims and entitlements. The notion and mechanism of legal aid is, therefore, deeply embedded in the foundation of these established notions of jurisprudence.

— Caesar Roy*

Law of Sedition in India - A Critical Analysis

Abstract

The law of sedition in India has assumed controversial importance largely on account of change in the body politic and also because of the constitutional provision of freedom of speech guaranteed as a fundamental right. The law of sedition is mainly contained in section 124A of the Indian Penal Code, 1860. The recent spate in instances of invoking sedition laws against human rights activists, journalists and public intellectuals in the country have raised important questions on the undemocratic nature of these laws, which were introduced by the British colonial government. This Article is an effort at bringing together various arguments to make law of sedition more effective. This Article deals with meaning of sedition, history of sedition laws, kinds of sedition, meaning of section 124-A OF IPC, constitutional validity of section 124-A of IPC, comparative study with different countries and lastly some suggestions are made to make the sedition law more effective.

Introduction

The rationale for sedition is based on the principle that dissemination of seditious material undermines the loyalty of citizens, that disloyal citizens jeopardise the Government at Law, and that a weakened Government at Law threatens the very fabric of the state as well as public order and safety. The recent wave of cases under the law of sedition against writers, editors, politicians, lawyers, human rights activists, political activists and public intellectuals is demonstrative of the broad application of the statute. While sedition laws are part of a larger framework of colonial laws that are now used liberally by both the central and state governments to curb free speech, the specificity of these laws

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lie in the language of 'disaffection' and severity of the punishment associated with them. Sedition laws were used to curb dissent in England, but it was in the colonies that they assumed their most draconian form, helping to sustain imperial power in the face of rising nationalism in the colonies including India. Recent incidents relating to the sedition law may be mentioned here. This law came in news when Mumbai Police arrested a cartoonist Aseem Trivedi on charges of sedition, cybercrime and insulting the national flag and the Constitution. Trivedi is accused of publishing anti – corruption cartoons featuring national symbols on his website. Writer Arundhati Roy and others were also booked under this law for speeches they made on Kashmir. Civil rights activist Binayak Sen was also convicted under this law.

Meaning of Sedition

The word sedition is derived from the Latin word 'seditio' which means 'going aside'.¹ The words 'going aside' in the context of a state and its people appear to indicate separatist tendency on the part of some of them.² According to Black Law Dictionary sedition means an agreement communication or other preliminary activity aimed at inciting treason or some lesser commotion against public authority.³ However, the term sedition is not understood in the above sense in the modern times and the word sedition would include any word or act directed against the lawful constituted authority which may bring the sovereign or the Government into contempt or hatred or generally which may disturb the tranquility of the state.⁴

According to Chambers 21st Century Dictionary, sedition means public speech, writing or action encouraging public disorder, especially rebellion against the government.⁵

¹ Webster's New International dictionary of the English Language, 2nd Edition, Vol-II, London (Unabridged), P.2264.

² The Law of Sedition in India, The Indian Law Institute, New Delhi, (1964) Page 1

³ Black Law Dictionary, Page 1388

⁴ Collins New Age Encyclopedia (World Atlas and Sports Supplement) London, 1957, Page 963.

⁵ Chambers 21st Century Dictionary, Page 1270

In a wider sense it may be defined as words, spoken or written or conduct calculated to bring into hatred or contempt or to excite disaffection against, the sovereign or his or her heirs or the lawful government and constitution or either House of Parliament or the administration of justice or to excite Her Majesty's subjects to attempt by unlawful means to alter any matter in church or state by law established, or to raise discontent or disaffection amongst Her Majesty's subjects or to promote ill will or hostility between different classes of subjects.⁶

Sir James Stephen, in his commentaries on the Laws of England has defined 'sedition' as a conduct which has, either as its object or as its natural consequence the unlawful display of dissatisfaction with the government or with the existing order of society.⁷

In England it has been held that "sedition including in itself is a comprehensive term and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the state and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of Sedition generally are to induce discontent and insurrection and stir up opposition to the Government and the very tendency of sedition is to incite the people to insurrection or rebellion".⁸ A substantially similar view was expressed by Coleridge, J in *R v. Aldred*⁹ when he said that the word "sedition" in its ordinary natural significance denotes a tumult, an insurrection, popular commotion or an uproar; it implies violence or lawlessness in some form."

In India the word 'sedition' is found only as a marginal note to section 124A of Indian Penal Code, 1860 and is not an operative part of the section but merely provides the name by which the crime defined in the section will be known. The marginal note, however, indicates that the offence defined in section 124A of IPC should be regarded as sedition. According to this section, bringing or attempting to bring into hatred or contempt, or exciting or

⁶ Everyman's Encyclopedia (5th Edition), 1967, Vol-11, Richard Clay & Company Ltd, Suffolk, London, Page 213.

⁷ 21st ed. Vol. 14, Page 141-142

⁸ *R v. Sullivan*, 11 Cox C.C. 44

⁹ 22 Cox C.C. 1,3

attempting to excite disaffection towards the government established by law in India through words, spoken or written or by signs or by visible representation or otherwise will amount to sedition. Sedition is nothing but libel (defamation) of the established authority of law i.e., Government. Hence it is called seditious libel in England. Sedition in the ordinary sense means a stirring up a rebellion against the Government.¹⁰ In other words, sedition is used to designate those activities of a man whether by words or deeds or writings which are calculated to disturb the tranquility of the state and lead people to subvert the Government established by law. In *Queen v. Jogendra Chandra Bose*¹¹, C.J. Petheram explained 'disaffection' to mean as a feeling contrary to affection, in other words dislike or hatred. Disapprobation means simply disapproval. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the government or to subvert or resist the authority, if and when the occasion should arise and if he does so with the intention of creating such disposition, among his hearers or readers, they will be guilty under the section.

In *Queen v. Balgangadhar Tilak*¹², Strachey J, agreed with the above ruling, holding that a man must not make or try to make others feel enmity of any kind towards the Government.

In *Niharendra Duta Majumdar v. King Emperor*,¹³ AIR 1942 FC 22, at 26

Sir Maurice Gwyer said that the fundamental duty of every government is the preservation of order, since order is the condition precedent to all civilization and advance of human happiness. This duty has no doubt been sometimes performed in such a way as to make the remedy worse than disease but it does not cease to be a matter of obligation because some on whom the duty rests have performed it well. It is the answer of the state to those who for the purpose of attacking or subverting it try to disturb its tranquility, to create public disturbance or to promote disorder or who incite others to do. Words, deeds and writings constitute sedition if they have this intention or this tendency. Public disorder or the

¹⁰ *Kedar Nath v. State of Bihar*, AIR 1962 SC 955

¹¹ ILR 19 Cal 35

¹² ILR 22 Bom 112

¹³ AIR 1942 FC 22, at 26

reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency.

The above statement of law was not approved by their Lordships of the Privy Council in the case of *Emperor v. Sada Shiv Narayan*¹⁴ and they held that the language of section 124A or the rules under which the case was tried did not justify the statement of law as made by the CJ. The expression 'excite disaffection' did not include 'excite disorder'.

In *Nazir Khan v. State of Delhi*¹⁵ our Supreme Court explained meaning and content of sedition thus –

“Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the state and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of Sedition generally are to induce discontent and insurrection and stir up opposition to the Government and the very tendency of the sedition is to incite the people to insurrection and rebellion.”

The Court further observed¹⁶ –

“Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance or to lead to civil war; to bring into hatred or contempt the sovereign or the Government, the laws or constitutions of the realm and generally all endeavours to promote public disorder.”

Historical Perspective

The legislative history of section 124-A of the Indian Penal Code dealing with sedition is of interest. Section 124-A of IPC, was originally section 113 of the code as originally drafted by Macaulay. This section was framed by the Indian Law Commission

¹⁴ AIR 1943 PC 82

¹⁵ (2003)8 SCC 461

¹⁶ Ibid.

in 1837, the enfranchisement of the Press having taken place in 1835. In 1839 it was proposed to insert the section in the draft Penal Code, but the section was omitted from the Indian Penal Code as it was enacted in 1860. The reason for the omission from the code as enacted is not clear, but perhaps the legislative body did not feel sure about its authority to enact such a provision in the code. However this section was adopted and added to the Indian Penal Code by way of amendment in the year 1870 by an Act XXVII of 1870. There was a considerable amount of discussion at the time the amendment was introduced by Sir James Stephen, who referred to Sir Barnes Peacock, the then Chief Justice of Supreme Court at Calcutta, who on looking at his notes, said he thought the section had been omitted by mistake.

There was on that occasion, a discussion as to section 113 and Sir J. Peacock proposed a section which was thought to be too severe and no corresponding section was enacted. Sir Stephen in introducing the present section explained what the law of England then was, and stated that he proposed that section 124-A should be passed into law because if there were no provision in the law of India, the offence would fall under the common law of England and would be more severely punishable and he most distinctly asserted that there must be an intention to resist by force or an attempt to excite resistance by force before the offence could be brought under the present section. This section was similar to the English statutory law of treason (under the Treason-Felony Act, 1848). However, whereas the English treason law seeks to punish directly disloyal feelings (evidenced by the fact that they are made public), sedition is intended only to punish not one's own disloyal feelings but causing or attempting to cause other people to have disloyal feelings towards the government.

But it would be seen that this section did not penalize conduct against the Queen or the British rule. The restrictions on the legislative competence of the Governor General in Council in 1870 were the same as those existed in 1833, where under the Law Commission expressed a doubt on the validity of a law against sedition, if enacted by the Council of India. Meanwhile section 124-A was so much discussed in several cases up to the year 1897. Accordingly it was felt that it would be better to amend this section and section 124-A was re-enacted by the Act IV of 1898. The

difference between the old section 124-A and the present one is that in the former the offence consisted in exciting or attempting to excite feelings of “disaffection” but in the later, “bringing or attempting to bring into hatred or contempt towards Government of India” is also made punishable.

Kinds of Sedition

J. Stephen has defined sedition, as applicable under English law, as a conduct which has, either as its object, or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused.¹⁷

- i) to excite disaffection against the king, Government or Constitution or against Parliament or the administration of justice.
- ii) to promote by unlawful means, any alteration in Church or state.
- iii) to incite a disturbance of the peace
- iv) to raise discontent among the king’s subjects; and
- v) to excite class hatred.

In India four categories of sedition have been recognized –

- i) Sedition by exciting hatred or disaffection against the Government established by law in India, punishable under section 124-A of the Indian Penal Code.
- ii) Sedition by causing class hatred punishable under section 153A of the same code.
- iii) Sedition by promoting religious insult punishable under section 295A of the same code.
- iv) Sedition by questioning the territorial integrity or frontiers of India punishable under section 2 of the Criminal Law Amendment Act, 1961.

Section 153A has been added by the Indian Penal Code (Amendment) Act, 1898 (Act IV of 1898). Clause (C) was added by the Criminal Law Amendment Act 1972.

¹⁷ Gaur K.D., The Indian Penal Code, Third Edition, Universal law Publishing Co. Pvt. Ltd., New Delhi (2007), Page 192.

This section finds a place between section 124A and section 500 of IPC where section 124A deals with what may be called. The deformation of the state, section 153A deals with defamation of a class while section 500 refers to the defamation of a person.

Section 295A was added by Act XXV of 1927 owing to the agitation following the decision of the Lahore High Court in Raj Pal Vs. Emperor¹⁸, in which it was held that section 153A was not meant to stop polemics against a deceased religious leader however scurrilous in bad taste such attacks might be. Section 295A underwent amendment by Act XII 1961 when two changes were affected viz. the means by which the crime may be committed was enlarged and maximum punishment for the offence was enhanced.

Section 2 of Criminal Law Amendment Act, 1961 makes questioning of the territorial integrity or frontiers of India in a manner prejudicial to the interest of safety or security of India. The outstanding differences between sections 124-A of the Indian Penal Code and section 2 of the Criminal Law Amendment Act, 1961 lie in the enforcement of the provision. For a prosecution under section 124-A, prior sanction of the State Government is a requisite. No such sanction is necessary for a prosecution under Criminal Law Amendment Act, 1961.

Section 124A of the Indian Penal Code(IPC), 1860

Section 124-A defines the offence of sedition. Section 124-A now reads as follows –

“Whoever by words, either spoken or written, or by signs or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation-1: The expression “disaffection” includes disloyalty and all feelings of enmity.

¹⁸ AIR 1927 Lah. 500

Explanation 2: Comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3: Comments expressing disapprobation of the administrative or other action of the government, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

So the offence of sedition under Section 124-A is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, or create disaffection against it. Such acts can be committed by means of words, either spoken or written, or by signs, or by visible representation. Such offences under the section are punishable for imprisonment from 3 years to lifetime with or without fine. A glance at the provisions of this section will disclose that the main body of the section is phrased in language used by English judges and jurists. Explanation I to the section sets out the scope of disaffection and in Explanation II and III is indicated what under the English Law is not considered seditious intention. It is however not clear from the provisions of the section whether exciting or attempting to excite feelings of disaffection, hatred or contempt is punishable per se or whether exciting or attempting to excite people to tumult and disorder is a necessary ingredient of the offence.

This section requires two essentials:-

1. Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards, the Government of India.
2. Such act or attempt may be done (i) by words, either spoken or written, or (ii) by signs, (iii) by visible representation.

The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter. The requisite intention can not be attributed to a person if

he was not aware of the contents of the seditious publication. Mere existence of feeling of hatred is not punishable unless an attempt is made to excite such feeling in others and the hatred and contempt must be hatred and contempt of the state or the established Government.

Constitutionality of Section 124-A of IPC

After the Constitution of India came into operation the constitutional validity of Section 124-A of the code was challenged as being violative of the fundamental right of freedom of speech and expression under Art 19(1)(a) of the Constitution. Article 19(1)(a) of the constitution guarantees to every citizen freedom of speech and expression. Article 19(2) deals with the grounds of reasonable restrictions. Sedition has not been mentioned therein as one of the grounds justifying reasonable restrictions. Now the question comes whether section 124-A of IPC imposes reasonable restrictions on the freedom of speech and expression guaranteed under Article 19(1)(a) of the constitution. These restrictions are imposed so that the public morals, the law and order, the safety and security of the society may be maintained. But these are very variable concepts. The framers of our constitution were conscious about it and accordingly they did not adopt the provision of sedition as one of the grounds justifying reasonable restrictions. More over it was argued that the meaning of sedition was not clear and might create difficulties if included in the Constitution.

After coming into force of the Constitution the validity of this section was considered by the Supreme Court in *Ramesh Thapar v. State of Madras*¹⁹ and *BrijBhusan v. State of Delhi*²⁰.

In *Ramesh Thapar v. State of Madras*²¹, the petitioner contended before the Supreme Court that the order of banning his paper 'Cross Roads' by the Madras State as it has contravened his Fundamental Right of freedom of speech and expression conferred on him by Article 19(1) of the Constitution. It was held by the Court that clause (2) of Art 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to public security is involved, an enactment, which

¹⁹ AIR 1950 SC 124

²⁰ AIR 1950 SC 129

²¹ AIR 1950 SC 124

is capable of being applied to cases where no such danger could arise, cannot be held to be constitutional and valid to any extent. Finally the Supreme Court allowed the application of the petitioner under Article 32 of the Constitution and quashed the order of Madras State prohibiting the entry and circulation of the paper in the State of Madras.

In *Tara Singh Gopi Chand v. State of Punjab*²², section 124-A of IPC was struck down as unconstitutional being contrary to freedom of speech and expression guaranteed under Article 19(1)(a). The Court further held that India is now a sovereign democratic state. Government may go and caused to go without the foundation of the State being impaired. A law of sedition though necessary during the period of foreign rule has become inappropriate by the very nature of the change which has come about.

To avert the constitutional difficulty as a result of the above referred cases the Constitutional First (Amendment) Act, 1951 added in Article 19(2) two words of widest import i.e. 'in the interest of' and 'public order', thereby including the legislative restrictions on freedom of speech and expression.

In *Ram Nandan v. State of Uttar Pradesh*,²³ the Court held that Sec. 124-A imposed restrictions on the freedom of speech and expression not in the interest of general public and thereby infringed the fundamental right of freedom of speech. It, therefore, declared Section 124-A as ultra vires to the Constitution as it cannot be saved by the expression 'in the interest of public order'.

However, this decision was overruled in 1962 by the Supreme Court in *KedarNath Singh v. State of Bihar*²⁴, which held that the sedition law was constitutional. The Court, while upholding the constitutionality of the judgement distinguished between "the Government established by law" and "persons for the time being engaged in carrying on the administration". The Court distinguished clearly between disloyalty to the Government and commenting upon the measures of the government without inciting public disorder by acts of violence:

²² AIR 1951 East Punjab 27

²³ AIR 1959 All 101

²⁴ AIR 1962 SC 955

“Government established by law” is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. That is why ‘sedition’, as the offence in s. 124-A has been characterized, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term ‘revolution’, have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings, which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

The Court further held²⁵ –

“This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded again becoming a license for vilification and condemnation of the Government established by law, in words which incite violence or have the tendency to create public disorder. A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The Court has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen’s fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order.”

Thus the Supreme Court upheld the constitutionality of the sedition law, but at the same time curtailed its meaning and limited its application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. It is important to note that the Supreme Court read down the offence of sedition in effect removing speech which could be exciting disaffection against the government but which did not have the tendency to create a disturbance or disorder from within the ambit of the provision. The judges observed that if the sedition law were to be given a wider interpretation, it would not survive the test of constitutionality.

Law of Sedition in other countries

Whilst there are many countries that still have sedition laws, the general trend is certainly away from such laws, which are often remnants of colonial era political landscapes. While countries like the United Kingdom and New Zealand have abolished the crime of sedition, in the United States and Nigeria, prosecutions for

²⁵ Ibid.

sedition have largely fallen into disuse. Further, in Australia and Malaysia, laws relating to sedition have attracted much criticism.

UNITED KINGDOM

In England, the forerunner of the crime of sedition was the crime of treason. Under the Treason Act, 1795, any act which endangered the person of the King, his government or the constitution would be considered treason. The Treason Felony Act of 1848 is still on the statute books.

The crime of sedition extends to a] publication of seditious libel b] utterance of seditious words and c] conspiracy to do an act in furtherance of seditious intention. In all these cases, a seditious intention has to be proved. A seditious intention is one where the person of the sovereign or of the government, the constitution, either House of Parliament, or the justice administration system could be brought into hatred or contempt. It also includes the alteration of church or state by unlawful means and any incitement of disaffection or discontent among the subjects or promoting hostility among different classes of people. These offences at common law have also been codified to some extent. Section 1 of the Criminal Libel Act, 1918 also mirrors the definition. Incitement to Mutiny and Disaffection Act criminalizes promoting ill will among the members of the armed forces. Subsequently, the Coroners and Justice Act, 2010 abolished the crimes of sedition and seditious libel. However, sedition by an alien is still an offence under section 3 of the Aliens Restriction (Amendment) Act 1919.

In abolishing the crime of sedition, the primary consideration was that the language in which the offence was framed was archaic and did not reflect the values of present day constitutional democracies. Further, although the prosecutions were few and far between, even the sporadic uses of the law had a “chilling effect” on free speech. However, although the crime of sedition has been done away with, the Terrorism Act, 2000 contains offences of “inciting terrorist acts” and seeking or “providing training for terrorist purposes at home or overseas”, which are as broadly defined and as vague as the earlier offences.

UNITED STATES OF AMERICA

In the United States, the Sedition Act was enacted in 1798, in a bid to protect the nation from ‘spies’ or ‘traitors’. The Sedition

Act, 1918, was actively used during the World War I, particularly against those who professed a Communist ideology. The Alien Registration Act, popularly known as the Smith Act was enacted in 1940 and again, was used against many members of the Communist Party. As many as 140 prosecutions were carried under this. Both Acts have now fallen into disuse. In the case of *Yates v. United States*,²⁶ the U.S. Supreme Court held that teaching an ideal, however unpopular or unreasonable it might be, does not amount to sedition. Initially, the decisions by the Holmes and Brandeis Courts of the 1920s and 1930s had criticized the “chilling effect” on free speech brought about such crimes. The decision in the case of *New York Times v. Sullivan*²⁷ was that the free criticism of public officials and public affairs would not constitute libel. In this context, it stated that the Sedition Act, 1798 had by “common consent” come to an “ignominious end”, being a violation of the First Amendment. Finally, in 1969, in the case of *Brandenburg v. Ohio*,²⁸ a distinction was made between the advocacy of a doctrine or violence in abstract terms and the advocacy of violation of law which resulted in immediate lawless action. The former was held to be protected under the First Amendment.²⁹Hence, in the United States, the courts have generally afforded wide protection to political speech, excepting where it results in immediate lawless action.

NEW ZEALAND

In New Zealand sedition was abolished in 2007, under the *Crimes (Repeal of Seditious Offences) Amendment Act 2007*. It was understood that the criminalization of dissenting views was not a useful or appropriate response, that it contravened the *New Zealand Bill of Rights* and that sedition in New Zealand bore a “tainted history”.³⁰ The New Zealand parliament also noted the vagueness of sedition, its irrelevance in the contemporary context, the appropriateness of other criminal law provisions to deal with

²⁶ *Yates v. United States*, 354 U.S. 298 (1957).

²⁷ *New York Times v. Sullivan*, 376 U.S. 254 (1964).

²⁸ *Brandenburg v. Ohio* 395 U.S. 444 (1969).

²⁹ *Brandenburg v. Ohio and other cases related to this issue have been discussed most recently by the Supreme Court in the case of Sri Indra Das v. State of Assam Criminal Appeal 1383 of 2007, available at <http://www.indiankanoon.org/doc/1525571/>, last visited on 05.08.2013*

³⁰ Crimes (Repeal of Seditious Offences) Amendment Bill, 2007, <http://parliament.nz/nr/rdonlyres/ob8ad487-c576-4bce-9a31-fd96362817f7/56750/1523crimesedition3.pdf>, last visited on 05.08.2013

cases of incitement to violence and importantly, the “chilling effect” that such laws have upon freespeech.

AUSTRALIA

Seditious words, participation in a seditious conspiracy and publishing seditious statements were of colonial origin and common law offences, which still remain in the criminal codes of several states. The law was mostly used to censor “undesirable” publishing and as in the case of U.S. and in India, was used to target the Communist Party of Australia. Regulation 27A was inserted into the War Precautions Regulations 1915, which made it an offence to advocate, incite or encourage disloyalty to the British Empire or to its “cause” in World War I, or advocates or incites the dismemberment of the British Empire. Provisions criminalizing sedition are on the statute books in Australia. It is codified in the Crimes Act, 1961 (they were first introduced through the Crimes Act, 1914). Unlawful organizations were defined under the Crimes Act, 1926, if they carried out any seditious intention. In 2001, the Law and Justice Legislation Amendment Act, 2001, repealed and substituted section 24C to effect the removal of the references in paragraphs 24C (a)-(c) to agreeing or undertaking to engage in a seditious enterprise, conspiring with any person to carry out a seditious enterprise and counseling, advising or attempting to procure the carrying out of a seditious enterprise.

MALAYSIA

In Malaysia, sedition is governed under the Sedition Act 1948, which criminalizes one who “does or attempts to do, or makes any preparation to do, or conspires with any person to do”, acts or speaks or prints words which have a seditious tendency. In addition, the act covers any person who has seditious material in their possession, without lawful excuse. The stringency of these laws are considered reasonable restrictions on Art 10(1) of the Malaysian Constitution dealing with free speech.

NIGERIA

Introduced during the early years of the twentieth century, the law on sedition in Nigeria too is of colonial origin. Reading Section 51 of the Criminal Code, it is evident that it draws inspiration from the English definition of sedition. It classes an

act as seditious if it is done with an intention to harm the person of the President or the governor, the justice administration system or the government, if it attempts to alter “any matter” without the use of lawful means, or if it raises discontent, disaffection, ill will of hostility in the population or between different classes of the population in Nigeria. Writers have come to the conclusion that the law was introduced with a view to curbing the writings and speeches of the educated elite under British colonial rule. In the case of *DPP v. Chike Obi*,³¹ where the constitutionality of the sedition laws was to be considered, the Court held that it was permitted to criticize the government in a fair manner, but it was not permissible to criticise the government in a “malignant manner”. However, in the case of *State v. Ivory Trumpet Publishing Company Limited*,³² the court held that the law of sedition does not serve to preserve law & order or security of state, but in fact, undermines it.

Conclusion & Suggestions

A colonial legacy like sedition law, which presumes popular affection for the state as a natural condition and expects citizens not to show any enmity, contempt, hatred or hostility towards the government established by law, does not have a place in a modern democratic state like India. The existence of sedition laws in India’s statute books and the resulting criminalization of ‘disaffection’ towards the state are unacceptable in a democratic society. These laws are clearly colonial remnants with their origin in extremely repressive measures used by the colonial government against nationalists fighting for Indian independence. The use of these laws to harass and intimidate media personnel, human rights activists, political activists, artists, and public intellectuals despite a Supreme Court ruling narrowing its application, shows that the very existence of sedition laws on the statute books is a threat to democratic values. Hence following suggestions are forwarded to bring this aspect of Indian laws more effective, appropriate and timely –

- I. The main ingredients of section 124-A of IPC are bringing or attempting to bring into hatred or contempt or attempting to excite disaffection against the Government established by law in India. This may be done by words

³¹ [1961] 1 All N.L.R. 186

³² [1984] 5 NCLR 736,748

either spoken or written or signs or by visible representation. All these ingredients would be meaningless if there is no intention to do the same. Thus intention is of great essence of this offence. But enough this intention has not been mentioned in the section. So the section 124-A should clearly express its mens rea by adding the words like intention and knowledge.

- II. Various judicial decisions of Privy Council, High Courts and Supreme Court make it clear that, the section 124-A is to be interpreted liberally. In a vast country like India with varied and diverse culture, heritage, faith and trade it is impossible to think that people would not feel aggrieved by the Government and that they would not speak or write against it. Conversely, people may speak or write so many things against the Government and would like to condemn it in the worst possible manner. The best way of treating all these expressions would be to keep the subjective or personal utterances against Government, aside and then to interpret the provisions. Another thing, that section 124-A should be interpreted liberally otherwise even a criticism of the existing Government or an expression of a desire for a different system might be an offence.
- III. Another problem relating to law of sedition is fixing the liability of the editor, journalist printer and publisher etc. under section 124-A of IPC. It needs to mention that in a democratic set up and specially in a country enjoying the maximum freedom of speech, editors will edit the matter and publishers will publish them. They may write on diverse subject and in diverse ways. But it is suggested that their writing should comply with certain basic norms. A code of conduct for newspapers, news agents and journalists etc. in accordance with high professional standards should be built up.
- IV. The fundamental right of the freedom of the press, implicit in the right of the freedom of speech and expression, is essential to the political liberty and proper functioning of democracy. Democracy can flourish only when debates on public issues are uninhibited robust and wise open which may also include vehement, caustic and sometimes

unpleasantly sharp attacks on the Government and its officials. But it is suggested that the interest of the state must same time be not lost sight of and the writers should not be the guise of criticism of public affairs. A boundary is to be drawn between disaffection and dissatisfaction. Writings which create disaffection, it may not be punishable but when it incites disaffection it should be made punishable.

- V. Again the Court when dealing with slangy and abusive words which incite disaffection should take into account the common and frequency use of such words by Society. Abuse or criticism should not be judged in exclusion or independently but the text and tenor in which the words were said are also to be considered.
- VI. According to 42nd Report on Indian Penal Code by Law Commission of India,³³ exciting disaffection towards the Constitution or Parliament or the administration of justice is not considered a seditious activity India, all of which would be as disastrous to the security of the State as disaffection towards the executive Government. So it is suggested that section 124A should be revised to take them in. Besides, promotion of public disorder in some form or other should be considered as an essential ingredient seditious conduct in India like England.
- VII. The Law Commission of India also suggested³⁴ that Indian Penal Code should contain a provision for punishing insults to the book of the Constitution the national flag, the national emblem and the national anthem. Burning of the copies of the constitution, desecration of the national flag or the national emblem and offering deliberate insults to the national anthem are not only unpatriotic acts but are also likely to cause a disturbance of public order. Accordingly the Law Commission recommended to introduce a new section 124B, just after section 124A of the IPC namely "Insult to the book of the Constitution, national flag, national emblem or national anthem."

³³ <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>, last visited on 06.08.2013

³⁴ <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>, last visited on 06.08.2013

Past Liberalization and Future Challenges of Future Service Trade

INTRODUCTION

Services trade has truly become an engine of world growth. Over the past two decades, international trade in services has grown faster than world merchandise trade, which in turn has grown faster than world output. A combination of policy liberalization and technological progress has facilitated trade in many previously untradable services. However, very little progress has been made towards new policy liberalization in the ongoing Doha Development Round. This article discusses trade in services in five sections. Following a short introduction, Section I presents data on the past growth of services trade flows and makes rough projections of future expansion. The second and third sections summarize the achievements of the WTO in the service field, both as a negotiating forum and a dispute settlement system. The third section also emphasized how FTAs are now playing the leading role in services liberalization. The fourth section critiques the absence of progress in the Doha Round and the fifth section examines the hot issue of services outsourcing. The concluding section offers policy recommendations for containing a possible protectionist backlash and promoting new liberalization. Services trade has truly become an engine of world growth. Over the past two decades, international trade in services has grown faster than world merchandise trade, which in turn has grown faster than world output. A combination of policy liberalization and technological progress has facilitated trade in many previously untradable services. If current trends continue, by 2020 recorded services trade flows will reach the level of merchandise trade flows—even though large volumes of services trade are not captured in statistical records. The academic literature points to huge potential payoffs from services liberalization. So far, however, very little

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progress has been made in the ongoing Doha Development Round. In fact, after an initial spurt of activity, the services area has lagged behind advances in both agricultural and non-agricultural market access discussions.

This article is organized as follows. Section I, following this short introduction, presents data on the past growth of services trade flows and makes rough projections of future expansion. The second and third sections summarize the achievements of the WTO in the service field, both as a negotiating forum and a dispute settlement system. The third section also emphasizes how FTAs have come to play the leading role in services liberalization. The fourth section critiques the absence of progress in the Doha Round and the fifth section examines the hot issue of services outsourcing. The concluding section offers policy recommendations for containing a possible protectionist backlash and promoting new liberalization .

Potential explanations for limited coverage of services in trade agreements

In the case of goods trade, there is an extensive literature that identifies several possible motivations for governments to engage in trade negotiations. This includes the terms of trade (market access) rationale: countries negotiate away the negative spillovers that are created by the imposition of trade restrictions. Trade agreements can also help governments implement reforms that are opposed by politically powerful vested interests. This is because international agreements offer a way for breaking domestic deadlocks by mobilizing export groups to support reform, as mentioned above. Another strand of economic literature argues that trade agreements offer a commitment mechanism to governments. By committing to certain rules that bind policies, i.e., “policy reform anchors,” government may use agreements to make domestic reforms more credible.

In principle these rationales should carry over to services trade liberalization. The puzzle is that in practice they do not appear to be as strong as has historically been the case for trade in goods. One potential explanation is that there is less need in the services context for traditional reciprocity-driven market access negotiations (Hoekman, 2008). Insofar as inefficient service

industries will generate costs for all downstream sectors, there is likely to be more pressure for unilateral reform than is the case for a tariff that protects a specific goods industry (as these have fewer economy-wide repercussions). In practice most reforms that have been implemented by both developed and developing countries have been autonomous. While this may help explain the significant reform in services since the late 1980s in most countries, barriers to trade and investment continue to characterize many service industries in both developed and developing countries.

Another potential reason why reciprocity may be less powerful in supporting reforms is that services exporters often face contrasting conditions of access: markets that are already open (and required no effort by firms to open) and markets that are almost irremediably closed. Thus, cross-border trade in services (e.g., business process outsourcing) or trade in tourism – two activities where many developing countries are net exporters – are generally not affected by restrictive policies. Conversely a large set of developing countries confront particularly high barriers for the one mode that is of export relevance to them which in practice is for all intents and purposes not on the table in (most) trade agreements. A consequence is that the standard political economy of trade negotiation may break down: domestic opposition to reform and liberalization by incumbents cannot be counterbalanced by export interests seeking better access to foreign services markets. The prospective additional profits associated with better access to foreign markets for exporting firms may be much smaller than the rents/excess profits that are captured by sheltered incumbents in the countries concerned. A related argument is that reciprocity may be less powerful in services because a policy reform that is made at the request of a trading partner is often automatically going to be of benefit to all other countries. This is because services policies often do not differentiate between the origin of firms operating on a market.

In our view an important reason for slow progress on negotiating services policy reform commitments are concerns about the realization of regulatory and non-economic objectives. Liberalization of services markets needs to be complemented by effective regulatory standards and implementing bodies. Regulation in services is pervasive and is driven by both efficiency

and equity concerns (Mattoo et al., 2008). The characteristics of many services give rise to market failures. For example, the existence of natural monopoly or oligopoly is a feature of “infrastructure services” that require specialized distribution networks: roads and railways, airports, or cables and satellites for telecommunications. Regulation of the owners/operators of the networks can then enhance efficiency by preventing prohibitive charges for access or interconnection to essential facilities, such as their established networks. Problems of asymmetric information are frequent in the services context. Buyers (consumers) confront serious hurdles in assessing the quality of service providers – e.g., the competence of professionals such as doctors and lawyers, the safety of transport services, or the soundness of banks and insurance companies. The regulation of entry and operations in a sector can increase welfare. Governments may also regulate to achieve equity objectives – e.g., ensuring access to services for disadvantaged groups.

Trade agreements generally do not constrain domestic regulation beyond general principles such as nondiscrimination and transparency provisions. While they may do little to attenuate a government’s “policy space”, they often also do little if anything to help governments determine whether they have adequate national regulation in place and whether there is a downside risk associated with making specific commitments. An example is a commitment to allow foreign banks to enter as branches. Branch banking implies that the capital adequacy standards of the home country apply and that there may not be any restrictions on the ability of the parent bank to transfer capital out of the market in which it establishes branches. If a government is concerned about this it could require foreign banks to establish local subsidiaries that must satisfy local capital adequacy requirements. But this presupposes that there is effective regulation and an effective regulator that considers the potential effects of different forms of liberalization.

Another example is when there are significant rents associated with a certain policies. Regulatory agencies may argue that it is better that these accrue to domestic agents than to foreign firms, even if the latter are more efficient providers of services. The name of the game in trade negotiations is market access: this

may easily result in a transfer of rents from local firms to foreign ones if the regulatory regime is not one that ensures markets are contestable. The implication is that broader regulatory reform is in many cases needed to ensure that welfare increases after liberalization. In general, improved prudential and pro-competitive regulation will be necessary to deliver the full benefits of liberalization in sectors such as financial services; basic telecommunications and other network-based services. Thus, attention should focus on strengthening and maintaining a robust capacity to identify, understand and design the *domestic* regulatory reforms that are needed to enhance the efficiency of services sectors.¹

Addressing regulatory concerns and constraints

Given the importance of regulation as a source of market segmentation, cooperation on regulatory matters is needed for trade agreements to do more than be a mechanism to lock-in applied policies and “harvest” unilateral actions by governments to open markets. One dimension of such cooperation is international assistance for *national* regulatory reform and strengthening implementing institutions so as to increase the prospects of achieving efficiency and equity objectives. This is a process that takes time and that will benefit substantially from information on the approaches and experiences of other countries that have (had) similar challenges. There is not necessarily any regulatory “best practice” for a sector or cluster of activities—in many cases there will be many options and countries need to figure out the approach most appropriate to their circumstances and needs. Once a reform path has been defined, implementation could be assisted by external assistance from high-income partners in North-South PTAs or development agencies as part of the multilateral “aid for trade” initiative. International dialogue and exchange of information and experiences – as is done through APEC – is another option. While APEC has often been criticized for being a “talking shop” the process has been effective in facilitating learning about country experiences and building trust among governments and regulators from participating countries. Better regulation will often be a precondition for action to open markets to greater competition, as well as for greater trade in instances where recognition of, or convergence in, regulatory

norms is required to permit foreign firms to contest the domestic market.²

Another type of cooperation is between regulators and is explicitly focused on expanding market access opportunities: aiming to address regulatory externalities that impede greater trade in services. The types of externalities that may arise will differ depending on the service activity. More cooperation on prudential regulation may be a precondition for trade in financial services and in information-based services to occur— for example, regulators may need to converge on a set of regulatory or data protection standards and establish that such standards are enforced. Competition agencies may need to have assurances that pro-competitive regulations apply in partner markets to ensure that gains from liberalization are not appropriated by international oligopolies. Particularly important is cooperation between regulatory agencies in host and source countries to allow greater temporary cross-border movement of natural persons that provide services—the experience of a number of successful bilateral labor agreements demonstrates that this is a precondition for arrangements that expand the “circular flow” of people. Mutual recognition of licenses and certification will often be another part of the equation.

Sometimes there is no good reason to hold back on liberalization even when regulatory reforms and access widening policies take time to implement. This is true for reforms that are “additive” in that the benefit from trade reform is independent of the benefit from domestic reforms and each can be undertaken separately. Thus, for example, the powerful growth of mobile telephony even in institutionally weak countries like Somalia suggests that there is no economic reason to wait to liberalize until a universal access policy is put in place say in telecommunications. In other cases reforms are “multiplicative” in that a country would benefit more from trade reform if domestic reforms were also implemented (and vice versa), but the order in which the two are implemented does not matter. Thus, regulatory improvements and competition in transport are mutually beneficial but the sequence is probably not critical.

However, in a number of situations, “sequences matter” in that if a country implements trade reform before the necessary

domestic reform, then the long-term payoffs will be lower than if the opposite sequence had been followed. This can be for both economic and political reasons. In these situations, if the complementary reform cannot be implemented instantaneously, then there is a case for gradual liberalization. For example, in countries like Zambia and South Africa, the failure to introduce full competition in a sector such as telecommunications made it much more difficult to implement effective regulation because of the excessive economic and political power of a monopolistic incumbent. In other sectors the problem has rather been too much competition too early leading to a form of “regulatory overshooting”. For example, allowing new entry in banking without creating a mechanism to sift the sound institutions from the dubious led to disruptions that have had a durable effect on the development of the financial sector in many countries: the once-bitten depositor is skeptical of the benefits of banking and the once-bitten central bank excessively prudent with stability the main concern. The result has been the implementation of excessively stringent regulation that has itself become an impediment to access.

Fora for learning and communication: “knowledge platforms”

There are two specific dimensions to the broad challenge of *national* regulatory cooperation and services policy reform: (i) addressing knowledge gaps – increasing information on regulatory experiences and impacts and identifying alternative options/good practices; and (ii) identifying the impact of – and the options for dealing with – the political economy constraints that impede the implementation of welfare improving reforms.

A number of analysts including Geza Feketekuty (2010), one of the “fathers” of the GATS, have suggested that efforts to improve market access opportunities need to be complemented by other approaches. Feketekuty argues for a mechanism to share experiences regarding services regulation and reform, to generate information on the substance of regulation and enforcement in different countries, on what works and why, and what did/does not. An important function of such a mechanism is to bring together sectoral regulators and experts with trade officials and specialists. The former often do not think about trade and the trade implications of sectoral regulation, but are the “owners” of the policies that affect trade opportunities.

The negotiation literature stresses that negotiators need to learn about the preferences and interests of other parties, as well as their own, and this is a process that takes time. Negotiations invariably involve a complex process of interaction between domestic groups that result in an understanding of negotiating objectives/priorities. Learning is critical when it comes to the substance of policy rules—officials and stakeholders need to understand what the implications are of a given proposed rule and how it will impact on the economy. Establishment of “knowledge platforms” – fora aimed at fostering a substantive, evidence/analysis-based discussion of the impacts of sector-specific regulatory policies – could help build a common understanding of where there are large potential gains from opening markets to greater competition, the preconditions for realizing such gains, and options to address possible negative distributional consequences of policy reforms. Generating information on the impact and experience with reform programs that were pursued in other countries could help governments both assess prevailing policies and institutions in their own nations, and identify policy reform options.

Such fora could fulfill a number of roles.

First, a mechanism through which information is generated on current services activity, prices and trade flows and prevailing regulatory policies. Better information on services policies and performance would help facilitate broad based discussion on what priority sectors are and where the key regulatory problems lie.

Second, enhance knowledge of regulatory experiences and impacts in other countries, in the process identifying alternative options/good practices through collection and sharing of information on the factors underlying successful efforts to expand trade in services and the complementary policies that can be used to address market failures and distributional concerns. Information and experiences from a range of countries can help ensure that regulations and standards that are adopted reflect local conditions and capacities for effective implementation.

Third, by bringing together representatives of a range of countries (officials, regulators, private services suppliers) governments can discuss and learn about alternative approaches

that have been pursued in practice to address the political economy constraints that may impede regulatory reform and constrain efforts to reduce barriers against foreign providers of services.

Any mechanism to identify good practices in regulation and services policies must be broad-based and tap into knowledge across the globe for a specific sector or issue, including both developing and developed countries. International sectoral organizations such as the ITU (for ICT/telecoms); the IMF/BIS, IASB, IOSCO, and the Berne Union (for financial sector-related standards/regulation), the IOM/ILO (for migration and cross-border movement of people); and networks of sectoral regulators and related institutions (such as the International Competition Network) could be the focal points for specific activities. The same applies to entities such as APEC and the OECD, UNCTAD and WTO secretariats and business associations such as the Coalition of Services Industries that exist in a number of countries.

In practice knowledge platforms may best be designed on a regional basis, linked to PTAs and regional institutions (such as regional development banks). Many PTAs include provisions calling for the creation of joint commissions and committees to interact on a given subject matter covered by the PTA, as well as periodic high-level joint meetings of senior officials and Ministers. But no PTAs to our knowledge has implemented what is being proposed here.³

International regulatory cooperation

As noted above, facilitating regulatory cooperation could help deal with apprehensions about liberalization on all modes. For example, in financial services, confidence in cooperation by the home country regulator could lead to openness to both commercial presence and cross-border trade. Similarly, in international transport services, confidence in the enforcement of home-country competition law may increase the willingness to liberalize in importing countries (Hoekman, Mattoo and Sapir, 2007). This is the case in particular if trade agreements are to become vehicles to facilitate the movement of natural persons (services providers). The assumption of obligations by source countries is a key element of regional mechanisms (e.g. APEC) that have facilitated mobility of skilled service workers, and

bilateral labor agreements (e.g. between Spain and Ecuador, Canada and the Caribbean, Germany and Eastern Europe) that have to a limited extent improved access for the unskilled. Source country obligations may include pre-movement screening and selection, accepting and facilitating return, and commitments to combat illegal migration. In effect, cooperation by the source can help address security concerns, ensure temporariness and prevent illegal labor flows in a way that a host nation is incapable of accomplishing alone.

Mutual recognition or acceptance of the regulatory standards and norms prevailing in partner countries can be a key driver of deeper integration of services markets. As is well known, it has generally proven very difficult for regulatory authorities, civil society and the business community to make rapid progress in agreeing that standards are “equivalent” and in practice a minimum level of convergence in the substance of regulatory norms will be required. The benefits of eliminating policy differences through harmonization depend on the prospects of creating a truly integrated market, which in turn is a function of the degree of similarity of the countries that are negotiating or engaged in a PTA (Mattoo and Sauv , 2011). The more similar—in terms of per capita incomes, economic and governance structures, legal regimes, etc.—the more difficult it is likely to be for one country to accept to change its regulatory norms and approaches to converge with those prevailing in a partner country. But at the same time if the countries are not very different in terms of per capita income and “structural features” the easier in principle it should be to agree to accept the standards of the other.

For countries that are very different – as is the case in many North-South PTAs – it will be much more difficult if not impossible to move down the path of mutual recognition as high-income partners will not accept dilution of their norms, whereas adoption of these norms may not necessarily increase the welfare of the low-income country partner. The latter therefore must balance the costs associated with raising its regulatory standards to the level of the high-income partner against the benefits that are associated with the greater trade opportunities this will generate. In practice the trade-off may not be stark insofar as the process of convergence helps a country attain better economic outcomes. Whatever the

case may be, regulatory cooperation is a precondition for greater trade in services to occur.

Aid-for-services trade to support implementation

An effective knowledge platform will identify specific areas for policy reform and ways in which regulatory institutions and enforcement capacity need to be strengthened for liberalization to be beneficial. As mentioned, the main focus of a platform or forum is not services liberalization per se, but to focus on where it is necessary/desirable to bolster and improve *national* services regulation. A platform could however also be a vehicle to support the international regulatory cooperation that is needed to allow greater trade in services to occur.

In many cases implementation of PTAs will involve a need for investments: in training, in infrastructure, data and information systems, etc. Low-income countries may not have the resources required or may have more urgent financing needs. Incorporating specific commitments and mechanisms through which a government (and stakeholders) can obtain the necessary technical and financial support should be a core feature of trade agreements that seek to achieve deeper integration of the economies of participating countries. This applies both to binding (enforceable) market access-related commitments and to the soft law forms of cooperation discussed above. Many North-South PTAs do too little to complement market access commitments with adequate and effective aid for trade in services.

Such assistance will generally not be available in the context of PTAs between developing countries. The multilateral aid for trade initiative that was launched at the 2005 WTO ministerial in Hong Kong provides a mechanism through which low-income developing country governments can obtain financial and technical assistance to implement regulatory improvements.⁴ To date most aid for trade assistance has focused on infrastructure investments and trade facilitation – not on regulation or service sector policies. There is no reason why aid for trade would not be provided for services policy reforms if these are identified as priorities by developing country governments (Hoekman, Mattoo and Sapir, 2007).

Services PTAs and the WTO

The idea is now gaining ground that the Trans-Pacific Partnership with the US in the lead and based on the idea of open regionalism could be an alternative to the multilateralism of the WTO and also as the best way of engaging China on trade issues.⁵ Similarly, with the prospects for a near term conclusion of the Doha Round services negotiations having become dim, some WTO members have suggested that one way forward is for subsets of the membership to negotiate a plurilateral agreement under WTO auspices.⁶ The goal of the group is to develop an International Services Agreement (ISA) with new rules governing trade and investment in services and deeper and wider commitments on market access and national treatment. The group has not yet decided whether any negotiated liberalization or disciplines would be implemented on an MFN or conditional MFN basis. Schott et al. (2012) argue that “Conditional MFN treatment may be the wiser choice in this agreement considering the fact that several important countries have not yet agreed to participate in the ISA and would be ‘free riders’ on the prospective liberalization if the accord is implemented on an MFN basis.” In fact, a number of WTO members have indicated that they will oppose the incorporation of a plurilateral services agreement into the WTO, implying that negotiation of PTAs will be the only alternative available to WTO members seeking to cooperate on services trade and investment policies.

The problem with the plurilateral approach is that countries like Brazil, China and India would never agree to just fall in line with rules in the negotiation of which they have not participated. Worse, TPP could also provoke these countries into playing the regionalism game in a way that could fundamentally fragment the trading system. A better way of keeping these countries anchored in the multilateral system would be for their trading partners to say that “not only in our dealings with you but also amongst ourselves, we will embrace multilateralism.” This would signal a belief in the intrinsic worth of multilateralism rather than just as an instrument to contain countries like China. One goal of such restraint today would be to prevent a dominant China tomorrow from pursuing preferential arrangements tomorrow that disadvantage excluded countries.

Meanwhile, the WTO can do much to provide its members with information on what is being done in the PTA context and to provide a forum in which members can discuss and learn from PTA experiences. The WTO can do much more to bring together regulators, trade officials, the business community, and other stakeholders to identify “good practices” that facilitate trade without detracting from the achievement of regulatory and social objectives. Instituting a parallel process that does not involve negotiations but that instead focuses on the substance of regulation (or the effects of a lack of appropriate regulation) could help countries improve regulatory outcomes and facilitate an expansion in trade. Creating such mechanisms for exchange and learning can help prepare the ground for future negotiations on services.

GATS has inspired a new generation of regional trade agreements

The GATS can ironically also count among its major achievements the inspiration of a new generation of regional trade agreements that have improved upon its own limitations and developed an alternative model for liberalizing services trade. The GATS framework reflected experience with the US-Israel FTA (1985), the Canada-US FTA (1989) and NAFTA (1994). However, due to strong opposition from developing countries in the GATT, the GATS Agreement could only be finalized in the form of a significant compromise that embodies a weak set of rules and a very fluid mechanism for services liberalization. In fact, the GATS model is almost diametrically opposed to that which the US and other countries have followed at the regional level. It has been the NAFTA model and not the GATS that has inspired subsequent United States free trade agreements and that is now being duplicated throughout the world by the United States and its trading partners, particularly Mexico and Chile.

This alternative model for services agreements differs considerably from the GATS in important ways. FTA negotiators developed an integrated framework, setting out chapters on investment, standards, transparency, government procurement, competition policy, electronic commerce and dispute settlement that cover both goods and services. In addition, they devised chapters on cross-border services trade, telecommunications, financial services and other subjects that apply to services alone.

Negotiators also incorporated disciplines that are cross-referenced in the areas of domestic regulation and transparency for investment both in services and goods.

GATS and future developments in dispute settlement

The discipline of cross-retaliation may represent the most important evolution of the WTO dispute settlement mechanism, insofar as services are concerned. The need for cross-retaliation is a direct consequence of the huge disparity that exists between WTO Members (illustrated by the contrast between the United States and Antigua). Allowing a small country to suspend the enforcement of certain intellectual property rights within its territory may induce the large country to comply with an adverse WTO ruling. Moreover, in some circumstances (e.g. trade between the European Union and Egypt) trade in commercial services may essentially be a one-way flow (except for tourism). Unless the European Union, in this example, can retaliate against Egyptian merchandise, it might have no practical means to induce compliance if Egypt breaches a commitment in financial services.

However, tension exists between the need to give more 'bite' to the WTO in asymmetrical dispute and the general mission of the WTO to assure predictability in the world trading system. Clear criteria need to be developed, guiding the arbitration panels that decide actual cases, so as to identify circumstances when cross-retaliation is permissible and the form it should take. WTO arbitration panels need to ground their decisions on sound and predictable economic calculations, a feature sometimes missing from past arbitral rulings. When cross-retaliation is authorized, the need for sound calculations is particularly important; for this purpose, arbitration panels need to be serviced by highly competent economists lodged in the Secretariat.

CONCLUSION

Possibly the main challenge of services at the multilateral level will be to bring about greater services trade liberalization. The GATS has been static for the past ten years, while services trade has progressed tremendously, both technologically and in volume. Meanwhile, the depth and breadth of services commitments (very limited in the case of most developing WTO Members) have remained the same since 1997. The positive-list

approach of the GATS has not brought about significant liberalization; the burning question is how to improve upon this approach so that such liberalization can actually be forthcoming at the multilateral level. The difficult, time-consuming and unwieldy request-and-offer technique is still the vehicle for services negotiations, but it has effectively stymied all progress. WTO Members need to realistically assess this situation and bring about useful improvements. In the absence of adopting a negative-list across-the-board approach, sectoral negotiations could be pursued that would offer greater potential for significant liberalization. Proceeding by sectors would offer the opportunity to coalesce the main service exporters and importers around a common and well-focused set of liberalizing and regulatory objectives.

Until WTO Members decide to make the GATS a vehicle for real services liberalization, much of the policy innovations and actual market-opening in services trade over the next decade is likely to take place within the framework of bilateral and regional FTAs. The WTO should certainly keep abreast of these developments, with a view to encouraging the compatibility of these agreements with the highest standard possible under the GATS and promoting the MFN application of resulting liberalization whenever feasible. In addition, the WTO could offer to make its dispute settlement mechanism available, if parties so wish, to resolve questions that might arise under bilateral and regional FTA commitments.

End notes

- ¹ See for example Mattoo and Payton (2007) for specific examples in a low-income country.
- ² But as Dee and Findlay (2007) note, "Given the relatively high resource cost of making and implementing good policy, it is unlikely that all countries can or should move immediately to 'world's best practice' in all regulatory areas."
- ³ The EU is of course *sui generis* given its supra-national nature.
- ⁴ Although the Aid for Trade initiative is not part of a quid pro quo for developing countries to make commitments, the initiative was in part driven by a recognition that not enough attention had been given to effectively assisting countries to benefit from market access opportunities created by WTO commitments. See Hoekman (2011b).

- ⁵ The TPP negotiations began in March 2010 and currently involve nine countries: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States, and Vietnam. Canada and Mexico were invited to join the talks in late 2012; Japan and South Korea may do so in 2013. See Schott et al. 2012.
- ⁶ The group now includes Australia, Canada, Chile, Colombia, Costa Rica, the European Union, Hong Kong, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, Singapore, South Korea, Switzerland, Taiwan, Turkey, and the United States. See Hufbauer, Jensen, and Stephenson (2012).

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Role of Teachers in a Democratic Society vis-à-vis Right to Education : A Study

1. Art 21 of the Constitution of India guarantees to all the 'right to life' which includes all those rights which are basic to the dignified enjoyment of life and the dignity of the individual can be ensured only when it is accompanied by the right to education.¹ In other words, the court declared that the right to education directly flows from right to life.² The right to education is not an absolute right as the contents and parameters need to be determined in the light of Articles 41 and 45 of the directive Principles of State Policy.³ This position of law became certain with the Constitutional Amendment specifically providing right to education as a distinct fundamental right.⁴ This constitutional provision states thus:

"The State shall provide free and compulsory education to all children of the age of (6) to (14) in such manner as the State may, by law, determine"⁵

Emphasizing the need for the right to education, Chief Justice of US Supreme Court observed: "In these days, it is doubtful any child may reasonably be expected to succeed in life, if he is denied the opportunity of an education".⁶ Art 21A now imposes a constitutional duty on the part of the State to provide schools, infrastructure, trained teachers, curriculum and teaching-learning material including midday meal facilities.⁷ However, the courts are cautious

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¹ Mohini Jain Vs. State of Karnataka, AIR 1992 SC P.1858.

² Ibid. See also Prof. Narender Kumar "Constitutional Law of India" Allahabad Law Agency 2012 P.318 (8th Edition reprint).

³ Unni Krishnan Vs. State of AP AIR 1993 SC P2178.

⁴ For details refer to Constitution (86th Amendment) Act, 2002 incorporating Art 21-A of the Constitution.

⁵ Ibid.

⁶ See the observations of Chief Justice Earl Warren in Brown Vs. Board of Education, 347 US 483 (1954).

⁷ See for details Shikshan Prasarak Mandal, Pune Vs. State of Maharashtra AIR 2010 Bom. P.39.

in the abuse of the right guaranteed when it ruled that managements of unrecognized schools cannot claim this right to protect their private interests and to run the schools unauthorisedly.⁸ Educational opportunities to children for their promotion and welfare, is now an indispensable mandate which the State has to discharge the obligation to give effect to Art. 21-A.⁹

2. Art. 41 of the Directive Principles of State Policy provides that the 'State shall within the limits of its economic capacity and development, make effective provision for securing the right to education..... "Art 45 of the Directive Principles of State Policy provides that "the State shall endeavour to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years". This Directive has now been transformed into a fundamental right¹⁰ which is not necessarily confined to primary education but includes all stages of education upto the age of 14 years¹¹. The duty of the State to provide education is a sine-qua-non for an intelligent understanding of various issues relating to the rights of citizens and in particular the understanding of social and political problems confronting the society which would ultimately help democracy in their choice to vote and determine the Govt., they would like to have. In other words, right to education is an intrinsic part of democracy itself and without it, democracy bears no sense.
3. Teachers have a vital role to play in promoting the right to education one of the prime requisite relates to appointment of teachers who are eligible and competent. Dealing with the appointment of teachers without possessing the eligibility the Supreme Court observed: "that if the appointment order itself is bad in its inception, it cannot be ratified and a person lacking eligibility cannot be

⁸ Shafeek S, Manager Vs. state of Kerala AIR 2009 (NOC) 2336 (Kerala).

⁹ See for details Bharatiya Seva Samaj Trust Tr Pres & another Vs. Yogeshbhai Ambalal Patel & another, AIR 2012 SC P.3285 hereinafter referred to BSS Trust Case.

¹⁰ See Art 21A of the Fundamental Right.

¹¹ Supra Unni Krishnan P.2178

appointed unless the statutory provisions provides for relaxation has been passed in terms of the said order".¹² Illegality in the appointment, if perpetuates would put a premium to the undeserving party / person.¹³

4. It is a gigantic task to educate children and the role of teachers has been emphasized by the Supreme Court in *Andhra Kesari Education Society Vs. Director of school Education*¹⁴ which can be summarized thus:-
 - i) Eligibility fixed by the legislature has to be strictly adhered to in the appointment of teachers in order to enable the teachers to bring out the skills and activities of tiny children;
 - ii) Teachers considered as an engine of the educational system and as a superb instrument in awakening the children to cultural values;
 - iii) Teachers must possess potentiality to deliver enlightened service and also quality to inspire and motivate the action of students and therefore, keep themselves abreast of ever-changing conditions;
 - iv) Teachers should perform as a live instrument and in an imaginative way;
 - v) Teachers must be able to eliminate unwarranted tendencies and attitudes;
 - vi) Teachers must be able to infuse nobler and national ideas in young children; and
 - vii) Their involvement in national integration is an indispensable requisite, so that children can take part in the unity and integrity of the nation.
5. In order to make the 'right to education' a reality, the apex court observed as follows:-¹⁵
 - i) The fundamental right under Part III of the Constitution should not remain beyond the reach of the larger majority which are illiterate;

¹² See for details *Mamata Mohanty's case* 2001 AIR SCW P.1332.

¹³ *State of Uttaranchal & another Vs. Ajit Singh Bholu* (2004)6 SCC P.800. See also *G.Venkateswar Rao Vs. Govt. of AP*, AIR 1966 SC P.828, and *Chandra Singh Vs. State of Rajasthan*, AIR 2003 SC P.2889.

¹⁴ AIR 1989 SC P.183.

¹⁵ *Mohini Jain Vs. State of Karnataka & others* AIR 1992 SC P.1858.

- ii) State's obligation must be to provide educational facilities at all levels to its citizens; and
 - iii) The educational institutions should function to the best advantage of the citizens and the opportunity to acquire education should not be confined to richer sections of the society.
6. As observed by the Supreme Court in BSS Trust Case,¹⁶ the concept of education has been elucidated thus:-
- i) Education does not mean only learning but includes the opportunities to get more information through means to acquire knowledge and wisdom, so that he may lead a better life and better citizen to serve the nation in the better way;
 - ii) Educational policy in India is based on the following belief:-
 - a) that the values of equality, social justice and democracy and the creation of a just and humane society which can be achieved only through provisions of elementary education to all;
 - b) provision of free and compulsory education of satisfactory quality to children for disadvantaged and weaker sections of society is not merely the responsibility of schools run or supported by appropriate Govt., but also of schools which are not dependent on Govt., funds.
 - iii) Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Education which empowers the future generation should always be the main concern for any nation;
 - iv) Without education, a citizen can never come to know of his other rights;
 - v) It is a well-accepted fact that democracy cannot be flawless but can strive to minimise these flows with proper education; and
 - vi) Democracy depends for its very life on a high standard of general, vocational and professional education.

¹⁶ Supra Note 9.

7. Implementation of Art 21A is absolutely mandatory as without it, the other fundamental rights are rendered meaningless.¹⁷
8. In Tamil Nadu's case,¹⁸the apex court stated:-
 - i) Education is the most important and effective means to create an egalitarian society;
 - ii) Earnest effort being made to bring education out of commercialism;
 - iii) Right of the child should be extended to quality education without any discrimination on economic, social and cultural grounds; and
 - iv) Basic education should be qualitative and trained and eligible teachers as per norms fixed by the legislature should be strictly adhered to.
9. In conclusion, the following suggestions are made:-
 - i) the guidelines given by the apex court in BSS Trust Case¹⁹ may be required to be followed strictly by all administrators and educators for the very survival of democracy in the Country;
 - ii) the guidelines laid down in Andhra Kesari Education Society's case²⁰ is also required to be strictly adhered to;
 - iii) eligibility criteria for appointment of teachers as laid down by the legislature should not be departed from. This criteria need periodic review by Educational experts;
 - iv) Art 21A be further amended to provide for higher education including professional education within the limits to be prescribed by law;
 - v) Right to education must not merely relate to learning but to acquire knowledge for which all necessary facilities and infra-structure should be provided for;

¹⁷ Ashok Kumar Takur Vs. Union of India 2008 AIR SCW P.2899.

¹⁸ State of Tamil Nadu Vs. K.Shyam Sunder AIR 2011 SC P.3470.

¹⁹ Supra Para 18.

²⁰ Supra Note 14.

- vi) The guidelines framed by the courts must be statutorily incorporated in the rules to be framed and to be made compulsorily observable by all educational authorities;
- vii) Continued efforts must be made wherever necessary, to free the educational system to be kept out of commercialism; and
- viii) Proper education is necessary for the very survival of democracy, as otherwise flaws in the democratic system may become irremovable causing irreparable damage to our democratic basic structure of our Constitution.

Spiritual, Ethical and Legal Status of Conversion of Religion in India

What is Religion: - Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religion in India and worldwide like Hinduism, Islam Christianity, Judaism, Buddhism, Persian etc. A religion has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe ritual and observances, ceremonies, and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress.¹

Swami Vivekanand said: - **Religion** as it is generally taught all over the world is said to be based upon faith and belief and in most cases consists only of different sets of theories and that is the reason why we find all religion quarrelling with one another. Those theories are again based upon faith and belief.

Constitutional Protection of Religion: - The freedom of conscience and the right to profess, practice and propagate religion is enshrined in **Article 25** of the constitution of India. The equality of all religion is expressly recognized by **Article 25** thereby emphasizing the cherished ideal of secularism. The expression 'practice' is concerned primarily with religions worship, ritual and observation. The fundamental right to freedom of conscience and the right to profess, practice and propagate a religion are subject to the considerations of public order, morality and health. **Clause (2) of Article 25** preserves the power of the state to make a law regulating any economic, Financial, political or other secular activity which may be associated with religions Practice. **Article 26** gives effect to the Concomitant right of the freedom to manage religious affairs and this right is again subject to public order,

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¹ Justice Mukherjee - in Shirur Mutt case -(AIR-1954 SC 282)

morality and health. **Article 25** and **26** undoubtedly extended to ritual also and not confined to doctrine.

Ethical and legal aspect towards conversion

According to **Article 18** of the universal Declaration of human rights the freedom of conscience and religion includes freedom to change the religion or belief because it is an individual right of a person. The change from one religion to another is primarily the consequence of one's conviction that the religion in which he was born into has not measured up to his expectations-spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he/she would like to embrace would better take care of his/her spiritual well-being or otherwise accomplish his/her legitimate aspirations.

Reasons For conversion:-

At time it may be hard to find any rational reason for conversion into another religion. The reason for propriety of conversion can not be judge from the standards of rationality or reasonableness. But the right to freedom of conscience thus implies the individual right of a person to renounce one's religion and embrace another voluntarily.

It may be noted that in some states, viz. Gujrat, Madhya Pradesh, Himachal Pradesh, Arunachal Pradesh etc., and the **Freedom of Religion Act** were enacted. The provision thereof prohibits forcible conversion (because it is a violation of fundamental right of professing a religion under Arti-25 and 26). i.e. by use of force, allurement or by fraudulent means and requires the person who participates or takes part in the ceremony for conversion from one religious faith to another should send the intimation to the District Magistrate either in advance or within a stipulated period after the event of conversion failure to do so is an offence.

Spiritual and legal processing of conversion

There are so many ceremonies are specifically prescribed. In many religious texts or precepts, related to conversion, like 'Shuddhie' in Arya Samajist, "Baptism" in the case of Christians, Declaration of "Iman and Tauhid" (through the reading of "Kaloma -E- Rasool") as an SHAHADA in the case of Muslims, etc, are gone

through in practice in some case, Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary. The subsequent conduct of the converter is also important in reaching the conclusion that a conversion in its true sense had taken place and there was genuine-conversion. Thus these ceremonies are useful to show the reality of spiritual belief and extreme faith in religion.

But conversion cannot be treated as an event which can be achieved through a mere declaration-oral or writing. At the same time no particular formalities or ceremonies are required according to the law declared by Honorable supreme-court. It has been held in number of decided cases including, the pronouncements of the Honorable Supreme Court that any particular formalities, Religious rituals or ceremonies are not necessary to bring about conversion or reconversion². In **Perumal Nadar (dead) by legal representative V/s Ponnuswami Nadar (Minor)**³ the principle was reiterated that no formal ceremony of Purification or expiation is necessary to effectuate conversion. In the recent case of **M. Chandra V/s M. Thanga Muthu and Another**,⁴ the Honorable Supreme Court observed that - "it is a settled principle of Law that to prove a conversion from one religion to another, two elements need to be satisfied. First- there has to be a conversion and second, acceptance into the community to which the person converted."

According to the decision of **Punjabrao v/s Dr. D.P. Meshram & others**,⁵ if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the fact of such an open declaration, it would be idle to enquire further as to whether the conversion to another religion was efficacious. It is an important step in establishing the factum of conversion to another religion. The filling of declaration and recording thereof should not be made obligatory and an indispensable mode of proof of conversion, but it should only be made optional so that the converted person will be enabled to have documentary proof to establish the factum of conversion/reconversion in the absence of other reliable documentary evidence.

² Punjabrao v/s Dr. D.P Meshram and org. Air 1965 SC 1179.

³ AIR - 1971 Sc - 2352.

⁴ (2010) - 9 SCC - 712

⁵ AIR -1965 SC-1179

Morality of Conversion with malacious intention

In a highly sensitive matter of conversion a question may arise as to what purpose will such a procedure serve where there are objections from some quarters? Whether they are **Bonafide** or **Malafide**? Honorable Supreme Court has consistently held that the law does not require any particular ceremony or ritual for conversion, but what is necessary is a **Bonafide** Intention to convert to another religion, faith accompanied by conduct unequivocally expressing that intention. That satisfaction of the Court on this aspect should necessarily be present and the filing of declaration of conversion before a prescribed authority is one of the important aspects that aid the court in reaching such satisfaction.

In the case of **Sapna Jacob, Minor V/s the state of Kerala & ors.**⁶ Justice **K.G.Balakrishnan** Ex. C.J.I. said that-“It may be true that the Court cannot test or gauge the sincerity of religions belief; or where there is no question of the genuineness of a person’s belief in a certain religion; the court can not measure its depth or determine whether it is an intelligent conviction or ignorant and super facial fancy. But a court can find the true intention of men lying behind their acts can certainly find from the circumstances of a case whether a pretended conversion was really a mean to some further end. In **Kailash Sonkar V/s Smt. Maya Devi**⁷ Honorable Supreme Court while dealing with a case of reconversion, adapted a similar approach, as seen from the following observations:- “ In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose where as the real intention may be shrouded in mystery.

Conversion: the Matrimonial Tool

In the Matrimonial relationship, both or single party without coercion), converts to a new faith just for marriage or to ask an intended spouse to give up his/her religion just for wedding

⁶ AiR -1993, Kerala 75.

⁷ AiR -1981 SC 600

is Ethical? Religions conversion is not a hollow ritual devoid of any meaning or consequences. These interfaith/ Inter relations matrimonial relationships should be based on mutual respect for both faiths, marriage should be solemnized without imposing religion's conversion on a spouse. After marriage both spouse's faith should get equal respect and consideration in home life and raising children.

If some one covert's his/her religion just for the matrimonial purpose, it would not be an Ethical and spiritual conversion, it would be treated like an immoral act. It would be malacious conversion due to lake of pious object of extreme faith or belief in particular religion and its principles. (Privy Council in the case of **Skiner v/s Aurd**).⁸ According to Honorable Supreme Court,⁹ if somebody want to cheat any one, (own spouse) or to take an advantage of another religion which is contradictory/ prohibited in his/here present religion, it would be commission of an offence. For example if married a man want to marry another woman, if he does so, it will be an offence of Bigamy (U/s 494 Indian Panel Code 1860) The 'X' converts to Islam and be Muslim (because a Muslim man can have four wives at a time), this conversion shall be void, Malafide, unethical and not enforceable.

In another situation, a man wants to marry with his cousin sister, but it is not permitted in his present religion, due to prohibited relationship between them. He coverts to another religion, where these restrictions do not exist or very feeble or liberal. Is it a proper, pious, Ethical, Spiritual and moral act of conversion.

Justice Sageer Ahmed pronounce the answer in the famous **case of Lilly Thomus v/s. 'Union of India**,¹⁰ "Religion, faith, and dedication/devotion are not so easy to transfer, If someone accepts another religion, Just for material benefits or interests, it would be treated like Bigotry. If some one accepts another religion (in a Jolly mood as a joke) so that he/she may marry in prohibited relationship or against the Law or dissolve his/her marriage without any reasonable cause, he/she would not be permitted to

⁸ (1871) 14 MIA: 309, Mulla - Principles of Mohammedan law -XVIII- pge 20(and caliph Umar 634-644/Surah-5:5 and 60:10)

⁹ Sarala Mudgal v/s Union of India, 1995-3-Sec. 635

¹⁰ AiR -2000- SC 1650

do so, because it is the misuse and exploitation of religion. Institution of marriage has the pious status in all religions, and Family Laws thus it should be protected by law and Religion.”

Hence Law and legislation tried to stop the misuse of conversion, and declare it as an important ground of Divorce in all family/ personal laws:-

1. Hindu marriage Act-1955-Sec. 13(i)(ii)
2. Muslim marriage Dissolution Act -1939-Sec-4. (with some limitations)¹¹
3. The Divorce Act -1869 (with Christian Marriage Act 1872)Sec-10(2)
4. The Parsi marriage Act-1936-Sec.32(J)
5. The convert's marriage dissolution Act 1866. (Applied on the person converts to Christianity.) Etc.

Like a marriage, conversion is also as solemn act; conversion from one religion to another has far reaching consequences-Socio- Psycho and legal. It affects marital significance, succession and inheritance. Divorce can be granted on the ground that the spouse has changed the religion. Upon conversion a person may be governed by different personal laws.

Legislative attempts toward conversion and it's morals-
In the 211th Report of the Law commission¹² has gone to the extent of recommending that non registration of Marriage and Divorce should be made an offense, and secondly that no judicial relief shall be granted if the concerned Marriage or Divorce is not duly registered under the proposed Act, so it does not necessarily follow that conversion to another religion should also be compulsorily registered. The law commission, there fore proposes to formulate the following recommendation.

1. Within a month after the date of conversion, the converted person, if she/he chooses, can send a

¹¹ Sec. 4, M.M. D. Act. 1939 Effect of conversion to another faith. The renunciation of Islamic by a married Muslim or her conversion, to a faith other than Islam, not by itself operate to dissolve her marriage. Provided that after such renunciation/conversion, the woman, shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section-2 Provided Further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

¹² 235th Report of Law commission, D.O.NO. 6(3)185/2010 :C[25] Dec.-27.2010

- declaration to the officer in charge of registration of marriages in the concerned area.
2. The registering official shall exhibit a copy of the declaration on the Notice Board of the office till the date of confirmation.
 3. The said declaration shall contain the requisite details viz; the particulars of the covert such as date of birth, permanent address, and the present place of residence, father's/husband's name, the religion to which the converter originally belonged and the religion to which he or she converted, the date and place of conversion, and the nature of the process given through for conversion.
 4. Within 21 days from the date of sending/filing the declaration, the converted individual can appear before the registering officer, establish her/his identify and confirm the contents of the declaration.
 5. The Registering officer shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objection is notified, he may simply record them i.e. name and particulars of objector and the nature of objection.
 6. Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the party who submitted the declaration or the authorized legal representative, on request.

These simple recommendations, relating to conversion/reconversion, having regard to the fact that it does not go contrary to the existing provisions of law nor does in any way impinge on the religious freedom or faith of any person.

Reference

1. The Constitution of India,
2. All India Reporter,
3. Supreme Court cases,
4. 211th, 235th Reports of Law commission
5. Mulla-Principles of Mohammedan Law.
6. Report of Kerala Law Academy-on-"Statutory vacant for effectuating voluntary religions conversion".
7. Religion and Marriage -By Kirsten Houghton.

The Constitutional Duty to Develop Scientific Temper vis-a-vis Sustainable Development: An Interdisciplinary Approach to What India Needs Direly

“It shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform.”¹

Introduction- Of course, we have an ancient and a unique civilisation jeweled with preserved² golden culture, scriptures, traditions, customs, art, plural religions, beliefs and convictions. It remains conserved, ‘unchanging and not-perished’³ despite the immemorial history, number of religions, sects, wars, onslaughts and invasions; British rule, partition etc. There was a time when India was known as ‘Golden Bird and *Jagad-guru*’⁴, however, during the course of time, our treasure and heritage gradually gone astray, whatever may be the causes and the golden civilisation is now stigmatised by evils and problems like superstitions, dogmas, casteism, honour-killing, dowry, child-marriage, illiteracy, poverty, over-population, corruption and so on. Formally-post-independence India is still suffering from the hardships from which we need to free ourselves because they not only clinch us to backwardness but also impede the process of development. Therefore the author calls for a rational and scientific attitude to meet the nation’s predicament and maintains that such attitude can pave a way, directly or indirectly, towards a development which can sustain.

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¹ Art. 51A (h), The Constitution of India.

² A. L. Basham, *The Wonder that Was India* 4 (Picador, 2004); (hereinafter, Basham).

³ *Id.*, at 4, 481.

⁴ *Jagad-guru* means a teacher or preacher of the whole world. Shockingly, the above two words don’t find any mention in two comprehensive accounts on Indian history, Basham’s *The Wonder that was India* and Nehru’s *The Discovery of India*.

What is scientific temper- The term 'scientific temper' has nothing to do with scientific inventions or their use. To Nehru⁵ the champion of this concept scientific temper is associated with reason, the search for truth and new knowledge, the refusal to accept anything without testing and trial, the capacity to change previous conclusions in the face of new evidence, the reliance on observed facts and not on pre-conceived theory. It refers to a mentality or an outlook rather than a specialised body of knowledge.⁶ In short, it implies a spirit of inquiry and questioning (because the foundation of science is questioning⁷), scepticism⁸, heterodoxy⁹, knowledge filtered by doubts¹⁰, observations and experience, no blind reverence to established facts and, rational and logical thinking i.e. acting for sufficient reasons¹¹. A similar term implying the above features is 'pragmatic approach' which denotes 'forward looking, sceptic, anti-dogmatic, experimenting'¹² and enquiry¹³ based attitude.

Origin of the concept- Most popularly and in India, the credit of bringing this concept in goes to Pandit Jawaharlal Nehru, though, the first work on the theme titled, *The Scientific Temper of Religion* was written by P. N. Waggett and published in London in 1905. In his profound creation *The Discovery of India* Nehru at the end calls for scientific temper¹⁴ and a spirit of inquiry as imperatives for progress. He visualises¹⁵ the solutions to many problems in scientific temper and vehemently advocates¹⁶ that it should be a way of life and a process of thinking.

⁵ Jawaharlal Nehru, *The Discovery of India* 570 (Penguin, 2012); (hereinafter, Nehru).

⁶ Srirupa Roy, *Beyond Belief: India and the Politics of Postcolonial Nationalism* 124 (Duke, 2007).

⁷ A. P. J. Abdul Kalam Azad, *Ignited Minds* 28 (Penguin, 2003). Kalam calls child, the first scientist as his questions are never ending. *See*, at 28.

⁸ *See for more*, Basham, *supra* note 2, at 298 and Amartya Sen, *The Argumentative Indian* (Penguin, 2005), at 22; (hereinafter, Sen, *Argumentative*).

⁹ Amartya Sen frequently uses this term to denote the tradition of questioning in ancient India. *See, id.*, at 21, 22, 354.

¹⁰ Francis Bacon, the great essayist opines in *The Advancement of Learning* that doubts initiate a process of inquiry which in turn enriches our understanding. *Quoted in*, Amartya Sen, *Identity and Violence* 122 (Penguin, 2007); (hereinafter, Sen, *Identity*).

¹¹ Amartya Sen, *The Idea of Justice* 175 (Penguin, 2010); (hereinafter, Sen, *Idea of*).

¹² Richard A. Posner, *Overcoming Law* 4-7 (Universal, 2007).

¹³ W. Friedmann, *Legal Theory* 31 (Universal, 2011).

¹⁴ Nehru, *supra* note 5, at 570.

¹⁵ *Id.*

¹⁶ *Id.*

A peep into the history of 'scientific temper' thought- The traces of scientific attitude in day-to-day life can be gathered even from the ancient times. In Rigveda, the creation hymn ends with radical doubts¹⁷ as to the creation and the creator, and in Ramayana¹⁸, Jawali lectures Lord Rama to follow what is within his experience and not to trouble with what is beyond that. Buddha, the crusader of 'experience-based knowledge'¹⁹ attacked superstition, ceremonial and priest-craft and buttressed logic, reason and experience.²⁰ He did not assault caste system directly²¹ but his attitude was against this abysmal system. Nehru opines²² that Buddha brings us to some of the concepts of modern physics and modern philosophic thought and he had a deep insight into latest modern sciences. Besides, the Carvaka School²³ (materialist) inveighed against all forms of magic and superstitions. In the West, while the utilitarian Bentham²⁴ also asked not to trust his theories, but to experience, and especially one's own; the great genius Einstein said²⁵ that, 'Science without Religion is lame; Religion without Science is blind'. Yet another major contribution was made by Renaissance during which generated a new spirit of inquiry which 'not only challenged old-established authority, but also abstractions and vague speculations'²⁶.

During medieval India, Raja Ram Mohan Roy the social reformer was, according to Monier-williams, in favour of scientific methods²⁷. Among Mughals, Akbar a democratic and secular ruler pursued *raah-e-aql*²⁸, the path of reason in the matters of social reform²⁹, open dialogue and communal harmony during his reign.

¹⁷ Sen, *Argumentative*, *supra* note 8, at 22.

¹⁸ *Id.*, at 26. *See also*, 7, 8.

¹⁹ Osho, *Es Dhammo Sanantano*, Part 1, 09:32 (Audio Book).

²⁰ Nehru, *supra* note 5, at 120, 121. *See also*, Dr.Sarvapalli Radhakrishnan, *Religion, Science and Culture* (Orient, 2013), at 15; (hereinafter, Dr. Radhakrishnan).

²¹ *Id.*, at 121.

²² *Id.*, at 131.

²³ *Id.*, at 96.

²⁴ Jeremy Bentham, *Theory of Legislation* 52 (LexisNexis, 2010).

²⁵ Justice V. R. Krishna Iyer, *Off the Bench* 294 (Universal, 2011). "The general impression that the spirit of science is opposed to that of religion is unfortunate and untrue." Dr. Radhakrishnan, *supra* note 20, at 9.

²⁶ Nehru, *supra* note 5, at 283.

²⁷ *Id.*, at 343.

²⁸ Sen, *Identity*, *supra* note 10, at 161, 162; Sen, *Argumentative*, *supra* note 8, at 288 and Sen, *Idea of*, *supra* note 11, at 39.

²⁹ Sen, *Idea of*, *supra* note 11, at 38. "He was opposed to child marriages and he stressed on remarriages of widows in Hindus." Sen, *Argumentative*, *supra* note 8, at 290.

Sir Syed Ahmad Khan a social activist wanted to reconcile modern scientific thought with Islam. He stressed on rationalistic interpretation of scripture and removal of *pardah* (veil).³⁰

On the threshold of modern India, Swami Vivekananda³¹ said that superstition is the biggest enemy of human beings. He condemned 'touch-me-notism of the upper caste'³² and 'occultism, mysticism and superstitions'³³. Buttressing the liberty of thought and action, he wanted to combine Western progress with India's spiritual background.³⁴ Dr. Bhimrao Ambedkar had a vision of informed and reasoned public engagement³⁵ and he made incessant efforts to annihilate untouchability and caste-system. On the other hand, the Nobel laureate poet, Ravindra Nath Tagore expressed his rationalistic feelings in *Geetanjali* as: "... Where the clear stream of *reason* has not lost its way, into the dreary desert sand of dead habit ... Into that heaven of freedom, my father, let my country awake."³⁶ In January, 1934 when thousands of people were killed due to earthquake in Bihar, Gandhi commented that this was a divine chastisement sent by God for the sin of untouchability but, Tagore³⁷ termed it an unscientific view³⁸. He also condemned romantic attachment to the past.³⁹ The champion of scientific temper thought, Nehru, in his intellectual work, *The Discovery of India*, stresses that we need a temper of science and the reliance on observed fact and not on pre-conceived theory for life itself and the solution of its many problems.⁴⁰ He finds that though we live in a scientific age⁴¹ but it does not reflect in the people.

³⁰ Nehru, *supra* note 5, at 377, 378.

³¹ Narendra Kohli, *Swami Vivekananda* 332 (NBT, Hindi edn., 2005).

³² Nehru, *supra* note 5, at 369.

³³ *Id.*, at 371.

³⁴ *Id.*, at 369.

³⁵ Jean Dreze and Amartya Sen, *An Uncertain Glory* 16 (Penguin, 2013); (hereinafter, Dreze and Sen, *Glory*).

³⁶ Rabindra Nath Tagore, *Gitanjali: Song Offerings* 105 (Ramkrishna, 2007).

³⁷ Sen, *Argumentative*, *supra* note 8, at 103, 104.

³⁸ However, it does not follow that Gandhi was too orthodox or dogmatic. When he was to go to England for further studies, his caste-people agitated his voyage saying their religion forbids voyages abroad and one cannot live in Europe without *eating* or *drinking*. But, Gandhi sat unmoved and therefore, he was treated an outcaste thenceforth. M. K. Gandhi, *An Autobiography* 37, 38 (Navjivan, 2008).

³⁹ Sen, *Argumentative*, *supra* note 8, at 105.

⁴⁰ Nehru, *supra* note 5, at 570. However, his first expression on the thought was made by him before the Indian Science Congress in Calcutta (January, 1938): Jairam Ramesh, Union Minister, 13th Convocation Address delivered at IIT, Guwahati, *Nehru's Scientific Temper Recalled* (May 27, 2011).

⁴¹ However, Justice Jahagirdar opines that on the basis of scientific knowledge and inventions, an age does not become scientific age though; it may be an age of technology. According to him, that age is a scientific age in which the problems of the society are faced and handled by men with scientific temper. Justice R. A. Jahagirdar, *Scientific Temper* 3-4 (collected works).

Among the modern Indian philosophers and saints, *Acharya* Rajneesh, also known as Osho, was a revolutionary and rebellious philosopher. He was of the view that we need to inculcate scientific temper⁴² and to free ourselves from the past⁴³ and from superstitions also as they block our thought-process⁴⁴. He vehemently condemned Gandhi's attitude by calling it regressive and anti-scientific⁴⁵. On Gandhi's reaction to the earthquake in Bihar, Osho comments⁴⁶ that if this was the only reason then, entire country must have suffered by such calamity as the sin was rampant in India. The recently passed away saint, Shri Satya Sai Baba, who established schools and university wanted to develop scientific temper in students and yet he believed that science without spiritual direction may be disastrous⁴⁷.

Scientific temper, hurdles to sustainable development and the law

The Directive Principles of State Policy contained in Part IV of the Constitution reflect a sincere spirit of development and therefore, it is correct to say that development is fundamentally a continuous and an 'empowering process'⁴⁸, and 'not at all confined to industrialisation, technological advancement or social modernisation'⁴⁹. According to Brundtland Report⁵⁰, development, to be sustainable, must meet the needs of the present without compromising the ability of future generations to meet their own needs however; Robert Solow⁵¹ in his definition encompasses such preservation for the generations of future generations as well. The

⁴² Osho, *Dekh Kabeera Roya*, Part 11, 08:25 (Audio Book).

⁴³ *Id.*, Part 10, 30:02.

⁴⁴ *Id.*, Part 11, 08:15.

⁴⁵ *Id.*, Part 9, 03:04.

⁴⁶ *Id.*, Part 9, 07:40.

⁴⁷ Justice P. N. Bhagwati, *My Tryst with Destiny* 197 (Universal, 2013).

⁴⁸ Sen, *Idea of*, *supra* note 11, at 249. In another profound and latest work, Dreze and Sen argue that development is, ultimately, the progress of human freedom and capability to lead the kind of lives that people have reason to value. Dreze and Sen, *Glory*, *supra* note 35, at 43.

⁴⁹ Dreze and Sen, *Glory*, *supra* note 35, at 43.

⁵⁰ *Our Common Future* 43 (1987), Report of the World Commission on Environment and Development, 1987. "It means the development which can be sustained by nature with or without mitigation." *Tirupur Dyeing Factory Owners Assn. v. River Ayacutdars Protection Assn.*, (2009) 9 SCC 737, at 747.

⁵¹ Sen, *Idea of*, *supra* note 11, at 250-1.

Supreme Court⁵² has also given it due weightage by treating it an integral part of the Fundamental Right to life enshrined under article 21 of the Constitution. However in the realisation of this right to sustainable development, the obstacles are many which have developed due to lack of rational steps and scientific outlook as discussed below. It appears quite inconceivable to the author that the conception of development has been accepted as a (human) right in international law⁵³ also and given a fancy name of 'third generation' or 'solidarity'⁵⁴ human right. But, development is less (or not) a matter of right and more a matter of 'individual and collective efforts'⁵⁵. If it is termed as a solidarity right, then it is argued that it can be realised by doing duty only in this direction as, in many cases like this, *duty is a means and right is an end*. A beautiful example of such a duty can be found in one of the Fundamental Duties marked in the Indian Constitution; 'to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement'⁵⁶.

Below is an account how factors paving way for sustainable development have been handicapped by the lack of scientific temper.

· **Illiteracy, pernicious education-system and the law-** As Tony Blair says⁵⁷; 'my three priorities for Government are education, education and education'. Education occupies due place in the Constitution of India also as a fundamental right⁵⁸ and a directive principle⁵⁹. The importance attached to education is manifold. Ability to read and write, employment, awareness

⁵² *N. D. Jayal v. Union of India*, AIR 2004 SC 867, at 878.

⁵³ Declaration on the Right to Development, 1986, Art. 1.

⁵⁴ D. J. Harris, *Cases and Materials on International Law* 623 (Sweet & Maxwell, 2011).

⁵⁵ P. Ishwar Bhat, *Law and Social Transformation in India* 673 (EBC, 2009).

⁵⁶ The Constitution of India, Art. 51A (j).

⁵⁷ Tony Blair, Speech at the Labour Party Conference (Oct. 1, 1996).

⁵⁸ Art. 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

⁵⁹ Art. 45: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

⁶⁰ Dreze and Sen, *Glory*, *supra* note 35, at 107-09. The authors point out as many as nine advantages of basic education but do not highlight the prime role of education in eradication of superstitions, dogmas and social evils.

regarding health and rights⁶⁰, a catalyst for social change⁶¹, agitation towards superstitions and social evils and many more are the benefits of basic education and that is why Fali S. Nariman⁶², the eminent Supreme Court lawyer opines that the lack of education is the root-cause of many problems like poverty, overpopulation and intolerance. The Supreme Court has even observed to the extent that without primary education, the objectives set forth in the preamble to the Constitution would not be achieved.⁶³

At the outset, many conventional parents in villages do not send their children to schools though, the scenario has changed to a great extent after the initiation of the Mid Day Meal Scheme and scholarships however, discrimination with girl-child still continues as 'a daughter does not bring any tangible benefits to her parents though her education may have strong influence on the health and education of her child later on'⁶⁴. The irrational governmental policies have also made the matters exacerbated. The first Five Year Plan argued against elementary school education and advocated Gandhian 'basic education' (teaching handicraft) which despite receiving wide criticism, was reasserted⁶⁵ in the second Five Year Plan. But things have not improved even today. More recently, despite lack of teachers in public schools⁶⁶ and books in library, the vote-seeking irrational and selfish state governments blindly spent crores⁶⁷ of rupees in distributing tablets and laptops for free to rank-holder students whereas the money could have been *invested* in appointing teachers. In addition to the Executive; the Legislature too seems to have handled the issue with *left hand*. In the Right to Education Act, 2010 there are few illogical and impractical provisions like; guaranteed automatic promotion⁶⁸ to

⁶¹ Jean Dreze and Amartya Sen, *Development and Participation* 143 (Oxford, 2011).

⁶² Fali S. Nariman, *The State of the Nation* 249 (Hay House, 2013).

⁶³ *Unnikrishnan v. The State of Andhra Pradesh*, AIR 1993 SC 2178.

⁶⁴ Veena Das (ed.), *Handbook of Indian Sociology* 351 (Oxford, 2008).

⁶⁵ Dreze and Sen, *Glory*, *supra* note 35, at 24.

⁶⁶ *See, id.*, at 119.

⁶⁷ For *e.g.*, where UP Government spent 2,700 crore rupees for distributing laptops, Rajasthan Government spent 165 crore rupees. *See*, http://articles.timesofindia.indiatimes.com/2013-0719/news/40678111_1_plan-size-free-laptops-plan-allocation and http://www.cmo.rajasthan.gov.in/Program/Pdf/91907331758149_75b3e861_8_d60521ebd_thirteen.pdf, *respectively* (Last visited on Aug. 15, 2013).

⁶⁸ § 16: "No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education."

next higher class (meaning thereby, 'no student shall fail') regardless of what a student has learnt and comprehensive and continuous evaluation (CCE)⁶⁹ wherein the teacher has to maintain record of every student containing daily learning progress of the student.⁷⁰ Looking into the present state of affairs, these self-evident provisions do not need any criticism? Alas! The few teachers working in elementary public schools have to do everything⁷¹; except teaching.

Taking up one more aspect, consistent with rather in addition to minorities' Fundamental Right under article 30(1) to establish and administer educational institutions of their choice, the government set up National Commission for Minority Educational Institutions under an Act of 2004 with many objectives but at the same time it has to be borne in mind that minority schools put children into a rigid box of categorisation and cultivate narrow-mindedness in them. Sen underlines that increasing the number of state-financed minority and faith-based schools has the effect of reducing the role of reasoning and horizons of understanding.⁷²

Health and the law- Poverty is 'deprivation of capabilities rather than merely as lowness of income'⁷³, as argued by Amartya Sen, and remediable to a great extent by education, health and employment. Education and health have a central role to play in the formation of human capabilities and expanding people's freedom.⁷⁴ To ensure universal education, the government has made primary education compulsory and free in public schools and from health point of view, schemes like Integrated Child

⁶⁹ § 29 (2) (h).

⁷⁰ Both of them seem to be reformative educational thoughts but do our schools have or (let the author put it other way); will the Government ever provide the wherewithal and infrastructural facilities?

⁷¹ Being in-charge of Mid Day Meal Scheme, clerical job of compiling and forwarding data (because there is no sanctioned post of clerk) to higher authorities whenever and for howsoever times demanded and sometimes busy in population census or elections to the local authorities, state legislature or parliament.

⁷² Sen, *Identity*, *supra* note 10, at 117.

⁷³ Amartya Sen, *Development as Freedom* 87 (Oxford, 2011).

⁷⁴ Dreze and Sen, *Glory*, *supra* note 35, at 182.

Development Services, Janani Suraksha Yojna, National Rural Health Mission and Mid Day Meal Scheme are being run though with doubtful success rate.

In the series of actions ensuring health, a historic and path-breaking law National Food Security Act, 2013 has been passed but its implementation is going to be complicated and troublesome due to some irrational provisions and unrealistic facts. In the Act, it has been left with the states to identify⁷⁵ the 'eligible households'⁷⁶ with the help of the published data. In the published data, the methods used by the Planning Commission and the BPL Census to identify people Below Poverty Line are not only illogical but also divergent and due to this 'conceptual confusion'⁷⁷, targeted people cannot be identified unquestionably, misleading the very object of the Act. Aside from this, there is a provision that if the food grain cannot be supplied to the targeted people, such persons shall be entitled to food-security allowance⁷⁸. This provision does not take into account the biggest hurdle lack of banks⁷⁹ in remote areas and; 'misuse of cash, plausible deprivation of nutrients and rise in price due to inflation'⁸⁰.

Irrational schemes and policies of the government- Among the many dismaying and illogical schemes of the government, few most severe are discussed below. It is said: "Give a man a fish and you feed him for a day. Teach a man how to fish and you feed him for a lifetime". But it is the limit of irrationality that some state governments, like that of Uttar Pradesh, Punjab and Rajasthan provide unemployment allowance to unemployed but qualified youngsters, leading them nowhere. On the other hand, from the point of view of subsidies, it is excruciating to see that the benefit of subsidies on electricity⁸¹, petrol-diesel⁸²,

⁷⁵ § 15.

⁷⁶ § 2 (3).

⁷⁷ Dreze and Sen, *Glory, supra* note 35, at 192.

⁷⁸ § 13.

⁷⁹ About 40% of Indians do not have a bank account. – Paranjoy Guha Thakurta, a veteran journalist and economist, in a discussion on a private news channel, IBN7, 08:45 PM, Aug., 28, 2013.

⁸⁰ Dreze and Sen highlight these apprehensions about the prospect of wholesale replacement of PDS (Public Distribution System) with cash transfers. *See*, Dreze and Sen, *Glory, supra* note 35, at 210, 211.

⁸¹ Dreze and Sen, *Glory, supra* note 35, at 87. Large landowners use subsidised electricity to tap free groundwater. *See*, at 269.

fertilizers⁸³ and 'revenue forgone'⁸⁴ is blindly given, in spite of heavy current account deficit, to better-off and powerful consumers which, instead, should have been used for infrastructural development and for the amelioration of the downtrodden. According to a Latin axiom, "*Non potest rex gratiam facere cum injuria et damno aliorum.*" - The king cannot confer a favour on one subject which occasions injury and loss to others.⁸⁵

· **Environmental pollution-** Environment is fundamental in any growth equation. Environmental protection and development have to co-exist for long-term goal of societal welfare and progress.⁸⁶ However, those who pollute the environment in any way do not pause for a moment and think, at least for their own benefit, that it is going to affect not only their own lives but also those of their successors. It is like cutting the branch one is sitting on. Polluting the environment is an example not only of lack of scientific thinking but also of *no thinking*. As aptly remarked by Sen: "Environmental degradation arises ... from thoughtless and lack of reasoned action."⁸⁷

· **Population-** It is illogical and shocking to see that where in the late 1980s, central government treated population control as a panacea for economic problems; in the 1990s, government found population growth a *good thing*⁸⁸ but soon we might be witnessing the 'population bomb'⁸⁹. No economic progress can give fruits which will be available to the people of the country unless there is a proper and rational population policy.⁹⁰ It has been profoundly observed that sustainable development is closely linked

⁸² *Id.*, at 88. Central government subsidies on petroleum and fertilizers are expected to cost more than 165,000 crore rupees in 2012-13 which is *four times* what the central government spends on health care. *See*, at 270.

⁸³ *Id.*, at 89.

⁸⁴ *Id.*, at 90. Total revenue forgone in 2011-12 was 530,000 crore rupees. *See*, at 270.

⁸⁵ Herbert Broom, *A Selection of Legal Maxims* 62 (Johnson, 1874).

⁸⁶ G. S. Tiwari, "Sustainable Development as a Socio-Economic Growth Strategy", 52 *JILI* 446 (2010).

⁸⁷ Sen, *Argumentative*, *supra* note 8, at 277.

⁸⁸ Nariman, *supra* note 62, at 257.

⁸⁹ Ruchir Sharma, *Breakout Nations: In Pursuit of the Next Economic Miracle* 55-56 (Penguin, 2013).

⁹⁰ Jahagirdar, *supra* note 41, at 10.

to the dynamics of population growth⁹¹. The available natural resources are limited and they can satisfy the needs of limited number of people only. We can visualise that the population increasing by leaps and bounds gives rise to many problems including shortage of water, food and accommodation, environmental pollution, unemployment, poverty, poor-health etc. and thus impede our development. In India, due to boy-preference, many people keep procreating until they don't get a male child. In many parts of India, people believe that children are God's gift and therefore, they don't follow family-planning. As rightly pointed out by Friedmann⁹², there are ethical as well as religious objections to birth control. There is a religious dogma among the Muslims also that children are Allah's blessings and their religion prohibits use of contraceptives. But it is a myth⁹³ and according to Justice Sachar report⁹⁴, the rate of increase in Muslim population has declined and in some parts of India, the reason of increase in their population is lack of awareness.

· **Dogmas and superstitious practices-** Superstition is a belief or notion, not based on reason or knowledge.⁹⁵ Witchcraft, necromancy, sorcery, black-magic, blind-faith to god-men, sacrifice⁹⁶ of animals for the gratification of gods; the list goes on in the name of religion. Dr. Radhakrishnan aptly remarks⁹⁷:

“Religion is not magic or witchcraft, quackery or superstition. It is not to be confused with outdated dogmas, incredible superstitions, which are hindrances and barriers, which spoil the simplicity of spiritual life.”

These practices spread like infectious disease, trap people, drag them into the quagmire, block their mental faculties of thinking, discourage scientific temper, divert them from their main course of life and thus mitigate their contribution to the society. The greatest damage done by these harmful superstitions is that

⁹¹ Satish C. Shastri, *Environmental Law* 14 (EBC, 2012).

⁹² W. Friedmann, *Law in Changing Society* 259-260 (Universal, 2011).

⁹³ <http://www.missionislam.com/family/familyplanning.htm> (Last visited on Aug. 21, 2013).

⁹⁴ Compilation of Observations and Recommendations made by Sachar Committee & Ranganath Mishra Commission, 6.

⁹⁵ *Sushil Murmu v. State of Jharkhand*, AIR 2004 SC 394, at 399.

⁹⁶ Basham, *supra* note 2, at 241. See also at 339.

⁹⁷ Dr. Radhakrishnan, *supra* note 20, at 10-11.

they deflect attention from the primary cause and lead to defeatist attitude of helpless acceptance.⁹⁸ People with such (mis)beliefs do not have advanced, forward-looking and dynamic thinking which in turn, makes them less-productive and slows down their progress. These incredible dogmas are unacceptable in this age.⁹⁹ In *Sacrifice* one of the Tagore's plays the priest's son, Jai Singh kills himself to discourage sacrifice and it has been nicely observed¹⁰⁰ that; 'life comes from life not from sacrifice'.

Class system- Classism on the basis of caste, community or gender is undeniably the major social evil in India. Before independence, it gave rise only to touch-me-notism and untouchability but today it has become a colossal barrier to our progress and a pervasive folly because from social to political life, classism has not only begotten biased treatment with the same-class-people and discriminatory treatment to others everywhere but also class-based vote-politics. In this garb, merit has lost its significance and the political system has been deflected. In spite of giving stability to ancient Indian society, caste system is now a barrier to change and it carries within it the seeds of destruction.¹⁰¹ In villages, people belonging to Scheduled Castes or Tribes (*dalits*) are not only discriminated against but also not allowed to enter temples, take water from wells or move procession (*barat*) during the ceremony of marriage. If a large section of society is suppressed in this way sans any reasonable ground, how can a nation dream of development? In the context of society today, it (casteism) is wholly 'incompatible, reactionary, restrictive, barrier to social progress'¹⁰² and a 'pernicious division of human beings into iron-curtained compartments'¹⁰³. Of course, there appears no because there *is no* rational or scientific basis of categorisation of people on the basis of caste, and discrimination against them and that is

⁹⁸ *Hulikal Nataraju v. State of Karnataka and Anr.*, W.P.NO. 1750/2008, Sept. 13, 2010, ¶ 15.

⁹⁹ Dr. Radhakrishnan, *supra* note 20, at 49.

¹⁰⁰ Rabindranath Tagore, *Sacrifice* 16 (Vidhyarthi, 2008). In the play, the queen wanted to sacrifice a goat in order to please the goddess so that she could be blessed with a child.

¹⁰¹ Nehru, *supra* note 5, at 241, 369.

¹⁰² *Id.*, at 277.

¹⁰³ Dr. B. R. Ambedkar, *Annihilation of Caste* (1936), cited in, Dreze and Sen, *Glory*, *supra* note 35, at 34-5.

why caste system was condemned¹⁰⁴ even in ancient times. Kabir, the heterodox poet and saint rejects the notion of caste in the following eloquent words, which mean; do not ask a saint his caste which you have nothing to do with but few words of knowledge which only can be helpful to you:

*"Jati na poochho sadhu ki, poochh lijiye gyan,
Mol karo talwar ka, pada rahan do myan"*¹⁰⁵

· **Nostalgia over past, and preordainism-** Undoubtedly we had a glorified past and a successful civilisation, as compared to the West, based on stability and security¹⁰⁶ but if we stick to it without preparing for the challenges of the future and apply the old norms and solutions to the new problems, it will not only make us stagnant but also generate grim inemptitude. Due to this clinching attitude towards past, gradually our civilisation has become 'static and self-absorbed'¹⁰⁷ and the narcissism over the past¹⁰⁸ has arrested our progress. To live one must first die to his old life.¹⁰⁹ As Osho¹¹⁰ puts in; aside from escapism, traditionalism is also our problem because we try to apply old solutions to new problems. It is a negation not only of scientific attitude but also of progress because we remain hypnotised by our past and ignorant to look forward. As aptly marked by Nehru; 'a rational spirit of inquiry, so evident in the earlier times, which might well have led to the further growth of science, replaced by irrationalism and a blind idolatory of the past'¹¹¹.

Besides, we have an attitude of taking things for granted especially whenever any so called misfortune is encountered without making any attempt to change or improve the situation. Justice Chagla¹¹² points out that relying on, rather misinterpreting the doctrine of *Karma* and *Kismet*, the Hindus and the Muslims

¹⁰⁴As in Mahabharat, Bhardwaj says that if different colours indicate different castes, then all castes are mixed castes and in Bhavishya Purana, it finds mention that since members of all the four castes are children of God, they all belong to the same caste. Sen, Argumentative, *supra* note 8, at 11.

¹⁰⁵Kabeer, in, *Sant Kaviyon Ke Dohe* (couplets) 64 (Manoj, 2012).

¹⁰⁶Nehru, *supra* note 5, at 147.

¹⁰⁷*Id.*, at 564.

¹⁰⁸*See also, id.*, at 567-8.

¹⁰⁹Dr. Radhakrishnan, *supra* note 20, at 52.

¹¹⁰Osho, *Bharat Ki Khoj* 49 (e-book).

¹¹¹Nehru, *supra* note 5, at 46.

¹¹²Justice M. C. Chagla, *Roses in December* 180 (Bhartiya Vidhya Bhavan, 2011).

respectively believe that sufferings are destined. Such preordainism lacks scientific sanction, makes us victims of the so called fate, debilitates our will and ability to fight problems and thus, hampers our progress.

Conclusion- Sustainable development is fatalistically the need of the hour in India in view of the problems like illiteracy, poor health, poverty, unemployment, appalling economy, etc. However, in the never ending sustainable development discourse, there is hardly any talk over the rudimentary catalyst mindset of the people. According to Nehru¹¹³, a society, to be stable and progressive, needs a dynamic outlook. Actions of any sort begin from the will to do but the lack of scientific attitude has traumatised the will and made us turn our backs to growth and development. As argued by Osho¹¹⁴, the peculiar feature of an evolving society is that it does not believe anything to be certain and final; instead it examines and finds the truth itself. He even goes one step further and says that such society should question its own findings after frequent intervals. However, we are reluctant to experiment, question, change, initiate and innovate. But 'to reject innovation is to reject progress', says Bentham¹¹⁵.

In this technological age, we have to change our mindset from dogmatic to scientific, rational, and inquiry-spirited one in order to progress and keep up with globalised world. In this age, the glory of technology shines if its discoveries can liberate us from dogmas and obscurantisms.¹¹⁶ The core components of the European Enlightenment ideas of progress (to mention a few, human agency and responsibility, rather than Divine Will or Reason, presides over definition of 'progress'; faith in science replaces faith in God; progress is a material idea not a spiritual one)¹¹⁷ are pertinent even today. God can neither be held responsible for the low ebb of the country nor can we leave our development at His will. We need not only to test our attitude and preoccupations towards work and life at the touchstone of scientific temper but also realise how the orthodox outlook has (mis)led us. As the famous Urdu poet Sahir Ludhianvi pens:

¹¹³Nehru, *supra* note 5, at 563.

¹¹⁴Osho, *Dekh Kabeera Roya*, Part 22, 50:45 (Audio Book).

¹¹⁵Bentham, *supra* note 24, at 40.

¹¹⁶Krishna Iyer, *supra* note 25, at 294.

¹¹⁷Upendra Baxi, *Human Rights in Posthuman World* 91 (Oxford, 2010).

*“Aqaayad veham hai mazhab khayal khaam hai saaqi,
Azal se zahen-e-insaan bastaa veham hai saaqi”*¹¹⁸

This means that creeds are a delusion and religions merely false notions and from the beginning, man’s mind has been a slave to superstitions. The crude attempts to liberate from the subjugation of anti-scientific attitude and to promote scientific temper made by the government (Statement on Scientific Temper, 1981, Palampur Declaration, 2011, two subsequent international conferences and workshops)¹¹⁹ did not yield any result. Many local organisations are also working in India to eradicate superstitions but instead of understanding their point of view, people protest such activists. One of such activists, Narendra Dabholkar from Maharashtra was shot dead on August 20, 2013. There cannot be more imprudent act than this one and after his death, Maharashtra Legislature passed an Act prohibiting superstition and black magic which he was fighting for throughout his life. Few movies of Bollywood¹²⁰ have also tried to create awareness among people against superstitions, dogmas, and blind-faith. However any significant contribution from any end society or state is yet to come but it seems that all efforts are in vain unless a voice comes from within of every individual. The discussion rests saying, unfortunately ideologically, that we *should*¹²¹ adhere to the Constitutional duty to develop scientific temper and the spirit of enquiry and reform.

“We have to reckon with the spirit of science, understand its limitations and develop an outlook which is consistent with its findings. Science will triumph over ignorance and superstition, and religion over selfishness and fear.”¹²²

¹¹⁸Quoted in, Justice Markandey Katju, *Justice with Urdu* 184 (Universal, 2012).

¹¹⁹Subodh Mahanti, *A Perspective on Scientific Temper in India*, 1 *Journal of Scientific Temper* 46-62 (Jan. 2013).

¹²⁰E.g. *Oh My God* and *Delhi 6*.

¹²¹In *Ramsharan v. Union of India*, AIR 1989 SC 549, 14, it has been observed that there is no provision in the Constitution for the direct enforcement of the Fundamental Duties.

¹²²Dr. Radhakrishnan, *supra* note 20, at 108.

The Oldage Law in India : An Overview

I.

Introduction

Today there is an explosive growth in the aged population living around the world. The United Nations information says that in the year 2025 their population will be 1.2 billion and by 2050 it would reach to 2 billions. Further more, the 2/3 of their total population live in the developing countries. It throws a great challenge particularly before such countries. India is not an exception in this regard. The Report of the Ministry of Statistics and Programme implementation, the Government of India gives an alarming signal that the population of elderly persons in India which was 5.6 per cent of the total population in the year 1961 it would be 12.6 per cent of the total population in the year 2020. The majority of the elderly people live in the rural area.¹ The problem does not stop at the population explosion, implosion and deplosion, it is further aggravated by the fact that the large number of old persons suffer from depression, demania, psyzofrania, blood pressure, diabilities, heart attack and circulatory, urinary problems, cancer and a long lists of disabilities and diseases.²

The elderly persons joint family system has withered away, and is unfortunately replaced by a nucleus family, and such a transformation has its own problems because 'united we stand and divided we fall'. The economic viability of sons and total dependence of poor parents on their sons and daughters has brought in economic crisis in the family relations. The increasing cost of living; and on the other hand, recurring heavy cost involved in the medicare of elderly persons has further aggravated the problem of maintenance of the parents.

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¹ See, *Situation Analysis of the Elderly in India*, Central Statistics office, Min. of Statistics and Programme Implementation, Govt. of India, June 2011.

² *Ibid.* 19.

What is the existing reality? It is reported that the then Chief Justice of the Punjab and Haryana High Court, Justice Shanti Svarup Dewan, was thrown out of his own house by his son who 'traumatized' and 'made their life hell'. Mr. M.Jagadeesen suffered atrocities committed by his near and dear son and was shown the way to the street out of his 6.6 acres home. Mr. Gupta built his home out of his all savings, and his son forcibly evicted him from it. Further there is a shocking instance where a son did not give money even for the last rites of his mother who ultimately had to be cremated in the government electric crematorium. A 87 years old man had to leave his pallacious home because of the greedy son and shifted to his daughter's house.³ One can see here the *rakshaks* are becoming *bhakshaks* or *rakshashas*. Where are we taking India to? Fortunately the above cases were brought to the daylight by the media but many more remain in the undercover or forewalls of the house to save the family reputation. Apart from the above problems, the industrialization, urbanization, migration particularly, to the United Kingdom and the United States of America, recurring, social ego and status, small affordable houses, generation gap, curtailment of their freedom, atrocities, physical violence and abuse at the hands of the son and daughter in laws, are some of the other problems which have put today the old parents in great sufferings of captive life. However, one should not forget that there is also other side of the picture where sons, daughter-in-laws and even daughters are meted out inhumane treatment.

Is not it a national shame in a country like India where sons like Rama, Bhishma, Shraavan Kumar made great sacrifices in their lives for the sake of being obedient to their old parents? A country where the prime concept was 'मातृ देवो भव पितृ देवो भव। 'त्वमेव माता च पिता त्वमेव'। न सा सभा यत्र न सन्ति वृद्धा :। It is here in India where the blessings are given 'जीवेम षरदः षतम्'. So what have we done in this regard? The present legislation, the Maintenance and Welfare of Parents and Senior citizens Act, 2007 intends to give a ray of hope to bring back the lost culture and tradition through the legal control.

³ Agewell Foundation, *The Hindu* (National), Human Rights of the Old at Stake, Aug 10, 2013. See also the *Indian Express*, Aug. 19, 2013; TNN May 18, 2013.

In this regard the main question is : have we, during the last seven years, moved any further towards transforming the dreams into a reality? Can the elderly persons dream in future to enjoy a respectable life see the light of the day? How long the parents have to suffer physical and mental violence, humiliation, isolation and remain like baggers in their own home or in the oldage homes? Unfortunately the law academics have hardly pondered over these issues seriously. The present researcher makes an humble attempt to critically evaluate the legislation and tries to find out answers to some of the questions : What have we done, where have we failed and what we need now to improve, the sad condition?

II

The Background Exercises in Parliament

In the Lok Sabha the Minister of Social Justice and Empowerment, it must be said, presented the Senior Citizens (Maintenance, protection and Welfare) Bill, 2006 with so meticulous and meaningful reasons that when it was finally put before the House for the deliberation, the Members hardly made any more contributions. The Bill was referred to the Select Committee of Parliament consisting of total 31 Members of both the Lok Sabha and Rajya Sabha with Srimati Sumitra Mahajan as the Chairperson. The Select Committee, suggested important reforms which included⁴, for example, the provisions of the Bill should be applicable to the State of Jammu and Kashmir, being a social legislation. Section 5(4) of the Bill provides the disposal of the maintenance application, 'as far as possible', which, it was suggested that such expression must be omitted. In continuance of speedy justice, the Committee also suggested that within six months from the commencement of the Act, the Tribunal and Appellate Tribunal should be constituted so as to avoid long delay in their constitution. Further the recommendations also included, setting up of recreation centres in the old age homes, a percentage of Income tax or surcharge be levied to form a corpus for geriatric/ senior citizens at the national level; all senior citizens should be covered under a group health insurance scheme; the Government must post the doctors in rural areas for the health care of rural aged people and that the private hospitals be required to give

⁴ See, for details *The Twenty-eight Report of the Standing Committee On Social Justice and Empowerment* (2007-2008) pp. 10-33, Aug. 31st, 2007.

concessional treatment to them; and the old age pension must find a place in the Bill. Last but not the least, the Bill should provide for setting up helpline, counselling centres, etc. for the most vulnerable group amongst the senior citizens and widowed women.

In the light of the above recommendations, the Bill of 2006 received structural changes by the Bill 40 of 2007. The important improvements were : firstly, the 'compulsory maintenance, protection and welfare', was replaced by 'effective provisions' which thus diluted the mandatory duty. Secondly, the former Bill had application to 'the whole of India' but the later Bill brings restricted application 'except the State of Jammu and Kashmir'. The another shortcoming of the 2007 Bill was the specific privileges, benefits and security with detailed specific criteria to identify the genuine claimants for maintenance allowance was missing. Further, the First Bill left to the discretion of the Central government to bring the legislation into operation as per its convenience; whereas, the Second Bill left its commencement at the sweetwill of the individual State giving multi-window operations. The original expression 'decent living' has been restricted to mean a 'normal living'. Further the strict and exemplary action intended by the Bill of 2006 of minimum of five years imprisonment to a maximum of ten year or/and fine extending to rupees ten lakh, has now been badly liberalized to a simple three months imprisonment or/and fine of rupees five hundred. Last but not the least, the Bill of 2007 reinstated a federal approach by giving the States the rule making power and power to remove any difficulty in the operation of the Central legislation.

Coming to the debates in the Lok Sabha and Rajya Sabha, the Members whole heartedly supported the Bill. However large number of them raised a concern that in country like India the time has come when we have to think to bring back the lost traditions for the maintenance, protection and welfare of the aged citizens. Their suggestions included⁵, for example, a more effective

⁵ The Bill was initially introduced in the Lok Sabha on March 20, 2007 and was finally passed by both the Houses on December 5, 2007. See the different views of the Members in the *Lok Sabha Debates* and the *Rajya Sabha Debates* of March 20, 2007 and December 5, 2007 respectively and see particularly the views of Mrs. Nirjala Deshpande, Sri M. Shivanana, Sri Mohan Jena and Sri Lalit Kishore Chaturvedi'.

mechanism to protect their interests; provisions for the general health insurance; pension for those who were not in employment; free medical aid in the government hospitals and private nursing homes; securing fundamental right of the elders to live a dignified life, and last but not the least, an exemplary punishment, are some of the needs to make available simple, inexpensive and speedy provisions to secure maintenance to the parents and senior citizens, the motto of the legislation.⁶

III

The Legislation : Shortcomings

(i) Good Legislative Drafting wither away :

Coming first to the legislative drafting, it must be said that the Select Committee, the Members of both the Houses of Parliament and the Ministry of Law and Justice, Government of India, it seems, casually drafted, examined and passed the legislation. This is reflected from the following arrangements; Chapter II immediately starts with 'Maintenance of Parents and Senior Citizens' without mentioning the eligibility and rights of claimant and the corresponding provisions of the duties of the children and relatives and also against whom this claim will be made. This Chapter could have started with 'the right and duties to maintain parents and senior citizens' in which the scattered provisions dealing with different rights, privileges and benefits of the old age people and duties of the children, relatives and the State could form an integral part of this Chapter. The Chapter II, consisting of fourteen sections, includes in one basket large number of varied provisions. For a good drafting there should have been a separate chapter on the constitution, jurisdiction and procedure of the Maintenance Tribunal. Chapter II, section 5(8) talks about penalty; whereas Chapter VI specifically deals with offences and penalty and, therefore, it would have been proper to deal with penalty under one head, i.e. in Chapter VI. In Chapter V the heading given is 'Protection of Life and Property of Senior Citizens'. But no specific provisions are provided for the protection of life in this chapter, instead the property of senior citizens has been given main emphasis in Chapter VI. Under this Chapter

⁶ See the Statement of Objects and Reasons to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

'security' should also have been given a place. Further, an unmatched provision find a place in this Chapter which deals with the authorities which will implement the provisions of this Act. Last but not the least, a provision should 'Act to have overriding effect' find a place in the First Chapter that should have been included in Chapter II - 'Miscellaneous'

(ii) The Scheme : A Resume'

Initially starting with the scheme of the Act, it has been divided into Seven Chapters, consisting of in all 32 sections. Chapter I, deals with the preliminary matters, followed by 'maintenance of parents and senior citizens. Chapter II, the longest Chapter, deals with maintenance. The next Chapter deals with the establishment of oldage homes. The medicare and protection of life and property find a place in Chapters IV and V respectively. The Procedure for Trial and Offences come under Chapter VI. And finally, the Miscellaneous provisions are put at the end of the Act in Chapter VII.

(iii) Source of Legislation

Coming to the source of legislative power, the Select Committee⁷ identified the source of the present legislation under List III, Entry 23 which reads as 'social security and social insurance, employment and unemployment'. It may be pointed out that Entry 23 is a general Entry and does not specifically deal with the protection of the aged. Moreover, the present Act is not just confined to above matters in aforesaid Entry, however, it extends to geriatric care, protection of 'normal life' and 'property' and provisions for 'other amenities'. Some of the above subjects come under the State⁸ and Concurrent⁹ Lists. And, therefore, it is submitted that the Central Legislation adds one more drop in the weathering away of the Indian federal structure. Further, the constitutional amendments brought in the Seventh Schedule to the Constitution of India under the respective Lists, the protection of forest, wild-life, birds and prevention of cruelty to animals, then

⁷ The Twenty-eight Report of the Standing Committee on Social Justice and Empowerment (2007-2008) 12, Aug, 2007.

⁸ List II, Entry 6- public health, hospitals and dispensaries; Entry 9 Relief of disabled and unemployable; Entry 42 - State pensions.

⁹ List III, Entry 6 - Transfer of Property'.

the question is: why not a specific Entry for the protection of the aged be provided in the Concurrent List to avoid a vacuum in the source of legislative power in the present case. Till such an amendment is made in the Constitution of India, Parliament should exercise its residuary legislative power under article 248 in this regard.

(iv) Directions of the Act

(a) General Provisions

Chapter 1, section 2(2) provides that the Act shall extend to the whole of India except the State of Jammu and Kashmir and also to citizens of India outside India. It is a social legislation which has been made operative even outside India. In such circumstance, it would have been better had its operation been extended even to the State of Jammu and Kashmir also. This would provide the elderly citizens a uniform protection and safeguards throughout India. Section 1(3) leaves the question of commencement of the Central Act at the discretion of the individual State Government. There shall be no uniformity in the date of commencement, causing discrimination between senior citizens of different States. Moreover, if a State Government wants to put the Act in an indefinite hold or in the cold storage, there is no accountability on such State Government. Does such approach not go beyond the wishes of Parliament for its speedy implementation and action?

Section 2 is a definition clause, and in Clause (a) it defines 'children' to exclude minor. A minor is excluded with the presumption that at this age no legal obligation to maintain can be imposed. However, under the Hindu law the pious obligation does not exempt the minor. Clause (b) defines 'maintenance' in a restricted sense to mean only *roti, kapada aur makan* -food, clothes and shelter. Their freedom of movement, right to education, recreation and socialization can not be kept outside of the purview of 'maintenance' because without these they cannot enjoy a decent normal life. Section 2(h) defines a senior citizen to mean a citizen of India who has attained the age of sixty years or above. The life of the human beings has now more longevity and in many government employments the retiring age has been extended to sixty five years. In the light of such development, it is time to think about a change in the provisions of the year of age. Further more, it is not that all senior citizens will get benefit of the Act

with the age qualification, the definition should have also included the financial status in a specific term of income.

Section 3 talks of the overriding effect of the Act. The question is whether the Act is a self contained Code? The Constitution of India, under article 21, guarantees fundamental right to life. There are cases where the Supreme Court of India has provided protection to the elderly persons.¹⁰ However, no fundamental right to elderly persons has seriously attracted the judicial activism in the fundamental right jurisprudence. Article 41 provides fundamental principles in the governance of the country to make effective provision for securing the right to public assistance to 'old age, sickness and disablement and in case of undeserved want'. Article 47 imposes a '*primary duty*¹¹' on the State to raise the level of nutrition and standard of living and to improve public health. Coming to the Fundamental Duties, 51A(f) imposes duty on the citizens to value and preserve the rich heritage of our composite culture and a duty of parent to educate their children for which a special provision, 51A(K), was added by the Constitution (Eighty-sixth Amendment) Act, 2002 read with article 21A fundamental right to education of children between the age of six to fourteen years. Does not it bring a corresponding fundamental duty on the children to repay their debts to the elderly parents and the fundamental right of such persons to be maintained? Under article 32, the fundamental rights can be enforced directly through the Supreme Court of India. Will the present ordinary legislation supersede the constitutional provisions? The answer cannot be positive.

Further more under the Family Law, the right to maintenance has been recognized as a pious obligation of a son. Moreover a right to maintenance is also provided under the Code of Criminal Procedure, 1973. The Act itself refers in the explanation to section 5, application of the Societies Registration Act, 1860 or any other laws for the time being in force. For the power of the judicial Magistrate and the Tribunal, section 6(4) and section 8(2) say that it shall be as provided under the Code of Criminal

¹⁰ See, for example, *Maahli Singh v. State of Punjab*, AIR 1983 SC 957; *Ronny v. State of Mah*; AIR 1998 SC 1251; *State of U.P. v. Dharmendra Singh*, AIR 1999 SC 2676; *Ram Deo Chauhan v. State of Ass.*, AIR 2000 SC 2679.

¹¹ *Emphasis Supplied.*

Procedure. There are different laws, Rules and Regulations which also provide special privileges, benefits, concessions and other amenities to the elderly persons. Will the overriding clause put in eclipse the provisions and rights, privileges and benefits available under different laws? The answer will be that the provisions of this Act should not be read with a myopic vision but should get nutrition from other relevant sources to make the protection more effective and meaningful.

(b) The Tribunals :

In order to adjudicate and decide the claim of maintenance, the Act provides for the Maintenance Tribunal and also the Appellate Tribunal. The Tribunal and the Appellate Tribunal shall be constituted by the State government. In case of Tribunal it shall be presided over by an officer not below the rank of sub-divisional Officer of the State. The Appellate Tribunal shall be presided over by an officer not below the rank of District magistrate. No tenure is provided for such officer, a sign of bad drafting. In many cases, it may be possible that the officers might be promoted to this position from a very junior rank, moreover they cannot be expected to have either any expertise or judicial experience in the present field. Even though it has been given all the powers of the civil court. However, section 8(3) provides that the Tribunal may choose one or more persons possessing special knowledge to help the Tribunal in its inquiry but they cannot be a part of the Tribunal.

There is no provision for the number of the members which will mean that it is a single Member Tribunal. Looking to the large number of atrocities committed on the senior citizens, will this Single Bench Tribunal be in a position to deliver speedy disposal. Moreover, in the present case there will be application of only one mind at the Tribunal and the Appellate Tribunal levels. In such circumstances it is difficult to understand how will they be able to administer judicial justice.

An application before the Tribunal may be made either by a senior citizen or parent or by another person or any organization authorized by him. Here comes the welcome approach of bring the concept of public interest litigation in view of their disability in this regard. The application shall be filed against any children or relative. It may be filed against one or more persons. What will

be the liabilities of other children who are not made party in the matter? The Tribunal, after giving due opportunities to the parties and making inquiry into the matter, may pass an order of award of maintenance. The Act confers on the elderly persons a right to medicare. In the expansive cost of such care, was it not necessary in the legislation to keep open a door for supplementary allowances, wherever necessary?

The Act attempts to encourage a conciliation in matter. The Tribunal may refer the matter to the Conciliation Officer, and if the Officer is successful then the Tribunal may, upon its report, order for the amicable settlement. The Tribunal is also given an important power under section 16(1) to make alteration in its order of maintenance on the proof of misrepresentation or mistake of fact or any change in the circumstance of the person receiving the maintenance allowance. Once an order for maintenance is made, the opposite party is required within thirty days from the date of order to deposit the entire amount in such manner as may be prescribed by the Tribunal. The non-compliance of the order is made a punishable offence under the Act.

If any senior citizen or a parent is aggrieved by the order of the Tribunal, he is given the right to appeal to the Appellate Tribunal within sixty days from the order and the Appellate Tribunal shall make endeavour to pronounce its order within one months from receipt of the appeal and the order shall be final. It may be pointed out that the children or relatives, who are aggrieved of the order, have not been given any right to appeal, making it a one sided treatment. Will not such a discrimination allow them to approach the civil court; high court or even to the Supreme Court through a special leave to appeal? Such alternative mechanism will put the matter to further delay for its disposal. The Act makes further improvement in the matter wherein section 5 allows a *suo moto* cognizance of the matter by the Tribunal. It may be pointed out that such cognizance has been allowed only in few cases and, therefore, the question is : how for such provision will be put into action ?

Though the appreciative part of the Act is that it has provided different time schedules to expedite for the process, ensuring speedy justice. For example, section 7(1) provides that

the State Government *shall*¹², within a period of six month from the commencement of the Act, constitute the Tribunal yet, in fact this period will start from the date of notification by the concerned State Governments for the commencement of the Act. It is no secret that the National Environment Tribunal Act, 1995, which provided for a very genuine cause for the establishment of the National Environment Tribunal, died before it could take birth because no notification for its commencement was issued. Section 5(4) is another provision which makes it mandatory for the Tribunal to dispose of the application of maintenance within ninety days from the date of the service of notice of such application. However, the proviso to this sub-section extends such period to further thirty days but it shall be in exceptional circumstances for reasons to be recorded in writing. On the other hand in sub-section 6 of section 16, the Appellate Tribunal shall make an *endeavour*¹³ to pronounce its order within one month of the receipt of an appeal. In this case, as compared to the Tribunal, the time period for the Appellate Tribunal is drastically reduced. Will it be possible for the Appellate Tribunal to dispose of the matter within one month? Further, with such a speedy process, it is conditioned with 'make an endeavour' giving an indefinite laxity to the Appellate Tribunal to decide the case. Looking to the existing long delay in disposal of cases by various tribunals, the question remains : will the above time schedules could be maintained? If not, what shall be its accountability? Let us have a positive hope and not a dream that the State Governments shall not belie the expectations of Parliament in the present exercise.

(c) Maintenance

Section 2(b) defines 'maintenance' to include provision for food, clothing, residence and medical attendance and treatment. The award of maintenance cannot overlook the welfare of the senior citizens. The word 'welfare' in section 2(k), apart from the above matter, also includes recreation and other amenities for the senior citizens. Section 4 uses the expression 'shall be entitled' which gives a statutory mandatory right to the senior citizens to be maintained. This right is available to the parent, grand-parent and a childless senior citizens against his children or relative. Their

¹² *Emphasis Supplied*

¹³ *Emphasis Supplied.*

obligations extend to provide the needs of such person so that he may lead 'a normal life'. In case of a relative the obligation will apply only if he has 'sufficient means' and he is in possession of the property of, or inherited property of such senior citizen. In case there are more than one relatives then it would be in proportion to the property they inherit. In case of the children, the expression 'sufficient means' is missing. This will mean that the children shall be under mandatory obligation who have either sufficient or insufficient means or irrespective of property of the parent inherited or to be inherited in future by the children. The Tribunal is given power to impose by an order the payment of maintenance allowance to be paid every month. The amount shall be prescribed by the State government; however, it shall not be more than rupees ten thousand per month.¹⁴ Thus irrespective of rich or poor both the children have to provide maintenance allowance so ordered to their parents. Can the poor son afford it, if not, then is not the final answer is, to end up in the jail.¹⁵ The word 'children' has been defined to include son, daughter, grand-son and grand-daughter. The Act no where specify the priority of the payee among son, grand-son, daughter and grand-daughter. The married daughter or married grand-daughter might not have inherited any property from the senior citizen and further being a part of the family of her husband, the question is : should she be still saddled with the mandatory obligation? Further, there may be a case where there are four sons but none has inherited any property then out of the four whose responsibility will be to maintain the parent.

It may be pointed out that section 4(4) talks about proportionate distribution of obligation but no such specific provision exists in case of children. It is left to the discretion of the Tribunal to decide. Further the obligations extend to their leading a normal life. Putting the parent in the outhouse of their palatious house and giving them minimum food, clothes and medicare to survive, the question is : will such be included in a

¹⁴ It is interesting to note that country like Canada has prescribed maximum 20 dollars per week, a very insufficient amount. *See Id* at note 2.

¹⁵ *See*, for example, the Protection of Rights and Interests of the Elderly Act, 1996 (China); the Order Parents Act, 1996 (South Africa); the Saskatchewan & Manitoba Parents Maintenance Act, 1993.

'normal life'? If we have to give due care to the elderly persons then the minimum of a decent life, a fundamental right now coming under article 21¹⁶ cannot be denied to them. One thing which emerges from the above discussion is that the Act centres around the family relations, a similar position that also exists in China, South Africa and Canada.

(d) Privileges and Amenities

For the welfare of parents and senior citizens, section 19 provides for the oldage home to the homeless senior citizens and parents or those who are abandoned by the children or relatives. The State Government may establish such homes in a phased manner but initially at least one in each district having capacity of accommodating minimum one hundred fifty senior citizens. A village is initially deprived of this benefit in the present set up. The State government may provide therein various types of services necessary for medicare and entertainment. For normal life it is necessary that the elderly persons, who are not invalid, must have some fruitful engagement, means of socialization with society, means to educate themselves in the field of their choice which are some of the services which could make the lifeless life of the old person lively. In this regard one should not forget the reality that the children homes, juvenile homes, womens' homes and what not are established but their conditions are no better than chattels houses, a known fact. In this scenario one more additional home can not get a better treatment, frustrating the grave concern of Parliament. A monitoring of the administration and accountability of such oldage homes for any failure is the need of the time.

In case of medicare, the government hospitals or hospitals partially or fully funded by the government shall provide *as far as possible*¹⁷ beds for all the senior citizens. There shall be a separate queue for them at the time of registration, facilities must be made for chronic, terminal and degenerative diseases and further research facilities shall be there for. Generally the government hospitals are flooded with all ages of sick persons, in this crowded place with least numbers of doctors and not many qualified in

¹⁶ See *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 *Olga Tellis v. Bombay Muc. Corp.*, AIR 1986 SC 180.

¹⁷ *Emphasis supplied.*

geriatric medicines, with only few beds and the corruption jurisprudence creeping in this pious service, so the question is : will the old sick persons get easy access and quality treatment? Unfortunately there are only few geriatric medicines hospitals and also few departments in this specialized field in the hospital in this country, providing one window treatment. It is because of these difficulties, the elderly persons have only one recourse in large number of case, the physicians.

A very important provision and an appreciative measure is relating to safeguard of the property right of the senior citizen. Section 23 makes provision to the effect that if the senior citizen had, after the commencement of the Act, transferred any of his properties by way of gift or otherwise, the transferee shall provide the transferor the basic amenities and physical needs. In case of failure of this duty, section 23 authorises the Tribunal to declare such transfer void on the ground that such transfer be deemed to have been made by fraud or coercion or under undue influence. Unfortunately this section does not indentify who shall be a transferee. Will an institution, charitable institution or any person in whose name the property is gifted, be deemed to be a transferee? The provision of the section has no answer. There may be a case where the children might have ill-treated the parent but they were looked after well by a family friend in whose name the parent has gifted his property. In such cases the question is : can they be also deemed to be covered under this section. Justice demands that the section should be given a wider application to include any transferee to safeguard the interest of the elderly persons.

(e) Punishment and Penalty

Coming to the punishment and penalty, section 24 makes it an offence to intentionally abandon wholly a senior citizen by a person who is under duty for their care or protection. The punishment for such offence is imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both. It may be pointed out the offence is not only against Indian tradition and culture but in some cases the very elderly sick person who is totally abandoned may even finally lead to his death or commission of suicide. Will the above quantum of punishment be sufficient in such cases? There may not be abandonment but the parent and senior citizen is badly neglected, tortured or physically abused in

the house. In such circumstances, the question comes : will the provision of section 24 not apply? Another dilution in penal sanction is in section 5(8) which provides that the children or relative who fail without sufficient reason to comply with the order of the Tribunal, the penalty prescribed is either one month imprisonment or till the maintenance payment is made whichever is earlier. Will a part payment allow a guilty person to go scot free? Further, the expression 'sufficient cause' is enough to allow to drag on the maintenance claim. Those who are responsible in this regard will always beat the drum of their economic poverty, a delaying tactics.

(f) Power of Central Government :

There are appreciative provisions in sections 30 and 31 where, unlike other central legislations, the Central Government is given two important powers : first, the power to issue directions to the State Governments for 'carrying into execution of the provisions of this Act; and second, the power to make periodic review and monitor the progress of the implementation of its provision. It has become routine that the State governments always cry for more manpower and financial constraints to give effect to the provisions of a central legislation. Further, in the present scenario, the coalition government at the Centre and State, it is difficult to see that the Central directions will see the light of the day. Furthermore, the Central Government, being entangled in the national crisis, will hardly find any time to review or monitor States' functioning in this regard, making both the above provisions a show piece in the beneficial legislation.

IV

Successes, Failures and Reforms

The present social legislation brings a ray of respite to the neglected, abused and deserted elderly persons but it is too early to conclude about its successful operation or whether, like other social legislation, the Act's high hopes may remain a dream of distant future. Today the scenario is that in many case we have almost dead buried our love, affection and responsibility towards the senior family members. In this family crisis, the present legislative control *intends*¹⁸ to bring back the lost Indian tradition

¹⁸ *Emphasis supplied.*

and culture of a very pious relationship between the parents and their children.

Coming first to the some of the bright sides of the legislation, the legal control has been given longer hands to nap the culprits living inside or outside India. The children, in its extended meaning are saddled with a mandatory duty to maintain their parents irrespective of their riches or meagre means or in receipt of gifted or inherited property. The obligation to pay the monthly maintenance allowance has been properly secured with sanction. The self-contained Code makes a one window treatment possible. The medicare, the protection of life of the senior citizens and other elderly persons benefits find a place in the legislation. Their property right has been more carefully safeguarded. The prescribed time schedules in various processes to accord speedy justice is a welcome step. Last but not the least, the constitution of the Maintenance Tribunal to settle the discord through either conciliation or the maintenance award with sanction against its non-compliance provides important protection to the elderly persons.

Apart from the above appreciative provisions of the legislation, there are also some misgivings, failures and something further remains being undone. No specific source of legislative power has been given any place in the Seventh Schedule; whereas; the constitutional amendments did justice with the protection of forest, wild animals and birds. The subject of protection of elderly person must find a specific place in the Concurrent List. The commencement of the Act is left to the individual freedom of each State wherein many States have still to bring the Act into operation, a discrimination against the senior citizens of these States. The input of perfect legislative drafting of yester years is missing. The bad drafting is one such black spot which will allow a lee way to the judiciary and the persons under bounden duty to maintain elders to interpret them according to their own notions or convenience.

The entire Act is duty oriented towards the family members, a family affair. The constitutional fundamental obligation of the State in this regard has been missing. However, from time to time the governments have, made some efforts but they have yet to show any positive results. The duty to provide maintenance

is imposed on all children - poor or rich. An extended legal obligation on the married daughter and grand daughter could have been left to their voluntary services. Further, for the poor, if not being impossible, it will be a difficult proposition which ultimately will end up in the jail sentence. Further, no priority of children is fixed.

The standard of 'normal life' will differ from case to case which will ultimately mean in many cases to provide subsistence to live and lead a vegetative life. Now the right to live a 'decent life' has become a part of the fundamental right. The fundamental right to Medicare and right to shelter have also become a part of the fundamental right but they have given a second class treatment in the Act. It is submitted that the ordinary law provisions cannot bypass or put in eclipse the protection of such fundamental rights. It is time that must find reflection in the present legislation. Moreover the cry of the State of financial and infrastructural bankruptcy, will hardly allow such high expectations of the legislation to see the light of the day. The rolling back of the gifted or transferred property is not so simple when the property has changed through many hands.

Coming to the time schedules for the Tribunals, such provisions also exists in case of other Tribunals. However the fact is that instead of rigidly following same, they have been flouted time and again, making a mockery of the intention of the Legislature. Moreover, the present Act does not provide any accountability for its non-compliance, making the intended speedy process a dream. Another important drawback is that the penal provisions do not match with the barbaric inhuman treatment meted out to the old parents and there are even cases of suicide. Further more those elderly persons, who are still in productive ageing, have been put in *vanaprastha*. The State must come forward in this regard and allow such old persons to be engaged in fruitful services to the nation.

What we need now? It is time that a critical legal analysis of the oldage law must now attract a serious attention in India. The law may not give high hopes to the victims but it is the implementing agency which has to seriously consider to bring them to the ground reality. Today the prime necessity is to reform the existing law and the implementing agencies has to become more

elderly persons friendly. The government must monitor and be made accountable to the people of India. The judiciary be activated to make the elderly persons fundamental right to live with dignified life a reality. The law can not be one sided, the young ones and also the elderly persons, both must be made known of their rights coupled with duties backed by public opinion. A sufficient budget should be allocated in that direction. Until the sufferers come out of the false claim of family repute, the law will remain on the statute book rather than in action. 'We the people of India' must resolve to wipe out each tear from each eye of the elderly persons to bring back the lost Indian tradition and culture - 'मातृ देवो भव पितृ देवो भव' ।

So finally what we need? The family members must internalize in their behaviour and conduct the lost traditions in this regard. Unless we achieve this, the high legislative hopes in this regard will continue to remain only a dream.

Traditional Knowledge and Intellectual Property Rights: False Dichotomy

Abstract

The indigenous and local communities are at the lowest pedestal of development. They don't have the basic infrastructural facilities, education, health and means of livelihood. Within the community found the Traditional Knowledge that has enormous economic utility. Most of these peoples don't know to exploit it commercially, the reason might be manifold. Intellectual Property Right regime is also reluctant on the subject matter. Traditional Knowledge is misappropriated for economic gain due to lack of uniform legal mechanism. It is their right to have a fair share in the benefit, if it is being exploited by the third party. It is the obligation of the policy maker to form a uniform system where not only their rights are protected but also, the TK holders derive benefits from it.

INTRODUCTION

Knowledge, technology and resources are the basis of all economies including those of traditional societies. No one could specifically deny the significance of Traditional Knowledge¹ to the

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¹ Art. 8 (j), Convention on Biological Diversity, June 5, 1992. Article 3(1) of Portugal's Decree-Law No. 118/2002 defines TK as: Traditional Knowledge is all the intangible elements associated to the commercial or industrial use of local varieties and other indigenous material developed by the local communities, collectively or individually, in a non-systematic manner and that are inserted in the cultural and spiritual traditions of those communities, including and not limited to, knowledge relating to methods, processes, products and denominations that are applicable in agriculture, food and industrial activities in general, including handicrafts, trade and services, informally associated to the use and preservation of local varieties and other indigenous and spontaneous material that is covered by the present law. Similarly Peru's Law No. 27811 through Article 2(b) define with the name

communities who are associated with such knowledge of economical utility. Traditional Knowledge is the information that people in a given community, based on experience and adaptation to local culture and environment, have developed over time, and continues to develop. This knowledge is used to sustain the community and its culture and to maintain the genetic resources necessary for the continued survival of the community.² Traditional Knowledge provides the underpinning for successful ways of subsisting in what are often hostile natural environments. Indeed, the growing recognition that, Traditional Knowledge, technologies and cultural expressions are not just old, obsolete and maladaptive; they can be highly evolutionary, adaptive, creative and even novel.³

But, there is no agreed internationally accepted definition of traditional knowledge and has been constantly challenged through intellectual property prospective. In the information age, traditional knowledge protection is, in some cases, the most attractive, effective and readily intellectual property right. But, it is difficult to conclude the broader ambit of Traditional Knowledge within a proper legal framework. This is where the real problem lies within the Traditional Knowledge regime. It has confounded

“collective knowledge” as the accumulated, trans generational knowledge evolved by indigenous peoples and communities concerning the properties, used and characteristics of biological diversity. So also Brazilian statutes Provisional Measure No. 2.186-16, of August 23, 2001) associated TK under Article 7(II) as: Associated traditional knowledge: Information or individual or collective practices of an indigenous or local community having real or potential value as associated with the genetic heritage. According to WIPO, “traditional knowledge” comprises: tradition-based literary, artistic or scientific works; performances; scientific discoveries; designs; marks, names and symbols; undisclosed information; and, all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Reports on Fact- Finding Missions on Intellectual Property and Traditional knowledge*” (1998-1999) at 25, available at <http://www.wipo.int/tk/ffm/report/final/index.html>, (visited on January 30, 2013).

² Stephen A. Hansen and Justin W. Vanfleet, “Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protection their Intellectual Property and Maintaining Biological Diversity”, available at: <http://www.shr.aas.org/tek/handbook/handbook.pdf>. (visited on 01.06.2013).

³ Dutfield Graham and Suthersanen Uma, *Global Intellectual Property Law*, 327 (2008).

the debate on national and international forum but certainly law will take its own course to define its horizon. And for any law to be proper need clarity to the subject for which it is enacted. There is a need to short out this confusion that has given passage to the intellectual fraud, generating enormous wealth to the multinational companies.

Traditional Knowledge does not lend itself easily to concept of property in any form of known Intellectual Property Rights.⁴ Also, the way Traditional Knowledge is given recognition as a form of Intellectual Property under the TRIPS Agreement has created a doubt against the *mala-fide* intention of the developed countries who are indulged in shrewd politics for their commercial gains exploiting Traditional knowledge of the resourceful countries.

TK has the potential of being translated into commercial benefits by providing leads for development of useful products and processes. The valuable leads provided by TK save time, money and investment of modern biotech industry into any research and product development.⁵ The way pharmaceutical industries got patent protection on medicinal plant *turmeric*⁶, *ayahuasca*⁷, and, *Enola bean*⁸ inventions utilising the knowledge that were already in the public domain simply explain how for the commercial utilization, misappropriation of traditional knowledge is going on denying the rights of the actual traditional knowledge holders. Similarly, in South Africa the patent was granted to the plant species called *hoodia*⁹ shows how the traditional knowledge of the local people (san) was being exploited without providing benefits of any kind.

The people who embezzle or often legally steal what rightfully belongs to the indigenous group of people not only

⁴ Ageet Mathur, "Who Owns Traditional Knowledge?" 38 *Economic and Political Weekly* 4480 (2003).

⁵ WT/CTE/W/156IP/C/W/198, document of the World Trade Organisation on Protection of Biodiversity and Traditional Knowledge- The Indian Experience, available at <http://www.twinside.org.sg/title/cteindia.htm>, (visited on March 23, 2010).

⁶ US patent bearing no. 5,401,504 for the "Use of *Turmeric* in Wound Healing"

⁷ Medicinal value used in cancer treatment and psychotherapy used by indigenous people of the Amazonian region.

⁸ US Patent No. 5894079

⁹ Used as appetite suppressant qualities to minimize hunger and thirst during long Kalahari hunting expeditions by San tribes.

deprive the community of all commercial, proprietary and monetary rights but they also affront the culture of these people. The damage caused by the Western hegemony is such that quite often the new generation in the community fails to appreciate the sanctity of their own traditions, wisdom and culture.¹⁰

TRADITIONAL KNOWLEDGE ENIGMA

Traditional Knowledge evolved over a period of time as a result of contributions of members of a particular society. Modified, enlarge and enriched, it became a valuable knowledge for the particular society and stood the test of time. What makes traditional knowledge 'traditional' is not an antiquity but the way it is acquired and used.¹¹ Traditional knowledge is not static rather inherently dynamic, as it evolves as a response posed by the environment. The challenging social environment alters its forms and content, thus is subject to a continuous process of verification, adaptation and creation. This traditional knowledge encompasses an entire field of human behaviour.¹²

A fundamentally important aspect of traditional knowledge is that it is "traditional"¹³ only to the extent that its creation and

¹⁰ Prakruthi P. Gowda & Ushasi Khan, "Sacred but Vulnerable: A Critical Examination of the Adequacy of the Current Legal Framework for Protection of Tribal Sacred Traditional Knowledge" 1 *NUJS L. Rev.* 13 (2008).

¹¹ Traditional Knowledge is transmitted from one generation to another as a non-static knowledge constantly being improved and adapted to the changing needs of the people acquiring them.

"Because its generation, preservation and transmission is based on cultural traditions, [traditional knowledge] is essentially culturally oriented or culturally-rooted, and it is integral to the cultural identity of the social group in which it operates and is preserved." (WIPO-IGC, 2002e, paragraph 28).

¹² Nadagoudar, Kiran M., "International Legal Regime Relating to Protection of Traditional Knowledge: An Analysis" 5 *Karnataka Law Journal* 33 (2005).

¹³ "Only ideas that are created in a traditional and informal way constitute TK.. 'Traditional' means that TK is developed according to the rules, protocols and customs of a certain community, and not that it is old. In other words, the adjective 'traditional' qualifies the method of creating TK and not the knowledge itself. As to the informality of TK, it is understood that its creation does not integrate formal processes of invention and innovation, but that it is generated through an incremental, 'trial and error' method. TK, by definition, cannot be generated in laboratories or other places of systematic research and development." Charles R. McManis (ed.) *Biodiversity and the Law Intellectual Property, Biotechnology and Traditional Knowledge* 244 (Earthscan Publishers, UK and USA, 2007).

use are part of the cultural traditions of communities. "Traditional", therefore, does not necessarily mean that the knowledge is ancient. "Traditional" knowledge is being created everyday; it is evolving as a response of individuals and communities to the challenges posed by their social environment. In its use, traditional knowledge is also contemporary knowledge. This aspect is another justification for legal protection.

Characteristically, traditional knowledge is thus knowledge that: is traditional only to the extent that its creation and use are part of the cultural traditions of a community- "traditional", therefore, does not necessarily mean that the knowledge is ancient or static; is representative of the cultural values of a people and thus is generally held collectively; is not limited to any field of technology or the arts; is "owned" by community and its use is often restricted to certain members of that community.¹⁴

It has always been interesting to examine the political pastime played on the subject by the developed nations to hijack natural and traditional based knowledge for their lucrative commercial gain. Scientific researches have revealed that the indigenous or traditional knowledge which are ignored for decades has immersed as a building block for solutions to the current problems.

Intellectual Property Laws treats traditional knowledge as information available in the public domain freely assessable to all. In its report on a series of fact-finding missions, WIPO¹⁵ sought to summarise the concerns of traditional knowledge holders as follows:

- Concern about the loss of traditional life styles and of traditional knowledge, and the reluctance of the younger members of the communities to carry forward traditional practices.

¹⁴ International Labour Organization, Indigenous and Tribal Peoples Convention, 76th Sess., C169, Art. 13(1) (1989), available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>, (visited on February 23, 2010).

¹⁵ WIPO (1999) "Intellectual Property Needs and Expectations of traditional knowledge Holders", WIPO Report on Fact-Finding Missions 1998-1999, WIPO, Geneva (Publication Number 768E) available at: <http://www.wipo.int/globalissues/tk/report/final/index.html>, (visited on January, 30, 2010).

- Concern about the lack of respect for traditional knowledge and holders of traditional knowledge.
- Concern about the misappropriation of traditional knowledge including use of traditional knowledge without any benefit sharing, or use in a derogatory manner.
- Lack of recognition of the need to preserve and promote the further use of traditional knowledge.

Against the backdrop of these rationalizations, the concern is quite manifested as to how the interest of the traditional knowledge holder is epitomised. Defining and redefining traditional knowledge¹⁶ is just an on growing process of conceptualizing the subject for the intellectual property protection because of the demanding global economic market.

What has emerged through the International IP regime is that while defining TK, it included almost all diverse intellectual territory which can be organised into several subsets by using terms traditional medicinal knowledge, scientific discoveries; designs; marks, names and symbols; undisclosed information, genetic

¹⁶ It is now well accepted that genetic resources and knowledge associated with them is property and thereby protected by nations. It is an accepted fact that traditional knowledge is not a static but an evolving system. There is continuous value addition taking place at every stage of its development and it is surviving as a valuable knowledge system. It is recognized that local and indigenous people are responsible for this value addition and its substance. It is these factors that make TK property similar to any other form of intellectual property. The major difference is that the ownership in this form of property in many castes is collectively enjoyed. This means that such knowledge is to be kept as an "open system" to be used and innovated for its continued evolution on an implied social understanding that the users are not going to misappropriate into private property for commercial benefits. Even in the cases it was kept in secret by a few members of the society there was an implied social understanding that it had to be used for social benefit. So it is logical that rights of the community are respected before anyone enjoys the benefit deriving from the utilization of their knowledge system. In this context the fact that tradition allowed TK holders to keep the knowledge system open to be freely enjoyed and argued by the modern commercial establishments to misappropriate and convert it into mere private property using patent law without their permission. Gopalkrishnan N. S.; TRIPS and traditional knowledge resources: New Challenge to Patent System, European Intellectual Property Report (2005).

resources etc. incorporated within its domain.¹⁷ It is not only desirable to develop a system that documents and preserves traditional knowledge created in the past, which may be on the brink of disappearance: it is also important to envisage a system that contributes to the promotion and dissemination of innovations which are based on continuing use of tradition.¹⁸

INTELLECTUAL PROPERTY PARADOX

The term Intellectual Property refers to creations of human mind. Intellectual Property Rights protect the interests of creators by giving them proprietary rights over their creation. Intellectual Property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies, at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them.¹⁹ Intellectual property is the bundle

¹⁷ Traditional Knowledge generally considered to cover the knowledge, innovations, creations and practices of indigenous and local communities (CBD Articles 8(j) and 18) These can be in the fields of agriculture, science, technology, ecology, medicine, and include expressions of folklore, names, geographical indications and symbols and movable cultural property (World Intellectual Property Organization Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998–1999). *See also*, according to WIPO, the subset of “heritage” referred to as traditional knowledge comprises: “tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and, all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. WIPO. Intellectual Property Needs and Expectations Of Traditional Knowledge Holders. Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999) (Geneva: WIPO, 2001) pg.25, Available at <http://www.wipo.int/globalissues/tk/report/final/pdf/part1.pdf>. *See also*, As a result of the negative nature of the definition of traditional knowledge, a wide range of cultural knowledge falls within its rubric, including “biological and other materials for medical treatment and agriculture, production processes, designs, and literature, music, rituals and other techniques and arts. Olufunmilayo B. Arewa TRIPS and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks [Vol. 10:2] *Marquette Intellectual Property Law Review* 164 (2006).

¹⁸ WIPO International Forum on “Intellectual Property and Traditional Knowledge: Our Identity, Our Feature *available at*: http://www.wipo.int/arab/en/meetings/2002/muscat_forum_ip/ipk_mct02_i3.htm visited on February 23, 2010.

¹⁹ Dr.V.Kavida and Sivakoumar. N, “Intellectual Property Rights – The New Wealth of Knowledge Economy: An Indian Perspective”, 2 *available at*: <http://ssrn.com/abstract=1159080> (visited on February, 2010).

of right recognized by the legal system and the owner of the intellectual property enjoys the same right usually available to the owner of the corporal property. The limited monopoly is available to the owner of intellectual property based on public interest.

The Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) was introduced in the GATT round of negotiations in 1994. The introduction of TRIPS assumes significance in the context of Intellectual Property Rights (IPRs). The Agreement has elevated the importance of IPRs in Trade and Commerce for the first time in global economic history. Moreover, it is the most comprehensive multilateral agreement relating to Intellectual Property.²⁰ The areas of Intellectual Property covered by the TRIPS are: Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); Trademarks including service marks; Geographical indications including appellations of origin; Industrial designs; Patents including the protection of new varieties of plants; the Layout-designs of integrated circuits; and Undisclosed information.²¹

Traditional knowledge does not fit into the domain of the IPR due to many reasons. Traditional knowledge evolved over a long period of time from generation to generation due to which it lacks the criteria of novelty and inventive steps for patent protection. Traditional knowledge may be held by different communities making it difficult to identify the original title holders. Also, time constrained protection provided by the IPR regime does not seem to be plausible for traditional knowledge otherwise, if provided it will frustrate the very nature of traditional knowledge. Thus, the right of the indigenous and local communities also gets affected.

THEORIES FOR JUSTIFICATION OF TRADITIONAL KNOWLEDGE AS A FORM OF PROPERTY

There are different justifications for allowing the proprietary right to the Intellectual Property, recognised under TRIPS, therefore, granted protection under IPR regime. It would be proper to revisit those justifications and try to establish the

²⁰ *Id.* at 12.

²¹ *Ibid.*

Intellectual Property proprietary rights to the Traditional Knowledge also.

Locke's Theory of Property:

Justification for the proprietary right to the traditional knowledge can be established on the labour theory propounded by John Locke. Creation of knowledge and its execution requires labour, may not require physical demonstration of physical power.

Though Lockean justification of property right is elucidated only to tangible property, but nowhere, he justifies it to intangible form, rather a common understanding with regard to intellectual property can be justified as it is the outcome of one's labour. According to Locke in a state of nature goods are held in common as an endowment from God. God grant this bounty to humanity for its enjoyment but these goods cannot be enjoyed in their natural state. The individual must convert these goods into private property by exerting labour upon them. This labour adds value to the goods, if in no other way then by allowing them to be enjoyed by a human being.²²

The essential logic of Locke's property theory is: Labour is mine and when I appropriate objects from the common I join my labour to them. The labour theory has a seam with regard to intellectual property. While the intellectual labour is as entitled to own the immediate fruits of his or her labour as any other, this entitlement does not establish the terms on which publication will take place. In a totally laissez-faire system, such term would presumably be negotiated between the intellectual labourer and others desiring the intellectual good.²³

Unfortunately for those who put forth the argument, not only is their controversy about the general Lockean argument, but its applicability to traditional knowledge is deeply problematic for two reasons. First, traditional knowledge has, by its very nature, been around for a long time and so this means that nobody using it today laboured to create it (if they had, they would already have a claim to traditional knowledge on standard legal grounds). Thus, these individuals do not have a direct claim based on the

²² Brooks Thom (ed) *Locke and Law*, xv (2007). See also, Dr. Elizabeth Verkey, *Law of Patents*, 7, (1st. edn. 2005).

²³ *Ibid.*

expenditure of their labour. Second, relying on the labour of one's ancestors and a subsequent assignment of the property right to the present generation is similarly unpersuasive.²⁴

Utilitarian Justification to Property

Utilitarianism²⁵ is a principal or doctrine of ethics proclaiming that (only) what is use-ful is good and that usefulness (utility) can be rationally determined; and the political, economical, and social theories and policies are based on this theory²⁶.

Bentham put the test of social usefulness either of the individual or of the government. According to Bentham the end of the state is *greatest happiness to the greatest number*. He applies the test of utility and he exclaims that every law governing the society has to undergo the test of utility, if it had led to the greatest happiness to of the greatest number.

This theory is very much applicable to patent rights that creates financial gain to the inventor that will provoked/instigate to invent new thing, and ultimately leads to the benefit of the society. As far as traditional knowledge is concerned this justification holds appropriate to the extent of economic benefit and proprietary right given to the local and indigenous communities, a recognition to their indigenous work. It will also raise their standard of living which is by and large neglected globally. Also, at the social and cultural sphere the communities will be immensely benefited by the altruistic nature of traditional knowledge.

²⁴ Castle David and Richard E. Gold, "Traditional Knowledge and Benefit Sharing: From Compensation to Transaction-Introduction: Global Welfare Inequities", *available at*: <http://www.springerlink.com/content/n1h53470118821j4/fulltext.pdf> (visited on March 31, 2010).

²⁵ The principle of utility according to Bantham means- "Property in any object, whereby it tends to produce benefit, advantage, pleasure, good, happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happiness of mischief, pain, evil or unhappiness to the party whose interest is considered; if that party be the community in general, then the happiness of the community; if a particular individual, then the happiness of that individual.' Bentham Jeremy, *Introduction to the Principle of Moral Legislation* 1-2 (reprint 2004).

²⁶ Encyclopedia Americana ;Vol.27, p.840 (2005).

Personality Theory of Property

Personality theory is basically for the justification of copyright. The most important copyright doctrines in civil law countries are derived from Immanuel Kant and Georg Hegel. Some scholars found the analogy of copyrights with property complicated because of the limited duration of copyrights. For other scholars, the property analogy did not correctly express the connection between authors and their creations. As a result, the copyright normative justifications in civil law countries are based principally in the German idealism of Kant and Hegel. For Kant, an author's rights were personality rights rather than property rights, expressing the author's inner personality. Therefore, Kant considered an author's rights not as a right over an object, "but an innate right inherent to his own person."²⁷

For Hegel, property is an external "thing" that allows the individual to exercise control over it, considering this control as a manifestation of freedom and development of the author's personality.²⁸ Hegel considers that "if emphasis is placed on my needs, then the possession of property appears as a means to their satisfaction, but the true position is that, from the standpoint of freedom, property is the first embodiment of freedom and so is in itself a substantive end."²⁹

Coming on to the traditional knowledge perspective if personality theory is perceived in accordance to the Kant and Hegel's notion, one cannot refute that the local and indigenous communities control over a certain amount of resources may be necessary to free the community from fascination, get hold of the means of continued existence, the "impetus of aspiration," and enable them to attend to privileged pursuits.

Incentive Theory Justification

It is an undeniable fact that indigenous people did not require any incentives in the outline of modern Intellectual Property Rights to develop Traditional Knowledge. Generally,

²⁷ See Netanel Neil, "Alienability Restrictions and the Enhancement of Author Autonomy in United States and Continental Copyright Law", 12 *Cardozo Arts & Ent. L.J.* 16-17 (1994).

²⁸ Hegel Georg, *Hegel's Philosophy of Right* 40-42 (1952).

²⁹ *Id.* 42.

incentive theory is argued mostly for patent protection. The incentive theory holds that the patent system realize its purpose by tendering monopoly profits as a bait to promote innovation that will ultimately result in achieving greater goal of human development.

If one thinks of TK as a living tradition, and if that tradition has had a recent burst of innovation, then IP rights may be justified because of that innovation, but the traditional aspect of the TK plays a comparatively small role in the justification.³⁰

COMPATIBILITY OF TRADITIONAL KNOWLEDGE WITH OTHER FORM OF INTELLECTUAL PROPERTY RECOGNISED UNDER TRIPS- AGREEMENT

From an intellectual property perspective, traditional knowledge was treated as part of the public domain, either because it did not meet established subject matter criteria for protection, or because the indigenous communities who created it did not endorse private ownership rules.³¹

As far as compatibility issue is concern there is an ongoing development to recognise the protection of traditional knowledge within the regime of Intellectual Property Rights. Many of the countries are providing protection to the traditional knowledge under different form of Intellectual Property Rights recognised by TRIPS Agreement, as for example the use of copyright protection in Canada to protect tradition-based creations including masks, totem poles and sound recordings of Aboriginal artists, the use of geographical indications to protect traditional products such as liquors, sauces and teas in Venezuela and Vietnam etc.

But due to the very nature of the traditional knowledge that inculcates almost everything within its ambit makes it impossible to protect within the TRIPS framework. The difficulties lies against traditional knowledge is to fit it in the domain of Intellectual Property Rights that often, does not meet the criteria of novelty and originality and seems almost difficult to identify the individual creators behind these works. Also, IPR regime

³⁰ Munzer Stephen R. & Raustiala Kal, *The Uneasy Case for Intellectual Property Rights in Traditional Knowledge* 27:37 *Cardozo Arts & Entertainment*, 74 (2009).

³¹ Helfer Laurence R., "Toward a Human Rights Framework for Intellectual Property", 40:971, *University of California*, Davis 982 (2007).

provides limited period of protection that will eventually end up in the public domain transcending the purpose of protection. Also, providing exclusive rights of any kind for an unlimited period would seem to go against the principle that intellectual property as it is awarded for a limited period of time, thus ensuring the return of intellectual property to the public domain for the others to use. In other cases the author or inventor of the material is not identified and there is thus no “rights holder” in the usual sense of the term. In fact, the author or inventor is often a large and diffuse group of people and the same creation or invention may have several versions and incarnations.³²

Patent-

A patent is a set of exclusive rights granted by the government to a person(s), usually for an invention, for a fixed period of time. In recent years concern has been expressed in relation to the recognition of traditional knowledge as prior art. Patents have been granted for traditional knowledge-related inventions which did not fulfil the requirements of novelty and inventive step when compared with the relevant prior art. This prior art consisted of traditional knowledge that could not be identified by the patent-granting authority during the examination of the patent application.³³

While discoveries and other forms of traditional medicinal knowledge based on plants or animal parts or fluids cannot be patented either they are obvious or because they are in the public domain, drugs derived from such plants and animals are generally patentable. The companies that developed and refined the molecule will own the patents. However, the research and development efforts concerning traditional medicinal knowledge and products are often inspired by holders of traditional knowledge, who may directly instruct western scientists or teach them by letting them observe their traditional practices.³⁴

However, looking at the nature of the traditional knowledge it is quite difficult for the TK holder to prove novelty and non-obviousness for getting protected under patent regime. It is also a

³² *Infra note 50.*

³³ *Supra note 31* at 1.

³⁴ Gervais Denial “E-TRIPS and Traditional Knowledge” in *The TRIPS Agreement: Draft History and Analysis* 61 (2003).

fact that traditional knowledge doesn't have the date of origin and develop from generation to generation. Affordability with the patent law on the novelty issue is not difficult to acquire no matter it is there for centuries without published³⁵ but the only problem in getting protection through patent system is when the knowledge is in the public domain in the documented form.

Patent law has its own drawbacks.³⁶ For a patent application to get it registered need full disclosure of the innovation or invention that will bring them in the public domain by publication of application.³⁷ But the community who wants their traditional knowledge trade secret, a patent may not be the appropriate Intellectual Property solution.

³⁵ The major criticism of American patent law on this point is its state-centric nature. The United States operates under a system of geographically specific notions of printed publications to determine prior art. Scholars argue that American patent law thus "waters down the novelty requirement by patenting inventions known or used in foreign countries as long as they have not been patented in a printed publication. A. Andrzejewski, Traditional Knowledge and Patent Protection: Conflicting Views on International Patent Standards 103 *available at*: <http://ssrn.com/abstract=1772524> (visited on October, 2012).

³⁶ *Supra note 6 at 248*, "The defensive approach to patent law is to make TK-related information that may constitute prior art available to patent examiners in a documented and organized fashion. This would address two sorts of concerns. On the one hand, in some jurisdictions, the novelty and non-obviousness conditions of patentability are assessed with reference to written prior art only. In the case of the US, for example, the prior knowledge or use of an invention is considered prior art only when those actions take place in US territory. Prior knowledge or use of an invention in a foreign country is not relevant for prior art purposes – only a written description in a printed publication is. Because much of TK is orally preserved and transmitted by traditional communities, patent examiners in those jurisdictions have no means to consider it as prior art, and that facilitates biosquatters' claiming and obtaining rights in such TK."

³⁷ The protected invention must be disclosed publicly in an official register. Another provision is inclusion of new provision for opposition of patent, on specific grounds under *section 25(1) of the Indian Patent Act*. This provides that after publication of patent application any person can in writing make an opposition to the controller of patents on the ground of lack of novelty or inventive step, or non disclosure or wrongful disclosure of source or geographical origin used in the invention and anticipation of invention by the knowledge, oral or otherwise available within any local or indigenous groups in the complete specification.

Copyright

The artistic work of the Traditional Knowledge holders, against unauthorised reproduction and exploitation can be protected through copyright. Many expressions of folklore and several other forms of traditional knowledge do not qualify for protection because they are too old and are, therefore, in the public domain. Providing exclusive rights of any kind for an unlimited period of time would seem to go against the principle that intellectual property can be awarded only for a limited period of time, thus ensuring the return of intellectual property to the public domain for others to use.³⁸

Derivative work³⁹ in the field of sound recording is quite common these days that are generally created by using traditional music. Thus, the folklore on which these derivative works are created does not get recognised and also faces economic loss. This situation become worst when derivative work resembles from the original traditional work, making it difficult for the indigenous communities to hold and protect their indigenous work.

The identification of the author is a difficult task within the community, as the copyright cannot be vested in the entire tribe or community, as the law does not recognise community ownership. Moreover, if the traditional knowledge is fitted under patents and copyrights it has to face fixed time period.⁴⁰

Geographical Indication

Geographical indication is one of the branches of conventional IPR that have been recognised through TRIPS-Agreement and can be a modern tool for the protection of some forms of indigenous knowledge.

³⁸ *Id.* at 60.

³⁹ The Berne Convention for the Protection of Literary and Artistic Works, 1971 at Article 2(3) defines derivative works as: "Translations, adaptations, arrangements of music and other alternations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work." see also, <http://www.businessdictionary.com/definition/derivative-work.html> that defines derivative work as "Artistic or literary work derived from one or more existing work which, to be copyrightable, must contain sufficient element of originality that makes it a new work in its own right."

⁴⁰ Nadagoudar Kiran M., "International Legal Regime Relating to Protection of Traditional Knowledge: An Analysis" 5 *Karnataka Law Journal* 38, (2005).

Geographical indications are not author specific nor do they require an element of innovation. It is immaterial whether the producer is an organised corporation or he is a single individual.⁴¹ Geographical indication under Article 22.1 of the TRIPS-Agreement provides protection in perpetuity without conferring a monopoly right over its use of certain information limiting certain categories of people utilizing the product.

The use of geographical indication is not, however, free from problems, particularly when the subject matter of protection is traditional knowledge. It can be argued that this form of protection only provides protection to the products, and not the embodied technologies, thus limiting its usefulness. Furthermore, this form of Intellectual Property Rights still does not address the fundamental problem that TK is often unbound by space and thus may not be confined to a geographical location, in which case geographical indications cannot be used for its protection.⁴²

Trademark

A trademark is a visual symbol in the form of a word, a device, or a label applied to articles of commerce with a view to indicate to the purchasing public that they are the goods manufactured or otherwise dealt in by a particular person as distinguished from similar goods manufactured or dealt in by other persons.⁴³ The Madrid Convention, 1891, provides for the registration of trademark and its amendment in 1979, provides for the establishment of the special union for the registration of marks. Trademark provides a link between customers and the manufacturer of goods. A trademark provides distinctiveness to the products and helps the customer to avoid any confusion.

Trademark can be used a mode of protecting traditional knowledge, customs and art of indigenous people. The mark or the indication can be used to refer to a tribe, an artist, or a combination of both. This has also the flexibility to be used for all form of folk art including folk medicines.⁴⁴

⁴¹ *Ibid.*

⁴² Dhar Biswajit and Anuradha R. V., "Access, Benefit-Sharing and Intellectual Property Rights", 17 *The Journal of World Intellectual Property* 622, (2004).

⁴³ Narayanan P., *Intellectual Property Law*, 146 (2001).

⁴⁴ Ragavan Srividhya, "Protection of Traditional Knowledge". 2 *Minnesota Intellectual Property Law Review* 21, (2001) also available at: <http://ssrn.com/abstract=310680>, (visited on February 15, 2010).

Trademark can form a better option of the protection to traditional knowledge than other form of IPRs the reason being it provides perpetual protection.⁴⁵ While providing registration it is immaterial whether the producer is an organisation or a single individual. The mark or indication can be used to indicate the source of origin of the particular knowledge of the indigenous community and can be protected against the unauthorised use but the problem is that they cannot protect the knowledge or the technologies involved. It can only distinguish products based on traditional knowledge and can serve as value added material that certify traditional knowledge authenticity.

Trade Secret

The information that is gained after cumbersome intellectual efforts need to be kept secret and protected in the business world. As long as certain sensitive and confidential information is kept secret it gained commercial advantage. Usually a trade secret is protected either under common law or under unfair competition law or according to contract laws. The defence provided under Art 39 of TRIPS Agreement is only against unfair competition or dishonest commercial practices.

Trade secrets unlike other intellectual property like trademarks, patents, copyrights etc. do not confer any right on the holder.⁴⁶ A trade secret owner has the right to prevent individuals who learn the trade secret through “improper means” from using or disclosing the information.⁴⁷ Applying this form of IPR for traditional knowledge protection⁴⁸ will help only to the extent

⁴⁵ “Unlike patents, trademarks can be renewed indefinitely if the owner is willing to pay for the renewal. The main value of a trademark is to offer an individual or a company an opportunity to develop a distinct and unique public signature that assists in building credibility and recognition.” Dr. V. Kavida and Sivakoumar. N, “Intellectual Property Rights – The New Wealth of Knowledge Economy: An Indian Perspective”, 2 available at: <http://ssrn.com/abstract=1159080> (visited on February, 2011).

⁴⁶ Wahie Gaurav, “Evaluating Trade Secrets under the IPR Paradigm”, 3 *Company Law Journal* 22 (2005).

⁴⁷ *Kewanee Oil Co. v Bicron Corp.*, 416 U. S. 470, 475-476 (1974).

⁴⁸ See Smpath Padmashree Gehl, *Defining an Intellectual Property Right on Traditional Medicinal Knowledge: A Process-Oriented Perspective* (U.N. Univ., Inst. for Tech. (UNU/INTECH), Discussion Paper No. 2003-4, 2003), available at: <http://www.intech.unu.edu/publications/discussion-papers/2003-4.pdf>, (visited on February 10, 2012).

when the knowledge is maintained within the community but, once, it is in the public domain, the protection through trade secret no longer exist.

TK to be classified as a trade secret (traditional knowledge which is not yet in public domain) should have some commercial value and their exploitation needs protection. Indigenous communities can use this knowledge and enter into a contract specifying payments for using this knowledge as a trade secret.⁴⁹

FALSE DICHOTOMY

The justification discussed above for the proprietary right of different form of intellectual property recognised under TRIPS can be given for the traditional knowledge also. Misnomer, antipathy and confusion created by the trading world seem to be a hegemony personified with deceit.

Traditional Knowledge like Intellectual Property is the product of mind and a creation of human intelligentsia. Like other forms of Intellectual Property, Traditional Knowledge has the potential of enormous economic gain. Prior to 1990's it was not considered as commercially profitable but the new trends of misappropriation making IPR as a tool to hide its true face and has created a debate at the international forum.

Now a day with the development in science and technologies it become easier for the pharmaceutical, biotechnological and other multinational companies making certain improvement in the existing traditional knowledge in the public domain and get the proprietary rights over the products through IPR regime. The disability of TK holder due to lack of infrastructure, money, education, legal awareness, scientific approach has made the TK infructuous for the indigenous and local communities.

Moreover, the law related to the Intellectual Property Rights and the indeciduous nature of Traditional Knowledge brings the subject-matter out of the purview of IPR recognised under TRIPS.

⁴⁹ *Ibid.*

Knowledge monopoly⁵⁰ under Intellectual Property Rights linked with Traditional Knowledge needs a comprehensive, mandatory review. The holders of traditional knowledge argue that the current Intellectual Property regime was design by western countries for western countries.⁵¹

TK as fundamental human right needs to be protected and proprietary rights should be dissolve in the indigenous and local communities by way of an appropriate mechanism under the intellectual property right regime that has been neglected for a long time.

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News from States

October, 2014 to December 2014

ANDHRA PRADESH

National Lok Adalat : Hon'ble Sri Justice H. L. Dattu, Chief Justice of India & Patron-in-Chief, NALSA inaugurated the National Lok Adalat Bench constituted by the High Court Legal Services Committee on 6/12/2014 in the premises of High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh. Two cases were disposed off in the esteemed presence of His Lordship and two cheques worth **Rs. 10 crores** were presented to the litigants.

As part of National Lok Adalat, 69833 cases were settled from 2nd October to 6th December, 2014 which includes 43702 pending cases and 26131 pre litigation cases. An amount of Rs. 125,02,27,045/- was awarded as compensation.

Village Legal Care and Support Centre : There are 822 Village Legal Care and Support Centres in the State of Telangana out of them 13 have been established during this quarter.

Training to PLVs : The District Legal Services Authorities imparted training to 379 Para Legal Volunteers during the quarter.

Jail visits : The District Legal Services Authorities and Mandal Legal Services Committees in various districts visited 12 District jails, 66 Sub Jails, 4 Central Prisons, 2 Special Prisons for Women, 2 Observation Homes in their respective jurisdiction and explained the inmates about the availability of legal services. They have also interacted with the prisoners about the facilities and find out whether they need legal services or any Legal advice etc and provided such assistance who ever requires.

Senior Citizen's Day : On the occasion of Senior Citizen's Day, on 01-10-2014, 26 Legal Literacy Camps were conducted and about 1750 persons participated. The participants were explained about their rights and welfare measures for the benefit of senior citizens.

World Mental Health Day : On the occasion of World Mental Health Day, a special awareness campaign was conducted. About 33 Legal Literacy Camps were conducted, explaining the public about the obligations towards ill persons and about the violation of penal provisions of mental health act. There are about 3000 persons have participated in these camps.

National Legal Services Day : National Legal Services Day was observed on 09.11.2014 and different programmes and Special Awareness Camps were conducted for the benefit of general public. The public have been explained about the availability of legal services and various legal services schemes and programmes being implemented for the benefit of the general public. On this occasion about 170 camps were conducted benefiting about 21,000 persons.

Children's Day : On the occasion of Children's Day on 14th November, 2014, about 68 Special Legal Literacy Camps were conducted and about 14000 persons attended. The resource persons have explained about Right to Education, Prevention of Child Marriages, various important legislations for Protection of Rights of Children, Legal Services Schemes and Programmes.

HIV/ AIDS Day : The rights of HIV/ AIDS affected persons and the obligations of the public towards them have been explained. The availability of legal services of the HIV/AIDS effected persons have been explained to the public attended the function. 39 Legal Literacy Camps were conducted and about 5000 persons attended.

Disability Day : Special Awareness Campaign was conducted on 3rd December, 2014 on the occasion of Disability Day and explained the public about the rights of disabled persons, schemes and programmes for protection of rights of disabled persons and availability of legal services for this target group. On this occasion, 37 Legal Literacy Camps were conducted and about 7,500 persons attended.

Human Rights Day : On 10th December, 2014, on the occasion of Human Rights Day, 43 Legal Literacy Camps were conducted and about 10,000 persons attended. On this occasion, the public was explained about human rights and about the legal services schemes and programmes.

Statistics:

- During the quarter, from October to December, 2014, about 770 persons were provided legal aid including 235 women, 126 persons in custody and 52 others.
- About 2282 Lok Adalats conducted and 71848 cases, both pending and pre litigation, were settled. Rs. 180,64,97,105/- was awarded as compensation. •

About 51 cases pertaining to Public Utility Services weresettled through Permanent Lok Adalat for Public Utility Services during the quarter.

- The Mediation Centres settled 213 cases during this quarter.
- About 1319 Legal Literacy Camps conducted during this quarter.

Consumerism :-

As directed by the **Hon'ble Sri Justice Kalyan Jyoti Sengupta**, Chief Justice & Patron-in-Chief, APSLSA, a scheme was introduced to render legal assistance for settlement of consumer disputes. As per the Scheme, the general public can submit their applications / representations pertaining to consumer disputes in the nearest Police Station, MRO Office or Panchayat Secretaries. They in turn forward such applications to the respective legal services institutions. Then the legal services institution will organise a Mobile Lok Adalat in the respective village or villages after issuing notices to the parties and conduct Lok Adalat and make efforts for settlement of such consumer disputes at pre litigation stage. Thus, the Scheme is introduced to provide justice at the doorsteps of the consumers.

The State Authority has also issued instructions to all the District Legal Services Authorities and requested the Director General of Police, District Collectors, Superintendents of Police in the State to take part in this process and issue instructions to all the concerned for receiving such applications from the general public in respect of consumer disputes and to send them to the respective legal services institution for taking necessary steps for amicable settlement of such disputes through Lok Adalat.

BIHAR

During the quarter from October, 2014 to December, 2014 the following activities were performed:

Month	No. of Lok Adalat (Continuous Lok Adalat & Special Lok Adalat organised)	No. of cases disposed of
October, 2014	36	441
November, 2014	75	120924
December, 2014	197	191993

Month	No. of Legal Awareness campus held	No. of person benefitted
October, 2014	36	441
November, 2014	75	120924
December, 2014	197	191993

No. of Mobile Lok Adalat held	Cases disposed of	Awereness programmes organized by Mobile Lok Adalat	Person benifitted
6	2344	6	441

CHHATTISGARH

National Lok Adalat on 06th December, 2014 : National Lok Adalat was successfully organized by CGSLSA benefiting people across the State with disposal of nearly 43 lakhs cases/disputes pending at different strata of Government functionaries. The program was organized in all Court complexes in 21 districts and High Court of Chhattisgarh concerning resolution of disputes concerning subjects of civil and criminal cases, revenue matters, MACT cases and disputes on subjects of Family, Electricity, Labour, Telecom, etc.

The National Lok Adalat has given outstanding results that as many as Pre-litigation cases: Taken up 2500633 Disposed of 2473928 and Amount settled 1049739007 and Cases referred by court : taken up 2029471 disposed of 1924194 & amount settled 1477178684.

Legal Aid Clinic Inauguration : Honourable Justice Sri T.P.Sharma, Chairman of High Court Legal Service committee visited DLSA Korba. A function was organised to spread legal awareness among locals. Furthermore, a legal aid clinic was also inaugurated in the village of ChuriyakalaDistt. Korba.

Workshop and sensitization programme for MSW students : On 13 November 2014 a workshop and a sensitization programme was organised by SLSA for the MSW students. Hereby Mr . Rajneesh Shrivastav, Member Secretary of the SLSA informed the students about the establishment of the NALSA, SLSA and DLSA and also

about various active programme led by the institution. Furthermore the Deputy Secretary Shri OmprakashJaiswal also addressed them regarding the function and establishment of Permanent Lok Adalats. The students were also addressed by MrShailesh Sharma, Secretary of the DLSA Bilaspur and by some of the professors of Guru Ghasidas University.

Rajyotsava : In order to celebrate the formation of the state, a rajyotsav was organised from 1st to 3rd of November. Hereby a legal awareness program was conducted by the DLSA, this program was led as per the directions and control of the SLSA of the state. A stall was provided to the DLSA, through which it circulated various videos, audio, pamphlets and print in order to increase the legal awareness amongst the local crowd. Furthermore it also provided them with the information regarding the local laws that govern their day to day life. Moreover the DLSA office of Ballod also conducted a skit in order to pass their message of legal awareness.

Legal Literacy Camps on Law Day : On 26.11.2014, Law Day was celebrated by holding special legal literacy camps at various places including schools and colleges. Through these camps, the gathering was made aware about different legal provisions including victi compensation scheme, legal aid schemes and the right and duties as enshrined in the Constitution of India. The Topics concerning women were also addressed in these camps.

World AIDS Day- 01.12.2014 : On 01.12.2014, World AIDS Day was observed in all the Districts by the DLSAs by delivering lectures on HIV/AIDS related topics. People were apprised about the causes of this disease and the medical treatment available to cure the same. They were also exhorted to give all physical and mental support to the persons suffering from this disease and not to look down upon them.

World Disability Day : On 03.12.2014, World Disability Day was observed in the entire State of Chhattisgarh. Special Legal Literacy Camps were organized apprising the people about the right of differently abled people and their duties qua them. Judicial officers and Secretaries in the State of Chhattisgarh visited the home of differently abled people and told them about the benefits formulated by the Government and also about the Legal Services available to them.

Human Rights Day : As per the action plan of SLSA, Human Rights Day was observed on 10.12.2014 by all District Legal Services Authorities by organizing Legal Literacy Camps in school, colleges and villages. In these camps, the students and the general public were made aware of their Fundamental Rights and duties guaranteed under Constitution of India and other Acts formulated by legislature. Through these camps the Panel Advocates exhorted people to respect the rights of others and to make the society around them a peaceful place of living.

World Senior Citizen's Day : On 1st October 2014 World Senior Citizen's Day was celebrated in the SLSA and various district legal service authorities of the state. People were informed about various legal rights which are available exclusively to the senior citizens. They were also informed about the maintenance right available to them

GOA

The DLSA, North Goa had organised 31 Legal Literacy Programmes on various topics in which 2828 people were benefited. The Legal Literacy Programmes were organised at Mapusa, Tiswadi, Ponda, Pernem, Sattari and Bichoiim Taluks on the subjects - Rights of Women and Consumer Protection Act, Rights and Welfare measures, Health Care Services, Rights of Senior Citizens, Mental Health Act, Importance of Senior Citizens to give guidance for future generation, Rights of Mentally Challenged people and their entitlement of free legal services, Right to Education, Mental Health Week, observance of World Mental Health Day, awareness programme for construction workers, Art of Advocacy and entitlement & benefits of Free Legal Aid, National Legal Services Day, Rights of Protection of a child from child abuse, Drawing Competition, Fundamental Rights & Duties Cyber Laws and Cyber Crimes, Rights of Women & Protection of Women from Domestic Violence etc.

The DLSA, South Goa Margoa organised 38 legal awareness programmes in which 3199 people were benefited. The legal aid programmes/camps were organised in respect of the Birth & Death Registration Act, Free Legal Aid, Rights of Senior Citizens, various schemes for Sr. Citizens, Domestic Violence Act, Entitlement of Free Legal Aid, Fundamental Duties, Maintenance Act, Good Manners, Health & Care, Entertainment programme for mentally challenged students, Drug Trafficking & Child Trafficking, Documentary film on

Trafficking, Right to life and liberty, BetiBachao, BetiPadhao & Importance of educating a girl child, Pre-natal Diagnostic Technique, Right to Information Act, meaning of law, Punishment under Law, types of laws, constitutional rights and duties, Mundkarial issues, Information on HIV/AIDS, Universal declaration of Human rights etc.

At District and Taluk levels there were total 4961 cases placed before the Lok Adalats, out of which 1817 cases were settled in the Lok Adalats during the quarter and compensation of Rs. 8,10,12,906 was awarded. The Goa SLSA organised National Lok Adalat at High Court level in which 11 matters were settled and compensation of Rs. 44,17,986/- was awarded.

During the quarter, legal aid beneficiaries were as follows:

1) In custody	: 109
2) Women	: 113
3) Children	: 6
4) SC/ST	: 8
5) Other eligible persons:	<u>45</u>
Total	281

GUJARAT

General Lok Adalats : On 02nd October, 2014, 5th General Lok Adalat of the Year-2014 was held throughout the State in which total 937 Lok Adalats were organized. In the above Lok Adalats, 21,885 cases were disposed of by amicable settlement and award of **Rs.55.60(Cr)** were made towards settlement.

As per the directions of NALSA, this Authority had also held National Lok Adalat on 06th December, 2014 throughout the State in which total 2,45,848 cases were disposed of by amicable settlement and awards of **Rs.155.89(Cr)** were made towards settlement.

On 21st December, 2014, 6th General Lok Adalat of the Year-2014 was held throughout the State in which total 901 Lok Adalats were organized. In the above Lok Adalat, total 9,249 cases were disposed of by amicable settlement and awards of **Rs.24.83(Cr)** were made towards settlement.

Lok Adalats & Legal Literacy Camps Permanent Lok Adalats and Legal Literacy Camps including General Lok Adalats were

organised during the quarter October-December, 2014. During this quarter total **3947** Lok Adalats and **3128** Legal Literacy Camps were organized. In the above Lok Adalats, **2,79,365** cases were disposed of by amicable settlement and award of **Rs.284.41Cr** were made towards settlement including M.A.C.P. Cases.

Special Legal Literacy Camps on the rights of HIV/AIDS patients in Collaboration with District Organization of GNSP+ for people living with HIV: During the quarter October-December, 2014, DLSAs in the Gujarat State organized **112** Special Legal Literacy classes on the rights of HIV/AIDS patients in collaboration with District Organizations of GNSP+ for people living with HIV.

Special Legal Literacy Camps on few areas focused by this Authority :

Senior Citizens : During the quarter October-December, 2014, total **60** Legal Literacy Camps have been organized on the areas to be focused by this Authority and Schemes of Government relating to the benefits of Senior Citizens in various districts of the State by the District Legal Services Authorities in their respective Districts.

Mal-nutrition : During the quarter October-December, 2014, total **70** Legal Literacy Camps have been organized by District Legal Services Authorities on the subject of Mal-nutrition for creating awareness amongst the adolescent girls, pregnant women, nursing mothers, children etc. During the said Camps, necessary information is provided as to various Schemes framed by the State Government.

Women's Rights/ Human Rights : During the quarter October-December, 2014 total **205** LLCs have been conducted by the various District Legal Services Authorities in the State, out of which 85 LLCs have been organized on the subject of women's rights and 120 LLCs on Human rights.

Legal Aid Clinics : During the quarter, total **23** Legal Aid Clinics have been established in the Gujarat State out of which 2 Legal Aid Clinics have been established in Colleges/University and 21 in villages.

TV Programme : New programme on "Sauna Mate Nyay" in collaboration with Prasar Bharti, Doordarshan Kendra, Ahmedabad has been launched with effect from 26/10/2014. Such

programmes will be of 52 episodes which will be aired on the Second and Fourth Sunday and succeeding Tuesday of the each month. The duration of the programme is 30 minutes and Resource persons who attend the said Programme are being nominated by this Authority who will conduct the said Programme on various subjects like Domestic Violence Act, Lok Adalat, Free Legal Aid, Rights of the Women, Human Rights, and Mediation etc. Recording of total eight episodes have already been completed till 30/01/2015. The first episode was telecast on 26/10/2014 wherein the Member Secretary, Gujarat State Legal Services Authority, as a Resource Person, had provided information regarding the establishment of Gujarat State Legal Services Authority, availability of Legal Services and Legal Aid, etc. The Member Secretary also gave information regarding the 24 hours Toll-Free number installed at the Permanent Legal Services Clinic at Shahibaug, Ahmedabad.

HARYANA

Legal Literacy Camps on Senior Citizen Day : On 01.10.2014, to mark the Senior Citizens Day, legal literacy camps were organised by the DLSAs across the State of Haryana. Legal awareness camps were also organised in the Old Age Home and Senior Citizen Club to spread awareness about the various laws which have been enacted for the protection and welfare of the Senior Citizens. Various provisions of the Maintenance and the Welfare of Parents and Senior Citizen Act, 2007 were explained in comprehensible language. This apart, section 20 of the Hindu Adoption and maintenance Act 1956 and section 125 of the code of criminal proceeding, 1970 were also elaborated in comprehensible language. The Haryana State Legal Services Authority has already published the booklet on the Maintenance Welfare of Parents and Senior Citizens Act, 2007. The copies of the said booklet were also distributed amongst senior citizens.

Special Legal Literacy Camps on Mahatma Gandhi Jayanti : As per the directions issued by the Haryana SLSA, all DLSAs organized special legal literacy camps on 02.10.2014 on the occasion of Mahatma Gandhi Jayanti. People were made aware of the different schemes floated by the Government for the benefit of poor, downtrodden and for the people belonging to scheduled castes or backward classes. Lectures were also given on the provisions of Mahatma Gandhi GraminRozgar Guarantee Yojana.

Legal Literacy Camps on World Mental Health Day : On 10.10.2014, Legal Literacy Camps were organised across Haryana. Lectures were delivered to create awareness about the various laws providing for the benefit of mentally ill persons.

Refresher-Cum-Workshop for Panel Advocates And Para Legal Volunteers : On 27.10.2014, a special refresher course-cum-workshop was organized for Panel Advocates and PLVs deputed at various Village Legal Care and Support Centres by DLSA, Ambala. It was held in the conference hall, Judicial Complex, Ambala. Apart from explaining to them the benefits of Lok Adalat and the procedure adopted therein, they were also apprised about the process of mediation. Various schemes launched by the Haryana Government for the benefits of people were also discussed.

Legal Literacy Camp Held at Saraswati Public School, Kaithal : On 27.10.2014, Legal Literacy Camp was held at Saraswati Public School, Kaithal. The students were apprised about the various functions of the Legal Services Authorities.

Legal Awareness on HIV/AIDS : District Legal Services Authority, Jind organized a special legal literacy camp on 31.10.2014 on the topic 'HIV/AIDS'. Various aspects of the law touching upon the rights of persons affected with HIV/AIDS were also discussed in the said camp.

Special Awareness Programme in Legal Literacy Club : On 03.11.2014, a Special Legal Literacy Programme was organized in Legal Literacy Club of SohanLal DAV College of Education, Ambala City, District Ambala by DLSA, Ambala. Competitions on various topics were organized such as Debates, Declamation contest, Poster Making, Poem Recitation, on the spot painting etc. Winners were awarded certificates. The students were given information about Right to Information Act, 2005 and various other laws.

Spreading Legal Awareness : On 06.11.2014, on the occasion of celebrations of Guruparv, special Legal Literacy Exhibition-cum-stall was organized in the premises of GurudwaraPanjokhra Sahib, Village Panjokhra, Teh. andDistt. Ambala. As lot of persons gathered and visited the Gurudwara on the said day so it provided good forum for spreading Legal Literacy at mass level. The stall

became highly useful in spreading legal awareness. Various legal literacy books, pamphlets, leaf-lets were also distributed amongst the people.

Special Legal Literacy Camp for officials at Grass Root Level, Sonapat : A Special Legal Literacy Camp was organised on 07.11.2014 for Officials at Grass Root Level by DLSA, Sonapat. DEO, BEOs of all the Blocks, Principals of all the Schools in District Sonapat attended the said programme. All were sensitized about the concept of “Access to Justice for All”, also and the various schemes of NALSA and HALSA were also explained to the officials.

Legal Care and Support Centre opened at Law College : On 07.11.2014, a Legal Care and Support Centre was inaugurated at Ami Chand College of Law, situated at Village Abdulagarh, Tehsil Barara, District Ambala, as per the National Legal Services Authority (Legal Services Clinics in University, Law Colleges and other Institutions) Scheme, 2013. On the said occasion, the students of Law College and B.Ed. College were apprised about the Legal Services Authorities Act 1987. The functions of the Legal Services Authorities were also explained to the students.

Legal Literacy Seminar on ‘The Consumer Protection Act, 1986’ : On 07.11.2014, DLSA, Jind organized the seminar on ‘The Consumer Protection Act, 1986’, at DAV Public School, Jind. The students were apprised about the various rights conferred upon the consumer by the said Act. Various provisions of the Consumer Protection Act, 1986 were explained to the students.

National Legal Services Day observed : 9th November, 2014 was celebrated as National legal services day. Various legal literacy camps and programmes in schools and colleges were organized by the DLSAs. Through these seminars, not only students were made aware of their legal rights and duties but also the common and rustic people residing in villages were enlightened about their rights and duties and the various schemes formulated for their benefit by the Government. Apart from organizing the legal literacy camps, District level competitions in various activities like slogan writing, on the spot painting, poem recitation, declamation, essay writings etc. were organized in many Districts in schools and colleges on various socio legal topics, in which the students participated with full enthusiasm.

Legal Literacy Camps on the occasion of Children's Day : On the occasion of Children Day - 14.11.2014, legal literacy camps were organised across Haryana by DLSAs under the aegis of Haryana SLSA. In the said camps, awareness was spread about the various laws meant for the protection and welfare of children. Child Marriage Act, Law prohibiting child Labour, Right to Education Act 2009 were explained in comprehensible language in the said camps.

Special Legal Literacy Camp in Jail : A special Legal Literacy Camp in District Jail, Bhiwani was organized on 22.11.2014 by DLSA, Bhiwani. The panel advocates of DLSA, Bhiwani apprised the inmates about their legal rights during police arrest, remand and investigations. The jail inmates were apprised that police after making the arrest has to produce the accused before nearest Area Magistrate within 24 hours. During this occasion the Superintendent and the Deputy Superintendent of District Jail were also present.

Special Legal Literacy Camp by DLSA, Palwal : DLSA, Palwal organised legal awareness camp at Govt High School Alhapur on 22.11.2014. In this Camp, students were made aware about the PC&PNDT Act, POCSO Act and Fundamental Duties. They were also made aware about RTE Act 2009 and Haryana Victim compensation Schemes 2013. Students were informed about Schemes of DLSA, PLA(PUS) and Helpline number of DLSA. They were also informed about Pension Drive, Road Safety Drive, Girls Students Safety Drive of DLSA. Booklets and Pamphlets of National Lok Adalats were distributed amongst them to create awareness.

Special Programme at Bharat Scout and Guide Training Center, Ambala Cantt. : A Special in house training programme was conducted for the students of Schools at Bharat Scout and Guide Training Center, Ambala Cantt from 21.11.2014 to 24.11.2014 in collaboration with DLSA, Ambala. Various activities for building confidence in the students and developing capability to serve society and nation were held in the said camp. Emphasis was also put on the performance of fundamental duties.

Training Programme for PLVs by DLSA Gurgaon : The training programme for PLVs was conducted on 26.11.2014 by DLSA, Gurgaon. The training programme focused on the importance of

various schemes of NALSA and HALSA and the role of PLVs in bringing these schemes to the knowledge of the people. PLVs were also given training upon different beneficial measures for the protection of the juveniles their right to have free legal aid advocate to have speedy and separate trial and to be kept in observation home or special homes and not in jails along with the other accused. The CJM-cum-Secretary, DLSA, Gurgaon also explained the importance of these laws enacted for the benefit of the children at large and the role of PLVs in ensuring the same. PLVs were also told to visit the Police Station and to ensure that the rights of children are protected in the light of the guidelines of the Hon'ble Supreme Court of India as well as under light of the provision of Juvenile Justice Care and Protection Act.

Special Legal Literacy Camps on "Environment and Pollution" :

On 01.12.2014, special awareness/legal literacy camps were organized by the DLSA, Jind on the topic "Environment and Pollution" at the Government Senior Secondary School, Jind. The students were enlightened on environmental laws and were encouraged for adopting no habits for keeping the environmental neat and clean. It was highlighted that environmental pollution is one of the biggest problems the world is facing today.

Special Legal Literacy Camps on the occasion of "World Disability Day" :

On 03.12.2014 various programmes and legal awareness camps were held across Haryana to raise awareness about the entitlement of disabled persons to free legal aid. The process of obtaining free legal aid was also emphasized in the said camps.

Special Legal Literacy Camps on the occasion of "Human Rights Day" :

On 10.12.2014, special legal literacy camps were held across the State of Haryana on the occasion of Human Rights Day. The concept of free legal aid for redressing the grievances relating to the violation of human rights was elaborated and emphasized in the said camps. Various human rights were explained in the said camps particularly the various rights under Article 21 of the Constitution of India.

Workshop for the Training of the Advocates : On 18.12.2014 workshop for the panel advocates was organized by DLSA, Jind. In the said workshop, Indian Penal Code, Criminal Procedure

Code, Indian Evidence Act, and the Protection of Children from Sexual Offences Act, 2012 were discussed.

National Lok Adalat held on 06.12.2014 : As per directions of NALSA, National Lok Adalat was held on 6th December, 2014 throughout the country. In the State of Haryana, total 16,02,028 cases of various categories were taken up out of which 12,59,348/- cases were settled in the National Lok Adalat. A sum of Rs. 22,41,18,151/- was awarded as compensation to the victims of Motor Accident in 1438 cases and a fine in the tune of Rs.3,59,41,504/- was realized in the 1,22,371 petty offences.

Legal Awareness through Community Radio Stations :

Gurgaon and Mewat- (Radio Stations: 1.Gurgaon Ki Awaz 2. Radio Mewat 3.Alfaj-e-Mewat)

- One live weekly programme is held at one station by rotation, and the other radio stations are telecasting the same on different timings at their radio stations. The programmes will be organised in such a manner that turn by turn all these Radio Stations will have one of the live programmes on "Kanoon Ki Baat".
- The programme is for 30 minutes and at present, the aforesaid Radio Stations are not charging any fee for broadcasting programmes.
- The resource persons/speakers would be ranging from the Judicial Officers, Senior Advocates and experts from the field of Law Colleges, Universities.
- The first inaugural programme on Kanoon Ki Baat was broadcasted on 19.12.2014 from 3.30 pm to 4.00 pm on the community radio station, Gurgaon Ki Awaz. District & Sessions Judge/Chairman and Secretary, DLSA, Gurgaon enlightened the listeners on importance of awareness programmes, the role of Judiciary and introduction of NALSA, HALSA & DLSA. Second programme held on the topic of Rights of Women on Community Radio, Mewat on 29.12.2014.

Lok Adalats : During the period from 1st October to 31st December, 2014, 170 Lok Adalats/Special Lok Adalats were organised throughout the State wherein 16,12,333 cases were taken up out of

which 12,62,885 cases were disposed of by amicable settlement between the parties and an amount of 28,28,28,501/- was awarded as compensation to the claimants in 1,430 MACT cases.

Rural/Mobile Lok Adalats : During the period from 1st October to 31st December, 2014, 90 Rural/Mobile Lok Adalats were organised at village level for providing justice to the common man at his door step. In these Rural/Mobile Lok Adalats 1837 cases pending in the courts as well as at pre-litigative stage of the concerned village and adjoining villages were taken up, out of which 1285 cases were settled.

Permanent Lok Adalats pertaining to Public Utility Services : At present the PLA(PUS) are working in all the 21 districts of Haryana. During the period from 1st October to 31st December, 2014, these Permanent Lok Adalats, Public Utility Services settled 13,429 cases out of 58,338 cases taken up therein.

Daily Lok Adalat : To make the Lok Adalat a permanent and continuous process, Haryana SLSA requested all the District & Sessions Judges-cum-Chairmen, DLSAs to hold daily Lok Adalats. They were further requested that every court in these Session Divisions should convert into a Daily Lok Adalat from 2:00 p.m. to 2:30 p.m., extendable to 3:00 p.m. depending upon quantum of work [4:00 p.m. to 4:30 p.m. extendable upto 5:00 p.m. from March, 2012 onwards. During the period from 1st October to 31st December, 2014, 15534 Daily Lok Adalats were organised wherein 88848 cases were taken up out of which 51566 cases were disposed of and an amount of Rs.11,37,17,262/- was awarded as compensation to the claimants in 725 MACT cases.

Mediation : During the period from 1st October to 31st December, 2014, 2322 Cases were referred by Referral Judges to the Mediators for mediation and conciliation in the District Mediation and Conciliation Centres in the State of Haryana, out of which 518 cases were settled by the Mediators.

Legal Literacy/Legal Awareness Camps/Seminars : During the period from 1st October to 31st December, 2014, 3456 Legal Literacy/ Legal Awareness Camps were organized with the help of Advocates, retired judicial/executive officers, social workers, law teachers and law students as resource persons and 13,60,946 persons were benefited by these Legal Literacy/Legal Awareness Camps.

Free Legal Aid : During the period from 1st October to 31st December, 2014, 2020 persons were provided with free legal services.

JAMMU & KASHMIR

Inauguration of ADR Centres : Hon'ble Mr. Justice M.M. Kumar, Chief Justice, Jammu & Kashmir High Court inaugurated ADR Centre on 31.12.2014 at Jammu. Speaking on the occasion Hon'ble Chief Justice highlighted the importance of ADR mechanism. In the Programme, Hon'ble Justice Mohammad Yaqoob Mir, Executive Chairman SLSA, Justice Dhiraj Singh Thakur, Justice Bansilal Bhat, Justice Janak Raj Kotwal, Registrar General, Principal District & Sessions Judge (Chairman District Legal Services Authority Jammu) attended the inaugural function. One more ADR Centre was inaugurated at District Leh on 14th November 2014 through Video Conference.

Lok Adalats and Legal Awareness : During the month of Oct. & Nov. 2014, 95 Lok Adalats were held in the State at different District/ Tehsil head quarters. In these Lok Adalats 6594 cases of different nature were settled and an amount of Rs:1,99,83072/- were awarded in 69 MACT cases.

In the month of December, 2014 National Lok Adalat was organized at High Court level/ District / Tehsil level in the State of Jammu & Kashmir. In the said National Lok Adalat 1,16,425 cases of different nature were settled on this day and an amount of Rs:95.15 crore were awarded as compensation in MACT cases.

During the quarter 73 Legal Awareness programmes were organized by District Authorities/Tehsil Committees in the State in respect of entitlement of Free Legal Aid, the rights of mentally ill persons, rights of women and protection of women from Domestic Violence Act, Right to Education Act, Child labour, Social Welfare Schemes etc. The Legal Literacy classes were also held at school/ college level through various District Authorities/Tehsil Committees during the quarter.

KERALA

School level quiz competition for Higher Secondary students was conducted by the DLSA Kannur, Thalassery in 13 schools of Thalassery Taluk, 20 schools of Kannur Taluk and 9 schools of Taliparamba Taluk on 07.10.2014.

Legal Aid Clinic was established by the TLSC, Nilambur on 07.10.2014 at Pothukal, Edakkara, Vazhikkadavu and Nilambur Police Stations and on 09.10.2014 at Wandoor, Kalikavu, Karuvarakundu and Pookkottumpadam Police Stations.

School level written examination for the quiz competition was conducted by the TLSC, Perinthalmanna in various Higher Secondary Schools. 784 students participated in the written examination. Among them, 33 students qualified to the Taluk level written examination.

Quiz competition was conducted in all Higher Secondary Schools by the Kochi TLSC on 07.10.2014. Students from 11 schools attended the programme. 3 students were selected from each school. Taluk level examination was conducted on 01.11.2014 at SDPY Vocational Higher Secondary School, Palluruthy.

DLSA, Kottayam observed International day against Child Abuse on 19.11.2014 at Govt. High School, Areeparambu. 120 students have attended the programme.

DLSA, Kannur observed Human Rights day on 10.12.2014 by conducting a legal awareness class at SreeSankaracharya Sanskrit College. 200 students participated.

DLSAs of Alappuzha, Thalasserry, Kannur, Manjeri, Thodupuzha, Idukki and TLSCs of Kannur, N. Paravur, TLSC, Kottayam, Ernad, Tirur, Parappanangadi, Ponnani, Thodupuzha and Udumbanchola organised programmes in connections with observance of Senior Citizens Day

DLSA, Manjeri, TLSCs, Nilambur, Perinthalmanna, Parappanangadi, Ponnani, DLSA, Thodupuzha, TLSCs, Vaikom and Kottayam organised programmes in connection with observance of Children's Day on 14.11.2014.

DLSA, Manjeri and TLSCs, Ponnani and N. Paravur organised programmes in connection with the observance of Legal Services Day.

TLSC, Ernad, DLSA, Manjeri, TLSC, Thodupuzha, TLSC, N. Paravur and DLSA, Thodupuzha organised programmes in connection with observance of Law Day on 26.11.2014.

MAHARASHTRA

Observance of "Senior Citizens Day" : All the District Legal Services Authorities and Taluka Legal Services Committees organized Legal Literacy Programmes on rights and maintenance of senior citizens on the occasion of "Senior Citizens Day" on 1st October, 2014.

Observance of World Mental Health Day : The State Legal Services Authority observed 'World Mental Health Day' on 10th October, 2014 throughout the State by organizing suitable programmes/functions in the State.

Observance of 'National Legal Services Day' : The Maharashtra SLSA celebrated the 'National Legal Services Day' on 9th November, 2014 throughout the State. On the said occasion, various programmes viz., Lok Adalats, rally, legal literacy programmes were organized.

Observance of 'Children Day' : On 14th November, 2014, Children's Day was observed throughout the State. Various Legal Literacy Camps and Legal Awareness Camps were organized on the topic of 'Rights of women and Children'.

Observance of 'Law Day' : All the District Legal Service Authorities and Taluka Legal Services Committees had observed 'Law Day' on 26th November 2014. On the said occasion, various programmes were organized on different topics.

Observance of 'World HIV/AIDS Day' : All the DLSAs and Taluka Legal Services Committees observed 'World HIV/AIDS Day' on 1st December, 2014. On the said occasion, various programmes on the topic of 'HIV/AIDS' were organized.

Observance of 'Disability Day' : The State Legal Services Authority, District Legal Services Authorities and Taluka Legal Services Committees had observed 'Disability Day' throughout the State.

Observance of 'Human Rights Day' : The SLSA, DLSAs and Taluka Legal Services Committees observed 'Human Rights Day' on 10th December, 2014 throughout the State.

National Lok Adalat : The Maharashtra SLSA organized National Lok Adalat as per directions of National Legal Services Authority on 13th December, 2014 in all the Courts and Tribunals through the State

of Maharashtra. In the said National Lok Adalat, more than 2.70 lakh cases were settled. Tremendous response of public, litigants, Insurance Companies, State Transport and Banks are received with intention to give wide publicity and to make more people aware about the organization of National Lok Adalat. Posters were displayed at all conspicuous places in the State. An audio advertisement is also made on the State Transport Bus Stand in the State. For making wide publicity of National Lok Adalat, an animated advertisement giving information about National Lok Adalat is also prepared and released on local cable channel of the District and Taluka places. Besides, the National Lok Adalat held on 13th December, 2014, during the month of October, 2014 to December, 2014, the Maharashtra State Legal Services Authority, Mumbai had organized total 109 Lok Adalats in the State of Maharashtra in which 1417 matters were settled.

MANIPUR

Lok Adalat : 1 (one) Lok Adalat for pre-litigation cases of United Bank of India was held on 11.10.2014 at UripokCheirap Court Complex, Imphal. In the said Lok Adalat 53 Pre litigation cases were taken up and out of which 17 cases were settled and a sum of Rs. 19,32,000/- was recovered.

Legal Awareness Programmes : Manipur SLSA in association with different DLSAs of the state had organised 60 legal awareness programmes during the quarter from October, 2014 to December, 2014 at different parts of the state creating awareness amongst people on different aspects of law such as Protection Of Women From Domestic Violence Act, Juvenile Justice, Child Trafficking & Child labour, Right to Information Act, Right to Education Act, Food security Act etc. as well as different welfare schemes of Government such as MGNREGA, TPDS, IAY, RSBY Fundamental rights & duties of Indian Citizen, availability of free legal aid, Mob Justice, Drug Abuse, Consumer's Rights, POCSO Act, Female Foeticide, different welfare schemes of the Government etc.

Live Phone-in Programme was aired on 20/10/2014 from 7.00 a.m. to 7.30 a.m. at Kangla Channel of AIR, Imphal. Shri Ch. Momon Singh, Advocate was the subject expert on the topic "**Female foeticide**" and Shri Ng. Tejkumar Singh, Director of Prosecution was the Moderator.

Another programme was aired on 17/11/2014 (Monday) from 7.00 a.m. to 7.30 a.m. at Kangla Channel of AIR, Imphal. Shri Ng. Tejkumar Singh, Director of Prosecution was the subject expert on the topic “**Domestic Violence**” and Km. B. Supriya Devi, Advocate acted as the Moderator of the said Programme.

The next live phone-in-programme was aired on 15/12/2014 (Monday) from 7.00 a.m. to 7.30 a.m. at Kangla Channel of AIR, Imphal. Shri Rakesh Meihoubam, Advocate was the subject expert on the topic “MGNREGA” and Shri Ng. Tejkumar, Director of Prosecution was Moderator of the said Programme.

National Legal Services Day :“ **National Legal Services Day**” was observed on 9/11/2014 at different parts of the state covering all the 9 Districts of the State. Legal Awareness Programmes were also held as a part of the observance.

Children’s Day, 2014 : Manipur SLSA in association with Imphal East & Imphal West DLSAs observed the “**Children’s Day**” on 14th November, 2014. As a part of the observance, small blankets and sweets were distributed to 220 Children residing at different Homes viz. Government Children Home, Ideal Blind School, Deaf & Mute School and Destitute Home, Tera Bazar, Imphal. Children’s Day was also celebrated by Bishnupur, Churachandpur and Senapati DLSAs at the Children Homes at their Districts and small gifts were distributed to the children.

Law Day was observed by Manipur SLSA on 26th November, 2014 at the Seminar Hall of Royal Academy of Law, Oinam. The function was graced by Shri Ch. Brajchand Singh, Member Secretary, Manipur State Legal Services Authority, Shri I. Jugeshwar Singh, Principal, Royal Academy of Law, Oinam & Shri O. Ibochouba Khuman, Vice Chairman, Governing Body, RAL, Oinam as Chief Guest, President and Guest of Honor respectively. Shri H. Iboyaima Singh, Advocate, Member, Bar Council of Assam and Manipur addressed on the topic “Fundamental Rights and Constitutional Remedies” and Shri L. Indrakumar Singh, Advocate, Joint Secy. AMBA, addressed on the topic “Right to Education”.

Manipur SLSA organised a seminar on “ADR Mechanism for disposal of cases” on 29-11-2014 at the Judges Lounge, High Court of Manipur. The said Seminar was attended by all the Judicial Officers of Manipur. Shri M. Binoykumar Singh, Director,

Manipur Judicial academy addressed the Judicial Officers on the said topic in the presence of Hon'ble Mr. Justice N. Kotiswar Singh, Executive Chairman, MASLSA.

Manipur SLSA opened a stall in the "Sangai Festival" held from 21st to 30th November, 2014 at the HaptaKangjeibung, Palace Compound, Imphal which is the biggest festival organised by Government of Manipur. During the Festival about 3000 visitors came to the stall and legal services booklets were also distributed to them. 2 Judicial officers with 2 PLVs were deputed everyday on shifts for rendering legal services to the visitors.

National Lok Adalat :As a part of the nationwide movement, Manipur SLSA in association with the DLSAs of the state had successfully organised the "**Second National Lok Adalat**" on **6th December, 2014** at 3 (three) levels viz. High Court, State and District Level. 37 benches were constituted for the said Lok Adalat. A total number of **3510** cases were taken up in the National Lok Adalat, out of which **1818** cases were settled and a sum of Rs. **6,73,16,864/-** was settled in the National Lok Adalat.

2 Days Refresher Training for PLVs was organised by Manipur SLSA in collaboration with Committee for Legal Aid to Poor (CLAP) & New Life Foundation, Imphal on 20th & 21st December, 2014 at the Auditorium of High Court of Manipur, Imphal. The said Training Programme was inaugurated by Hon'ble Mr. Justice Kh. Nobin Singh, Judge, High Court of Manipur. About 50 PLVs from across the state participated in the said Training Programme. Valedictory address was delivered by Hon'ble Mr. Justice N. Kotiswar Singh, Judge, High Court of Manipur & Executive Chairman, MASLSA and distributed the Certificates to the PLVs.

World Aids Day : Manipur SLSA in association with Imphal East Network of Positive People observed the "**World Aids Day**" on 1st December, 2014 at the office complex of the Imphal East Network of Positive People, New Checkon, Imphal East, Manipur

International Day of Persons with Disabilities : was observed by Manipur SLSA in association with Centre for Mental Hygiene at the conference Hall of Centre for Mental Hygiene, ChangangeiUchekon, Imphal on 3rd December, 2014 with the theme "*Sustainable Development: The Promise of Technology*."

Human Rights Day : Manipur SLSA has also observed the “**Human Rights Day, 2014**” at the Neerascent English School, ChangangeiHeigruMakhong, Imphal on 10th December, 2014.

MEGHALAYA

The Meghalaya SLSA had organized the following Programmes during the period from 1st October to 31st December, 2014:

October, 2014

1. Awareness programme-cum-Observation of World Senior Citizen Day-cum-Medical Checkup Camp held at Mawryngkneng Block, East Khasi Hills District on 01-10-2014.
2. Legal Literacy Campaign held at Karbi Christian Secondary School, Tomonpo-Anglong, RiBhoi District, Nongpoh on 17-10-2014.
3. The Committee on Juvenile Justice, Meghalaya Chapter in collaboration with the Meghalaya State Legal Services Authority, Social Welfare Department organised a 2 (two) Days Workshop on Sensitization of Police on Juvenile Justice held at YojanaBhawan, Main Secretariat, East Khasi Hills District, Shillong on 18-10-2014 and 19-10-2014.
4. Meeting of the Chairman District Legal Services Authority with Panel Lawyer held at Tura, West Garo Hills District on 22-10-2014.
5. Legal Literacy Campaign held at Wahmawlein Village under Mawryngkneng Block, East Khasi Hills District on 24-10-2014.
6. Visit to the District Jail Tura, West Garo Hills District on 25-10-2014.
7. Visit to Mental Ward at Civil Hospital, Tura, West Garo Hills District on 27-10-2014.
8. Visit to Tura Law College, West Garo Hills District on the 28-10-2014.
9. Visit to Don Bosco College Tura, West Garo Hills District on 29-10-2014.
10. Legal Literacy Classes in Schools & Colleges held at Nepali Secondary School, RiBhoi District, Nongpoh on 30-10-2014.
11. Visit to Tura Government College, West Garo Hills District on 30-10-2014.

November, 2014

1. Vmsit to Meghalaya Institute of Mental Health and Neurological Sciences (MIMHANS), Lawmali, Shillong, East Khasi Hills District on 03-11-2014.
2. Legal Literacy Campaign-cum-Observation of Legal Services Day held at Science Hall, Nongpoh, RiBhoi District on 09-11-2014.
3. Legal Literacy Campaign-cum-Observation of Legal Services Day held at Shillong High Court Bar Association, East Khasi Hills District, Shillong on 09-11-2014.
4. Legal Literacy Campaign-cum-Observation of Legal Services Day held at Government Girl's Higher Secondary School, Jowai, West Jaintia Hills District on 09-11-2014.
5. Legal Literacy Campaign-cum-Observation of Legal Services Day held at Rongrenggri Higher Secondary School field, Williamnagar, East Garo Hills District on 09-11-2014.
6. 3(three) days visit to the District Jail Jowai, West Jaintia Hills District on 11-11-2014, 19-11-2014 and 26-11-2014.
7. Observation of Children's day held at School premises of Government Higher Secondary School, Resubelpara, North Garo Hills District on 14-11-2014.
8. Observation of Children Day held at Mawkyrwat, South West Khasi Hills District on 14-11-2014.
9. Observation of Children's Day held at Baghmara Government Higher Secondary School Play Ground, South Garo Hills District on the 14-11-2014.
10. Observation of Children's held at Nongpoh, NSCA, Indoor Stadium, RiBhoi District on 14-11-2014
11. Meeting with the Para Legal Volunteer's held at Mawryngkneng, East Khasi Hills District on 13-11-2014.
12. Meeting with the District Legal Services Authority's, Banks, Insurance and different Department in connection with the National Lok Adalat held at Conference Room Main Secretariat, Shillong, East Khasi Hills District on 21-11-2014.

December, 2014

1. Awareness Programme-cum-Observation of World HIV/ AIDS Day held at Mawkyrwat, South West Khasi Hills District on 01-12-2014.

2. Awareness Programme-cum-Observation of World HIV/ AIDS Day held at Deputy Commissioner, Office, Jowai, WestJaintia Hills District on 01-12-2014.
3. Legal Literacy Campaign-cum-Observation of "World Disability Day held at Office Chamber of the District & Sessions Judge, Nongpoh, RiBhoi District on 03-12-2014.
4. Awareness Programme-cum-Observation of World Human Right Day held at Mawkyrwat Block, South West Khasi Hills District on 10-12-2014.
5. Legal Awareness Programme-cum-Observation of World Human Right Day held at District Jail, Shillong, East Khasi District on 10-12-2014.
6. Legal Awareness Programme-cum-Observation of World Human Right Day held at District Jail, Jowai, WestJaintia Hills District on 10-12-2014.
7. Legal Literacy Campaign held at Umphyrnai Village, East Khasi Hills District on 15-12-2014

MIZORAM

Village Legal Care & Support Centre : During the quarter, a total number of 729 people approached the Centres. Champhai DLSA conducted PLV training in the District Jail for PLVs amongst the inmates.

Legal Awareness Campaigns : The MSLSA and DLSAs organised legal awareness programmes both urban and rural, by way of campaigns, circulation of pamphlets, journals, etc. Awareness functions were held at schools, jails and other places. Leaflets/ booklets were distributed to the participants. During the quarter, 61 such programmes were held at different locations across the State for a total number of 10,569 beneficiaries.

The MSLSA and Department of Psychology, Mizoram University visited TNT Camp to conduct a legal awareness campaign and a survey on mental illness issues. The resource persons administered intelligence tests and assessed the wards as part of a survey on mental health for a study being conducted by the University on the subject.

The MSLSA organised a programme of “**Seminar on Sensitization of all Stake Holders in Issues relating to Drug Abuse and Drug Trafficking**” on 20th October, 2014 at Aijal Club, Aizawl. A report on the Seminar is shown below.

The State Authority also organised **Lawyers’ Training/ Seminar on “The Role and Responsibility of Lawyers in Society and Duties upon Accepting Briefs”** and “**The Narcotic Drugs & Psychotropic Substances Act, 1985 with Special reference to Pseudoephedrine/ Methamphetamines**” at Aijal Club on 31st October, 2014.

The programme was attended by 108 lawyers. It was chaired by Mr. L.H Lianhrima, Sr.Advocate. Mr. Justice B.P Katakey, Rtd. Judge, Gauhati High Court delivered a speech on the topic “The Role and Responsibility of Lawyers in Society and Duties upon Accepting Briefs”. Mr. Justice P.G Agarwal, Rtd. Judge, Gauhati High Court delivered a speech on the topic “The Narcotic Drugs & Psychotropic Substances Act, 1985 with Special Reference to Pseudoephedrine/Methamphetamines” The speeches were followed by interaction. Mr. Nelson Sailo. Sr.Advocate delivered vote of thanks.

Besides the above mentioned activities, regular jail visits were conducted by the DLSA Secretaries. Lok Adalats were regularly organized by the State and District Authorities. There were 27 sittings and 161 cases were settled. In the National Lok Adalat conducted on 6th December, 2014, 244 cases were disposed out of 517 cases taken up and Rs. 2,18,54,925/- was awarded.

Legal Aid Counsels were provided to 948 individuals during the period.

ODISHA

Lok Adalats :

- (i) At State Level : A State Level Lok Adalat was held at Bhubaneswar on 22.11.2014 in which total 58 no. of cases have been settled/disposed which include Civil-05, Criminal-38 and MAC cases-15. A sum of Rs.5,92,000/- has been awarded as Compensation in the above MAC cases. Further, Rs.9,500/- has been realized in criminal cases.

(ii) At-District & Taluk Levels : 30 DLSAs and 74 TLSCs have organized **84 no. of** District and Taluk Level Lok Adalats in which total **11,051** no.of cases were disposed of, which comprises 34-Civil, 3408-Compoundable Criminal Cases, 7220-Revenue, 07-Matrimonial,193 -Bank, 187-BSNL and 02-MACT cases. A sum of Rs.7,47,027/- towards criminal fine and Rs.23,07,805/- as revenue were collected in the said Lok Adalats. Further, a sum of Rs.6,20,000/- was awarded as compensation in the above Motor Accident Claim Cases.

As per the instruction of National Legal Services Authority, 2nd**National Lok Adalat** was organized throughout the State on **6th December, 2014**. In the said Lok Adalat. **4,71,800** no.of cases in toto were disposed of, which include Civil-3797, Criminal-1,94,028, N.I.Act Cases-12,576, Revenue-2,15,257, Permanent Lok Adalat(PUS) cases-513, Mining cases-10, Forest Cases-2189, Labour-667, Land Acquisition cases-393, Execution Applications-622, Traffic Challan Cases-2283, Misc Appeals-73, Excise Cases-23610, Matrimonial-1492, Consumer matters-130, MAC cases-3109, Industrial disputes-05, Sales Tax Cases-16, DRT Cases-60, Services matters-51, High Court cases-428 (Motor Accident Claim Appeals-307, Land Acquisition/RFA/FA-21, Bank matters (SARFAESI)-05, Crl.matter (N.I.Act)-04 & Other Cases(OJC/WP.(c)-91), Pre-litigations disputes(Bank cases-9762 and Other Cases-729. Compensation to the tune of Rs.71,61,47,700/- was awarded in the MACT/MACAs cases. Similarly, a sum of Rs.1,48,19,581/- towards fine in Criminal Cases and Rs.5,29,57,328/- towards revenue fine and other dues in revenue matters were realized in the said Lok Adalat.

Permanent Lok Adalats(for Public Utility Services) U/s.22-B of the Legal Services Authorities Act : During the quarter October, 2014 to December, 2014, 895 number of new cases relating to Public Utility Services were registered, out of which, 661 cases were settled.

Generating awareness and spreading Legal Literacy :

(i) At State Level : The Odisha SLSA in association with DLSA, Cuttack observed “**World Mental Health Day**” at the **Mental Health Institute of S.C.B.Medical College and Hospital, Cuttack on 10.10.2014** by organizing a meeting involving the local Judicial Officers, Head of the Psychiatric Department and other doctors

and staff of the Hospital. Sri S.Mishra, Member-Secretary, Odisha SLSA and Sri G.R.Purohit, District Judge-cum-Chairman, DLSA, Cuttack interacted with the patients and the doctors of the Psychiatric Ward and distributed fruits and sweets to the patients of the indoor as well as the outdoor wards.

The SLSA had opened a temporary stall at the famous Baliyatra Ground from 5.11.2014 to 11.11.2014 and displayed different activities of this Authority with a view to create awareness amongst the general public. Hundreds of visitors interacted with the Para Legal Volunteers, Retainers who were engaged in the stall. A temporary Mediation Centre was also established where live mediation between the parties was undertaken. Hon'ble Patron-in-Chief & Hon'ble the Executive Chairman of SLSA were pleased to visit to the stall and patiently interacted with the Para Legal Volunteers, Retainers, Mediators and some litigants(visitors to the stall). Similarly, the DLSA, Bargarh also opened a stall during the celebration of "**DhanuyatraMahotsava**" at Bargarh from 26.12.2014 to 5.1.2015 and displayed different activities of this Authority, for creating awareness amongst the general. Thousands of people visited the said stall. They interacted with the Para Legal Volunteers, Retainers who were engaged in the stall. The Mobile Lok Adalat Vehicle was also deployed during the above period and **short film namely "MaruMallhar" & play namely "NyayamevaJayate"** were displayed to the public attended on the above occasion A temporary Mediation Centre was also established, where mediation of some disputes were undertaken.

(ii) At District & Taluk Levels: During the quarter, **321 no.** of Legal Literacy/Awareness Programmes were organized by the field units on Protection of rights of mentally challenged persons, Awareness Camps for Women and Senior Citizens, Awareness programme on the occasion of observance of National Legal Literacy Day on 9th November, 2014, Children's Day on 14th November, 2014 and Law Day on 26th November, 2014 and also organized other programmes as per the Calendar of Activities of this Authority. **Total 38,879** no. of persons were benefited by attending those Legal Literacy/Awareness Camps.

Activities of ADR/Mediation Centre : During the quarter, **1342**no.of cases were referred by the differentCourts to the Mediation Centres and **713**no. of cases were disposed of, out of which,**120** cases were disposed of on successful mediation.

PUNJAB

Legal Aid Cases :

Number of application received during the quarter October, 2014 to December, 2014	1441
Number of Applications disposed of.	1334

Break-up of Beneficiaries:

SC	249
ST	1
Backward Classes	29
Women	685
Children	12
Custody	1277
General	607
others	15
Total	28754

Legal Literacy Camps/Seminars :

Number of Seminars/Legal Literacy Camps held during the Quarter October, 2014 to December, 2014	2314
Number of People who attended the Seminar	303093

Monthly Lok Adalats :

Number of Monthly Lok Adalats held during the Quarter October, 2014 to December, 2014	107
Number of Cases entertained	5968
Number of Cases disposed off	4166

Permanent Lok Adalats for Public Utility Services :

Number of Permanent Lok Adalats (Public Utility Services) set up in the State of Punjab.	22
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Total Number of Cases disposed off in these Lok Adalats during the Period October, 2014 to December, 2014	3272
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Counselling and Conciliation Centres:

Number of Pre-litigation cases taken up in Counselling and Conciliation Centres during the period October, 2014 to December, 2014	91
Number of Pre-litigation cases disposed of in Counselling and Conciliation Centres during the period October, 2014 to December, 2014	8
Number of Post-litigation cases taken up in Counselling and Conciliation Centres during the period October, 2014 to December, 2014	6975
Number of Post-litigation cases taken up in Counselling and Conciliation Centres during the period October, 2014 to December, 2014	1349

Legal Aid Clinics : As per regulation “National Legal Services Authority (Legal Aid Clinics), Regulations, 2011, Legal Aid Clinics are being established to provide free and Competent Legal Services to weaker sections of society and to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities. Till, December, 2014, PULSA has established **366** Legal Aid Clinics in the Rural and Cluster area and Law Colleges in the State of Punjab.

Legal aid Clubs : As per the directions of NALSA, Legal Literacy Clubs are being established in Schools and Colleges to impart legal knowledge to students and to make them aware of their rights and duties. The enlightened students would be the light house of Legal Literacy. Till December, 2014 PULSA has established **204** Legal Literacy Clubs in Govt. and Govt. Aided Colleges and 1559 Student Legal Literacy Clubs in Govt and Govt. Aided School in the State of Punjab.

Para Legal Volunteer Schemes : As per Para Legal Volunteer Scheme of National Legal Services Authority, till December 2014, Punjab Legal Services Authority has imparted training to **2177** PLVs in the State of Punjab. These PLVs includes Advocates,

Teachers and Lecturers of Govt. and Private Schools and Colleges of all levels, Anganwadi Workers, Private or Government doctors and other government employees, field level officers of different departments and agencies of the State and Union Governments, Students of graduation and Post graduation in Law, Education, Social Services and Humanities, members of NGOs and Clubs, Members of Neighborhood Groups, Educated prisoners serving long term sentences in Central Prison and District Prison, Social Workers and Volunteers, Volunteers of Panchayat Raj and Municipal institutions, Members of Co-operative Societies, Members of Trade Unions, etc.

Training of Trainers(TOT) : In the month of October, 2014 a Training of Trainers Programme (TOT) was organized by the Mediation and Conciliation Project Committee of Hon'ble Supreme Court of India, New Delhi at Chandigarh Judicial Academy w.e.f. 4-10-2014 to 6-10-2014, in which 5 Advocate Mediators were imparted training.

Settlement of Cases through Mediation : Out of 24 officers of the Punjab Legal Services Authority, 22 are Trained Mediators. The said officers during their spare time perform mediation in their respective districts. During the period they have successfully settled almost 300 cases through mediation.

RAJASTHAN

Mediation & Conciliation programmes/ Activities : During Oct. 2014 to Dec. 2014, total 2937 cases were referred for mediation by the High Court and subordinate courts out of which 427 cases were disposed of by the mutual consent of the parties.

Mediation Awareness Programmes : As per direction of MCPC Supreme Court of India, New Delhi two day Mediation Awareness Referral Coaching and Mentoring (ARCM) programme was organized on 18-19, Oct. 2014 at Udaipur.

Mediation Training Programme : As per direction of MCPC Supreme Court of India, New Delhi. Mediation Training and Referral Judges Training programmes were held at Jaipur and Kota Division from 10-12 October, 2014 and 17 to 19 October, 2014 in which 24 Judicial Officers and 46 Advocates had undergone 40 hours mediation training. Mediation training programme at Bharatpur Division and Bikaner Division were organised on 7-9

November, 2014 and 21-23 November, 2014 in which 19 Judicial Officers and 33 Advocates had undergone 40 hours mediation training.

Lok Adalat under Section 19 : 6239 Lok Adalats were organized at High Court, District and Taluka level, 3,72,045 cases were taken up and 1,51,918 cases were disposed off. An amount of Rs. 8483,38,306/- was awarded in 4,907 MACT cases.

Mega Lok Adalat : Mega Lok Adalats were organized in October, 2014 at District and Taluka Level. Total 218606 cases were taken up, out of which 136486 cases were disposed off and amount Rs. 54,31,82,030/- was awarded.

2nd National Lok Adalat : 2nd National Lok Adalats was organized from 2 Oct. 2014 to 06 Dec. 2014 at High Court, District and Taluka Level. Total 10,79,523 cases were taken up, out of which 8,22,780 cases were disposed off and amount Rs. 94,78,31,176/- was awarded.

Legal Literacy Camps : 2106 Legal Literacy Camps were organized and total 163847 persons were benefited through these Legal Literacy Camps.

Special Legal Awareness & sensitization programmes by way of legal literacy camps were organized at District and Taluk Level i.e. to restrain Child Marriage, to stop female feticide, women empowerment for uplifting the Status of women in Society, Protection women from Domestic violence, Against women trafficking, prohibition of tobacco, protection of Rights of Disabled persons, maintenance and welfare of parents and senior citizens, protection of child labour, protection of consumer, environment law, and to spread the awareness about the law and provisions of MNAREGA through micro legal literacy scheme. During the period, total 483 such Legal Literacy Camps were organized

Special legal awareness Competition programme for School Student through Essay competition, Debate Competition and Poster/Painting Competition among the Children of Class 9 to 12 throughout the State :The SLSA undertook a Special legal awareness Competition programme for School Students through Essay, Debate and Poster/Painting Competitions among the Children of Class 9 to 12 throughout the State. These Competition programme were held on the of following topics:-

1. Stop Child Marriage,
2. Child trafficking
3. Rights of Senior citizen
4. Female Foeticide- PCPNDT act.
5. Rights of Women
6. Human Rights
7. Environment Protection
8. Fundamental Duties
9. Anti Tobacco (Smoking and Gutka)
10. Anti Ragging Law
11. Lok Adalats & Free Legal Services programme.

The debate, Essay and Poster /Painting competition were conducted at Schools, Block, District, division & State Level in a seriatim manner. Winners of these competition at each level were awarded as I,II& III Prize along with certificates, whereas all the participants of competitions throughout the state were also distributed certificates in this respect.

Senior Citizen's Day : Programme on "Senior Citizen Day" was organized on 1.10.2014 by Rajasthan SLSA in the presence of Hon'ble Mr. Justice R.S. Chauhan, Judge, Rajasthan High Court & Chairman Rajasthan High Court Legal Services Committee, Jaipur, Hon'ble Mr. Justice MohmmadRafiq Judge, Rajasthan High Court & Judge Incharge Mediation Rajasthan High Court, Jaipur, Senior Citizens, School Students, N.G.Os., Judicial Officers, RLSA Officers, Administrative Officers, Police Officers , Advocates and Legal Functionaries etc.

World Mental Health Day : Literacy Camps were organised on 10.10.2014 for the benefit of Mentally disabled people on the eve of "World Mental Health Day.

National Legal Services Day : National Legal Services Day was celebrated throughout the state and organized Legal Services programmes on 9.11.2014.

Legal Aid Clinic at University Law College Jaipur organized a one day Workshop on " Bridging the Gap between Bank and Rural People through Legal Literacy" for SHG's and NGO's in association with NABARD on 26th November, 2014. RLSA officers attended the function as resource Persons.

Legal Aid : 1176 persons were benefited through Legal Aid during the quarter.

Legal Aid Clinics : From Oct. 2014 to Dec. 2014, 5873 applications were disposed off in the legal aid clinics

SIKKIM

Awareness Programmes :64 Legal awareness programmes were organised during the quarter under Micro Legal Literacy Scheme, Mahatma Gandhi NREGA, Anti Ragging laws, Senior Citizen , Mental Health, National Legal Services Day, Children's Day, Juvenile Justice & Child Right, Consumer Day, Human Rights Day in (East) & (North) and (South) & (West) Districts of Sikkim. Various legal rights and benefits of weaker section of the society, women and children, rights of persons arrested, various provisions contained in the Constitution of India such as Articles 21, 48-a and 51-A (g), provisions contained in the Indian Penal Code, 1860, the Code of Criminal Procedure,1973, features of MG NREGA Scheme enshrined in respective schedules were deliberated for information of the public.

Observance of Senior Citizens Day:Senior Citizens Day was observed by the DLSAs and TLSCs in co-ordination with Sikkim State Legal Services Authority on 1st October, 2014.During the programme held, the general public was apprised about the salient features of the "Maintenance and Welfare of Parents and Senior Citizens Act, 2007". They were briefed in detail about the maintenance provided by Section 4 of the Act along with the procedure for applying for such maintenance.

Observance of World Mental Health Day :World Mental Health Day was observed by the DLSAs and TLSCs in co-ordination with Sikkim SLSA on 10th October, 2014 and the week thereafter as Legal Services Week.

Sensitization Programme on Mental Health & Suicide Prevention: Sensitization programme on "Mental Health and Suicide Prevention" was organized by DLSA and TLSC (West), Gyalshing, West Sikkim in co-ordination with Sikkim SLSA on 18th October, 2014. Hon'ble Shri Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim SLSA/Member, Central Authority, NALSA was the Chief Guest.Dr. C.L Pradhan, Head of Department (Psychiatry) of S.T.N.M Hospital and Shri Anjan Sharma, Panel Advocate were the Resource Persons.Free Counselling and Health

Camp was organized by the officials of District Hospital, Gyalshing for the public and they were also informed about the counselling centres established in the District Hospital and people having mental health issues and suicidal tendencies could approach them for medical help.

Observance of National Legal Services Day on 9th November, 2014 and a Week Thereafter as Legal Services Week : National Legal Services Day was observed by Sikkim SLSA, DLSAs and TLSCs all over the State on 9th November, 2014. Legal awareness camps were conducted by the DLSAs and TLSCs throughout State and the week thereafter as Legal Services week from 9th November to 15th November, 2014. Pamphlets published by Sikkim SLSA were provided to the DLSAs and TLSCs for the legal awareness programmes held in their respective jurisdiction.

Observance of Children's Day : As per the directions of National Legal Services Authority, Children's Day was observed by all the DLSAs and TLSCs under the aegis of Sikkim SLSA on 14th November, 2014 in their respective jurisdiction. The District Legal Services Authorities and Taluk legal Services Committees celebrated the Children's Day with the under privileged children in various shelter homes.

Legal Awareness Survey: The student members of Legal Literacy Club of Paljor Namgyal Girls School conducted a survey on 15th November, 2014 at Arithang, East Sikkim. During their door to door survey, they came across many cases like Domestic Violence, Gender Discrimination, Drugs Abuse etc. At the same time, they made the public aware about the free legal services provided by Sikkim State Legal Services Authority and intend to conduct such kind of survey in other local areas.

Three Day Induction-Cum-Orientation Training of Para-Legal Volunteers : Three days training of ASHA workers as Para-Legal Volunteers was conducted by DLSA, Mangan, North Sikkim in coordination with Sikkim SLSA from 21st November to 23rd November, 2014. Shri S.P. Bhutia, Shri T.W. Bhutia and Shri Sonam Gyamtso Bhutia, Panel Advocates were the Resource Persons for the programme. 61 ASHA members were administered oath as Para-Legal Volunteers and identity cards with a validity of one year were issued to them. Certificates were also distributed.

National Lok Adalat :The National Lok Adalat was held on 6th December, 2014 throughout the country. Sikkim SLSA constituted 10 (ten) Lok Adalat Benches at High Court Level, District Court level and Taluk (Sub-Division) level. 314 cases were successfully settled and an amount of **Rs.7,15,75,699/-** only was awarded by the Lok Adalat Benches.

Two Day Refresher Course for Para-Legal Volunteers :Two day Refresher Course for PLVs was conducted by Sikkim SLSA in coordination with Committee for Legal Aid to Poor (C.L.A.P), Odisha in the Conference Hall, District Administrative Centre, Sichey, East Sikkim from 12th to 13th December, 2014. Ms. Namrata Chaddha, Team Leader, Committee for Legal Aid to Poor, Mr. Bhawani Prasad Nayak, Programme Manager, Committee for Legal Aid to Poor, Ms. NavtaraSarda, Mr. S.S. Hamal, Mr. U.P. Sharma, Mr. B.C. Tamang, Learned Panel Advocates of Sikkim SLSA and Mrs. Matilda Isaacs, Additional Secretary, Sikkim SLSA were the Resource Persons for the training programme. 22 Para-Legal Volunteers were trained during the training programme .

Essay Competition :As per the Calendar of Activities, DLSAs in coordination with Sikkim SLSA had conducted Essay Competition in the various schools located in their respective jurisdiction.

Lok Adalats :

High Court Lok Adalat

No. of Lok Adalat held	Previous Pending	No. of Cases received	Total	No. of Cases settled	No. of cases returned	No. of Cases pending
03	09	06	15	10	NIL	05

District Lok Adalats

No. of Lok Adalat held	Previous Pending	No. of Cases received	Total	No. of Cases settled	No. of cases returned	No. of Cases pending
63	24	284	471	281	05	22

Taluk Lok Adalats

No. of Lok Adalat held	Previous Pending	No. of Cases received	Total	No. of Cases settled	No. of Cases returned	No. of Cases pending
32	13	159	172	131	38	3

Legal Aid :

Legal aid was provided to **189** persons during the quarter

SC	ST	Women	Child	Under Trial/Detained in custody	General	Disabled	Total
33	11	59	05	89	20	Nil	189

Cases before the Mediation Centres :

No. of Mediations held	No. of cases taken up	No. of cases settled	No. of cases returned
33	13	04	07

TELANGANA

Inauguration of National Lok Adalat : The Telangana SLSA conducted National Lok Adalat on 06.12.2014 in all the 10 districts. **Hon'ble Sri Justice H. L. Dattu**, Chief Justice of India & Patron-in-Chief, National Legal Services Authority inaugurated the National Lok Adalat Bench constituted by the High Court Legal Services Committee in the premises of High Court of Judicature at Hyderabad for the State of Telangana and for the State of Andhra Pradesh. In the august presence of the **Hon'ble Sri Justice H. L. Dattu**, Chief Justice of India & Patron-in-Chief, NALSA, two cases were disposed off, and two cheques worth **Rs. 10 crores** were presented to the litigants. In the National Lok Adalat **136882** cases were settled. out of which 55802 are the pending cases and 81080 are pre litigation cases. An amount of Rs. 71,64,00,877/- has been awarded as compensation.

Village Legal Care And Support Centre : There are 462 Village Legal Care and Support Centres in the State of Telangana out of them 13 have been established during this quarter.

Senior Citizen's Day : On the occasion of Senior Citizen's Day, on 01-10-2014, 07 Legal Literacy Camps were conducted and about 500 persons have participated. The senior citizens were explained about their rights and welfare measures for their benefits.

World Mental Health Day : On the occasion of World Mental Health Day, a special awareness campaign has been conducted and about 03 Legal Literacy Camps were organized explaining the public about the obligations towards mentally ill persons, and about the violation of penal provisions of mental health act. About 3000 persons participated in these camps.

National Legal Services Day : National Legal Services Day was observed on 09.11.2014 and different programmes like Special Awareness Camps were conducted for the benefit of general public. The public was explained about the availability of legal services and various legal services schemes and programmes, for the benefit of the general public. On this occasion about 71 camps were conducted benefiting about 14537 persons.

Children's Day : On the occasion of Children's Day on 14th November, 2014, about 41 Special Legal Literacy Camps were conducted and about 7624 persons attended. The resource persons explained about Right to Education, Prevention of Child Marriages, various important legislations for Protection of Rights of Children and the Legal Services Schemes and Programmes available to them.

HIV/ AIDS Day : The rights of HIV/ AIDS Day affected persons and the obligations of the public towards them have been explained. The availability of legal services of the HIV/AIDS effected persons have been explained to the public attended the function. 11 Legal Literacy Camps were conducted and about 2170 persons have attended and got benefited.

Disability Day : Special Awareness Campaign was conducted on 3rd December, 2014 on the occasion of Disability Day and explained the public about the rights of disabled persons, schemes and programmes for protection of rights of disabled persons and availability of legal services for this target group. On this occasion, 10 Legal Literacy Camps were conducted and about 1409 persons have attended.

Human Rights Day : On 10th December, 2014, on the occasion of Human Rights Day, 05 Legal Literacy Camps were conducted and about 1173 persons attended the camps. On this occasion, the public have been explained about human rights and about the legal services schemes and programmes.

Statistics :

- During the quarter, from October to December, 2014, about 640 persons were provided legal aid including 203 women, 1667 persons in custody and 52 others.
- About 1257 Lok Adalats conducted and settled 100186 cases has been settled of both pending and pre litigation in nature and Rs. 82,12,16,140/- was awarded as compensation.
- About 658 cases were settled pertaining to Public Utility Services, through Permanent Lok Adalat during the quarter.
- The Mediation Centres settled 213 cases during this quarter.
- About 718 Legal Literacy Camps were conducted during this quarter in the entire State of Telangana by various District Legal Services Authorities and Mandal Legal Services Committees.

Consumerism : As directed by the **Hon'ble Sri Justice KalyanJyotiSengupta**, Chief Justice & Patron-in-Chief, APSLSA, a new scheme has been introduced to render legal assistance for settlement of consumer disputes. As per the Scheme, the general public may submit their applications / representations pertaining to consumer disputes in the nearest Police Station, MRO Office or to the Panchayats. They in turn forward such applications to the respective legal services institutions. Then the legal services institution would organise a Mobile Lok Adalat in the respective village or villages, after issuing notices to the parties and conduct Lok Adalat, and make efforts for settlement of such consumer disputes at pre litigation stage. Thus, the Scheme is introduced to provide justice at the doorsteps of the consumers. The State Authority has also issued instructions to all the DLSA, and further requested the Director General of Police, District Collectors, Superintendents of Police in the State to take part in this process and issue instructions to all the concerned for receiving such applications from the general public, in respect of consumer

disputes and to send them to the respective legal services institution for taking necessary steps for amicable settlement of such disputes through Lok Adalat.

UTTARAKHAND

Lok Adalat : During the quarter, **22 Monthly/Mega/National Lok Adalats** have been organized and in these Lok Adalats total **22,527 Cases** were disposed off, a sum of **Rs.16,17,54,160/-** were awarded as compensation to the litigants, a sum of **Rs.99,94,869/-** was realized as fine and total **23,006 Persons** were benefitted.

In this span of time **02 Mobile Lok Adalats** were also conducted by the Uttarakhand SLISA in coordination with DLSA, Nainital & Pithoragarh. **In these Mobile Lok Adalats 66 cases were referred and 19 Cases were settled amicably. Rs.26,500/- were realized as fine and 19 persons were benefitted.**

02 Jail Lok Adalats were organized during these months in **District/Sub Jails** of the State and **16 Cases** were settled through these Jail Lok Adalats. A total number of **19 Under Trial Prisoner/ Jail Inmates** were benefitted.

Mediation Centres & ADR Centres : Total **103 Cases** were settled in the **Mediation & ADR Centres** established in High Court, District Courts & Outlying Courts of the State. Besides this, **75 Cases** were resolved/settled through **Women/Child Helpline** as per needs & requirements of said cases/complaints.

Legal Aid & Advice : In the months of October, November & December-2014, a total number of **213 persons** (including under trial prisoners) were **provided Panel Lawyers** free of cost to defend their cases in different courts of the State. **16 persons** were also benefitted by giving legal advice to them.

Legal Literacy/Sensitization Campaign & Seminars : A total number of **67 Legal Awareness/Sensitization Camps** were organized by all the DLSAs in Villages/Town Areas, Tehsil & Blocks, Schools/Colleges, Hospitals/Primary Health Centers and disaster affected areas of their district. The said camps were organized on the subjects of **Female Foeticide, Women Rights and Rehabilitation of Disaster Victims**. In these legal awareness camps a total number of **13,645 persons** including women, children, senior citizens, students, teachers, persons affected due to disaster

calamities were sensitized on PC-PNDT Act, PWDV Act, Child Marriage, HIV/AIDS, Child Labour, Sexual Harassment at work places, Child Labour, Anti Ragging Act, RTE & RTI & Welfare Schemes to disaster victims etc.

72 Micro/Mega/ General Legal Literacy Camps have been organized by the Uttarakhand SLSA and DLSAs. The said camps were organized in remote villages, market places, Universities/ Colleges, Law Colleges, regional congregations/festivals organized in the State. Through these legal awareness camps approx **13,512 persons**, including Women, Students, Children, Senior Citizens, persons from SC/ST community were informed about Programmes/Schemes of Legal Services Institutions, Lok Adalats, Welfare Schemes of Central & State Governments & other Rules/Regulations /Provisions benefitted them in day to day life. Gathering was sensitized by the Chairman & Secretary of DLSAs, Panel Advocates, Doctors & Officers from different Govt. Departments.

In order to sensitize the people about '**Fundamental Duties**', total **35** Legal Awareness Camps were organized at School Level and Community Level, by the DLSAs. In these camps a total number of 8,907 persons, including Boys/Girls students, persons from different strata of the Society were informed about Free Legal Services, RTI, RTE, Consumer Protection Act, Child Marriage, Animal Cruelty Act, Domestic Violence Act and programmes/activities of Legal Services Institutions etc.

05 Special Legal Literacy Camps were organized for **NCC/NSS cadets**. Approx 845 NCC/NSS cadets have been informed about Free Legal Services Programmes, provisions of RTE Act, Consumer Protection Act, Juvenile Justice Act, different Acts, Rules and Provisions benefiting them in day to day life.

In order to make aware the Under Trial Prisoners detained in District/Sub Jails of the State, **16** Legal Awareness Camps were organized by the DLSAs in the Jails of their districts. Total **1,676 under trial prisoners** were apprised about their legal rights & Free Legal Services as provided by the Legal Services Institutions.

During this period **02** Special Legal Literacy Camp was organized by the DLSA-Chamoli & Udham Singh Nagar on **MNREG Act** and a total number of 275 workers of unorganized

sectors were sensitized about the Act/Rules & Provisions of Mahatma Gandhi Rural Employment Guarantee Act.

In addition to above 03 Special Legal Awareness Camps were organized on the subject of **Child Labour & SC/ST Community** and gathering was informed deeply about ill effects of child labour and welfare schemes specially run by the Government for SC/ST community.

Legal Awareness Campaign through Mobile Van : With a view to sensitize the residents of remotest areas/villages of the State, two 07 Days Legal Literacy Camps were conducted by the Uttarakhand SLSA in coordination with DLSA-Nainital & Pithoragarh at pre-determined places of both districts. In these camps 54 villages were visited by the Mobile Van and approx 2,078 persons/villagers were sensitized about Mediation Mechanism, Legal Right to Women, Consumer Protection Act, Legal Adalat & Legal Awareness Camps organized time to time by the Legal Services Authorities of the State.

Legal Literacy Class : 05 Legal Literacy Classes were conducted at Schools & Colleges and a total number of 845 Students were enlightened on Right to Compulsory Education, Consumer Protection Act, FIR, Juvenile Justice Board Act, Motor Vehicle Act and Right to Services Act etc. Principal, teachers & other staffs have also attended the said classes.

Visits-cum-Legal Literacy Camp/Inspection : During these Months 06 Legal Literacy Camps were organized in the **Government Children/Observation/Protection Homes, Old Age Ashram/Orphanage House & Nari Niketans**. In these camps 155 destitutes/inmates were sensitized about their legal right and legal services available to them through Legal Services Institutions.

During this period 09 Visits were conducted to Government Children/Observation/ Protection Homes, Old Age Ashram/Orphanage House & Nari Niketans of the State by the Secretaries of the Concerned DLSAs. A total number of 201 inmates were present in the said homes during the visits. Facilities & other arrangements of aforesaid homes were assessed. Interaction was also made by the visitor with the inmates to know their problems. Boarding/Lodging & Toilet facilities have also been inspected. Probation Officers of the Homes were directed to remove the errors founded during the visit.

On 28.10.2014, Secretary, DLSA-Udham Singh Nagar has conducted a spot inspection of Complaint Boxes set-up in Village Legal Care Support Centres of Village Dhanpur&Khatola and in Legal Aid Clinic of Unity Law College in presence of Professor Unity Law College.

As per directions of NALSA, 02 Legal Literacy Camps-cum-visits were organized in the **Boarding Schools** of the State, during this period. Boarders were sensitized about Rules & Provisions benefitted day to day life. They were also informed about RTE Act, Anti Ragging Act & their legal rights as boarders. Boarding/Lodging facilities as provided by the school to boarders were also inspected.

Training Programme : In the months of October, November & December-2014, DLSA-Bageshwar, Chamoli, Dehradun, Nainital&PauriGarhwal have organized total **06 Training Programmes** for Para-Legal Volunteers (PLV) and a total No. of **195 PLVs** were imparted training.

Visits of District Jail, Sub Jail and Observation Home : Hon'ble Executive Chairman along with Member Secretary, SLSA made inspection of District Jail, Roshnabad and Government Children Observation Home, Roshnabad, District- Haridwar on 18.11.2014 as well as of District Jail, Nainital on 11.12.2014 and Sub Jail at Haldwani, District-Nainital on 13.12.2014. During the visit of these jails and observation homes, the necessary directions were issued to all the stakeholders so as to provide better facilities at these institutions. On the inspection note recorded by Hon'ble Executive Chairman of District Jail-Nainital, the matter was taken up in the judicial side by the Hon'ble High Court of Uttarakhand in a P.I.L. regarding improvement of infrastructure and conditions of jails in Uttarakhand.

Observance of Occasions/Days :

In order to observe **National Legal Services Day, National Consumer Day, World AIDS Day, World Handicapped Day & World Mental Health Day**, all DLSAs organized **33 Legal Literacy Camps/Seminars**. A total number of 2,779 people were sensitized about the issue of H.I.V. and welfare schemes/programmes of State Government being run for the disabled persons and persons affected with HIV/AIDS. It was discussed in the Seminars that how mentally ill persons could be provided proper medical

facilities and how could their legal rights be preserved. Gatherings were asked to avail free legal services being provided by the Legal Services Institutions including the Toll Free No.1800 180 4072 installed at establishment of State Authority.

Rally-cum-Legal Literacy Campaign : In the month of October-2014, 02 Street Rallies were organized by the DLSAs-Bageshwar and Haridwar. DLSA-Bageshwar has organized rally by focusing on Preservation/Protection/Cleanliness of Environment under Clean India Campaign. DLSA-Haridwar has also organized a Rally on the occasion of 'World AIDS Day'. By these campaigns local residents were made aware by slogans and by displaying boards on concerning issues of hygiene and ill effects and precautions from HIV and AIDS.

UTTAR PRADESH

In the National Lok Adalat organized on 6.12.2014, 2,10,10,371 cases including 25,55,557 information received from DLSAs (Civil, Revenue, MACT, Consolidation, Pre-litigation matters etc.); 1,019, U.P. Information Commission; 1,24,99,229, Aadhar (UIDAI); 9,27384 Pension Matters; 80, Debt Recovery Tribunal; 12, CGIT; 50,23,372, Chief Electoral Officer, UP; 910, Trade Tax; 405, Railways; 15, State Public Service Tribunal; 375, High Court Legal Services Committee and 2013, State Women Commission Cases were decided. Compensation of Rs. 1,05,07,28,586 in about 5,946 MACP cases was awarded. Most remarkably, as many as 93,840 Bank cases were settled in the Pre-litigation Lok Adalat alone, involving Pre-litigation settlement amount of Rs. 2,92,18,28,548/- (Rs. Two hundred Ninety Two Crore, Eighteen Lac Twenty Eight Thousand Five Hundred Forty Eight only). The Revenue Department of the State, led in particular by the Consolidation Authorities also in most districts participated whole heartedly. The number of Revenue cases settled stood at 2,16,024.

The UPSLSA has been organizing '**Bal Sanwad Adalats**' for settling the matters regarding juveniles in conflict with law, who have been implicated in criminal matters, which entails punishment up to 7 years for adult offenders. During the quarter ending on 31st December, 2014 total of 492 matters pertaining to juveniles in conflict with law were settled through the balsanwadadalats.

The SLSA organised Jail Lok Adalats every month in the central and district jails of the State. During the quarter ending on 31st December, 2014 through such Jail Lok Adalats 1125 matters involving jail inmates were successfully disposed/settled.

In addition to providing legal awareness to the people through legal awareness camps organized from time to time, the UPSLSA to provide legal assistance to persons looking for legal advice and counsel, started the **toll free number** in April, 2009. The services are provided for a caller from anywhere in the country, through 3 lawyers having experience of the application of law and working of the High Court and the District Court. During the quarter ending on 31st December, 2014 a total of 804 persons have been provided legal assistance through this facility.

During the last quarter of the year 2014 i.e. October – December, 2014, 371 legal literacy camps were organized, through which efforts were made to educate the assembled mass numbering 1,19,371. During this quarter the effort is reflected in the fact that 279 persons were provided free legal aid.

Special Days like the Senior Citizens Day on 01.10.2014; Gandhi Jayanti on 02.10.2014; World Mental Health Day on 10.10.2014; Legal Services Day on 09.11.2014; Children's Day on 14.11.2014; Law Day on 26.11.2014; AIDS Day on 01.12.2014 & Human Rights Day on 10.12.2014 were celebrated with special programmes throughout the State.

On the occasion of the Legal Services Day, special legal literacy camps with particular emphasis on promoting the National Lok Adalat scheduled for 06.12.2014 were organized throughout the State. The Member Secretary, UPSLSA and other judicial officers on deputation the Authority visited the home for women in Lucknow. Each and every inmate was interacted with and an effort was made to understand their problems and the reasons on account of which the women were residing in the home. It was found that most of the women who were mentally challenged have been abandoned by their families. Many young women were found to be residing in the home under the directions of the Hon'ble Court for the purpose of providing security to those

women, as they have eloped with spouses of their choice against the wishes of their families. The Member Secretary, UPSLSA requested the Superintendent of the Home to submit to the Authority all application received from the inmates if they make any request for legal aid. On this occasion a special appeal was also made to all concerned to avail of their right as per eligibility/ entitlement of receiving free legal aid in different forms.

WEST BENGAL

About 300 Legal Literacy Banners of State Legal Services Authority, West Bengal have been displayed in the crowd pulling Puja Pandels for the awareness amongst the Darshanarths of the Goddess DURGA on the occasion of "Durga Puja Festival – 2014" in the State of West Bengal.

On 10th October, 2014 DLSA, Purulia opened a Legal Care & Support Centre at Institute for Mental Care, Purulia on the occasion of observance of World Mental Health Day.

On 19th – 20th of October, 2014, the third Review Meet of all the Secretaries of nineteen DLSAs of West Bengal was organised at the conference Hall of West Bengal Power Development Corporation Limited, Sagardighi in the District of Murshidabad. Hon'ble Mr. Justice Ashim Kumar Banerjee, Judge, High Court, Calcutta and Executive Chairman, SLSA, West Bengal inaugurated the said Review Meet on 19th October, 2014. Sri Abhijit Som, Member Secretary and Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal and 18 Full Time Secretaries of all District Legal Services Authorities were present. His Lordship has been pleased to peruse the district-wise presentation of activities-cum-achievements of the DLSA by the Secretary of the respective district within specified time slots during the working Session and preparation for more disposal of pending cases to make it grand success of the last National Lok Adalat. The problems relating to effective implementation of the Legal Services faced by the Legal Services Institutions and way to manage & resolve the problems were discussed in the interactive session on the occasion of Review Meet followed by the Concluding address by His Lordship's.

On 25th October, 2014 a Live Telecast programme on Doordarshan, Kolkata titled "AIN KANOON" took place to generate awareness on legal services activities by Sri Satya Arnab Ghosal, Secretary of DLSA, North 24 Parganas and Sri Deepto Ghosh, Secretary of District Legal Services Authority, Malda which was anchored by Sri Jayanta Narayan Chatterjee, Advocate of Calcutta High Court in the manner of discussion –cum-interview on Legal Services and Lok Adalats followed by receiving phone calls of the viewers. At least 6-7 call viewers interacted during programme.

On 3rd November, 2014 a legal awareness camp was organised by the District Legal Services Authority, Bankura at Chhatna, Bankura on the occasion of Chatna Jagaddjatri Mela. Legal awareness booklets & leaflets were distributed. The feature film – Otho Go Bharata Laxmi was screened. About 2000 visitors were benefited.

Legal awareness camps were organised by the Sub-Divisional Legal Services Committee, Bishnupur on the occasion of Sishu Boi Mela 2014 at Bishnupur, Bankura from 31st October, 2014 to 6th November, 2014. The Judicial Officers, Advocates, Social Workers attended the said camps. Legal Literacy books, Sishu-O-Mohila Der AiniAdhikar –O- Surakha, Aksho diner Kormosuchi – O- Apnar Adhikar and leaflets were distributed. Otho Go Bharata Laxmi at the said stall. 1000 visitors visited the stall and interacted with their grievances.

On 8th November, 2014 a sensitization meeting organised by the Police Administration of CID, Government of West Bengal at Bhabani Bhavan, Kolkata. Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary, SLSA, West Bengal participated in the said meet and solicited co-operation of Police Authorities with regard to compliance with the direction on "BachpanBachaoAndolan" of the Hon'ble Supreme Court of India to depute Para-Legal Volunteers (PLVs) in the Police Stations in the State of West Bengal. The said meeting was presided by Ms. Damanti Sen, Additional Director General, (CID), Government of West Bengal.

On 9th November, 2014 a legal awareness camp was held at Kaichar Bus Stand under Mangalkote Police Station, Burdwan on the occasion of observance of "National Legal Services Day" followed by staging dramas on legal literacy – "Bhola Galo Iskule"

presented by Ellora (Drama Team), Burdwan and KhanchayaBandiPakhi' presented by students of ITTA High School, Burdwan, apart from the other legal awareness programmes held in the district of Burdwan on that day.

The Children's Day on 14th November, 2014 was observed at Dhruvasharm, Kolkata. Sri Abhijit Som, Member Secretary & Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal, Smt. Mou Chatterjee, Secretary, DLSA, Kolkata participated in the said programme. Shocks, Tupis, Fruits and sweets were distributed to orphans. Apart from this District Legal Services Authorities as well as Sub-Divisional Committees also observed the child rights week on the eve of Children's Day from 8th – 14th November, 2014 by organising Legal Literacy programme in schools with emphasis on malnutrition, Child Marriage Restraint Act, & POCSO Act in befitting manners.

On 15th November, 2014 a State Level Lawyers consultative Meet on Missing Child Alert Project in collaboration with Plan India in 10 border districts of West Bengal was organised by Child In Need Institute(CINI) in association with the State Legal Services Authority, West Bengal at Hotel Hindusthan International, Kolkata to address the issue of cross border trafficking between India, Nepal and Bangladesh to rescue, repatriation & providing legal assistance to the missing and trafficked children under the Juvenile Justice (Care and Protection of children) Act, 2000, Protection of Children from Sexual Offences Act, 2012. Hon'ble Mr. Justice Joymalya Bagchi, Judge, High Court, Calcutta has been pleased to enlighten on Legal Perspectives of Missing and Trafficked children and implication of the legal assistance to be provided on the missing and trafficked children in collaboration with DLSA under the POCSO Act. Sri Abhijit Som, Member Secretary & Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal, Dr. AshokenduSengupta, Chairperson, SCPCR, Sri Adhir Sharma, Additional DGP, Govt. of West Bengal, Secretaries of District Legal Services Authorities of 11 districts, namely Kolkata, North 24 Parganas, South 24 Parganas, Cooch Behar, Jalpaiguri, Darjeeling, Nadia, Murshidabad, Malda, Uttar Dinajpur&DakshinDinajpur. Smt. Sarmistha Das, Joint Secretary, Women & Social Welfare, Govt.

of West Bengal, Sri Rajib Halder, Additional Director, CINI, Coordinators, CINI and all other stakeholders were present in the said Meet.

The Legal Literacy Stall of District Legal Services Authority, Cooch Behar was set up in the Rash Mela- 2014 at Rash Melapangan, Cooch Behar from 9th – 23rd of November, 2014. The Chairman, District Legal Services Authority & District & Sessions Judge, Cooch Behar inaugurated the said stall on the 9th November, 2014 on the occasion of observance of Legal Services Day and also a sensitization programme on the legal services activities was also held at Rashmela Sanskriti Manch, Cooch Behar. The Judicial Officers, Advocates, Para-legal Volunteers and large number of people including the women were present. The leaflets, legal literacy booklets were distributed during the said period.

On 25th November, 2014, a sensitization programme on activities of Legal Services Institutions and Schemes of NALSA organised by the State Legal Services Authority, West Bengal at the Conference Hall of this Authority. 35 numbers of Law students of Hooghly Mohsin College participated in the said sensitization programme. Sri Abhijit Som, Member Secretary & Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal and Prof. Siddhartha Dutta, Hooghly Mohsin Law College, Hooghly interacted with the students. A feature film Otho Go Bharat Laxmi was screened to generate special awareness among the law students in the said occasion.

On 26th November, 2014 a legal awareness camp was organised by the District Legal Services Authority, Bankura at Machantala More, Bankura for spreading legal awareness and a drama – Bholo Galo Iskule by Ellora, Burdwan (drama team) has been staged to focus legal awareness on right to education on the occasion of observation Law Day. Legal awareness booklets & leaflets were distributed.

On the occasion of the observance of Law Day, District Legal Services Authorities were organised Legal Literacy Programme on 26th November, 2014 in village to empower the general public about basic laws viz. Panchayat & Municipal Laws, Marriage Laws, Marriage Registration Act, Birth and Death Registration Laws and highlighted the benefits extended by the Government for the weaker sections of the society.

On 29th November, 2014 a Live Telecast programme on Doordarshan, Kolkata titled "AIN KANOON" took place to generate awareness on legal services activities by Sri Prasanta Mukhopadhyay, Secretary of District Legal Services Authority, South 24 Parganas and Smt. Archita Bandyopadhyay, Secretary of District Legal Services Authority, DakshinDinajpur which was anchored by Sri Manishankar Chattopadhyay, Advocate of Calcutta High Court in the manner of discussion-cum-interview on Legal Services to the poor and downtrodden people of the society followed by receiving phone calls of the viewers. At least 7-8 call viewers interacted during programme.

On 30th November, 2014 a Special Lok Adalat was held at Barast organised by District Legal Services Authority, North 24 Pargans in association with the Barasat Swabalmi Pratibandi Sangathan, NGO, comprising of three Benches consisting of former Judges of the Hon'ble High Court, Calcutta, Hon'ble Mr. Justice MoloySengupta, Hon'ble Mr. Justice Pradipta Ray & Hon'ble Mr. Justice Prabir Kumar Samanta for each of the bench. 333 numbers of petitions of disabled persons were placed before the Lok Adalat out of that 191 matters have been settled. 382 disabled persons were benefitted.

On 1st December, 2014 a legal awareness programme was organised by District Legal Services Authority, Bankura at Sabala Mela, Bankura at Machantala for spreading legal awareness and activists of legal services institutions amongst the people. Legal awareness booklets & leaflets were distributed. The feature film – Otho Go Bharata Laxmi was screened. About 200 visitors were benefitted.

On the occasion of Poush Mela – 2014 at Santiniketan, Bolpur in the district of Birbhum, the State Legal Services Authority, West Bengal and the District Legal Services Authority, Birbhum have installed Legal Literacy cum Legal Awareness Camp and free legal aid clinic at Mela premises at Santiniketan – Bolpur, for wide publicity of legal awareness and propagation of legal services activities to the common people from 23rd December, 2014 to 25th December, 2014. The Chairman, District Legal Services Authority, Birbhum, the Chairman, Sub-Divisional Legal Services Committee, Bolpur, Judicial Officers, Ld. Advocates, Para-legal volunteers were present. Judicial Officers & Ld. Advocates interacted with the visitors of Literacy stall.

On 27th December, 2014 a legal literacy stall was set up organised by District Legal Services Authority, Bankura at Bishnupur Mela, Bankura at Bishnupur for spreading legal awareness and activists of legal services institutions amongst the people. The Judicial Officers, Advocates, Para-legal volunteers were present. 125 no. of persons visited and interacted with their grievances with officers. Leaflets were distributed. The feature film – Otho Go BharataLaxmi was screened. About 200 visitors were benefited.

On the occasion of the New Town Mela 2014-15 organised by New Town Kolkata Development Authority, the State Legal Services Authority, West Bengal made arrangement for three slots of Legal Literacy Drama (duration 30 minutes) for spreading the legal awareness amongst the people at the MelaPrangan, Rajarghat New Town. On 25th December, 2014, the drama – Bhola Galo Iskule by Ellora, Burdwan (drama team) focused legal awareness on right to education and prohibition of child labour, on 5th January, 2015 the drama – “Sonar Hanser Dim” by Natadha, Howrah focused on legal awareness on Child Labour, on 7th January, 2015 the drama – “Palte Debar Pala” by SantipurSanskriti, Nadia focused legal awareness on Protection of Women from Domestic Violence. Hon’ble Mr. Justice Ashim Kumar Banerjee, Judge, High Court, Calcutta and Executive Chairman, State Legal Services Authority, West Bengal, Sri AbhijitSom, Member Secretary and Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal were present on those days. The leaflets and Sishu-O-Mohila Der AiniAdhikar –O- Surakha were distributed on the said Melaprangan.

The National Lok Adalat as per direction of National Legal Services Authority was held from 2nd October, 2014 to 6th December, 2014 organised by the Legal Services Institutions, starting from High Court to Sub-Divisional/Taluk Courts in this State under the Supervision of the State Legal Services Authority, West Bengal. The Legal Services Institutions in the State of West Bengal organised National Lok Adalat comprising of 309 Benches, where 104052 number of cases were disposed of in total which include MACT – 874, Civil Suits - 96, Land Acquisition Cases-7, Compoundable Cr. Offences - 4105, Cases under M.V. Act including pre-litigation – 91616, N.I. Act u/s.138 -13, Mat Suit &

Maintenance –35, Revenue matter – 21, Execution Application – 1, Service matter – 4, Labour matter – 3, Electricity – 17, Consumer disputes – 23, Bank loan matters including pre-litigation –4122, Pre-litigation matters relating to disabled persons - 191, Pre-litigation matters – 1986, Pre-litigation Telephone matters – 675, Writ matters – 69 and other cases-194 with the awarded money Rs.588233323/- and no. of cases/matters taken up - 141072.

Orientation cum Training Programme of the newly appointed Full Time Secretaries of eight District Legal Services Authorities, Kolkata, North 24 Parganas, Nadia, DakshinDinajpur, Jalpaiguri, Darjeeling, PaschimMedinipur and PurbaMedinipur has been organised by the State Legal Services Authority, West Bengal at the Administrative Training Institute, Salt Lake, Kolkata during the period from 16th – 23rd December, 2014 for imparting training to the newly appointed Secretaries of District Legal Services Authorities as per guidelines of National Legal Services Authority, New Delhi. Hon'ble Mr. Justice Ashim Kumar Banerjee, Judge, High Court, Calcutta & Executive Chairman, SLSA, West Bengal, Hon'ble Justice Indira Banerjee, Judge, High Court, Calcutta and Chairperson, Calcutta HCLSC, Hon'ble Mr. Justice Jyotirmoy Bhattacharyya, Judge, High Court Calcutta, Hon'ble Mr. Justice Sanjib Banerjee, Judge, High Court Calcutta, Hon'ble Mr. Justice Debangsu Basak, Judge, High Court Calcutta, Hon'ble Justice Dilip Kumar Basu(Retd.), Hon'ble Justice AlopeChakrabarti (Retd.), Smt. Roshni Sen, Secretary, Child and Women Development and Social Welfare, Govt. of West Bengal, Sri Debasish Sen, Principal Secretary, Urban Development Department, Govt. of West Bengal and other eminent persons from different fields took classes apart from professional trainers in the training programme.

On 27th December, 2014 a Regional Consultation on Anti Human trafficking held at Siliguri, Darjeeling on Human Trafficking, its dimensions, challenges and existing responses, rescue, rehabilitation and reintegration of trafficked victims & role of Legal Services Authority organised by Shakti Vahini, NGO. The Secretaries of DLSAs of Malda and Uttar Dinajpur attended the said sensitization Programme.

The Legal literacy Stall of SLSA, West Bengal was set up at the Fair of Physically challenged Persons held at RabindraSadon,

Kolkata 4th – 5th December, 2014 organised by Government of West Bengal for wide publicity about the activities of Legal Services Institutions under the Act and Schemes of NALSA with special reference to Scheme for Legal Services to the Mentally ill persons and persons with Mental Disabilities, 2010. Sri Abhijit Som, Member Secretary and Sri Anjan Kumar Sengupta, Registrar-cum-Deputy Secretary of State Legal Services Authority, West Bengal, Smt. Mou Chatterjee, Secretary, District Legal Services Authority, Kolkata attended in the said campaign. Leaflets and legal awareness books were distributed.

ANDAMAN & NICOBAR ISLANDS

Legal Awareness Camps : 4 Legal Awareness Camps were organised during the quarter October, 2014 to December, 2014.

Human Rights Day : International Human Rights Day was observed by the State Legal Services Authority in collaboration with the District Legal Services Authority, A & N Islands on 10/12/2014 where the Member Secretary, SLSA, Mr. Sudip Niyogi, Mr. Asit Kumar Dey, District & Sessions Judge and Chairman DLSA spoke on the occasion and highlighted about the importance of human rights and also what they are precisely meant.

On 27/12/2014, awareness camps about Human Rights were organized jointly by the SLSA and DLSA at Panchayat Hall at Keralapuram, Diglipur, North Andaman and at Sundargarh, Baratang on 28/12/2014, Middle Andaman.

Essay Competition: Following the resolution of 12th All India Meet of State Legal Service Authorities at Lucknow in March, 2014 a 3-tier essay competition on Fundamental Duties was conducted in the month of October, 2014. The theme of the competition: - "Fundamental Duties of a Citizen" for elementary level, "Fundamental Duties: Essence of a Good Citizen" for secondary level and "Importance of Fundamental Duties in Nation Building" for college level. All together 1093 students from all over the A & N Islands participated in the competition which was held in 9 educational zones of this Union Territory.

The first three candidates from each category were selected for first, second and third prizes respectively. That apart, the next five candidates from each category were selected for consolation prizes. Winners were felicitated on 6th December, 2014 with a cash

prize and certificates. On this occasion, Hon'ble Mr. Justice Soumitra Pal, Executive Chairman, SLSA was the Chief Guest and Hon'ble Mr. Justice Joymalya Bagchi, Judge, High Court, Calcutta and holding Circuit Bench at Port Blair was the Guest of Honour. Mr. G. ThevaNidhiDhas, Secretary Law/Tribal Welfare, A & N Administration, Director Mr. R. Devdas, State Institute of Education (SIE) and many other dignitaries were also present.

National Lok Adalat : The 2nd National Lok Adalat was held on 6th December, 2014 at the ADR Centre, Port Blair. Two benches and three special sittings of magistrates disposed of cases, both pending and pre-litigation. No. of cases disposed of as under:-

1. Criminal cases of minor offences – 348
2. MACT case – 1
3. Pre-litigation – 92

CHANDIGARH

Lok Adalats and Mediation Centre : One Quarterly Lok Adalat (31.10.2014) and National Lok Adalat (06.12.2014) were organised. A total number of **164244** cases were settled, compensation of **Rs. 400606526/-** was awarded and an amount of **Rs. 131275843/-** was recovered as fine.

During the quarter ending December 2014, Permanent & Continuous Lok Adalat Settled **08 cases** at pre-litigative stage. **06 referred cases** were settled in the District Courts.

Permanent Lok Adalat for Public Utility Services disposed of **282 cases** and an amount of **Rs. 452500/-** was awarded as compensation.

Mediation and Conciliation Centre functional in the District Courts Complex, Sector 43, Chandigarh settled **cases 118** cases during the quarter.

Two Daily Lok Adalats established in the premises of Court of Punjab and Haryana, Chandigarh are functioning on all working days. These Lok Adalats have settled **187 cases** and an amount of **Rs. 29922385/-** has been awarded as compensation in Motor Accident Claim Cases.

Legal Aid : During the quarter, free Legal Aid was provided to **244 beneficiaries** under Section 12 of the Legal Services Authority Act, 1987.

Legal Awareness Programmes : During the quarter, the Authority organized **109 Seminars/Legal Awareness camps/Workshops** on various dates at different venues in Chandigarh. The details are given below:

1. Regional Colloquium on “Pure Food : A Fundamental Right”: SLSA, U.T., Chandigarh in association with Department of Health and Family Welfare, Government of Punjab and Food Safety and Standards Authority of India organized a regional Colloquium on Pure Food: “A fundamental right” on 18th October, 2014 at Chandigarh Judicial Academy, Sector 43-D, Chandigarh. The colloquium was inaugurated by Hon’ble Mr. Justice A.K. Sikri, Judge, Supreme Court of India.

The Hon’ble Judges from the High Courts of Punjab and Haryana, Allahabad, Delhi, Rajasthan, Uttrakhand and Jammu and Kashmir, representatives of Centre and State Governments, Judicial, Officers and other dignitaries from northern region of the country participated in the Colloquium. The proceedings of the Colloquium were also telecast live in the adjoining convention Hall, to enable the Trainee Judicial Officers to have access to the deliberations, for the constraints of space in the Auditorium, which was packed to capacity.

Hon’ble Mr. Justice A.K. Sikri, while inaugurating the Regional Colloquium, emphasized on the strict implementation of the provisions of the Food Safety and Standards Act, 2006, the pure food being a Fundamental right. He highlighted the double standards of the MNCs, which are preparing the food articles for their respective countries in strict compliance with the Rules and Regulations of the said countries, but when it comes to India these very companies prepare the adulterated food items.

Hon’ble Mr. Justice Ashutosh Mohunta, the then Acting Chief Justice, Punjab and Haryana High Court emphasized that Right to Pure Food has to be considered as fundamental human right and to ensure that Pure Food is available for all, the existing food law has to be strictly enforced.

Hon’ble Mr. Justice M.M. Kumar, the then Chief Justice, Jammu and Kashmir High Court, emphasized on the need for having a strong legislation as well as regarding setting up necessary infrastructure and trained and dedicated manpower and well

equipped to implement the provisions of the Act in their letter and spirit.

Hon'ble Mr. Justice Hemant Gupta raised the concerns about the uncontaminated and healthy food being a big challenge despite the legislation of the various statutes including the Food Safety and Standards Act, 2006. He stressed upon fixing of responsibility of the manufacturers in case the food products were found to be not meeting the prescribed standards.

Dr. Sunita Narain stressed upon the need for having strong legislation. While raising her serious concerns about the adulterated food items, she referred to the instances of antibiotic having been found in the samples of honey and chicken tested in the laboratories.

The Colloquium comprised of two Working Sessions wherein the eminent jurists, experts and stake holders deliberated on different issues. In the First Working Session the subjects ranging from Consumer Awareness, Food Business Operators' responsibility to New Horizons and Emerging Issues in Food Safety were discussed. In the Second Working Session, Responsibilities of State Food Authorities, Enforcement Practices of State Government & Offences, Penalties, Compensation and Effective Adjudication formed the subject matter of deliberation.

2. Legal Awareness camps at Government Institute of Mentally Retarded Children, Sector 32, Chandigarh : Legal Awareness Camps for the benefit of Mentally ill patients and their guardians were held on 9th, 16th, 30th October, 6th, 13th, 20th, 27th November and 4th, 11th, 18th December at Government Institute of Mentally Retarded Children, Sector 32, Chandigarh. The Authority deputed Ms. Savita Saxena, Advocate Ms. Harman Preet Kaur, and Sh. Nitish Saxena PLV, to visit the institute. The care givers/guardians of the Mentally retarded patients were given guidance and awareness on the legal rights of these patients.

3. Legal Awareness camp in Chandigarh Carnival : The Authority created awareness to the visitors in the Chandigarh Carnival on 28.11.2014 to 30.11.2014 by establishing a stall. Staff and Para Legal Volunteers distributed pamphlets to public and told them about the activities/schemes of Legal Services Authority. Several hundred people visited the stall of the Authority in the carnival.

4. Awareness camps and Surveys in the villages and colonies of Chandigarh : Three Awareness camps and Surveys were organized by the Authority on 12.11.2014 in Ramdarbar, on 19.11.2014 at villages Burail and on 26.11.2014 in Palsora. The Mobile Legal Awareness Camps-cum-surveys were organized at these villages of Chandigarh by the Para Legal Volunteers with the help of law student Interns pursuing internship with the Authority. The people of these villages were told about the services being offered by the Authority. They were also told about their Rights, Duties and Government Welfare Schemes.

5. Legal Literacy Camps in schools of Chandigarh : 25 legal literacy camps were organized by SLSA, U.T, Chandigarh in different schools of Chandigarh. In these camps /classes, the subjects of discussion primarily included fundamental duties, juvenile Justice, Rights of Women and Children, Rights of specially abled, Rights of Senior Citizens, E-Courts, Protection of Children from Sexual Offences Act, 2012, Sexual harassment at work places, Mediation, Lok Adalats, Drug Abuse, Improvement of Literacy and Life Skills and Empowerment of Children and Women of the disadvantaged sections of society. Para legal Volunteers and Law students interning with Authority were speakers in these camps.

Refresher/Orientation/Training Programmes :

1. Advanced Training of Trainers Programme : An Advanced Training of Trainers Programme (TOT) for trained mediators was conducted on 4th October to 6th October 2014 by Legal Services Authorities of Punjab, Haryana and Chandigarh. Mrs. Manjit Kaur, and Sh. Harish Chhabra Trained mediators from Chandigarh were given advanced training by Ms. Shailender Kaur and Dr. Sudhir Kumar Jain Resource Persons from Mediation and Conciliation Project Committee, Hon'ble Supreme Court of India.

2. Refresher Programmes for the Panel Lawyers organized at Chandigarh Judicial Academy : The Authority conducted a refresher Course for the Lawyers/Para Legal Volunteers/Mediators on 28.10.2014 in Chandigarh Judicial Academy as per the directions of NALSA, New Delhi. The total of 28 Advocates/PLVs/Mediators attended the same. They were told about the issues relating to Sexual harassment at work places and Laws related to property by Mrs. Manjit Kaur and Sh. Baljeet Singh, Advocates respectively. A round of interaction followed the lectures.

The Authority conducted a refresher Course with the Lawyers/Para Legal Volunteers/Mediators on 27.11.2014 in Chandigarh Judicial Academy as per the directions of National Legal Services Authority, New Delhi. The total of 24 Advocates/PLVs/Mediators attended the same. They were told about the Laws relating to disadvantaged sections i.e. Schedule Caste, Schedule Tribe etc by Mrs. Seema Pasricha, Advocate. Later on a round of discussion was conducted among the audience.

3. Induction-cum-Orientation Programme for new Panel Lawyers : The Authority conducted an Induction-cum-orientation programme for new Panel Lawyers on 17.12.2014 in Chandigarh Judicial Academy. The total of 38 Advocates attended the same. Sh. Lal Chand, Member Secretary, addressed the gathering and sensitized them about the procedure to be adopted while dealing with the Legal Aid cases. They were also apprised of the schemes and working of the Authority by Mr. Rajeshwar Singh, Law Officer of this Authority.

4. Para Legal Volunteers Training : Para Legal Volunteers Training programme was conducted in Senior Citizen Home on 05.11.2014. The participants were given the training on the topics of POCSO, Women and their Rights, Social Welfare Schemes etc.. 60 Social workers and Mission Purna Shakti staff from the department of Social Welfare participated in the programme.

Visits to Model Jail Chandigarh : Sh. Lal Chand, Member Secretary, State Legal Services Authority, U.T. Chandigarh visited the Model Jail, Chandigarh regularly during the quarter to monitor the legal aid services to the Jail inmates. Sh. Rajeshwar Singh, Law Officer visited Model Jail, Burail, Sector 45, Chandigarh and interacted with the inmates of each barrack on every Monday of the week. He provided free legal aid to unrepresented inmates.

On every alternate day Advocates deputed by the Authority visited the jail. They interacted with the inmates of each barrack and provided free legal aid to unrepresented inmates. A total number of 51 visits were conducted to Model Jail, Chandigarh during the quarter.

DADRA & NAGAR HAVELI

The following programmes were organised during the quarter October, 2014 to December, 2014:

Date	Subject	Venue	No. of Persons Benefited
01.10.2014	Observance of "Senior Citizen Day"	District Court, Silvassa	105
10.10.2014	Observance of "World Mental Health Day"	District Court, Silvassa	111
10.11.2014	Observance of "National Legal Services Day"	District Court, Silvassa	80
14.11.2014	Observance of "Children's Day"	District Court, Silvassa	100
26.11.2014	Observance of "Law Day"	District Court, Silvassa	115
01.12.2014	Observance of "World HIV/Aids Day"	District Court, Silvassa	90
03.12.2014	Observance of "Disability Day"	District Court, Silvassa	110
10.12.2014	Observance of "Human Rights Day"	District Court, Silvassa	85

DAMAN & DIU

Legal Awareness Programmes were organised on 10.10.2014 – "World Mental Health Day", 26.11.2014 – "Law Day" and on 10.12.2014 – Human Rights Day. The programme was attended by large number of people including advocates, senior citizens, social workers, PLVs, general public.

National Lok Adalat was organised on 6.12.2014 in which 5 criminal matters, and 6 civil matters pending in the court were settled. 1 pre-litigation matter was settled in Lok Adalat.

DELHI

Lok Adalats :In the quarter October, 2014 to December, 2014, Delhi SLSA organized National Lok Adalat on 6th December, 2014 at all the six District Courts Complexes and also at High Court level. The category wise detail of cases disposed of in National Lok Adalat is as under:-

Sl. No.	Types of Cases	No. of Cases Disposed of	Settlement Amount
1.	Criminal Cases	2379	27,62,304/-
2.	NI Act Cases	512	1,75,09,862/-
3.	Bank Cases	395	38,85,69,953/-
4.	MACT Cases	702	16,15,58,313/-
5.	Matrimonial Cases	252	49,60,100/-
6.	Labour Cases	59	12,99,293/-
8.	Civil Cases	1693	2,64,60,145/-
9.	Revenue Cases	87	-
10.	Execution Applications	104	34,62,820/-
11.	Electricity/Theft & Water	672	4,13,46,585/-
12.	Services Matters	01	-
13.	Traffic Challans	58050	6,46,580/-
14.	Misc. Appeals	09	10,54,040/-
15.	Excise	10	5000/-
16.	Telephone	317	12,43,404/-
17.	Municipal Department	1168	2,80,066/-
18.	Consumer Disputes	261	5,08,76,307/-
19.	Petty Criminal Cases	343	51,05,700
20.	High Court	47	1,64,17,198/-
	Total	67,061	72,35,57,670/-

Besides the above, 804 cases were also disposed of by Permanent Lok Adalats, in which settlement amount was Rs. 3,02,58,167/-.

Legal Literacy :

➤ **Legal Awareness Programme at GRCs/NGOs**

During the abovesaid quarter, DSLSA organized **548 Legal Awareness Programmes** at Gender Resource Centres/NGOs on the topics of “Fundamental Rights under Constitution of India, Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and various schemes available for them, Protection of Women from Domestic Violence Act, Mental Health Act and NALSA Scheme for Legal Services to Mentally Ill Persons, availability of Free Legal Services to Socially and Economically Weaker Sections of Society, Human Rights, Prohibition of Employment of Children and awareness programmes for RWAs on the topic of Prevention of Corruption Act etc.

People were also made aware about the functioning & activities of DSLSA, provision of free legal services provided by DSLSA & District Legal Services Authorities.

➤ **Inauguration of Mass Legal Literacy Campaign and Opening of Legal Literacy Clubs in Schools and Colleges**

On 27th October, 2014, DSLSA held the Inaugural Function of Mass Legal Literacy Campaign and Opening of Legal Literacy Clubs in Schools and Colleges at Plenary Hall, VigyanBhawan, New Delhi. The Chief Justice of India, Chief Justice of High Court of Delhi and other Hon'ble Judges of Supreme Court of India and High Court of Delhi were present on the occasion. **In order to execute this campaign, on 28th October, the DLSAs organized 858 Legal Literacy/Awareness Programmes** at Schools on the topic of Fundamental Duties. The other topics included were: Traffic Laws, Cyber Laws, POCSO Act, PWDV Act etc. The Judicial Officers/Lawyers were the resource persons in these programmes.

➤ **Legal Awareness Programme for School/College Students**

Besides the abovementioned **858 Legal Literacy/Awareness Programme**, during the abovesaid quarter, **820** Legal Awareness Programmes were also organized by the DLSAs for Schools students on the topics of Fundamental

Rights & Duties under the Constitution of India, Traffic Laws, Protection of Children from Sexual Offences Act, 2012, Cyber Laws and cautions to be exercised while Net Surfing with special reference to Social Media and all Offences in sync with My Delhi Safe Delhi Campaign. The programmes were also organized in Girls schools on the topic "How to protect from eve-teasing and techniques of Self-Defence".

Besides the above, on 30th October, the Office on Special Duty, DSLSA gave a lecture on the topic of "Legal Literacy" and on 31st October, the Member Secretary, DSLSA gave a lecture on the topic of "Protection of Children from Sexual Offences Act" at Delhi Public School, Dwarka.

➤ **Essay Competition in Schools**

In the month of November, 2014, the North-East District Legal Services Authority organized Essay Competition in 05 schools on the topic of "Cleanliness".

Besides the above, in the month of December, 2014, the DLSAs have also organized essay competitions in 90 schools on the topic of "Fundamental Duties".

➤ **Awareness Programme at Home for Mentally Retarded Persons**

On 30th October, 2014, the Secretary, West DLSA organized an awareness programme at Home for Mentally Retarded Persons, Asha Kiran Complex, Avantika, Rohini on the topic of Mental Health Act and NALSA Scheme for Legal Services to Mentally Ill and Persons with Mental Disabilities.

➤ **Awareness Programme at Ram Manohar Lohia Hospital**

On 3rd December, 2014, the New Delhi DLSA organized a legal awareness programme at Ram Manohar Lohia Hospital on the topic "Mental Health Act".

➤ **Visit of Trainee Judicial Officers**

On 1st November, 2014, 12 Judicial Officers from

Tripura Judicial Service, who were undergoing Training at Delhi Judicial Academy, visited Central Office, DSLSA. The Judicial Officers were briefed regarding the Legal Services Authorities Act, 1987 and the organizational structure of DSLSA. They were also made aware about the legal aid activities of DSLSA. The documentary “Nyaya Ki Aur” was also shown to them.

➤ **Visit of Delegation from Afganistan**

On 24th November, a delegation from Afganistan through Lawyers’ Collective visited Central Office of DSLSA. They were briefed regarding the Legal Services Authorities Act, 1987, organizational structure of DSLSA and the legal aid activities of DSLSA. The documentary “Nyaya Ki Aur” was also shown to them.

➤ **Celebration of Children’s Day**

- DSLSA in association with Children Home Bachchiyon Ka Ghar and Bachchon Ka Ghar, Matiya Mahal, Delhi celebrated Children’s Day on 14th November at Delhi Medical Association Hall, Daryaganj, Delhi.
- The East DLSA in coordination with Shahdara DLSA, Department of Women and Child Development and Saakar -NGO organized **Sports Meet Srijan: Celebrating Childhood** from 10th Nov. to 14th Nov., 2014 wherein inmates of JJB-I participated in various sports activities and in order to encourage and appreciate the participants, prizes/medals etc. were also distributed amongst the participants.

➤ **Celebration of World AIDS Day**

DSLSA participated as Principal Partner in the various programmes organized by Bhagidari Jan Sahyog Samiti and Pragati Path Foundation on the occasion of World AIDS Day, 2014.

Three Sessions of Competitions were organized for the students of 9th to 11th Class.

1. Delhi State Poster Competition was held on 20th Nov. at Community Hall, Babar Road, Bengali Market, New Delhi

2. Delhi State NukkadNatak Competition was held on 21st Nov. at the above said venue.
3. Delhi State Speech Competition was held at 23rd Nov. at Conference Hall, 1st Floor, NDMC Convention Centre, Sansad Marg, New Delhi.

All the 03 above said competitions were attended by the Secretary, New Delhi DLSA.

Besides the above, on 29th November, the Member Secretary and OSD, DSLSA also attended the Seminar and Prize Distribution Session at Auditorium, NDMC Convention Centre, Sansad Marg, New Delhi.

➤ **Training Programme for Officers/Officials of Delhi Police**

The Secretaries organized/addressed **81** Legal Literacy Programmes for officers/officials of Delhi Police at various Police Stations/DCsP Offices/Specialized Police Training Centre at Rajender Nagar, Delhi and gave lectures on various topics including "Missing Children and Victims of Rape – Guidelines and Judicial Directions, Juvenile Justice System, Roles and Responsibilities of Police Officers in dealing with offences against women and children, Juvenile Justice System, PC & PNDT Act, PWDV Act, POCSO Act, Maintenance and Welfare of Parents and Sr. Citizens Act, Amendment in Criminal Law and Support services of DSLSA to Police Officials for well being of children etc.

Besides the above, on occasion of Human Rights Day on 10th December, the New Delhi DLSA organized **18** programmes at Police Stations.

➤ **Awareness Programmes at Jails and Observation Homes**

The DLSAs organized **53** awareness programmes at jails and 84 awareness programmes were also organized by Shahdara and New Delhi DLSAs at Observation Homes.

Besides the above, On 22nd December, 2014, the North-East DLSA organized a Sensitization Programme for jail inmates at Central Jail No. 6 (Women Jail) on the topics of "Remission, Parole and Furlough". The students and

faculty from Tata Social Research Institute, Mumbai also participated in this programme and the South-East DLSA also celebrated Human Rights Day on 10th December at Jail No. 7.

➤ **Legal Awareness Programme for Senior Citizens at Old Age Homes**

The DLSAs organized **08** awareness programmes for Senior Citizens at Old Age Homes on the topic “Maintenance and Welfare of Parents and Senior Citizens Act, 2007”.

Besides the above, in order to celebrate Human Rights Day on 10th December, 2014, the North-East DLSA organized Elder’s Meet and held a legal literacy programme on the topic of “Maintenance and Welfare of Parents and Sr. Citizens Act, 2007” and on 28th December, 2014, the South-East DLSA organized an awareness programme at Sr. Citizen’s Forum, Lajpat Nagar-IV on the topic of Protection of Women from Domestic Violence Act, 2005 and Maintenance and Welfare of Parents and Sr. Citizens Act and

Legal Aid

➤ **Visits to Jails and Observation Homes**

Under Project of the year adopted by Delhi SLSA, in order to ensure that legal rights of the inmates are not lost on account of lack of information and lack of assistance and also to support to enforce those rights, the Secretaries have made **28** visits to the Jails and **16** visits to Observation Homes in Delhi.

Besides the above, on 15th November and 23rd December, 2014, the Secretary, East DLSA made visits to Institute of Human Behaviour and Allied Science (IHBAS) and organized awareness programmes on Mental Health Act.

➤ **Training Programmes for Legal Services Council**

The DLSAs have organized **29 Training Programmes for Legal Services Council**. The topics for the training programme were: Issues relating to Juveniles age verification, ,

Client Counselling & Ethics, Order-I (Parties to Suit) and Statement of Accused u/s 313 Cr. PC, Order 23 CPC (Law on Compromise) and Protection of Women from Domestic Violence Act etc.

Besides the above, on 1st November, 2014, a training programme was also held for the Chairpersons and Members of Child Welfare Committees at Conference Hall, Central Office, DSLSA.

➤ **Opening of Legal Services Clinics**

In the abovesaid quarter, the DSLSA has opened 02 new Legal Services Clinic.

First Legal Services Clinic was opened at Law Centre-II, University of Delhi on 17th November, 2014 and second clinic was opened at Central Jail No. 7, CPRO Building, Gate No. 3, Tihar Jail Complex, New Delhi on 10th December, 2014.

➤ **Beneficiaries of Legal Services**

During the quarter October to December, 2014, Delhi State Legal Services Authority has provided legal aid/assistance to following number of persons:

Category	No. of Persons
Schedule Caste	98
Schedule Tribe	03
Women	1579
Children	04
In custody	3074
General	828
Others	1680
Total	7266

Besides the above, in the abovesaid quarter, the Delhi State Legal Services Authority also dealt with

- 487 cases of DAR/MACT Cases.
- 753 cases of Missing Children.
- 231 cases of victims of sexual assault
- Under Delhi Victims Compensation Scheme, 2011, compensation awarded in 223 cases, in which awarded amount was Rs. 2,14,51,000/-.

Statistical Information

NATIONAL LEGAL SERVICES AUTHORITY

STATEMENT SHOWING THE NUMBER OF PERSONS BENEFITTED THROUGH
LEGAL AID AND ADVICE HELD BY STATE LEGAL SERVICES AUTHORITIES UNDER
LEGAL SERVICES AUTHORITIES ACT, 1987, SINCE INCEPTION (AS ON 31.12.2014).

S.No	State	SC	ST	BC	Women	Children	incustody	General	Total
1	Andhra Pradesh	7,092	5,677	9,887	12,615	1,359	10,232	30,720	77,582
2	Arunachal Pradesh	165	1,408	78	352	4	63	1,523	3,593
3	Assam	38,176	28,442	8,205	25,236	1,389	558	123,428	225,434
4	Bihar	4,909	1,410	8,55	6,949	1,148	1,672	18,183	42,824
5	Chhattisgarh	43,927	52,820	41,693	33,747	6,755	32,086	31,454	242,482
6	Goa	73	22	315	2,089	73	3,525	1,599	7,696
7	Gujarat	15,451	8,491	1,253	30,568	562	12,569	43,366	112,260
8	Haryana	39,470	104	1,165	10,252	540	37,243	14,081	102,855
9	Himachal Pradesh	140	167	67	6,192	136	229	5,209	13,140
10	Jammu & Kashmir	1,498	403	991	17,309	779	325	11,992	33,297
11	Jharkhand	1,396	2,072	2,438	3,234	396	3,976	3,113	16,625
12	Karnataka	8,957	2,064	19,938	14,170	178	239	87,190	132,736
13	Kerala	2,073	526	2,63	14,589	795	20,448	157,763	198,824
14	Madhya Pradesh	313,934	268,124	224,337	84,586	9,594	56,469	677,702	1,634,746
15	Maharashtra	49,478	36,143	23,324	98,808	2,289	26,574	3,699,889	3,936,505
16	Manipur	2	22	14	115	15	6	2,361	2,535
17	Meghalaya	310	947	65	138	396	947	144	2,947
18	Mizoram	233	31,627	2,48	4,696	516	4,438	6,207	50,204
19	Nagaland	940	3,738	1,344	1,650	577	2,047	391	10,687
20	Odisha	32,344	21,800	1,584	36,381	559	4,369	39,035	136,072
21	Punjab	10,240	562	4,893	14,110	873	38,916	28,478	98,072
22	Rajasthan	19,332	27,562	8,330	17,364	757	21,867	24,464	119,676
23	Sikkim	120	476	29	2,154	244	3,205	687	6,915
24	Tamil Nadu	196,533	24,096	226,410	419,755	3,286	32,747	4,574,207	5,477,034
25	Telangana	57	27	30	463	158	400	373	1,508
26	Tripura	625	476	133	5,618	311	1,722	4,092	12,977
27	Uttar Pradesh	793,297	101,920	629,901	376,755	140,672	16,610	2,545,020	4,604,175
28	Uttarakhand	3,048	1,615	397	3,501	1,830	1,515	18,763	30,669
29	West Benga	6,337	2,922	2,829	24,696	1,386	15,537	20,132	73,839
30	Andaman& Nicobar Islands	-	-	-	207	-	1,183	403	1,793
31	U.T. Chandigarh	575	10	55	1,297	185	5,761	556	8,439
32	Dadra and Nagar Haveli	-	4	-	291	150	19	523	987
33	Daman & Diu	1	2	4	72	120	40	214	453
34	Delhi	5,963	329	364	55,200	8,349	110,075	97,749	278,029
35	Lakshadweep	-	2	-	-	-	1	2	5
36	Puducheery	22,206	36	15,962	21,813	4,478	863	6,415	71,773
37	Supreme Court (L.S.C).	1,256	252	1,795	2,644	23	6,430	10,156	22,556
TOTAL :		1,621,158	626,298	1,241,500	1,349,616	190,882	474,906	12,287,584	17,791,944

Statistical Information

NATIONAL LEGAL SERVICES AUTHORITY
STATEMENT SHOWING THE NUMBER OF LOK ADALATS HELD
BY STATE LEGAL SERVICES AUTHORITIES UNDER LEGAL SERVICES AUTHORITIES
ACT 1987 AND CASES SETTLED SINCE INCEPTION (AS ON 31.12.2014).

S. No.	State	No. of Lok Adalats held	No. of MACT Cases Settled	No. of Cases Settled (including MACT Cases)	Compensation Awarded in MACT Cases (in Rs.)
1	Andhra Pradesh	202,754	136,815	2,006,740	15,440,952,033
2	Arunachal Pradesh	636	972	6,136	36,876,176
3	Assam	4,135	29,968	412,773	2,359,566,962
4	Bihar	26,538	135,721	1,087,525	1,088,268,237
5	Chhattisgarh	15,863	11,836	5,012,544	1,996,562,825
6	Goa	968	5,267	13,740	374,166,281
7	Gujarat	147,727	211,218	7,688,151	14,552,767,448
8	Haryana	82,142	39,312	1,663,342	4,155,491,293
9	Himachal Pradesh	9,131	6,356	236,866	956,833,761
10	Jammu & Kashmir	5,117	11,010	326,774	2,564,061,132
11	Jharkhand	26,513	5,580	4,590,103	856,931,050
12	Karnataka	149,643	155,754	2,806,574	8,952,271,490
13	Kerala	38,484	152,251	424,483	7,602,498,154
14	Madhya Pradesh	38,558	203,586	13,584,948	15,193,997,005
15	Maharashtra	40,510	104,352	2,641,954	17,520,230,806
16	Manipur	93	1,416	3,185	166,620,000
17	Meghalaya	180	973	9,283	127,966,406
18	Mizoram	1,428	240	2,357	6,094,080
19	Nagaland	253	1,433	3,599	183,082,023
20	Odisha	15,170	52,937	4,757,225	4,568,076,474
21	Punjab	29,200	18,525	1,852,144	1,970,724,150
22	Rajasthan	184,751	620,441	3,278,960	8,850,986,207
23	Sikkim	1,860	160	6,938	9,101,000
24	Tamil Nadu	261,435	233,902	6,153,892	39,080,581,486
25	Telangana	3,381	4,053	152,268	1,091,587,791
26	Tripura	1,158	4,664	95,954	149,855,318
27	Uttar Pradesh	48,045	90,054	13,987,106	9,244,082,297
28	Uttarakhand	1,766	5,008	354,787	649,832,326
29	West Bengal	22,882	40,612	1,521,189	3,744,350,181
30	Andaman and Nicobar Islands	266	32	6,496	7,848,468
31	U.T. Chandigarh	8,563	20,032	669,649	1,647,254,009
32	Dadra and Nagar Haveli	20	119	2,207	12,007,699
33	Daman & Diu	25	61	1,940	3,099,000
34	Delhi	14,593	22,760	1,294,704	3,766,737,012
35	Lakshadweep	319	11	172	435,000
36	Puducherry	1,174	9,130	57,206	448,352,729
37	SCLSC	8	44	81	-
	TOTAL	1,385,289	2,336,605	76,714,195	1,69,380,148,309