

(1)

**REPORT OF NJA CONFERENCE ON ADJUDICATION OF
ISSUES RELATING TO WOMEN AND CHILDREN.-by Sri N.
Senabaya Deori, CJM, Tinsukia.**

On 06-09-12 at 11.30 a.m., the Director of NJA, Dr. Balram Gupta presented his introductory lecture welcoming all the Judges and Magistrates/ participants of lower Judiciary representing various states of India.

At 10.40 a.m. the resource person, Ms. Geeta Rameseshan delivered his lecture on Right & concerns of Women & Children Constitutional Prospective.

At 11.45 a.m. Prof. Preeti Saxena delivered his lecture on Issues relating to women and children and International Law & its Impact on India.

At 2.00 p.m. Ms. Geeta Ramesseshan delivered his lecture on the topic of Recent Developments in Laws relating to Women & Children.

At 3.45 p.m. Sri Anil Malhotra delivered his lecture on the topic of NRI Marriages: Implication in Litigation relating to Women & Children.

On 07-09-12 at 09.30 a.m., a group discussion held in presence of Hon'ble Mr. Justice K. Kannan on the Challenges in Implementing the Laws relating to Women & Children.

At 11.30 a.m. the resource persons, Hon'ble Mr. Justice K. Kannan and Anil Malhotra delivered their lectures on the topic of Adoption & Surogacy- Concerns & Judicial Response.

At 2.00 p.m. Justice K. Kannan delivered his lecture on the topic of PC & PNDT Act-Issues & Judicial Response.

At 3.45 p.m. Dr. LN Suman delivered his lecture on the topic of Perspective on Child Custody-Psychological Approaches to Identify the Best Interest of the Child.

On 08-09-12 at 09.30 a.m., Justice Anjana Prakash and Prof. BB Pande initiated their deliberation on the topic of Crime against Women & Children-Response of Courts.

At 11.45 a.m. the resource person, Hon'ble Mrs. Justice Anjana Prakash delivered her lecture on the topic of Court Room Conduct & Court Room Procedures in cases relating to women & Children.

In summing up the entire lectures/deliberation of the resource persons on the issues relating to women & children are as follows:

As per data of 2012, Crime against women are:

1.	Kidnapping & abduction of women & Girl.	38262	1.6%
2.	Assault on women with intent to outrage her modesty.	45351	1.9%
3.	Insult to the modesty of	9173	0.4%

(2)

	women		
4.	Cruelty by husband or his relatives	106527	4.5%
5.	Importation of girls from foreign countries.	59	0.0
Total		244270	10.2%

The aggravating circumstances which leads to the commission crime are:

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.
2. The offence was committed while the offender was engaged in the commission of another serious offence.
3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
5. Hired killings.
6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
7. The offence was committed by a person while in lawful custody.
8. The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Code of Criminal Procedure.
9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.
10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/ uncle and is inflicted with the crime by such a trusted person.
11. When murder is committed for a motive which evidences total depravity and meanness.
12. When there is a cold blooded murder without provocation.
13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Constitutional Provisions relating to Children

Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation. Article 15(3) of the Constitution has provided the State with the power to make special provisions for women and children. Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word "life" in the context of Article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right.

Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injuries to their health and personality. Article 24 expressly provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. This Court has issued elaborate guidelines on this issue.

The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self-imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.

Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually, Article 45 recognizes the importance of dignity and personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years. 28. The Juvenile Justice Act was enacted to provide for the care, protection, treatment,

(4)

development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes or neglected juveniles and special homes for delinquent or neglected juveniles.

In respect of sentencing a convict person, it was held in *Shyam Narain Vs. The state of NCT of Delhi*, AIR 2013 SC 2209 that 'Primarily it is to be borne in mind sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim'.

In case of reduction of sentence, an adequate and special reasons shall be given by the Appellate Court (*State of Rajasthan Vs. Vinod Kumar*). In case of Offence under section-376(2) IPC, it is not safe to compromise because the victim/prosecutrix might have been pressurized. Some of the offences under section-375 IPC of amended provision having consistent with the Protection of Children from Sexual Offences Act, 2012 (POCSO), however, the provision of POCSO is gender Neutral.

In respect of PC-PNDT Act, i.e. Killing of female foetus is of much concerned and is being misused as observed in *Radiological and Imaging Association Vs. Union of India*. It requires silent observer by Appropriate Authority.

Regarding NRI Marriage, expressed the views in *Y. Narasimha Rao & Ors. Vs. Y. Venkata Lakshmi and Anr.* That the rule can be deduced for recognizing foreign matrimonial judgment in this country and the jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent

(5)

voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law.

In respect of Custody of Child, the best interest of the Child is to be taken into account. To protect the visitation Right, the party may approach the court, (Ruchi Majoo Vs. Sanjeev Majoo). In Bachpan Bachao Andolan vs. Union of India, direction was given to the State authorities to set up Shelter Homes for the Children. In Sakshi Vs. Union of India, laid down the suggestion, how to hold the trial/inquiry of the Child sex abuse or Rape.

1. The provisions of Sub-section (2) of Section 327 Cr.P.C. shall, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.
2. IN holding trial of child sex abuse or rape:
 - (i) a screen or some such arrangements may be made where the victim or witness (who may be equally vulnerable like the victim) do not see the body or face of the accused; (ii) the questions put in cross-examination on behalf of the accused, is so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
 - (iii) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

That's apart, the resource persons laid emphasis that the Judges should not only be active but also be activist and of course to excel within the purview of law. A Judge must be dispassionate, person of integrity, sensitive to the issues relating to crime and must have social accountability. They have also laid emphasis more on incompatibility, fiction of laws and the gray areas. There shall be an effort to evoke a balance between the crime and the victims and to maintain the proportionate punishment.

'BEST OF LUCK' to all the participants of the country at NJA, Bhopal by Director, Dr. Balram Gupta.

(Sri N. Senabaya Deori)
CJM, Tinsukia,

(6)

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