



SJA NEWSLETTER

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TOPIC OF THE MONTH

Constitutional Obligation of the Judiciary

To understand and appreciate fully the true constitutional obligations of Judiciary may I begin by mentioning the current perception of the Judiciary in India society. It would be no exaggeration to say that our countrymen have placed us on the highest pedestal and they have really put us at a *dizzy* height. This goes to show the manner in which the people of our country appreciate and praise what they consider to be good work done by the Judiciary. The beauty of this country is that the people praise you and elevate you to dizzy heights merely for doing your duty. It should set us thinking and it requires great reflection. Are we giving them back their due? Is the return to them commensurate with what they have given us?

There is an old saying, "It may be easy to get at the top but it is not easy to stay there". In the onward ascent to the summit, there may be several factors which may weigh. May be, the path which you tread to the summit at that time is not too arduous. May be, your competitors are not as skilful and, therefore, the competition to get to the top is less. But then, if you want to stay at the top, you have to justify being there by constantly improving your equipment so that even when the competition is tougher, you can withstand the same and continue to remain there. If you lose sight of this fact and are not constantly

aware and you are led away by the euphoria of the time, I have no doubt that success would be short-lived. The resultant failure to be where you have been placed is not merely your personal failure but because of the nature of the constitutional obligations entrusted to you, would be the failure of the role assigned to you by the Constitution in the governance of the State. Therefore, it would be a failure of the constitutional obligation entrusted to you, the Judiciary.

Ultimately each one of us does that which we are assigned as our role under the Constitution to do. The great Roman Statesman, Cicero said "The chief law is public good". These words summarise the entire reason for the entrustment of certain powers to each one of us in the three separate wings of governance, so that in the discharge of our duty, we always bear in mind that justice is to be administered according to law and that the chief law is public good. Therefore, for the purpose of proper implementation of the rule of law, the interpretation we make of the laws has to be in keeping with this basic postulate which must never be forgotten by the Judiciary. Addison said: "Perfect justice is the attribute of the divine but to do so to the best of our ability is the glory of man". If we are given the power or the authority to sit in judgment over our fellowmen, we must remember that this is a divine function because no human being has the right to sit in judgment over his fellowmen. The Tudor kings came to believe in the 'divine right of the kingship' as a personal attribute and came to grief. History tells us that they came to grief because they started thinking that they were themselves divine instead of remembering that this was a divine

function entrusted to them for the welfare of their subjects. This is what we have to remember. Justice is a divine function. We are entrusted with the onerous task of dispensing justice. We, therefore, discharge a divine function. Since none of us is divine and consequently perfect justice is beyond us, to administer justice to the best of our ability in all that we can do and must strive to achieve.

Complete justice or true justice must encompass within it morality and ethics. Mathematically stated: "abstract law plus morality or ethics is equal to justice". That is the task which we Judges are required to perform in the course of administration of justice. This is the kind of role which the Judiciary has to perform and by Judiciary I mean not merely judges but lawyers as well because it is together that we form the machinery for the administration of justice.

The interpretation of laws has to be purposive. This means the interpretation must subserve the object of the enactment of the law keeping in view the supreme law, the Constitution. Every law has to accord with the Constitution, otherwise it suffers the defect in invalidity or unconstitutionality and, therefore, even, while construing statute law, one must always bear in mind the provisions of the Constitution, the constitutional goals and the constitutional purpose which is sought to be achieved.

[Abstracted from the book "New Dimensions of Justice" by Hon'ble Mr. Justice J. S. Verma, published by Universal Law Publishing Co. (His Lordship passed away on 22-04-2013 in New Delhi)]

ACADEMY NEWS

Inducton Training for newly recruited District Judges:

The Academy has started Induction Training Course for newly recruited District Judges. The trainees have to undergo three months training at (a) Academy, (b) by way of court attachment and (c) field visits. The principal aim of the induction course is to build strong foundation for their grooming as Judges.

The training scheme is devised with the following goals sought to be achieved:-

1. Development of Judicial Skills;
2. Orientation to cultivate strong desire to do justice and to discharge the onerous duty of a judge;
3. Knowledge and application of law;
4. Court Management and Computerization;
5. Personality Development including Stress Management;
6. Judicial Ethics; and
7. Basics of Administration.

The trainees have completed their training by way of Court attachment with Munsiffs, Sub-Judges & District Judges. They are now undergoing practical training by field visits to Forensic Science Laboratory, Government Medical College, Revenue Training School, Accountancy Training School and State Police Academy etc.

NEWS AND VIEWS

HE DID NOT BEND

K. T. Thomas*:

Justice Chinnappa Reddy was among the few judges who fought to

protect the freedom of citizens during the Emergency.

Justice Chinnappa Reddy's death last week did not garner much media attention, perhaps due to his own characteristic taciturnity, but he was one of the rarest of rare judges in India. He was endowed with a sharp intellect, admirable secular perception and indomitable courage. When he was chosen as a judge of the Andhra Pradesh High Court, little did the Bar elsewhere realise that this was a judge who would eventually decorate the judiciary with his contributions.



JUSTICE CHINNAPA REDDY

During the dark days of the Emergency, when most judges buckled and genuflected before the executive, Justice Reddy was among the few judges who did not bend. He fought to protect the freedom and liberty of citizens and refused to submit to the commands of the establishment. He did not treat emergency provisions as overriding the guarantees enshrined in the Constitution. The establishment viewed him as a defiant and unpliant judge. He was in the first batch of judges to be uprooted from their high courts and transferred. After the Emergency, the new administration offered him a return to the parent HC and to make him chief justice. Justice Reddy declined, and opted to remain where he was. No wonder he was elevated to the Supreme Court.

In his initial years at the apex court, he came out with new standards in appreciating evidence, particularly in criminal cases. He accorded a ceremonial burial to the conventional anathema towards "chance witnesses", "interested witnesses" and a "hostile witnesses". He informed the Bar that the minutes of the court proceedings regarding what transpired in open court would be sacrosanct and even conclusive, and not even the most respected counsel would be heard to canvass before the superior court whether he or his counterpart in the subordinate court made concessions on any point.

Those who believed that tax avoidance is a permitted phenomenon in fiscal jurisprudence were informed by him (through his judgment in *McDowell vs Inland Revenue Commissioners*) that "colourable measures for avoidance of tax by making suitable arrangements in commercial transactions must be discouraged, and that the statutes should be so construed as to disfavour tax evading that it is high time to desist from the alluring logic of tax avoidance and disfavour the ingenious attempt to rationalise and legitimates the same".

He was an atheist, but nevertheless exhibited judicial zeal in safeguarding the religious faith of citizens, however miniscule the membership of the denomination to which the faithful belonged. This was highlighted by his most famous judgment in the Jehovah's Witnesses case. Three children in a government school in Kerala who refused to sing "Jana Gana Mana" were expelled. The Kerala HC upheld the action of the school authorities, but a bench headed by Justice Reddy in the SC set it aside. In the celebrated *Bijoe Immanuel vs State of Kerala* judgment, he dealt with the

question of whether the refusal to sing the national anthem, as it would be perfidious to their faith, was genuine. He found that members of that community, wherever they are, adopt the same approach to the national anthem of those countries. He held that they had a right to adhere to their religious faith as long as they did not show any disrespect to the national anthem, and that our Constitution would protect such a right. His reasoning is summed up thus: "We do endorse the view... that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held, it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein."

The judgment also said, famously, that "We only wish to add - our tradition teaches tolerance; our philosophy teaches tolerance; our Constitution practices tolerance; let us not dilute it".

After retirement, he seemed to have a busy schedule heading different commissions. I got the opportunity to spend some time with him, and he impressed me as a man with a fine temperament. The SC Bar was full of praise for the way he disposed of his cases not with cryptic orders, but with well reasoned analysis. He was a judge with a difference and India cannot afford to ignore his contribution to constitutional and jurisprudential growth.

**The writer is a former judge of the Supreme Court.*

(Indian Express - 20/04/2013)

Compensate Rape Victims: SC

Victims of sexual assault need a completely different treatment than what is meted out to them by the society and state authorities, the Supreme Court has said and ordered all states to implement its 18-year-old directive.

The 1995 judgment of the apex court had directed setting up of Criminal Injuries Compensation Board and said it could take up the task of determining the amount to be paid by the offender to rape victims who incur huge financial loss apart from carrying the unwarranted stigma.

"The Board shall take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of rape," the court has said in Delhi Domestic Working Women's Forum case.

Reiterating the guidelines, a bench of Justices B S Chauhan and F M I Kalifulla said, "Undoubtedly any direction issued by this court is binding on all the courts and all civil authorities within the territory of India." While dealing with a rape case from Madhya Pradesh, the bench accepted arguments of Vibha Datta Makhija and upheld the High Court's decision to reverse the acquittal of one Dilip who was accused of rape.

The lack of sensitivity shown towards the rape victim by the prosecution and the trial court anguished the bench and said that the 18-year-old directive asking the prosecution and states and Justices Chauhan and Kalifulla decided to add more norms to the guidelines.

It told the MP Director General of Police and the home ministry "to issue proper guidelines and instructions to the other authorities as to how to deal with

such cases and what kind of treatment is to be given to the sexual assault victim, who requires a totally different kind of treatment not only from the society but also from the state authorities."

"Certain care has to be taken by the doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously she should be provided help of some psychiatrist," the bench said.

"The investigating officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the investigating officer in the presence of her family members making the victim comfortable except in incest cases," the court added.

(TOI/26/04/2013)

Punish Convicts for the crime as well as its brutality: Apex Court says Sentence must reflect gravity of offence: SC

The increased brutality in committing crimes, including gang rapes in the recent past, has not been lost on the Supreme Court, which has promised to the society that the accused if convicted would get adequately punished not only for the crime but also for their depravity.

It said all trial courts, while awarding punishment to a convict, must follow the cardinal principle of sentencing policy which mandated "the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence".

"The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment," said a bench of Justices P Sathasivam, M Y Eqbal and Arjan K Sikri.

Setting aside a lenient sentence awarded by Punjab and Haryana high court in an attempt to murder case, the bench said: "The punishment awarded should be directly proportionate to the nature and the magnitude of the offence."

It said the discretion vested in the judiciary by the legislature for determining appropriate sentence has put the onus on the Judges to exercise care and caution and arrive at a fair and impartial verdict. It said the sentence would either be reformatory or coercive depending on the facts and circumstances of cases. Writing the judgment for the bench, Justice Sathasivam said, "The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

Though the bench said the trial courts must take into account the manner in which the crime was planned and committed as an attendant circumstance for determining the sentence, it stressed that "undue sympathy" should never creep into the mind of a Judge while determining the quantum of punishment.

The bench said, "Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court

to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed."

(TOI/26/04/2013)

"Victim Compensation Scheme"

The Government has framed the Victim Compensation Scheme under Section (1) of Section 545-A CRPC, which is reproduced verbatim for the benefit of Judicial Officers.

Notification dated: 23rd April, 2013

SRO 229: - In exercise of the powers conferred by sub-section (1) of Section 545-A of the Code of Criminal Procedure Smavat, 1989 (Act No. XXIII of 1989), the Government hereby makes the following scheme for providing funds for the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation; namely: -

1. Short Titled: This Scheme may be called the Jammu and Kashmir Victim Compensation Scheme, 2013.

Definition: In this scheme, unless the context otherwise requires: -

a) "**Act**" means the code of Criminal Procedure Samvat, 1989 (Act No. XXIII of 1989);

b) "**Schedule**" means Schedule appended to this notification.

c) "**State**" means State of Jammu and Kashmir.

d) "**Victim**" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.

2. Victim Compensation Fund:

i) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

ii) The Government shall allot a separate budget for the purpose of the scheme every year.

iii) The funds shall be operated by the Member Secretary, Jammu and Kashmir State Legal Service Authority.

Eligibility for Compensation:

A victim shall be eligible for the grant of compensation if: -

a) The offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub-section (4) of Section 545-A of the Act;

b) He/She should not have been compensated for the loss or injury under any other scheme of the Central/ State Government, Insurance Company or any other Institution;

c) The victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case;

d) The compensation shall be provided to the victim/claimant only after filing of charge sheet or final report in the competent court of law.

3. Procedure for grant of compensation:

1) The victim/claimant shall report the crime to the Officer-in-charge of the Police Station or a Judicial Magistrate of the area within a period of six months of the commission of crime;

2) Whenever a recommendation is made by the Court or an application is

made by any victim or his dependent under sub section (2) of Section 545-A of the Act to the concerned District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury cause to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme;

3) The compensation received by the victim/claimant under the scheme shall be recovered and credited to the victim compensation fund if he/she resiles from the statement during trial of the case in the court of competent jurisdiction resulting in the acquittal/discharge of the accused.

4) Compensation under this scheme shall be paid to the victim/ claimant subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of Section 545 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub section (3), whichever, is less. An undertaking to this effect shall be given by the victim/ claimant before the disbursal of the compensation amount.

5) The concerned District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of losses caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount

required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on facts of each case. However, the quantum of compensation shall not exceed the amount mentioned in the Schedule-I appended to this scheme.

6) The quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents as the case may be, from the Victim Compensation Fund.

7) Compensation received by the victim from the State in relation to the Crime in question namely, insurance, ex-gratia and/or payment received, under any other Act or State-run scheme, shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Victim Compensation Fund.

8) The case covered under Motor Vehicle Act, 1988 wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under this Scheme.

9) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost or any other interim relief as it may deem fit on the production of a certificate of the police officer not below the rank of the Officer-in-charge of the police station or Magistrate of the area concerned.

4. Orders to be placed on record:

Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial

Court to enable the court to pass order of compensation under sub-section (3) of section 545-A of the Act.

5. Limitation:

No claim made by the victim or his dependents under sub-section (4) of section 545-A of the act shall be entertained after a period of six months of the commission of crime;

Provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the claim.

6. Appeal:

Any victim aggrieved of the denial of compensation by the District Legal Services Authority, may file an appeal before the State Legal Services Authority within a period of 90 days;

Provided that the State Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the appeal.

By order of the Government of Jammu & Kashmir.

Schedule-I to Notification SRO 229 dated 23-04-2013

S. No.	Particulars of loss or injury	Maximum limit of Compensation
1.	Loss of Life (normal)	₹1.00 lakh
2.	Death by torture in police custody	₹2.00 lakh
3.	Loss of any limb or part of body resulting in 80% or above handicap	₹50,000/-
4.	Loss of any limb or part of body resulting in 80% and below 80% handicap	₹20,000/-
5.	Rape of Minor or rape in Police custody	₹1.00 lakh
6.	Rape	₹50,000/-
7.	Acid Victims	₹20,000/-
8.	Injury causing severe mental agony to women and child victims in case like Human Trafficking	₹10,000/-