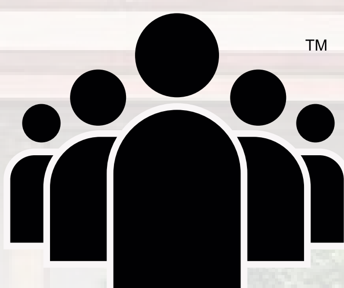
COMPILATION OF SELECTED SUO MOTO PETITIONS

PREPARED BY
TEAM PROBONO INDIA

AUGUST 2020



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Injustice anywhere is a threat to justice everywhere.

- ***Martin Luther King Jr.***

August 2020

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Team ProBono India has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.

Explanation

Suo Moto & *Suo Motu* carry the same meaning.

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Prof. Subir K. Bhatnagar
Vice Chancellor

धर्म संस्थापनार्थाय

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FOREWORD

Suo Moto cognizance is an oft-used technique by the courts in India wherever they find that any instance of injustice or violation of human rights is going unheeded and unaddressed. This technique is an offshoot of the Social Action Litigation (SAL)/ Public Interest Litigation (PIL) which has seen phenomenal growth in the last few decades. The public spirited individuals and organizations approached the courts of law for the redressal of many humanitarian issues related to peoples' sufferings and the judges obliged them by relaxing the principle of *locus standi*. This judge- crafted 'Access to Justice Approach' might have motivated its initiators i.e. judges, too to make use of it by taking *suo moto* cognizance of the similar kind of the injustices which they were already dealing with in a number of SAL/PIL cases. Therefore, instead of waiting for someone to invoke court's jurisdiction, the judges began moving their own jurisdictions, though quite cautiously, for addressing the instances of human rights abuses, atrocities, injustices etc. being perpetrated on the hapless individuals and the masses. In fact, one can find that, in the *suo moto* cases, the judge is genuinely impelled by his constitutional empathy. He would pick up the case on his own for its disposal only when his human sensitivity as a judge is deeply aroused due to a constitutionally unpalatable scenario. This, somewhat, may remind an Indian citizen of the inquisitive kind of adjudication which is the hall mark of the legal systems of the civil law family. Needless to state that in the *suo moto* cases, the judges play a pivotal role. This has been observed that *suo moto* cases, by their genesis, have great potential to impact the life of a single individual or the lives of the community at large.

This **Compilation of Selected Cases on *Suo Moto*** is a welcome addition of its own kind to the legal literature on court- oriented basic rights jurisprudence. This happens to be the second book of case compilation by the Team ProBono India. The onerous task of bringing this compilation-project to its ultimate conclusion has been accomplished by a dedicated team of enthusiastic twenty four students, ably led by their ever-energetic mentor **Dr. Kalpeshkumar L. Gupta (Founder, ProBono India)**. The coming together of these students under the banner of their guide-teacher demonstrates that, apart from the learning in classroom settings, legal knowledge realizes its true meaning and potential when the

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students employ their professional skills to educate and liberate the common people. Interestingly, the students did not know one another before joining this project but Dr Kalpeshkumar L. Gupta cemented them into one solid block. Even with numerous unpredictable challenges thrown by the Covid-19, the teamwork, perseverance and determination of the group made them to achieve yet another milestone.

I hope that this compilation would encourage enthusiastic law students and faculty to take more projects of this nature. I wish all the best to the compilers of this book.

SKBhatnagar
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Vice Chancellor

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PREFACE

"Start where you are. Use what you have. Do what you can."

Arthur Ashe

Life surprises each individual with different challenges and each of them tend to teach a lesson at the end. The process never stops until one doesn't stop growing and making something out of their life. Education emerges as one of the tools that guide each individual to face the challenges and it never fades away. The wisdom one gains over the years and the knowledge it stays till the end and helps one to turn into a prudent person. This process of learning doesn't stop even when times are difficult like now when a global pandemic is at its acme and causing commotion across the globe. The ones that survive such mayhem and continue to learn will emerge as the winners and pioneers of the future. The challenging times test each individual in various manners through the two qualities patience and passion to learn helps man not to just escape but gain during such times.

The compilation is based on the ideology and various individuals came together to help showcase the importance of passion and patience. **Dr. Kalpeshkumar L Gupta (Founder, ProBono India)** the pioneer in the field of the law came up with the idea of this compilation and with the help of various enthusiastic volunteers, this project has been successfully compiled. The process of coming together, learning, and then sharing knowledge is what helps knowledge grow in the true sense, and this project forwards this form of learning. It was Dr. Kalpeshkumar L. Gupta who proposed the idea of developing and launching a series of **case compilation under the ProBono India banner**.

The case compilation has been titled as "**Compilation of Selected Suo Moto Petitions".** The topic was chosen as it is one of the prominent tools with the judiciary in India to address the various social concerns in India. The instances of social injustice are picked up by the judiciary and justice is delivered by it. The compilation is the result of hard work and determination of 29 students perusing law in different institutes situated at different corners of India. The enthusiasm and compassion of these students under the guidance of the pioneer Dr. Kalpeshkumar Gupta kept the project alive and developing while it was in the process of development. Sir kept us motivated and determinate through the period of the compilation of this project.

The project began with me being appointed as a student coordinator of this exemplary compilation of ProBono India Case Compilation which was indeed a pleasure and a learning experience for me. It was a sheer pleasure for me to work and share this project with the like-minded and talented group of people. Here's an introduction to my beloved team:

1. **Akshat Agrawal** *(Christ (Deemed to be University), Bengaluru)*
2. **Amrith R.** *(The Tamil Nadu Dr. Ambedkar Law University, Chennai)*
3. **Archit Shukla** *(National University of Study and Research in Law, Ranchi)*
4. **Arpith J.V.** *(Christ (Deemed to be University), Bengaluru)*
5. **Ashray Vinayaka (***Government Law College, Mumbai)*
6. **Ayanava Bhattacharya** *(Christ (Deemed to be University), Bengaluru}*
7. **Ayush Agrawal** *(Ram Manohar Lohiya National Law University, Lucknow)*
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9. **Divyanshi** *(National University of Study and Research in Law, Ranchi)*
10. **Gayatri Batra** *(Christ (Deemed to be University), Bengaluru)*
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15. **Naman Jain** (*Bennett University, Greater Noida)*
16. **Nivedita Kushwaha** *(Indore Institute of Law, Indore)*
17. **Nikita Sharma** (*Indore Institute of Law, Indore)*
18. **Pooja Lakshmi** (*Bennett University, Noida)*
19. **Prathina P. Tharuna** *(Christ (Deemed to be University), Bengaluru)*
20. **Rishi Raj** (*Symbiosis Law College, Noida)*
21. **R. Gireeshvaran** (*School of Excellence in Law, the Tamil Nadu Dr. Ambedkar Law University, Chennai)*
22. **Tuhupriya Kar** (*South Calcutta Law College, Calcutta University)*
23. **Varsha Karunananth** (*School of Law, Christ University, Bengaluru)*

A journey of about two months ended On August 30, 2020, as we concluded our compilation and the hustle came to an end. The project was completed through the learning of each individual in the compilation didn't which was a key learning from the initiative.

The idea that Dr. Kalpeshkumar wanted all of us to understand as stated by Sir Henry Ford was **“Coming together is a beginning. Keeping together is progress. Working together is success."** With the idea of teamwork, it was the importance of working with minimal resources, and achieving the most is what he wanted to teach us. I am thankful to the team and Dr. Kalpeshkumar for the never-ending support and hard work.

We hope our effort inspires great creations!

On behalf of the Team ProBono India,

Yashwardhan Bansal

(Coordinator)

ABBREVIATION

ADV.	Advocate
AGI	Advocate General of India
AICCTU	All India Central Council of Trade Union
AIR	All India Reporter
BBMP	Bruhat Bengaluru Mahanagara Palike
CB-CID	Crime Branch – Criminal Investigation Department
CBI	Central Bureau of Investigation
CCTV	Closed-Circuit Television
CID	Criminal Investigation Department
CJI	Chief Justice Of India
COVID	Coronavirus Disease
CPC	Civil Procedure Code
CPCB	Central Pollution Control Board
Crl	Criminal
CrPC	Criminal Procedure Code
DJB	Delhi Jal Board
DPSP	Directive Principles of State Policy
EH&S	Environmental Health and Safety
FIR	First Investigation Report
FAO	Food and Agricultural Organization
HC	High Court
Hon'ble	Honorable
IPC	Indian Penal Code
ICT	Information and Communication Technology
J.	Justice
KSLSA	Karnataka State Legal Services Authority
MDGs	Millennium Development Goals
MMRD ACT	Mines & Minerals (Regulation And Development) Act
MoEF	Ministry Of Environment And Forest
MP	Madhya Pradesh

NCT	National Capital Territory
NeGP	National e-Governance Plan
NGT	National Green Tribunal
NHRC	National Human Rights Commission
No.	Number
Ors	Others
POCSO	The Protection of Children from Sexual Offences
PUCL	People's Union for Civil Liberties
PCA	Police Complaint Authority
PIL	Public Interest Litigation
PM	Prime Minister
PTI	Press Trust of India
Re.	Reply
RERA	Real Estate Regulation & Development Authority
Retd.	Retired
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SSP	Senior Superintendent of Police
UDHR	Universal Declaration of Human Rights
UOI	Union of India
V.	Versus
WP	Writ Petition
Yrs.	Years

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CASE NO. 1

THE REGISTRAR (JUDICIAL), MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
v.
STATE OF TAMIL NADU & ORS.

(SUO MOTO WRIT PETITION (MD) No. 7042 OF 2020)

CUSTODIAL DEATH OF TRADERS IN TUTICORIN.

ABSTRACT

The case relates to the recent matter of custodial death of father-son duo who were traders in the district of Thoothukudi (Tuticorin) in Tamil Nadu. The brutal incident sparked rage across the state and has infuriated people. Amidst the situation of lockdown against the global pandemic, the case proves to be a classic example of police brutality which has always been prevalent in India. The death of P Jeyaraj and his son J Bennicks allegedly by the police officers of the Sathankulam town in Tuticorin has yielded outrage in the state to its peak. There have been many instances of police brutality and custodial deaths in the past. According to the data from National Crime Records Bureau, around 1,727 people died in police custody in between 2001 to 2018 but only around 26 police men were convicted for the crime of custodial violence. The infamous judgement that sprouted from DK Basu v. State of West Bengal had a fundamental idea to restrict and prevent the police personals from misuse and abuse of power, but we have little evidence till date to suggest that those laws really made some effect. In the present matter, the Madras High Court took a *suo moto* cognizance of the case and has given several directions for investigation in the matter. CB-CID has also been investigating the matter and the case hearings are still in process. The case touches upon one of the most significant areas of law and highlights about the grievousness of custodial violence. It raises pertinent issues regarding abuse of power and authority and poses a very important question that *"Who will watch the watchmen?"*

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Moto Writ Petition (MD) No. 7042 of 2020
Jurisdiction	:	Madras High Court, Madurai Bench
Case Filed on	:	June 24, 2020

Case Decided on	:	July 2, 2020
Judges	:	Justice P.N. Prakash & Justice B. Pugalendhi
Legal Provisions involved	:	Section 176 (1) (1-A) Code of Criminal Procedure (CrPC) Section 342, 302 and 201 of Indian Penal Code (I.P.C.)
Case Summary Prepared by	:	Akshat Agrawal School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

- **Parties**

The present case is a *suo moto* cognizance by the Madurai Division Bench of the Madras High Court which undertook the matter of custodial death in the state considering its importance and grievousness. The parties to the case are Judicial Registrar of Madras High Court against The State of Tamil Nadu which is represented through The Superintendent of Police, Thoothukudi District, the Inspector of Police, Sathankulam Police Station, Superintendent of Kovilpatti Sub Jail and the Dean of Medical College Hospital, Palayamkottai.

- **Factual and Procedural**

On June 19, 2020, P Jeyaraj, father (62 yrs) and his son J Bennicks (31 yrs) who ran a mobile phone sale and service shop in Sathankulam Town were found to be arrested by the Police Patrol team for allegedly keeping the mobile shop open beyond the permitted time of 8 PM in violation of lockdown guidelines by the government. Jeyaraj was taken to the police station by the patrol team and was verbally abused and assaulted. It was mentioned by the police officers in the FIR against them that they restricted them from doing their duty.

When his son reached the police station and requested the police officers to release his father, both of them were brutally assaulted by the police officers and were beaten mercilessly. The police officers allegedly thrashed them including forcible anal penetration with batons. Both of them were booked on various charges under the Indian Penal Code (I.P.C) which included Section 188 (disobedience to order promulgated by public servant), Section 383 (extortion by threat) and Section 506 (ii) (Criminal Intimidation).

After the ruthless torture at the police station, they had to be taken to the Sathankulam government hospital for medical assistance where their clothes were found to be completely soaked in blood. The next morning, they were taken to the Sathankulam Magistrate Court where the magistrate gave permission for their remand without even seeing their condition. The family further was not made aware about any updates regarding the father-son until when they had to be shifted to a government hospital on June 22, 2020. It has been said that due to continuous loss of blood and number of internal and external injuries, Bennicks died in the hospital on evening of June 22, 2020 complaining for chest pain and Jeyaraj passed away the next morning.

Jeyaraj's wife lodged a complaint against the police officers for the death of her husband and son and claimed the only reason for it being the police brutality by the officers at the police station.

3. ISSUES INVOLVED IN THE CASE

When the protests against the incident grew up in the state and soon across the country where the demands for justice grew louder, the Madras High Court on 24th June 2020 took a *suo moto* cognizance of the case and the division bench of the High Court ordered the Superintendent of Police, Thoothukudi to conduct the inquiry and submit the report to the court at an earliest. The primary issue for the court to decide upon was:

I. Whether the death of Jeyaraj and Bennicks was a result of actions from police brutality and are they liable for murder under Section 302 and for wrongful confinement under Section 342 of the Indian Penal Code?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The present case of custodial deaths of father and son traces its nature as a matter of criminal proceedings. The investigating officer of the case Mr. Anil Kumar registered the case under Section 176 (1) (1-A) of Code of Criminal Procedure (Cr.PC) that mandates a judicial inquiry for every case of death, rape and disappearance in the custody. After examination of around 15 witnesses, the investigation officer identified and named 5 accused to the case and has charged them under Section 342, 302 and 201 of the Indian Penal Code (I.P.C.).

Section 342 provides 'Punishment for Wrongful Confinement' where whoever wrongfully confines a person shall be imprisoned with the term that may extend to one year or with a fine up to thousand rupees or both. **Section 302** provides for 'Punishment for Murder' where any person who commits murder shall be punished with death or imprisonment for life and also liable for fine. **Section 201** provides punishment for 'Causing disappearance of evidence of offence, or giving false information to screen offender' which classifies the punishment into categories of capital offence, imprisonment for life and imprisonment under ten years. For categories of capital offence, section 201 awards punishment for imprisonment up to seven years, for second category it awards imprisonment up to ten years and for the third category it awards imprisonment for one-fourth part of longest term provided with the offence committed.[1]

Understanding the gravity of the situation, the High Court of Madras ordered the Chief Judicial Magistrate to enquire into the matter himself. It also ordered the Judicial Magistrate, Kovilpatti to complete the enquiry and submit the original enquiry report to the Chief Judicial Magistrate

5. JUDGEMENT IN BRIEF

The Madras High Court initially after looking for prayers in the petition along with the affidavit filed therewith, issue a Writ of Mandamus which directed the respondent to furnish a report on the death of Jeyaraj and Bennicks. A Writ of Mandamus is an order by the court that mandates to perform the duty. It is issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.[2] On taking the cognizance of the case, the division bench of the High Court directed the following to the Judicial Magistrate:

I. Directed to go to Sathankulam to conduct the enquiry from the family members and recording of statements.
II. To conduct local inspection, visit the Sathankulam Police Station and take photocopies of all the records, including the General Station Diary.
III. To visit the place of occurrence for better appreciation of the facts and to take videographs of the place of occurrence wherever he finds it necessary.

[1] Indian Penal Code 1860 § 342, 302, 201
[2] Pallavi Pritviraj Ghorpade, *Analysis of Writ of Mandamus,* LEGAL SERVICES INDIA (Jul 30, 2020, 7:22 PM), http://www.legalservicesindia.com/article/592/Analysis-Of-Writ-Of-Mandamus.html

IV. Having all the jail records, the postmortem report and CCTV footage from the police station and the jail be preserved and kept.[3]

After the hearing of 30th June, the Madras High Court ruled that there were prima facie evidences to put murder charges against the police officers responsible for custodial violence and deaths. The division bench asked the Tamil Nadu government to handover the case to Crime Branch – Criminal Investigation Department (CB-CID) for further investigations. The court also ordered the State government to provide security to a woman head constable, Revathy, of Sathankulam police station, who is a signed witness to the violence.[4]

The further investigations and enquiries are in process under the continuous supervision of the Division Bench of Madras High Court and the hearings take place through means of video-conferencing during the present situation of pandemic. The concerned police officers were suspended and are currently in Madurai Central Jail. The investigation has been taken over by the Central Bureau of Investigation (CBI) for further enquiries. The court is yet to complete all the hearings and pronounce its final decision on the matter.

6. COMMENTARY

This case of custodial violence and deaths of traders in Tuticorin has unfurled a dark side of public servants and law & order. When a system exists in a society with certain powers for protection of general public starts misusing the power and abuse the rights of common man, the consequences get brutal. The case has raised several important questions which have been left completely unanswered by the police administration and the state government agencies in the matter.

There is no obligation for a police officer to arrest a person immediately and as soon as the FIR is registered. The inclusion of non-bailable sections like Section 506 of criminal intimidation has been misused by the police professionals a number of times. It is included in the FIR solely for the purposes of getting the order of remand from the court. Having including them in present case just for the violation of lockdown guidelines indicates a prior hidden agenda to harass the deceased. The grant of remand by the magistrate without even considering the ante-

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[3] Priyanka Kavish, *Madras High Court orders Judicial Magistrate to conduct inquiry into alleged custodial deaths in Tuticorin,* SABRANG INDIA (Jul 30, 2020, 8:28 PM), https://sabrangindia.in/article/madras-hc-orders-judicial-magistrate-conduct-inquiry-alleged-custodial-deaths-tuticorin

[4] Ilangovan Rajasekaran, *T.N. custodial deaths prima facia murder: High Court,* FRONTLINE (Jul 30,2020, 9:10 PM), https://frontline.thehindu.com/the-nation/article31957125.ece

mortem injuries and bruises of the now deceased has also been questionable. As per the precedent in case of *Arnesh Kumar v. State of Bihar*[5], the apex court made it clear that magistrate cannot mechanically order remand in cases where the maximum punishment for the offence in FIR is imprisonment up to seven years. The court made very clear that the magistrate has to specifically record satisfaction about the exceptional circumstances necessitating the remand.

The cases of custodial tortures and deaths are not new in the country and have been prevalent from a very long time that they have almost become like an accepted part of police functioning. If it gets established in the present case that the deaths of Jeyaraj and Bennicks was solely due to the custodial violence and torture by the police professionals, it would give rise to a more deeper problem of mindset and mentality of the officers that provokes them to carry out such a merciless and inhumane acts towards common man. According to the study and reports, two of the main reasons that could be citied to encourage these kinds of custodial abuse of power were listed as first the statistical evaluation of work and second being the public pressure to produce quick results in cases.[6]

In my opinion, there are many reforms that need to be incorporated in the system to have checks and balances on such kinds of incidences. The landmark judgment of apex court in the case of *Prakash Singh v. UOI*[7] in 2006 directed the central and state government for the operational reforms and functional autonomy of police. It mandated the governments to set up Police Complaints Authority (PCA) which was supposed to probe into the acts of police misconduct comprising of death, grievous hurt, rape, detention etc in police custody. Very few states in India have implemented and constituted PCA which shows the gross negligence and irresponsibility against the actions of police abuse and public protection.

There is a pressing and urgent need to inculcate reforms and devise methods to strongly address and take serious actions against such kinds of inhumane acts which violates the basic fundamental rights of any citizen which are enshrined and provided by the Constitution of India. Because such kind of brutal acts not only result in affecting the immediate individual but have far fledged remote effects on the families of such victims for lifetime. It is a high time for judicial, quasi-judicial and administrative processes in the system to become transparent in their working. It is also the responsibility of people to raise their voices against such acts guard their

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[5] Arnesh Kumar v. State of Bihar AIR 2014 SC 2756

[6] Tryst and Turns, *Time for a movement against police brutality,* THE TRIBUNE (July 31, 2020, 11:24 PM), https://www.tribuneindia.com/news/comment/time-for-a-movement-against-police-brutality-108321

[7] Prakash Singh & Ors v. Union of India & Ors, Writ Petition (Civil) 310 of 1996

rights against the police brutalities. The custodial violence has been an institutional phenomenon and is not just confined to a particular instance. Courts also have a substantive role to play in such cases and decide upon the matter by examining and taking into consideration all the aspects and giving an impartial and unbiased decision even if against the government institution because as an old saying goes that *"Not only must the Justice be done; it must also be seen to be done."*

7. IMPORTANT CASES REFERRED

- *Arnesh Kumar v. State of Bihar, AIR 2014 SC 2756*
- *D.K. Basu v. State of West Bengal, (1997) 1 SCC 416*
- *Prakash Singh & Ors v. Union of India & Ors, Writ Petition (Civil) 310 of 1996*

CASE NO. 2

COURT ON ITS OWN MOTION
v.
UNION OF INDIA & ORS.

(WRIT PETITION (C) No. 6100 OF 2020)

A VIDEO OF A TODDLER TRYING TO WAKE UP HIS DEAD MOTHER LYING ON A RAILWAY PLATFORM.

ABSTRACT

The case to be discussed in the following note is *Court on its own motion v. Union of India*. This was a *suo moto* case, taken up by the Patna High Court, incognizance of the article in the newspaper called "Times of India" dated May 28, 2020 Patna edition. The news article gave details about a video which went viral in social media, in which a child was trying to wake up his dead mother at Muzaffarpur Railway Station. The child was seen removing a shawl covering his mother's body. According to some reports, the woman died of thirst and hunger on the train. However, the railways said she was not only ill, but also mentally unstable and was not keeping well. The court said that if the contents of the new items are correct, then the incident was rather shocking and unfortunate. It also said that it had no reason to disbelieve the news article, for; the paper has a national repute having wider circulation. The court said that this incident had warranted its intervention in exercise of their jurisdiction under Article 226 of the Constitution of India and hence it was taking *suo moto* cognizance.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (C) No. 6100 of 2020
Jurisdiction	:	Patna High Court
Case Filed on	:	May 2020
Case Decided on	:	June 2020
Judges	:	Justice Sanjay Karol, C.J., Justice S. Kumar
Legal Provisions involved	:	Article 226, Constitution of India
Case Summary Prepared by	:	Amrith. R School of Excellence in Law, TNDALU, Chennai

2. BRIEF FACTS OF THE CASE

The case to be discussed in the following note is Court on its own motion v. Union of India.

- This was a *suo moto* case, taken up by the Patna High Court, incognizance of the article in the newspaper called "Times of India" dated May 28, 2020 Patna edition. The news article gave details about a video which went viral in social media, in which a child was trying to wake up his dead mother at Muzaffarpur Railway station.
- The child was seen removing a shawl covering his mother's body. According to some reports, the woman died of thirst and hunger on the train. However, the railways said she was not only ill, but also mentally unstable and was not keeping well.
- The court said that if the contents of the new items are correct, then the incident was rather shocking and unfortunate. It also said that it had no reason to disbelieve the news article, for, the paper has a national repute having wider circulation. The court said that this incident had warranted its intervention in exercise of their jurisdiction under Article 226 of the Constitution of India and hence it was taking *suo moto* cognizance.
- The court said that the Petition will be registered as 'Court on its own motion on the basis of News Report dated May 28, 2020 published in the 'Times of India'.
- The court added 8 respondents to the case, namely:

I. Union of India through the Principal Secretary, Disaster Management, New Delhi

II. The State of Bihar through its Chief Secretary, Patna

III. The Department of Health & Family Welfare through its Principal Secretary, Government of Bihar, Patna

IV. The Department of Disaster Management through its Principal Secretary, Government of Bihar, Patna

V. The Inspector General of Police, Bihar

VI. The Department of Social Justice, Government of Bihar through its Principal Secretary, Patna

VII. The Department of Home through its Secretary, Government of Bihar, Patna

VIII. The Indian Railways through its Principal Secretary, New Delhi

- The court had taken up the matter in the morning and hence it had asked the advocate for the State, Additional Advocate General, Sri. S. D. Yadav, to obtain all instructions on all the issues before 2.15 P.M. that day. The court also said that the Registrar General shall telephonically or electronically inform the nominated counsel and ensure that after registration, a complete paper book is supplied to them through electronic mode.

- The court said that it had understood that Hon'ble the Supreme Court of India had taken cognizance of matters pertaining to the migrants. The court asked the Additional Advocate General IX, Sri S. D Yadav to ascertain from the nominated Standing Counsel for the State of Bihar in the Supreme Court, as to whether Hon'ble Supreme Court had taken cognizance of this particular incident or not.
- The court also requested Sri. Ashish Giri, learned Counsel, who was also present in the Virtual Court, to assist in the matter as Amicus Curiae.
- The court said that the Registrar List shall ensure that not only all the learned counsels of all the Respondents are informed of the posting of the matter for 2:15 P.M. that day, but shall also ensure that the link for joining the proceeding through Video Conferencing is forwarded to them. The Court Master was also directed to ensure compliance of the matter.

3. ISSUES INVOLVED IN THE CASE

The court wanted to ascertain certain facts and get specific information on an immediate basis for the purposes of this case from the Additional Advocate General IX regarding the following issues:

I. Whether post-mortem of the dead-body was conducted? If yes, what was the cause of death? Did the lady actually die of hunger?

II. Was the lady travelling alone with her sibling? If not, who all were her companions?

III. What action stands taken by the law enforcing agencies?

IV. Were the relatives of the deceased informed of the incident?

V. Were the last rights of the deceased performed as per the custom, tradition and the instructions issued by the government? and

VI. Above all who is now taking care of the children/sibling(s), who unfortunately lost their mother in these times of distress?

4. SUBMISSIONS OF THE RESPONDENT

- In the afternoon session when the matter was taken up at 2:30 P.M., Sri. S.D. Yadav, learned Additional Advocate General-IX informed the court that for ascertaining information of overlapping of issues, the learned Advocate General had himself spoken

with the Standing Counsel for the State of Bihar in the Supreme Court as also the learned Solicitor General of India. However, no information could be ascertained as the matter listed on the Board, had yet not reached.

- Sri. Yadav further stated that the news report was partially incorrect. The deceased was in fact mentally unstable and had died a natural death during the course of her journey from Surat (Gujarat), which fact was reported by her companions i.e., her sister and brother-in-law (sister's husband, namely Md. Wazir). The deceased, who had been deserted by her husband, had only one child.
- Md. Wazir brought the factum of her death to the notice of the Railway Authorities and after recording of his statement, the dead body was allowed to be taken home. No post mortem was conducted. Also, no FIR was registered. However, the District Administration facilitated by providing an Ambulance up to the place of destination.
- The AAG also submitted that the orphaned child is in safe custody and guardianship of the sister of the deceased. Shri Yadav further stated that even though the child is safe and secure, yet, he shall personally pursue the matter with the authorities who would again reach out to the family, enquiring any need of assistance.
- The AAG also clarified that his statement is based on the instructions so received and the recorded statement of Md. Wazir.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The court had taken up the matter and filed a petition on its own, as a *suo moto* cognizance because it had understood the gravity of the situation. The Court had taken up the case as it had jurisdiction to do so, under Article 226 of the Constitution of India.

6. JUDGEMENT IN BRIEF

- Taking into consideration the aforesaid statements of the Additional Advocate General, the Court said that at that stage, it was awaiting instructions from the Standing Counsel in the Supreme Court. Hence, the Court said that it was prudently refraining from issuing any further directions on the said matter, more so when the child is in safe custody.

- However, the Court said that whatever was so stated by the Additional Advocate General, as also the complete facts, should be made known to the Court, on the personal affidavit of the concerned Principal Secretaries before the next date that the court authorized, which was June 3, 2020.

7. COMMENTARY

The case is of paramount importance considering the fact that migrant laborers faced a lot of struggles during the lockdown imposed to control the outbreak COVID-19 pandemic. However, we witnessed distressing images. From herding together inside an oil truck, to getting crushed by trains on rail tracks; from getting sprayed by harmful chemical bleaches used to sanitize buses which could expose them to dangerous cancers, to walking and cycling thousands of kilometers, hungry and starving, to reach their home; from bags perched on their heads and children on their arms, walking down the highways at these desperate times, to succumbing to the pangs of hunger on roads; from dying in road accidents, getting collided by trucks and buses, to facing the wrath of the police and the heat; from pregnant migrant lady workers walking and delivering babies on highways, to being forcefully evacuated from the banks of rivers where they had got shelters; from gathering together expectantly in Mumbai to return to home, to being regretfully fled away by the police and government authorities... their miseries are endless. Visuals of hundreds of workers wearing *gamchas*, carrying heavy backpacks and wailing children, and walking on national highways, boarding tractors, and jostling for space atop multi-coloured buses became defining images for India in the past one and a half month.

This *suo moto* case of the Patna High Court was of massive importance because it conveyed the right message that the judiciary would not tolerate the apathy shown by the concerned public authorities towards the migrants and made sure that they brought a motion on their own so as to enquire into the matter and speedily dispose it off.

CASE NO. 3

A. VENKATESAN AND ORS.
v.
GOVERNMENT OF TAMIL NADU AND ORS.

(SUO MOTO CONTEMPT PETITION NO. 1438 OF 2012 AND W.P. NO. 27632 OF 2012)

CONTEMPT OF COURT FOR USING CELL PHONE IN COURT ROOM PROCEEDINGS.

ABSTRACT

The present case addresses an issue of contempt of a court by a contemnor inside the court room for using cell phone while the court room proceedings were going on. This case leads to frame the appropriate and necessary explicit strict guidelines to regulate the entry of government servants and also to the usage of Cell Phone or any other Digital or Electronic Device/Gadgets having audio/video recording capability in any mode, inside the Court halls and the Court premises.

Both *the Suo Moto* Contempt Petition and the writ petition are arising out of the same issue and both the petitions have been taken up together for hearing and passing a common order. The present case analyze the reason of the appellant as to why he used a cell phone for recording the court proceedings and whether the impugned order passed issuing notice to contemnor calling upon him to explain as to why action for Contempt of Court Proceedings could not be initiated against him.

The concept of contempt of court is several centuries old. In England, it is a common law principle that seeks to protect the judicial power of the king, initially exercised by him, and later by a panel of judges who acted in his name. Violation of the judges' orders was considered an affront to the king himself. Over time, any kind of disobedience to judges, or obstruction of the implementation of their directives, or comments and actions that showed disrespect towards them came to be punishable.

When a court decides that an action constitutes contempt of court, it can issue an order that in the context of a court trial or hearing declares a person or organization to have disobeyed or been disrespectful of the court's authority, called "found" or "held" in contempt.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Contempt Petition No. 1438 of 2012 and Writ Petition No. 27632 of 2012.
Jurisdiction	:	Madras High Court
Case Filed on	:	October 4, 2012
Case Decided on	:	October 30, 2012
Judges	:	Justice K.N. Basha and Justice N. Paul Vasantha Kumar
Legal Provisions involved	:	Article 226 of the Constitution of India. Contempt of Court Act, 1971.
Case Summary Prepared by	:	Archit Shukla National University of Study and Research in Law, Ranchi

2. BRIEF FACTS OF THE CASE

The present case is related to the contempt of court by the contemnor Mr. A. Venkatesan, who is an Assistant Section Officer, attached to Home (P&E) Department, Secretariat, Chennai. The contemnor came to the court hall for just watching the court proceedings and was not summoned by any Government official for any possible reason. The government officer came to the Court Hall watch the proceedings on his own without getting any permission from his office.

The court's enquiry in this matter nearly crystallized all the facts where the contemnor has clearly admitted that he has started recording the court proceedings in his mobile phone and stated that within a short time, it was noticed and seized by the Court staff. He has further stated that he has just come to the Court Hall for watching the proceedings and he was not summoned by the learned Government Pleader or the learned Public Prosecutor or any other Government Advocate to assist or instruct them. It is stated by him that he has come to the court hall on his own only for the purpose of watching the proceedings. It is also admitted by him that he has not obtained permission / pass from the security authorities before entering into the Court premises. It is also stated by him that he has not obtained any written permission for attending the Court proceedings.

He started recording the court room proceedings out of curiosity and after few minutes he was caught by the officials of the court room. His cell phone was seized and submitted to the registrar general of the court.

3. ISSUES INVOLVED IN THE CASE

I. Whether the appellant is in contempt of court or not?

II. Whether the guidelines to regulate the entry of government servants and also to the usage of electronic device in the court room proceedings are explicit or not?

4. ARGUMENTS OF THE PARTIES

Appellant

The appellant in the present case, the Contemnor, namely, Mr. A.Venkatesan, filed an affidavit of tendering apology before this Court which reads as follows:

I, A. Venkatesan, Male aged about 41 years, S/o. T. Adikesavan, working as Assistant Section Officer in the Home, Prohibition and Excise (XIV) Department, Secretariat, Chennai, do solemnly affirm as hereunder :-

- I am most humbly submit that, I came to the court hall for watching the proceedings and I was not summoned by the learned Government Pleader or learned Public Prosecutor or any other Government Advocate to assist or instruct to them. I came to the Court Hall on my own to watch the proceedings without getting any permission from my office. This is the first time, I have entered in the Court Hall and I am not aware of the Court procedures. Out of curiosity without any intention or motive I recorded the Court proceedings innocently with my cell phone.
- I humbly submit that I have joined the service only two years back, and I have to look after my aged father and mother, wife and two small daughters. I am the only bread winner of the whole family.
- I am to submit that I was not aware that I should not bring cell phone in the Court Hall and use the same. I have not used the cell phone intentionally, wantonly and deliberately. I have no intention whatsoever manner to interfere in the administration of Justice during the Court Proceedings. I, therefore, beg this Honourable Court to sympathetically pardon me and drop further action.
- I most respectfully submit that such mistakes will not be committed by me and once again tender my apology for committing the above mistakes considering my family circumstances and I request that I may be pardoned."

Respondent

The learned Public Prosecutor also stated that neither the Office of the Public Prosecutor nor the Office of the Government Pleader has sent any instructions to the said person, to appear before the Court. The appellant is not in a position to explain as to what purpose he has come to this Court. It was seen that he was having a file with some blank papers as if he has come to the Court to give instructions to the learned Public Prosecutor or to the learned Government Pleader. The above said factors make it crystal clear that he appears to have interfered into the administration of justice during the Court proceedings.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Article 226 of the Indian Constitution was also employed by the court in the case as the writ known as Mandamus was explained and its relevance. The high court's power to issue mandamus against any person or authority was analyzed. The power of the high court to the power to issue a writ of mandamus or a writ like a mandamus or to pass orders and give necessary directions where the government or public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.

Contempt of Court refers to the offence of showing disrespect to the dignity or authority of a court. The objective for contempt is stated to be to safeguard the interests of the public if the authority of the Court is denigrated and public confidence in the administration of justice is weakened or eroded. The Supreme Court and High Courts derive their contempt powers from the Constitution. The Contempt of Court Act, 1971, outlines the procedure in relation to investigation and punishment for contempt. The Act divides contempt into civil and criminal contempt.

Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

i. Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or

ii. Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or

iii. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

6. JUDGEMENT IN BRIEF

The proceedings initiated against Mr. A. Venkatesan, S/o. T. Adikesavan, Assistant Section Officer, attached to Home (P&E) Department, Secretariat, Chennai, the court accepts the tendering of apology.

The Government has formulated certain guidelines and restrictions for the entry of the Government officials. Apart from the said factor, it is also seen that the said contemnor Mr. A. Venkatesan, is in service only for the past 2 1/2 years and he is aged about 41 years and it is brought to the notice of this Court that he has not been issued with any other charge memo or implicated in any other proceedings. It is also stated by him that he is the sole bread-winner of the family and he has to take care of his aged parents (father and mother) apart from his wife and two small daughters. Considering all these factors, we are of the considered view that the Government shall drop the proceedings initiated against Mr. A. Venkatesan.

In view of the order passed in the *Suo Moto* Contempt Proceedings, we are of the view that no further order is required in respect of the writ petition filed by appellant and former Additional Government Pleader of this Court, and we are also of the considered view that there is no ground made out for ordering enquiry by Central Bureau of Investigation (CBI) in this matter. Both the petitions are disposed of accordingly. The cell phone already seized from Mr. A.Venkatesan, and kept under the custody of the Registrar General is directed to be returned to Mr. A.Venkatesan after deleting the clippings recorded by him during the court proceedings.

7. COMMENTARY

Judiciary in India should really be expanding its time and energy invoking its power to punish for contempt of court. Supreme Court and High Courts derive their contempt powers from the Constitution. The Contempt of Court Act, 1971, Act only outlines the procedure in relation to investigation and punishment for contempt. The Constitution allows superior courts to punish

for their contempt. The Contempt of Court Act additionally allows the High Court to punish for contempt of subordinate courts. The contempt power is needed to punish willful disobedience to court orders (civil contempt), as well as interference in the administration of justice and overt threats to judges. The reason why the concept of contempt exists is to insulate the institution from unfair criticism and prevent a fall in the judiciary's reputation in the public eye. For many years, truth was seldom considered a defence against a charge of contempt. There was an impression that the judiciary tended to hide any misconduct among its individual members in the name of protecting the image of the institution. The Act was amended in 2006 to introduce truth as a valid defence, if it was in public interest and was invoked in a bona fide manner. The punishment for contempt of court is simple imprisonment for a term up to six months and/or a fine of up to ₹. 2,000.

From the case of *A. Venkatesan & Others. v. The Government of Tamil Nadu & Others*, It is made clear that it is the responsibility of the Assistant Commissioner of Police, who is in-charge of the security arrangements of the High Court premises, to ensure that the Government officials are strictly following the said guidelines before entering into the High Court premises and if any dereliction and violation of the said guidelines is noticed, the same will be viewed seriously.

CASE NO. 4

ASSOCIATION OF DEAD PEOPLE AND ORS.

v.

STATE OF UTTAR PRADESH AND ORS.

(C.M.W.P. No. 29806 OF 1999)

CASE OF THE 'LIVING DEAD'.

ABSTRACT

This case is about how the farmers in Azamgarh were declared dead by corrupt persons in the revenue records which then allowed the commission of organized crime whereby their land was snatched by the same persons who were said to be accompanied by the official record keeper. This issue came to the spotlight when TIME Magazine brought out an article highlighting the same, which was then followed by the High Court of Allahabad taking suo moto cognizance and registered as a writ petition. The court ordered that the two chosen amicus curiae must present this case before the National Human Rights Commission, while allowing for more cases of the same kind to be filed with the Chief Judicial Magistrate.

1. PRIMARY DETAILS OF THE CASE

Case No	:	C.M.W.P. No. 29806 of 1999
Jurisdiction	:	Allahabad High Court
Case Filed on	:	July 21, 1999
Case Decided on	:	January 7, 2000
Judges	:	Justice Ravi Swaroop Dhavan and Justice Birendra Dikshit
Legal Provisions involved	:	Article 21 of the Constitution of India Sections 14 and 36(2) of Protection of Human Rights Act, 1993
Case Summary Prepared by	:	Arpith Jacob Varaprasad School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

- The Appellants in this case are (1) Association of Dead People through Lal Bihari, and (2) Lal Bihari.
- The Respondents in this case are (1) State of Uttar Pradesh through the Secretary (Revenue) Uttar Pradesh Government, Lucknow, (2) Collector, Azamgarh, (3) Registrar, Land Registry Office, Azamgarh, (4) Sub Divisional Officers of the District of Azamgarh.
- The main plight of the farmers under this case had gone unnoticed and unvoiced for years together until it was reported in an article, "Plight of the Living Dead: Indian Farmers declared deceased by unscrupulous relatives must prove they're alive to regain their land", published by TIME Magazine, Asia Edition, July 19, 1999. This article was written by Michael Fathers along with Meenakshi Ganguly who made an on-the-spot enquiry about the happenings in Uttar Pradesh. This article begins with the authors describing the horrifying state of affairs in the state of Uttar Pradesh, also known as the "bad lands." It is as simple as going to a government office, paying a minimal amount as bribe to an official and the owner will be declared as dead while the land will be transferred to your name. The focus is laid on Lal Bihari, who fought hard for 18 long years to get justice and his land back after he had been a victim of being declared as dead even though he was very much alive throughout. During his long fight, in order to get his name registered on a government document of any kindle tried multiple tricks, first he sought arrest, tried to run for Parliament, kidnapped the son of the man who stole his property, threatened murder, insulted judges, threw leaflets listing his problems at legislators in the State Assembly, but every single attempt of his went in vain as he was flogged and rebuked for wasting the time of officials. Soon he started to meet more people who faced the same issue and were going through the same struggle, which led to the formation of Association of Dead People, which attracted more 'living dead' people, like bees to honey. From all the people who had joined hands with them to raise their problems and concerns, one thing was clear, that majority of the victims were sick, widows or simple people, basically anyone who is incapable of fighting back and cannot take a stand for themselves.
- After the publication of this news report, the High Court of Allahabad, Uttar Pradesh took *suo moto* cognizance of the same and registered the issue as a writ petition. Along

with which, the court appointed two learned senior counsels as amicus curiae to the case, Messrs Suresh C. Tripathi and Prabodh Gaur.

3. ISSUES INVOLVED IN THE CASE

The main issues in this case were basically those that revolved around the grabbing of the land by the powerful from those farmers who were poor and vulnerable, while declaring them as dead. Firstly, the violation of human rights of the farmers under the aforementioned clauses of the Protection of Human Rights Act, 1993 and the Constitution of India. Secondly, the corruption that involved bribing the government officials and the presenting of false evidence under Section 191of the Indian Penal Code.

4. ARGUMENTS OF THE PARTIES

- **Petitioner** represented by Raj Karan Yadav, Suresh C. Tripathi and Prabodh Gaur
  The petitioners argued that there was a violation of their fundamental right i.e. Article 21 of the Indian Constitution, since their only source of livelihood and income was being snatched away from them by those with muscle power and money who engaged in unfair and unjust means.
- **Respondent** represented by Ashok Mehta and B.N. Mishra
  The Chief Standing Counsel, Uttar Pradesh, Mr. Ashok Mehta immediately requested the court, via the District Magistrate, to spread the word all around the district of Azamgarh, via newspapers, radio and television, that whoever has had a similar fate of being declared as dead and having their land grabbed and possessed illegally. They also argued that the reports received from the Chief Revenue Officer of Azamgarh were inadequate, while also asking for a direct conference with the District Magistrate on the totality of the circumstances. He also raised a concern as to how, at the local administration level, nothing is being done, unless there is an application to seek redressal from the court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Broadly, there are three legal aspects involved in the case:

I. Article 21 of the Indian Constitution, which states, "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" As seen in

the facts of the case, it is evident that there is a blatant violation of the said article, since farming and the land owned for the same is clearly the necessity and only source of income for the farmers to live their lives. Moreover, Article 21 is a fundamental right, the violation of which is of utmost importance for any Indian citizen.

II. Section 14 of Protection of Human Rights Act, 1993 which states, "*The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be*", which basically means that the National Human Rights Commission has the power to utilise services of any Government agency.

III. Section 36 (2) of Protection of Human Rights Act, 1993 which states, "*The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.*"

6. JUDGEMENT IN BRIEF

- Initially the court gave three directions, firstly, the state administration will arrange for wide publicity. Second, a core group would be formed under the District Magistrate for the discovery of more cases, which would be registered with the Chief Judicial Magistrate. And third, it stated that since this matter involved the fabricating of false evidence, it is an offence against public justice and therefore will be charged by the Chief Judicial Magistrate.
- The High Court of Allahabad had suggested that the case be closed as soon as possible since this involved the issue of extremely poor farmers who have been deprived of their livelihood, and is a blatant violation of human rights and of Article 21 of the Indian Constitution, which talks about the provision of a fundamental right whereby no person should be deprived of their right to life and personal liberty, whereby livelihood comes under the ambit of the said provision, therefore also involving dignity which the farmers have been stripped off. Moreover, the Court admitted and regretted to state that over and above these troubles, the farmers have also been denied the equal protection of law which is their fundamental right. During the proceedings, there had been multiple concerns raised by a number of people such as the Advocate General, Chief Standing Counsel, Cabinet Minister, and also the Board of Revenue, but there was no concrete

solution presented to the court, to which the court responded by saying that if it were a few cases then issuance of a writ would suffice in ensuring compliance with law, but since the magnitude of the affected was large and there was no concrete solution presented to the court, therefore the State showing mere concern is not of any major help.

- In relation to the provisions given under Section 14 of Protection of Human Rights Act, 1993, the court decided that since the National Human Rights Commission has the right to intervene in any court proceeding involving the violation of human rights, and since both the amicus curiae submitted that they do not have the resources to proceed with the case and are looking for the law to protect all of them.
- The court requested the amicus curiae to present this case to the National Human Rights Commission within six weeks, for which the Chief Standing Counsel assured that his office would provide secretarial assistance, while the cases that were being filed with the Chief Judicial Magistrate might be filed until an amiable and logical conclusion has been reached.
- The proceedings stood consigned as the matter was to be filed at the National Human Rights Commission.

7. COMMENTARY

This case is a classic example of how there is abject violation of law and discrimination towards the poor and powerless in India and as to how they can be helped and what are the steps and measures that can be taken.

Throughout the course of history, there has always been a group of people who have been discriminated, looked down upon, and have been treated in the worst and most inhumane ways. These people are the poor, now since they are stuck in this vicious cycle of poverty while not being able to escape due to the lack of awareness as well as lack of opportunities, they are considered as invisible to those with muscle and money power paired with an evil and greedy mind. As seen in the case, the poor have just been tossed around and their lives have been completely destroyed, with a simple bribe, and the reason they are unable to bring that out into the public sphere and fight for their lives is solely because they are scared for the lives of their family and what would happen to them if the people spoke up. Luckily for the farmers in this case, there was a silver lining that paved the way for them to seek redressal. Even though the fear was still present amongst many of them, there was a unity that was generated with the

article that was published in the TIME Magazine, as it spread awareness amongst people and brought them together. That is the power of media, as to how it can take up a story of the underprivileged and distraught, and via their publication they are able to garner the support of people, officials and even the court.

Article 226 of the Indian Constitution states, "*Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose*." This provides for the High Court of Allahabad to take *suo moto* cognizance over the case and register it as a writ petition. The powers of any High Court to take *suo moto* cognizance, is solely for the purpose that every person should be delivered to every single person, even those that are unable to afford it or speak up for themselves, which in this case were the agriculturalists. One of the powers under the umbrella of *suo moto* cognizance that the High Court of Allahabad used, is the power where the court can order for a probe by any authority on any matter where an intervention is deemed necessary. Also, the role of National Human Rights Commission is to help the people and protect them from any form of violation of their human rights, and can use their power and authority of intervening in any court case and taking it over from thereon, provided there is a violation of a human right in the case, but in the given case, before any sort of intervention by the National Human Rights Commission it is seen that the court directs the two appointed amicus curiae to present the matter to the commission, since they would be better equipped to deal with the matter, considering their availability of resources and the specialization. Once the case was transferred over to the National Human Rights Commission, the District Magistrate, Azamgarh and Secretary of Revenue, Uttar Pradesh conveyed to the Commission that action was being taken to correct the Revenue records wherever the land holders had been erroneously shown to be dead. Moreover, the Special Secretary informed the Commission that all such records would be corrected by March 31, 2001.

In conclusion, the High Court of Allahabad proceeded with the case in the best possible manner, and delivered an outcome that was satisfactory on paper, although the happenings on the ground reality will always be a lingering doubt. The delegation of duties amongst the officials, and the efforts taken by them and the court to ensure that not just a few of the farmers who approached the court, but also the others who might have suffered from the same but have

not had the opportunity or the courage to speak up for themselves while also providing for their protection, shows that humanity still exists amongst people and the will to ensure that the fundamental rights guaranteed under the Constitution of India, are not discriminatory and are applicable equally to every single person irrespective of economic status, religion, caste, or gender.

CASE NO. 5

SUO MOTU
v.
STATE OF GUJARAT & ORS.

(WRIT PETITION (CIVIL) NO. 42 OF 2020)

ROLE OF STATE IN COMBATING COVID-19.

ABSTRACT

This judgement is a dialogic judicial review exercised by High Court of Gujarat of the actions taken by the state authorities to contain Covid-19. This judgement dealt majorly with two issues firstly problems of Migrant workers employed in different areas of Gujarat in different industries and secondly problems associated with affordable healthcare for economically poor strata of covid-19 patients. Ancillary issues such as Cost of Interstate Migration, grievance redressal mechanism for Migrant workers, Subsistence money for the daily wage workers, Procurement of N-95 masks, establishment of covid-19 facilities, problems faced by doctors were also dealt in this judgement.

The Hon'ble court in this judgement establishes writ jurisdiction of the private authorities with the help of various special enactments like Epidemic Disease Act, 1897 and Disaster Management Act, 2005. Court observes the public duty done by the hospitals and hence under the ambit of article 226 of the constitution of India. In the interest of public, the court directs state authorities in relation to both the issues.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (Civil) No. 42 of 2020
Jurisdiction	:	High Court of Gujarat
Case Filed on	:	March 13, 2020
Case Decided on	:	May 22, 2020
Judges	:	Justice Vikram Nath, CJ & Justice J.B. Pardiwala
Legal Provisions involved	:	Article 12, 19 (1 (g) and 21 of the Indian Constitution Section 2(1) of the Epidemic Diseases Act, 1897
Case Summary Prepared by	:	Ashray Vinayaka Government Law College, Mumbai

2. BRIEF FACTS OF THE CASE

The case was voluntarily taken and filed by the case according to *suo moto* cognizance basis for Supervision of the actions taken by the state government and other authorities. The Hon'ble court takes cognizance of various news reports and other reports to keep a check on the actions of the government functionaries involved in alleviating Covid-19 pandemic. This *suo moto* case observes

- Issues related to transportation and other plights of interstate and intrastate migrant workers
- Issues related to Management of Hospitals, Staff, medicines and related objects.
- Issues related to Payment of Aanganwadi workers and 10th and 12th board examinations.

The High court of Gujarat took this case at a very pertinent time. At this time the Covid-19 cases were on a steep rise in the State of Gujarat. The high court ensured that there shall not be any irregularity or mismanagement through the orders passed in this case

3. ISSUES INVOLVED IN THE CASE

I. Whether the funds of Real Estate Regulatory Agency (RERA) can be used for the benefit of migrant workers?
II. Whether private hospitals have a public duty to provide affordable medication?

4. ARGUMENTS OF THE PARTIES

- **Defendant**

With respect to using fund of RERA for the benefit of construction workers, it was submitted that under section 75(1) & 75(2) of the Gujarat Real Estate (Regulation and Development) Act of 2020, the funds under the RERA Act can only be utilized for payment of salaries and other allowances of the Chairperson and other members as well as for other administrative expenses that may be required to be incurred by the authority for discharging its functions and purposes provided under the Act. Therefore, there is a statutory dictum for using the funds under the RERA Act and it is difficult for the RERA authority to go beyond the statute and utilize the funds for the benefits of construction workers. However it is pertinent to note that a onetime benefit of 1000/- has been transferred through Direct Benefit Transfer mode.

With respect of the travelling charge/displacement allowance of interstate migrant workers, it was submitted that section 14 & 15 of the interstate migrant workers act, 1979 does not apply to them because most of the migrant workers have come on their own however it was added that the States of U.P., Odisha and Tamil Nadu have informed that they will deposit the payment for travelling charges to the Railways directly. No migrant worker has been denied travel to his home town on account of non-payment of travel charges. Further it was submitted that other measures like setting up a helpline number are instituted. It is important to note that through order dated 15.05.2020, the Supreme Court have granted interim protection to employers from their obligations to make full payments.

With respect to exorbitant amount charged by private hospitals, it was submitted that covid specialised hospitals have been established in four mega cities where free treatment including free meal is provided. In addition to that 50% of the beds in 42 private hospitals have been requisitioned for the patients referred by Municipal Corporation and charged according to ceiling rate fixed by the municipal commissioner. With regard to Private laboratories it was submitted that the State has decided to conduct testing in government labs, so that patients can avoid unnecessary expenditure. The private laboratories shall be allowed to perform the tests, if and when, the capacity of Government labs is exhausted. It is relevant to note that MOUs were entered into with 23 hospitals for various services related to Covid-19 treatment. However some hospitals have refused to enter into the MOU.

In regard to raising the honorarium of aganwadi workers, it was submitted that the honorarium has been increased and details were provided about payment of arrears.

With respect to 10th and 12th board examinations it was submitted that the examinations have already been conducted.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The judgement talks about the article 19(1)(g) of the Constitution of India, freedom to practice any profession or to carry on any occupation, trade or business and the reasonable restrictions imposed on them. It deliberates upon the reasonability with the help of various articles in Directive Principles of State Policy (DPSP).

The judgement explains the power conferred on the state authorities under various provisions of the Disaster Management Act, 2005 and Section 2(1) of the Epidemic Diseases Act, 1897, Gujarat Epidemic Disease COVID-19 Regulations, 2020 to alleviate the pandemic.

Health as a fundamental right under article 21 of the Constitution of India and the concept of Public duty under Article 12 was discussed in the judgement and to clarify the obligations on the medical profession the judgement also touches upon IMC (Professional Conduct, Etiquette and Ethics), Regulations 2002, Clinical Establishments (Registrations and Regulation) Act, 2010.

6. JUDGEMENT IN BRIEF

The Hon'ble court observed the need to issue stern directions against those hospitals which refused to enter into MOU. The court directed the State Government to initiate appropriate legal proceedings against all those private/corporate hospitals who are not ready and willing to honour the understanding arrived at with regard to treating the COVID-19 patients including those who are not agreeable or willing to cooperate and enter into an MOU. Further the court directed the State Government to institute prosecution against all responsible persons of the concerned hospitals for the offence punishable under Section 188 of the Indian Penal Code and Sections 57 and 58 respectively of the Disaster Management Act.

The State Government was also directed to issue a Notification making it mandatory for all the multi-speciality private/corporate hospitals in the city of Ahmadabad and on the outskirts to reserve 50% of their beds (or such other capacity, as the State Government may deem fit and proper on the basis of the increase in the number of cases). This should include all categories of beds to treat the COVID-19 patients with specific guidelines and SOPs which the State Government may deem fit.

Further the Hon'ble court, in regard to the condition of civil hospital, Ahmedabad, issued the following directions to transfer the doctors who were not performing, to improve the working conditions of the resident doctors, to establish accountability of senior officers, to increase the number of ventilators and oxygen beds and to take punitive action against the ward boys for negligence.

The Hon'ble court directed the railway authorities to waive off one way charges of the migrant workers or in alternative, for the state government to bear the charges. Also relying on the

report of high power committee and the order by the apex court, the Hon'ble court extended the bail of those accused who were already on temporary bail for forty-five days.

This judgement is an example of the dialogical judicial review exercised by Gujarat high court. The court further listed down the names of eight hospitals which were not included in the list of hospitals contacted by state authorities for Covid-19. The judgement also discussed the hospital management model adopted by Maharashtra during the pandemic which can be used as an example for Gujarat. The judgement observes that one of the hospitals is listed in the previous list but is missed in the latest update and seeks a reply on this to ensure a fair system.

The Hon'ble court also proposed the state government to issue directions to the terms of permanent parking of an ambulance near a quarantine facility. All the general physicians shall open their clinic or serve in Covid facility, the private hospital shall not demand fees in advance from the patients, Creation of different Covid care centres to separate high risk patients from asymptomatic patients, Creation of a computerized control centre for grievance redressal of common public, Procurement of medicines and other devices.

The Hon'ble court held that Health is a state of complete physical, mental and social well being. The term 'health' implies more than mere absence of sickness as held by the Supreme Court. The Apex Court in India has played a decisive role in realization of the right to health by recognising the right as a part of the fundamental right to life and issuing suitable directions to the State authorities for the discharge of their duties. The Court has recognised that maintenance of health is a most imperative constitutional goal whose realisation requires interaction of many social and economic factors.

The court held that the writ of mandamus would lie against a private individual and the words "any person or authority" used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State and they may cover any other person or body performing public duty. The judgement deliberating upon the practice of appointment of a commission to investigate and provide evidence in claims made on behalf of weaker sections of the society observes that the court goes beyond the adversarial procedure in the interest of public. Placing its reliance on *Bandhua Mukti Morcha v. Union Of India & Others*, the Hon'ble court observed "*If the Supreme Court were to adopt a passive approach and decline to intervene in such a case because relevant material has not been produced before it by the party seeking its intervention, the fundamental would remain merely a teasing illusion so far as the poor and disadvantaged sections of the community are concerned."* The Hon'ble court further added that there is a

certain evidentiary value to the report of the commission as well and the high court has the jurisdiction to form a commission under article 226 of constitution of India.

Defining the term "Public Function" , the Hon'ble court observes that, *A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. The court observes that the Public function need not be exhaustive domain of the state Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. "*

The Hon'ble court established an analogy between education institutions and Medical institution to direct that profiteering and commercialization shall not be the object of these professions. Relying on TMA Pai, The Court made it clear that it is a noble occupation which would not permit commercialization or profiteering and, therefore, such educational institutions are to be run on 'no profit no loss basis'. Through this analogy the Hon'ble court observes that Hospital performs a public function and have a public duty as envisaged under Article 12 of the Indian constitution.

The Hon'ble High Court establishing jurisdiction upon the Private hospitals held that if a private body has a public duty imposed on it, the high court has the jurisdiction to entertain writ petition. The High Court placing its reliance on *UOI v. Mool Chand Khairati Ram Trust* held that "*the poor cannot be deprived of the treatment by the best physician due to his economic disability in case he requires it. It is the obligation on the medical professionals, hospitals, the State and all concerned to ensure that such a person is given treatment and not deprived of the same due to poverty. That is what is envisaged in the Constitution also."*

7. COMMENTARY

The World Health Organisation declared Covid-19 a global pandemic on March 11, 2020. Understanding the need of urgent judicial review of actions of state authorities, the Hon'ble court took *suo moto* cognizance of this issue and registered the case on March 13, 2020.

With respect to judicial review of executive actions, the appellate courts in India have been criticised for framing the issues in binary form i.e, either the usurpation of power or complete abandoning and leaving it on the executive. However in this case the Hon'ble court had exercised dialogical judicial review of the notifications/orders of the state authorities handling the Covid-19 pandemic. The court created a line of extent of review by the judiciary. The court relied upon *State of Himachal Pradesh v. A.* Parent of a Student of Medical College, Shimla wherein the Apex court held that no doubt that court cannot even indirectly enter into a supervisory role over lawmaking activities of the executive and the legislature but when the court finds that the executive is remiss in discharging its obligation under the constitution, so that the poor and the underprivileged continue to be subjected to exploitation and injustice, the court can certainly and must intervene and compel the executive to carry out its constitutional obligation.

In the present case, the court has observed that the name of one hospital was exempted from the list of covid-19 facility. The court remarked the possibility of foul play and directed to show the reason of such exemption secondly the court on its own listed eight corporate hospitals which were not included in the Covid facility list. The court directed the state authorities to provide reasons for not including them. It is relevant to note here that the court has not usurped the role of the executive instead it entered into a dialogue with the executive to overcome the shortcomings.

8. IMPORTANT CASES REFERRED

- *Bandhua Mukti Morcha v. Union Of India & Others (1984) 3 SCC 161*
- *CESC Limited v. Subhash Chandra Bose & Ors, AIR 1992 SC 573*
- *Janet Jeyapaul v. SRM University Limited (2015) 16 SCC 530*
- *State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla (AIR 1985 SC 910),*
- *T.M.A.Pai Foundation & Ors v. State Of Karnataka & Ors (2002) 8 SCC 481*
- *UOI v. Mool Chand Khairati Ram Trust (2018) 8 SCC 321*

CASE NO. 6

COURT ON ITS OWN MOTION
v.
UTs of J&K AND LADAKH

(WRIT PETITION (C) PIL NO. (UNNUMBERED) OF 2020)

RISING DOMESTIC VIOLENCE AMID LOCKDOWN- MEASURES AND DIRECTIONS.

ABSTRACT

Covid-19 has been one of the most challenging times that any of us had to endure during our lifetimes. While there have been a variety of challenges regarding a vaccine and preventing further infections, another saddening aspect of this pandemic has emerged which is being experienced by women at large, who have to deal with instances of rape, molestations and domestic violence owing to lockdowns. With the sorry state of affairs being highlighted by various organizations and studies, Jammu and Kashmir had a really bad cluster of rape and molestation cases along with eve-teasing which was reported leading to the J&K High Court deciding to take *Suo Moto* cognizance of the same and passing an order to ensure that certain necessary steps are taken for the prevention of the same by the government by ensuring ease of access to resources among other things along with it requiring the concerned authorities to submit a report regarding what was done to further the same at a later date.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (C) PIL No. (unnumbered) of 2020
Jurisdiction	:	High Court of Jammu and Kashmir
Case Filed on	:	April 16, 2020
Case Decided on	:	April 16, 2020
Judges	:	Justice Gita Mittal, CJ, Justice Rajnesh Oswal
Legal Provisions involved	:	Protection of Women from Domestic Violence Act, 2005
Case Summary Prepared by	:	Ayanava Bhattacharya School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

- With it being *suo moto* cognizance cases the parties involved were the HC and respondents being the Secretaries of the UT of J&K and Ladakh along with the Social Welfare Department.
- Taking into account the global trend wherein the various countries have all faced the same issue of women being victims of violence due to imposition of lockdown and losing access to relief facilities and friends the court wanted to ensure that the same can be prevented by the concerned authorities to ensure lesser no of crimes against women are committed during this period.
- In the order dated 16.04.2020 the court took into account the instances of the same issue worldwide as well as what has been advised by the UNO. Also in the order, the court has laid down a list of 8 measures that it wants the government to take and further demanded a report regarding what was done and what measures are already in place for the same from the concerned authorities.

3. ISSUES INVOLVED IN THE CASE

The Court identified the problem of domestic violence and crimes against women arising out of the various factors that come into play that lead to these issues and they are as follows:

I. The inability of women and children from the economically weaker sections of Indian society to accessing on-line platforms for assistance. Any measure for assistance to victims of domestic violence must provide for women and children from this group.

II. Shelters and help lines for women must be considered an essential service for every state with specific funding and broad efforts made to increase awareness about their availability.

III. The fact that the victim has to go against intimate domestic partners or her family members.

IV. The lack of enforcement, as well as an alternative source of residence, also impedes women filing complaints with officials or the police.

V. Even at the best of the time, women and girls face tremendous barriers in accessing means to meet for help and securing justice. Illiteracy, financial incapacity; ignorance of available assistance; family and societal barriers; fear of formal institutions like police; insufficient legal aid; lack of information, etc impede women and girls from accessing resources.

4. ARGUMENTS OF THE PARTIES

With this being a *suo moto* cognizance case and it is an order rather than a case per-se there weren't any arguments raised. Though the reason that the court felt the need to take up this matter can be understood by the UNO guidelines regarding the same

- to dedicate funding in COVID-19 response plans for domestic violence shelters;
- ensure increased support to call-in lines, including text services so reports of abuse can take place discreetly;
- provide online legal support and psychosocial services for women and girls; which Services in many cases are run by civil society organizations, which now also need financial support;
- Shelters should be designated as essential services and kept open, which may mean providing childcare to the staff so they can work;
- Ensure that these services are accessible, so they should be integrated into other essential service spaces, like grocery stores and pharmacies

5. LEGAL ASPECTS INVOLVED IN THE CASE

The main law that's been the basis for this order is the Protection of Women from Domestic Violence Act, 2005 which primarily intends to prevent domestic violence on women in all forms from her intimate partner and other family members. 'Domestic Violence' not only includes actual abuse but also the threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives are also covered within the meaning of domestic violence.

- **Physical Abuse** - Bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force
- **Sexual Abuse** – Conduct that abuses, humiliates, degrades or otherwise violates the dignity of woman.
- **Verbal and Emotional Abuse** - Insults, ridicule, humiliation and repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- **Economic abuse** - Deprivation of all or any economic or financial resources to or prohibition or restriction to continued access to resources or facilities to aggrieved person

or her children or disposal of her *stridhan* or any other property jointly or separately held by the aggrieved person. (Section 3)

A duty is cast upon the government under Section 11(a) of the enactment to take all measures to give wide publicity to the provisions of the law through public media including the electronic and the print media. With this being the basis the court also based its order a variety of instances from other countries where measures were taken to further the same objectives or advise was given to try to protect the basic rights of a person and special needs of women in abusive households in challenging times like this

6. JUDGEMENT IN BRIEF

- The rationale behind the judgment the fact that all crisis disproportionately impacts women. Thus internationally it has been observed that while the pandemic is having a tremendous negative impact on societies and economies, the adverse social and economic consequences of the pandemic for women and girls are devastating. With nearly 60% of women around the world working in the informal economy, earning less, saving less are at greater risk of falling into poverty because of the COVID-19 pandemic. As markets fall and businesses close, millions of women's jobs have disappeared. At the same time as the women are losing paid employment, women's unpaid care work has enhanced exponentially, as a result of school closures and the increased needs of elder people. These currents have been observed to combine as never before to defeat women's rights and deny women's opportunities. As the lockdown is implemented, societies as a whole are having reduced access to resources. There is an increase in stress due to loss of jobs and strained finances. Lack of income, unemployment, insecurity about the future or the fate of children creates tensions amongst the adults leading to abuse of all kinds. This is exaggerated in families with prior histories of such behaviour. Women and children are found to be especially vulnerable to such domestic violence which has seen a worldwide spike this has made this order a much need one and thus in the furtherance of justice, equity and good conscience this order was passed.
- With the Obiter Dicta being that the court took judicial notice of the fact that the plight of victims of domestic violence in the Union Territories of Jammu and Kashmir as well as Ladakh must be no different as that of similarly placed victims in other jurisdictions. There should be no hesitation in holding that to ensure adequate means and tools to

address domestic violence to victims in these two Union Territories, women's leadership and adequate contributions must also be at the heart of the COVID-19 planning and implementation measures in light of the huge number of calls being received by the authorities of the valley which are majorly about domestic violence.

7. COMMENTARY

India has long been a country which has had its share of hardship with dealing with the evolving times and the uphill journey of dismantling a patriarchal setting of its society. But what had been a huge issue to the image of the country has been the alarmingly increasing cases of crimes against women, such as rape, molestations, eve-teasing, bride burning, dowry deaths, honor killings and so many others, with the 2012 Nirbhaya Rape case attracting huge domestic and international outcry and even having Delhi labeled as the rape capital of the world. Post this incident numerous cases of rape and other heinous crimes have been highlighted with many studies saying that India was one of the worst countries to be born as a woman in, this even took a toll on our tourism industry, with that being said the times of COVID 19 has forced people to stay at home for a long duration of times which has in many cases led to the increase in disputes among co-habitants or in the case where the husband is abusive has led to an astronomical increase in the number of cases of domestic violence. With factors such as lack of financial independence, inability to access resources of relief this has caused the cycle of abuse to continue. Taking note of the difficulties of women, the Secretary-General of the UN has called for all governments to make the prevention and redress of violence against women a key part of their national response plans for COVID-19. The court further said that The position as obtains in India on the issue of domestic violence is similar as is being experienced in countries all over the world including Argentina, Canada, France, Germany, United Kingdom and the United States of America where there are increasing reports of domestic violence during the crisis and heightened demands for emergency services. Studies have shown that innovative actions are being taken that should be examined and replicated.
Some examples are listed below as mentioned in the order-

- In Argentina, for example, pharmacies have been declared safe spaces for victims of abuse to report;
- In France, reports of domestic violence have risen by about 30% since the government announced a national lockdown. Grocery stores are housing pop-up-counselling services. Victims are being asked to access pharmacies and inform pharmacists about

the abuse directly or using a code word: mask 19 if they are accompanied by their abuser. France's government also recently announced that it had reserved 20,000 hotel rooms for victims of domestic violence.

- In Spain, where lockdown rules are extremely strict, and many people are being fined for breaking them, the government has told women they will not be fined if they leave home to report abuse.
- Canada and Australia have integrated funding for violence against women as part of their national plans to counter the damaging fallout from COVID-19. Prime Minister Justin Trudeau of Canada has set aside tens of millions of dollars to support women's NGOs, shelters and sexual assault centres across Canada.
- In China, the hashtag #AntiDomesticViolence During Epidemic has taken off as part of advocacy with links to online resources- helping to break the silence and expose violence as a risk during the lockdown.
- In Antigua and Barbuda, online and mobile service providers are taking steps to deliver support such as free calls to helplines.
- In Columbia, the government has guaranteed continued access to virtual gender-based violence services, including legal advice, psychosocial advice, police and justice services, including hearings
- In the UK, Mandu Reid, leader of the Women's Equality Party, has called for special police powers to evict perpetrators from homes for the duration of the lockdown, and for authorities to waive court fees for the protection orders.
- A prosecutor in Trento, Italy, has ruled that in the situation of domestic violence the abuser must leave the family home and not the victim, a decision hailed as "fundamental" by the trade union CGIL.
- Within India, the police in Uttar Pradesh has launched a new domestic violence helpline as cases surge.
- In Greece, officials said they were stepping up a campaign to help women deal with problems emerging from the issue of confinement.
- The Government in Wales has declared its Live Fear Free helpline will remain open 24/7 and reminded people that if someone is in immediate danger, they should contact '999'. All lead domestic abuse service providers and charities in Wales are ensuring that support

Taking inspiration from the above and keeping in mind the UNO guidelines as well the following measures were advised by the court keeping in mind the various steps and initiatives by other countries along with the suggestions of the UNO:

- Creation of dedicated funding to address issues of violence against women and girls as part of the COVID-19 response by the Union Territories of the Jammu and Kashmir and Ladakh;
- Increased availability of call-in services to facilitate discreet reporting of abuse;
- Increased tele/online legal and counseling service for women and girls;
- Designated informal safe spaces for women say grocery stores and pharmacies, where they can report domestic violence/abuse without alerting the perpetrators.
- Immediate designation of safe spaces (say for instance empty hotels/education institutions etc) as shelters for women who are compelled to leave their domestic situation. These shelters must be treated as accessible shelters.
- Giving urgent publicity to information regarding all of the above measures as also the availability of the facilities for seeking relief and redressal against the issues of domestic violence.

Thus seeing the nature of the order and the timing that this comes it can be considered a very proactive step by the high court and a much-needed one at this point with the Kashmir Valley facing its challenges and this pandemic just being an added burden one can only hope that the above is well implemented the due relief reaches the aggrieved parties.

8. IMPORTANT CASES REFERRED

- *Vikas Bhutani v. State & Anr. CRL.REV.P. 579/2017 & Crl.M.A.12671/2017*
- *Vijayanand Dattaram Naik and 4 Ors v. Vishranti Vijayanand Naik and Anr CRIR/60/2018*
- *Ajay Kumar v. Lata @ Sharuti & ORS. CRIMINAL APPEAL NO(S). 617 of 2019/ (SLP(Crl.) No(s). 652 of 2019)*

CASE NO. 7

SUO MOTO
v.
THE CHIEF SECRETARY TO GOVERNMENT OF TAMIL NADU AND ORS.

(SUO MOTO WRIT PETITION NO. 10020 OF 2009)

IMPLEMENTATION OF MOTOR VEHICLE ACT.

ABSTRACT

According to the Ministry of Road Transport and Highway, 4.6 per cent of India's road fatality figures are directly linked to drunk driving. The figure may seem small, however the report also stated that there were more fatalities in accidents due to drunk driving than in accidents due to any other causes as many as 42% victims of drunk driving accidents ended up a fatality. Tamil Nadu, a non-dry state, recorded the highest number of drunk driving accidents countrywide. The madras high court took the Suo Moto notice of The Times of India's report of May 30 on the increase in drunken driving cases. Any person who in his/her blood has alcohol exceeding 30 mg. Per 100 ml of blood, detected in a test by a breath analyser, is said to be driving under the influence or drunk driving. The same also applies to any person who is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle. The court directed the state police and transport authorities to invoke penal provisions of section 185 of the Motor Vehicles Act and meticulously implement the law in the interest of the society. The judge also issued notices to the chief secretary, transport secretary, director general of police and Chennai police commissioner. In cases of drunken driving, section 185 of Motor Vehicle envisages a six-month prison term and/or upto Rs 2000 fine for the first offenders. For the second or subsequent offence, committed within three years of the first offence, the imprisonment may extend to two years with or without fine up to Rs 3000/-.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Moto Writ Petition No. 10020 of 2009
Jurisdiction	:	Madras High Court
Case Decided on	:	June 3, 2009
Judges	:	Justice N. Kirubakaran

Legal Provisions involved	:	Section 185 & 19 of Motor Vehicle Act, 1988
Case Summary Prepared by	:	Ayush Agrawal Ram Manohar Lohiya National Law University, Lucknow

2. BRIEF FACTS OF THE CASE

The case was voluntarily taken and file by the Madras High Court after a news article in the Times of India newspaper. The item that has appeared on Saturday May 30, 2009 under the title `CRACKDOWN ON DRUNK DRIVERS HITS RED TAPE — Transport Department Nixes Traffic Police's plan to cancel licences on spot". It was mentioned in the article that the proposal to cancel the licenses of people driving the vehicle under influence was caught in the "red tape". This proposal could not be implemented because of some provisions in the Motor vehicle Act. The city traffic police started impounding licenses of the people driving under influence and forwarded them to the transport department for action. However, the transport department officials refused to allow on spot cancellation of driving license as the Motor Vehicle Act provides for an opportunity to the first-time offender to correct themselves. The court after taking notice of the above-mentioned article and some other regular articles in "The Hindu" asking for strict actions, decided to take action of its own.

3. ISSUES INVOLVED IN THE CASE

I. Whether section 19 of Motor vehicle Act, 1988 prohibit on the spot cancellation of driving licences?

4. ARGUMENTS OF THE PARTIES

Appellant

Issue a Writ of Mandamus or any other Writ, or order or direction, directing the respondents strictly follow the provisions of the Motor Vehicle Act implementing Section 185 of the said Act in dealing with the drunken drivers and to direct the respondents to evolve an unified action plan relating to the spot cancellation of licence of drunken drivers.

Respondent
The Motor Vehicles Authorities expressed their inability quoting certain provisions of Motor Vehicles Act. If the licence has to be cancelled, the provision under Section 19 of the Motor Vehicles Act has to be invoked.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Section 185 in The Motor Vehicles Act, 1988 talks about Driving by a drunken person or by a person under the influence of drugs. It states that, -

Whoever, while driving, or attempting to drive, a motor vehicle,(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or (b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation.—For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

Section 19(1) in The Motor Vehicles Act, 1988 talks about revoking a license and states that a licensing authority has the power to disqualify a person for a specified period for holding or obtaining any driving licence and revoke any such licence. The section gives the holder of a driving licence an opportunity of being heard. The offender must be a habitual criminal or habitual drunkard or a habitual addict to any narcotic drug or psychotropic substance within the meaning of the Narcotic Drugs and Psychotropic Substances Act, 1985.
(d) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public; or
(f) has committed any such act which is likely to cause nuisance or danger to the public, as may be prescribed by the Central Government, having regard to the objects of this Act; or

Article 226 of the Indian Constitution was also employed by the court in the case as the writ is also known as Mandamus. The high court’s power to issue mandamus against any person or

authority was analysed. The power of the high court to the power to issue a writ of mandamus or a writ like a mandamus or to pass orders and give necessary directions where the government or public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.

6. JUDGEMENT IN BRIEF

In this case the Madras High Court reflected upon the increasing problem of drunken driving and agreed that every day people are dying because of road traffic accidents and according to the newspaper, the Government General Hospital sees as many as 150 road accident cases and the figure goes up to 200 on Saturdays. The court agonized over the negligent driving in the city and lack of discipline by the drivers. They viewed giving driving licences to people who cannot drive properly and due to drunken driving as a major reason for this behaviour. The court noticed that the Police Authorities have taken steps to cancel the licence of the drunken drivers on the spot, but the Motor Vehicles Authorities expressed their inability quoting certain provisions of Motor Vehicles Act. Court held that "if the licence has to be cancelled, the provision under Section 19 of the Motor Vehicles Act has to be invoked. As far as taking action against drunken drivers are concerned, under Section 185 of the Vehicles Act, there is a stringent punishment and Section 185 of the Act is extracted here". The court believed that a unified action plan by the Police and the Transport Authority regarding spot cancellation of licence has to be evolved.

The court directed the police to strictly follow the provisions of the Motor Vehicles Act, especially Section 185 of the Act in dealing with the drunken drivers and conduct regular drunken drive check throughout the state.

7. COMMENTARY

In India, the permissible and lawful age for consuming alcohol differs between 18-25 years and varies from one state to another. Some states have totally banned alcohol A maximum number of states and union territories in India have a lawful drinking age of 21 years. States like Bihar, Gujarat, Nagaland, Manipur and the union territory of Lakshadweep have completely banned

the sale of alcohol. So, even though drinking norms vary from state to state in India, drink and drive rules apply uniformly throughout the country, i.e. it is unlawful and prohibited to drink and drive according to the Motor Vehicle Act. Thus, driving under the impact of alcohol or drugs is treated as a criminal offence.

Any individual in whose blood, alcohol above 30 MG/ 100 ML of blood, is being spotted in a particular test done by a breath analyser, is considered to be a case of drink and drive under the effect of alcohol. The same will also be applicable to any individual who is under the effect of drugs to such a level which makes him or her incompetent of suitable control over the motor vehicle.

The High Court said that drinking itself is dangerous and drunken driving is more dangerous as it causes loss of life or many lives, injuries and grave injuries. Many families lose their bread winner and many people become handicapped and they have to lead a miserable life.

CASE NO. 8

IN RE: EXPEDITIOUS TRIAL CASES INDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881

SPECIAL LEAVE PETITION (CRIMINAL) NO. 5464 OF 2016

EXPEDITIOUS DISPOSAL OF TRIALS UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881.

ABSTRACT

The following is the summary of the case In Re Expeditious trial of cases Under Section 138 of Negotiable Instrument Act, 1881, Special Leave Petition (Criminal) No. 5464 of 2016. In 2005, the Supreme Court heard a petition concerning the dishonor of two cheques for a combined sum of some 1,70,000/-, tried and challenged over a 15-year period up to the top level. The Supreme Court noted that it took 7 years for this case to be dealt with at the level of the trial court, a matter which is expected to be resolved summarily by the trial court in 6 months. Such a case has been pending in various courts for 15 years, consuming judicial time and space of this Court. During the year 1988, with the incorporation of Chapter XVII into the Negotiable Instrument Act, 1881, the Dishonour of cheque, which initially provided grounds for action to file a civil suit, was criminalized. cheque dishonour, followed by default of payment after a notice of demand, was punishable with imprisonment or fine under Section 138 which could apply twice the value of the cheque or both. The intention behind this amendment was to ensure faith and credibility in business transactions. The Supreme Court took the *Suo Moto* cognizance of the issues relating to the cases under section 138 of N.I. Act, 1881.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Special Leave Petition (Criminal) No. 5464 of 2016
Jurisdiction	:	Supreme Court
Case Decided on	:	March 5, 2020
Judges	:	Justice S.A. Bobde, CJI, Justice L. Nageswara Rao
Legal Provisions involved	:	Section 138 of N.I. Act, 1881
Case Summary Prepared by	:	Bhavika Lohiya United World School of Law, Gandhinagar

2. BRIEF FACTS OF THE CASE

The Supreme Court took *Suo Moto* cognizance of the issues relating to the expeditious trial of cases under Section 138 of Negotiable Instruments Act, 1881. This Petition relates to dishonour of two cheques on January 27, 2005, for a total amount of 1,70,000/-, tried and contested over a period of 15 years up till this Court. A matter which is supposed to be disposed of summarily by the trial court in six months, it took seven years for this case to be disposed of at the trial court level. A dispute of such nature has remained pending for 15 years in various courts, taking judicial time and space up till this Court The Bench consisting of S A Bobde, CJ and L. Nageswara Rao, J has issued notice to the Union of India through Banking institutions. The Court took notice that despite many changes being brought through legislative amendments and various decisions by the apex court mandating speedy trial and disposal of these cases, after that also the Trial courts are filled with large number of cases which are pending. A recent study showed that the number of pending cases is more than 35 lakh cases which constitute more than 15% of total criminal cases pending in the District Courts.

3. ISSUES INVOLVED IN THE CASE

I. Why the cases are pending in the court despite many legislative amendments?
II. Is there a need to change the process of execution?
III. Whether decriminalization of Dishonour of Cheques of Smaller amounts?

4. LEGAL ASPECTS INVOLVED IN THE CASE

Section 138 of Negotiable Instrument Act, 1881, which deals with the dishonour of cheque is a criminal offence and is punishable by imprisonment up to two years or with monetary penalty or with both.

Section 143A of the NI Act states the court can order interim compensation to the complainant during the pendency of the case. This section was inserted after the amendment to the NI Act in 2018.

Section 19 and **Section 20** of The Legal Services Authorities Act, 1987 provides for a statutory mechanism for disposal of case by Lok Adalat at pre-litigation stage.

5. JUDGEMENT IN BRIEF

- In this order the apex court gave the Judgement which has made that there is a need to evolve a system of service/ execution of process issued by the court and ensuring the presence of the accused, with the efforts of the Complainant, Police and Banks.
- A mechanism may be developed where the banks share all the requisite details available of the accused, with the complainant and the police officer for the purpose of execution of process. These could include a provision to print relevant information , i.e. the email Id, the account holder 's registered mobile number and permanent address, on the verification or dishonour memo that informs the holder of the dishonour.
- RBI, as the regulatory body, may also establish guidelines for banks to facilitate the information needed for the trial of these cases and any other matters that may be appropriate. A separate software-based system can be created to track and ensure process service to the accused in cases relating to the offense referred to in Section 138 of the N.I. Acting.
- RBI may consider developing a new cheque proforma to include payment purposes, along with other details listed above, to facilitate the adjudication of real issues.
- A procedure can be established to ensure the presence of the accused even as a punitive measure, taking effect, if necessary, from Section 83 of the Cr . P.C. That allows property to be attached, including movable property.
- The attempt to recover interim compensation that grow under Section 143A of the N.I. Act as well as the fine or fee to be collected in compliance with Section 421 Cr. P.C.
- The National Legal Services Authority, being the competent authority in this regard, may establish a dispute settlement scheme for pre-litigation test bounce, i.e. prior to filing the private complaint. An Award issued at the stage of pre-litigation or pre-cognition shall have the effect of a civil decree.
- High Courts can also consider setting up exclusive courts to deal with Section 138 matters , especially in establishments where the pendency is above a standard level. It may also be possible to devise specific criteria for evaluating the work of exclusive courts giving additional weight to the dismissal of cases within the timeline as provided by law.

6. COMMENTARY

The present case has considered very important issue. After many changes through legislation amendments the speedy trial of the cases under section 138 of N.I. Act could not reduce the pendency and burden of the courts. The Supreme Court had taken the action to decriminalize the dishonour of cheques of small amounts. and suggested the ADR mechanism to have the banking issues being handled.

A number of duty holders such as banks, police and legal services agencies may be required to take action and plan schemes in order to develop a system for timely and fair adjudication of cases relating to dishonor of cheques, meeting the mandate of law and minimizing high dependence. Thus, in order to develop a cohesive, organized process for the expeditious adjudication of these cases according to the legal mandate, the court found it necessary to hear them.

7. IMPORTANT CASES REFERRED

- *Indian Bank Association and Ors. v. Union of India and Ors.*
- *Meters and Instruments Private Limited and Anr. v. Kanchan Mehta*
- *K.N. Govindan Kutty Menon v. C.D. Shaji*

CASE NO. 9

SUO MOTU
v.
MANOJ SHARMA AND ORS.

(CRIMINAL CONTEMPT PETITION NO. 5 OF 2013 AND D.B CRIMINAL MISC. APPLICATION NO. 249 OF 2013)

CONTEMPT OF COURT FOR DISRUPTION OF JUDICIAL PROCEEDINGS.

ABSTRACT

A law for criminal contempt is completely asynchronous with our democratic system which recognizes freedom of speech and expression as a fundamental right. An excessively loose use of the test of loss of public confidence combined with a liberal exercise of *suo moto* powers, can be dangerous, for it can amount to the court signaling that it will not suffer any kind of critical commentary about the institution at all, regardless of how evidently problematic its actions may be. The law Commission of India submitted its report on the Contempt of Courts Act, 1971. Contempt refers to the offence of showing disrespect to the dignity or authority of a court. The Act divides contempt into civil and criminal contempt. Civil contempt refers to the willful disobedience of an order of any court. Criminal contempt includes any act or publication which: (i) 'scandalises' the court, or (ii) prejudices any judicial proceeding, or (iii) interferes with the administration of justice in any other manner. 'Scandalising the Court' broadly refers to statements or publications which have the effect of undermining public confidence in the judiciary. The power is derived from the Constitution of India. Therefore, deletion of the offence from the Act will not impact the inherent constitutional powers of the superior courts to punish anyone for its contempt. These powers will continue to remain, independent of the 1971 Act.

There are many times when advocate go on a strike and stall the judicial process. The obstruction with the judicial proceedings and in the administration of justice will not be forgiven and would amount to Contempt of the Court. The judges also face personal comments by the advocates if some cases go against them. Contempt of the Courts Act, 1971 states the punishment for the contempt. When a court decides that action constitutes contempt of court, it can issue an order that in the context of a court trial or hearing declares a person or organization

to have disobeyed or been disrespectful of the court's authority, called "found" or "held" in contempt.

1. PRIMARY DETAILS OF THE CASE

Case No	:	D.B Criminal Contempt Petition No. 5 of 2013 and Criminal Misc. Application No. 249 of 2013
Jurisdiction	:	High Court of Rajasthan
Case Filed on	:	August 8, 2013
Case Decided on	:	January 9, 2014
Judges	:	Justice Amitava Roy, CJ and Justice Mohammad Rafiq
Legal Provisions involved	:	Article 215 of the Constitution of India., Section 2(c), 15 and 17 of the Contempt of Court Act, 1971
Case Summary Prepared by	:	Divyanshi National University of Study and Research in Law, Ranchi.

2. BRIEF FACTS OF THE CASE

The present *Suo Moto* contempt proceedings have been initiated by the court itself on account of the disruption of judicial proceedings caused by Mr. Manoj Sharma, the president and Mr. Bhuvnesh Sharma, the general secretary of the Rajasthan Bar Association, Jaipur. On 8/8/2013 at 11:20 A.M, the contemnor Mr. Manoj Sharma and Mr. Bhuvnesh Sharma along with many office bearers rushed into the court room and asked the court not to pass any adverse orders in the matters in absence of the advocates. They started threatening and pressurizing the court in the name of request, for not proceeding further. After the court requested them not to interfere with the judicial proceedings, they started shouting, "when other courts are accommodating why this court is not accommodating us".

The secretary, Mr. Bhuvnesh Sharma said,

"हम आपको मायलोर्ड कहते हैं इसका मतलब यह नहीं है कि आप जो मर्जी आये करो". "स्ट्राइक को कब खत्म करना है वो आप नहीं तय करेंगे। वो हम करेंगे"

When the court directed them not to pressurize the court and the advocates or to cause any intrusion in the process of administration of justice, otherwise the court would be compelled to pass orders against them, they started shouting "बेला त्रिवेदी हाय हाय"

Under the heated circumstances the court had no alternative but to stop the judicial work ad to retire in the chamber, stating that the appropriate orders shall be passed in the current matter.

At this point, it is relevant to mention that on an account of the indefintie call for strike by the Bar Associations at Jodhpur and Jaipur, rasing the protest against thr setting up of Circuit Bench at Udaipur, the courts couldn't able to function since last fifteen days.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Secretary and the President of the Bar Association is in contempt of the court or not?

II. Whether the intereference with the judicial proceedings and obstructing the way of justice in the name of strike can be held as a contempt of the court or not?

4. ARGUMENTS OF THE PARTIES

The court's order and arguments on one side

After the aforementioned incindent, the court has passed the following order in SBCMA No. 51/12:

- None is present for the appellant due to an indefinite strike call given by the Bar Associations at Jodhpur and Jaipur. Mr. Nand Kumar Gotewala, for the respondent, who is appellant in the connected Civil Misc. Appeal No. 510/2012, is present in the Court.
- It is indeed a very unfortunate and disturbing state of affairs prevailing in the Courts that the judicial work has been hampered because of the strike call for indefinite period given by the Bar Associations at Jodhpur and Jaipur. Apart from the fact that there is no justifiable reason for giving such a call, the Court is constrained to pass this order as the strikes and boycotts have become almost a regular feature in the courts and that too on baseless and frivolous grounds, which not only hampers the judicial process and paralyses the Court's work, but also causes lot of hardships and irreparable losses to the litigants, for whom the Institution stands.
- The Courts have not taken any stern action in this regard so far, probably because of the apprehension that the harmonious relations between Bar and the Bench would be spoiled, which again might cause greater hardship to the litigants. One cannot be oblivion of the fact that the Advocates are not only the officers of the Court but also one

of the important components of the justice delivery system, however it appears that now the time has come to remind the Advocates about their duties towards the clients and the Courts.

- Without elaborating further on this issue, it would be appropriate to reproduce the observations made by the Apex Court time and again in various decisions as regards the role and the rights and duties of the Advocates.
- The aforesaid observations and conclusions drawn by the Apex Court expressing serious concern over the menace of strike/boycott calls given by the Advocates, deserve to be implemented in the letter and spirit, and should not remain as a piece of paper. As observed by the Apex Court, the Courts also should not be privy to such strike calls. In view of the prevailing situation, it is therefore deemed just and proper to bring to the notice of the office bearers of the Bar Associations at Jodhpur and Jaipur, about the aforestated observations of the Apex Court with the hope that they resume the work at the earliest.
- The office is directed to send the copies of this order to the respective Presidents of the Bar Associations at the Principal Seat at Jodhpur and at the Bench at Jaipur. In order to see that substantial justice is done to the parties and the Court is not constrained to pass orders in absence of the advocates, the matters are being adjourned today, however, it is clarified that the appropriate orders shall be passed in the matters, if the court work is not resumed by the advocates on or before 08.08.2013.

Respondent

In reaction to the said order, the Rajsthan Bar Association at Jaipur and Bar Association at Jodhpur had passed resolutions for boycotting this court. The reports were published in the local newspaper like Hindustan Times, Dainik Bhaskar, Rajasthan Patrika on 08/08/2013. The same are annexed alongwith this order and are directed to be taken on record as part of the proceedings.

The respondent have further stated that they were not accompanied by any other lawyer when they enteres the court room and theu did not expect the group of lawyers to enter the court room behind their back.

They pleaded that in these circumstances the respondents could not be held vicariously liable for any act which migh have been done by anyone in the group of lawyers. The second respondent stated in his reply that he ha utmost regard for the this Honourable Court and has

done nothing which would amount to contempt to the court. Both the respondents stated that they highly regret of such happening.

5. LEGAL ASPECTS INVOLVED IN THE CASE

It is in the Article 215 of the Constitution of India where the High Court is a court of record and empowered with the right to punish for contempt of itself.

As held by the Apex Court in case of *Supreme Court Bar Association Vs. Union of India & Another* MANU/SC/0291/1998: (1998) 4 SCC 409, the jurisdiction under Article 215 is an inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice. Para 12 of the said decision reads as under:--

> *A court of record is a court, the records of which is admitted to be of evidentiary value and is not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.*

The word contempt can be defined as offense of being disrespectful or disobefient towards a court of law and its officers in the form of behaviour that opposes or defies the authority, dignity of the court.

It may further be mentioned that any act of the person which interferes or tends to interfere with the due course of any judicial proceedings or which obstructs or tends to obstruct the administration of justice would tantamount to "criminal contempt", as per the definition contained in Section 2(c) of the Contempt of Courts Act, 1971. The said clause 2(c) is reproduced as under for ready reference:

Section 2(c):-"criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or

(iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

6. JUDGMENT IN BRIEF

The court prima facie finds the secreatry and the president has taken an initiative to intrude with the judicial proceedings and cause obstruction in the administration of justice and they were found responsible for causing interference and thereby committing the d causing obstruction in the administration of justice, and thereby for committing the "criminal contempt" under Section 2(c) of the Contempt of the Court Act. Therefore, the court has taken cognizance of such criminal contempt against the contemnor under section 15 of the said Act.

The office is directed to issue notice under section 17 of the said Act to Mr. Manoj Sharma, President and Mr. Bhuvnesh Sharma, General Secretary of the Rajasthan High Court Bar Association, Jaipur. The matter shall be heard and determined in the Division Bench and therefore, it shall be placed before the Chief Justice.

The court has reiterated the observations by the Apex Court in case of *Ex. Cap. Harish Uppal V. Union of India* MANU/SC/1141/2002 : (2003) 2 SCC 45 for referring the matter to the Bar Council of Rajasthan and Bar Council of India for taking necessary action against the advocates giving calls for strike or boycott. It has been held by the Apex Court in the said case inter alia that the lawyers have no right to go on strikes or give a call for boycott, not even for a token strike. It has also been held in Para 25 of the said decision that in case any association calls for a strike or a call for boycott, the State Bar Council concerned, and on their failure, the Bar Council of India must immediately take disciplinary action against the advocates who gave a call for strike and if committee members permit calling for a meeting for such purpose, against the committee members.

The office was directed to register the matter as *Suo Moto* Contempt proceedings under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971, for the purpose of Record.

The division bench in its judgement stated that the instant proceedings shall be closed by accepting the unqualified regrets expressed by the respondents. The notices are discharged on the terms that this instance shall not be repeated in future.

7. COMMENTARY

The contempt power is needed to punish willful disobedience to court orders as well as interference in the administration of justice and overt threats to judges. The objective for contempt is stated to be to safeguard the interests of the public, if the authority of the court is denigrated and public confidence in the administration of justice is weakened or eroded. The Supreme Court and High Courts derive their contempt powers from the Constitution. Section 10 of The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempt's of its subordinate courts. Criminal contempt includes any act or publication which: scandalizes the court, prejudices any judicial proceeding and interferes with the administration of justice in any other manner. Making allegations against the Judiciary or individual judges, attributing motives to judgments and judicial functioning and scurrilous attack on the conduct of judges are normally considered matters that scandalize the judiciary.

The law is already well settled. The duty should be served by the advocates who have accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that Courts are under an obligation to hear and decide cases brought before it and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of Courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. In the case of *Dr. B.L. Wadehra (Dr.) Vs. State (NCT of Delhi),* MANU/DE/0296/2000 : AIR 2000 Del 266, it was held that Every court has a solemn duty to proceed with the judicial business during court hours and the court is not obliged to adjourn a case because of a strike call. The court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike.

So it can be said that even in the name of strike, no lawyers has any right to obstruct the administration of justice or prevent another lawyer from discharging his professional duty of appearing in the court and if anyone does it, he commits a contempt of the court.

To avoid the contempt of court, a person or an organization may offer an unconditional apology in the form of an affidavit to the court. Now it's court's discretion to accept that apology or not.

From the present case, it is crystal clear that any intrusion with the judicial proceedings and administration of justice in the name of Strike can be said as contempt of the court.

8. IMPORTANT CASES REFERRED

- *Dr. B.L. Wadehra (Dr.) v. State (NCT of Delhi), MANU/DE/0296/2000 : AIR 2000 Del 266*
- *Ex. Cap. Harish Uppal v. Union of India MANU/SC/1141/2002 : (2003) 2 SCC 45*
- *Supreme Court Bar Association v. Union of India & Another MANU/SC/0291/1998 : (1998) 4 SCC 409*

CASE NO. 10

SUO MOTO
v.
STATE OF RAJASTHAN AND ORS

(S.B. CRIMINAL MISC. PETITION NO. 4171 OF 2011)

IMPORTANCE OF FUNDAMENTAL PRINCIPLES.

ABSTRACT

The following is a case summary of *Suo Moto v/s. State of Rajasthan and others.* This case reiterates the importance of the fundamental principles in jurisprudence. It lays down that no action shall be taken against any judge of a court without prior approval of the Chief Justice of India. In fact, no sanction can be delineated unless the CJI is consulted.

The petition is filed by a group of lawyers who request *suo moto* cognizance in cases of this nature. The court decided their judgement based on the preliminary guidelines asserted in the landmark case of *K. Veeraswami v. Union of India*. An elaborate explanation through certain statutory provisions deals with the underlying significance concerning with the independence of the Indian judiciary.

Before proceeding into the in-depth analysis of the case, the understanding of the term *Suo Moto* cognizance is much needed. This term has been originated from Latin. In instances where an action is taken directly by a government agency on receiving information about a breach of duty, violation of right or an alert by a third party (media); courts consider the use of *suo moto* cognizance. In the past, Indian courts have taken *Suo Moto* cognizance mostly in cases where contempt of court is observed. In addition to this, ordering a probe for new cases as well as reopening old cases also calls for *Suo Moto* action.

The author of this summary has made an informed attempt to express this case in a simple yet thorough manner for academic purposes. This summary has been created after a detailed and comprehensive research using various precedents to procure an analogy with respect to the judgement. Sections from various acts which deal with this case have been identified. A clear nexus has been derived between the laws applied and the factual data of this case.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	S. B. Criminal Misc. Petition No. 4171 of 2011
Jurisdiction	:	High Court of Rajasthan
Case decided on	:	December 12, 2011
Judges	:	Justice M.C. Sharma
Legal Provisions involved	:	Section 77 of IPC, Section 482, 483 of Cr.Pc. Judicial Officers Protection Act,1850, Judges (Protection) Act, 1985
Case summary prepared by	:	Gayatri Batra School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

The parties involved in this case are a group of learned advocates as petitioners. The respondents include an advocate and a journalist namely, Sarjana Shresth and Babu Lal respectively.

A news item was published in the Rajasthan Patrika dated 12.12.2011 with respect to a criminal case against three High court judges. The names of whom were clearly mentioned in the news item. In addition to this, they were also telecasted repeatedly Hon'ble Mr. Justice Guman Singh (Retd.), Hon'ble Mr. Justice Mahesh Bhagwati, and Hon'ble Mr. Justice S.S. Kothari). The present petition is filed against an order under which Metropolitan Magistrate (Jaipur), on the basis of that particular news report instructed for registering first information report (FIR) against three judges of High Court. The FIR did not contain the details and names of the judges although it was all over the press.

The learned Advocates requested that in such cases *suo moto* cognizance should be taken. The reasoning behind this was to prevent abuse of process of any Court. Thereafter, the Magistrate concerned was also called by the court personally.

During the proceedings of the case, it was observed that the Ms Ambika Soni (Metropolitan Magistrate) did not read the contents of the complaint. Thereafter, it was forwarded to Ashok Nagar police station in Jaipur under section 156 (3) of the Code of Criminal Procedure without appropriate discernment.

This petition prayed for revoking this complaint on the basis of *K. Veeraswami Vs. Union of India*. The aforementioned judgment precisely laid down certain guidelines with respect to the

matter at hand. It said that, without prior approval of the Chief Justice, a criminal case could not be registered against Judges of High Court as well as the Supreme Court.

3. ISSUES INVOLVED IN THE CASE

I. How does the prosecution of a Judge of the High Court and Supreme Court in civil and criminal cases hinder or affect the independence of the judiciary in India?

II. Is section 156 (3) of the code of criminal procedure totally invalidated in *Suo Moto v. State of Rajasthan?*

III. Whether there are similar precedents in the past which have led to the imposition of this case as under *suo moto* cognizance?

4. ARGUMENTS OF THE PARTIES

a) Petitioners:

- The group of learned advocates used Section 482 and Section 483 of the Code of Criminal Procedure as a strong argument in the court.
- Section 482- Saving of inherent power of the High Court.
- Section 483- Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrate.
- They further used the guidelines provided in the landmark case of *K. Veeraswami v. Union of India* as an eloquent argument.

b) Respondents:

- In plain and simple words the major argument which was put forward by the advocate and the journalist was that they never used the name of the judges in the First Information report.
- They sought to protect the fundamental right of each citizen given by the constitution. The Article 19 argument was immediately countered by the petitioners.

- The respondents were also of the opinion that the Advocates Act gives a practitioner of law the inherent freedom to express themselves openly. Moving on to the counter argument by the petitioners was that with this freedom comes great responsibility in choosing the words one uses. It is the duty of each Advocate to maintain the decorum of the court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Legislations:

a. Section 3(2) of the Judges (Protection) Act, 1985 states that-

“no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function”.

b. Chapter 3 of the Judicial Officers Protection Act 1850 clearly says that-

“No Judge shall be liable to be sued in any Civil Court for anything which is done by him when acting judicially, in the exercise of any power which is given to him by law, or which in good faith he believes to be given to him by law."

The legislations which are mentioned above basically imply a certain type of immunity which is given to the judicial officers with respect to the duties carried out by them. Judiciary being one of the main pillars of democracy; it is essential to provide such immunity so that the independence of it does not exhaust. For instance, if these provisions were absent in our judiciary, all the judges will always have a sense of fear before passing any judgment.

The motive of judgments in simple words is an unbiased opinion of a person in a case between two parties. Therefore, without these statutory provisions mentioned in the Judicial Officers Protection Act,1850 and Judges (Protection) Act, 1985 all judges as well as officials of law will limit themselves which will further lead to unnecessary corruption and unjust decisions.

Indian Penal Code:

Chapter 4, that is, general exceptions of the Indian Penal Code includes Section 76 to Section 85. There are two main objects in this chapter. Firstly, the removal of repetitive criminal cases. Secondly, exceptions where a person may escape liability.

a. Section 77 of the Indian Penal Code also protects the acts done by a Judge:

"Act of Judge when acting judicially.- Nothing is an offense which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law."

Section 77 is better understood by way of an example: A judge, in good faith, gives life imprisonment to a criminal, believing that he can in the future, be potentially harmful to others in the society.

Code of Criminal Procedure:

The competency of the High Court allows it to deal with work which is administrative as well as judicial. The following sections were added in the 1923 amendment of the Code of Criminal Procedure. They are a sort of reminder that High courts are not merely courts of law but aim on securing the ends of justice. These sections exist so that the process of administration of justice is not abused.

Section 482- Saying of inherent powers of the High Court

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Section 483 - Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates

"Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is expeditious and proper disposal of cases by such Magistrates."

The above information is taken from the respective legislations to bring more clarity. In simple and precise words, from the above statutes, it is intelligible that a civil or criminal complaint against a judge is completely invalid. Keeping in mind the due procedure of law and the independence of our judiciary the legal aspect is quite comprehensible.

6. JUDGEMENT IN BRIEF

The single-judge bench which comprised of M.C Sharma held that:

Mr Asmohammad (S.H.O. Ashok Nagar, Police Station, Jaipur City,) upon questioning said that complaint number 273 of 2011 which was filed by Sarjana Shresth (Advocate) and Babu Lal (Journalist) did not mention the names of the Hon'ble Judges. In fact, the first information report did not indicate the involvement of the retired judge as well as the sitting judges of the same court.

Further, it was also observed that the complaint was transferred from the police station to the Criminal Investigation Department (CID) for another detailed inquiry. It was only the carelessness of the metropolitan magistrate which led to the decision of an interim order by this court. An interim order is a temporary order by the court. In such cases, the final order has not been passed or is awaited. Concerning this case, the CID was yet to derive an inference. The following points are the crux of the order/judgement held by the court:

- The Deputy Registrar of this court instructed to register this matter as a miscellaneous criminal petition under section 482 and section 483 of the Code of Criminal Procedure.
- Further, the Deputy Registrar was also ordered to give copies of this judgment to all the District and Sessions Judges in Rajasthan, Bar Council of Rajasthan, Bar Associations of Jaipur and Jodhpur and all District Bar Associations in Rajasthan and all the advocates, who appeared and assisted this court.
- The court directed that notices shall be provided to the Chief Secretary, Principal Home Secretary and Director General of Police of State of Rajasthan. In addition to this, notices shall also be given to the complainants along with this order.
- The published news report from Rajasthan Patrika dated 12.12.2011 shall be placed on record as a part of the miscellaneous criminal petition.

7. COMMENTARY

The essence of this case is based on the principles of natural justice. They focus on or aspire to secure justice with fairness. These two elements must be vested in every judicial process. A fair play in action is required so that there is no miscarriage in justice. These principles are not

fixed, in fact they are not even prescribed in any code. Natural Justice per se does not point out a specific principle. They are just basic prerequisites to an equitable trial.

In order to ensure that the process of decision making remains transparent and at the same time unbiased, law enforcement calls for judges being protected with the immunity of what they decide in a dispute. The two main principles of natural justice are "nemo judex in causa sua" and "audi alteram partem". The former exhibits the rule against biased and the latter implies the rule of fair hearing. These principles can only be implemented in cases where the judge can independently and severally make decisions.

Suo Moto v. State of Rajasthan established a crucial and informative understanding on the working and autonomy of our judiciary. It not only dealt with the facts and circumstances with the matter at hand but also gave a clear interpretation by using precedents.

In the landmark case of K. Veeraswami v/s. Union of India certain guidelines were laid down. The court held that there are a large number of judges who pass fair, honest and just judgements in accordance with the facts of each case. It was also said that judges should be in a position to decide a case without the feeling of fear or harm. Moreover, it was directed that no criminal case shall be registered under section 154 of the Code of Criminal Procedure against a judge of the high court, Chief Justice of High Court and judge of Supreme Court until and unless the chief justice of India is consulted.

Further in the case of *Court on its own motion v. Vikas Sanoria*, a complaint was filed against two Hon'ble judges of the court. This was put forward before the Chief Justice of India. He further directed that the contemnor has to pay compensation as well as tender an apology to both the judges. The reasoning behind such an extreme judgement was that the written complaint had words which were both, scandalizing and derogatory. Such language lowers the authority of the court.

Apart from the above judgments, another perspective which was drawn is the concept of criminal contempt. In the case of *Delhi Judicial Service Assn. v. State of Gujarat*, it was observed that the definition of criminal contempt is wide enough to include any act by a person who interferes with the justice system. The implication of this is that if complaints are rampantly filed against judges there will be a lot of obstruction in terms of the administration of justice and pronouncements of judgements. Acts done by judges are judicial functions and are a necessity.

Each citizen of India is guaranteed with the fundamental right of freedom of speech and expression under Article 19 of the constitution. But one should use this right in a dignified manner keeping in mind the decorum of court proceedings. The course of any case shall be done in an orderly fashion whilst addressing the concerned subject. Hence, a judge should have full freedom and independence to settle litigation between two parties without worrying about the future or subsequent circumstances.

According to the author of this summary (notwithstanding the analysis of the aforementioned precedents), the registration of criminal and civil cases must be permitted with more lenient and forbearing restrictions. The reasoning behind this thought process is nothing but the hushed corruption which the public is unaware of. However, this analysis comes with major drawbacks. If moderate restrictions are imposed, honest judges who pass fair judgements would be harassed in all the future cases wherein the defendant is proved guilty of misconduct. In addition to that, personally attacking and scandalizing the judge brings down the whole judiciary. Nevertheless, this does not excuse the fact that, the general population of our democratic country, who are genuinely stuck in a dilemma can only register a complaint against a judge on the advice of the Chief Justice of India.

8. IMPORTANT CASES REFERRED

- *Court on its own motion v. Vikas Sanoria (In Re, Ajay Kumar Pandey, MANU/SC/1281/1996 : (1996) 6 SCC 5TGT10)*
- *In Delhi Judicial Service Assn. v. State of Gujarat 1991 AIR 2176, 1991 SCR (3) 936*
- *K. Veeraswami v. Union of India And Others 1991 SCR (3) 189, 1991 SCC (3) 655*

CASE NO. 11

IN RE: JUSTICE C. S. KARNAN

(SUO MOTU CONTEMPT PETITION (CIVIL) NO. 1 OF 2017)

CONTEMPT OF COURT PROCEEDINGS AGAINST JUSTICE KARNAN AND ANALYSIS OF HIS CLAIMS.

ABSTRACT:

This case primarily involves the contempt of Justice Karnan who has given several orders asking authorities to pose charges on the judges of Madras High Court based on several claims. Some claims included corruption charges and allegations of sexual harassment. He even questioned the qualification of some judges by stating that they did not meet the requisite qualification that was required. Justice Karnan has even claimed that he was discriminated by the Chief Justice of Madras because he belonged to a lower caste. He wrote several letters addressing the Police to protect an advocate who spoke against the judges. He even addressed some letters to the Prime Minister by raising these concerns. This case was suo motu filed in the Apex Court and the court held Justice Karnan to be acting in contempt of court that was of grave nature. His administrative and Judicial powers were taken away.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Contempt Petition (Civil) No. 1 of 2017
Jurisdiction	:	Supreme Court
Case Filed on	:	February 10, 2017
Case Decided on	:	May 9, 2017
Judges	:	Justice J S Khehar, CJ Justice Dipak Misra, Justice Jasti Chelameswar, Justice Ranjan Gogoi, Justice Madan B Lokur, Justice Pinaki Chandra Ghose, Justice Kurian Joseph
Legal Provisions involved	:	Article 20 of the Constitution of India Section S. 2(c), 12 and 14, Contempt of Courts Act, 1971
Case Summary Prepared by	:	Indiradevi Kollipara School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

In a letter dated, 21.8.15 to the Chief Justice of the Madras High Court, Justice Karnan stated his dissatisfaction of not having a roster assigned for him when he was deputed to the Madurai Bench of the Madras High Court. Even after he returned to the Principal bench he was unhappy with the roster assigned to him. Subsequently, he expressed his displeasure citing the fact that the matters that were originally assigned to him were taken away by the Chief Justice of Madras High Court and assigned the cases to other benches. Apart from this, he clearly stated that two judges (namely Dr. Justice TV and C.T.S According to the case) did not exercise their judicial functions independently. He even stated that a one of the judges namely Justice V.D did not have the requisite academic qualifications for his position. Justice Karnan also mentioned that the Chief Justice of Madras High Court did not include him in any of the administrative committees that was constituted to discuss and discharge administrative responsibilities in the High Court. He claimed that this segregation and isolation took place because he belonged to a under-privileged caste and the Chief Justice favoured advanced communities for appointment of judges in the High Court which further created a communal divide. In addition to this, he highlighted the fact that he lodged a complaint to the Chairman of the National Commission of Scheduled Castes and Scheduled Tribes.

Another letter (dated 5.8.2016) was given by Justice Karnan that was addressed to the Home Secretary of Tamil Nadu. The letter was intended to render protection to a lawyer, namely, Peter Ramesh Kumar who made allegations against some judges. The letter was in turn labelled by Justice Karnan as “suo-motu judicial order”. In addition to this Justice Karnan even directed the Registry of Madras High Court to assign the letter (labelled as suo motu writ petition) a number.

Subsequently the third letter (dated 21.8.2016) was addressed to the then Chief Justice of Madras High Court claiming that the Chief Justice only allowed upper caste judges to participate in the inauguration of the Tamil Nadu State Judicial Academy which happened in Coimbatore and Madurai.

Then, he claimed that he was taken out as a member of the Board of Governors of the Judicial Academy since 2001. Things got out of the court’s reign when Justice Karnan involved the police in the matter. He made a request to the City Commissioner of Police, Chennai stating that a criminal case must be registered against the judges under the Ragging Act for acting wrongly against a Dalit judge (i.e him). In another letter on 2017 which addressed to the Prime

Minister of the country, Justice Karnan highlighted corruption in the High Court through the hands of twenty judges that he listed. Through the letter he claimed allegations namely sexual assault inflicted on an intern by one to fake representation of educational qualifications.

In the beginning of 2017, Justice Karnan's transfer order from Madras High Court to High Court of Calcutta became a public debate. He subsequently claimed that the judges of the Supreme Court and judges of the Madras High Court had connections that enabled such a transfer.

After getting transferred to the Calcutta High Court, Justice Karnan continued his fight against them.

The Attorney General for India was requested to assist the court in the matter on behalf of the judiciary. The Supreme Court bench on February 2017, held that Justice Karnan was to be refrained from handling any judicial or administrative work. All files and documents in possession shall be returned to the Registrar General of the High Court. Justice Karnan then claimed that the doctrine of natural justice was being derogated and his rights under Article 14 and 21 of the Constitution were being affected. He also claimed that that there was distinct fallacy in the order due to derogation of Article 219 of the Constitution. He also sought for the continuation of his duties (administrative and judicial) by claiming that his retirement was imminent. He claimed that all these efforts were meant to maintain the sanctity and decorum of the courts.

On 10.3.2017, Justice Karnan exercised suo-motu extraordinary jurisdiction and passed an order stating that no contempt (either civil or criminal) can be initiated against a sitting High Court Judge under the Contempt of Courts Act(Sections 2 (c), 12 and 14 or under Article 20 of the Constitution of India. He also mentioned that a motion of impeachment can only be initiated against a sitting judge of a higher judiciary before the parliament via Judges' Enquiry Act.

Later on, the Supreme Court asked for a medical check-up for Justice Karnan to determine his state and Justice Karnan even gave statements to media about the entire fiasco. The Court gave an order to the Director Health Services, Government of West Bengal to constitute a Board of Doctors from Pavlov Government Hospital, Kolkata to examine Justice Karnan to determine if he was in a fit condition to defend himself. The hospital then confirmed that he was fit to defend himself. Later Justice Karnan levelled charges against 33 judges of the Madras High Court.

3. ISSUES INVOLVED IN THE CASE

I. The primary issues in this case involves on whether the actions taken by Justice Karnan is within the limits of the conduct permissible for a Judge of a High Court in this country and whether the behaviour amounts to "proved misbehaviour" or "incapacity" within the meaning of Art 124(4) read with Article 217 (1) (b) of the Constitution of India.

4. ARGUMENTS OF THE PARTIES

Justice Karnan primarily argued that his actions were merely efforts to protect the sanctity of the judiciary. He said that his actions were meant to protect his rights against those who discriminated him on the basis of the caste he belonged to. He primarily contended that his transfer from Madras to Calcutta High Court were also questionable as he claimed that the Judges of the Madras High Court had connections with some judges in the Supreme Court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

As mentioned in the issues the primary legal aspects that were considered was whether the actions of Justice Karnan was proven as a matter of misbehaviour and incapacity and whether his claims were justifiable and right**.** Another question raised in this case was whether impeachment of judges is strictly limited to the legislature.

6. JUDGEMENT IN BRIEF

The court held that Justice Karnan was oblivious to the fact that an informant cannot be a judge in his own complaint. This was based on the rudimentary principles within the realm of natural justice. In addition to this the court held that his actions had adverse impacts on the reputation of the individual judges as well as the judiciary as a whole. The court also held that contempt of court was always exercised by the judiciary from time immemorial. This was to inspire confidence and maintain of the judiciary. Interference of the judicial proceeding is another facet of criminal contempt. Hence, Justice Karnan can be liable to be punished for the contempt of judiciary.

The court passed an order subsequently, stating that they are satisfied to punish him by sentencing him to imprisonment of six months and shall not exercise any administrative or

judicial functions. The court also held that furthermore, an statement made by Justice Karnan will not be published hereafter.

7. COMMENTARY

The case is a testament to the fact that arbitrary use of power can be checked within the organ itself. The judiciary is capable to check the balance of power through its own evaluation. There was no violation to the principles of natural justice as the concerns of Justice Karnan were heard by the bench and moreover his claims against the judges stand debunked. The Apex Court in one way or the other had to maintain the integrity and sanctity of the Judiciary by passing this judgement. However, one question remains unanswered. What if the Madras High Court Judges and the Supreme Court Judges really did have a plan in transferring him for a reason unknown and it is strange to note that the judgement does not consist of any instance that pertain to the proof of the allegations that were made by Justice Karnan. These questions arise with respect to the facts of the case.

8. IMPORTANT CASES REFERRED:

- *A.K. Kraipak & Ors. v. UOI &Ors., 969 (2) SCC 262*
- *Brahma Prakash Sharma v. State of U.P. (1953) SCR 1169*
- *Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. v. Ramjee (1977) 2 SCC 256.*
- *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal & Anr., (1975) 1 SCC 70.*
- *M/s Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh & Ors.,(1977) 2 SCC 741.*
- *Sukhdev Singh Sodhi case (1954) SCR 454*
- *Suresh Koshy George v. The University of Kerala and Others, AIR 1969 198.*

CASE NO. 12

SUO MOTU WRIT PETITION

(SUO MOTU WRIT PETITION NO. 7492 OF 2020)

RIGHT TO DECENT BURIAL IS FUNDAMENTAL RIGHT.

ABSTRACT

The Madras High Court in a landmark judgement dated April 20, 2020 affirmed that the right to a decent burial comes within the ambit of Article 21 of the Constitution. A division Bench of the Madras High Court comprising of Justices M. Sathyanarayanan and M. Nirmal Kumar took up a *suo moto* public interest litigation petition, with the permission of Chief Justice AmreshwarPratapSahi. The Court took *suo-muto* cognizance of a media report by a Tamil visual media channel named "Puthiya Thalamurai" that elucidated in detail how Dr. Simon Hercules a doctor from Chennai who succumbed to Covid-19 was denied the right to having a burial by some members of the public over the fear of the spread of Covid-19. Referring to *Francis Coralin Muller v Union of India* and *Kharak Singh v State of Uttar Pradesh* , the Court opined that a multitude of judgements hold that constitutional protection of life and personal liberty under Article 21 extends to any deprivation on the limbs and faculties by which life is enjoyed.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition No 7492 of 2020
Jurisdiction	:	Madras High Court
Case Filed on	:	April 20, 2020
Case Decided on	:	April 20, 2020
Judges	:	Justice M Satyanarayan, Justice M Nirmal Kumar
Legal Provisions involved	:	Article 21, 226 of Constitution of India
Case Summary Prepared by	:	Kaushik Chandrasekaran School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

Dr. Simon Hercules was a 55 year old neurosurgeon and a citizen of the State of Tamil Nadu. He also headed a reputed private hospital on Poonamallee High Road, Chennai. He was tested positive for the Covid-19 virus and succumbed to the deadly virus on April 19, 2020. Approximately 200 local residents opposed burial of the surgeon's body by the Chennai Corporation at the Christian Kilpauk cemetery. Consequently, the Chennai Corporation took the body to a burial ground at Velangadu in New Avadi Road where again a mob again attempted to prevent the burial. Additional Commissioner of Police (South) Prem Anand Sinha in a media statement dated April 19, 2020 asserted that some locals threw stones, damaging the ambulance and even injuring public servants. This act led to huge public uproar with many news channels reporting the same. On April 20, 2020 a division Bench of the Madras High Court comprising of Justices M. Sathyanarayanan and M. Nirmal Kumar took up a *suo-motu* public interest litigation petition, with the permission of Chief Justice Amreshwar Pratap Sahi.

3. ISSUES INVOLVED IN THE CASE

I. Whether the right to decent burial comes under the ambit of Article 21 of the Constitution?

4. LEGAL ASPECTS INVOLVED IN THE CASE

Article 21 – No person shall be deprived of his life or personal liberty except according to procedure established by law

The Supreme in a multitude of decisions has expanded the ambit of Article 21, including within it a multitude of rights. The Supreme Court held in *Hussainara Khatoon v. Home Secretary State of Bihar,((1980) 1 SCC 81)* that speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Art. 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Art. 32 for the purpose of enforcing such right and the Supreme Court in discharge of its constitutional obligation has the power to give necessary directions to the State. In *M.H Hoskot v State of Maharashtra (AIR 1978 SC 1548)* the Supreme Court has invoked Art. 39A and held that state under Article 21 should provide free legal aid to a prisoner who is indigent and or otherwise disabled from securing legal assistance where the ends of justice call for such service. The Supreme Court has shown its great concern in cases of maltreatment of prisoners. As far as

mode of punishment is concerned in *Prem Shankar v Delhi Administration (AIR 1980 SC 1535)* the Supreme Court held that handcuffing is a prima facie is inhuman in nature therefore it must be the last refuge as there are other ways for ensuring security. Similarly in *D.K Basu v State of West Bengal (AIR 1997 SC 610)* the Supreme Court held that any form of torture or cruel inhuman or degrading treatment during the investigation, interrogation or otherwise is violative of Article 21 of the Constitution. In *Sheela Barse v State of Maharashtra (AIR 1983 SC 378)* the Supreme Court has given directions to prison authorities to ensure rights of women against torture and maltreatment in police lockup. The Supreme Court in *Olga Tellis v. Bombay Municipal Corporation ((1985) 3 SCC 5)* held that the concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" which in turn includes right to livelihood. Right to education is considered as third eye of man without which no one can lead good, decent and dignified life. Earlier right to education was a part of directive principles of state policy .However as per the changing needs of society Supreme Court in *Mohini Jain v. State Of Karnataka (AIR 1992 SC 1858) and Unni Krishna v. State of Andhra Pradesh (AIR 1993 SC 2178)* rule that right to education is fundamental right because it directly flows from right to life.

Article 226 – Power of High Court to issue writs

5. JUDGEMENT IN BRIEF

The Madras High Court referred to a April 19, 2020 news report by "Puthiya Thalamurai" a Tamil visual media channel that elucidated in detail how Dr. Simon Hercules was denied the right to having a burial by some members of the public over the fear of the spread of Covid-19, twice firstly at the Christian Kilpauk cemetery and secondly at the Velangadu burial ground in New Avadi Road. The Bench also noted that public personnel suffered injuries. The Court referred to the Covid-19 guidelines issued by the Union Ministry for Health & Family Welfare that emphasised on the need for the public to follow the Covid-19 guidelines due to the increasing social stigma against Covid-19 positive cases of frontline personnel. It also referred to a notification dated March 16, 2020 by Union Ministry for Health & Family Welfare that set the procedure to be followed regarding the management of dead bodies. The Bench opined that since these guidelines are published by a competent authority and are available in the public domain, the public is mandated to respect the same and act within the confines of law. Referring to *Francis Coralin Muller v Union of India ((1981) 1 SCC 608)* in which the

Supreme Court of India held that the right of life enshrined under Article 21 of the Constitution is a life with dignity and *Kharak Singh v State of UP (AIR 1963 SC 1295)* that further elucidated that the constitutional protection of life and personal liberty under Article 21 extends to any deprivation on the limbs and faculties by which life is enjoyed , thus the Court noted that the right to a decent burial comes under the ambit of Article 21. The Court found that in the present case, Dr. Simon Hercules was denied of dignified and safe burial. In this regard it noted

> *"In the considered opinion of the Court the scope and ambit of Article21 includes, right to have a decent burial. It prima facie appears that as a consequence of above said alleged acts, a person who practiced a noble profession as a doctor and breathed his last, has been deprived of his right, to have a burial, in a cematary earmarked for that purpose and that apart, on account of law and order and public order problem created, the officials who have performed their duties, appeared have sustained grievous injuries."*

The Court also referred to Sections 129-132 of the Cr.PC to reiterate the power of police to deal with public that act contrary to law and hoped that further incidents will not occur in the future.

6. COMMENTARY

The then Chief Justice Dipak Misra in his judgement in *Common Cause vs. Union of India* albeit in different context observed:

> "*In a certain context, it can be said, life sans dignity is an unacceptable defeat and life that meets death with dignity is a value to be aspired for and a moment for celebration*".

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The 'procedure' mentioned in Article 21 has been read into the 'due' procedure by the Supreme Court in *Maneka Gandhi v. Union of India (AIR 1978 SC 597*) which means that procedure must be fair, just and reasonable. Over the period of time, the Supreme Court has interpreted Article 21

to include various rights within its fold. The Supreme Court in *Kharak Singh v. State of Uttar Pradesh* (*AIR 1963 SC 1295)* held -

> *"Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world."*

It has framed the *"right to life"* as more than mere existence and as a right that includes living with dignity. In *P. Rathinam v. Union of India (AIR 1994 SC 1844*) the Supreme Court held that the word 'life' in Article 21 means right to live with human dignity and the same does not merely connote continued drudgery. The Article takes within its fold *"some of the finer graces of human civilization, which makes life worth living"*, and that the expanded concept of life would mean the *"tradition, culture and heritage"* of the person concerned. Right to dignity is not only available to a living man but also to his body after his death was articulated by the Supreme Court in *Parmanand Katara (Pt.) v. Union of India (1995) 3 SCC 248.*This was a petition that challenged the method of execution of the death sentence by hanging under the Punjab Jail Manual as inhuman and violative of Article 21 of the Constitution. The petitioner pointed out the Jail Manual which required the body of a condemned convict to remain suspended for a period of half an hour after hanging as violative of right to dignity. Although the Supreme Court rejected the challenge to the method of execution by hanging, it accepted the contention of the petitioner suspending the body for a period of half an hour after death as a violation of its right to dignity. The Supreme Court held:

> *"We agree with the petitioner that right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death". We make it clear and hold that the jail authorities in the country shall not keep the body of any condemned prisoner suspended after the medical officer has declared the person to be dead. The limitation of half an hour mentioned in para 873 is directory and is only a guideline".*

Further, in *Ashray Adhikar Abhiyan v. Union of India (AIR 2002 SC 554),* the court accepted the various steps taken by the Police and the local body for providing a decent burial to a homeless dead person, according to the religious faith to which he belonged. The petition was

disposed of on the basis of sworn affidavits by the Deputy Municipal Health Officer of the Municipal Corporation of Delhi and the Deputy Commissioner of Police (Headquarters), Delhi. In *S. Sethu Raja v. The Chief Secretary, d W.P.(MD) No.3888 of 2007,* the Madras High Court directed authorities to bring back the petitioner's son's dead body from Malaysia." *By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead".* It went on to state: *"There can be no dispute about the fact that the yearning of a father to perform the obsequies for his son who died in a alien land, is as a result of the traditional belief that the soul of a person would rest in peace only after the mortal remains are buried or burnt.* "Traditions and cultural aspects are inherent to the last rites of a person's dead body. Right to a decent funeral can also be traced in Article 25 of the Constitution which provides for freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and to the other fundamental rights under Part III of the Constitution. The very idea of transformative constitutionalism has not just been expounded by recent judgements of the Supreme Court like *Justice K S Puttaswamy v Union of India* ((2017) 10 SCC 1) and *Nav Tej Singh Johar & Ors v. Union of India* (*(2018) 10 SCC 1),* but through the very history of the Constitution itself. Remnants of transformative constitutionalism can be traced back to the "Act of State" doctrine laid down by the Privy Council in the case of *State of Gujarat v. Vora Fiddali Badruddin Mithirbarwala* (*(1964) 6 SCR 461).* Juristic opinion on the nature of the Constitution however, is of conflicting nature with ambiguity over the conservative and evolutionary nature of the Constitution. Supporters of the conservative nature believed in the inherent nature of the Constitution that is primarily the mandate of continuity. On the other hand, many jurists believed in the evolutionary nature of the Constitution that is not to continue the legacy of British Imperialism but to act as an element of transformation and evolution. The approach of transformative constitutionalism, like any other judicial approach has been subject to great discourse and debate among jurists, lawyers, and judges alike. One view is that the Court will overstep its jurisdiction legitimized by constitutional mandate. Reference can be made to the public outcry after *Young Indian Lawyers Association v. State of Kerala ((2019) 11 SCC 1)* wherein which jurists condemned the use of abstract principles like constitutional morality and transformative constitutionalism. The Supreme Court of India with a multitude of actions before expounding the nature of transformative constitutionalism itself like the introduction of the PIL, *suo moto* cognizance and the wide interpretation of Article 21 through a multitude of judgements has asserted its role as an arbiter of justice. Thus despite their flaw, transformative constitutionalism is of substantive importance as its merits outweigh the demerits acting as a

beacon of hope in the dark path of justice. The decision of the Madras High Court affirming the right to a decent burial is a legitimate decision in line with constitutional jurisprudence.

8. IMPORTANT CASES REFERRED

- *Francis Coralin Muller v. Union of India, ((1981) 1 SCC 608)*
- *Kharak Singh v. State of Uttar Pradesh, (AIR 1963 SC 1295)*

CASE NO. 13

IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS

(SUO MOTU WRIT PETITION (CIVIL) NO. 1 OF 2020)

CONDITION OF PRISONERS DURING COVID-19.

ABSTRACT

The whole world had been shattering from past few months due to the outbreak of the pandemic called Noval Corona Virus or COVID-19. This had made the tremendous changes in the life the of common man. This outbreak makes everyone to sit in the homes, because social distance is the only way to prevent the people from the attack of Noval Corona Virus. In the mean while many quarantine and isolation centres had been constructed to treat the people. This was the situation in the outside world. But in the inside world, the life of prisoners had became harder than the earlier. Since most of the prisons are over-populated, it became the huge issue all over the world. In India, the courts took the suo motto cases and tried to resolve the issue. The main task of judiciary with respect to dealing the prisoners is their right and their safety. The government needs to take the steps to save the prisoners from transmission of COVID-19 without violating their rights. so this paper analyses the rights of the prisoners and the steps that needs to be taken by the government in order to prevent the contagion of COVID-19 virus in the prisons.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition (Civil) No. 1 of 2020
Jurisdiction	:	Supreme Court of India
Case Filed on	:	March 16, 2020
Case Decided on	:	March 23, 2020
Judges	:	Justice S. A. Bobde, CJ, Justice. L. Nageswara Rao
Legal Provisions involved	:	Article-14, 21, 22 of Indian Constitution, Section-4, 13, 37(1), 39 of Prisons Act,1894
Case Summary Prepared by	:	Kotta Naga Anjaneya Chaitanya School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

During past few months the, the world has witnessed the respiratory disease called Novel Corona Virus (COVID-19), which the outbreak was first identified in Wuhan, Hubei, China in December 2019. Medical experts have noted that there are four stages of the contagion of the COVID-19 virus, in which the final stage is epidemic level. The Government of India and the respective State Government have also issued several advisories to the citizens, regarding the prevention of the further spread of the COVID-19 virus. One of the suggestions made by the Government of India is to maintain social distancing, which is considered to be the most effective way of stopping the contagion of COVID-19 virus. The bitter truth is that our prisons are overcrowded, making it difficult for the prisoners to maintain social distancing.

There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively. Like most other viral diseases, the susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as COVID-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. The Supreme Court is in the opinion that there is an imminent need to take steps on an urgent basis to prevent the contagion of COVID-19 virus in the prisons.

3. ISSUE INVOLVED IN THE CASE

I. What are immediate steps, which should be taken to prevent the contagion of COVID-19 virus in the prisons?

4. LEGAL ASPECTS INVOLVED IN THE CASE

Article-14 Indian Constitution states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article-21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except

according to procedure established by law". Article-22 states protection against arrest and detention in certain cases. section-4 of Prisons Act,1894 states that it is the duty of state and union territories, to provide the accommodation for the prisoners. Section-13 Prisons Act, 1894 states that the Medical Officer shall have charge of the sanitary administration of the prison. Section-37(1) Prisons Act, 1894 states that The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, by reported by the officer in immediate charge of such prisoners to the Jailer and Section-39 Prisons Act,1894 states that In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

5. JUDGEMENT IN BRIEF

The Supreme Court directed the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID 19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare. And appointed Mr. Dushyant Dave, learned Senior Counsel as the Amicus Curiae.

The Respondents shall submit a reply in writing before March 20, 2020. The reply shall contain the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of the Corona virus among the prisoners/juveniles. The Respondents shall further ensure that, a responsible officer of their choice duly authorised to take decision in the matter shall be made available to this Court on the next date of hearing i.e. March 23, 2020.

The Respondents may first submit their respective written reply and shall appear in Court as and when called upon to do so. They shall submit their respective responses to the Supreme Court, learned Attorney General for India, learned Solicitor General of India, and the learned Amicus Curiae.

6. COMMENTARY

A. Some of the Legal Provisions for the welfare of Prisoners:

1. **The Basic Principles for the Treatment of Prisoners**, which was adopted by the General Assembly Resolution, 1990 clearly states that, "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings, and Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation".

2. **Article-3 of Universal Declaration of Human Rights** provides that everyone has the right to life, liberty and security of person.

3. As per the **Model Prison Manual, 2016**, Rule-7.84 states that Every case, or suspected case, of infectious diseases shall immediately be segregated and the strictest isolation shall be maintained until the Chief Medical Officer considers it safe to discontinue the precautions. The Medical Officer shall give written instructions as to the clearing, disinfecting or destroying of any infected clothing. And also Rule-2.16.2 (h) states that there shall be Isolation rooms for accommodating patients with infectious and contagious diseases, in the prison hospitals.

B. Role of Judiciary:

1. In the case of *D. Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh*, The court held that Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess, and even a convict is entitled, to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.

2. In the case of *Sunil Batra v. Delhi Administration and Ors*., the court held that Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity.

3. In the case of *Nilabati Behara v. State of Orissa*, the court held that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in

accordance with law while the citizen is in its custody. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions.

4. In *Ram Murthy v. State of Karnataka*, the court found nine major issues in prison, which need an immediate attention. Those are: over-crowding, delay in trail, Torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, Streamlining of Jail Visits and finally management of Open air prisons.

5. In the Case of *D.K. Basu v. State of West Bengal*, the court held that fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity for prisoner as well.

6. In the case of *Jogindar Kumar v. State of U.P*, the court opined that the horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests.

7. In *A. K. Gopalan's* case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in *Maneka Gandhi* case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution.

8. In the case of *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Ors.*, the court held that Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of the Government hospital to provide timely medical treatment

to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

9. In the case of *Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi*, the court held that imprisonment does not spell farewell to fundamental rights.

C. Legal Rights of Prisoners:

1. The prisoners have the right to family visits.

In the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others,* the question arose was, whether the appellant has right to interviewed with family and friends. The court held that he right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. And also stated that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. And therefore as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Articles 14 and 21, unless it is reasonable, fair and just.

2. Right to Speedy Trial:

In the case of *Hussainara Khatoon and other v. Home Secretary, State of Bihar*, court held that the State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources, to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, an sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment' of additional Judges and other measures calculated to ensure speedy trial.

3. Right to Legal Aid:

Article-39A of Indian Constitution states that, The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and 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.

In the case of *Madhav Hayawandan Rao Hoskot v. State of Maharashtra,* the court held that If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142, read with Articles 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice.

4. Right Against Solitary Confinement:

In the case of *Sunil Batra v. Delhi Administration and Ors*. Petitioners were served with an order of detention. The question arises was whether, solitary confinement imposed on Batra was valid or not? In this case the court held that Article 21 forbidden deprivation of personal liberty except in accordance with procedure established by law and curtailment of personal liberty to such an extent as to be a negation of it would constitute deprivation. However, Sub-section (2) of Section 30 permitted solitary confinement, when a prisoner under sentence of death. The Classification according to sentence for security purposes was valid. Therefore, Section 30(2) did not violate Article 14 and requirements of Section 30(2) did not appear to be unreasonable.

The Ratio Decidendi of this case was A convict is entitled to precious right guaranteed by Article 21.

Similarly in the case of *Mukesh Kumar v. Union of India*, (which is popularly known as Nirbhaya Rape case), the petitioners after rejection of Mercy petition, he filed a case for the reviewing the rejection, in which he mention that from past one and half year he has been in solitary confinement which is in violation of principles laid down in the Sunil Batra Case. As a response to the same, the Director General of prison in his affidavit stated that, for security reasons, the Petitioner was kept in one ward having multiple single rooms and barracks and the said single room had iron bars open to air and the same cannot be equated with solitary confinement/single cell. It was stated that the prisoner/Petitioner who was kept in the single

room comes out and mixes up with the other inmates in the prison on daily basis like other prisoners as per rules. Considering the averments in the affidavit filed by the Director General, Prisons, the contention of the Petitioner that he had been kept in solitary confinement in violation of the principles of Sunil Batra case could not be countenanced. This could not therefore be a ground for review of the order rejecting the Petitioner's mercy petition.

The Ratio Decidendi of the case was 'Quick consideration of the mercy petition and swift rejection of the same cannot be a ground for judicial review of the order passed under Article 72/161 of the Constitution.

D. Condition of prisoners rights during COVID-19

During this pandemic situation most of the prisoners' rights has been suspended to curb the transmission of the virus. Most of the important rights like right to meet the family members and to give the interview, right to speedy Trial has been suspended. But if one considers the current pandemic situation, meeting the family members, who are coming from outside to Prison can lead to transmission of COVID-19 virus into the prison. Due to which many state governments came up with rules, which prohibits the family members to visit the prisons.

And also many states came up with their own rules and regulation to curb the transmission of the Novel Corona Virus. For example the Director General of Prisons, Kerala has set up isolation cells within prisons across-Kerala. Those suffering with COVID-19 symptoms such as cold and fever are being moved to these isolation cells. All the new inmates who will be admitted to the prisons in Kerala will be isolated in the isolation cells in the admissions block for six days before permitting their entry into the regular prison cells. Similarly, an isolation ward has been set up in the Tihar Jail, Delhi and all the 17,500 inmates of the said Jail were checked for COVID-19, and it was found that none displayed any symptoms relating to COVID-19. The authorities of the Tihar Jail have also decided that new inmates will be screened and put in different wards for three days.

But still in many of the Jails the Novel Corona Virus is spreading rapidly. For instance in Odisha, the Berhampur Circle jail was reported with 43 positive cases inside the jail. Due to which other prisoners went on hunger strike demanding to transfer the positive tested prisoners to other jails. By considering the fact that, Indian Jails were over-populated, it became the duty to the states, union territories and concerned authorities to take required action.

Moreover the rights like speedy trial became one of the issue for the prisoners during this pandemic situation, because the courts are working virtually, which is so difficult for the prisoner to get the speedy justice. And also the courts are working on the basis important matter. This may affect the mental health of the prisoners.

The United Nations Office on Drugs and Crime had come up with two rules during this pandemic based on Nelson Mandela rules as the prison reforms. Those are:

- "The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge, without discrimination on the grounds of their legal status."
- "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions." This is with respect to alternative of imprisonment.

As a result to the pandemic most of the countries had decided to release the prisoners in order to reduce the strength of prisons. Recently the Afghanistan government decided to release nearly 10,000 prisoners, which included the aged prisoner, prisoners suffering from critical illnesses to reduce the population of prisoners. Similarly the Sri Lanka government released 2961 prisoners as a part of providing legal redress. Myanmar announced the release of 24,896 prisoners on the basis of the Presidential Amnesty.

8. IMPORTANT CASES REFERRED

- *K. Gopalan v. Government of India, AIR 1966 SC 816*
- *Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi, AIR 1978 SC 1514*
- *D.Bhuvan Mohan Patnaik and Ors. v. State of Andhra Pradesh, AIR 1974 SC 2092*
- *D.K. Basu v. State of West Bengal, AIR 1997 SC 610*
- *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & others, AIR 1981 SC 746*
- *Hussainara Khatoon and other v. Home Secretary, State of Bihar, AIR 1979 SC 1369*
- *Jogindar Kumar v. State of U.P, 1994 SCC (4) 260*

- *Madhav Hayawandan Rao Hoskot v. State of Maharashtra, AIR 1979 SC 1360*
- *Maneka Gandhi v. Union of India and Ors. AIR 1978 SC 597*
- *Mukesh Kumar v. Union of India, AIR 2020 SC 694*
- *Nilabati Behara v. State of Orissa, AIR 1993 SC 1960*
- *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Ors, AIR 1996 SC 2426*
- *Ram Murthy v. State of Karnataka, AIR 1997 SC 1360*
- *Sunil Batra v. Delhi Administration and Ors, AIR 1980 SC 1579*

CASE NO. 14

IN RE: REGARDING CLOSURE OF MID-DAY MEAL SCHEME

(SUO MOTU WRIT PETITION (C) NO. 2 OF 2020)

MID DAY MEAL AT DIFFERENT GOVERNMENT ESTABLISHED EDUCATIONAL INSTITUTIONS.

ABSTRACT:

While number people dying out of extreme hunger already exists in India, certain unforeseen situations like pandemic and disasters makes their state of lives most vulnerable. As a result of this vulnerability, they do not find any other means rather to die or live at the edge of hunger all time. India has a wide range of feeding schemes and subsidies in food aiming at Hunger free nation and alleviating malnutrition. Underlying notion of such programmes is nothing but the acknowledgement of their Human rights and obligations of the state in ensuring their Right to adequate food. One among that is Mid-day meals scheme that provides food for Children in the primary schools. Recent pandemic outbreak has induced several countries to temporarily close their schools, which later affected nearly 70-75 percentage of the student's education across the globe. India, not an exception to it, has also insisted its state governments to close its schools. PIL was filed regarding closure of government schools and government assisted schools in many states has affected around 32 million children dependent on mid day meals scheme. This paper would analyze the importance of MDM and its significance in the future.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition (C) No. 2 of 2020
Jurisdiction	:	Supreme Court of India
Case Filed on	:	March 2020
Case Decided on	:	March 27, 2020
Judges	:	Justice S A Bobde, CJ, Justice BR Gavai, Justice Surya Kant
Case Summary Prepared by	:	M Balaji School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

Facts of the case was that in order to prevent the spread of COVID 19, most of the states and some union territories have closed their schools as directed by the central government. Some states have also closed Anganwadis. It is to be noted that mid-day meals scheme under which the nutritional food is being supplied to the children in their schools across the states in the country. On the other hand, Anganwadis supplies nutritional food to the lactating mothers and nursing mothers.

Due to the closure of these schools and Anganwadis as a measure of reducing the spread of COVID 19, the children as well as the lactating and nursing mothers were deprived of the nutritional foods. But, there were some instances reported in the news that some districts in the states have supplied the food to the concerned family of the children benefitting under the mid-day meals scheme. The parents, in these districts have been told to pick up the nutritional food to their children from the schools.

Reports states that the closure of schools which resulted in non-supply of nutritional food to the children and lactating mothers would therefore, lead to a large scale mal-nutrition and undernourishment both in the rural as well as in the tribal areas dependant on the mid-day meals. In those circumstances, theses people would be more prone to get affected with the infection. In this regard, court took *Suo Moto* cognizance of this matter in this case.

3. ISSUES INVOLVED IN THE CASE

I. One of the main issues in this case was that whether the states should be directed to open the schools for the purpose of mid-day meals or be directed to frame an immediate policy to ensure these people are not under-nourished.

4. JUDGEMENT IN BRIEF

After hearing from the counsels of the appellants, Court directed all states to frame a uniform policy to in order to ensure that the scheme which provides nutritional foods to children and lactating mothers should not, in any way, get affected while preventing from the spread of pandemic.

Ratio decidendi of the case: ***"The States should come out with a uniform policy so as to ensure, that while preventing spread of COVID-19, the schemes for providing nutritional food to the children and nursing and lactating mothers are not adversely affected."***

It also has issued notice to the Secretary, Ministry of Women and Child Development of the Union of India as well as the Chief Secretaries/Chief Administrators/Administrators of all the States and the Union Territories across the nation.

In addition to above mentioned, Supreme Court has also issued a notice to the resident commissioners of all the states and union territories in Delhi by their respective emails. It has waived the service of the respondents in this case- Union of India and the state of Orissa as Mr. ANS Nadkarni, learned additional solicitor General and Mr. Sibo Shankar Mishra, learned counsel appeared on behalf of those respondents respectively.

Supreme Court has also appointed Mr. Sanjay R. Hegde, who is the Senior Counsel present before the court, as learned Amicus Curiae to assist the Court in the matter.

Obiter dictum: ***'While dealing with one crisis, the situation may not lead to creation of another crisis'.***

It stated that while dealing with the crisis of COVID 19, the same should not act as means in creating another crisis that is malnutrition and undernourishment in children and lactating mothers.

5. COMMENTARY

a) Scope of Mid-day meals in India:

Having established as a centrally sponsored programme in 1995, the National Programme of Nutritional Support to Primary Education (NP-NSPE) today, has been recognized as the largest feeding programme for around 12.5 crore children in nine lakh schools across the country. Through the directive of Supreme Court in the year 2001, all state governments and union territories have been directed to implement the mid-day meals scheme by providing every child in all government and its assisted primary schools having calories with 8-12 grams of protein each day of school for a minimum of 200 days. One of the main aims of the Mid-day meals scheme in India is to address the major problem faced such as food and primary education. It is accepted concept that children would engage in the education if they were to be fed by the

government. Tamil Nadu was the first state to implement the scheme. This scheme along with Anganwadis helps in ensuring at least one day meals of people who could not even afford to it. Mid-day meals scheme has significance in exhibiting a positive influence on the school education. In order to restrict the child and lactating mothers of malnutrition, mid day meals serves an important purpose of social values and foster equality. As per previous case studies, overall mid day meals scheme has been ensuring a better well-being of children and the lactating mothers in some Anganwadis. Specifically in case of lower-income families, mid day meals scheme plays a pivotal role in hunger free environment through provision of enough nutritional diet. It also improves the health condition and nutritional level of around 9.2 crore children from the socially disadvantaged groups of the society.

b) Right to Adequate Food and Mid Day Meals scheme:

An intense analysis of the present case would provide two main issues both in general and specific sense. In general sense, the case highlights the direct impacts that would cause problems to a set of people in the community, who solely dependent on government schemes and organizations during unforeseen situations like pandemic and even under normal conditions, unlike others. Whereas on the other hand, in specific sense, it invokes a major concern regarding Right to food as part of Human rights and as an unwritten fundamental right. The basic idea of Human rights is that people are given certain fundamental things so that they live with dignity and denial of which would therefore make their life incomplete. Right to food should, therefore, be one among those things, which cannot be denied at any point of their lives in the earth.

It is universally accepted right which is part of Universal Declaration of Human rights (UDHR) and even in Food and Agricultural Organization (FAO). Food security means availability of sufficient food grains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices. Having influenced greatly by UDHR, Indian constitution also enables its citizen to enforce their Human rights within their territory. In light of this, the concept of right to food was spelt by National Human rights commission in the year of 2003. Even though many people and organizations have certain obligations towards Human rights, Nation's government has the primary duty to ensure that all those minimum requirements for the survival mankind are satisfied. There are certain Articles in the Indian Constitution that enables Right to adequate nutritional food directly and indirectly.

Firstly, Article 39(a), which directly states that the state shall direct its policy towards securing its citizens, men and women equally to have right to an adequate means of livelihood. Article 47 states that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. These two articles are enshrined as part of directive principles of State policy. There has been a myth created that these articles are not enforceable in court of law under Article 37 and are merely an obligation placed before the government while framing the laws. People of the country cannot enforce these articles even if they have been denied of those by the state. The importance of Right to food as part of Article 21 gave an ulterior motive to ensure that the people are in no way denied of Right to adequate food. Court interpreted article 21 and stated that Article 39(a) and 47 should be read along with Article 21. Through these provisions the state has the ultimate duty towards its citizens in providing adequate food as part of Directive principles of state policy. The interpretation of Article 21 along with Articles 39(a) and 47 places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. Denial of adequate meal to the needy, which desperately require food for their mere survival even during unforeseen disastrous situations like pandemic, would thereby result in violation of right to life under Article 21.

c) Role of Judiciary in ensuring Right to adequate food:

Administration of Justice involves the three organs of the state to perform their functions and obligation so as to ensure the justice is rendered to its citizen. Despite rendering justice does not rely only on the act of the judiciary, judicial decisions, through many cases has created a sense of obligation in the way of administration by the government. One among those was with respect to interpretation of Rights to food as fundamental and human right. Some of the cases which ensured the right to food as a fundamental right are as follows.

In *Keshavananda Bharathi vs. State of Kerala (1973),* the Supreme Court took a similar stance and held that the object of the constitution is to uphold social and economic justice. It stated that the duty rests on all the wings of the government- executive, judiciary and legislature. It added that protection from starvation is fundamental right of every citizen. The significance of Keshavananda Bharathi's case to right to food was remarkable. It created all new platform to enable the new jurisprudence involving direct intervention and access to livelihood that is free from starvation of people who in spite of their efforts, could not feed themselves.

In the case of *Francis Mullin v. Administration of Union territory of Delhi (1981)*, court explained a the diverse components that are laid down under the umbrella of Right to life, which included the basic necessities for the survival of any person such as nutrition, clothing, shelter etc.

In *Board of Trustee of Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni (1983)*, Supreme Court held that people should not be allowed to lead a life of continued hustle and they have the right to livelihood which enables them to lead a worthy life. One of the components to have absolute livelihood would be the right to life. Thus, it expended the doctrine of right to life to include the basic component called right to food. Further, it stated that, a person should have basic comforts of his life and such cannot be denied by the government at any time.

In order to reduce the hunger or to alleviate the same, the Apex court in the case of *Olga Tellis and others v. Bombay Municipal Corporation and others (1985)* held that the any deprival of right to livelihood would therefore lead a person to stay in hunger and starvation. It further added that people could be able to eat only if they are provided with the adequate livelihood.

In another important and a significant analysis of Right to food was interpreted in the case of *J.P.Ravidas and others v. Navyuvak Harijan Utthapan Multiunit Industrial Co-operative Society Ltd and others (1995),* where the Apex court determined the scope of International obligations on the nation state that is part of the International conventions. It held that under the International obligations such as **Universal Declaration of Human Right, 1948 and International Covenant on Economic Social and Cultural Rights, 1966,** the Nation state that abides or having part of it has an obligation to promote the objectives of the conventions by enacting legislations that are not present within its laws. In the same way, it stated that the Nation should provide adequate means of livelihood to all its citizens under the above conventions.

A significant contribution to ensure the protection of rights of the hungry and starving citizens of India was made in the case of *Peoples Union of Civil Liberties v. Union of India (2001),* where the court held that right to food is a guaranteed right under the ambit of Article 21. It stated that in order to realize the right to life, it is essential to prevent people from starvation. This case enabled the government to introduce various food related schemes across the country.

In *Indian Council of Legal Aid and Advice & others v. State of Orissa (2008),* the court introduced Human rights commission into the ambit of Right to food in order to ensure the right

even in easier and wider sense. It requested Human rights commission to overlook into the operationalization and implementation of the schemes that are undertaken by the government for the understanding of right to food for the people to prevent the malnutrition and starvation deaths. Since then, Human rights commission started its major role in preventing the violation of any activity by the government relating to Right to food.

d) Impacts of closure of Midday meals scheme on Children and their Right to food:

As per Food and Agricultural organization (FAO), India has been classified as a low-income and a food deficit country. Unfortunately, India has the largest number of undernourished people and with highest levels of child malnutrition than some of the African countries as per the statistics among other countries in the world. The country has committed to attain Millennium Development Goals (MDGs). But, the Reports state that India is far behind the required rate in the nutritional level of children and even their mothers in spite of economic growth before it started reducing in the recent years. It is to be noted that 47 percent i.e. almost half of the children who are malnourished are due to the lack of enough primary cares in the health care. Sadly, the issue of lack of nutritional food connects to another issue of health care. Malnutrition of the mother indicates the health of their children and increases the risks even higher.

It has to be noted that the school feeding programmes serve healthier meals and could fulfill around two-thirds of every child's daily nutritional requirements. In case of families with lower incomes, the mid day meals will only serve the requisites for survival rather adding nutritional needs. They are merely the means for the survival and not an option. With this situation in place, mid day meals cover up the dietary requirements and negate the malnutrition of the children from disadvantaged section of the society. Closure of schools even for a week or so would result in reduced level of immune response in their body, leading to several diseases which may affect the physical, mental and psychological well being of the children in the future. One of the examples that could be cited is the situation in Odisha. The closure of schools due to lockdown and inability of the migrant workers of the state to return from other states has put their children in mental and physical depression as they were only dependent on the foods served and hostels they provide. According the Health department, children with undernourishment and malnutrition could easily get affected with COVID 19, as a result of less immune response. In that sense, longer the closure of schools and delay in the provision of nutritional foods, greater will be the amount of malnutrition and undernourishment to these hunger children in the societies. Closure of schools has indirect effects on the children in form

of exploitation, especially the ones from most vulnerable section of the society. There are possibilities that these children will be pushed towards child labor and other negative strategies in order to cope up with their daily needs, which may increase the risk of spread during the time of pandemic. These are some of the impacts of closure of government schools and non-provision of mid day meals scheme.

e) Need for effective policy for long term:

Unfortunately, one child's happiness in the Closure of schools during the pandemic outbreak was not the same for any other child, especially in the ways of survival they undergo. Recent closure has taken the issue to its further level, making the situation even more complicated due to insufficient health care system and improper infrastructural facilities that has been prevailing even before the pandemic. As per recent reports, there were many instances where the nutritional level of the children and lactating mothers were lowered because of the interruption in the provision everyday meals in the schools. It has been anticipated that the current situation may not end suddenly as per International organizations on Health. If this continues, then the government would thereby open no schools in order to prevent the spread across the country. If current situation continues, the question arises as to what would be the status of children dependant on mid day meals scheme in the future when the school reopens. No matter what the situation is government has the duty to safeguard each lives. These families have no means to enforce their rights in order to survive. Government's schemes are the only means, for which the government has to ensure that there is adequate food being provided in a manner that would prevent the spread as well as the people's needs, are also addressed thereby. Only with an effective implementation, could we be able to solve the problem of these marginalized sectors of the people considering them not as poor but as a part of our Indian democracy in general.

In that sense, the prevailing deficiency in the nutritional levels of the children and the lactating mothers could be solved by a policy that gives easier accessibility of these nutritional foods such as fruits, eggs, and also vegetables at their houses at affordable prices, the measure which is undertaken Kerala government. In order to stop the spread of COVID 19, the state has introduced an important and heartwarming way to ensure that these underprivileged children still have the right to access the mid day meals from the respective schools. The measure also applies to 33, 000 Anganwadis across the state which provides the food to the children's houses benefitting around 3.75 lakh children.

As the country faces the economic set back, government can introduce National funds for health of these children and lactating mothers, similar to PM CARES fund relief, to the public at large stating the purpose behind the same. Only way that would prevent the issue from becoming even more complicated is the proper functioning of government and in the way new policy is being implemented across the nation. In that way, the present order enables the government and imposes the responsibility on the same to make right choice while dealing with unforeseen situation. It stated that one crisis should not bring forth another crisis. Looking from broader perspective, there needs a full co-operation between the education department of the states as well as in the centre with the governmental agencies that would speedily effectuate the emerging health concerns during the pandemic.

6. IMPORTANT CASES REFERRED:

- *Keshavananda Bharathi v. State of Kerala (1973) 4 SCC 225*
- *Francis Mullin v. Administration of Union territory of Delhi (1981), 1 SCC 608*
- *Board of Trustee of Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni (1983) 1 SCC 124.*
- *Olga Tellis and others v. Bombay Municipal Corporation and others (1985) 3 SCC 545.*
- *J.P.Ravidas and others v. Navyuvak Harijan Utthapan Multiunit Industrial Co-operative Society Ltd and others (1995) 9 SCC 300.*
- *Peoples Union of Civil Liberties v. Union of India (2001) Writ Petition (Civil) 196 of 2001.*
- *Council of Legal Aid and Advice & others v. State of Orissa (2008) SCC Supreme 421*

CASE NO. 15

IN RE: INDIAN WOMAN SAYS GANG RAPED ON ORDERS OF VILLAGE COURT PUBLISHED IN BUSINESS AND FINANCIAL NEWS

(SUO MOTU WRIT PETITION (CRIMINAL) NO. 24 OF 2014)

WEST BENGAL RAPE CASE.

ABSTRACT

The following is a case summary of a gang rape case of West Bengal that took place in January 2014. This case was brought before the Supreme Court of India in the form of the Suo Motu petition. Mr. Sidharth Luthra, learned amicus, stood for the side of 20 yr old raped girl and raised his contentions against the State Government of West Bengal.

Mr. Anip Sachthey, the learned counsel for the state, Chief Judicial Magistrate, and the Chief Secretary were the defendants in the present case. Mr. Luthra was appointed by the court to investigate the matter on behalf of this Suo Moto petition when the court found out some discrepancies in the reports and files submitted by the police officers and District Judge concerning the present case.

A 20-yr old girl having a relationship with a man of different caste was gang-raped by few people as per the directions of the community panchayat of the village. The only reason for such direction given by the panchayat was that the man with whom the girl was in a relationship was of a different cast. All the above was done by a few brutal, feudal minded people in an urge to give punishment to a 20-yr old girl.

The aspects of the law that was triggered in this case are the legality of inter-caste marriages as per the law, the extent of the liability on the state to compensate for the victim, relation of inter-caste marriage with the acts that constitute for honour killings, and the responsibility of the state police machinery towards the increasing cases of such heinous crimes throughout the country.

The author of this summary has made an informed attempt to chalk out the majors of this case in the form of a short case brief for academic and research purposes. The author personally got fascinated by the arguments and the investigations done by Mr. Sidharth Luthra. This case has brought to the limelight of society, an issue that is grave and has to be dealt on an international-global level too.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition (Criminal) No. 24 of 2014
Jurisdiction	:	Supreme Court of India
Case Filed on	:	January 23, 2014
Case Decided on	:	March 28, 2014
Judges	:	P. Sathasivam, C.J.I., S.A. Bobde and N.V. Ramana, JJ.
Legal Provisions involved	:	Article 21 of the Constitution. S. 357-A,B,C, S.154, S. 161, S.164 of Code of Criminal Procedure. S. 326-A, S.376-D of the Indian Penal Code.
Case Summary Prepared by	:	Naman Jain Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

Parties

The Supreme Court of India initiated this case in the form of a Suo Moto petition. The arguments and the case issues were raised by the learned amicus curiae, Mr. Sidharth Luthra, who investigated and analyzed the case and various reports. All the arguments and issues were raised against the state, to which the learned counsel for the state, Mr. AnipSachthey, defended and laid down his contentions.

Factual

The Judgement was given by Hon'ble Judges, P. Sathasivam, C.J.I., S.A. Bobde and N.V. Ramana, JJ on March 28, 2014.

All the issues in this Suo Moto case were raised by the amicus curiae, Mr. Sidharth Luthra. The case dealt with the gang rape of a 20-yr old girl. In Subalpur Village, P.S. Labpur, District Birbhum, State of West Bengal, a 20-yr old girl, had a relationship with a man from a different community. As per the rules and punishment of community panchayat of the village, no one is allowed to, or it is deemed socially wrong for a girl and a boy of different communities to marry each other or have a relationship. After knowing about this relationship of a 20-yr old girl and a man of a different community, the community panchayat ordered and conspired a group of men to gang rape the 20-yr old girl as a punishment for having a relationship with a man of a different community. On the intervening night of 20/21st January 2014, this girl was gang-raped by few people as per the community panchayat's directions. On 24th January 2014, the Court took a Suo Moto action and ordered the District Judge, Birbhum District, to inspect

the case and submit a report in a week's time concerning the happenings, issues, convicts, and victims of the case. The First Investigation Report was filed by Anirban Mondal, a resident of Labpur, Birbhum District, West Bengal. All the above facts of the case were published in the Business and Financial News on 23rd January 2014.

Procedural

- As per the court's orders, a report was submitted by the Chief Judicial Magistrate and the District Magistrate to this court.
- On January 31, 2014: the court noticed that the report submitted by the judges after the said inspection and research did not contain any specific information regarding the steps or actions taken by the police to search this matter; and therefore, the court again ordered the judges to submit a detailed report on the matter. Moreover, Mr. Sidharth Luthra, learned Additional Solicitor General was requested to assist the court as amicus (friend of the court) in the matter.
- On January 10, 2014, the Chief Secretary submitted a detailed report and analyzed by the court for four days subsequently.
- On March 14, 2014, the court ordered the state and the police to submit on record the FIR, case diaries, forensic opinion and related reports of the rape, police report u/s 173 of the Cr.PC, and the statements of the victim recorded during the investigation.
- On March 13, 2014, the court got all the above-said material, and Mr. Anip Sachthey, learned Counsel for the state, represented all the issues and facts on behalf of the state.
- After hearing the arguments of the defence counsel for the state and Mr. Sidharth Luthra, learned amicus curiae of the court, the court gave the final judgment on March 28, 2014 in favour of Mr. Sidharth Luthra, who stood for the rights of the 20-yr old raped girl.

3. ISSUES INVOLVED IN THE CASE

I. Whether the compensation of 50 Thousand Rupees made by the government of West Bengal to a 20-yr old rape victim, enough for the rehabilitation of the victim?

II. What is the liability of the state government and police officers towards the increasing rape cases in the state?

III. Whether all the hospitals and first aid clinics provide free of cost treatments as mentioned under Section 357C to the victims of any offence covered under Sections326A, 376, 376A, 376B, 376C, 376D or 376E of the Penal Code?
IV. Whether the inter-caste marriages or girl and boys marrying, belonging to different communities illegal as per the rules laid down in the constitution?
V. Whether the State Police Machinery could have possibly prevented the said crime of rape?
VI. Whether the honour killings of the individuals who undergo inter-case of inter-religious marriages out of their own wills justified by brutal, feudal minded family members or other concerned people?

4. ARGUMENTS OF THE PARTIES

Mr. Sidharth Luthra, learned amicus curiae, standing in favor of the Suo Moto petition

Mr. Luthra stood for the side of 20-yr old, against the state, and raised several arguments concerning the authenticity of the investigation that took place by the police under the directions of District Judge. Mr. Luthra stated that the FIR was filed by the Anirban Mondal, a resident of Labpur, Birbhum District, West Bengal, but there was no accurate information about his coming to the police station or his presence in the police station.

Further, he raised issues concerning the recording of the statements of the victim. He argued that a women officer must record the statements of a female rape victim with respect to the FIR filed according to the latest amendment in S.154 CrPC dated 3rd Feb 2013. He also said that it was unfair or unauthorized for Deputy Superintendent of Police to re-record the statement, and the same action would have led to contradictions during cross-examinations. He also pointed out the misplaced phone calls record that the police failed to obtain.

He researched the case minutely and argued that the Judicial Officer's report and the FIR have variations in the facts concerning the holding dates and times of the village meeting (Salishi). Relating to the framing of charges on the convicts, he pointed out that the offense of Extortion under S. 385 of the IPC, criminal intimidation under S. 506, grievous hurt under S. 325 of the IPC should be invoked against the convicts. He stressed on the point that the investigation agency has not considered S.354A and 354B during the time of the investigation. He found out that there is variation in the name of the accused, as written in the FIR and the Judicial Officer's report, as both have some discrepancy. In addition to it, non-certified electronic documents

submitted by the Judicial Officer forced Mr. Luthra to argue that some aspects of conspiracy on a large scale are also visible in the case concerning the facts of the case.

Lastly, Mr. Luthra argued that no proper compensations and due care and attention were given to the 20-yr old rape victim to ease her rehabilitation. Conclusively, Mr. Luthra focused on the issues concerning the faulty and improper investigation, as mentioned above, the state's responsibility to prevent recurring of such crimes and the liability of the state to compensate the victim and help in her easy rehabilitation.

Mr. Anip Sachthey, learned counsel for the State

Mr. Anip defended the arguments raised against the state by Mr. Luthra. Moreover, he provided the court with the cross arguments assuring that the deficiency, if any, in investigation or compensation as claimed by learned amicus, would be looked into and rectified certainly.

Mr. Anip laid down the Rehabilitation Report in front of the court formulated by the Chief Secretary. The report said that 50 Thousand Rupees had been sanctioned for the rape victim by the state government. Adequate legal aid, a plot of land 'Patta,' construction of a house, widow pension to the mother of victim, installation of tube well near victim's house, sanitation facilities, enrolment in Social Security Schemes, Antyodaya Anna Yojna Card for the victim's mother, and various other governmental relief articles have got sanctioned in favour of the victim and her family.

All the arguments of Mr. Anip focused on proving that the state government has taken all necessary administrative actions to aid the victim for her ease to rehabilitate and reintegrate.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The most crucial issue that this case showcases is the compensation given to the rape victims by the state government. This case raises the question of the extent to which the state's liability is to care for and compensate the victim for their rehabilitation. It also puts a question on the police's inability to keep a regular check on the villages and prevent these crimes from recurring.

Further, the case deals with the legality of the inter-caste or inter-religion marriages. Art. 21 of the constitution provides for the personal liberty and Protection of life of a person. If a boy and

a girl from different castes have married each other, at maximum, the family members or any other concerned person can cut off social relations with them. Doing any sort of defamation, domestic violence, harassment, or threatening of the couple will bring a criminal action against the wrongdoer. Another aspect involved is regarding the honourable killings of persons who undergo inter-caste marriages. In villages and less educated areas, people who bring shame to the family by doing some actions that lower the family's name and fame in their surrounding society are killed by the brutal, feudal-minded people. Whether these inter-caste marriages are barbaric and shameful acts and should come under the boundaries of honour killings or not, was also answered by the court in this case. Lastly, the legality and the state government's liability for giving interim compensation to the victim under section 357B of the IPC, irrespective of the standard compensation or fine given by the accused/convict to the victim, was also discussed in this case.

6. JUDGEMENT IN BRIEF

The case was decided on March 28, 2014 by the Hon’ble Judges P. Sathasivam, C.J.I., S.A. Bobde and N.V. Ramana, JJ.

Considering various facts and circumstances of the case, the court held that the state government had done its duty not entirely, but to some extent by giving grants to the victim for the rehabilitation. However, the court decided that the 20-yr old victim should be given 5 Lakhs Rupees in addition to the already sanctioned 50 Thousand Rupees. As the victim is herself a major (20-yrs), the court held it appropriate to transfer the money in the victim's name rather than any other family member.

Further, the court held that irrespective of the ordinary damages or compensation by the accused to the victim, it is the state government's duty to provide interim compensation to the victim, according to S. 357B of the IPC. Such compensation by the state government is mentioned under S. 357A of the IPC, and it should be paid in addition to the payment of the fine by the accused to the victim.

The court said that it was the police officers' duty to keep a regular check on the villages for security and protection. Further, it was held that no amount of compensation could be an adequate amount or of any respite to the victim, but as the state and the police officers have failed in protecting such a heinous crime of rape that violated the fundamental right of the victim; therefore, it is the duty of the state government to provide compensation in the form of

monetary values or any other governmental help to the victim that may help in the rehabilitation of the victim. The court accepted the fact that the reputation and humiliation caused to the victim cannot be recompensed into a monetary form, but the same will provide some solace to the victim.

A new section 357-A was added to the code in 2009 that cast a responsibility on the state government to formulate compensation schemes. Before this section was added, the government did not need to sanction ex-gratia relief or interim compensation to the victims. However, the addition of this section has put the onus on the state government to decide the quantum of the compensation of the ex-gratia relief based on the facts and the circumstances of the case, but the failure to grant uniform ex-gratia relief is not unconstitutional. Lastly, the court had the jurisdiction to award the victim at the final stage of the trials; therefore, there is no reason for the court to deny the interim compensation. Hence, the court held that a sum of 5 Lakh rupees should be given to the victim by the state government within the 30 days of the decision.

The court pointed out that the compensation was not enough, and therefore, a high amount of security and safety is required in the village, especially in the victim's area. Hence, the court directed the officers if the area to inspect the victim's place on a regular basis and ensure the protection and safety of the victim.

Concerning the honour killings and inter-caste marriages, the court ruled out that killing people who undergo inter-caste marriages is not honourable. Moreover, the court constituted these acts of killings as barbaric and shameful murders committed by brutal and feudal-minded persons. These offenders deserve harsh punishments, any person or family member who tries to threaten, instigate acts of violence, or defame such a couple will be liable for criminal proceedings, said the court.

Concerning the procedure to record the victim's statements, the rules were mentioned clearly in the Code of Criminal Procedure. However, the police and other concerned officials must be vigilant during the investigation of such crimes, and they should strictly implement the provisions of the code to prevent the recurrence of the crime.

The court also commented regarding the caste system and the social racism that dealt with the issue of inter-cast marriages, the court held the cast system as a curse on the nation. The court chalked out "*The caste system is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the*

national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes."

In the end, the court stressed out that it is mandatory to register a FIR in case of commission cognizable offense U/s 154 of the code, and it the sole duty of the police officers to register the FIR. For the safety and security of the people in concern with the basic fundamental rights of citizens enshrined in the constitution, S. 357C mandates all the hospitals, public or private, to provide first or treatment, free of cost, to the victims of all the offenses covered under S. 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the Indian Penal Code.

The Suo Moto Petition was disposed of, providing ex-gratia relief to the victim, making the implementation of provisions stricter in concern with the caste system and inter-caste marriages, and providing enhanced protection of the police for the safety and security of the society.

7. COMMENTARY

This case is an outstanding example of the myths and beliefs practiced in the villages and less educated backward areas. The fact that the community panchayat planned for the gang rape of a 20-yr old girl to give her punishment for being in a relationship with a man of different caste is not acceptable. Making of rules and regulations in such cases will help to some extent, but the mindset of the people needs to be changed by spreading awareness and educating them. Moreover, violence against women is a continuous crime across the whole world. A very true statement was recorded in the case which says, *"The case at hand is the epitome of aggression against a woman, and it is shocking that even with rapid modernization such crime persists in our society."* The safety of women has become one of the most dreadful agenda in today's world. Various Acts and Bills have been passed for the same. The crime noted in this case is not only a violation of domestic or Indian law, but it is a direct breach of the obligations under the International law as well. India has participated in various international conventions and treaties concerning the protection of women and sexual discrimination; still, the problem exists at a massive level. It is not only the people's mindset to be blamed; however, the state police machinery could be blamed too. Such crimes could be prevented and reduced to a considerable

level if the government, the police, and the citizens of the country work in harmony to protect the dignity and integrity of the women from falling. Therefore, a dire need for the state police machinery to work in a more organized and dedicated manner can be witnessed and is advisable.

8. IMPORTANT CASES REFERRED

- *Arumugam Servai v. State of Tamilnadu, [(2011) 6 SCC 405].*
- *Bodhisattwa Gautam v. Miss Subhra Chakraborty, [(1996) 1 SCC 490].*
- *Delhi Domestic Working Women's Forum v. Union of India and Ors, [1995 SCC (1) 14: JT 1994 (7) 183].*
- *Lalita Kumari v. Govt. of U.P and Ors, [2013 (13) SCALE 559].*
- *Lata Singh v. State of U.P. and Ors, [(2006) 5 SCC 475].*
- *P. Rathinam v. State of Gujarat, [(1994) SCC (Crl) 1163].*
- *Railway Board v. Chandrima Das,[(2000) 2 SCC 465].*
- *Shakti Vahini v. Union of India and Ors,[(2018) 7 SCC 192].*
- *Satya Pal Anand v. State of M.P., [SLP (Crl.) No. 5019/2012].*
- *State of Rajasthanv. Sanyam, Lodha, [(2011) 13 SCC 262].*
- *The State v. Md. Moinul Haque and Ors,[LEX/BDHC/0247/2001: (2001) 21 BLD 465].*

CASE NO. 16

IN RE: DEATH OF 25 CHAINED INMATES IN ASYLUM FIRE IN TAMIL NADU
v.
UNION OF INDIA AND ORS.

(WRIT PETITION (CIVIL) NO. 334 OF 2001)

DEATH OF MENTALLY CHALLENGED PATIENTS HOUSED IN A MENTAL ASYLUM.

ABSTRACT

The case relates to the ill practices and false treatment given to the mentally challenged people. Such people must be treated on par with others and should be provided with access to their basic rights. There are certain laws and provisions available in India such as the Mental Health Act, 1987, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. All of these aim to protect the rights of mentally challenged people.

A fire broke out in a mental asylum in Erwadi which left behind around 25 inmates who were chained to their beds or poles. Taking into consideration the submission note of the registrar (judicial) to a news item on the above subject matter published in all leading national dailies, the Supreme Court took Suo Moto action. The Court on the advice of the Amicus Curiae directed the State Governments and the Central Government to present a report mentioning the status throughout the country on the subject aforementioned and for the proper implementation of the three Acts by the concerned authorities in the country.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (Civil) No. 334 of 2001
Jurisdiction	:	Supreme Court of India
Case Filed on	:	2001
Case Decided on	:	February 5, 2002
Judges	:	Justice M.B. Shah, Justice B.N. Agrawal and Justice Arijit Pasayat

Legal Provisions involved	:	Section 3-8 of Mental Health Act, 1987, The Persons with Disabilities (Equal Opportunities Section 8 (2) (b) of Protection of Rights and Full Participation) Act, 1995 Section 21 of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Article 21 of the Indian Constitution
Case Summary Prepared by	:	Nivedita Kushwaha Indore Institute of Law, Indore

2. BRIEF FACTS OF THE CASE

Parties

The present case is a *Suo Moto* cognizance by the Supreme Court of India that undertook the matter of the death of 25 inmates of a mental asylum at Erwadi village in the state of Tamil Nadu considering its severity and grievousness. The parties to this case were Dr Abhishek Manu Singhvi, the learned counsel as the amicus curiae assigned by the Supreme Court while Mr Soli J. Sorabjee, the Attorney General appeared on behalf of the Union Government.

Factual

On 6th of August in the year 2001, a fire broke out at Moideen Badusha Mental Home in Erwadi Village in Tamil Nadu. Erwadi was famous for dargah of Quthbus Sultan Syed Ibrahim Shaheed Valiyullah, from Medina, Saudi Arabia, who came to India to spread Islam. Different people believe that holy water from the dargah and oil from the burning lamp there has the power to heal all diseases, particularly mental problems. The therapy also included constant caning, beatings and the patients were even tied with ropes to the trees during the day and with the iron chains to their beds at night. During their dreams, the patients awaited a divine order to return home. This was supposed to take anywhere from 2 months to several years for the order to arrive. People around the place were highly religious and believed strongly in such religious superstitions. When the number of people seeking cure at dargah increased, individuals set up homes to look after the patients allegedly. Most of these homes were established by people who had come to Erwadi themselves seeking a cure for their relatives.

Likewise happened on 6th August when around 45 patients were chained in the ramshackle shelter where they slept, even though shackling was contrary to Indian legislation. The fire

broke out and left around 25 inmates charred to death and 5 severely burnt. These patients could not escape as they were chained to poles or beds. Many prisoners whose shackles were not as tight escaped, and five were treated with serious burns. The incident was such worse that the dead bodies could not be identified. Moreover, the reason for the origin of the fire remains unknown yet.

Procedural

- The Court appointed Dr Abhishek Manu Singhvi, the learned counsel as the amicus curiae to assist the Court and also notice was issued to the Union of India.
- The Court issued notice by the order dated October 15, 2001, directing the state of Tamil Nadu to produce a report on the subject. In the same report, the State and Union Government have also sought information on an affidavit of the competent authority on the subject concerned.
- The Court on January 21, 2002, had to hear upon the matter but most of the states sought extension of time. The matter got adjourned till 29th January 2002.
- On January 29, 2002, again some of the states sought for extension of time in compliance with the directions of the Court. Further, the amicus curiae submitted before the Court that the Mental Health Act, 1987 was not at all being followed by the concerned authorities and even the State Governments failed on their part for the same.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Mental Health Act, 1987 is rightly implemented by the concerned authorities of the Central and State Government?

II. Whether the human rights of the mentally challenged patients been violated?

4. ARGUMENTS OF THE PARTIES

Petitioner

1) Argued that there had been slackness on the part of concerned authorities to implement the laws enacted by the Parliament.

2) Argued that the 1987 Act aimed at benefitting the mentally challenged people. The notification for the implementation of the Act was published in the Gazette of India on 11th January 1993.
3) Argued that certain provisions of the 1987 Act i.e. sections 2-8 were not being implemented properly. The Court thus shall issue following directions:-

- Every State and Union Territory must undertake a district-wise survey of all registered/ non-registered bodies. They must cancel the license of all who do not abide by the laws of the 1987 Act. The process of licensing and survey must be completed within 2 months and the Chief Secretary of State must file a compliance report within 3 months of this order. The report must include that no patient will be chained in any part of the State.
- The Chief Secretary/ Additional Chief Secretary of the state at State level and the Cabinet Secretary or any equivalent at the Central level shall be the nodal agency to coordinate all activities related to implementation of the Mental Health Act, 1987, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.
- The Cabinet Secretary, Union of India shall file an affidavit before the Court within a month indicating the contribution made/proposed to be made under section 21 of the 1999 Act to constitute a corpus of the National Trust, the policy of Central Government to establish one Centre-run mental hospital in each State/Union Territory and national policy, if any, framed under section 8 (2) (b) of the 1995 Act.
- The Chief Secretary of the State/Union Territory must file an affidavit within one month indicating steps being taken to establish at least one government-run mental hospital and a definite schedule for the establishment of the same.
- Both the Central and State Governments must undertake campaigns to educate people about the provisions of law relating to mental health and rights of mentally challenged people and that such people must not be treated in religious places rather by the doctors in the hospital.
- Every state shall file an affidavit stating clearly if State Medical Health Authority exists in the state under section 3 of the 1987 Act, if not then when is it going to be established, the data of meetings held in the existing authorities till date, a statement that the authorities would take meetings in at least every four months and all the statutory functions and duties of such authorities were duly discharged, and lastly, the number of

prosecutions, penalties or other punitive/coercive measures taken, if any, by each state under 1987 Act.

Respondent

- Argued that the 1987 Act was for the benefit of the mentally ill persons and its proper implementation was a must. The Centre would take appropriate action for the same.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The present case outlines the need for the protection of human rights. The mentally challenged people too have the privilege to exercise their human rights and they have certain provisions enacted for their safety and care such as the Mental Health Act, 1987, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Section 2(l) of the 1987 Act defines "mentally ill persons" as a person who needs treatment because of any mental disorder other than mental retardation and **Section 2 (q)** of the same Act defines "psychiatric hospital" or "psychiatric nursing home" as a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services

Section 3 of the 1987 Act provides that—

1) The Central Government shall establish an Authority for mental health with such designation as it may deem fit.
2) The Authority established under sub-section (1) shall be subject to the superintendence, direction and control of the Central Government.
3) The Authority established under sub-section (1) shall—

a) be in charge of regulation, development, direction and coordination concerning Mental Health Services under the Central Government and all other matters which, under this Act, are the concern of the Central Government or any officer or authority subordinate to the Central Government;

b) supervise the psychiatric hospitals and psychiatric nursing homes and other Mental Health Service Agencies (including places in which mentally ill persons may be kept or detained) under the control of the Central Government;
c) advise the Central Government on all matters relating to mental health; and
d) discharge such other functions concerning matters relating to mental health as the Central Government may require.

Section 4 of the 1987 Act provides for the establishment of State Authority and the functions of it would be the same as the Central Authority provided, at the state level.

Section 5 of the 1987 Act provides that the Central Government may, in any part of India, or the state government may, within the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, and care of mentally ill persons at such places as it thinks fit; and separate psychiatric hospitals and psychiatric nursing homes may be established or maintained for, -

- Those who are under the age of sixteen years;
- Those who are addicted to alcohol or other drugs which lead to behavioural changes in a person;
- Those who have been convicted of any offence; and
- Those belonging to such other or category of persons as may be prescribed.

Where a psychiatric hospital or psychiatric nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, about such hospital or nursing home, be construed as a reference to the Central Government.

Section 6 of the 1987 Act reads as- on and after the commencement of this Act, no person shall establish or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid license granted to him under this Act:

Provided that a psychiatric hospital or psychiatric nursing home (whether called asylum or by any other name) licensed by the central government or any state Government and maintained as such immediately before the commencement of this Act may continue to be maintained, and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be, under this Act,-

- For a period of three months from such commencement,

- If an application made under Sec. 7 for a license is pending on the expiry of the period specified in Clause (a) till the disposal of such application.

Nothing contained in sub-section (1) shall apply to a psychiatric hospital or psychiatric nursing home established or maintained by a Central Government or State Government.

Section 8 of the 1987 Act reads as- on receipt of an application under Sec.7, the licensing authority shall make such inquiries as it may deem fit and where it is satisfied that -

- The establishment or maintenance of the psychiatric hospital or psychiatric nursing home or the continuance of the maintenance of any such hospital or nursing home established before the commencement of this Act is necessary;
- The applicant is in a position to provide the minimum facilities prescribed for the admission, treatment and care of mentally ill persons; and
- The psychiatric hospital or psychiatric nursing home will be under the charge of a medical officer who is a psychiatrist.

It shall grant a license to the applicant in the prescribed form, and where it is not so satisfied, the licensing authority shall, by order, refuse to grant the license applied for:

Provided that, before making any order refusing to grant a license, the licensing authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a license shall set out therein the reasons for such refusal and such reasons shall be communicated to the applicant in such manner as may be prescribed.

Also, **Article 21** of the Indian Constitution speaks about mental health care to be taken care of. The Constitution incorporates provisions guaranteeing everyone's right to the highest attainable standard of physical and mental health.

Section 8(2)(b) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 states to formulate a national policy for the protection of rights of the mental patients.

Section 21 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 states to constitute a corpus of National Trust for the welfare of the mentally retarded people.

After the Erwadi incident, all such mental homes were closed and more than 500 patients were transferred to Government mental hospitals for better care and treatment. Also, a commission

was set up under the supervision of N. Ramadas by the state to inquire into the death of 25 mentally ill patients in the fire at Erwadi village in Ramanathapuram district of Tamil Nadu. It was only after this incident that the State Government and Union Government got into the action of improvising and properly implementing the legal provisions as mentioned for the mentally challenged people under the three Acts discussed above.

6. JUDGEMENT IN BRIEF

In India, *Suo Moto* cases are instances wherein the High Courts and the Supreme Court using their inherent powers initiate a hearing by taking cognizance of any matter on its own, without anybody filing any appeal or writ petition. In the present case too, the Supreme Court took cognizance on the matter and directed the following:-

- The Supreme Court directed accordingly, the State Governments and the Central Government to file affidavits complying with the directions mentioned by the amicus curiae.
- The Court further directed that the necessary affidavits as per order dated October 15, 2001 should also be submitted, if not already tendered.
- The case was further put on standby till April 9, 2002.

7. COMMENTARY

World Health Organization (WHO) defines mental health as, "a state of well- being in which every individual realizes his or her abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to her or his community". Any misbalance to this mental health leads to mental imbalance. A person who is mentally challenged should be given equal rights and apt care by society. They must be treated by the doctors and not by any religious rituals.

At Erwadi village, people used to take such patients for the religious treatments and got them treated with severe inhumane behaviour as the patients were chained there and beaten with canes and sticks. They believed that the patients would get back to normal after a divine blessing is bestowed upon them in their dreams and they receive the command to return to their homes. This procedure sometimes took months to years.

Even today, Tamil Nadu's mental health care system is in a deplorable condition, as successive governments have failed to act on the numerous reports and studies that were performed at the various faith-healing centres on the plight of the mentally ill people. The disaster of Erwadi, which drew the world's attention, forced the State Government to act. In addition to introducing some urgent steps to deal with the crisis, it agreed to enforce some aspects of the Mental Health Act, 1987, after 14 years. For instance, the State made it mandatory for anyone running a mental home to obtain a license as mandated by the Act and ordered the closing of all "mental homes" located in thatched sheds and the "unchaining" of all prisoners.

The tragedy like Erwadi mental asylum could be prevented only with the development of greater accountability and monitoring systems. Another innovative approach that needs to be emphasized here is the delivery of mental health care and consultative and educational services to all who seek it. Hence, the need to improvise and understand the unfamiliar treatment given to the mentally challenged people must be considered and strict and more stringent laws must be enacted and implemented in the country so that we never have the misfortune to witness any such incident ever again.

CASE NO. 17

IN RE: TO ISSUE CERTAIN GUIDELINES REGARDING INAQEQUACIES AND DEFICIENCIES IN CRIMINAL TRIALS

(SUO MOTO WRIT (CRL) NO. 1 OF 2017)

INADEQUACIES AND DEFICIENCIES IN DISPOSING OF CRIMINAL CASES.

ABSTRACT

The case related to a uniform pattern of criminal practice. Justice S.A. Bobde (now CJI) & Justice L. Nageswara Rao, while taking Suo Moto cognizance of the issue before it noted the diversity in trials rule across all High Courts. A report has been compiled by three Amicus Curiae (Senior Advocate R Basant, Sidharth Luthra and Advocate K. Parameshwar) appointed by the Supreme Court to assist the court in redressing and deficiencies in the Criminal trials system. Amici curiae suggested that all the State government, High Court and police department must come together to bring uniformity of Criminal trial practice. By January 2019, amici curiae (Senior Advocate R Basant, Sidharth Luthra and Advocate K. Parameshwar) collect response given by 21 High Courts, 15 States/Union territories. Based on this feedback, the amici curiae evolved a consultation paper and drafted Rules of Criminal Practice, 2020 for the consideration of the Supreme Court on 7th March 2020, on which they deal with various issues such as investigation, how the charges accompanied, trails, judgment pattern, and bails.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Moto Writ (Crl) No. 1 of 2017
Jurisdiction	:	Supreme Court of India
Case Decided on	:	March 30, 2017
Judges	:	Justice S.A. Bobde (now CJI), Justice L. Nageswara Rao.
Legal Provisions involved	:	Section 27, Section 145, Section 157, of Indian Evidence Act, 1872. Section 164, Section 161, Section 162, Section 207, Section 228, Section 238, Section 244, Section 251, Section 354, Section 428 of Code of Criminal Procedure, 1973 (CrPC) Rule 62, Rule 132 and - Rule 134 of Kerala Criminal Rules of Practice,1982 Andhra Pradesh Criminal rules of Practice and Circular

		Orders, 1990 - Rule 66, Constitution of India - Article 142.
Case Summary Prepared by	:	Nikita Sharma Student of Indore Institute of Law, Indore.

2. BRIEF FACTS OF THE CASE

The Hon'ble Supreme Court in *In Re: To Issue Certain Certain Guidelines Regarding Inadequacies and deficiencies in Criminal Trails v. State of Andhra Pradesh & Ors.,* while hearing this case of Criminal Appeal No. 400 of 2006 and other related matters, Mr R Basant, learned senior counsel appearing for the Appellants-complainant, noticed that there are some common inadequacies and deficiencies in the course of trial adopted by the trial court while disposing of criminal cases in the Country. It was also noticed that though there are certain provision in the rule of some of the High court's ensure that certain documents such as a list of witnesses and the list of exhibits/material objects referred to are annexed to the judgment and order itself of the trial court, these features do not exist in Rules of some other High Courts. The judgments and orders of the trial court which have such lists annexed can be appreciated much better by the appellate courts.

Mr Basant pointed out certain other matters. During the time of discussion at the bar, they suggested that in the interest of better administration of criminal trials and to follow a certain pattern of uniformity. The Supreme Court may issue certain general guideline to be followed across the board by all Criminal courts in the country. Three Amicus Curiae (Senior Advocate R Basant, Sidharth Luthra and Advocate K. Parameshwar) appointed by Supreme court to draft report to bring best uniform practices across the country. The Supreme Court issued notice to all the state governments, union territories, and high court to submit their views regarding the proposed amendments in criminal law practice to bring a uniform criminal justice system in India. By the order of Supreme Court in January, 2019 15 state government/ union territories and 21 high courts express their viewpoint or suggestions regarding the amendment submit their responses by failing response in the Supreme Court. Amicus curiae created a consultation paper based on their feedback given by 15 states/union territories and 21 High Courts, which inter alia contained draft rule, and the same was also circulated to all the parties by latter on February 18, 2019. Written response was invited from the stakeholders and a colloquium was convened in the India International Centre on March 30, 2019, which was attended by different Indian union territories, states and high courts. Through the suggestions, amicus curiae submitted the report of Criminal practice to the Supreme Court for the consideration on March

7, 2020. The amicus curiae take all the reasonable care while drafting the rule to ensure the uniformity in the Criminal Justice system.

3. ISSUES INVOLVED IN THE CASE

I. Whether the criminal trials is uniform or not?

II. Uniform pattern in criminal trials should be followed or not?

4. LEGAL ASPECTS INVOLVED IN THE CASE

The case involved various legal provisions from different statues such as the constitution of India, evidence act, Code of Criminal Procedure, Kerala Criminal Rules, Andhra Pradesh Criminal Rules of Practice and Circular Orders. The amice curies use different section/rule/article to draft a uniform pattern of the criminal justice system.

They use Rule 62 of Kerala Criminal Rule of Practice 1982 and Sections 27 of Indian Evidence Act for marking of exhibits such as if filed by the prosecution, with capital letter P followed by numeral like P1, P2, P3 etc. for defence, with capital letter D followed with a numeral, and in case of Court exhibits, with the capital letter C followed with numerals, so that it becomes easy and less time consuming of court. Use Rule 66 of Andhra Pradesh Criminal Rule of Practice and Circular orders, 1990, so that witness shall be referred by their names or ranks as P.Ws. or D.Ws. Section 145, section 157 of Indian Evidence Act, section 161 and section 162 of Cr.PC for recorded of evidence in any format so that true copies will be available, section 164 of Indian evidence act produce of document which was refused on notice, section 207 and section 238 of Cr.PC for submission of warrant cases institute on police reports, section 228 of Cr.PC in sessions trials when the charge is read out and explained to the accused, section 244 of Cr.PC for the recording of warrant cases, section 251 of Cr.PC for trails of summons cases by the magistrate on which the particular of the offence is stated to the accused parties, the original decision may have particular information prescribed under section 354 of Cr.PC, trials courts must be mandatorily obliged to specify in the judgment the period of set-off under section 428 of Cr.PC, the court may also consider issuance of direction under article 142 of the constitution.

5. JUDGEMENT IN BRIEF

In the giving direction by Supreme Court, the Amicus Curiae (Senior Advocate R Basant, Sidharth Luthra and Advocate K. Parameshwar) was appointed by the Supreme Court to collect feedback given by 21 High Courts, 15 States/Union territories, Draft Rules of Criminal Practice, 2020.

The draft contains the following area to be considered to achieve the uniformity pattern in criminal trials;

- Pernicious practice of the trial Judge leaving the recording of deposition to the clerk concerned and recording of evidence going on in more than one case in the same courtroom, at the same time, in the presence of the presiding officer.
- Statement of the witness must be recorded, in typed format, using computers, in court, to the dictation of the presiding officers (in English wherever possible) so that true copy of witness statement will be available.
- Statement of every witness must be recorded into separate paragraphs, assigning part numbers, so that easy to understand and reference to the specific portion.
- Specific nomenclature and number should be assigned to witness/documents/material object.
- All court judgement, must have the name of the parties and an appendix showing the list of prosecution witnesses, prosecution exhibits, defence witnesses, defence exhibits, court witnesses, court exhibits and material objects.
- All the witness, accused and exhibits should be assigned numbers. Whenever there is a need to refer to them by name their rank as accused/witness must be shown in brackets. Because with the help assigned number help to understand the proceedings papers and judgements, and reduce confusion.
- Repetition of pleadings, evidence and argument in the judgement and orders of the trials court, appellate and revisional court be avoided. Repetition take away unnecessarily time of court.
- In every criminal case file, a judgment folder to be maintained and the 1st paragraph in the appellate revisional judgement to be numbered as the next part after the last para in the impugned judgment, this would cater to a better culture of judgement writing.
- Every medico-legal certificate, post mortem report shall contain a printed format of the human body on its reserve and injuries, if any, shall be indicated on such sketch. This

would help the judges to have a clearer and surer understanding of the suits of the injuries.

- Marking of contradictions/omissions a healthy practice, so proper marking should be down.
- The omnibus marking of Section 164 statement of witness deserves to be deprecated. The marked should be separately and specifically.
- The presiding officers shall ensure that only admissible portion of section 8 or section 27 of Indian Evidence Act, 1872 is marked, which is to be extracted on a separate sheet and marked and given as exhibit number. Avoid marking the entire confession statement.
- The trial court must be mandatorily obliged to specify in the judgement the period of set-off under section 428 Cr.PC. specifying date and not leave it to be resolved later by jail authorities or successor presiding officers. The judgement and the consequent warrant of committal must specify the period of set off clearly.

Judges directly notice issued to the Registrars General of all the High Courts, the Chief Secretaries/the Administrators and the Advocates-General/Senior Standing Counsel of all the States/Union Territories, so that consensus can be arrived at on the need to amend the relevant Rules of Practice/ Criminal Manuals to bring about uniform best practices across the whole country. This Court may also consider issuance of directions under Article 142 of the Constitution.

6. COMMENTARY

Criminal trials mean "the framework of laws and rules that govern the administration of justice in a case involving an individual who has been accused of a crime, beginning with the initial investigation of the crime and concluding either with the unconditional release of the accused under acquittal (a judgement of not guilty) or by the impositions of a term of punishment according to a conviction for the crime".[8]

Suo Moto means relating to an action taken by a court of it is own accord, without any request by the parties involved or regarding an action taken by a court without any request by the

[8] Criminal Procedure, Criminal trial legal definition of Criminal trial, https://legal-dictionary.thefreedictionary.com/Criminal+trial

parties involved.[9] Suo Moto's power of Supreme Court has been provided under article 131 of the Indian Constitution.[10]

Supreme court of India while taking the suo moto cases, it was noted the diversity in the criminal practise rules across all the high courts. The Supreme Court-appointed three amicus curiae Senior Advocate R Basant, Sidharth Luthra and Advocate K. Parameshwar to draft rule on Criminal Practise 2020, because there was no uniform procedure of trials and the Supreme Court should intervene to bring uniformity in Criminal Justice system. The decision of the Supreme Court is appreciable because to bring about uniformity in the proceedings right from the lower level court. There are various loopholes in our Criminal trails system and for this Supreme court take a step ahead to fixing it. The amicus curiae papered the draft in the best interests of better administration of criminal justice and also guides the certain amount of uniformity. The uniform pattern should be followed in criminal trials because if the administration of the justice wants to give good results and according to me the courts must act with the great promptitude. If all the Courts, the Chief Secretaries/the Administrators and the Advocates-General/Senior Standing Counsel of all the States/Union Territories follow the single pattern, which is easy to follow, understandable and not create any confusion.

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[9] Oxford Dictionary on Lexico.com, https://www.lexico.com/defination/suo_motu.

[10] Indian Constitution of India, 1950.

CASE NO. 18

IN RE: NEWS ITEM PUBLISHED IN HINDUSTAN TIMES TITLES 'AND QUIET FLOWS THE MAILY YAMUNA'

(WRIT PETITION (CIVIL) NO. 3727 OF 1985)

YAMUNA RIVER POLLUTION CASE.

ABSTRACT

The Yamuna, also called **Jumna,** is the second-largest and significant river of northern India Uttarakhand, Himachal Pradesh, Uttar Pradesh, Haryana, Delhi), a tributary river of the Ganga and the country's most sacred rivers. It is often called Delhi's lifeline, as it is the primary source of water for Delhi. The same river turns out to be one of the most polluted rivers in the country. Fish, turtles, alligators, and other such lives that are dependent on fresh river water are dying in the toxic industrial pollutants and sewage dumped in the Yamuna**.**

The apex court asked the Centre and, therefore, the governments of Delhi, Haryana, and UP (Uttar Pradesh) to seek out and provide details on dissipation or spending incurred by them for creating the Yamuna pollution-free. It asked the Central water pollution control board to extract a water sample of river Yamuna and give a report on its cleanliness. The Bench said to the central water pollution control board to extract samples of river water, the Yamuna from the states of Delhi, Haryana, and Uttar Pradesh till Agra and present their report within four weeks. It directed all the authorities associated with the work of controlling the river's pollution to offer details of the steps taken by them during the matter. The Court issued the direction taking Suo Motu cognizance of writing on pollution in the Yamuna published during a national daily in 1994.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (Civil) No. 3727 of 1985
Jurisdiction	:	Supreme Court of India
Case Decided on	:	February 27, 2012
Judges	:	Justice S.H. Kapadia C.J., Justice A.K. Patnaik and Justice Swatanter Kumar
Legal Provisions involved	:	Article 32, Article 51A (g) of the Constitution of India S.21, S.28,S.2(j) of the Water (Prevention and Control)

		Act, 1974 S.24 of the Disaster Management Act, 2005 Section 2 (a), Section 3 , Section 3(2) (v) of Environmental Protection Act, 1974
Case Summary Prepared by	:	Pooja Lakshmi Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

Factual

This case was brought before the Hon'ble Supreme Court of India in the form of a Writ Petition under Article 32 of the Constitution of India. The Judges for the petition were S.H. Kapadia C.J., A.K. Patnaik, and Swatanter Kumar, JJ. The Writ Petition was registered on a Suo Moto notice issued by this Court upon a commentary of an article published within the Hindustan Times dated July 18, 1994. Writ Petition is of the year 1994 and has been pending for approximately 18 years. The Court is bothered only about pollution being caused to river Yamuna and complete deterioration within the quality of water in the river not only in Delhi but also within the States of Haryana and Uttar Pradesh. The scope of this petition was even sought to be extended by filing an application being I.A. No. 27 in this Writ Petition. Praying for interlinking of this prayer was not granted or permitted by the Court, but I.A. No. 27 was ordered to be independently registered as Writ Petition (Civil) No. 512 of 2002, which has been disposed of with a different judgment by this very Bench.

The advocates who appeared for the plaintiff were G.E. Vahanvati, A.G. (N/P), Ranjit Kumar, Sr. Adv. (A.C.) (N/P), M.C. Mehta, Party-in-Person (N/P), and for defendants were P.P. Malhotra, A.S.G., and Manjit Singh, A.A.G., Haryana, T.S. Doabia, R.S. Suri and Geeta Luthra, Sr. Advs., M.K. DiwakaranNambordiri, Avd. (N/P), Indra Sawhney, Gaurav Sharma, Sunita Sharma, Sushma Suri, S. Wasim A. Qadri, Zaid Ali, D.S. Mahra, Kiran Bhardwaj, B.K. Prasad, Shreekant N. Terdal, B.V. Balaram Das, Pallavi Tayal, Deepayan Mandal, Chanchal Kumar Ganguli, Ravindra Bana, Hemantika Wahi, Nupur Kanungo, Vijay Panjwani, Advs., Lawyers Associated, Naresh Bakshi, Chandra Prakash Pandey, V.K. Verma, M.L. Lahoty, Girish Chandra, Kamlendra Mishra, Pradeep Misra, Malvika Trivedi, Sudhir Kulshreshtha, Ajay Kumar Agrawal, Prashant Chaudhary, D.N. Goburdhan, Abhishek Agarwal, Shiv Kant Arora, Prabal Bagchi, Tarjit Singh, Kamal Mohan Gupta, Kavita Wadia, Ashok Kumar Srivastava, Vikas Mehta, SheilSethi, Satish Vig, Vishnu Bahadur Saharya, Advs., for Saharya and Co., Sanjiv Sen, Ujjwal Banerjee, Praveen Swarup, Geetanjali Mohan, Binu Tamta and A.D.N. Rao.

The case category was a letter petition and a PIL matter on water pollution concerning industrial, domestic, sewage, rivers, and sea sector.

Procedural:

The Court wanted to find suitable ways to pass an order or instruction which would reject this petition while achieving the object of making the Yamuna pollution-free. The learned Counsel appearing for the parties was directed to file written submissions supported by an affidavit stating the complete background of the case according to that authority, litigant, or industry. The Court also asked to check whether the public authorities have constructed treatment plants, in particular for the treatment of sewage before its discharge into river Yamuna at Delhi, Haryana, and the districts of Uttar Pradesh to know the steps taken by the respective State Governments. The Central Water Pollution Control Board was told to take samples of water of river Yamuna from the States of Haryana, Delhi, and Uttar Pradesh till Agra and submit its report within four weeks. Delhi Jal Board and Noida Authority were asked to submit action taken reports. It should also ensure that no person, including corporations or other industries, discharge their trade, sewage or other effluents directly into the Yamuna, without treating the same under the provisions of the Environment Protection Act.

3. ISSUES INVOLVED IN THE CASE

I. The main issue is how to tackle the high concentration of domestic sewage or garbage in Yamuna's waters?

II. How to reduce the pollution caused to river Yamuna, which led to a total worsening in the quality of water in the river in Delhi and the States of Uttar Pradesh and Haryana?

III. Whether the State Government had paid attention to the worsening condition of the sacred river and had initiated probation into the matter?

IV. Whether any steps, if at all, had been taken by the state?

V. What steps should the Central Government take to regulate pollutant discharge into the river throughout its course?

VI. Whether Court to issue appropriate directions for the prevention of Yamuna water pollution requiring the Court to issue appropriate directions for the prevention of Yamuna water pollution?

VII. Whether the Enforcement of various statutory provisions that impose duties on the municipal and other authorities were taken place, or was it for namesake?

4. ARGUMENTS OF THE PARTIES

Appellants: Whether the right action is taken to save the river Yamuna from pollution and maintain water quality in the river. Are the authorities taking the right steps or doing corruption, in the name of river Yamuna? Are there any preventive measures taken by the authorities to prevent domestic and industrial waste flowing to river Yamuna? Considering the vast length of the river and the innumerable number of industries that are located on its banks, are industries responsible for their waste, or is it the government that is not taking action against them?

Respondents: there was no layback in taking the right steps to promote and safeguard river Yamuna from pollution and maintain the quality of water of Yamuna. The authorities took the appropriate measures to save the Yamuna from pollution. Various steps were taken by the central pollution control board, which includes the setting up of sewage treatment plants.

5. LEGAL ASPECTS INVOLVED IN THE CASE

- Article 32 of the Constitution of India.

- Violation of the provisions of the Water (Prevention and Control of Pollution) Act 1974- Section 2(j) of the Act defines a stream as including a "river; watercourse (whether flowing or for the time being dry); inland water (whether natural or artificial); subterranean waters; sea or tidal waters to such extent or, as the case may be, to such point as the State Government, by notification in Official Gazette, specify in this behalf. Section 16 and 17 of the Act describes the functions of the Central and State Boards, respectively.

- Article 51A (g) states "to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures." (Fundamental duty)

- Functions of the State Board includes inspecting sewage or trade effluents, works and plants for the treatment of sewage and trade effluents, and to review plans, specifications or other data relating to plants set up for the treatment of waterworks for the purification and the system for the disposal of sewage or trade effluents. Section 24

of the disaster management Act prevents the disposal of pollutants in a 'stream' as defined under Section 2(j) of the Act.

- Environmental Protection Act –

    1) Section 2 (a) states that 'environment' includes water, air, land and the interrelationship that exists among and between water, air and land, human beings, other living creatures, plants, micro-organism, and property.

    2) Section 3 of Act empowers the Central Government to take adequate measures to protect and improve the environment and prevent pollution.

    3) Section 3(2) (v) empowers the Central Government to lay down standards for pollutant emission.

6. JUDGEMENT IN BRIEF

In order to have a complete background of the case and directions required to be passed by Court, two things are required. For fulfilling the requirements of understanding the case, learned Counsel appearing for the parties was directed to file written submissions supported by an affidavit stating the complete background of the case according to that authority, litigant, or industry. Secondly, it was asked to check whether the public authorities have constructed any treatment plants, in particular for the treatment of sewage before its discharge into river Yamuna at Delhi, Haryana, and the districts of Uttar Pradesh.

If the answer to the same is in affirmative, then its details are to be submitted. Moreover, if the same is negative, reasons should be reported in brief with the statement as to why concerned authorities could not construct such treatment plants and ensure their functioning even after the lapse of such an extended period. They were also bound to answer that if they could not be made operational, why the possible alternative systems of sewage or trade disposal were not adopted or taken rather than discharging metric cubic tons of discharge into the Yamuna River. The Court also questioned whether any of the State Governments and particularly Delhi, Haryana, and Uttar Pradesh has appointed Consultants to finalize the design and places of installation of sewerage treatment plants, and whether such experts have submitted their reports to the State Governments, and what action has been taken by the respective State Governments.

The Court asked to submit the main points of committees appointed under orders of this Court or otherwise, by State Governments, directly concerning writ petition. Furnishing of Details regarding the functioning of Committees, analysis of reports, if any, submitted by Committees and implementation of reports of committees is essential.

Meetings of the following Departments were supposed to take place to conclude a decision :

1. Ministry of Urban Development, Government of India

2. Ministry of Environment & Forests, Government of India

8. National Capital Territory, Delhi

4. Delhi Jal Board

5. Delhi Development Authority

6. Municipal Corporation of Delhi

7. New Delhi Municipal Council

8. Delhi Cantonment Board

9. Delhi State Industrial Development Corporation

10. State of Uttar Pradesh

The expenditure incurred by Central or respective State Governments on projects concerning the cleaning and making of the Yamuna free of pollution, including the details of projects on which respective States have incurred such expenditures were to be shared with the documents. Proof of Steps has to be taken by all the authorities about control of Water Pollution in the Yamuna caused by illegal occupants on either side of the river altogether. Additionally, the proofs are to be presented before the Court by the state.

The Central Water Pollution Control Board was permitted to take samples, of water of river Yamuna from the States of Haryana, Delhi, and Uttar Pradesh till Agra as to submit its report within four weeks and the Head of the concerned Departments were given the authority to file their respective affidavits in this regard.

The Secretary, Ministry of Urban Development, acted as a convener and Chairperson of the High Powered Committee. The other Governments/Departments represented by officers, not below the rank of Joint Secretaries. The Chairperson/convener was assigned as a Member-Secretary of this Committee. The Committee was assisted by Mr. Ranjit Kumar, Amicus Curiae, by giving due notice of the date and time of the meeting by the Member-Secretary. An

action plan prepared by the Committee is to be submitted to this Court within six weeks suggesting the mode and manner in which the quality of the water can be improved and the steps and measures required to be taken by various authorities.

The Government of Uttar Pradesh is directed to file within four weeks an affidavit stating what steps have been taken by it under the Yamuna Action Plan. In respect of Haryana Distillery, the Court directed that the Central Government Committee shall examine the report prepared by the Haryana Pollution Control Board, Central Pollution Control Board as well as the stand of Haryana Distillery and, if necessary, it shall also conduct a joint inspection in the presence of all parties who are concerned and submit a report within four weeks.

7. COMMENTARY

Central Pollution Control Board (CPCB) report has detected that the coliform (domestic sewage) level in the river Yamuna was comparatively higher than the permissible limit. Over Rs, 1,200 crores of taxpayers' money were spent collectively by the Centre and three state governments to clean the Yamuna. However, the CPCB report has correctly pointed out the failure of state governments to place adequate mechanisms to treat domestic sewage. Because of the lack of efforts on the part of the state governments concerning the treatment of waste, the water quality of the river Yamuna has not shown any improvement or developments as Delhi Jal Board's (DJB) sewage treatment plants were not in a "working condition." A high level of untreated sewage waste continues to pollute the river.

On July 18, 1994, the Supreme Court had taken Suo Moto cognizance of a Hindustan Times report, 'And Quiet Flows The Maily Yamuna,' and from that moment, it has been giving directions to different government authorities to take steps for making the river Yamuna free from pollution.

"This matter is pending before us since 1994. Let something happen for the good of the people. The river has become worse in the last decade. Unfortunately, the huge public fund has spent without showing any improvement in the quality of water in the Yamuna," was stated by the Bench.

The Court also directed the Centre, Delhi, Uttar Pradesh, and Haryana governments to furnish details about how much money has been spent and under what head or reason the process of making the river pollution-free will continue.

The right to a safe, clean, and healthy environment is in the Fundamental Rights of all people in India. The right to live contains the right to claim compensation for the victims of pollution hazards, and the best compensation that can best provide is to bring river Yamuna into its pure pollution-free stage. The death of aquatic life should acquire justice in this manner.

8. IMPORTANT CASES REFERRED

- *M.C. Mehta v. Union of India, WP 3727/1985 (1996.12.19) (Tanneries Case: Calcutta).*
- *A.P. Pollution Control Board v. Prof. M. V. Nayudu (Retd.) & Others. 1994 (3) SCC 1*
- *Sterlite Industries (I) Ltd. Etc. v. Union of India And Ors.*
- *Gujarat Water Pollution Control v. Kohinoor Dyeing And Printing (1993) 2 GLR 1368.*

CASE NO. 19

SUO MOTU WRIT PETITION ON THE REPORTS PUBLISHED IN VARIOUS MARATHI NEWSPAPERS ABOUT THE UNTIMELY DEATH OF MANY CHILDREN DUE TO MALNUTRITION WITHIN TWO MONTHS

v.

THE STATE OF MAHARASHTRA AND ORS.

(SUO MOTU WRIT PETITION NO. 5629 of 2004)

MALNUTRITION AND CHILDREN'S DEATHS IN MAHARASHTRA.

ABSTRACT

In India, Malnutrition has been a cause of concern for several decades now. The primary reason for this is the vast economic inequality. With a large portion of the population below the poverty line with a meagre source of income and others without any source of livelihood, it becomes difficult to afford the day-to-day expenses, even enough to feed themselves and their families for one meal a day. To prevent such inequalities from causing a violation of the fundamental rights of a citizen, the state is required to intervene and introduce various schemes that help the needy to live a life that is not just mere existence but including all the other essentials that are necessary for the growth and development of the individual. Despite all this, the State of Maharashtra had not implemented the welfare schemes as required and had recorded countless cases of malnutrition and child death in the State tribal and non-tribal areas.

The following is a case summary of the case that arose out of a *suo moto* writ petition on the reports published in various Marathi newspapers about the untimely death of many children due to malnutrition within two months. The defendants in this case comprise of the State of Maharashtra and others. This case was taken up by the High Court of Bombay in the year of 2004. The Court in this case has given adequate instructions to the State Government to facilitate better implementation of the schemes so as to eliminate and reduce the infant and child mortality rate as well as the level of malnutrition.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition No. 5629 of 2004
Jurisdiction	:	High Court of Bombay
Case Filed on	:	2004
Case Decided on	:	September 20, 2006
Judges	:	Justice R.M. Lodha and Justice S.A. Bobde
Legal Provisions involved	:	Article 21, 47 of Constitution of India
Case Summary Prepared by	:	Prathina P Tharuna, School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

Factual:

The Marathi newspapers relentlessly published reports on the unending deaths of a large number of children owing to malnutrition and had stated that the Government of Maharashtra had failed to combat child deaths within the state tribal as well as non-tribal areas. The distressing statistics of this report led to the Suo Moto writ petition being filed against the State of Maharashtra and others. This petition is dealt with along with Writ Petition No. 1623 of 2003.

On December 12, 2003, the State government had constituted a Child Mortality Evaluation Committee under the chairmanship of Dr. Abhay Bang. The committee comprised of 13 other members and had submitted two reports. The first report dealt with the improvement of the registration of infant and child deaths in tribal areas. And the second report dealt with the measures to be taken for curbing infant mortality, child mortality, mortality and malnutrition in the tribal districts of the state. There was a huge gap between the recommendations made and the actions taken in this regard, hence requiring the state to indulge in a better way of implementing policies in order to curb child and infant mortality.

It is also important to note that the Anganwadi Centres which were introduced by the Indian Government in the year 1975 as a part of the Integrated Child Development Services program to combat child hunger and malnutrition were to be introduced in these areas of the State as well. However, only 80% of the Anganwadi Centres had come into operation in the State of Maharashtra and an additional 12,684 Centres had not been made functional.

Among other things, an affidavit was filed on behalf of the State Government by Dr. Raju Manohar Jotkar, Assistant Director of Health Services. This affidavit made it evident that the Marathi press was right in stating that the Government of Maharashtra had failed to combat child deaths in both tribal and non-tribal areas. In 15 tribal districts of the State, in the year 2003-2004, the child mortality was 8,321 while in the year 2004-2005 it was 8,003, and in 2005-2006, it was 7,700. It also revealed that child death between the ages of one to six had been increasing over the years except for a marginal decrease in the period of 2005-2006. Malnutrition was a major contributor to such child deaths in the state.

Thus, it led to the inference that the State Government had failed in its primary duty of raising the level of nutrition of the children and the feeding mothers as enshrined in Article 47.By doing this, it also violates the right to life which is a fundamental right under Article 21 of the Indian Constitution.

Procedural:

- October 4, 2005- An affidavit was filed by Pranali Praveen Chitnis, Under Secretary in the office of Secretary, Women and Child Development Department wherein the statement had been made that the additional sanctioned 12,684 Anganwadi Centres will be made functional by June 2006.
- The Chief Secretary was to submit the compliance report on affidavit by 18.10.2006. Stand over to 19.10.2006.
- September 20, 2006- An affidavit was filed on behalf of the State Government by Dr. Raju Manohar Jotkar, Assistant Director of Health Services.
- September 20, 2006- case decided.

3. ISSUES INVOLVED IN THE CASE

I. Whether the State Government has taken adequate steps to curb infant and child mortality due to malnutrition in the state tribal and non-tribal areas?
II. Whether the death of children due to malnutrition is an infringement of Article 21 and 47 of the Indian Constitution?

4. ARGUMENTS OF THE PARTIES

Defendants:

Various affidavits were filed on behalf of the State government from time to time. On September 20, 2006 another affidavit was filed on behalf of the State by Dr. Raju Manohar Jotkar, Assistant Director of Health Services on September 20, 2006 showing statistics on the mortality of infants and children. And in almost all the affidavits filed on behalf of the State Government, there have been claims that the State is in its best endeavor to prevent child deaths and that the welfare schemes in place are implemented appropriately. The State government also filed affidavits enumerating the recommendations made by Dr. Abhay Bang committee and the actions taken in that regard presented in the form of facts and figures.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The primary violation that has taken place in this case is that of Article 21 and 47 of the Indian Constitution. Article 21 is a fundamental right as enshrined in Part III of the Constitution of India. A fundamental right can be recognized as any right which is essential for the growth of a person and required for him to live a dignified life. It shall be granted to every citizen irrespective of his caste, gender, religion, birthplace or race. Article 21 specifically grants the 'Right to life and personal liberty' which declares that no person shall be deprived of his right to life or personal liberty except according to the procedure established by law. 'Life' in this Article does not mean mere existence, but has a wider meaning and includes the right to live with dignity, right to a healthy environment, right to health, rights for children to grow in a healthy manner and so on.

Article 47 is a part of the Directive Principles of State Policy under Part IV of the Constitution of India. These directive principles are a set of instructions or duties which are required to be fulfilled by the State in order to achieve socio-economic development so as to promote the welfare of the people. This article states that it is the "Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties"

6. JUDGEMENT IN BRIEF

The Court has observed in this case that the affidavits filed by the State government over time, highlight the recommendations made by Dr. Abhay Bang committee and also the actions taken by the State in this regard. On carefully observing the data provided in the aforementioned affidavits, it was concluded that the State had not taken adequate measures to reduce infant and child mortality and had not implemented the welfare schemes properly. Hence, it was required by the court to find a better and more suitable way of implementing the schemes so as to benefit the citizens and in particular the children of both tribal and non-tribal areas of the State.

The court held that when the Additional Government pleader was inquired with regard to the Affidavit filed on October 4, 2005, he had stated that according to the instructions given by Dr. Prakash Doke, around 80% of the allotted Anganwadi Centres had come into operation, however, the remaining 12,684 Anganwadi Centres were still pending and had not been made functional by the State Government.

The court also held that the affidavit filed on September 20, 2006, on behalf of the State government, by Dr. Raju Manohar Jotkar, had also played as proof against the State and helped reinstate the fact that the State had not taken adequate measures to combat child and infant deaths in the State tribal as well as non-tribal areas. Despite the claim of the government that several welfare schemes had been launched in these tribal districts, the child death count had been a figure of thousands the past few years and there was only a marginal decrease of a few hundred as each year passed. Child deaths of one to six years had been ever-increasing except for the marginal decrease in the year 2005-2006. Thus, it had led the court to infer that either the existing welfare schemes have failed to have any impact, or that the State government has not adequately implemented the schemes in a manner in which it was required to be done. It was also held that malnutrition was a major contributor to the number of child deaths in the State. It was hard to believe, from all the data provided that the State government had done its best to prevent child deaths.

The court also held that this was a clear violation of Article 21 of the Indian Constitution which guarantees the right to life and personal liberty to every citizen of India. This was because there was widespread child and infant deaths in the State in very short periods, and malnutrition was the majority factor for the same. It was also observed that the State had violated Article 47 of the Constitution which imposes a duty on the State to raise the standard of living of its people and improving the standard of public health which seemed like a distant dream in these tribal

areas of Maharashtra. With thousands of children dying every year due to malnutrition, the only inference that could be made and was made by the court was that the State had not fulfilled its primary duty in raising the level of nutrition of feeding mothers and children.

After carefully observing the recommendations made by Dr. Abhay Bang committee, the actions taken by the State Government so far, the Constitutional provisions and the state of urgency requiring immediate actions to be taken, the court issued a set of directions:

i. The additional 12,684 Anganwadi Centres which were not functional, had to be made functional by the State Government as per the Government of India guidelines as set out in the affidavit dated October 04, 2005 by October 31, 2006. Failure to do so shall expose the Principal Secretary, Women and Child Development Department, Mantralaya, Mumbai, to an action under the Contempt of Courts Act, 1971.
ii. As suggested by Dr. Abhay Bang committee, the State Government was to initiate a Mission "Bal Mrutyu Mukta Maharashtra" and accordingly modify "Rajmata Jijau Maternal Child Health and Nutrition Mission" starting from March 11, 2005 to ensure a speedy rate of reduction of the infant mortality rate and leading it to a zero within a period of five years from that date. In other words, the infant mortality rate was required to be reduced to almost nil by the end of September 30, 2011, in both the tribal as well as non-tribal areas of the State.
iii. The State was to identify malnutrition free and maternal death and child death free villages and felicitate them and also give funds and responsibility to Gram Panchayats and self-help groups to achieve more of such villages.
iv. The State Government was requires involve the local Gram Panchayats, self-help groups and non-Governmental organisations for control of child deaths and malnutrition.
v. Adequate incentives were to be given to the officers and workers working in the Health department if they have contributed in controlling child deaths and malnutrition and in prevention of child mortality.
vi. The scheme, 'Rajmata Jijau Maternal Child Health and Nutrition Mission', was to be adequately modified by providing more facilities, adequate medicines and kits to the Anganwadi Centres which would help in eradicating deaths caused by malnutrition.
vii. The Tribal Gram Sabha was to be involved as much as possible by the State Government in cases that concerned the tribal areas for the development programme planning.

viii. The Female Pada volunteers who had been appointed in the districts were to be suitably trained for management of common childhood problems and also for home-based neonatal care. The training programme if not started yet, was to be started by January 1, 2007.

ix. Transport was required to be made available or the provision for delivery vans was to be made for emergency referral of pregnant women.

x. The high risk areas as per the infant mortality rate and severity of malnutrition were to be identified and provided with additional budget and requisite resources. If necessary, Nav Sanjivani Programme initiated by the State Government was to be modified to ensure that it has the desired impact.

xi. The collectors of the 15 tribal districts were to be instructed by the State Government to spend a minimum of two days in a month in the tribal villages of the district where there was high rate of infant mortality and severe malnutrition. During their stay, the collector was required to coordinate with all agencies, including N.G.Os involved in the said mission. If there was no substantial improvement, in combating the child deaths due to malnutrition in a particular district, the poor performance in this regard was to be reflected in the service record of the said collector.

xii. The Chief Secretary was also to ensure that every single rupee allocated by the State for the purpose of combating child mortality and malnutrition through various schemes, was used only for the purpose for which it was granted, which was the ultimate benefit of the needy.

xiii. The State Government was to ensure the availability of the doctors and emergency obstetrics centres not only in the district hospitals but also in other small places of the State.

7. COMMENTARY

The present judgement was the need of the hour to facilitate a greater decrease and ultimate elimination of malnutrition and child mortality in the State of Maharashtra. As observed before, the state of malnutrition and deaths was due to the lack of an adequate framework to deal with the same and also the failure to implement it in the right manner. Article 21 of the Indian Constitution has been given a broader interpretation by the Courts and includes the Right to live a healthy life and the right to medical care. It is essential for the State Government to frame regulations and schemes keeping in mind these rights and needs of the people and to ensure that the welfare of the citizens is promoted. The State also has a duty to ensure that the citizens have

been provided with their fundamental rights which are consciously upheld. Article 47 also imposes a primary duty on the State to increase the level of nutrition, standard of living, and public health. This judgement upholds these articles and helps in reiterating the fact and reminding the officials that, there can be no violation of the fundamental rights of the citizens of India.

On the keen observation of several affidavits, reports, cases and provisions the court had given an adequate set of instructions to combat all the issues that were raised before it. It led to the compulsory setting up of the additional Anganwadi Centres within a said time limit, thereby imposing a greater degree of responsibility on the State to take it up seriously and work on it. It also requires officials to get a direct picture of the ground reality in the said villages and take into consideration the opinion of the officials of the villages so as to get a clear picture of the statistics, issues faced, barriers to the appropriate implementation of schemes and also to identify the requirements and solutions that can be adopted to best fit each scenario in order to achieve the greater goal of eliminating child deaths and malnutrition.

By providing incentives and penalties to the officials involved in the process, it encourages them to act with greater caution and diligence in order to ensure that the schemes are well implemented so as to help the ultimate beneficiaries of the same. The Court has also reminded the officials that there can be no malpractices and that each penny allocated in the state budget for the purpose of combating the said issue must be used only for the same and has to be for the ultimate benefit of the needy. This judgement has also required the State to construct more hospitals and Centres that deal with common child problems including health and nutrition and also requires it to provide a greater level of medical care in the said villages. By doing all this, it upheld Article 21 and 47 of the Constitution of India and aided the process of higher eradication of the cases of death and malnutrition in the state. It served as a bridge between the framing of such schemes for elimination of malnutrition and child mortality and the proper implementation of the same. This case acts as a gentle reminder to the people that the court is judicially pro-active and acts as the ultimate authority to safeguard the rights of the people and uphold their interests.

8. IMPORTANT CASES REFERRED

- *Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802*
- *State of Punjab v. M.S. Chawla, AIR 1997 SC 1225*
- *Vincent v. Union of India, AIR 1987 SC 990*

CASE NO. 20

IN RE: GOVT. CHILDREN'S HOME AT SHIVKUTI ALLAHABAD

(CRIMINAL WRIT PETITION NO. 4207 OF 2012)

SHIVKUTI RAPE CASE.

ABSTRACT

The following is a Case Summary of the *In Re: Govt. Children's Home at Shivkuti Allahabad*, also commonly known as the "*Shivkuti Rape Case*". This case was taken by Allahabad High Court as a *Suo Moto* case under Article 226 of the Constitution of India.

In this case, the Allahabad High Court took *Suo Moto* cognizance of commission of heinous crimes committed against minor girls aged 6-10 at Shivkuti Children's Home of Allahabad after the publication of a news report in "Hindustan" regarding crimes of sexual abuse of minor orphan girls after a daily newspaper published an article regarding the same.

In this case, the High Court of Allahabad took *Suo Moto* cognizance under the power vested in it as per Article 226 of the Constitution of India on the basis of a report published by daily newspaper Hindustan. In this case, a contract chowkidar committed heinous crimes of sexual abuse against minor girls aged 6 to 10 residing at the state government established orphanage.

The case raised a pertinent issue regarding safety and management of homes established for orphan girls and appointment of sensitive and perceptive superintendents at homes established for girls and women.

The author of this case summary has attempted to highlight the importance of the safety of children housed at state established orphanage and shelter homes and their right against undue exploitation. Furthermore, the author aims to highlight the responsibility of the state in the guardian role for citizens who have no one to protect them and take care of them.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Criminal Writ Petition No. 4207 of 2012
Jurisdiction	:	Allahabad High Court
Case Filed on	:	April 2012
Case Decided on	:	April 2012

Judges	:	Justice Amar Saran, Justice Ashok Srivastava
Legal Provisions involved	:	Constitution of India- Article- 21, 23, 24, 226 Indian Penal Code- 107, 120B, 375, 376, 503 Provisions under The Protection of Children from Sexual Offences (POCSO) Act, 2012
Case Summary Prepared by	:	Rishi Raj Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

The case is a *Suo Moto* cognizance taken by Allahabad High Court based on a news report under Article 226 of the Constitution D. R. Chaudhary has appeared on behalf of the government in the case. Mrs. Manju R Chauhan was the Amicus Curiae in this case.

The Allahabad High Court took *Suo Moto* cognizance according to an article published in a daily newspaper regarding barbaric crimes against orphan girls aged 6-10 years of age.

The matter came into light when adoptive parents of a girl found bloodstains on her underwear. On being question she revealed that the underwear did not belong to her. It belonged to another child in a state-run orphanage. The girl to whom underwear belonged when question revealed that the chowkidar, Vidya Shankar Ojha had committed rape on her. 2 more girls came forward and informed that they were also raped by Ojha multiple times but due to fear of beating they did not reveal it to anyone.

On April 5, 2012, the District Magistrate cum Chief Development Officer of Allahabad ordered magisterial inquiry for the shelter home and submission of report within 3 days. The result of the magisterial report was shocking. It showed that Ojha had committed heinous and barbaric crimes of sexual nature on girls aged 6-10. Furthermore, the cook, nurses, sweepers and staff of the orphanage often were eye witness to his barbaric acts yet their indifference and ignorance to such heinous crime added to virtual connivance in the crimes of Ojha.

3. ISSUES INVOLVED IN THE CASE

I. Are girls safe in state-administered orphanages and shelter homes?

II. Should there be an emphasis on appointments of sensitive and dedicated superintendents of such homes for the safety of girls and women?

4. PARTIES INVOLVED

- **Government**
  - ➢ The Ministry of Women and Child Development set up committees in each district of the state of Uttar Pradesh through a notification dated April 9, 2012. The name of the committee will be "Inspection, Evaluation and Advisory Committees". It shall be chaired by Additional District Magistrate nominated by the District Magistrate and will constitute of an officer, not below Circle officer rank nominated by SSP, a doctor appointed by Chief Medical Officer, District Probation Officer and 2 reputed social workers or local NGOs.
  - ➢ The committee will carry out surprise inspection of all homes each month to check upon food quality, medical health, education and other aspects for the benefit of children.
- **Police**
  - The SSP of Allahabad informed the court that steps have been taken to complete investigation against Vidya Bhushan Ojha and other home staff who failed to take punitive and preventive action against Ojha.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal aspects in this case involved are as follows-

- Article 21, Constitution of India- Right to life and personal liberty
- Article 23 and 24,Constitution of India- Right against exploitation
- Article 226, Constitution of India- This article empowers the High Courts to take cases into cognizance on their own also known as – *Suo-Moto Cognizance*.
- Section 107, Indian Penal Code- Abetment or in-sighting the offender for committing the offence.
- Section 120B, Indian Penal Code- Conspiracy to commit a criminal act
- Section 375 and 376, Indian Penal Code- Definition of Rape and its punishment
- Section 503, Indian Penal Code- Criminal Intimidation
- Provisions under The Protection of Children from Sexual Offences (POCSO) Act, 2012.

6. JUDGEMENT IN BRIEF

- The High Court of Allahabad gave certain directions to state in the case against issues highlighted above.
- The identity of the aggrieved and traumatized girls must be kept under the wraps due to the risk of leaking of names and identities of the victims. The media and media personnel have been prohibited form identifying victims or publishing their names or photographs.
- In case of sexual misconduct by employees and connivance provided by superintendents and staff, the inquiry must be completed within one-month extendable upto 2 months.
- The Senior Superintendent of Police (SSP), Allahabad is directed to complete investigation with an utmost expedition against accused Vidya Bhushan Ojha. Furthermore, the SSP shall also inform the court regarding the apprehension of accused involved in active concealment of such barbaric crimes.
- The appointment of Superintendents must be done on the basis of hard work, performance and sensitivity and not on the basis of seniority. This direction was given to Principal Secretary, Women's and Child Director, UP. And Director, Mahila Kalyan.
- The District judges shall nominate officers not below the rank of Senior Judicial Magistrates to participate in committee set-up for monitoring and running of homes through government notification on April 9, 2012.

7. COMMENTARY

The case of In Re: Govt. Children's Home at Shivkuti Allahabad brought one of the most barbaric faces of mankind before me. The repeated rape of minor girls aged 6-10 years by the contract chowkidar, Vidya Bhushan Ojha and the ignorance showed by the staff towards Ojha's acts against the constitution, penal laws and human rights is a heinous crime committed.

On analysing the legal issues of the case, Ojha- the accused has committed rape of minor girls confirmed by the medical tests conducted and hence must be punished severely for his act. Furthermore, the staff of Ashram which includes Superintendent Urmila Gupta, Assistant Superintendent, Chaya Badwal two nurses, Km. Uma Jaiswal, and Smt. Krishnavati, one nursery teacher, Kusum Gupta, two house mothers, Rama Singh and Preeti Lata, Class 4 employee Ramapati, helper Smt. Nirmala Mishra, and one male class-IV employee, Prem Singh have encouraged the accused by their ignorance to continue with his barbaric acts. Furthermore,

the staff members have used accused to evade their duties and responsibilities and have been getting their chores done by orphan girls using force and intimidation. The staff members have been suspended and a disciplinary action has been initiated against them, however, I opine that the staff members must be booked under Section 107 (Abetment) and Section 503(Criminal Intimidation) as they have helped and aided the accused, Ojha in his heinous crimes as well as intimidated the girls to do their chores. The staff members have done a series of omission of duty as per Section 33 of Indian Penal Code as well as have been delinquent in performing their statutory and humanitarian duty.

The state is also responsible for the current scenario. In my opinion, the state has the role of guardian for all the citizens especially in the case of orphan children. The rape of orphan girls in the premises of the orphanage by a contractual staff on state payroll is the responsibility of the state. The state must pay compensation to the victims of the case. In the case of *Charan Lal Sahu v. Union of India,* the Supreme court of India held that- "The State in the capacity of *parents patriae* (parent of the country) for protecting the victims. It is the duty of the State to protect the rights and privileges of its citizens and where the citizens are not in a position to assert and secure their rights the State must come into the picture and protect and fight for the rights of the citizens." Here, the Supreme Court clearly highlights the guardian role of the state and its importance. It also highlights that the state must come to rescue of citizens when there is a gross violation of rights and citizens are not able to assert their rights or seek recourse. Furthermore, the constitution of Committees for evaluation and inspection by the Women and Child Development Section through order vide April 9, 2012 is though appreciated but yet it has come late. Such a committee must have already been in place to keep a check on the working of the orphanages and shelter homes. The surprise checks for evaluation of food quality, safety medical health and education must have been instituted when the orphanages and shelter homes first came into existence. The late action of state has also resulted in such commission of such heinous offence against minor girls.

Furthermore, the Suo Moto cognizance taken by the High Court in the exercise of its judicial power though has brought the issue to light yet, the judiciary and the judicial system must keep a check on whether the state and district administration has taken those directions and orders and implemented them. Furthermore, the media professionals must be sensitive towards the victims of the case and must not try to reveal identities of the victims, The media must follow high court orders in all cases as well the present case and report the facts and proceedings without highlighting names, identities or addresses of the victims or the accused.

I conclude that in order for such heinous crimes to remain in check, the state must take requisite measures before the incidents and not after their occurrence.

8. IMPORTANT CASES REFERRED

- *Charan Lal Sahu v. Union of India, AIR 1990 SC 1480*

CASE NO. 21

INACTION OF POLICE IN LODGING FIR IN OFFENCES AGAINST WOMEN
v.
STATE OF U.P.

(CRIMINAL MISC. WRIT (PIL) PETITION NO. 9187 OF 2013)

DELAY IN LODGING F.I.R. IN SERIOUS CASES OF OFFENCES AGAINST WOMEN

ABSTRACT

The case to be discussed in the following note is *Inaction of Police in lodging FIR in offences against women v. State of U.P. (Criminal Misc. Writ (PIL) Petition No. 9187 of 2013).* The current case is a *Suo Moto* filed by the court in linking the previous PIL filed by the government's advocate which was decided on May 10, 2013 following which a circular passed by the police hierarchy did not complete the action or impact that the court wanted to. Taking this into cognizance the court filed a *Suo Moto* case.

The court discussed the core matters cases where statements and the investigations are delayed, particularly when the crime is serious in nature and the victim is seriously injured the procedures during those circumstances are well reiterated by the Hon'ble court in the following case note.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Misc. Writ (PIL) Petition No. 9187 of 2013
Jurisdiction	:	Allahabad High Court
Case Filed on	:	2013
Case Decided on	:	September 16, 2013
Judges	:	Justice Shiva Kriti Singh C.J, Justice Vikram Nath
Legal Provisions involved	:	Section 154 of the Code of Criminal Procedure.
Case Summary Prepared by	:	R. Gireeshvaran School of Excellence in Law, TNDALU, Chennai.

2. BRIEF FACTS OF THE CASE

The facts of the case in hand are that two female victims who were severely injured and were in hospital where while undergoing treatment their statements were recorded by the magistrate and chief judicial magistrate. However, the police did not take any steps in recording their statements by which it resulted in wanting of any other source or witness to register F.I.R due to few days delay on the subject case. The government advocate filed a public interest litigation in the Allahabad High Court and ordered the same on May 10, 2013 after which a D.G.P circular dated May 22, 2013 directing the police hierarchy to take care of the issues causing delay in lodging of FIR in serious cases of bum etc. committed against women. However, the circular did not have any rulings for the subject matter of delay in filing F.I.R within the timeframe of 24 Hrs. or a reasonable time limit to record statement of the victim of a serious crime having sustained serious injuries. Thereby in absence of any reasonable action the subject case, taking cognizance of the matter into hand the Allahabad High Court filed for a Suo Moto case on its own against the state of Uttar Pradesh.

- The court had a strong opinion that it was unreasonable action on the side of police by neither recording a F.I.R even when there was considerate knowledge about the victim and victim's state nor filing the same on the basis of the statement recorded by the magistrate.
- Also, it submitted for speedy registration of cases and investigation of the same in serious offences where victims incur serious injuries.
- Citing the judgement of the Apex Court in the case of *Apren Joseph alias Current Kunjukunju and others v. The State of Kerala* [MANU/SC/0078/1972: AIR 1973 SC 1]:
- The court stated that, First Information Report is the first report regarding the details of the offence and its commission under section 154, Cr.P.C as iterated by the Privy Council in Emperor v. Khwaja, [MANU/PR/0007/1944: ILR 1945 Lah. 1: AIR 1945 PC 18] anyhow recording F.I.R is not a strict condition to be followed before starting the chain of investigation. The statute also doesn't have strict compliance for an eye witness requirement before filing F.I.R.
- The F.I.R cannot be even taken as substantive evidence before the court of law. But when it is recorded it is the basement upon which case is built upon. It is to be used only to verify or refute the information given by evidence in court. It is very useful to record the statement before there is duration and chances to pamper the evidences and to decorate the same or before the memory of the informant's vanishes.

- Undue, unreasonable and unjustifiable delays in filing an F.I.R therefore arises inexorable doubts on the fairness of investigation, trust questions in the authority that conduct the same and on the prosecution's version too.
- The court further stated that no amount of time frame can be setup as reasonable for the registering a F.I.R it is unstable and is unique to individual cases. Also lethargic or unjustifiable delay in lodging of complain leads to deadly flaw in the criminal justice system, if in any case delay is caused reasonable and plausible explanation is to be given and it must fall into the facts and circumstances of individual cases.

3. SUBMISSIONS MADE BY RESPONDENT

The learned counsel appearing for the government stated that

- There is no legal hindrance or obstacle in the method by which the police from the nearest police station procures the statement from the injured victim and may treat it as a F.I.R as under section 154 of the Code of Criminal Procedure.
- It is the duty of the police to have specific knowledge of the said statement when the victim is seriously injured and have to act on that basis if cognizable offence is disclosed.
- Further the police officials from the nearest police station also have to investigate a crime, find out the contents of the statement recorded by the Magistrate/Doctor and if the victim is unable to give further statement or dies then the subject statement is to be taken as the basis of drawing F.I.R without any delay.

4. JUDGEMENT IN BRIEF

Taking account of the case and its arguments the court ruled that:

- It is of crucial importance on the part of police to take account the statement recorded by magistrate/ doctor or the statement given by the victim himself/ herself to be taken as F.I.R in cases involving serious crimes and fatal injuries without any delay or in any circumstances within the 24hrs.time limit which alone shall ensure the undue delay in investigation to be out of scene and shall protect the interests of justice.
- The writ petition was disposed with direction to the Director General of Police, U.P. to issue a circular in addition to the earlier circular within a week by which directions to

ensure that investigation is carried out properly by recording the statement of Doctor and Magistrate who are present at the time of recording of the statement of the victim and directed the police hierarchy to not cause any delay in lodging F.I.R by the nearest police station and any other concerned police station in the manner prescribed above within the time limit of 24 hrs. and after that it is to be forwarded to the police station having jurisdiction of the crime. Also the circular so ordered was directed to contain stipulation of disciplinary action and if any of the directions are violated it would be held contemptuous against the court.

- The writ petition was disposed and the copies of the order were furnished to government advocate for communication and compliance to all concerned parties.

5. COMMENTARY

The *Suo Moto* case handled the practical difficulty and hindrances in the legal framework of recording a F.I.R and the investigation process involved in the same, the subject matter is very important because of the fact that the case handled the basics of the criminal law and its procedures and how crucial the same build upon the fundamentals of Indian criminal justice and its framework.

The fact that the police had been delaying the registration of F.I.R in serious cases where serious injuries are inflicted on the victims and delaying the process of drawing the F.I.R based upon the statements of the magistrate, doctor or the victim himself/ herself questions the whole set up around which the criminal justice system in India functions.

The Hon'ble High Court discussed the matter in detail and cited two important judgement by weighing the matter in hand and promptly ruled the stringent actions to be taken in such circumstances and directed the same to the concerned departments of legal enforcement.

6. IMPORTANT CASES REFERRED

- *Apren Joseph alias Current Kunjukunju and others v. The State of Kerala [MANU/SC/0078/1972: AIR 1973 SC 1]*
- *Privy Council in Emperor v. Khwaja, [MANU/PR/0007/1944 : ILR 1945 Lah. 1 : AIR 1945 PC 18]*

CASE NO. 22

IN RE: GUIDELINES FOR COURT FUNCTIONING THROUGH VIDEO CONFERENCING DURING COVID-19 PANDEMIC

(SUO MOTU WRIT PETITION (CIVIL) NO. 5 OF 2020)

ENSURING SOCIAL DISTANCING IN ORDER TO PREVENT THE TRANSMISSION OF THE VIRUS IN COVID-19.

ABSTRACT

The following is a case summary of the case dealing in the matter of Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic (2020). This is a Writ Petition which has been filed in light of the COVID-19 Pandemic which strikes the urgent need for the Courts of India to take recourse to online arbitration methods. The guidelines issued by the Supreme Court of India for achieving the purpose of proper Court Functioning through Video Conferences are not to be taken as a discretionary decision of the Supreme Court but rather to be considered more of a duty which demands the cooperation of all courts, judges, litigants, parties, staff and other stakeholders who are working to keep the wheels of justice running in motion.

The present case is a Suo Motu Writ Petition invoked with regard to the public interest by the Supreme Court of India. This PIL has been filed in the midst of the outbreak of the Coronavirus pandemic in several countries, worldwide, including India. The Supreme Court of India neither wants to compromise with the health of the citizens of India nor does it want to compromise with the quality of justice that is to be provided to the aggrieved parties. The reason being which the Indian Judiciary has incorporated the Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project as part of the National e-Governance Plan (NeGP). It has been incorporated with the certain belief that this robust infrastructure in place would help reduce the conventional impediment that often surrounds the use of virtual courtrooms. The ICT enabled infrastructure has been incorporated throughout the existing courts of India including at the level of district judicial system which constitutes the initial interface of the court system with the citizens even at the local level.

The Author of the case-summary of the suo motu case that is named as In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic which has been

compiled has made an informed attempt to curate a short summary in the form of a brief for the sake of academic purposes. The Author being a law student is in support of the judgment of the Court that it has passed in the interest of Justice, Equity and Good Conscience.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Writ Petition (Civil) No. 5 of 2020
Jurisdiction	:	Supreme Court of India
Case Decided on	:	April 6, 2020
Judges	:	Justice S.A. Bobde, C.J.I, Justice D.Y. Chandrachud, Justice L. Nageswara Rao
Legal Provisions Involved	:	Article 142 of the Constitution of India
Case Summary Prepared by	:	Tuhupiya Kar South Calcutta Law College, Kolkatta

2. BRIEF FACTS OF THE CASE

The Supreme Court of India has issued the order in regard to the directions In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic on the 6th of April 2020 by taking recourse to the power conferred on it by Article 142 of the Constitution. The Bench of Judges that presented the final draft of the order and guidelines constituted of the following Judges: S.A. Bobde, C.J.I, D. Y. Chandrachud and L. Nageswara Rao JJ.

On April 3, 2020, Hon'ble Justice D. Y. Chandrachud, the Chairperson of the Supreme Court E-Committee, had had a meeting with the Computer Committees of the various High Courts to understand the extent of the actual practicality of the order which had to be drafted with regard to the guidelines for hearing trials via using video conferencing technologies. It was suggested in the meeting that the *use of technology must be institutionalized even after the lockdown is lifted and normalcy returns*.

The matter is with regard to the urgent need for an order penning down the guidelines for the functioning of the court through the medium of video conferencing has certainly become a necessity at such dire situations. The recent spread of the coronavirus (COVID-19) in India and many other countries asks every citizen's duty to contain the spread of the virus by doing whatever they can in their power.

The Supreme Court and the High Courts of India have thereby relented to the COVID-19 and have adopted several measures to reduce the number of people and their physical appearance or presence in the Courts. Steps have been taken to reduce the number of conventional operations in Courts and resort to the use of modern technology and AI to go digital especially with regard to the Court Proceedings.

The modern technology with the continuous advancements in speed and connectivity has to a great degree reduced the obstacles in the path of providing justice to the people through the access of Virtual world. The pandemic situation has made the Indian Courts greatly resilient to accepting the changes brought in the judiciary system of the country by the advancements in technology. In fact, the Indian judiciary has incorporated Information and Communication Technology systems through the e-Courts Integrated Mission Mode Project (e-Courts Project) as a part of the National e-Governance Plan (NeGP). ICT enabled infrastructure is also available across all courts including the district level courts which constitutes the primary interface court system with the citizens of India.

The use of technology backed by judicial recognition and support found precedent of this Court in the case, *State of Maharashtra v. Praful Desai (2003) 4 SCC 601*. In the case, the Court held that in the arena of technology virtual courts are similar to that of the physical courts.

> *"Faith is belief without evidence and reason; coincidentally that's also the definition of delusion." – Richard Dawkins*

The Supreme Court also held that the term 'evidence' would be inclusive of the electronic evidence also and that evidence may be recorded in virtual courts via the use of video conferencing that can be later on kept as recorded evidence or evidence in recorded form.

Section 3 of the Indian Evidence Act, 1872, defines the word and concept of 'Evidence' as follows:

1) *All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; (oral evidence);*
2) *All documents including electronic records produced for the inspection of the Court; (documentary evidence)*

The Supreme Court of India in the case *State of Maharashtra v. Praful Desai* had held the following statement :

'Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place…Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence… In fact, he or she is present before you on a screen. Except for touching one can see, hear and observe as if the party is in the same room. In video conferencing, both parties are in the presence of each other... Recording of such evidence would be as per "procedure established by law".

Hence, the presence of the Petitioner or the Respondent over video conferencing for the purpose of recording evidence would undoubtedly result in the 'presence' as is envisaged under section 273 of the Criminal Procedure Code.

3. LEGAL ASPECTS INVOLVED IN THE CASE

The Supreme Court of India has passed the order and judgement with regard to the matter of guidelines for Court functioning through video conferencing under the power conferred on it by Article 142 of the Constitution of India. Article 142(1) of the Constitution of India reads as follows:

"The Supreme Court in the exercise of its jurisdiction may pass such decree as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe."

Article 142 (1) states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary and efficient for doing justice to the Country of India and its respective citizens. This Article brings within its purview the measures adopted by the Supreme Court and the High Courts throughout the territory of India to respond to the call and need for social distancing without hampering the quality of justice provided by the judiciary system of India.

Article 142 vests unconditional independent jurisdiction for the purpose of passing any order which to be issued in the interest of the general public to do complete justice as when and

where required. It is provided that such order passed by the Indian jurisdiction shall not be contrary to any other provisions of the law in existence.

In the case *Academy of Nutrition Improvement v. Union of India (2011) 8 SCC 274* the Supreme Court of India reiterated that "*The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to doing complete justice ... and are in the nature of supplementary powers ... (and) maybe put on a different and perhaps even wider footing than ordinary inherent powers of a Court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents 'clogging or obstruction of the stream of justice'.* "

4. JUDGEMENT IN BRIEF

The Supreme Court directed the followings:

- All the decisions taken by the Supreme Court and High Courts of India with regard to the purpose of reducing the requirement of the physical presence of all the stakeholders within the court premises and at the same time to maintain the proper functioning of the courts shall be considered to be lawful;
- The Supreme Court and the High Courts of India are to take the necessary measures as required for the robust and proper functioning of the judicial system through the use of video conferencing tools and technologies keeping in view the exceptional abnormalities of the judicial system and the dynamic public health situations in every state that's prevalent during the present COVID-19 pandemic;
- Every High Court is further empowered to determine the measures that are to be taken for the suitable execution that would ultimately suit the transition of the systematic functions of the Indian judiciary to the use of video conferencing technologies;
- It is further instructed that the aforementioned Courts (existing High Courts throughout the territory of India) shall install and maintain a helpline number so that the complaints with regard to the quality or audibility of feed during a court proceeding over video conferencing shall be immediately communicated during such ongoing trial or latest by the end of the trial procedure failing which no grievance related to it shall be entertained later on.

- The District Courts are directed to adopt the mode of Video Conferencing as would be prescribed by the High Courts of the respective states.
- Courts are directed to ensure that the litigants who do not have access to the means required for attending video conferences are provided with the conferencing facilities. The Court may also appoint an amicus-curiae (an impartial adviser to a court of law appointed for a particular case) provided with all the video conferencing facilities to approach such litigant.
- It is to be seen that video conferencing is the only platform available for hearing arguments irrespective of trial or appellate stage.
- No evidence via video conferencing shall be recorded without the prior mutual consent of both the parties. If it is found necessary to record evidence in a Courtroom the presiding officer shall ensure and determine a safe distance between any two persons present in the Courtroom.
- The presiding officer is vested with the sole power to restrict the entry of persons in the courtroom especially from the time when the advocates have started to address their arguments to the presiding Judge in the courtroom.
- The presiding officer shall not restrict the entry of any of the appearing parties to the courtroom until and unless such party is suffering from an infectious disease or illness.
- The presiding officer shall have the power to restrict the number of litigants if many to a few. It is also left to the sole discretion of the presiding judge to have the power to adjourn the court proceedings for a particular time or for a particular day, when and where it is not possible to restrict the numbers from entering into the courtroom once the presentation of the arguments by the respective advocates has already begun.

It is further reiterated by the Supreme Court that the above directions have been issued in a bid to ensure that the judiciary will be efficient in rising and standing upto the challenges to face the unique challenge presented by the outbreak of the coronavirus (COVID-19).

5. COMMENTARY

This order is introduced in the light of the ‘new normal’ which has been created by the devastating pandemic, COVID-19. It is not an easy time for anybody especially the Indian judiciary system. India despite being a developing country has come a long way in the advancement of technology but the real challenge to tackle would be at the district level which

is formed by the nodal points of nearly 6.5 lakh villages which, constitutes an almost 70% of the total population of India. As once quoted by Mahatma Gandhi, “if the village perishes India will perish too.”

As the entire nation is currently under lockdown with the objective of reducing the risk of the virus’s spread with ease only in some exceptional sectors the Indian judiciary has also taken it upon itself to observe social distancing as much as possible and in a bid to do so it has shut down its regular court functioning and is resorting to hearing cases of only urgent matters via video conferencing.

It will certainly be a great challenge to administer justice at the district level especially in rural areas where modern video conferencing technology is not as prevalent as in the urban areas. Communication through the mode of online video conferencing has never been the way of interaction even for the youth living in villages. The village people have always known life in the simplest of the forms. But measures have been taken as is evident from the order ‘In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic’ and the online trial processes have been thought through with the hope that the prevalent pandemic will not hamper the delivery of a quality justice at any cost whatsoever.

6. IMPORTANT CASES REFERRED

- *State of Maharashtra v. Praful Desai, MANU/SC/0268/2003: (2003)4 SCC 601.*
- *Academy of Nutrition Improvement v. Union of India (2011) 8 SCC 274.*

CASE NO. 23

SUO MOTU PROCEEDINGS INITIATED TO QUASH COMPLAINT AGAINST JUDICIAL OFFICER

(SUO MOTU CRIMINAL PETITION NO. 2107 OF 2020)

STATEMENT BY JUDICIAL OFFICER DURING REMAND PROCEEDINGS.

ABSTRACT

This case summary briefly deals with the proceedings of quashing a private criminal petition filed by an individual against a judicial officer. The crux of the summary deals with the rare instance of allowing the complainant to pursue the complaint against the Judge since there is complete immunity granted to a judicial officer under the Judges (Protection) Act, 1985. In this case, a complaint was filed against the judicial officer privately, under Section 200 of the Criminal Procedure Code addressed to a Civil Judge in light of alleged comments made by the Judge during remand proceedings in the Court of Judicial Magistrate of First Class in the district of Ballari, Karnataka. This summary also sheds light on the inherent powers of a Court to take suo-motu cognizance of a case.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Suo Motu Criminal Petition No. 2107 of 2020
Jurisdiction	:	High Court of Karnataka
Case Filed on	:	May 27, 2019
Case Decided on	:	July 21, 2020
Judges	:	Justice Abhay Oka, CJ, Justice M Nagaprasanna
Legal Provisions involved	:	Section 482, Section 200 of Criminal Procedure Code, 1973 Section 166, Section 205, Section 120-A, Section 211, Section 219 and Section 499 of Indian Penal Code, 1860 Section 3 (1) of the Judges (Protection) Act, 1985
Case Summary Prepared by	:	Varsha Karunanant School of Law, Christ (Deemed to be University), Bengaluru

2. BRIEF FACTS OF THE CASE

The party involved in this case is Mr. C M Manjunath who is the complainant who filed the said complaint against a Civil Court Judge and Judicial Magistrate of First Class, Sri. Vijay Kumar S. Jetla, who is indicated as Accused No. 1 in the complaint. This was filed against the Judge for stating certain comments made during a certain remand proceeding.

The case, as a matter of fact, arose when C M Manjunath wrote a letter, which is treated as a private criminal complaint under Section 200 of the Criminal Procedure Code, 1973 to Secretary, Chief Justice on May 25, 2019, consisting certain grievances against the said Judge as follows:

I. Grievances with regards to his grant of the complainant's custody for a period of 14 days during remand proceedings
II. Grievances with regards to rejecting the protest petition filed by the complainant

Allegations that were also part of the complaint against the Judicial Officer and 9 other persons construed as accused were said to be committing offences punishable as per Indian Penal Code, 1860 under Section 120A, Section 166, Section 205, Section 211, Section 219 and Section 499 read with Section 34.

In this regard, the complainant was told to, by the Secretary to the Chief Justice, pursue this complaint through the judicial wing and not as part of the administrative wing on 13th June, 2019. This complaint which is still said to be in pendency at the Court of Senior Civil Judge and Judicial Magistrate of First Class, was taken *Suo Motu* cognizance of by the High Court of Karnataka on July 21, 2020.

3. ISSUES INVOLVED IN THE CASE

I. The principal issue in this case was the private complained filed by the individual named C M Manjunath against the Civil Judge which is in violation of the absolute immunity granted to the Judicial officers under Section 3 the Judges (Protection) Act, 1985.

4. ARGUMENTS OF THE PARTIES

Plaintiff's arguments

Mr. C M Manjunath argued that in 2019, during the remand proceedings, Civil Judge and Judicial Magistrate of First Class along with 9 other persons were said to be committing offences punishable under several provisions of the Indian Penal Code. Particularly, this case was filed against the Civil Judicial Officer pertaining to the statements made by him during the proceedings which led to the plaintiff sending a letter to the Secretary to the Chief Justice of High Court of Karnataka. Relying on the reply letter from the said Secretary, he deemed it as the permission to file a case against and prosecuting the Judge.

5. LEGAL ASPECTS INVOLVED IN THE CASE

1. Section 120A of IPC, which deals with Criminal Conspiracy.
2. Section 166 of IPC, which deals a Public Servant disobeying the law with an intention to cause injury to any individual.
3. Section 205 of IPC, which deals with False personation of another personation for the purposes of an act or proceeding in suit or prosecution.
4. Section 211 of IPC, which deals with falsely charging of an offence with an intention to cause injury.
5. Section 219 of IPC, which deals with a Public Servant making a report that is in contravention of law during judicial proceedings
6. Section 499 of IPC, which deals with Defamation.
7. Section 34 of IPC, which deals with Common intention

Section 120A specifically deals with the act of criminal conspiracy. The section looks to hold two or more persons liable for conspiring to do an 'illegal act', liable for an offence which they have either 'planned and done' or 'planned to do'. The law on conspiracy was imported to India by the colonizers from their motherland; thus it is only fair that one refers to their writing so as to appreciate the intricacies of the concept. To be liable of the offence of criminal conspiracy the agreement must be to do or cause to be done an 'illegal' act, or an act which is not illegal by 'illegal' means. The expression 'illegal' has been defined in section 43 of the Code and whenever this expression has been used in the Code, it will have this meaning only.

Section 166 of the IPC deals with the disobeying of law by a Public Servant. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Section 205 deals with False impersonation with an ulterior motive. According to section 205 of Indian penal code, Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 211 states that anyone, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceedings against that person or falsely charges any person with committed an offence knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description of a term which may extend to 2 years, or with fine or with both and if such criminal proceedings be instituted on a false charge with an offence punishable with death, imprisonment for life, or imprisonment for 7 years or upwards, shall be punishable with imprisonment of either description of a term which may extend to 7 years and shall also be liable to fine.

Section 219 provides for whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 499 expressly deals with Defamation. Defamation is one of the most common types of cases that are filed in the courts of law around the world. Anyone who feels he or she has been wrongly accused of something by someone in public, through words or gestures, spoken, written, or by inference can file a defamation suit in a court of law claiming that the accusation leveled deals a blow to his/her reputation. In India there are two types of Defamation: Civil and Criminal. In civil defamation a person who is defamed can move either High Court or subordinate courts and seek damages in the form of monetary compensation. There is no punishment in the form of jail sentence. In criminal defamation, the person against whom a defamation case is filed might be sentenced to two years' imprisonment or fined or both.

Section 500 provides for the Punishment for Defamation for imprisonment up to 2 years or with fine or both.

6. JUDGEMENT IN BRIEF

High Court of Karnataka ordered the Registrar General to register a *suo motu* criminal petition to dismiss the private complaint lodged by C M Manjunath against the Civil Court Judge and Judicial Magistrate First Class under Section 482 of the Criminal Procedure Code on July 21.

The division bench consisting of Chief Justice Abhay Oka and Justice M Nagaprasanna stated that if the plaintiff had been allowed to proceed with the complaint that is still in pendency at the Civil Court the proceeding would have absolutely disregarded the immunity granted to the Judicial Officers under Section 3 (1) of the Judicial (Protection) Act, 1985.

This was executed while using the inherent powers vested in the Court under Section 482. In this regard, the High Court held while citing *Popular Muthiah v. State Represented by Inspector of Police* propounded that the High Court has the power to exercise its inherent jurisdiction granted under Section 482 of the Criminal Procedure Code in the interest of justice and public welfare in both procedural and substantive matters.

7. COMMENTARY

In this case, what was interestingly observed is the fact that the individual (C M Manjunath) was given the permission to file a complaint against the Civil Judge and Judicial Magistrate First Class (Sri. Vijay Kumar) by the Secretary to the Chief Justice, keeping in mind that there is absolute immunity granted to the Judicial Officers under the Judges (Protection) Act, 1985.

The said complaint is still in pendency at the Civil Court. However, the High Court of Karnataka decided to take the case on its own motion. *Suo Moto* cognizance by the Indian judicial system has been a widely explored topic by several jurists and legal scholars.

Suo Moto proceedings are typically taken up by the Supreme Court of India. Over the last three years, the Indian Judiciary has undeniably kept the baton for upholding democracy. In numerous instances, various High Courts and the Supreme Court have risen to the occasion by themselves taking cognizance of a legal issue and providing swift justice. Multiple courts in India have launched legal proceedings on their own based on public and media stories and letters received from aggrieved individuals, taking the issue on the Court's own motion. *Suo*

Moto action is usually when a Supreme Court or High Court takes control of the matter or the case on its own.

Therefore, in light of the present circumstances of this case, it was an unerring position that was chosen by the division bench of High Court of Karnataka to take up *suo moto* cognizance of this case in order to impart justice that is fair and equitable.

8. IMPORTANT CASES REFERRED

- *Popular Muthiah v. State Represented by Inspector of Police [(2006) 3 SCC (Crl) 245]*

CASE NO. 24

IN RE: DESTRUCTION OF PUBLIC AND PRIVATE PROPERTIES

v.

STATE OF A. P. AND ORS

(WRIT PETITION (CRIMINAL) NO. 77 OF 2007)

DESTRUCTION OF PUBLIC AND PRIVATE PROPERTY IN BANDH AND HARTALS.

ABSTRACT

The case addresses one of the most important contemporary issue which is the destruction of both public and private property during the *bandh* and riots. The after witnessing the different violent protests in the country and the destruction caused intervened through a *Suo Moto* cognizance and tried to form guidelines regarding it. A specific emphasis on the causes of such mass actions and the parties supporting them were discussed in it.

The court formed two different committees that analyzed the current laws on illegal gathering and protests that included *bandhs, hartals*, and riots on a large and small scale. It even discussed the measure that is to be taken to prevent the destruction of public and private properties in these protests. It even considered various important modalities related to the protests like fixing liability and recovering for the damages as compensation from the mob and protestors. This particular case tried to eradicate the loopholes in the law that existed that dealt with protests.

The case analysis the various steps that can be taken to reduce the destruction caused during protests to a minimal amount and even provides for the implementation of the law. Its guidelines even provide for the procedure through with demonstrations that could be conducted in a peaceful manner only. The case even makes recommendations related to the amends are required in the Prevention of Damage to Public Property act, 1984.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Writ Petition (Criminal) No. 77 of 2007
Jurisdiction	:	Supreme Court of India
Case Filed on	:	June 5, 2007

Case Decided on	:	April 16, 2009
Judges	:	Justice Arijit Pasayat, Justice L.S. Panta, Justice P. Sathasivan
Legal Provisions involved	:	Article 19 (1) (a), 21, 32 and 226 of Constitution of India Section 437 of the Code of Criminal Procedure, 1973 Section 5 of Prevention of Damages to Public Property Act, 1984
Case Summary Prepared by	:	Yashwardhan Bansal School of Law, Christ (Deemed to be University), Bangalore

2. BRIEF FACTS OF THE CASE

The case was voluntarily taken and filed by the Supreme Court of India according to *suo moto* cognizance basis for the protection to parties impacted by protests and the destruction caused during it. The Suo Moto writ petition was filed under Articles 32 and 226 of the Indian Constitution. The major reason behind addressing the matter was the various reports that were being published regarding the damages during protests. Dr. Rajeev Dhavan acted as a senior council acted as Amicus Curiae for the court in the case and provided his assistance in it. The court-appointed two committees after pursuing various reports headed by Justice K.T. Thomas and Mr. F.S. Nariman respectively with other members. The case was filed to check the destruction caused by the protesters to the public and private properties. The case reflected upon the trauma and economic damages faced by individuals and the state during protests. It tried to provide for remedies and fix liability on the protesters causing the damage.

The case analyses the situation, the law that existed, and then suggested the guidelines regarding the matter. The laws that already existed namely the Prevention of Damage to Public Property Act, 1984 wasn't able to address the issue and had various loopholes. The case tried to come up with guidelines and amendments that could reduce the loopholes and make scope for better implementation of the law. It majorly focused on the matter that damages should be provided to the people that faced damages due to mass violent protests. The case even emphasized on the role played by media and different political parties in causing and assisting the protests that destroy different properties. The act of abetment to different crimes like organizing huge illegal protests was also addressed in the case.

3. ISSUES INVOLVED IN THE CASE

I. Whether the Prevention of Damage to Public Property act, 1984 needs amendments or not?

II. Whether the high court and the Supreme Court can pass mandamus (Writ) in the case of damage to private and public property during protests?

III. Whether parties abetting to cause illegal and violent protests can be held liable or not?

4. ARGUMENTS OF THE PARTIES

- **Appellant**

The counsel for appellants claimed that the high court with division bench can't issue a writ of mandamus to direct a public authority to act according to their directed manner.

- **Respondent**

The counsel for respondent claimed for issuing a writ of mandamus by the court as a relief.

They claimed that any high court has the right to issue any writ under the provisions of the Indian Constitution namely article 226 against any person or authority.

- Report of the committee headed by Justice K.T. Thomas

The committee made various recommendations and that includes:-

- The PDPP Act must be amended so that the rebuttable presumption that the accused is guilty of the offenses could be incorporated.
- The PDPP Act shall contain provisions to make the leader of the concerned organization that called for the protest to be liable for the abetment of the offense.
- The PDPP Act to include provisions for rebuttable presumption.
- The provision for the video tapping of the activities causing damage to public property should be provided and the required facilities.

According to the committee, some various details and requirements will have to be proved to hold anyone liable for the damages to the public and private property. After this, the burden can be shifted to the accused to prove his/her innocence. The PDAA act may be amended to include this particular effect.

The committee even stated concerning the second recommendation that the specific provision for fixing liability on the leaders of different groups that abet the crime by

enticing people to cause public protest and damage properties. It is difficult to trace to the involvement of top-notch leaders abetting the crimes and the grass-root level leaders and common people are framed from damages hence, specific provision for fixing liability on them will be advisable.

The committee even considered various aspects and recommended that prosecution shall be required to prove two things in specific that are the damage to the public property due to the direct action and that the property was damaged during or in the aftermath of such direct action. The court can then form a presumption against the person who abetted the commission of the offense. However, the accused shall be free from the liability once he/she can prove to have no connection to the offense or the party that called out for the offense. The other requirement is that the accused must have taken necessary measures to prevent the damages to the public property.

The committee addressed another concern which is the means of adducing required evidence to prove the guilt of the accused. The committee suggested procuring evidence by tapping and recording the crime so that the liability with concrete evidence could be fixed. As the amendment in the evidence act admits electronic evidence since the year 2000 it should be employed for conducting the investigation. For this, the local police stations shall be empowered to maintain a panel of local video operators who could be made available at short notice. The concerned police officer on duty must take the video operator and the probable act of violence shall be filmed. Then immediately the local magistrate shall record the statement of the police officer and the original CD with the recording shall be produced in court at the appropriate stage or as and when called for.

The committee even suggested making the laws related to bail for the accused persons more stringent and left on court discretion. Section 5 was suggested to be amended for carrying out the above restriction. It even suggested for attaching power for pecuniary liability with imprisonment to the court is also necessary. In the case of non-payment of the fine, the term of imprisonment shall be extended.

The committee even suggested the procedure for effectuating the modalities for preventive action and adding teeth to the investigation. The guidelines that are to be observed as soon as any demonstration is organized are:-

- The organizer shall meet the police to discuss the route and lay down the conditions for a peaceful march or protest

- The usage or carrying of any weapon is prohibited
- An underwriting to be provided by the organizer to ensure that protest is conducted peacefully under surveillance.
- The police and state government shall ensure videography of such protests.
- The SP or other high-rank police officer of the area shall supervise the event or the protest.
- In case the protest turns violent the police in charge shall ensure videography of the even though the private operator and even the informants from media.
- The police shall immediately inform the state government of the violence and the damage caused in the violence.
- The state government shall gather all the information possible and prepare a report. The government shall even file a petition in High Court or Supreme Court with the report or court may take the case via suo moto cognizance.
- Report of the committee headed by Mr. F.S. Nariman

The committee made various recommendations and that includes:-

The committee emphasized the protecting rights of people that face losses during the protests specifically monetarily. It emphasizes on exemplary damages to the people that are impacted adversely by the violence conducted during protests. It even talked about the role of law having a deterrent function concerning wrongdoing. The committee addressed a major issue related to fixing liability which is where persons are whether jointly or individually part of the protests and the violence caused in it. Regarding the judgment in the M.C. Mehta v. Union of India case that the committee recommends court to frame guidelines. There is a need for special laws that could protect the rights of people in extraordinary situations of violent protests and bandhs. The committee even addressed the importance of tort law in fixing monetary liabilities on people in the form of compensation.

Damages provided in tort law in India as discussed by the committee are:-

- Damages based on the idea of restitution in interregnum to enable complete recompense.
- Exemplary damages - the idea of making whole, an injury to the property to be compensated by damages, and making sure that the rights of people impacted are restored.

The guidelines suggested by the committee in the absence of the damages were:-

- When a protest happens and causes damages to people the High Court or the Supreme Court may issue *suo moto* and set up the machinery to investigate damages.
- In case there is more than one state involved the Supreme Court may address the matter.
- In both, cases the respective courts may form a commission headed by retired High Court judge or a sitting or retired District judge as a Claims Commissioner to estimate the damages and investigate liability.
- Even an assessor may be appointed to assist the claim commissioner.
- The Claims Commissioner and the Assessor may seek instructions from the High Court or Supreme Court as the case may be, to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.
- The principle of absolute liability shall be applied in the situation to fix the liability.
- The liability shall be borne by the actual participator and the organizers of the event and the proportion of sharing the damages may be decided by the court.
- Exemplary damage to the extent of double the amount of losses may be imposed on the liable person.
- Damages shall be assessed for:-
  (a) Damages to public property;
  (b) Damages to private property;
  (c) damages causing injury or death to a person or persons;
  (d) Cost of the actions by the authorities and police to take preventive and other action
- The Claim commissioner shall prepare the report and determine the liability after hearing the parties and submit the report to the court.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case involved various legal provisions from different statutes and the Constitution of India was also employed in it. Article 19 (1)(a) of the Indian constitution which provides the freedom to speech and expression to the citizens of India. The nuances of the right to speech and expression were discussed in the case and how the amendment proposed to the Press Council Act, 1978 didn’t violate the freedom of people. Article 21 of the Constitution of India provides

for the right to life and liberty and this right was protected in the case. The case talks about the illegality of extracting information by the means of torture which is neither right nor fair. The accused person may be interrogated by the scientific methods but not by force and torture. Article 32 of the Indian Constitution was also addressed which provides for the right to the court to act for enforcement of the fundamental rights and the executive powers of the union have to meet the challenge to protect the rights of its citizens. Even the concept of enforcement of rights and public law remedy distinct from private law remedy under tort was differentiated.

Article 226 of the Indian Constitution was also employed by the court in the case as the writ known as Mandamus was explained and its relevance. The high court's power to issue mandamus against any person or authority was analyzed. The power of the high court to the power to issue a writ of mandamus or a writ like a mandamus or to pass orders and give necessary directions where the government or public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred.

Section 437 of Code of Criminal Procedure, 1973 provides for regulation and nuances related to granting of bail by the court in the case of a non-bailable offense. According to this provision, any person who is accused or found to be suspect for the commission of an act which is non-bailable must be released on a bail on specified circumstance and with the permission of the court. In this case, the provision was discussed as the committee suggested that granting of bail in such cases of violence should be made more stringent. It even suggested that granting of bail in such cases of violence should be completely prohibited if felt by the court.

Section 5 of Prevention of Damages to Public Property act, 1984 provides for the granting of bail in the cases of violence and damaging property during the *bandhs* and *hartals*. According to section, no person accused or convicted under sections 3 and 4 of the respective act shall be released on bail until the prosecution is allowed to oppose the application for such release. The commission specifically emphasized this provision and demanded it to be more stringent so that the convicts or accused are investigated most appropriately without delay.

6. JUDGEMENT IN BRIEF

The apex court in this particular case referred to various cases like *Lakshmi Kant Pandey v. Union of India, Vishaka v. State of Rajasthan, Vineet Narain v. Union of India*, etc. to issue directions considering the urgent need and meeting the requirements of the situation. Considering the precedents the court approved of various guidelines proposed by the two committees and demanded the immediate implementation of them. The court requested the legislature to amend the laws so that the power to draw a presumption could be conferred with the court. This would help the court to fix the liability and pre-empt that the accused is liable for the violence and damages and the burden of proof could be transferred on him to prove his innocence. This would be an exception to the general law according to which the defendant has to prove that the accused is liable for the violence.

The bench of the apex court also stated that in the absence of the legislation the high court should be conferred with the power to take Suo Moto cognizance in any such case of mass destruction and damage to both public and private property caused by protests, *bandhs*, and *hartals*.

In the cases, on the discretion of the high court or the supreme court their needs to be setting up a commission under the leadership of a sitting judge or district judge to fix the liability and award damages. Even an assessor can be appointed by the court to assist the commission and the various pieces of evidence like video recordings extracted from various sources shall be employed to fix the liability. The decision of fixing liability and exemplary damages shall remain with the court and the executive shall not award any punishments. The principle of natural justice one cannot be the judge in its case shall be applicable and the executive should remain out of the matter according to it. The court even emphasized the division of liability amongst the perpetrators and organizers according to the role of the party.

The court even reflected upon the role of press and media during and after the violent protests is conducted in India. The principle of responsible broadcasting and institutional arrangement for self-regulation was suggested. The court even emphasizes the responsibility of media to capture the incidents of violence and assist the different departments like local police in the investigation process by providing relevant evidence collected by them in their camera.

Ultimately, the apex court by furthering the different suggestions made by the two commissions disposes of the writ petition and recommends various agencies and departments to take appropriate measures. It emphasizes the needs of constituting the different recommendations

and guidelines and leaves it on authorities to take effective steps for the implementation of them.

7. COMMENTARY

This is one of the landmark cases which discussed the major social issue and problem that is faced though-out the length and breadth of the country. The case emphasizes the damage and loss that are caused by violent protests and *bandhs*. In India the organization of different protests and them turning into the ground for causing violence is common. The major reasons that cause or instigate violent protests are political leaders to further their miscreant political agendas, individuals, or religious groups to promote their religious beliefs and deprived community or section of society to come into limelight and highlight their plight. The private and public properties are damaged by the protesters which have been prohibited by the Indian legislations though; the matter of fixing liability on different parties is addressed in it. The role played by the different heads and organizers that don't participate directly at ground level are also discussed and their part of liability.

In the case, the two commissions identify various loopholes that exist in the system and the lack of laws that exist to protect the rights of individuals that are impacted during the violent protests and the procedure to reimburse for their damages. The damages caused during the protests to public and private properties are massive and it becomes really difficult to fix the liability so the case provides the solutions to the problem. The various recommendations that were enlisted by the commissions in their reports submitted to the court were cherished by the court and the direction of their application like using videography by the police department, the establishment of commission form case to case to fix liability, etc. was made.

In a pragmatic sense like the laws that existed even the guidelines also had a limited impact at ground level. The shortcoming or lack of impact of the guidelines was experienced as the identification of the protesters remains to be a mammoth challenge. The protests and *bandhs* that are organized by a certain group and their leaders the efforts to trace to the leader remain to be a major challenge. In the cases where the protests aren't called by one particular leader tracing the protesters on the ground-level becomes difficult. The idea of providing compensation to the people that face damages and covering that from the convicts remains to be minuscule. The case opened space for the court to take stringent actions against the accused and the convicts though fixing liability still exist to be a huge issue with minimal impact experienced at ground-level. The recommendations made by the court and commissions haven't

been rectified and formulated into a proper law by the legislature which leads to the existence of similar loopholes. The implementation of the procedure provided by the court for conducting a protest and the laws at ground level by authorities still lacks in most of the instances.

8. IMPORTANT CASES REFERRED

- *Commissioner of Police v. Gordhandas Bhanji [1952]1 SCR135*
- *Comptroller and Auditor General of India v. K S. Jagannathan [1986]2 SCR 17*
- *Common Cause v. Union of India [1996] 1 SCR 89*
- *Delhi Judicial Service Assn. v. State of Gujarat AIR 1991 SC 2150*
- *Delhi Development Authority v. Skipper Construction Co. (P) Ltd. AIR 1996 SC 2005*
- *Dinesh Trivedi, M.P. v. Union of India [1997] 3 SCR 93*
- *D.K. Basu v. State of West Bengal 1997 CriLJ 743*
- *K. Veeraswami (1992)*
- *Lakshmi Kant Pandey v. Union of India [1984] 2 SCR 795*
- *State of W.B. v. Sampat Lal 1985 CriLJ 516*
- *Union Carbide Corporation v. Union of India AIR 1992 SC 248*
- *Vishaka v. State of Rajasthan AIR 1997 SC 3011*
- *Vineet Narain v. Union of India 1998 CriLJ 1208*

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About ProBono India

Founded in October 2016 with an aim to integrate legal aid and awareness initiatives – ProBono India has ventured into different avenues viz. legal aid, legal awareness, legal intervention, legal journalism, legal activism etc. – all with the underlying objective of contributing to the positive development of the society with a strong socio-legal approach.

The activities at ProBono India include an active dissemination of legal information via the medium of its official website, rolling internship programmes for law students to help them develop a holistic personality with a socio-legal approach to their professional personality, interviews with eminent personalities working at the ground-level offering insights into their successful projects, providing a platform to promote and publish the art of research and legal writing, amongst many others.

The team of ProBono India works to promote legal activism as we believe that law and society are two sides of the same coin. Law and society are so inextricably interdependent that to both need to be equally improved in order to lead the world into the desired new order. We at ProBono India believe in a better and brighter tomorrow. We believe not just in being passengers on this drive to change – rather, we aim to drive towards the change.

Vision

Integrate Legal Aid and Legal Awareness Initiatives.

Mission

To provide the legal aid, conduct legal awareness activities, disseminate legal aid, legal awareness activities of various organizations of the world and conduct research on overall aspects of legal aid and legal awareness.

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