



# ST. THOMAS' COLLEGE OF LAW



## LAW FOCUS

**VOL. I. ISSUE NO. I**

**December 2021**

With immense pleasure, I congratulate St. Thomas' College of Law for the launch of its maiden Newsletter, "Law Focus".

The STCL has taken giant leaps, within a short span of time and the launch of this Newsletter will be a new milestone towards its path to excellence. This promising exercise would promote much needed awareness; inculcate legal acumen, and brilliance amongst the STCL students and other readers. May the blessing of the Almighty be always on all institutions of St. Thomas Higher Education Society. I am sure that STCL will soon be at the pinnacle of legal education which not only will produce outstanding advocates, judges, academicians but also good, honest and industrious humans as well.



**Most Rev. Dr. P.C. Singh**  
**Chairman**  
**St. Thomas' Higher Education Society**

**‘Public intolerance’ led to Dabur ad being pulled: Justice D. Y. Chandrachud:**

Just two days ago, all of you would know of the advertisement that a company was required to pull down... it was an advertisement for karwa chauth of a same-sex couples... it had to be withdrawn on the ground of public intolerance,” Justice Chandrachud said.

“Public intolerance” led to pulling down of the Dabur advertisement that showed a lesbian couple celebrating Karwa Chauth, Supreme Court judge DY Chandrachud has said.

He was speaking at an event organised by the National Legal Services Authority on ‘Empowerment of women through legal awareness’ on October 31.

“Just two days ago, all of you would know of the advertisement that a company was required to pull down... it was an advertisement for karwa chauth of a same-sex couple... it had to be withdrawn on the ground of public intolerance,” Justice Chandrachud said.



***Prof. Dr. S.C. Panda***  
***Vice Chairman***  
***St. Thomas' Higher Education Society***

The entire humanity is going through a bitter and unprecedented experience unleashed by COVID - 19 pandemic. It is heartening to hear that STCL is coming with maiden edition of the Law Focus (Newsletter), which will cover various developments in the legal sphere and the achievements of our esteemed college. Law is a dynamic entity and is constantly evolving, which may not always be easy to recapitulate in a Newsletter devoted exclusively to legal education, yet an attempt is always appreciable.

Standing up to the new challenges is always the hallmark of the St. Thomas' Family. STCL is committed towards nurturing values. This Newsletter will surely be a delight for all its readers. Let us support and encourage the STCL team in their new endeavour. I congratulate the faculty members for the launch of this intellectually vibrant and stimulating newsletter.



***Dr. Anuradha Amos***  
***Hony. Director, STCL***  
***Secretary, St. Thomas' Higher Education Society***

I extend my wishes to St. Thomas College of Law on the launch of its first newsletter Law Focus. It is a creative endeavour to bring out an array of academic and extracurricular activities of the College. It serves as a platform to highlight and nurture creativity which is the basis of successful education. Such an effort enables the learner to embark on a journey of proficiency

and passion. STCL has performed tremendously well in academic and non-academic fields in a very short span of time. The newsletter will capture all the activities and events in a nutshell.

I congratulate the entire management, faculty members, students, and the Editorial Board of this newsletter.



**Rev. Shailesh Dennis Lall**  
**Treasurer,**  
**St. Thomas' Higher Education Society**

I am happy to record that we continue to stand with determination, and strength of mind in fulfilling to create capable and ethical human beings. Here at STCL we impart training to the students of law in this very direction. We provide innovative pedagogies to encapsulate the prescribed curriculum along with consistency, thereby focusing on the holistic growth of every student.

I feel extremely happy to see our maiden newsletter Law Focus being published which will record our Institutions' growth by leap and bounds.



**Prof. (Dr.) K. S. Bhati**  
**Advisor, St. Thomas' College of Law**  
**Former Registrar, Indian Law Institute, Deemed University**

I feel extremely happy to share the joy of the advent of the maiden issue of the Law Focus and I take this opportunity to express my best wishes.

The STCL founded in 2015, is an Institution of the Diocese of Delhi, Church of North India, committed to provide



### **Bombay HC's 'Skin to Skin' Judgment: NCPDR Asks Maharashtra Government to File 'Urgent Appeal' Against the Judgment**

The Supreme Court has stayed a controversial Bombay High Court verdict, which acquitted a man found guilty of assault under Protection of Children from Sexual Offences Act (POCSO) on the grounds that he groped his victim over her clothes and there was no 'skin-to-skin' contact between them. Decision will set a very dangerous precedent, says Attorney General K.K. Venugopal. A Bench led by Chief Justice of India Sharad A. Bobde on Wednesday took cognisance instantaneously after Attorney General K.K. Venugopal made a special mention in court, saying the High Court decision would set a "very dangerous precedent" and cripple the intention of POCSO to punish sexual offenders. On January 19, a Single Judge of the Bombay High Court's Nagpur Bench created a furore after it acquitted a man under POCSO Act and held that an act against a minor would amount to groping or sexual assault only if there was "skin-to-skin" contact.



## Indian Ministry of Civil Aviation (“MoCA”) in June 2020 “Draft UAS Rules”<sup>1</sup> the MoCA has now notified the final Unmanned Aircraft System Rules, 2021 “UAS Rules”

This paves the way for the new drone law in India and the earlier Drone regulations of December 2018 (“Earlier Guidelines”) stand superseded. We have discussed below some of the key features of the UAS Rules which will now govern the civil use of Drones in India.

### Applicability

Unlike the Earlier Guidelines whose applicability was limited only to the India territory, the applicability of the UAS Rules has been extended to all UAS registered in India, even when they are operating outside Indian territory. Further, its provisions would also apply to all persons seeking to own or possess, or seeking to engage in importing, exporting, manufacturing, trading, leasing, operating, transferring or maintaining a UAS in India.

professional education, primarily to fulfil the needs of less fortunate and largely ignored segments of society; attaining holistic education, sculpting competent professionals, imbued with the spirit of service to humankind and a quest for excellence, strengthening the moral fabric to foster external and intellectual wellbeing of individuals.

STCL is committed to all-round growth of its students, through the Students’ Societies’ viz. Debating Society, Youth Parliament Society, Moot Court Society and Legal Aid Centre, which inculcate professionalism among the students. Our research programmes, reflect the same value preference. Also, it is our motto to mobilize and channelize the tremendous energy of our young students in a creative direction aiming at the building of creative talent pool having the potential to benefit society.

STCL has a very rich library with latest textbooks, journals, legal souvenirs, magazines, and legal literature which are useful for students. The college has been making constant efforts to produce committed and efficient professionals who would contribute to the growth of an ideal legal system in the Country.

Our faculty members are determined to provide the best legal education through regular class teaching, seminars, webinars, lectures by distinguished experts, national as well as international colloquiums and visits to law Courts and Institutions of constitutional and legal eminence.



**Prof (Dr.) K. S. Bhati**  
**Dean, St. Thomas’ College, Greater Noida**

It is indeed a great initiative that St Thomas ‘College of Law is starting a newsletter showcasing the various aspects of the institution-academic, intellectual and co-curricular. Being a pioneer institution in the Delhi-NCR it will be a great platform for academicians and students to interact on different subjects of societal and national interest. It will help everyone to know more about the institution, its governing principles and ethos.

Gen X has a lot to offer with their innovative approach, their dynamism and fresh and new perspective of looking at familiar aspects. This newsletter will be an eyeopener.

I congratulate the Director, Vice Chair, Advisor, and faculty members of the College for their unstinted support in carrying on this creative journey.

## NATIONAL WEBINAR ON HUMAN RIGHTS DAY



St. Thomas' College of Law (STCL), Gr. Noida, an eminent institution established by Diocese of Delhi, Church on North India, under the auspices of St. Thomas Higher Education Society, organised a National Webinar on the 9th December 2020, on the eve of World Human Rights Day, on the Theme "Stand Up for Human Rights: The Need of Global Solidarity".

The Webinar was inaugurated and presided by the Hon'ble Ms. Justice Indira Banerjee, Judge, Supreme Court of India, who graced the program as a Chief Guest

The Hon'ble Mr. Justice N. Kotiswar Singh, Acting CJ of Gauhati High Court was the Guest of Honour. Other distinguished Speakers were Mr. Pradeep Rai, Sr. Advocate, Advocate Romy Chacko and Ms. Sneha Kalita, Advocate, Supreme Court of India.



**Justice N. Kotiswar Singh  
of Gauhati High Court**

- On the Eve of Human Rights Day, A webinar was organised on the theme, Stand Up for Human Rights: The need of Global Solidarity.
- Orientation Program



**Professor (Dr.) Afzal Wani**



**Prof. (Dr.) K. S. Bhati, Advisor,  
STCL**



**Dr. M. K. Tyagi, Dean, STC**

## ORIENTATION



The Orientation Program was held on 19th January 2021, wherein the students were acquainted with the STCL management, faculty Members and introduced to their field of study and curriculum.

On this occasion, the Hon'ble Mr. Justice Rajesh Tandon, formerly Judge of Allahabad High Court and Chairperson, Uttarakhand Human Rights Commission was the Chief Guest. Prof. (Dr.) M. Afzal Wani, of Guru Gobind Singh Indraprastha University, New Delhi was the Guest of Honour.



## Glimpse of the Event



## FRESHER'S PARTY



St. Thomas' College of Law organised a Fresher's Party on 19th February 2021 for the freshers every year. This was to give a warm welcome to the newcomers. Such events not only build their confidence but also add an element of fun. Ramp walk, colourful decoration, finger licking food were the high lights.

## LEGAL AID CAMP



St. Thomas' College organised a Legal Aid Camp at Mohiyapur, GautamBudh Nagar Greater Noida on 15th February 2021. This was to create awareness amongst the students of Shaheed Bhagat Singh School about law and its related aspects. This was organised as per the requirements of the Legal Education.

It is an initiative of Legal Aid Cell, active since 2017 and is now all set to focus on the areas relating to "Fundamental Rights & Duties, Human Rights along with Right to Healthy Environment" and further to create awareness among people about "Sexual Offences against Women."



*Prof. Dr. S. C. Panda, Vice Chairman  
inaugurating Meraki (Youth Fest)*

## CELEBRATING INTERNATIONAL WOMEN'S DAY



The International Women's Day, which was observed on 8th March 2021, was celebrated virtually at St. Thomas' College Greater Noida. Dr. Justice, Sangita Dhingra Sehgal, former judge of the High Court of Delhi was the Chief Guest, Prof. (Dr.) Manjula Batra former Dean of Jamia Millia Islamia New Delhi was the Guest of Honour and Ms. Sobha Gupta, Advocate Supreme Court was the Guest Speaker on the occasion. The focus was on Gender parity and World Social Order.

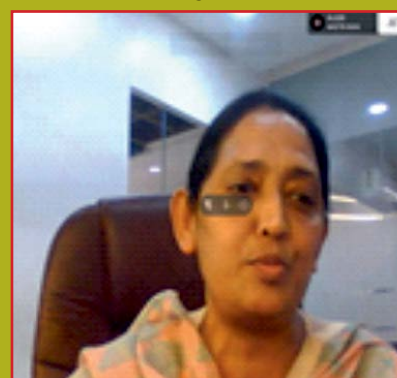
The Chief Guest was welcomed by Prof. (Dr.) K.S. Bhati, Hony. Advisor of the college and the inaugural note was delivered by the Chief Guest Dr. Justice Sangita Dhingra Sehgal presented her views on the importance of this day. Whether in the domestic field or in various other professional fields, women have achieved laurels everywhere. She also discussed women's rights in every aspect of life and spoke about the day to day crimes committed against women. She emphasised that in order to empower women in a country like India, the government should make different policies and implement those. She also advised the girl students to be career conscious and economically independent.



*Dr. Justice Sangita Dhingra Sehgal Former Judge, Delhi High Court (Chief Guest)*



*Prof. (Dr.) Manjula Batra Former Dean, Jamia Millia Islamia, (Guest of Honour)*



*Ms. Sobha Gupta Advocate, Supreme Court of India, (Distinguished Speaker)*



*Our Classroom*

# OUR ACTIVITIES

## JANUARY

B.A.LL.B. 1st Semester and LL.B. 1st Semester's Orientation Program was conducted on 19th January thereafter Physical Classes started.



## FEBRUARY

- A Legal aid camp was organised at Mohiyapur Village Greater Noida by the Students of B.A.LL.B. on 15th Feb 2021.
- Debate was conducted on the Rights of Transgender on 17th Feb 2021.
- Examinations for B.A.LL.B. and LL.B. Senior Batches started on 27th Feb 2021.



## MARCH

- To Celebrate International Women Rights Day A webinar was conducted on the theme Gender Parity and World Social Order.
- Examinations for B.A.LL.B. 1st Semester Started on 22 March 2021.



## FACULTY MEMBERS

- Dr. K. S. Bharti, Advisor
- Dr. B. D. Tiwari, Principal
- Ms. Simmi Pal, Assistant Professor
- Mr. Dhananjay Kumar Mishra, Assistant Professor
- Mr. Adnan Irshad, Assistant Professor
- Dr. Niti Sinha, Assistant Professor
- Mr. Faheem Khan, Assistant Professor
- Ms. Mithlesh, Assistant Professor
- Ms. Shweta Verma, Assistant Professor
- Mr. Satyaveer, Assistant Professor
- Mr. Sailendra Gaudiyal, Assistant Professor





*Inter College General Knowledge Quiz Competition*



*Students felicitated after Intra College Legal Quiz Competition in the Multi - Purpose Hall*



*View of Classrooms*



## FACULTY NEWS

Ms. Simmi Pal presided as a Judge in 1st Virtual National Moot Court Competition 2021 organised by ICFAI Law School, Jaipur.

Mr. Adnan Irshad presided as an Arbitrator in Lloyd Intra College Mediation Competition.

He also presided as a Judge in the Final Round Intra College Moot Court Competition at FIMT, New Delhi.

Mr. Dhananjay Kumar Mishra presided as Judge in 1st: National Ram Jethmalani Memorial Moot Court organised by ANZ LAWZ, New Delhi.

Dr. Niti Sinha organised a workshop on Cyber Law under Nayi Pahal Society wherein she was also a resource person.

Mr. Faheem Khan chaired 4th Anand Swaroop Gupta Memorial National Moot Court Competition organised by Sharda University, Greater Noida, UP.

Ms Simmi Pal, Mr. Dhananjay Kumar Mishra and Mr. Adnan Irshad attended the Faculty Development Programme pertaining to Research Methodology organised by Christ University recently.

# CUSTODIAL VIOLENCE: GRADUAL DEMISE OF RULE OF LAW

Simmi Pal<sup>1\*</sup>

*“Any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an in-road into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with the procedure prescribed by law.”<sup>2</sup>*

- Justice P.N Bhagwati.

## INTRODUCTION

India is built on the bedrock of respect for the law. The sanctity of our democracy hinges upon the conferment of equal rights to all, and each instance of custodial violence is a black mark on the country. The police are considered agents of the State, and the teeth to the law, however, in India; they are frequently acting as an entity unto themselves. The unfettered power vested in the police system builds up a superiority complex that manifests in the police acting as the masters of the sovereign law, instead of its servants. Custodial violence is a problem that has plagued the world for centuries, and is a symptom of a lack of empathy for the lives of individuals, and the prioritisation of displays of power over the rule of law.

## CUSTODY IN LAW

Custody is the apprehension of an individual to be kept under protective care. The Sections 57 and 167 of the Code of Criminal Procedure (CrPC), concern themselves with the procedure to be followed while placing a person under custody, and also differentiates between the types of custody. Under Section 57, a person cannot be detained by the police for longer than 24 hours without an order from the magistrate as under Section 167, CrPC, who determines whether there are sufficient grounds to order a remand of the suspect, either into judicial or police custody.<sup>3</sup> The period of police custody begins when the person is apprehended by the police, and interrogation is allowed only during police custody, and not in judicial custody, unless under exceptional circumstances.

## CUSTODIAL VIOLENCE MANIFESTED

J. Krishna Iyer observed: “Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights”<sup>4</sup> Custodial violence, encompassing all forms of violence including torture, rape, and other physical and mental abuses of power, is usually carried out by the police, inflicted upon a person in their custody. The elements which constitute custodial violence are firstly, the infliction of severe mental or physical pain or suffering with the consent of the state authorities, and secondly for a specific purpose, such as to gain information, to punish, or to intimidate the target. However, the term custodial violence is not explicitly defined under any statute.<sup>5</sup>

<sup>1</sup> Research Scholar at SOL, G.D. Goenka University.

<sup>2</sup> Francis Corali Mullin v Union Territory of Delhi, 1981 AIR 746.

<sup>3</sup> Raj Pal Singh v. State of U.P (1983) Cr.L.J. 109.

<sup>4</sup> Kishore Singh v State of Rajasthan AIR 1981 SC 625.

<sup>5</sup> D.K Basu v. State of West Bengal (1997) 1 SCC 416.

One could turn to the judiciary to understand the meaning of the term. In the case of *D.K Basu v. State of West Bengal*<sup>6</sup>, Justice Dr. A.S Anand provides a definition for custodial torture as, “a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward-flag of humanity must on each such occasion fly half-mast.” This was later on cited in *Mehmood Nayyar Azam v. State of Chandigarh*<sup>7</sup> however this is merely an analysis of custodial torture, which is one of the various types of custodial violence. For obvious reasons, the police doesn’t use the word torture, and instead calls it “sustained interrogation”, “questioning” and “examining”.<sup>8</sup> However, it does not detract from the severity of the problems that plague the justice system.

It is the legitimate right of any police officer to interrogate or arrest any suspect on some credible material, but it is their duty that such an arrest must be in accordance with the law, and that interrogation does not mean inflicting injuries.<sup>9</sup> The Police, through their brutality towards persons in their custody, commit behind closed doors precisely what the tenets of our legal order forbid. Custodial violence represents the worst form of excesses by public servants entrusted with the duty of law enforcement.<sup>10</sup> The perpetration of custodial violence only diminishes the respectability of the law in the eyes of the public, and makes the administration of justice harder. In India, the instances of custodial violence are only a manifestation of the underlying institutional issues that pervade our society and the perception of the role of the police.

The state’s sponsorship of custodial torture is India’s worst kept secret, with politicians, policemen, and bureaucrats terming it as a necessary evil to curb the crime rate. Ingrained mind sets in the public regarding the role of the police as the ultimate protector, leads to the justification, and even glorification of police brutality and custodial violence. There is a significant amount of pressure that is placed to solve high profile cases, which leads to the police resorting to violence to extract information. In such cases, the guilt of the accused is already established by the media and the public, much before the courts pronounce the judgement, which thus allows the police to torture and even murder the accused, and portray a “big brother” image to the public. The lack of comprehensive anti-torture laws, and the immunity afforded to police forces, culminates in a zero accountability policy. Institutional challenges also include the lack of urgency to reform the opaque and corrupt prison system, which imposes barriers for the enforcement of the rights of prisoners. The police forces are an extension of the State, and as such, must carry out their conduct within the realms of the rule of law. In its capacity as an institution which helps punish criminal offenders, it is hypocritical if the police force itself illegally tortures an individual in custody. The democratic nature of India is such that no individual is above the rule of law, especially those who enforce it.

## **JURISPRUDENCE SURROUNDING CUSTODIAL VIOLENCE**

Laws are written primarily for the protection of life and liberty of a person. The Constitution of India ensures the same in Article 21, which is considered an integral part of the fundamental rights in the constitution and holds a certain place of pride.<sup>11</sup> This includes the right to live with dignity as well, and interpretations of constitutional courts provide human rights a priority in the situation of custodial violence.<sup>12</sup> The judiciary has interpreted the article to

<sup>6</sup> Id.

<sup>7</sup> *Mehmood Nayyar Azam v. State of Chandigarh*(2012) 8 SCC 1.

<sup>8</sup> R.S Saini, *Custodial Torture in Law and Practice with Reference to India*, 36 *Journal of the Indian Law Institute* 167, 166-192(1994)

<sup>9</sup> *Bhagwan Singh v. State of Punjab*, (1992) .1 sec 249; JT 1992(3) SC 216

<sup>10</sup> National Human Rights Commission, *Annual Report 2016-17*, 39.

<sup>11</sup> A.G Noorani, *Access to Prisons and Custodial Torture*, *Economic and Political Weekly*, Vol.40, 4497, 4497- 4498 (2005).

<sup>12</sup> K.I Vibhute, *Right to Human Dignity of Convict under ‘Shadow of Death’ and Freedoms ‘Behind the Bars’ In India: A Reflective Perception*, 12 58

increase its scope from mere existence to living with dignity and all that it entails.<sup>13</sup> Article 20(3) as well as Article 22 strengthens this extension to include living with dignity.<sup>14</sup>

The Constitution serves as the basis for the prevention of these crimes, however it is important to look at certain provisions under various statutes that identify custodial crimes. In the Indian Penal Code, provisions such as Section 330 (voluntary hurt in order to extort confession), 331 (voluntary causing grievous hurt to extort confession), 376(2) (custodial rape), 348 (wrongful confinement).<sup>15</sup> Chapter V of the Code of Criminal Procedure lays down the safeguards required to be followed by the police in order to protect the interests of the arrested persons.<sup>16</sup> Confessions gained from interrogation by police are utilised in court, hence the Evidence Act provides for confessions gained through coercion, inducement etc. to be made irrelevant to the proceedings<sup>17</sup>. It is also impossible to use confessions made to a police officer against a person,<sup>18</sup> and allows confessions by the accused only if done in the presence of a Magistrate.<sup>19</sup> The judiciary plays a major role in the provision of justice, as an interpreter of the law. Custodial violence is a manifestation of the imbalance between the liberty of an individual and the power of the state, and the judiciary acts as an equaliser between the two.<sup>20</sup> With the police unwilling to accept responsibility, and officers assisting each other in commission of these crimes, the judiciary takes on the role of ensuring accountability.<sup>21</sup> Although the legislature has failed to provide a standard definition for custodial violence, custodial torture<sup>22</sup> and solitary confinement<sup>23</sup> have been defined by the judiciary. In situations where statutes have failed to provide an understanding of the application of laws, the courts have stepped in.<sup>24</sup> In the case of *D.K Basu v. State of West Bengal*<sup>25</sup> the Supreme Court issued a set of guidelines which were to be applied in case of an arrest of a person. It included the procedure for police officials to follow when detaining a person with respect to a crime, maintenance of an inspection memo, keeping details of personnel conducting investigation, etc.<sup>26</sup> Similarly, in the landmark case of *Joginder Singh v. State of Uttar Pradesh*,<sup>27</sup> the court issued guidelines which included the rights of an arrested person and directed the police to enforce these guidelines to the fullest extent. Courts have also looked into interrogation techniques used by law enforcement in order to obtain information from a subject. The court in the case of *Kedar Nath v. State of Punjab*<sup>28</sup> made clear that violent practices held no place in criminal jurisprudence. The decision in *Public Prosecutor v. Shaikh Ibrahim*<sup>29</sup> also displayed a similar opinion. The judiciary's position is best summarised by Justice Y.V Chandrachud in the case of *Dagdu and Ors. v. State of Maharashtra*<sup>30</sup> where he writes, "The police, with their

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Journal of Indian Law Institute, 21, 15-54 (2016).

<sup>13</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.

<sup>14</sup> Supra note 11.

<sup>15</sup> Adhya Khanna, *The Enshrinement of Custodial Violence in India*, Bar&Bench, July 17, 2020, 10:40 am. <https://www.barandbench.com/apprentice-lawyer/the-enshrinement-of-custodial-violence-in-india><sup>1</sup>.

<sup>16</sup> Supra note 11

<sup>17</sup> The Indian Evidence Act, 1872, § 24.

<sup>18</sup> The Indian Evidence Act, 1872, § 25.

<sup>19</sup> The Indian Evidence Act, 1872, § 26.

<sup>20</sup> Shodhganga, *Judicial Response in the prevention of custodial crimes in India*, available at [https://shodhganga.inflibnet.ac.in/bitstream/10603/128150/17/11\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/128150/17/11_chapter%204.pdf)

<sup>21</sup> Aneesha Sareen, *Gaping holes in probe report*, Chandigarh Tribune, January 20, 2011.

<sup>22</sup> *D.K Basu v. State of West Bengal* (1997) 1 SCC 416.

<sup>23</sup> *Sunil Batra II v. Delhi admin* AIR 1978 SC 1675.

<sup>24</sup> *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

<sup>25</sup> Supra note 8.

<sup>26</sup> Deeksha Saggi, *Custodial Deaths and Role of Judiciary Critical Analysis*, July 25, 2020. <https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis/>

<sup>27</sup> *Joginder Kumar v. State of UP* AIR 1994 SC 1886.

<sup>28</sup> *Kidar Nath v. State of Punjab* 1960 Cr.L.J. 390 (Punjab).

<sup>29</sup> *Public Prosecutor v. Shaikh Ibrahim* AIR 1964 A.P. 548.

<sup>30</sup> *Dagdu v. State of Maharashtra* (1977) 3 SCC 68.

wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must, in the larger interests of justice, be nipped in the bud.”<sup>31</sup>

## RECOMMENDATIONS AND CONCLUSIONS

In order to address the issue of custodial violence, a unilateral effort by a single stakeholder may not be sufficient. The multiple stakeholders involved in this scenario, ranging from the government and its institutions to the police themselves, have to jointly effect change.

### • AMENDMENT TO THE INDIAN EVIDENCE ACT, 1872

The reports of the Law Commission of India have for ages guided lawmakers in the enactment of statutes and in the updation of laws already in place, in order to combat a specific issue.<sup>32</sup> However, the legislature has no obligation to implement its recommendations since it is merely an executive body.<sup>33</sup>

The Law Commission on several occasions has addressed custodial violence, however the government has chosen to overlook many of the recommendations by the commission. Certain recommendations made in the 113th<sup>34</sup> and the 152nd<sup>35</sup> Law Commission Reports seem to be repeated, particularly the recommendations to include an amendment to the Indian Evidence Act, 1872 particularly Section 114.<sup>36</sup> The Amendment shifted the onus of proof in the event of custodial violence to the police officer who had kept the person in custody.

This amendment was recommended in the 113th report keeping in mind a 1985 Supreme Court judgement,<sup>37</sup> wherein the court dealt with the issue of prosecution of police<sup>38</sup> officers in the matter of a custodial death. In this case the person arrested died in six hours and during this time, was in custody of the police officer. This is why the court highlighted the fact that the burden of proof did not lay on the officer but on the victim, even though the victim was in the custody of the police.<sup>37</sup> the court stated in the case.<sup>39</sup>

“The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection.”

Even though the amendment was recommended after the Ram Sagar Case, it was still considered relevant 23 years later as the Law Commission in October 2017 reiterated the insertion of this particular amendment to the Indian Evidence Act.<sup>40</sup> The section ensures that the burden of proof is shifted to the police authorities, bringing about a sense of caution among authorities due to their increased accountability.<sup>41</sup>

<sup>31</sup> Id.

<sup>32</sup> Law Commission of India, official website. <http://www.lawcommissionofindia.nic.in/main.htm#a2>

<sup>33</sup> Diva Rai, *Important pointers you must know about Law Commission of India*, iPleaders, September 9, 2019.

<sup>34</sup> Law Commission of India, *Injuries in Police Custody*, Report no. 113(July 1985).

<sup>35</sup> Law Commission of India, *Custodial Crimes*, Report no. 152(August 1994).

<sup>36</sup> Indian Evidence Act, 1872, § 114.

<sup>37</sup> Indian Evidence Act, 1872, § 114.

<sup>38</sup> Supra note 35, 41.

<sup>39</sup> Supra note 38, ¶20 (per Y.V Chandrachud J.).

<sup>40</sup> Law Commission of India, *Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation*, 40 Report No. 273(October, 2017).

<sup>41</sup> Supra note 40,



## IN-LINE OF SEVEN PILLARS

*Dr. R.S. Yadav*

When and how I fell in love with the law course is difficult to narrate? Sometimes it may be your own interest or decision or sometimes due to motivation by friends and Subject Matter Specialists. Anyhow the decision surprised not only me but my friends and family members as well. During the year 1995 when I was working in Jaipur, my friend and the Dean of the Law Faculty, University of Rajasthan, advised me to do Graduation in Law through evening classes. But I didn't take him seriously saying, what will be the use to me after doing PhD and MBA. Being an eminent educationist and Jurist, he was always in favour that it will pay in life and is also very useful for society. After my retirement from All India Radio and working for about three years as Professor of Mass Communication, I thought now it is time to pursue my hidden interest and that hidden interest was nothing but love for law courses. It can also help me to do social services for the needy in society. Though, it is still a million dollars question. The phrase, 'where there is a will, there is a way' fit well in my case. During the first semester, it was Lukewarm interest but as time passed, it took me deeper and deeper in the subjects. I realized and felt that the course is of immense importance in our daily life.

Teaching the profession is one of the noblest occupations but sooner I realized that Advocacy is not far behind. An Advocate and Legal Expert is the torchbearer of society. He is a privileged member of the community, a gentleman besides being an officer of the court and a great citizen. Here sometimes he plays the role to lead the community, sometimes to guide and sometimes to protect. It will not be good for me to divert the subject and it will be better I should come to the topic. Justice Sir Abbot Parry who happened to be a great Jurist and dramatist of his time beautifully narrated the 'Seven Lamps of Advocacy'. The foundation of these seven pillars starts during the course of study of Law Graduation. What can be the seven pillars or lamps for a student? Are these qualities can be cultivated and fitted during student life? How can the same be nurtured in our students? No doubt a journey of thousand miles begins from the very first step. It is one desire, perspiration and hard work that make the journey smoother and easier. The Abbot principles of an Advocate take its birth while a student is still pursuing his Law Graduation.

**Integrity and Honesty:** These qualities tell a student the truth, who then can tell the same to others. Integrity is an essential part of one personality and honesty in any profession is also very essential. During his course of study, a student should be judged based on the merits and demerits of this attitude. Always be honest with your teachers and Professors. Not only your teachers but your own colleagues, with whom the question of deceiving should never

be in our minds. Even a student pursuing law graduation can't be negligent to his course of studies and the classes. What can a student grasp in one hour period be mesmerized in a full day?

**Courage:** - Courage for a student means his ability to display his own knowledge and personal experience when he gets an opportunity. Opportunities, in the form of seminars, workshops, teaching yourself, debates, symposiums, mock courts etc. This will make him capable to argue, convince others, courage to appreciate friends and teachers. This is the weapon that provides you with a safe cover. Success and failure are parts of the game and courage make a student face the reality.

**Hard work is synonymous to Industry.** There is no short cut for hard work. In our student life, we should invest sufficient time to understand the legal matters, case laws and important decisions. This quality paves the way for knowledge, attitude and skill. Law subject is very vast, and nobody can master law because it is just like an ocean. If we will kill our time in gossips and play, then time would end up killing us. The law demands hard work and hard work needs time and with that, it also needs to prioritize our work, task and the power of delegation.

**Humour and wit** are rare qualities. During our student life in college, we can acquire this quality through the presence of the mind. Concentration, pause and rethink, creates space for humour. Seriousness is good but not at the cost of wit. Wit gives birth to new ideas and thoughts based on logics. Humour at proper time and pause is always liked by teachers as well as by fellow students.

**Master your subject and language:** If we can prove the mastery of our subject, we are on the right path of Eloquence.

It's a rarest of rare quality that can be developed while pursuing a law course. One can find a flood of opportunists in colleges to develop mastery of language, and body chemistry through the right pause and phrases. This ability makes a man perfect to influence the people towards his own views and thus it gives a psychological edge to the students over his colleagues.

**Judgement that is Logical Thinking:** Through cross-questioning with your Professors, a student can develop a rare quality of proper judgement. He needs to understand the feelings of the other person and apprehend their issues. This trait will give a different treatment to a student personality. This is ability when you can think in any circumstances and difficult situations.

**Co-ordination and that is Collaboration:** A team spirit that is mastered in college life is of immense importance. This Capability and ability show own talent at different platforms and work environment. Try to settle the ego to achieve the maximum outcome. Your friendship with your fellow students is going to play an important role. If you have a stand to achieve the best grade in examinations, others too have the same. Respect your teachers, friends and particularly the girl students. This is a quality that never started and takes the longest to finish.



# CASE COMMENT

*Adnan Irshad'*

## *Satish vs. State of Maharashtra*

[Decided on January 19, 2021 by the High Court of Judicature at Bombay, Nagpur Bench in Criminal Appeal No. 161 of 2020]

### **INTRODUCTION**

The Bombay High Court has acquitted a man of sexual assault charges under the Prevention of Children from Sexual Offences (POCSO) Act for groping a child, and instead convicted him under the Indian Penal Code (IPC) for a lesser offence.

Justice Pushpa V Ganediwala said the allegation was not heinous enough for greater punishment prescribed under the law. The ruling, which drew criticism for its restricted interpretation of the offence, spotlights the concept of mandatory minimum sentencing in legislation, including POCSO. The judgement has created alarm amongst different stake holders Child Right groups as well as the general masses.

### **BACKGROUND OF THE CASE**

The Nagpur Bench of the Bombay High Court reversed the decision of a session court which had convicted 39-year-old Bandu Ragde under Section 8 of the POCSO Act and sentenced him to three years in jail. Section 8 prescribes the punishment for the offence of sexual assault defined in Section 7 of the Act.

The convict was accused of luring the 12-year-old prosecutrix to his house on the pretext of giving her a guava and pressing her breast and attempting to remove her salwar.

The High Court upheld the conviction under sections that carry a lesser minimum sentence of one year under the Indian Penal Code, including outraging the modesty of a woman.

### **The prosecution Story, in brief**

On 14.12.2016, the informant (mother of the prosecutrix) (PW-1) lodged a report at police station Gittikhadan, Nagpur, stating therein that the appellant took her daughter (prosecutrix) aged about 12 years, on the pretext of giving her guava, in his house and pressed her breast and attempted to remove her salwar. At that point of time, the informant reached the spot and rescued her daughter. Immediately, she lodged First Information Report. On the basis of the said FIR, crime came to be registered against the appellant / accused vide Crime No. 405 of 2016 (Exh. 1) for the offence punishable under Sections 354, 363 and 342 of the IPC and under Section 8 of the POCSO Act.

### **JUDGEMENT**

The court was of the following considerate view that pressing of breasts amounts to sexual harassment under section 354 IPC and shall be dealt accordingly and the Provisions of section 8, POSCO ACT is uncalled for because it negates the doctrine of Just deserts or proportionate sentencing. In view of the above discussion, this Court holds that the appellant is acquitted under Section 8 of the POCSO Act and convicted under minor offence u/s 354 of IPC and sentenced

him to undergo R.I. for one year and to pay fine of Rs.500/-, in default of fine to suffer R.I. for one month.

### **ANALYSIS of Various Issues**

The court reasoned that since the offence under POCSO carried a higher punishment, a conviction would require a higher standard of proof, and allegations that were more serious.

Section 7 of the Act says “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act with sexual intent...”

The court said that since the convict groped the prosecutrix over her clothes, this indirect contact would not constitute sexual assault.

#### **Issue I: Is such a reading of the law unusual?**

Such restrictive reading is not uncommon, especially in POCSO cases. In *State v Bijender* (2014), a Delhi court acquitted a man under the POCSO Act and instead convicted him of IPC offences. A seven-year-old girl had testified that the convict took her into the bathroom by force, slapped her, and tore her jeans. The Special Court held that the act of tearing the clothes of the victim did not constitute physical contact even if sexual intent was present.

This was despite the recognition of “any other act with sexual intent which involves physical contact without penetration” to be sexual assault under Section 7 of POCSO. The judge reasoned that since the accused did not touch the vagina, anus or breasts of the child, the latter part of the section could not be invoked. The court restrictively interpreted the lack of physical contact with sexual organs to mean that there was no physical contact.

Section 8 of the POCSO Act carries a sentence of rigorous imprisonment of three to five years. However, imposing the minimum sentence is mandatory. Where a statute has prescribed a minimum sentence, courts do not have the discretion to pass lighter sentences irrespective of any specific circumstances that the case or the convict might present.

Minimum sentences have been prescribed for all sexual offences under the POCSO Act barring the offence of sexual harassment. In a 2001 ruling, the Supreme Court held that where the mandate of the law is clear and unambiguous, the court has no option but to pass the sentence upon conviction as provided under the statute. “The mitigating circumstances in a case, if established, would authorise the court to pass such sentence of imprisonment or fine which may be deemed to be reasonable but not less than the minimum prescribed under an enactment,” the court said in *State of J&K v Vinay Nanda*.

#### **Issue II: Is there a need of mandatory minimum Sentencing?**

A mandatory sentence is prescribed to underline the seriousness of the offence and is often claimed to act as a deterrent to crime. In 2013, criminal law reforms introduced in the aftermath of the 2012 Delhi gang rape prescribed mandatory minimum sentences for criminal use of force and outraging the modesty of a woman, among other charges.

Mandatory minimum sentences are also prescribed in some cases to remove the scope for arbitrariness by judges using their discretion. For example, the punishment for a crime under IPC Section 124A (Sedition) is “imprisonment for life, to which fine may be added, or ...imprisonment which may extend to three years, to which fine may be added, or...fine”, which leaves room for vast discretion with judges. There are certain drawbacks pertaining to mandatory minimum sentencing that is pertinent to discuss.

## Criticism of Minimum Mandatory Sentencing

Studies have shown that mandatory sentencing in laws lead to fewer convictions, because when judges perceive that the punishment for the offence is harsh, they might prefer to acquit the accused instead. After conviction, a separate hearing is conducted to award sentence, in which aspects such as the accused being a first-time offender with potential for reformation or being the sole breadwinner of the family, or the accused's age and social background, or the seriousness of the offence, etc., are considered. The absence of the opportunity to consider such factors, and instead prescribe a mandatory sentence, pushes judges in some cases towards acquitting the accused.

A 2016 report on the 'Study on the Working of Special Courts under the POCSO Act in Delhi' by the Centre for Child Law at the National Law School of India University, Bengaluru, has highlighted the reluctance of courts in convicting under sections that carry a mandatory minimum sentence.

The study noted: "Some within the legal fraternity were of the view that minimum sentences under the POCSO Act are very high. As an example, one respondent shared that the minimum punishment for sexual assault and aggravated sexual assault is high. "Should a 21-year-old be imprisoned for three years for forcibly kissing a girl? He will become a criminal in jail. No point in packing our jail with adolescents." Another respondent was of the view that probation should be used in cases of statutory rape where the accused is between 18-22 years. One respondent also felt that the Act should provide sentencing discretion to judges."

In India, Mr. Mrinal Satish, professor of Law at NLSIU, argued that when mandatory sentencing regimes are put in place to remove judicial discretion, the discretion merely shifts within the system to the police, but is not removed. It surely restricts the judicial domain.

Legal experts have argued that mandatory sentences are counterproductive to the aim of reducing crime or acting as a deterrent. Instead of harsher punishment, they recommend judicial reform that makes the sentencing process more accountable and transparent. This would include holding transparent proceedings for sentencing, recording specific reasons for punishment in rulings, etc.

## CONCLUSION

The Appellant was convicted under Provisions of IPC and the learned Judge in her considered opinion was of the view that mandatory minimum sentencing as prescribed by the POSCO Act was not justifiable because it was harsh and disproportionate compared to the gravity of the offence.

It is to be appreciated that mandatory minimum sentencing sometimes creates challenges but on the other hand it is also very useful in many instances of delivering justice moreover as it is obvious in the corpus of the judgement that harassment of a minor is not taken as seriously as it should be taken. The groping of minors Breasts on the pretext of giving her something to eat cannot be given such a liberal interpretation both as a matter of policy as well as to create deterrence against child abuse and paedophilia. The judgement in the humble opinion of the writer could have been more nuanced and balanced.

# AFTERMATH OF FAKE ENCOUNTER

*Dhananjay Kumar Mishra*<sup>\*1</sup>

*"An eye for an eye makes the whole world blind."*

- Mahatma Gandhi

Wearing confession play card and seeking forgiveness Umakant, Vikas Dubey's aide relinquished at the police station. He explained the rationale behind his actions was his crime guilt. His family served as his chaperones and pleaded for absolution. However, the police claimed that their frequent raids were the reason for the repercussion<sup>2</sup>. This is the fear which has been created in the mind of criminals due to the increasing number of extra-judicial killing. Extra-judicial killing is the killing of a person by governmental or individual authorities without the sanction of any legal or judicial proceedings. The extra-judicial killing has been made a fundamental piece of the law-authorisation arrangement of India for a long time. The progressing pattern of extra-judicial killing has hardly any extraordinary techniques for which slaughtering criminal suspects with point-blank shots and publicising accounts of supposed "crossfire" or "experience" with hardly any different equivalent words like "weapon fight," "in the line of fire" etcetera. The legislature legitimises the killings by utilising the expression "crossfire," which it alludes to as gunfights between any supposed criminal gathering and "solidified" lawbreakers, what's more, the police. These killings are restricted by the Constitution of India and national legislation, as well as by various foreign instruments. The extra-judicial killing has severe effects on people living today and in the near future.

## Acceptance of Violence in Society

### What is violence?

As per World Health Organization, 1996 "The intentional use of physical force or power, threatened or actual, against oneself, another person, or a group or community, that either result in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation."<sup>3</sup> Fake encounters have a strong influence on the moulding of human behaviour, including the use of violence. Standards are created to protect society from police brutality, but if the standards are not followed, they can also motivate and promote the use of violence. It is not about the killing that occurs, the hostile engagements, the way [people] are celebrating, and they are encouraged by the police brutality. Celebration among people could be seen in many extra-judicial cases, for example - Hyderabad Encounter that happened on 6 December 2019. In which four men were detained for reportedly raping and murdering the woman and then burning her body; but after that Telangana Police shot down the four people suspected of raping and killing a young woman in Hyderabad during an alleged attempt to escape. As a result, the celebration begins among people as well as hundreds of people gathering to applaud the police.<sup>4</sup> Types of violence involved?

- Self-directed violence refers to violence in which the perpetrator and the victim are the same individual and is subdivided into self-abuse and suicide<sup>5</sup>. When the fake encounter is executed, and an innocent person is killed. The mental trauma through which the victim's family go through is very much. There stressful incidents or situations placed victims loved ones at increased risk of being harming themselves.

<sup>1</sup> Assistant Professor of Law at St. Thomas' College of Law, Greater Noida and Research Scholar at G D Goenka University.

<sup>2</sup> PTL, "Bikru ambush accused surrenders" The Pioneer, Aug 09, 2020

<sup>3</sup> "Violence prevention" <https://www.who.int/violenceprevention/approach/definition/en/>

<sup>4</sup> Editorial, "All 4 accused in Hyderabad rape-murder case killed in encounter" The Economic Time, Dec 06, 2019

<sup>5</sup> "Self-directed violence" [https://www.who.int/violence\\_injury\\_prevention/violence/suicide/en/](https://www.who.int/violence_injury_prevention/violence/suicide/en/)

- Collective violence refers to violence committed by larger groups of individuals and can be subdivided into social, political, and economic violence.<sup>6</sup> Collective violence could be seen in-country as people are encouraged by the extra-judicial killing and the slow pace of justice in our country. Cases of mob lynching could be seen increasing at the rapid pace, in which innocent people are killed by aggression and violence of people.

## Fear in criminal

Since many suspects have been killed or arrested in encounters, others have started surrendering before police, to escape encounters, fear of encounter could be seen in the criminal with an increasing number of surrender happening in the country. A few days back, Vikas Dubey's aide surrendered himself to police wearing play card because of the trepidation of encounter happening in the society<sup>7</sup>. This type of incident is not the first such incident either, a criminal, Nizam, with a reward of Rs 25,000 on his head surrendered before the Bulandshahr Police yesterday out of fear of police. Nizam was carrying a placard around his neck while surrendering, which said, "I am a criminal, please arrest me. I will not commit any crimes in the future."<sup>8</sup> Similarly, gangster Lawrence Bishnoi plea, to be handcuffed while being produced in court. Bishnoi also stated that he might be killed in a fake encounter while being taken to trial by the police, alleging that he had attempted to run away from custody.<sup>9</sup> Even hardened criminals in India are making the job of the police and government of the state easy by surrendering themselves. Goons and perpetrators of numerous crimes in the state are fearful of the administration's crackdown on criminals and stick to the most straightforward thing they can do to escape police encounter clutches. Furthermore, the most natural thing is that they surrender to the police fear of getting killed in police encounter instilled in the hearts of criminals.

## Corruption in Police

### What is corruption?

"Dishonest or illegal behaviour especially by powerful people (such as government officials or police officers)"<sup>10</sup>

Police as a law enforcement organisation is an essential body of the social regulation that operated at all ages in some shape or form in all society. Police enforcement is an essential part of society today. Without an active, genuine, and truthful police force a community in the present set-up cannot survive and develop. The negative things it inherited from the old police regime include corruption among today's policemen. In the police system, corruption exists in one way or the other. Besides, corruption present from the old regime, but encounters have shown an impact on increasing corruption in the police. Police officers could be seen demanding money from the criminals for not killing them in a fake encounter.

Last year, 28-year-old Pushpendra Yadav, who was killed in an alleged police encounter, His family alleged that the inspector, a station house officer (SHO), killed Pushpendra when he was asked to return Rs 1 lakh in exchange for the release of the man's truck seized last week for overloading. Pushpendra's family stated that "On Saturday night my son left the house at about 9 pm after getting an inspector's call. He told his mother that he was called by the SHO to talk about the truck's sale, and he will meet with him. He demanded an amount of Rs 1.50 lakh, and he had already paid Rs 1 lakh to the SHO. Nonetheless, he started saying that a challan was released on the truck after taking Rs 1 lakh, and he cannot release it. There was some argument between the SHO and Pushpendra over the money return if the truck could not be released, and SHO shot him"<sup>11</sup>. Which later was termed as an encounter? As the police wear a

<sup>6</sup> "Collective violence" [https://www.who.int/violence\\_injury\\_prevention/violence/collective/en/](https://www.who.int/violence_injury_prevention/violence/collective/en/)

<sup>7</sup> PTI, "Wearing confession placard and seeking forgiveness, another accused of Kanpur ambush surrenders before police" The New Indian Express, Aug 08,2020

<sup>8</sup> PTI, "Wearing confession placard and seeking forgiveness, another accused of Kanpur ambush surrenders before police" The New Indian Express, Aug 08,2020

<sup>9</sup> Jagpreet Singh Sandhu, " Court dismisses gangster Bishnoi's plea to be handcuffed while being produced in court" The Indian Express, July 22, 2020

<sup>10</sup> "Corruption." Merriam-Webster.com. Merriam-Webster, 2020.Web. 15 Aug 2020

<sup>11</sup> Avaneesh Mishra, "Jhansi 'encounter': Family refuses cremation, seeks FIR" The Indian Express, October 8, 2019

protective cape and many of their duties. There is a propensity to myth or sensationalise lapses like corruption, shrouded in secrecy. Police image so produced in people's minds remains weak and sullied.

### **Disobedience of Laws**

There are no shortcuts to solving the problem of crimes and allowing police to kill those it accuses only makes us more unsafe simply. Encounter is right when it is done on the pretext of self-defence, national security at stake or when it involves utilitarian principle but unethical. The ethical issues that arise from such killings are as follows:

- Right to life "No person shall be deprived of his life and personal liberty except according to the procedure established by law." Is disregarded.
- Fake encounter contradicts Article 22(3) in The Constitution of India 1949 "any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention." Whereby the state oversteps its limit.
- Article 38 of the DPSP is violated, whereby it is the state's responsibility of maintaining social order for its subjects.
- The rule of law is violated as fake encounters makes the police superior to the judicial system and due bypass process of law, which requires that every alternative should be provided to the accused.

### **Conclusion and Remedies**

"Injustice anywhere is a threat to justice everywhere."

- End impunity of police with the goal that the ones dependable are sentenced. The delicate connection between the state and public is, to a great extent, subject to the significant regard of human rights. The Supreme Court's 2006 request on setting a police complaints authority will offer an opportunity to each resident to record a grievance against police officers for any demonstration of unfortunate behaviour. Aside from a couple of states, this request has been gathering dust in organisers.
- There is a requirement for fundamental changes like revamping the primary training programs for the police officials, concentrating on human rights, destroying the built up attitude of separation prompting loathe violations inside the jails and building a standard procedure of investigation to guarantee that law and wellbeing of people are complied with.
- Each nation and each state merits a police power that regards human rights and does not play with the lives of its public. In public do not have a sense of security around the police, what is the purpose of having them? The police ought to perceive and regard the impediments of their forces also, capacities. They ought not to usurp or even appear to usurp the capacities of the legal executive and sit in judgment on cases to retaliate for people and rebuff the blameworthy.

The developments in human rights are a significant predictor of a nation's wellbeing and its institutions. The more legal abuses, the more the 'illnesses.' India has always suffered from 'ill health' when it comes to human rights problems, and this government as well. Several local and international human rights organisations have voiced serious concerns and complaints about several human rights problems in India including arbitrary mass arrests, systematic violence and widespread extrajudicial killings. Law enforcement authorities should be more vigilant about our country's human rights and other protection of rights. To keep our general public safe and crime-free, it is generally essential to stop any criminal and freak exercises. It likewise needs to guarantee that there will be no infringement of human rights by anybody so all can make the most of their privileges openly.

# LEGISLATIVE TREND

*Dr. Niti Sinha\**

## **The Farm Bill**

Rajya Sabha has passed two bills related to Agriculture Sector Reforms, namely:

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020.

## **Key Points**

These forms are expected to accelerate growth in the sector through private sector investment in building infrastructure and supply chains for farm produce in national and global markets. They are intended to help small farmers who don't have means to either bargain for their produce to get a better price or invest in technology to improve the productivity of farms. The legislation on contract farming will allow farmers to enter into a contract with agri-business firms or large retailers on pre-agreed prices of their produce. However, for the middlemen and the state, it is not really good news as they will have their commission and mandi taxes. Neither of the bills affect the Minimum Support Price in any way as the MSP is an administrative decision not a law.

## **The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020**

### **Key features**

It seeks to provide for the creation of an ecosystem where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers' produce. The Bill also proposes an electronic trading in transaction platform for ensuring as seamless trade electronically. The farmers will not be charged any cess or levy for sale of their produce under this Act. Further there will be a separate dispute resolution mechanism for the farmers.

### **Benefits**

**Selling option:** The bill gives the long sought freedom to the farmer to sell their produce via more

than one channel of APMCs. However, APMC will still be available as a choice to sell their products. **Promote trade:** It will also promote barrier-free inter-state and intra-state trade and commerce outside the physical premises of markets not if i.e., under State Agricultural Produce Marketing legislations. **Better price:** It will also help farmers of regions with surplus produce to get better prices and consumers of regions with shortages, lower prices. It will open more choices for the farmer, reduce marketing costs for the farmers and help them in getting better prices.

**One India, One Agriculture Market:** The Bill basically aims at creating additional trading opportunities outside the APMC market yards to help farmers get remunerative prices due to additional competition. This will supplement the existing MSP procurement system which is

\* Dr. Niti Sinha (Assistant Professor) St. Thomas' College of Law.

providing stable income to farmers. It will certainly pave the way for creating One India, One Agriculture Market and will lay the foundation for ensuring golden harvests for our hardworking farmers.

### **Key Features**

It seeks to provide for a national frame work on farming agreements that protects and empowers farmers to engage with agri-business firms, processors, wholesalers, exporters or are retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner and for matters connected there with or incidental there to.

### **Benefits**

Level playing field: The new legislation will empower farmers for engaging with processors, Wholesalers, aggregators, wholesalers, large retailers, exporters etc. on a level playing field Without any fear of exploitation.

Transfer the risk: It will transfer the risk of market unpredictability from the farmer to the sponsor and also enable the farmer access modern technology and better inputs. Attract private sector: This legislation will act as a catalyst to attract private sector investment for building supply chains for supply of Indian farm produce to national and global markets, and in agricultural infrastructure.

Published by: Prof. Dr. K.S. Bhati, Advisor

Email: [stcl.jerwood@gmail.com](mailto:stcl.jerwood@gmail.com)

Plot No. 33A/2, Knowledge Park III, Greater Noida-201308, Uttar Pradesh

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