

Seminar to Assess Working of Human Rights Courts in India



RAPPORTEUR FOR

SEMINAR TO ASSESS WORKING OF HUMAN RIGHTS COURTS IN INDIA

10TH March, 2016- 13th March, 2016

SUBMITTED TO:

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Introduction-

National judicial Academy organised a seminar to Assess Working of Human Rights Courts in India from 10th March, 2016 to 13th March, 2016. District and Session Judges from across the states of India participated in the seminar. The four day workshop was spilt into 4 sessions each day and the last day had three sessions.

Prof MK Ramesh, Prof VS Elizabeth, Ms. Suneetha Eluri, Prof MC Sharma, Hon'ble Justice Manmohan Sarin, Hon'ble Justice S. Muralidhar, Adv. Priya Hingorani, Adv. S. Martin participated as Resource person in all these various session held for four days and presented and guided participants on various topics in the sessions.

Hon'ble Justice G. M. Akbar Ali and Hon'ble Justice Manmohan Sarin chaired various sessions for four days.

Programme Coordinator-

Ms. Nitika Jain (Law Associate), National Judicial Academy, Bhopal

Day 1

Session 1

Cases dealt by Human Rights Court under Protection of Human Rights Act, 1993 till date

Hon'ble Justice G. M. Akbar Ali

The session was started by Dr. (Prof) Geeta Oberoi who gave her introduction and also asked the participants to introduce themselves. Then the session was addressed by Hon'ble Justice G. M. Akbar Ali who started of the session by showing a power point presentation on Human Rights Act, 1993 and discussed the definition of Human rights under section 2(d) of this Act which defines Human rights as-

Section 2(d) - "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. He also said that human rights are inherent on all human beings irrespective of nationality, place of residence, sex, national or ethnic origin. The participants also participated in the discussion and mentioned that many of the District judges are designated as Human Rights Courts but then none of the cases on violation of human rights have come till date to them. In his presentation he talked about various rights which come under or are regarded as Human rights as well as what are the offences against human beings that is to deny even the basic rights to human beings and to treat them that they are even less than human and undeserving of respect and dignity. Then he showed "Instances on Human Rights Violations" which are as under-

- Case dealt in India
- Custodial death fake encounters
- Cases related to women and children
- Police excesses
- Atrocities on Minority and Dalit
- Bonded labour
- Armed forces/ Para military

Then he described briefly what Bonded Labour is and mentioned about debt bondage in India-Debt bondage in India was legally abolished in 1976 but it remains prevalent, with weak enforcement of the law by governments. He also presented a slide on “Crimes related to Women and Children” which are-

- Child marriage in the name of customs, despite of legal prohibition
- Child labour Sexual assault on children as well as women
- Rape
- Immoral trafficking
- Female foeticide and infanticide

Then he mentioned about Human Rights Courts whereby he stated that Human Rights Courts were created for the purpose of providing speedy trial of offences arising out of violation of Human Rights. The object of this section is to provide speedy justice with regards to offence against inhumane behavior. He also said that unfortunately till date very few states have set up a human rights court. There are arrays of judgements pronounced in many states instructing to set up such court. To state a few but those remain as mere pronouncement. Then he presented a slide on “offences arising out of violation of human rights” where he mentioned that-

- The section states ‘offence arising out of human rights...’
- The draftsmen have failed to mention the ambit of this phrase. The following has to be considered.
- What constitute such offense?
- Who can be convicted under the section?
- What could be the orders?
- “Each session court to try the offence...”
- Who shall take cognizance of such offence is not mentioned.

He also talked about Section 193 of CrPC which clearly states that, “Unless specifically provided the Court of Session shall not take cognizance of an offence as Court of original jurisdiction.” And, “the dilemma of committal of an offence stands as a practical difficulty to commence the proceeding.” He also gave an example in the form of a case law, **K.Dhamodharan vs R.V.Narbabi**, decided by Madras High Court on 10th November, 2006, where,

- The respondent/complainant preferred a complaint before the Court of the Chief Judicial Magistrate, Kumbakonam, which was formerly the Human Rights Court, under Section 2(d) of the Protection of Human Rights Act r/w Section 200 of the Code of Criminal Procedure.
- The sum and substance of the complaint is that the petitioner/accused herein, who was serving as Station House Officer at Thanjavur Town East Police Station, entertained a false complaint given by one Ashok Kumar in connection with the introduction of one Sethu Ramachandran by the complainant to the said Ashok Kumar and in the guise of such a complaint preferred by Ashok Kumar, the complainant was forcibly taken by the accused to the police station on 19.04.2003.
- As the committal proceedings are in progress, the present petition has been filed by the accused seeking quashment of the whole proceedings in P.R.C.No.38 of 2005 on the file of the learned Judicial Magistrate No.1, Thanjavur.
- The learned counsel for the petitioner/accused would vehemently submit that any complaint regarding the violation of human rights shall be submitted only before the State Commission constituted under the Protection of Human Rights Act, 1993. No private complaint would lie as against the public servant.
- The private complaint filed by the complainant has no sanction of law. He would further contend that the entire gamut of facts and circumstances spoken to by the complainant in the private complaint does not reflect violation of any human rights.
- On that score also the complainant cannot prosecute the Inspector of Police, who was just performed his duty on receipt of complaint against the complainant. Therefore, the whole proceedings which culminated in P.R.C.No.38 of 2005 on the file of the learned Judicial Magistrate No.1, Thanjavur may be quashed, he would lastly submit.

Justice Ali also asked questions from the participants regarding what is the object of Human rights Courts? Whether we have to punish the wrongdoer or compensate the victim. The participants also participated with great enthusiasm and kept their point of view as, this section 2(d) defined under 1993 Act are not exclusively used. There must be specification of crimes committed. The offences under Human rights protection is not defined. How to differentiate that which offence should go to Human rights court and which should not.

A question was also raised by the Chairperson that, are all the custodial death, investigations dealt and brought before the courts? To which it was answered that human rights court should be a special court and not to designate session's court or any other court as a human right's court. Whenever there is a matter of custodial death then there must be an authority to choose that this case to be dealt by Magistrate. The term offences has not been categorized in the Human Rights Act of 1993.

Also, it was concluded that under section 30 of the Act only special court can try the offence.

Session-2

Interpretation of Section 30 of Human Rights Act

Prof MK Ramesh

Chair: Hon'ble Justice G. M. Akbar Ali

The second session commenced with the distribution of a training response performa form which included all the questions regarding taking of cognizance, Problems faced by the Human rights courts, Section 30, etc., which was to be filled by the participants. Then the programme was carried forward by Professor MK Ramesh. Professor Ramesh described about the first session that he found first session as inspirational and thought provoking. He with the interpretation of section 30 of Human Rights Act and the role of human rights court under 1993 Act. He said that more than any other wing of the government judiciary is the most creative wing we have the most productive wing that we possess. The issues are very simple and the judges in our judicial system are quite capable and competent enough to handle these situations and there are difficulties in the entire law making process and the administrative process but you cannot expect the Law makers that they will put the law containing every detail of it. It's the duty of judges to interpret it in proper manner and to make innovations in law. The judges have the problem of accessing justice, in making the concerned answer and accountable. He revisited the questions which was posed by the participants. He also posed question that if the higher judiciary protects all rights guaranteed under the constitution then why there is a separate court for human right jurisdiction? He suggested that having a Special Court may be perfectly in order with very well laid down procedure and orders, with clear description so that there is no confusion in taking cognizance and for all this we really need to look into context of this Act. Also the Preamble of the 1993 Act, says that, "An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto."

The law makers say that every law we have made is under the Human Rights Construction.

Section 30 of the Human rights Act says that, For the purpose of providing speedy trial of offence arising out of violation of human rights, the State Government may, with the concurrence of the

Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences. Provided that nothing in this section shall apply if

(a) A Court of Session is already specified as a special court; or

(b) A special court is already constituted, for such offences under any other law for the time being in force.

Further, he said that, section 30 makes it very clear that the reason why we have made this court and therefore he suggested that judges should be very clear in making the decision of the case. It should ensure speedy trial in offences arising from violation of human rights. The state has a duty to protect all our rights. The constitution empowers this on the state. He also said that this is a practically impossible law but can we bring life to this law and make it possible. The participant participated by saying that while trying the Criminal cases we should ensure speedy trials of criminal cases.

Professor Ramesh amplified the views of the participant and said that the law maker who made the laws he did not go with the required preparations of this law which was required to be done by them. He suggested the requirements that the government can entrust the speeding of the process of trials to the already existing Sessions Court.

The participants also expressed their views on section 30 of Human Rights Courts and said that being the District and Session Judge we are trying the criminal cases. Being the Human rights court we should ensure that there should be speedy trial of the case.

Professor MK Sharma concluded the programme by saying that it is more of a framework law. The form and substance we have to take out from it and we have to look into the working of various State Human Rights Commission and National Human Rights Commission.

Session 3

Rights of women against sexual harassment at workplace – Human Rights of women in danger

Prof. VS Elizabeth

Ms. Suneetha Eluri

Chair: Hon'ble Justice G. M. Akbar Ali

The third session commenced after tea break and it was taken over by Ms. Suneetha Eluri and Prof. VS Elizabeth. Ms. Suneetha Eluri started with her presentation on "Prevention of Sexual Harassment at Workplace to Woman." She posed some questions as to why we need to talk about sexual harassment. She said that sexual harassment is prevalent all over the world not only in India even the most developed state's statistics show that women are being subjected to sexual harassment at workplace. She further presented the statistics of the survey conducted in India where it was seen that 400 women were interviewed in India and among them 66 of them said yes that they have faced sexual harassment at workplace and out of these 66 women 90 percent of them faced physical harassment and rest 10 percent of them were harassed in some or the other way. There was a presentation on- Understanding and Assessing Sexual Harassment where it was discussed about Sexual Harassment at workplace: Prevention and Prohibition Act, 1993 and it was shown that the women of almost all the countries face sexual harassment and the statistics of various countries were shown such as- Australian Human Rights Commission, 2012: One among 5, belong to 15 and above subjected to Sexual harassment, In European countries 40 to 50 experience Sexual Harassment, In US 83% of girls aged 12 to 16 experience Sexual Harassment in public schools. Then it was discussed and shown that what is the definition of sexual harassment-

- Sexual Harassment is:
 - not friendly and mutual behavior
 - unwelcome and unwanted conduct
- Sexual Harassment is:
 - not about romance & love
 - about power

- Silence or lack of complaints does not mean sexual harassment does not occur.

Then it was shown that there are different forms of Sexual harassment which are categorized as

➤ Verbal

- gender based insults or
- sexist remarks
- Sexual or gender-based jokes or teasing
- Innuendos and taunts
- Unwelcome sexual overtone
- Requesting sexual favours, etc.

➤ Non- Verbal

- Unwelcome hugging, sexual touching or kissing
- Forcible physical touch or molestation
- Standing too close to or brushing up against another person, leaning over, invading a person's space
- Patting, stroking, grabbing or pinching
- Blocking someone's path with the purpose of making a sexual advance

➤ Visual

- Presence of sexual visual material such as posters, cartoons, drawings calendars, pinups, pictures, computer programmes of a sexual nature
- Written material that is sexual in nature, such
- as notes, SMS, E-mail containing sexual comments
- Knick-knacks and other objects of a sexual nature

➤ Non- Verbal

- Staring
- Sizing up a person's body (looking up and
- down)
- Derogatory gestures of a sexual nature
- Sexually suggestive looks
- Facial expressions of a sexual nature; winking, licking lips

- Stalking.

Then the effects of Sexual harassment on women were discussed that what are the effects which a woman suffers after being subjected to sexual harassment? It was seen that the impact of Sexual harassment is different for different women and it is more prevalent among vulnerable women. Even it was seen that sexual harassment hampers the society. The transportation market went down after the Nirbhaya Case as it created fear among the people to travel in buses and trains or any other public transport.

- The sexual Harassment at workplace: Prevention, Prohibition and Redressal Act, 2013 contains 8 chapters and 14 rules, extends to whole of India and Extends to all women including women who are not part of that particular workplace (No woman shall be subject to sexual harassment at workplace)

The key provisions of this Act was also discussed such as,

1. Constitution of ICC and LCC
2. Monetary contribution
3. Interim protection orders
4. Conciliation Confidentiality
5. Prosecution of false and malicious complaints
6. Appeal authorities

Then the presentation contained and covered varied fields related to this act such as Powers of ICC and LCC, Responsibility of the Employers, constitution and Composition of ICC, Reports of the Committees to employers, Other responsibility of the employers, Local complaint committees, Nature of Punishments, conciliation, Interim Protection Orders, Monetary contribution, Confidentiality clauses, Appellate authorities, Time frames.

The session was taken over by Prof. VS Elizabeth who discussed about Rights of Women against Sexual Harassment at workplace and talked about section 3(1) and (2) of 2013 Act which says that-

1. No woman shall be subjected to sexual harassment at any workplace

2. The following circumstances, among others, if it occurs or is present in relation to or connected with any actor behaviour of sexual harassment any amount to sexual harassment:-

- Implied or explicit promise of preferential treatment in her employment or,
- implied or explicit threat of detrimental treatment in her employment; or
- implied or explicit threat about her present or future employment status;
- interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- Humiliating treatment likely to affect her health or safety.

She also discussed about 'right to life' which includes 'right to live with dignity' and sexual harassment takes away this right from a woman and she is treated as a sexual object and not as a woman. She also talked about what are the human rights –

- 1) Rights which every human possess and is entitled to enjoy simply by virtue of being human
- 2) All human rights are universal, indivisible, interdependent and interrelated.
- 3) Human rights is for all whether you are of any community irrespective of caste, color, creed, size

The presentation also discussed about the cause of sexual harassment on woman which are as follows-

- There are very many complex reasons
- Basically because of the unequal power relations between men and women in society which is also reflected in the workplace
- Sexual Harassment is not so much about sex as about power
- It is a mechanism used to debase the role of women in the workplace, their professional capabilities and their leadership abilities and to draw attention to their sexuality while at the same time undermining the exercise of power or authority by women

The myths and facts which were discussed about sexual harassment are listed as,

Myth is- Women keep quiet so they must like it and Fact is- Women keep quiet believing that if they ignore it will stop, that if they protest or complain things will get worse. The presentation also discussed about article 14 and 15 of the constitution.

General Recommendation 19 (11th session 1992) Violence against Women-

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the CEDAW. These rights and freedoms include:

- a) The right to life;
- b) The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment;
- d) The Right to liberty and security of person;
- e) The Right to equal protection under the law;
- h) The right to just and favorable conditions of work.

Article 11 – Equality in Employment- Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

At last it was said that sexual harassment of a woman at workplace seriously hampers the dignity of women and her freedom to work without any fear and threat. Right to practice any profession, trade or occupation includes right to safe environment free from sexual harassment.

Session 4

The Role of Human Rights Court under 1993 Act

Prof. MK Ramesh

Chair: Hon'ble Justice G. M. Akbar Ali

The session resumed after the lunch break and Prof. MK Ramesh took over the session where he raised some questions such as how judiciary has looked at the very design of this Human Rights court. The defects in the law. What as a judge anyone can do and any scope for innovation in this law? Recently the present chief Justice of India Justice TS Thakur gave remarks that, “the arena of human rights is never static and always challenging. The Indian Judiciary is well equipped to deal with these challenges, he added. He also said that the Supreme Court has given six months’ time to constitute Human Rights Commission in the States which are not having the Commission at present. He also suggested that a Special Human Rights Court should be set up in each district to address the human rights issues.”

Also, Justice Akbar Ali said that, there are as many as about 100 instances of Human Rights which have not been brought to the court and people are laughing over NHRC for becoming paper type. The Act refers to instances of violence on human beings and infringement of human rights. He also said that the lacuna is that the session’s judge cannot take up the cases of human rights violations. Human rights becomes real only when without an exception judge or anyone (academician, law maker, common man) takes human sufferings seriously. And since the judges are the most eminent and capable person in the field of law so it is left to the capacity of the judges to make law on human rights effective.

The solution to the lack of implementation of the Human Rights Act, 1993 were listed as follows-

- 1) There must be a definition for ‘Type of offences’ which are violated under Human Rights Act, 1993
- 2) Definition of Punishment should also be there
- 3) Offences under violation of any other right should also be there.
- 4) Whether session judge can also be given some power under Human Rights violations such as to impose compensation or remuneration.

- 5) Awareness of Human rights violations so that they can be reached to Human Rights Courts and not only to NHRC or any SHRC.

It was also suggested that the Complaints to magistrate. This should also be applicable to Session judge or any other special judge appointed for Human Rights cases.

Also, Warrant and trial procedures can also be followed and lastly,

This Act is only procedural and not substantive. Specific procedures has to be implemented and then this Act has to be linked with human Rights Commission.

Day 2

Session 5

Human Rights in Conflict with other Rights

Hon'ble Justice G. M. Akbar Ali

The first session of second day commenced with great enthusiasm and zeal. Hon'ble Justice G. M. Akbar Ali started off the session with a presentation on comparison between Constitution of India and Universal Declaration on Human Rights, and also discussed about how in *Keshvanand Bharati v. State of Kerela*, people of India understood the nature of human rights at the time when the constitution was adopted.

The presentation further consisted of Conflicting Rights-

- Law legalising abortion under certain conditions is in conflict with right to life of a child.
- The depiction of women, as also of violence against women, has raised difficult questions of censorship and of free speech and expression.
- The power to determine what is 'obscene' or
- 'indecent' could curtail the use of media to interrogate, for instance, rape: for the depiction of rape could be viewed as 'obscene' and explicitly addressing the issue proscribed
- The responsibility of the researcher, and the impact of publishing research findings, has been in issue in the Almora case, where research published in September 1999 became a subject of singular controversy in April 2000.
- The research, on AIDS and the local community, used the responses from a sample of respondents who spoke about the sexual practices in the area, from where male migration for work is very high.
- The protesters were angry at the depiction of the community in the report. That the research was funded by a foreign donor agency added a dimension to the protest. The NGO later apologized, and withdrew the report.

- By then, three activists had spent 45 days in jail.
- On the one hand is the demand that sex work be recognized as real work.
- On the other hand sexual exploitation is regarded as violation of human rights
- There was some conceptual confusion about ‘decriminalizing’ and ‘legalizing’ prostitution

Then he discussed about section 8 of the Immoral trafficking act which brings women prostitute (victim) as an accused. There was some conceptual confusion about decriminalizing and legalising prostitution.

Justice Akbar Ali concluded by saying that we have adopted this in our criminal jurisprudence that the accused should be protected until proven guilty because they are in a disadvantageous position and hence we have to give leverage to that person.

Session 6

Poverty as an impediment in realization of Human Rights

Prof MC Sharma

Chair: Hon'ble Justice G. M. Akbar Ali

The session resumed after tea break which was addressed by Dr. Geeta Oberoi introducing eminent Professor Mool Chand Sharma and describing about his Excellency in the field of law and teaching.

Then the session was carried forward by Prof. Mool Chand Sharma saying that too much professionalism kills the justice system.” He quoted that, “law grows as the society grows and it decays as the society decays as the society decays.”

Human rights are inherent and inalienable. 40% of Indian population in 2015 are living in ‘extreme poverty’ and not ‘poverty’. The world should ensure that people have the right to be human and then talk about ‘human rights’.

If Supreme Court is giving statement on bonded labour and having delivered number of judgements on human rights then existence of poverty is violation of Human rights by state. State should make some provisions for eradication of poverty and hence ensure that there is protection of Human Rights.

Within social, cultural and economic rights there is a core which has to be discharged by state and if the court fails to do so then the state is liable.

Professor Sharma also described the extreme poverty which India is suffering and the various rights which are being violated such as right to livelihood, right to dignity, right to clean environment, etc. He quoted a story in Hindi saying that there are people who are not getting even the basic human condition to live, basic amenities such as food, water and shelter so there is no need to make laws for human rights violations. First basic human condition, right to livelihood should be provided to every human being and there should be eradication of poverty and all forms of social evils.

Caste discrimination is still prevalent in, many parts of India and due to this division of caste there are so many riots and evils which are creating hurdles in the path of development of India.

Loss of dignity is nothing but merely corroding the human soul. Caste discrimination, child labour, class discrimination is all hampering the 'Right to life' as well as 'Right to Life.'

Session 7

Protection of dignity as a Human Right

Prof. MC Sharma

Chair: Hon'ble Justice G. M. Akbar Ali

The session resumed after the Tea break and was continued by Prof. MC Sharma where he stated the lacunas in our law system which fails to protect the Human Rights of people. Comparing to way of working of Commission and courts and coming to the Human Rights courts. At present the complaints are dealt by Human Rights Commission which are overburdened and hence take long time in disposing of the case.

Hence, by creating Human Rights Courts we can make speedy disposal of cases.

He talked about dignity that in India there is still extreme poverty. He told his own story where he said that at the time when he was just 9 years old he was the sole earner of his family and how his mother told that if there is someone asking you for food then even though if you have to starve you should give it to the one who is begging before you because if you show that you don't have anything then that will affect your dignity and hence starving was preferred rather than to say no or to beg in front of anyone. Hence he said that poverty and dignity go hand in hand they are so closely connected that it is the poverty that makes any poor person realise that he is surviving because others are giving him. So this hampers their dignity.

Dignity to human beings appears to be the most important. It is more important than even food, clothing and shelter. Dignity means self-respect or self-esteem. The caste discrimination, treating some class or group of people as untouchable so as to not to touch him or not to eat the food cooked or prepared by him all these things totally makes a person feel useless and worthless and that in return hampers his dignity.

He also told a story of Prince Siddhartha who later on became Gautama Buddha. Through this story he wanted to say that people are talking about Siddhartha who is attaining eternity but there are also so many people who are not even having basic essentials required for human existence. The message which he wanted to give from this story was that we are talking about human rights

violations but first we have to see that in India still there is a large number of population who is living in so extreme and in inhuman condition that we need to remove this poverty and then talk about protection of dignity as a human right.

Then he said that the decision passed by the Human Rights Courts can be challenged under CrPC but no statutory remedy is provided against any order passed by Human Rights Commission.

The human Rights Courts has to try the case according to law as per law and it has nothing to do with Code of Criminal Procedure or Human Rights Act. The role of Human Rights court and Human Rights Act is to try the offender and punish them according to law while the role of Commission is more recommendatory in nature.

Trial of the case by Human Rights courts is different from the inquiry and investigation of the offence.

The judicial pronouncement and amendments should be done to ensure that there is definition of commission of the offence, etc.

Professor Sharma also posed some questions such as when a complaint is against a Public Servant whether section 197 of CrPC is applicable or not and section 197 talks about course of official discharge of function.

Section 30 of Human Rights Act, 1993 talks about For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences: Provided that nothing in this section shall apply if—

- a) a Court of Session is already specified as a special court; or
- b) a special court is already constituted, for such offences under any other law for the time being in force.

How session court will deal exceptionally with those criminal cases which are violating human rights is by providing speedy trial of offences against Human rights.

Session 8

**Functioning of Human Rights Courts and their role Vis a Vis Human Rights Commission
under 1993 Act**

Hon'ble Justice G. M. Akbar Ali

Professor MC Sharma commenced with the session by describing about section 2(d) of the Human Rights Act, 2013 which says that, “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;”

Comparing the way of working of Commission and coming to Human Rights Courts. At present the complaints are dealt by human rights commission which take long term and are overburdened and hence take long time in disposing of the case.

Hence, by creating Human Rights courts we can make speedy disposal of cases.

The decision passed by the Human rights Courts can be challenged under CrPC but no statutory remedy is provided against any order passed by Human Rights commission.

The Human rights Courts has to try the case according to law as per law and it has nothing to do with Code of Criminal Procedure or Human Rights Act. The role of Human rights courts and Human rights Act is to try the offender and punish them according to law while the role of commission is more recommendatory in nature.

Trial of the case by the human Rights court is different from the inquiry and investigation of the offence.

The judicial pronouncement and amendments should be done to ensure that there is definition of commission of offence, etc.

Session court can deal exceptionally with those criminal cases which are violating human rights under Human Rights Act by providing speedy trial of offences against Human Rights.

Then he also showed a presentation on, ‘Functioning of Human Rights Commission.’

Functioning of the Human rights commission-

- The functions assigned to the Commission under the Act.
- The powers vested with the Commission relating to inquiries.
- The powers vested with the Commission relating to inquiries
- The Commission is Autonomous.
- The Commission inquire into complaints.
- Steps open to the Commission after inquiry.
- The procedure is prescribed under the Act with respect to armed forces.
- The complaint be in any language.
- Kind of complaints not entertained by the Commission
- Kind of complaints not entertained by the Commission.
- Kinds of issues on which complaints have been received.
- The focus of the Commission's Working

In the case of Mr. Rasiklal M. Gangani vs Government of Goa through Chief, (2004) 106 BOMLR 626 it was decided that-

- The provisions of the Human Rights Act do not mandate that a prosecution cannot be launched unless and until the complaint has been first inquired into or investigated by the Commission
- The provisions of the Act certainly empower the Commission to recommend to the Government the prosecution of the erring officers but that does not mean that a prosecution can only be launched if the Commission recommends the institution of the prosecution. In fact Section 12(b) permits the Commission to intervene in any proceeding involving violation of human rights, no doubt, with the permission of the Court.
- By this Act two different forums are created. One forum, namely, the Commission to inquire and investigate into the complaints involving violation of human rights and to

suggest either remedial measures or the prosecution of the violators. The second forum, namely, the Human Rights Court to try the complaints involving violation of human rights.

- Trial of an offence by the Human Rights Court is different from the inquiry and investigation by the Commission.
- Filing of complaint cases is not something unknown to the procedure in the Code of Criminal Procedure. Private complaint cases can be filed for offences exclusively triable by a Court of Sessions. The Human Rights Court has to try the cases as per law and is not called upon by the Code of Criminal Procedure or the Human Rights Act to hold any inquiry.
- The role of the Human Rights Commission is more recommendatory in nature while the role of the Court the Human Rights Act is to try the offenders and punish them according to law.

The issue of detention of an accused in the police lock up for more than 24hours was also raised stating that the police should be punished if he or she detains the accused for more than 24 hours in a police lock up because this is also violation of Human Rights on the part of the accused.

Day-3

Session 9

Human Rights protection through Part-IV of the Constitution

Hon'ble Justice Manmohan Sarin

Hon'ble Justice Manmohan Sarin commenced with the session by describing about section 2(d) of the Human Rights Act, 2013 which says that, "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;"

Justice Ali mentioned that,

1. There are no penal offence or criminal punishment given in the Human Rights Act, we have to go back to IPC for giving penal punishment.
2. There should be justice at doorstep that is every district in every state should have one district court.

Section 9 of the reading material- human rights Protection through part IV of the constitution.

Article 36- Article 51 of the constitution deals with Directive Principle of State Policy which imbibes in it various human rights.

Article 39 says that, certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

- a. that the citizens, men and women equally, have the right to an adequate means to livelihood;
- b. that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
- c. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that there is equal pay for equal work for both men and women;

- d. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- e. that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and
- f. that childhood and youth are protected against exploitation and against moral and material abandonment.

And also, if any of the Directive Principle is violated then that is a violation of Fundamental Rights. In, *Keshavananda Bharati v. State of Kerala*, the Supreme Court observed, "The Universal Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights at the time the Constitution was adopted."

Section 337 of the Reading material talks about that, if any distinction between fundamental rights and directive principle then Fundamental rights are the ends of the principle provided to the people and Directive Principle provide path to it. Also, equal pay for equal work has not been considered as a fundamental right in the constitution of India.

Pages 92- 94 of the reading course material deals with various cases on human rights violations. Cases related to preservation of environment cases.

Article 31 C of the Constitution of India talks about abolition of Zamindari system and hence it was violating the right to hold property and hence was violating fundamental rights.

Article 51 of the Constitution of India is directive Principle of State Policy requiring states to deal with enforcement of law.

Also, the right of human beings especially labour to work in just and humane condition is very much necessary which was described in *Bandhua Mukti Morcha Case* which is also famous by the name of Bonded Labour Case.

The Supreme Court said that the Right to live with human dignity.

Then there was a PowerPoint presentation prepared by the programme coordinator Ms. Nitika Jain on Protection of Human Rights through Part-IV of the Constitution-

➤ **What is meant by Directive Principles?**

- They are a set of guidelines or principle.
- Fundamental in the governance of a country

➤ **Directive Principles of State Policy**

- Aims of DPSP is establishment of a “welfare state” which is envisaged in the preamble to the Constitution.
- Many of the provisions corresponds to the Provisions of ICESCR. As a party to the ICESCR, the Indian legislature has enacted laws giving effect to some of the treaty obligations and these laws are in turn enforceable in and by the courts as laid down in various judgments.
- The directive principles have, through important constitutional amendments become the benchmark to insulate enacted to achieve social objectives as enumerated in some of the directive principles.
- The courts have sometimes used DPSP to uphold the constitutional validity of statutes that apparently impose restrictions of Fundamental rights as long as they are stated to achieve the objective of DPSP.

Chandra Bhavan v. State of Mysore, (1970) 2 SCR 600

The Directive Principle of State Policy are seen as aids to interpret the Constitution, and more specifically to provide the basis and extent of the content of a fundamental right.

Human Rights protected through Directive Principles-

They can be classified into following groups:

- Social and economic justice
- Ideals of social security
- Indian Polity

Concluding the presentation it was said that the district judiciary renders an active role in dispense of justice, they have a massive duty to protect the constitutional rights of the citizens. Barring few

limitations, the District Judicial Officers are in charge of all matters including application and interpretation of constitutional provisions like Articles 14, 19, 21.

Session 10

Human Rights of Fair and Impartial Investigation

Hon'ble Justice Manmohan Sarin

The session resumed after a small tea break and was chaired and addressed by Hon'ble Justice Manmohan Sarin by posing some queries to the participants such as whether the Investigating Officer (IO) is required to register the case as soon as he comes to know about the case or he has the power to say or appeal that let me make a preliminary inquiry.

When it comes to cognizable offence and then the Investigation officer should immediately register the case.

The participants expressed their views and opinions-

1. Magistrate is of the view that IO is not doing his work properly then he should appoint special officer.
2. This question can be raised every time in Police magistrate's meetings.
3. We can direct them in meetings that how it should be ratified. Coordination between magistrate and police meeting is very much required and that too administrative coordination is necessary.
4. Asking question from the IO by the magistrate.
5. If the magistrate thinks that police has not investigated in the case properly then magistrate may direct to carry out re-investigation.
6. Based on the judgement of the prosecution who failed to produce the judgement before the concerned I. IO must be made responsible that the investigation has not been carried out properly and the accountability to IO must be made by S.P. or by some senior authority to carry out re-investigation.
7. If section 176 of CrPC is followed then a lot of problem can be solved.
8. The magistrate at the time of investigation can refer to Section 91 of CrPC which is very effective.

9. Direction can be given by Magistrate to IO under Section 156(3). Power under Section 156(3) is all persuasive for magistrate.
10. Scrutiny of closure report as well as whenever the accused is produced before the magistrate then we can inquire from the accused whether all the compliance of Section 41 is implemented or not.
11. Monetary cell meeting should be there.
12. Even at the time of remand they can ask for evidences and proof. So therefore at the time of filing the charge sheet also the magistrate should look into and ensure that materials given by the IO is there in the charge sheet and all relevant material has been filed.
13. Punchnama is not been forwarded to magistrate which should be forwarded specially in the case of food adulteration.
14. We can see that whether the case of DK Basu's case is being applied or not by the IO.
15. Section 173 of CrPC says that the reports submitted must be thoroughly scrutinized. And the meetings which are conducted we should ask the police officers that whether there has been ratification in the investigation. And the meetings which are conducted we should ask the police officers that whether there has been ratification in the investigation.
16. Statutory provision under Section 164 of CrPC must be properly followed by the magistrate.

Session 11

Overcrowding of prisons: Human Rights of prisoners in danger

Hon'ble Justice Manmohan Sarin

Adv. Priya Hingorani

The session was taken over by Adv. Priya Hingorani after the tea break who discussed on the topic of overcrowding of prisoners in jails. She discussed about her experience and survey which she had conducted in Tihar jail and shared her experience about the conditions of prisoners in tihar jail who were suffering their imprisonments even after expiry of their term of punishment or without any crime because of false complaints.

She discussed that according to the criminal law the under trails are not supposed to be working in jail or doing any kind of rigorous work. The work is to be done only by the convicted who are suffering rigorous imprisonment.

But, the under trials are forced to work by the wardens of the jail as well as the superintendent.

Judges expressed their opinions and gave solutions on the overcrowding of the jails-

1. More number of jails should be made
2. The main cause of overcrowding of prisons that heinous crimes are more as compared to petty crimes and hence they cannot be released easily.

Session 12

Limitations of human Rights Courts established under Human Rights Act

Adv. S. Martin

Chair: Hon'ble Justice Manmohan Sarin

The session resumed after the lunch break and was addressed by Advocate S. Martin. He started by showing presentation on Limitations of Human Rights Courts established under Human Rights Act-

- ❖ Protection of Human Rights Act and establishment of Human Rights Courts.
- ❖ To fulfill the obligation under Universal declaration of Human Rights.
- ❖ International Covenant on Civil & Political Rights. International Covenant on Economic, Social & Cultural Rights
- ❖ To fulfill the constitutional obligation of speedy justice.

Principles relating to the Status of National Institutions. (The Paris Principles)

- A national institution shall be vested with competence to promote and protect human rights.
- A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

Tamil Nadu Pazhankudi Makkal Sangam Vs Government of Tamil Nadu-

- First ever judgment to activate Human Rights Courts.
- Applicability of Code of Criminal Procedure in the absence of specific rules.

Offences not defined, punishment not given-

2 (d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

- a. Sec.2. (n) & 4 of CrPC. defines offences.
- b. I.P.C.
- c. Other special laws

No original jurisdiction-

- CDJ 2007 MHC 2420 : 2007 (2) MLJ (CrI) 697
- As the Human Rights Court has no power to entertain a complaint directly as it has no original criminal jurisdiction, the private complaint will have to be preferred only before the Judicial Magistrate concerned, who shall initiate the committal proceedings and commit the case for trial before the Human Rights Court.

It was discussed that physical torture should not be made an offence, onus of proof in case of custodial violence, violations by individuals not under the purview of Human Rights Courts.

There is lack of awareness and so we need to popularize human rights and NHRC, SHRC and LSA must take up this task.

Providing legal aid is a Human right and if someone does not provide this then that is a violation of human rights. But it's not an offence and it's not punished. Secondly Human rights courts which will be created would only deal with violations or offences committed by the state or any public authority.

Day-4

Session 13

Human Rights of Accused

Hon'ble Justice S. Muralidhar

The last day of the conference was divided into two sessions and was chaired and addressed by Justice S. Muralidhar where he divided the participants into six groups and presented some case studies and asked them to give their views and opinions and to come out with solutions if such kind of cases related to human rights comes to them.

All the groups gave different solutions as per their problems

Group1- The case study given to them and the question posed to this group was if a lawyer is beaten up in a court what should a judge do. To which the participants replied that Police protection should be given to them.

Cases such as Selvi v. State of Maharashtra and A.S. Mohammad Rafi v. State of Tamil Nadu was used as an example for precedent and solutions by the participants.

Group 2- According to the case given to this group the group said that A contempt application to be made before the court as per the D.K. Basu's case. There is duty now on police officer to take protect the accused and ask police officer to take proper care of her health and proper medical facilities are provided.

And the question was posed by the chair that if we have lady as an accused then will you take any special hearing. The answer to this question was that we must take an extra effort to get a lady lawyer.

- Right to be defended by the lawyer
- Right to speedy trial
- Hussainara Khatoon case
- D.K. Basu case

Group3- As per the section 67 of CrPC no person can be itself arrested without having evidence.

Group4- The question posed to this group as per their case study was which provision of law would you invoke and to what effect. And on the judicial side what issues you think are arising from the fact. The solution given by the group was that there has to be a coordination developed between the bar association and the lawyers.

Section 41(b) and section 41(c) of CrPC was also told to be invoked.

Group5- The solution given by this group was that free legal aid should be given to the accused so that her case could be filed in court and pleaded by a lawyer on her behalf and justice must be done to her.

Group 6- this group gave the solutions as per their case and that access to justice and fair treatment should be given to victims of redressal, Restitution and Compensation should be given to the victim.

Then the three stages of 'Victims in Criminal justice system was discussed'-

- The stage of investigation
- The prosecution stage
- Trial

Victimology in Indian Jurisprudence

- International Covenant on Civil and Political Rights
- The Code of Criminal Procedure, section 157(1) and section 24(8) as well as section 357, 357A and 357B
- Section 12 of Legal Service Authority Act, 1987

Measures of Redressal for victims-

- Access to justice system and fair treatment
- Restitution
- Compensation

Session 14

Human Rights of Victim

Hon'ble Justice S. Muralidhar

This session resumed after tea break and it was addressed by Justice S. Muralidhar where they talked about human rights of accused. The session consisted of the discussion as to what happens to the accused who is not been proven guilty and whose human rights is violated in the process of that trial.

The discussion was open to the participants and participants very enthusiastically participated and gave their views that in every crime committed somewhere or the other the rights of accused is violated. Be, it in unlawful detention of the person by the police or, detention for more than 24 hours in the lockup, denial of free legal aid to the accused.

The participants also said that the rights of victims are more taken in consideration than the rights of accused who are still under trial and are not proven guilty and convicted for the offence.

An acid attack documentary was also shown by the chairperson Justice Muralidhar wherein various surveys were conducted on the acid attack survivors and their views were taken. Most of the survivors shared their views by saying-

- Their life was spoiled because of boycott from the society
- Their right to life and live with dignity was also hampered
- There was no strict or serious punishment given to the wrongdoers
- Many of them lost their self-confidence and moral.

The conclusion drawn out of this video clip was that-

Mere 'monetary compensation' is not at all sufficient in Acid attack because it is a lifelong trauma.

Feedback and Evaluation

Hon'ble Justice S. Muralidhar

Dr. (Prof) Geeta Oberoi

At the end of the programme Dr. (Prof) Geeta Oberoi thanked everyone on behalf of whole National Judicial Academy and Justice S. Muralidhar for his valuable inputs. And then the participants were given an evaluation form to fill and give any further suggestion for improvement.

