



# SOUVENIR







ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ













***Souvenir***  
**1948-2023**



## **Patron**

**Dr. Justice S. Muralidhar**  
Chief Justice

## **Committee for the preparation of the Souvenir**

**Chairman : Justice D. Dash**

## **Members**

**Justice K. R. Mohapatra**  
**Justice B. P. Routray**  
**Justice M. S. Sahoo**  
**Justice Sashikanta Mishra**

### **Photography, layout & printing**

**Canonfire Creatives Pvt. Ltd.**  
Bhubaneswar

### **Published by**

**The High Court of Orissa**

Note: Opinion expressed in the articles and messages do not reflect the views of the High Court of Orissa

All rights reserved.

No part of the publication may be reproduced or transmitted by any form or by any means, electronic or mechanical, without permission in writing from the High Court of Orissa

<b>From the Souvenir Committee</b>	<b>1</b>
<b>From the Chief Justice</b>	<b>3</b>

## Messages

Her Excellency the President of India	9
English Translation of the message of the Hon'ble President of India	10
Hon'ble Prime Minister of India	11
His Excellency the Governor of Odisha	13
Hon'ble Chief Justice of India	14
Hon'ble Minister of State (I/C) for law and Justice	17
Hon'ble Chief Minister of Odisha	19

## Former Chief Justices of India

• Justice Gopal Ballav Pattanaik	20
• Justice Dipak Misra	21

## Former Supreme Court Judges

• Justice Arijit Pasayat	23
• Justice Peruvemba Krishna Ayer Balasubramanyan	25
• Justice Asok Kumar Ganguly	27
• Justice Balbir Singh Chauhan	29
• Justice Ananga Kumar Patnaik	30
• Justice Venkate Gowda Gopala Gowda	32
• Justice Amitava Roy	34
• Justice Vineet Saran	36

## Chief Justice of Jharkhand High Court

• Justice Sanjay Kumar Mishra	37
-------------------------------	----

## Former Chief Justices of High Court of Orissa

• Justice Sujit Barman Roy	38
• Justice Bilal Nazki	40
• Justice Kalpesh Satyendra Jhaveri	41
• Justice Mohammad Rafiq	42

## Former Chief Justices of other High Courts from Orissa

• Justice Prafulla Kumar Misra	44
--------------------------------	----



- Justice Laxmi Kanta Mohapatra 46
- Justice Jaswant Singh 47

### **Former Judges**

- Justice Basudeb Panigrahi 49
- Justice Susanta Chatterji 50
- Justice Pradipta Ray 51
- Justice Ratnakar Dash 52
- Justice Prafulla Kumar Tripathy 53
- Justice Bimal Prasad Das 54
- Justice Choudhury Pratap Kishore Misra 56
- Justice A. Suryanarayan Naidu 59
- Justice Madan Mohan Das 61
- Justice Arun Kumar Parichha 63
- Justice Raghunath Biswal 65
- Justice Biswanath Mahapatra 67
- Justice Vinod Prasad 68
- Justice Bijay Kumar Nayak 69
- Justice H. S. Bhalla 72
- Justice Bira Kishore Mishra 73
- Justice Raghubir Das 74
- Dr. Justice Durga Prasanna Choudhury 75
- Justice Jatindra Prasad Das 78
- Justice Akshay Kumar Mishra 79
- Justice Pramath Pattnaik 80
- Justice Biswajit Mohanty 81
- Justice Sujit Narayan Prasad 83

### **Former Advocates General**

- Jagannath Patnaik 85
- Bijay Krushna Mohanti 87
- Asok Mohanty 88
- Surya Prasad Mishra 89

### **Senior Advocates**

- J. K. Tripathy 91
- G A R Dora 92

• Shakti Dhar Das	94
• Basudev Panda	95
• Bhaktahari Mohanty	96

### Advocates

• Narasingha Mishra	97
• Narasingha Patra	99

## Photo Gallery

• Judges of the High Court of Orissa who were elevated as the Chief Justice of India	102
• Chief Justices / Judges of the High Court of Orissa who were elevated to the Supreme Court of India	103
• Chief Justices of the High Court of Orissa who also became Chief Justice in other High Courts	106
• Former Judges who served as Chief Justice of other High Courts	106
• Chief Justices of the High Court of Orissa	107
• Former Judges of the High Court of Orissa	110
• Chief Justice and Present Judges of the High Court of Orissa	118

## Events

• Foundation Day of the High Court of Orissa and “Lawyer of the Year, 2021 Award” Function at the Odisha Judicial Academy	122
• One Year Celebration of Record Room Digitization Centre	123
• Inauguration of 34 Paperless Courts in the Districts	125
• High Court pavilion at the Baliyatra	126
• State Level Consultation on Effective Implementation of POCSO Act	127
• Inauguration of Digitization Hubs in 10 Districts	128
• Release of the Judicial Calendar, 2023	129
• Sports Meet of the employees of the High Court	130
• Foundation stone laying ceremony of the Centre for Judicial Archives and the High Court Employees’ Residential Complex	131
• Inauguration of Virtual High Courts in 10 Districts of Odisha	132
• District Judges’ Conference, 2023 and Release of the Annual Report, 2022	133
• Cultural Programme of the employees of the High Court	134
• Inauguration of e-Libraries in 24 outlying stations	135
• Inauguration of the Museum of Justice	136
• Felicitation of the members of the consultative committee	137
• Inauguration of Virtual Centres of the High Court in 10 Districts of Odisha	138

• Free Wi-Fi facility and e-Inspection facility for the members of the High Court Bar Association	139
• Inauguration of the High Court Guest House at Puri	140
• Felicitation of the Legal Assistants having completed 30 years in their profession & release of a welfare stamp for their Association	141
• 40 hours' mediation training workshop for the Advocates of Western Odisha	142
• Felicitation of the former Chief Justices and former Judges of the High Court of Orissa	143
• State Level Law Quiz–2023 for Law Students	145
• Offices of Legal Aid Defense Counsel	146
• Observance of Lawyers' Day: Felicitation of the Lawyers of High Court having completed 50 years of practice along with former and present Advocates General and the "Lawyer of the year-2022" awardees of the District Courts	147
• National Conference on Digitization, Paperless Courts and e-Initiatives	148
• Celebration of one year of Centre for Judicial Archives, Odisha	149
• 40 hours' mediation training workshop for the advocates of Koraput, Malkangiri, Nabarangapur, Rayagada and Kalahandi	150
• State Level Law Quiz for Judicial Officers	151
• Inauguration of 50 Paperless courts	152
• National Conference on Judicial History and Archiving	153

## **Case Statistics (upto 30<sup>th</sup> June, 2023)**

• High Court statistics	154
• District Court statistics	156

## **Articles**

### **Sitting Judges**

• Relationship Between Bar & Bench	- Justice Bidyut Ranjan Sarangi	160
• To My Mind	- Justice Biswanath Rath	166
• Orissa High Court - A Transformative Institution	- Justice Mruganka Sekhar Sahoo	171
• The Consciousness of Justice	- Justice Sashikanta Mishra	173
• Transformation: GST to GST via VAT	- Justice Murahari Sri Raman	176

### **Advocate General**

• Celebrating the contribution of High Court of Orissa to Enrichment of Legal Jurisprudence	- Ashok Kumar Parija	181
---	----------------------	-----

### **Senior Advocates**

• Artificially Intelligent or Intelligently Atrificial	- Gautam Mukherji	184
• Within the hallowed portals	- Subir Palit	187



• Random Milestones: Small & Big	- Gautam Misra	189
• The High Court of Orissa- An Evolving Institution	- Pami Rath	197

## Judicial Officers

• Alarming rate of low conviction in Odisha (Causes and measures to curb)	- Srikanta Mishra	201
• A step towards preserving Claimant's rights	- Dr. Bhagyalaxmi Rath	204
• Public Interest Litigation – Means to achieve Environmental Justice in India	- Dr. Pabitra Mohan Samal	207
• Impact of the Internet on Due Process of Law in the 21 <sup>st</sup> Century: An Introduction to Cyber Law	- Sangram Keshari Pattanaik	212
• Application of Artificial Intelligence in the Judiciary	- Pravakar Ganthia	214
• Marital Rape in India: A repugnant form of machismo which needs to be criminalized	- Hara Prasad Pattnaik	217
• Euthanasia and the Advance Medical Directive: An Overview	- Dr. Kiran Kumar Pradhan	221
• ବୋଉ ନା' ଭୟା	- Bisweswar Biswaprakash Roy	226
• Reconciling patent rights & patient rights in the Pandemic: A global concern	- Byomakesh Nayak	229
• Access to Justice and role of Legal Aid Service Authority	- Kumudini Muduli	233
• Alternative Dispute Resolution: A solution or an empty promise?	- Neha Das	236
• A Study of Partition and Maintainability of Partial Partition	- Dhananjaya Nayak	240
• Modernization of Courts through virtual hearing	- Arunima Dash	242
• A critical analysis of the trend, pattern and cause of rise of juvenile crime among older juveniles in India and Odisha	- Bishwa Bhusan Nayak	245
• Section 143-A of Negotiable Instruments Act, 1881- A critical analysis of its jurisprudence and grey areas of its interpretation.	- Siddhant Mishra	252
• Corruption in the Electioneering Process: Investigative Identification, Institutionalised/ Legal Sanction & Reformative Recommendations	- Reeti Tripathy	256
• Celebrating 75 Years of Judicial Excellence : High Court of Orissa	- Krushna Subudhi	264
• Liability of Internet Service Providers (ISP) for Copyright Infringement under Copyright Act, 1957 & IT Act, 2000	- Sandeep Kumar Mohanty	268





Heritage Building of The High Court



## *From the Souvenir Committee*



*L-R: Justice M. S. Sahoo, Justice K. R. Mohapatra, Justice D. Dash, Justice B. P. Routray  
Justice Sashikanta Mishra*

The year gone by was a year of celebration as the High Court of Orissa stepped on to its 75<sup>th</sup> year. It was a time of solemn remembrance of the stalwarts and the great sons of the soil but for whose sacrifices and struggle the institution would not have been at this height on this day. It was also a period of rejoicing and cherishing the fond memories associated with high tradition and standard set for the institution of the past seven decades - a veritable trip down memory lane!

Various events were held under the aegis of specially constituted committees to commemorate the milestone such as holding quiz contests among judicial officers and law students, sports and cultural meets among the staff members etc. The highlights were the functions held to specially acknowledge the individual contributions of all persons that have gone into building of the institution, brick by brick. Former Judges, former Advocates-General, Senior Advocates, Advocates and Legal Assistants were felicitated. Besides, National Conferences on different topics including the first-of-its-kind conference on Judicial History involving eminent Historians from across the country were also held.

Notable personalities of the country and the State as also the legal luminaries of yesteryears have expressed their warm wishes for the institution on the special occasion through their individual messages. Judges, Advocates and Judicial Officers have given expression to their erudite thoughts through articles touching law in general and the institution.

All these along with photographs of the events are encapsulated in the form of this Souvenir.

We sincerely express our gratitude and thanks to Hon'ble the President of India, Hon'ble the Prime Minister of India, Hon'ble the Governor of Odisha, Hon'ble the Chief Justice of India, Hon'ble Minister of State (I/C) for law and Justice UOI, Hon'ble Chief Minister of Odisha and all the former Chief Justices of India, Chief Justices and Judges for sharing their kind messages for publication in the Souvenir commemorating the 75<sup>th</sup> Year of the High Court of Orissa.

We also acknowledge and thank all those who have toiled tirelessly to make the year-long event successful and for bringing out this Souvenir.

***Chairman and Members of the Committee***

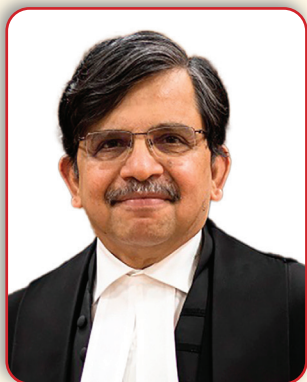




*Gond painting in the High Court Judges' Lounge*



## From the Chief Justice



**Dr. S. MURALIDHAR**

Chief Justice, High Court of Orissa

On 26<sup>th</sup> July 2023, the High Court of Orissa will be achieving an important milestone in its history. It will be completing the 75<sup>th</sup> year of its existence. The High Court's judicial history commenced in 1916 when the circuit bench of the Patna High Court began holding its sittings in Cuttack. On that occasion on 8<sup>th</sup> May 1916, Utkal Gourav Sri Madhusudan Das, as President of the Bar Association, stated:

*"I am giving expression to the feelings of the millions in Orissa when I express a hope that this Circuit Court will become a permanent Bench in the near future."*

Earlier as a legislator while responding to a question in the Assembly whether there should be a separate High Court for Bihar and Orissa, he articulated the demand in the following words:

*"... as regards the question of a High Court for the province there cannot be two opinions."*

*Whether it is convenient to the people of Orissa or whether it is convenient or inconvenient to the people who live at the further end of this province or of Bihar itself, that is a different question, that is a question of convenience, and perhaps it has also a financial aspect as regards litigants. But I believe, Sir, that it is not possible to develop the province without having its highest tribunal located not in any particular place (I do not believe that there is much in locality) without having its highest tribunal particularly interested in its large affairs."*

Even before the Constitution of India could be formally brought into force, the Orissa High Court Order, 1948 was published on 30<sup>th</sup> April 1948. It announced that there shall be a High Court for the province of Orissa "which shall be a Court of record and shall consist of a Chief Justice and such other Judges as the Governor General may from time to time, whether before or after the prescribed day appoint in accordance with the provisions of Section 220 of the Government of India Act, 1935."

When the first four Judges of the High Court of Orissa including the indomitable first Chief Justice Bira Kishore Ray took their oaths of office on 26<sup>th</sup> July 1948, it was a moment of rejoicing. At the same time it was, to quote Chief Justice Ray, a moment "which assigns to us a very great and responsible task of grave import and consequences." The words he uttered on that day ring true even now. He said:

*“We fully realize and are alive to the sense that justice is one of the bulwarks that sustain the edifice of independence of any people anywhere on the face of this earth. We fully realize, too, that it is up to this institution to uphold the rights, privileges and liberties of the people, who are entitled to possess them unaffected and unmolested by any power on earth except through due process of law. We must all be alert and conscious, at all times, in all our actions and even in our hope, and expectations of one fundamental fact, namely that this institution has an aspect of universal absolutism; it is equal to all and partial to none.”*

In its long journey of 75 years, the Bar and Bench of Orissa have built an edifice on the foundation of the institution that was laid in 1916. In a metaphorical sense the ground floor was completed in 1948. Today, we have in the High Court complex, the heritage building standing proudly in front of a seven-storied annexe building. The High Court is not just about its structures but what happens within their walls.

Institutional memory is important, since the past in many ways shapes the present and leaves markers for the future. In its 75<sup>th</sup> year, the High Court of Orissa on 8<sup>th</sup> April, 2023 honoured its former Chief Justices and Judges who nurtured the institution and helped it grow. The institution acknowledged their contribution to the development of the law and legal traditions reinforcing the rule of law that forms the bedrock of a democratic polity. It also acknowledged the support and contribution of the families and spouses of the judges.

If today the High Court can claim that

it has strived to deliver on the constitutional promise of equal and fair justice to all then the credit for it must go not only to the Judges who have dispensed justice sitting in its portals but to a rich galaxy of the finest legal minds. Several brilliant Advocates General (AGs), senior lawyers and advocates have brought cases and causes before the High Court and through their competent presentation helped the Judges to deliver landmark judgments that have developed the law in its myriad branches. These include Swami Bichitra Nanda Das, Banchanidhi Mohapatra, Dinabandhu Sahoo, Ashok Das, Gangadhar Rath, Birendra Mohan Patnaik, Gobind Das, Jagannath Patnaik, Bijoy Krishna Mahanty, Surya Prasad Mishra and the present incumbent, Ashok Parija. Their work stands on the strong foundation laid by several legal luminaries beginning with Utkal Gourav Madhusudan Das, Utkalamani Gopabandhu Das, Sadasiva Mishra, Rabindra Nath Sinha, Bibhudendra Misra, Viswanath Pasayat, Barrister Ranjit Mahanty, Bijoy Pal, Prabir Palit, Ramakanta Mohapatra, Bipin Bihari Rath, Bijan Behari Ray, A.S. Naidu, who later adorned the Bench and several others. On April 28<sup>th</sup> 2023, which was celebrated as Lawyers' Day, the High Court honoured the former and the present AGs as well as lawyers who completed 50 years in the legal profession.

On 1<sup>st</sup> April 2023, as part of its 75<sup>th</sup> year celebrations, the High Court honoured the Legal Assistants who had completed 30 years in their avocation.

Again, as part of its 75<sup>th</sup> Year celebration, State Level Law Quizzes were organized by the High Court separately for the law students



of Odisha and the Judicial Officers of Odisha. We had two national conferences organized. One, on Digitisation and Paperless Courts in May 2023 and the other on Judicial History and Archiving in July, 2023.

The High Court of Orissa, when it began in July 1948 had four judges and around 2000 cases. In 1978, its sanctioned strength of judges rose to 8 and the number of pending cases rose to 7057 cases. The sanctioned strength rose to 12 in 1989, 16 in 1992, 22 in 2004 and 27 in 2010. In 2021 the sanctioned strength of the High Court rose to 33, owing to an increased workload as a result of transfer of nearly 40,000 pending cases from the Odisha Administrative Tribunal (OAT) which was abolished. I am happy to state that in less than two years the pendency of such transferred OAT cases has come down to around 4,500. The pendency in the High Court which stood at 2 lakhs at the beginning of 2022 has come down to around 1,46,000 cases. In 2022 this Court had a working strength of 24 judges, the highest ever in its history. With the retirement and transfer of some of our colleagues the working strength today stands at 21 judges.

The working strength in the district judiciary today stands at 808 judges. As regards pendency in the District Judiciary it has risen from 30,000 cases in 1948 to 87,000 in 1978. Today the pendency in the 30 District Courts stands at 18,56,253 lakhs. Although work did slow down a bit during the Covid-19 pandemic years of 2020 and 2021, the High Court and the District Courts continued functioning in hybrid mode; the institution and disposal of cases continued to grow.

We often talk of arrears and pendency of cases and fail to acknowledge the actual work done by our courts. While in 2021 the High Court disposed of 1,05,334 cases this figure rose to 1,36,599 in 2022. Correspondingly while the district courts disposed of 2,38,588 cases in 2021 the figure for 2022 was 5,15,392 cases, a 116% improvement. Even in terms of judgments the High Court delivered 2,118 judgments in 2022 as compared to 938 in 2021. The district courts delivered 72,806 judgments in 2021 and 1,61,263 in 2022. The working Staff strength in the High Court rose from 788 in 2021 to 930 in 2022. Pendency of 25 years old cases has been reduced from 12,317 as on 1<sup>st</sup> January 2021 to 9,701 as on 1<sup>st</sup> January 2022, which was further reduced to 4,669 as on 1<sup>st</sup> January 2023. Due to consistent monitoring, the present position of such cases is 3,747 as on 30<sup>th</sup> June 2023.

The improved performance of the High Court and the district judiciary is owed to several factors. Better infrastructure: over 121 new courts and 23 new court buildings - 6 district courts and 17 taluka courts - have been established in the last two years. Each of the branches both judicial and non-judicial in the High Court have been refurbished with an entirely new ambience and décor that would match any corporate office. In the High Court today on the administrative side, the non-judicial branches and the CJ's secretariat are all paperless with the adoption of the Odisha Judicial Workflow Automation System (OJWAS). Other measures include the increase in the working strength of judges and staff, case distribution rationalisation, opening of VWDCs in every one of the 30 districts, virtual courts

of the High Court in 20 districts, introduction of paperless courts, e-filing and provision of e-Libraries for District Court lawyers.

All this has been possible because of the active cooperation of all my colleagues in the High Court, the Judicial Officers in the Districts, the High Court Registry, the staff and of course, the lawyers and their legal assistants both in the High Court and in the District Courts. The judicial officers who are master trainers have already conducted several hands-on training sessions in e-filing for members of the district and High Court bar and their legal assistants. The High Court has introduced a scheme that recognises and rewards meritorious lawyers of the district courts in the age group of 30 to 40 years and another scheme that acknowledges the work of the better performing district courts.

The allied organs of the High Court - the Odisha State Legal Services Authority, the Orissa High Court Legal Services Committee, the Odisha Judicial Academy, the Arbitration and Mediation Centres of the High Court, the Permanent LokAdalats at the District Courts and the High Court - have performed better with every passing year and have contributed significantly to improving access to justice and providing alternate means of dispute resolution to the people of Odisha.

Then we have the state-of-the-art Record Room Digitisation Centre (RRDC) which stores approximately 11 lakh files of disposed of cases of the High Court and where nearly 300 persons are involved in scanning, verifying and archiving case records. We have the four District Court Digitisation Centres in Cuttack, Berhampur, Balasore and Sambalpur apart from 10 DCDC

Hubs to undertake the work of digitisation of the disposed of records of the courts in all the remaining districts of Odisha. While looking at the future, this institution believes in being rooted firmly in its past by nurturing the rich traditions which have formed its strong foundation. The setting up of the Centre for Judicial Archives and the revamping of the Museum of Justice are testimony to this. In terms of improved accessibility and transparency, the High Court has facilitated visits by school children to its premises at least twice in a month and the proceedings of two of its courts including that of the Chief Justice, are being live-streamed.

Through all these measures, the judiciary in Odisha is witnessing a transformation in a positive way and creating a working atmosphere that incentivizes higher productivity of the judges and staff both in the High Court and District Courts. The complete cooperation and assistance both in terms of the provision of infrastructure and finance by the State Government has contributed to this in no small measure. Odisha is perhaps the only state to have an exclusive Judicial Infrastructure Management Agency.

It is no doubt a work in progress and much remains to be done. For instance, while in the district judiciary the presence of women is to the extent of almost 40%, there is scope for improvement of their numbers in the Bar and in the Bench in the High Court. Likewise, as regards the presence of persons belonging to the SCs, STs, OBCs and persons with disabilities. The Institution is moving ahead strengthened by the confidence that the coming generation of Judges and lawyers are committed to carrying



forward the Constitutional vision of delivering fair and equal justice to the people of Odisha. I believe with infusion of younger lawyers who are sincere, hard-working and dedicated and who are likely to be the torchbearers of their generation, the future of the Bar is in safe hands.

In 2016, the High Court celebrated the Centennial of the sitting of the Circuit Bench of the Patna High Court in Odisha. The Chief Justice of India Justice T S Thakur while speaking on the occasion noted:

*"We have done well that is evident from the fact that Judiciary today is one of those most respected Institutions which has suffered the least erosion or aberration. Institutions have eroded, confidence of the people in Institutions has gone down. But when it comes to Judiciary, the confidence of the people has over the years multiplied, increased and strengthened and that is what makes our challenge greater, because to live up to the confidence of the people by continued hard work and by rectitude is not an easy task. You are permanently, you are almost every moment in the Court, outside the Court working under public gaze, people watch you, people assess you, people judge you and they are not hesitant in passing judgments*

*also. Some of them unpleasant, some of them pleasant, but the fact remains that Judiciary has maintained its credibility no matter the challenges of credibility keep multiplying. It is also time for us to introspect, because there are no successes and rewards only, there are failures and shortcomings also. An occasion like this must put us to thought, whether we have failed in some respects and if so where have we failed and what we need to do to correct those failures."*

Those words are even more relevant today. The expectations of the people of Odisha from its judges is growing and we must not be found wanting in our efforts to help them realise their aspirations and hopes for equal and fair justice. The High Court has to be ever ready to introspect, to learn from its failures, to be responsive to the changing needs of the times and to continue to be relevant to the people whose needs for justice it is supposed to serve.

There is much work to be done. We must resolve once again to work even harder in contributing to the mission of the High Court of Orissa being an institution that is increasingly accessible, inclusive, transparent and accountable to the people of Odisha.

**Cuttack**  
**17<sup>th</sup> July, 2023**

**Dr. S Muralidhar**  
**Chief Justice**



*Filigree work in the Chief Justice's Chamber*





राष्ट्रपति  
भारत गणतंत्र  
PRESIDENT  
REPUBLIC OF INDIA

ବାର୍ତ୍ତା

ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ ପ୍ରତିଷ୍ଠାର 75 ବର୍ଷ ପୂର୍ତ୍ତି ଉପଲକ୍ଷେ ବିଭିନ୍ନ ଉତ୍ସବ ଆୟୋଜନ କରାଯାଉଥିବା ଏବଂ ସେହି ପରିପ୍ରେକ୍ଷୀରେ ଏକ ସୁଦୃଶ୍ୟ ସ୍ମରଣିକା ପ୍ରକାଶ ପାଉଥିବା ଜାଣି ମୁଁ ବିଶେଷ ଆନନ୍ଦିତ ।

ଆମ ଗାଣତାନ୍ତ୍ରିକ ଶାସନବ୍ୟବସ୍ଥାରେ ନ୍ୟାୟପାଳିକା ଏକ ପ୍ରମୁଖ ସ୍ଥଳ ଭାବରେ ବିବେଚିତ । ଦେଶର ନାଗରିକମାନଙ୍କ ପାଇଁ ନ୍ୟାୟ ସୁନିଶ୍ଚିତ କରିବା ଆମ ସମ୍ବିଧାନର ଏକ ମୌଳିକ ସିଦ୍ଧାନ୍ତ । ଏ ଦିଗରେ ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ ନିଜର ସାମ୍ବିଧାନିକ ଦାୟିତ୍ୱ ସୁଚାରୁ ରୂପେ ତୁଲାଇ ଆସୁଛି । ଏହି ଉଚ୍ଚ ନ୍ୟାୟାଳୟର ନ୍ୟାୟବିଚାର ଯୋଗୁଁ ରାଜ୍ୟର ଦଳିତ, ନିଷ୍ପେକ୍ଷିତ ଓ ଅବହେଳିତ ଲୋକମାନେ ନିଜର ନ୍ୟାୟ ଅଧିକାର ହାସଲ କରିବାରେ ସକ୍ଷମ ହୋଇଛନ୍ତି । ପୁନଶ୍ଚ, ଏହି ନ୍ୟାୟାଳୟର ଅନେକ ବିଚାରପତି ଏବଂ ଅଧିବକ୍ତାଙ୍କର ଆଇନଗତ ଜ୍ଞାନ, ପାରଦର୍ଶିତା ଓ କର୍ମନିଷ୍ଠା ରାଷ୍ଟ୍ର ତଥା ରାଜ୍ୟ ପାଇଁ ଅଜସ୍ର ସୁନାମ ଆଣିଛି ଏବଂ ଦେଶବାସୀଙ୍କ ମଧ୍ୟରେ ଅତୁଟ ବିଶ୍ୱାସ ସୃଷ୍ଟି କରିଛି ।

ଓଡ଼ିଶା ମାଟିର କନ୍ୟା ହୋଇଥିବାରୁ ମୁଁ ବ୍ୟକ୍ତିଗତ ଭାବରେ ଏହି ଭବ୍ୟ ଅନୁଷ୍ଠାନ ପାଇଁ ଗର୍ବିତ । ନ୍ୟାୟର ଏହି ମନ୍ଦିର ସର୍ବଦା ନିଜର ଉଚ୍ଚ ନ୍ୟାୟିକ ପରମ୍ପରା ଏବଂ ଗରିମାକୁ ବଜାୟ ରଖିବା ବୋଲି ମୋର ଦୃଢ଼ ଆଶା ଓ ବିଶ୍ୱାସ ।

ମୁଁ ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ ସହିତ ସଂଶ୍ଳିଷ୍ଟ ପ୍ରତ୍ୟେକ ବ୍ୟକ୍ତିବିଶେଷଙ୍କୁ ଶୁଭେଚ୍ଛା ଜଣାଉଛି ଏବଂ ଏହି ଅବସରରେ ଆୟୋଜିତ ବିଭିନ୍ନ କାର୍ଯ୍ୟକ୍ରମ ତଥା ପ୍ରକାଶିତ ସ୍ମରଣିକାର ସର୍ବାଙ୍ଗୀନ ସଫଳତା କାମନା କରୁଛି ।

ଦ୍ରୌପଦୀ ମୁର୍ମୁ  
(ଦ୍ରୌପଦୀ ମୁର୍ମୁ)

ନୂଆଦିଲ୍ଲୀ  
26 ଜୁନ୍, 2023



## ***English translation of the message of the Hon'ble President of India***

### **MESSAGE**

I am extremely happy to know that several functions are being organized to mark the completion of the 75th year of the establishment of the High Court of Orissa and that in this context a resplendent Souvenir is also being published.

Judiciary is considered a prominent pillar in our system of democratic governance. A fundamental principle of our Constitution is to ensure justice for the citizens of the country. In this direction, the High Court of Orissa has been effectively discharging its Constitutional responsibilities. The marginalized, oppressed and neglected persons have been successful in achieving their due rights because of dispensation of justice by this Court. Moreover, the legal knowledge, proficiency and commitment of several Judges and advocates has earned numerous accolades for the State and created unstinted faith among the countrymen.

Being a daughter of Odisha, I am personally proud of this glorious institution. I firmly hope and believe that this temple of Justice shall continue to maintain its lofty standards and dignity.

I extend my good wishes to everyone associated with the High Court of Orissa and hope for the all-round success of the various events being organized as also the Souvenir published on this occasion.

New Delhi  
26<sup>th</sup> June, 2023

**Droupadi Murmu**



सत्यमेव जयते

प्रधान मंत्री  
Prime Minister

### MESSAGE

It is heartening to learn about the completion of 75 years of establishment of the High Court of Orissa. Heartiest congratulations and greetings to everyone associated with the esteemed Court and to the wonderful people of Odisha on this joyous occasion.

Judicial systems and justice delivery have been given a place of pride in our history and heritage. Through the vision of 'यतो धर्मस्ततो जयः', our ancestors have outlined the indispensability of righteousness and justice in creating a successful, harmonious and inclusive society.

Established soon after the nation's independence, the High Court of Orissa has played a crucial role in upholding the principles of justice and safeguarding the rights of citizens. During the last seven-and-half decades, its growth, evolution, and contribution towards the growth of the state has been exemplary.

In recent years, it has been noteworthy that the High Court of Orissa has adopted technology to further improve its style of functioning and efficiency. Be it introducing e-filing systems, digitisation of records, or online case management tools, efforts to transform the legal processes and enhance efficiency and transparency are clearly palpable. These measures have not just helped in minimising paperwork, but also simplified the process of access to information and tracking the progress of cases.


Ease of Justice is an important parameter in justice delivery. The nation has taken many steps to boost this over the last few years, such as repealing unnecessary and obsolete laws, digitisation of processes and the modernisation of judicial infrastructure. It is heartening to note many efforts by various courts across the country to make our systems more people-centric.

Amrit Kaal is an opportunity to realise the vision of building a glorious and self-reliant India. The transformational journey of the nation during this period will be accelerated by factors such as Ease of Justice, Ease of Doing Business and Ease of Living. I am positive that our judiciary will continue to play a key role in this journey.



The completion of 75 years of the High Court of Orissa is a testimony to its commitment to justice, fairness, and the rule of law. Such memorable occasions also call for the acknowledgement of the tireless efforts of many generations of judges, lawyers, administrative staff and everyone associated with the High Court. We recall with pride their invaluable contributions to society and the nation.

Greetings and best wishes for the celebrations. The gesture to bring out a Souvenir on such an occasion of significance is thoughtful and will help capture the journey of the justice delivery system of the state in a way that inspires future generations.



(Narendra Modi)

New Delhi

आषाढ 29, शक संवत् 1945

20<sup>th</sup> July, 2023

**Prof. Ganeshi Lal**

Governor, Odisha

ପ୍ରଫେସର ଗଣେଶୀ ଲାଲ

ରାଜ୍ୟପାଳ, ଓଡ଼ିଶା



RAJ BHAVAN  
BHUBANESWAR - 751 008

ରାଜଭବନ  
ଭୁବନେଶ୍ୱର-୭୫୧ ୦୦୮

May 23, 2023

MESSAGE

I am glad to know that the High Court of Orissa is completing the 75<sup>th</sup> year of its establishment on July 26, 2023. A Commemorative Souvenir is also being brought out to mark the occasion.

The High Court of Orissa, in its sojourn in the 75 years of its establishment, has left an indelible imprint. Many a stalwart had occupied the high chairs of Judgeship of this High Court and some of them had risen to adorn the high chair of the Chief Justice of India and Judge of the Supreme Court of India. The advocates of this High Court have made huge contribution to the profession with their legal acumen. All of them contributed a lot in making the High Court of Orissa one of the foremost judicial institutions in the country. It is indeed gratifying that the High Court of Orissa, by its judgments has always upheld the spirit of the Constitution of India be it in social justice or other fronts.

The ultimate aim of law is the welfare of every citizen of the country and we must strive to achieve that. I am confident that the High Court of Orissa will continue to perform its role creditably thereby further glorifying the Judiciary in the country.

I wish High Court of Orissa and publication all success.

(Ganeshi Lal)





Dr Justice D Y Chandrachud  
Chief Justice of India

### Message

#### On the Occasion of the 75<sup>th</sup> Anniversary of the High Court of Orissa

The Orissa High Court traces its origins to 1916 when the Patna High Court established a Circuit Court in Cuttack. After the creation of a separate province of Odisha in 1936, there were increasing representations for Odisha to have its own High Court because four districts—Cuttack, Balasore, Puri, and Angul were under the jurisdiction of a single district judge. The Orissa High Court was established on July 26, 1948. This significant development catered to the diverse needs of the people of Odisha and became a beacon of hope for countless individuals seeking legal redress.

The Orissa High Court observing its 75<sup>th</sup> Anniversary is a momentous occasion and a cause for celebration. I take this opportunity to congratulate all the residents of Odisha, as well as the judges, advocates, and staff of the High Court. This commemorative souvenir stands as a testament to the High Court's enduring legacy. It encapsulates not only the historical milestones but also the indomitable spirit of the common people, judges, litigants, and all other stakeholders. In addition, the Commemorative Postage Stamp serves as a poignant reminder that the history of the High Court extends beyond mere statistics. It encapsulates the very essence of justice, the emotions that



**Dr Justice D Y Chandrachud**  
**Chief Justice of India**

resonate within the courtrooms, and the profound impact the High Court has had on the lives of countless individuals. I applaud the Orissa High Court's foresight in establishing the Museum of Justice. Through its exhibits and displays, the museum provides invaluable insights into the evolution of the legal system in Odisha, showcasing the journey from ancient to modern times. Its pictorial depictions allow viewers to appreciate the evolving nature of justice and its dispensation.

Over the past 75 years, the Orissa High Court has remained committed to its constitutional obligations. It has been at the forefront of embracing technological progress, implementing initiatives such as digitalizing records, introducing paperless courts, and establishing a Vulnerable Witness Deposition Centre. The establishment of the state-of-the-art Record Room Digitization Centre (RRDC) in 2021 stands as a testament to this commitment, enabling the storage, preservation, and retrieval of case records in an easily accessible digital format.

The High Court has been a pioneer in promoting transparency and accountability. It was one of the first to publish a one-of-a-kind annual report, shedding light on its efforts to bridge the digital divide, managing the docket explosion, and showcasing significant judgments delivered by each of its judges. This transparency extends to the details of judicial expenditure,





Dr Justice D Y Chandrachud  
Chief Justice of India

administrative initiatives to reduce pending cases in district courts, and the utilization of technology to enhance the administration of justice.

I extend my heartfelt wishes for the continued success of the Orissa High Court in its noble mission of enabling access to justice. May it continue to serve as a pillar of hope, safeguarding the rights and aspirations of the people of Odisha.

*Dhananjaya Chandrachud*

**Dhananjaya Y Chandrachud**

अर्जुन राम मेघवाल  
Arjun Ram Meghwal



विधि एवं न्याय राज्य मंत्री (स्वतंत्र प्रभार)  
व

संसदीय कार्य और संस्कृति राज्य मंत्री  
भारत सरकार, नई दिल्ली-110001

MINISTER OF STATE (I/C) FOR LAW & JUSTICE

AND

MINISTER OF STATE FOR  
PARLIAMENTARY AFFAIRS AND CULTURE  
GOVERNMENT OF INDIA, NEW DELHI-110001

### MESSAGE

I am pleased to learn that the Hon'ble High Court of Orissa is commemorating its 75th year of establishment and will be publishing a special souvenir to mark its journey. The Nation is making its journey in the Amrit Kaal towards building a developed India by year 2047. I am sure that the Orissa High Court will play a significant role towards achieving this objective.

The publication unravels the long and purposeful voyage of this judicature in the service of the people and delivery of justice. It is a celebration of the court's impeccable legacy and its steadfast commitment to the fundamental values of our Constitution.

It is a matter of immense pride that since its establishment on 26th July 1948, the High Court has emerged as a beacon of hope for those in search of justice. The court's unwavering dedication in upholding the principles of justice, fairness, and equality has been exemplary. Its commitment for advancing constitutional ideals serves as an inspiration for the legal community and reinforces our belief in a just and equitable society.

I extend my heartiest congratulations to the entire fraternity of Orissa High Court on this special occasion and express my best wishes for its continued success.

(Arjun Ram Meghwal)





*Illuminated New Building of The High Court of Orissa*



**NAVEEN PATNAIK**  
**CHIEF MINISTER, ODISHA**



**LOKASEVA BHAVAN**  
**BHUBANESWAR**



## MESSAGE

The Rule of Law is paramount in a vibrant democracy. Indian judiciary- the bar and the bench, as the upholders of law- has been playing a significant role in providing justice to people. In our state, the High Court of Orissa, for the last 75 years, is leading the way for delivery of justice to common man.

Every society has its own history, and so has every organization. The High Court of Orissa has a glorious past, every moment of which needs to be valued and cherished. Long under jurisdiction of different High Courts-Calcutta, Patna and Madras, Odisha got its own High Court at Cuttack in about a year after independence. Since then, it has been making impressive strides in the justice delivery system.

In recent times, the High Court of Orissa has been taking transformative initiatives that will make justice delivery faster and more equitable. The e-initiatives such as digitization, paperless courts and online hearing are bringing in positive changes for ensuring an efficient, transparent system which is more affordable and accessible.

The twin projects of 'Judicial History of Odisha' and 'Museum of Justice' are hallmarks of a magnificent era in judiciary. Archiving of judicial history since early 19th century is a wonderful step in preservation of our judicial history. The High Court of Orissa is certainly a path-breaker in many ways, and a model for other States.

The celebration of 75th year of the 'High Court of Orissa' is a celebration of justice and equity in Odisha. I extend my warm greetings to this great institution on this momentous occasion; and wish the celebration a grand success.

**(NAVEEN PATNAIK)**





## JUSTICE GOPAL BALLAV PATTANAİK

*Former Chief Justice of India*

*(8.11.2002 to 19.12.2002)*

I was a practicing advocate of this High Court for 21 years and odd and a Judge for 12 years and odd. My experience was that the relationship between the Bar and the Bench was very cordial. Lot of cohesion which was eminent from the fact that the dinner which was being hosted by the Bar Association either to welcome a Judge or to bid farewell to a retiring judge, all the judges used to come and the evening was a hilarious one. I will narrate just three instances to indicate what was the relationship and how was the relationship. One was in 1961, probably when G.K. Misra, before he was elevated as a Judge, was arguing a case before a Court and his other case before Justice Burman was called. So Justice Burman did not give any time. So G.K. Misra came running from the other court and snatched the brief and stood up. So Justice Burman asked lawyer, how long will you take? and the answer was, My Lord, as long as Your Lordships would take to understand the matter.

Second instance I would narrate was with Chief Justice Khaleel Ahmed, who came from Patna. He was hearing a second appeal and Mr. M Mohanty was arguing after 20 minutes. He was

not willing to admit the appeal. So Chief Justice said Mr. Mohanty, my concern is not aroused. Then Mohanty replied, My Lord if Your Lordships deliberately put your concerns into slumber, then nobody can arouse. Then immediately, Khaleel Ahmed admitted the second appeal.

Third instance was when G.K. Misra as Chief Justice was hearing a matter where a chowkidar had been punished for being drunk and not attending to his duty. Dr. Manmohan was arguing and he was not allowing the lawyer to argue. And he said, Mr., you do not know where you reach once you get drunk. The then Advocate General B.M. Patnaik, who was sitting in the Court, he stood up. So the Court asked Mr. Patnaik, why have you stood up? He said the answer to Your Lordship's query is I always take a drink and You now see where I am.

This made the situation so changed. Ultimately, Doctor's client's dismissal was set aside. He was reinstated, but arrear pay was not given. These are the few instances to indicate what was the relationship and what was the dealing between the Bar and the Bench and unless that relationship exists, unless both Bar and the Bench unitedly try, then the institution will always suffer.

My message is that I find the area is quite alarming, even though the Judges have tried to clear up the backlog in 2022 but it needs conjoined and united effort of all the learned 24 Judges of the Court and the members of the Bar to find out ways how quickly the arrears can be disclosed, arrears can be cleared, otherwise the value and credibility of the institution will get eroded day by day. When you will be observing the centenary celebration after 25 years, you will be in a better position to analyse how valuable my advice was.



## JUSTICE DIPAK MISRA

*Former Chief Justice of India*

*28.8.2017 to 2.10.2018*

I must pleasantly confess, I share great delight to speak on my experience, on this august occasion as the High court of Orissa has been celebrating the 75<sup>th</sup> anniversary for some time. I have been told that I should share my experiences as an advocate in the High Court and as a Judge of this Court.

So before I go to my individual experiences, I am reminded of a statement by Oliver Wendell Holmes, who had said, "The life of law is not logic. It has been experience." Experience as the philosophers, thinkers and jurists propagate can shape an individual's personality and when it is collectively garnered it can bring in institutional philosophy that will guide the society with collective strength.

Coming back to my personal experience, I will share some. I was fighting a Civil revision before the learned single Judge and the bench was that of Late R.C. Patnaik. The trial Court, had declined to interfere in the proceeding

where the petitioner had sought the removal of the arbitrator on certain grounds. The trial court was of the view as the Supreme Court had appointed the arbitrator, it is the Supreme Court alone that can remove. I was able to distinguish the judgment rendered by the Apex Court, but I must apprise all concerned that Justice Patnaik took the pain to develop certain other concepts and observed that a time will come when the Supreme Court will overrule this judgment because of certain past precedents. The said judgment was eventually overruled in 2018 by a larger Bench.

My purpose of saying, what you as a lawyer argue with sense of originality that may after few decades, get the stamp of approval of law.

I will come to the first part of the ninth decade of last century. Now, I shall narrate two experiences in the Court of the Hon'ble Chief Justice B.L. Hansaria . A group of petitions were filed challenging the constitutional validity of section 29 of the State Financial Corporation Act. I was defending the validity of the legislation. After the arguments were closed, we submitted our written notes. And in the judgment the Hon'ble Chief Justice wrote that he had taken note of 11 distinctions made by Mr. Mishra, learned counsel for the corporation and he thinks it appropriate to reproduce them. Accordingly, all 11 paragraphs were reproduced. This was one of the most pleasant memory which I still cherish.



On another occasion, a bunch of writ petitions were filed and they were taken up by the Division Bench presided by Hon'ble Chief Justice Hansaria because he was not agreeing with the view of the learned single Judge of the Orissa High Court in a different context that rejection of nomination paper could be assailed under Article 226 of the Constitution of India. When the matter was listed, number of counsel were involved in many a matter. I had few matters. On that day, Mr. Palit who was a gentleman of class asked me whether I was ready or not. I said I was ready. Then he asked me, you assist the Court. When the matter was called at 8:15 in the morning, I stood up. The Hon'ble Chief Justice looked at Mr. Palit and he said Mr. Misra will argue. Every half an hour, the Hon'ble Chief Justice was asking, how do you meet the ratio laid down. I really could not proceed the way I had prepared. After the tea break, the court said "You argue in your own manner, we will not disturb your thoughts." I argued till 11.30. Thereafter the State argued. I think the learned counsel for State concluded in half an hour. When the Chief Justice was proceeding to deliver the Judgment, and wherever he referred, he was smiling. Eventually however, the learned Chief Justice observed, if in a democratic setup, all nominations are rejected, that may be required to be dealt in a different way. Such an issue came up before us in 2018. Rejection of certain nomination papers in the State of West Bengal, the Calcutta High Court had permitted, certain members to file, nomination papers through email. We dislodged their judgment relying on

Nanumal and I discussed with my colleagues about my experience before this court. My purpose of saying is that your arguments in life, ultimately will help to garner courage in deciding, following and nourishing the cause of justice. I was dealing with a case under NDPS Act in a criminal appeal where the father lodged the FIR. As there were enough materials, I was compelled in law to convict the accused, the son of the informant. Though I was personally sad, but I knew the father was fighting for the collective cause as the son had become a nuisance to the society.

As far as the present is concerned, my suggestion to the Bench and Bar is they should work in harmony and endeavor to nourish and nurture the cause of justice and see that the poorest of the poor and the lowest person in the social strata gets access to justice and there can be no obstruction in that regard. I am sure all of us as the members of the Bar and all students of law, remember it. We should never forget that the Bar is the mother of Judges, all of us come from the Bar. With experience the Bar teaches us to excel and I am sure the Hon'ble Judges of the High Court of Orissa and the members of the Bar shall live up to the traditions and shall march with glory towards a great future. In this context I am reminded a line of Edward Jr., Future is a corridor to which we look into with the light coming from behind, that is the past. Never neglect the past. Live with traditions. But grow with the future, with that kind of laser beam. Telescope the ideas and excel and sing for the cause of justice. That is life. That is law. That is Justice.



## JUSTICE ARIJIT PASAYAT

*Former Supreme Court Judge*

*19.10.2001 to 10.5.2009*

I have very fond memories of the Orissa High Court. In fact, I took my Advocate's license on 10<sup>th</sup> of October 1968. Tenth October is a very remarkable day in my life because my father was born on that date and my father has been my role model in my life. My father enrolled as an advocate in 1940 after getting his BL degree from the Patna University. So, when I joined the Bar, actually what I had was the legacy of my father as an advocate who had passed away in 1964. But as the luck would have it or as fate has designed it, four generations of us are in the legal profession and have appeared in the Orissa High Court.

It started with my father, continued with me and now my daughter and my son, they have continued it and my grandson also has joined the legal profession. I stayed in this State as a judge for over 10 years, then I went to Kerala as the Chief Justice in 1999 and in 2000, I went to Delhi as the Chief Justice and then due to God's grace, I came to the Supreme Court in 2001 to 2009. My experience as a lawyer and a

judge has been that, we are a part of the justice delivery system and as a lawyer we have a duty not only to the client but also to the society.

Because ultimately the reflections in the judgments, they have a big impact to pay in our social life. For example, Martin Luther King had once said that injustice anywhere is injustice everywhere, and in a state like Odisha, the High Court, I considered, was a dream for more than 99% of the litigants. Because, for them the Judicial Officer in the ladder down below, was the Supreme Court. How many of them could afford to come to the Supreme Court or the High Court? So therefore, Judicial Officers have a big duty to play in the justice delivery system, and they should never think that we have appeals, we have appeals for the High Court, we have appeals for the Supreme Court. These are dreams for more than 99% of the people of the State. So while functioning as a lawyer, you are an officer of the court, and the courts have been actually designated in such a way, people consider it as a temple of justice and if there is injustice in the temple of justice, then the very justice delivery system will collapse. That will be a very sad day for the nation because a country is known by the judiciary it has and Indian judiciary has always been considered as a hallmark of all the courts globally. So therefore, in Orissa High Court, we have seen many brilliant lawyers, many brilliant Judges who have made their mark in the judicial field. Their judgments are still cited in different High Courts and the Supreme Court. And for example, there are cases, the Orissa High Court's judgment is probably the only judgment on the line. So therefore, while I was a judge, I had always



considered it my duty that I should work with a clear heart and the almighty Lord Ganapati is there always to guide you. If the Judicial Officer always thinks that if I am working honestly with a clear heart, with a clear mind and unbiased by any consideration, then, whatever be the result, the result will be tested, of course it will be tested because there are appellate forums, but the judicial officer will have the satisfaction that I have done my duty. That what is very important for a judicial officer. He should not for a moment bother to make it foolproof. Nothing in this world is perfect. How can a Judicial Officer's judgment be perfect? Can we say that the Supreme Court judgments in all cases are perfect? If that would have been there, then subsequent judgments wouldn't have overruled the judgments. Two Judge benches have been overruled by three Judge benches, three Judge benches have been overruled by five Judge benches and so on and so forth.

So ultimately it is a changing process. Law is a moving spirit. It moves. So therefore the courts have a duty to see that they ultimately become an instrument for delivery of justice. That way the lawyers have also a big role to play because they assist the courts in arriving

at particular decisions. I remember there was a particular matter, when it was told to us that the High Court has referred to a judgment which has been ultimately overruled by the Supreme Court, you see then I told in court, and in the judgment I wrote, it would have been the duty of the lawyers of both sides to say fairly that this judgment of the Supreme Court on which they are relying has been overruled by the Supreme Court. So, we had the unpleasant task of saying that look here, the judge has failed or the judges have failed and the lawyers have failed. So therefore, now it does not matter whether you succeed in a case or not, but see that the sanctity of law is maintained so that the purity of law is maintained and the justice delivery system does not suffer from any aberration. I am happy that I have been a part of this great institution, the Orissa High Court for more than 55 years, and it is not a small thing. I had the occasion to be a part of the 25-year celebration, the 50-year celebration and now we are going to have the 75 years. It is a big moment for me. It is a big moment for all of us who have been associated with this great institution for the State, the Orissa High Court



## **JUSTICE PERUVEMBA KRISHNA AYER BALASUBRAMANYAN**

*Former Supreme Court Judge*

*27.8.2004 to 28.8.2007*

I became a Judge of the Kerala High Court in the year 1992. When my turn came for elevation as a Chief Justice in December, 2001, I was appointed as Chief Justice of this court. That is how I came here. I always feel that since this is a court to which I came as Chief Justice first, this is my adopted State. This Court had a great tradition with well-known Judges presiding over it for long and in Kerala, both as a lawyer and as a Judge, there were a lot of occasions to use the decisions of this court or the authorities laid down by this court. So, I had a concept of Orissa High Court as one of the leading Courts in the country and my endeavor as Chief Justice was to uphold that tradition. So with that in view, I started functioning as Chief Justice. Here I received full cooperation from my colleagues from the Bench. My impression of the Bar was that it was a very learned one, committed to

the profession and the cause of their clients. Of course, in every High Court there are some problems. I did my best to rectify or solve some of such problems.

I also spent considerable time in supervising the work of the Subordinate Judiciary. I found some areas where there could be improvement and I set in place certain systems which would bring about that improvement which I thought were called for. In that process, I believe I earned the respect and affection of the Subordinate Judiciary. It was interesting to find that the Subordinate Judiciary picked up its functioning as a whole and I still remember the then Chief Minister of the State, Mr. Naveen Patnaik, telling me on one occasion when I met him in connection with some official function that after my arrival as Chief Justice, the Subordinate Judiciary in the State has started looking up. I am quoting his words. I was very happy to hear that the Subordinate Judiciary was starting to perform well and its performance was being noticed by the Executive.

In the High Court, we, the Judges as a team were able to put in very good work. There were systematic postings of cases, regular disposal of cases, attention to administrative details, supervision of the Subordinate Judiciary, all leading to what I perceived to be general improvement of the system. I will say as a matter of experience in this Court that I had the fullest cooperation from my brother Judges.



My experience with the Bar was quite happy. I found that there were quite a number of very learned Advocates, who had mastery over the subject and who spared no time in preparing their cases and in presenting them. I was able to encourage the younger members of the Bar, at least I believe so. I think that the younger members of the Bar were happy in general at the way they were being dealt with.

Before I could probably complete the process, I got transferred as Chief Justice of the Jharkhand High Court and had to leave. Whatever I was attempting to do, to some extent, it remained unfinished. There were some environmental matters in which probably I took an uncompromising view in ensuring that any violation of Environmental Protection Laws was dealt with.

The Judicial Academy required a proper premise. We were able to get a suitable land allotted for that purpose and also able to get renovated a building, which probably was a heritage building. Of course now I find that a well-equipped Judicial Academy has come up in the land that was allotted for that purpose by the Government. The requirement of a well-equipped Judicial Academy has to be recognized and I am very glad to find now that

Judicial Academy functioning has become almost perfect. But there is nothing perfect in law because it always calls for improvement and learning and therefore, I am sure that the Judicial Academies functioning, will continue as it is now in an excellent manner and it will continue to be so in future also. New building has come up for the High Court, as I find from the reports but I have not seen it. The old building, a heritage building, I find it as one of the most attractive structures in our judicial system. I am glad to see that the said building is being preserved and not razed to the ground.

The geography of the State is such that there are some regions where it is very difficult to function for the British officers either because of the climatic conditions or because of environmental issues. We must be able to improve the system in those areas, and I am sure that things might have changed by this time. This High Court has a history of 75 years of unblemished functioning. My message to the Hon'ble Judges, the members of the Bar and the staff is to continue to contribute their best to the institution and uphold the position, it has held. I wish the Judiciary of the State all the best in the years to come.



## JUSTICE ASOK KUMAR GANGULY

*Former Supreme Court Judge*

*17.12.2008 to 3.2.2012*

Well, before I came to Orissa High Court, I was in Calcutta High Court. That was sometime in April, 2006. At that time, I was the senior most puisne judge in Calcutta High Court and prior to coming to Orissa, I functioned twice as Acting Chief Justice of Calcutta High Court. When I came to Orissa, I found that Orissa High Court was perfectly ok and I found to my surprise that the lawyers of Orissa High Court and also the Judges, who were previously lawyers of Orissa High Court, were very cooperative and they did cooperate with me very open-heartedly and they also accepted me with a great sense of welcome and I felt as if I was at home. I always considered my stay in Orissa High Court as if I was staying in my own home because the culture is the same, the food habit is the same and there is a great deal of cultural compatibility between the State of West Bengal and the State of Odisha. So, I enjoyed my stay in Orissa High Court and thereafter, I became the Chief Justice of Orissa High Court.

I also later on became Chief Justice of another High Court. But this is the 1st Court where I became the Chief Justice. As the Chief Justice, I utilized my previous experience of my stay in the High Court for about 10 months. Because within those ten months, I came to know my colleagues, I came to know the members of the Bar, I came to know the staff and within a very short time, I was the Chief Justice of this High Court, I think from March, 2007 till May, 2008. Within a span of one year and a few months, I could initiate some developmental moves, which have now become fully operational and today, Orissa High Court is one of the best High Courts in the country.

It is my pleasant experience that I used to receive quite a lot of assistance from the Bar. With the help of this, I could deliver many judgments and decide many new points, especially in the area of taxation law. In taxation law, I did not have much experience prior to coming to Orissa High Court, but after coming here, I could tackle many important, difficult, intricate questions of taxation law with the help of the members of the Bar and with the help of my colleagues on the Bench. That is a great pleasant experience.

Well, I am very happy that this High Court has reached 75 years of its existence. From Calcutta High Court, Patna High Court became separate and from Patna High Court, Orissa High Court became separate. Today, Orissa High Court is one of the best Courts in Eastern India. Not only in Eastern India, but also in the whole of India and under the stewardship



of the present Chief Justice, who is initiating many new improvements, Orissa High Court is one of the first Courts, which has completely digitalized its records and its functioning. Now it is made possible to look into Orissa High Court proceedings online. It is a great development and every District is connected with the High

Court and that gives the District Judges and the District Judiciary a great deal of confidence and a sense of transparency and, if I may say so, that a sense of better functioning, better delivery of justice, both qualitatively and quantitatively prevail.



## JUSTICE BALBIR SINGH CHAUHAN

*Former Supreme Court Judge*

*11.5.2009 to 1.7.2014*

I had a very short period to serve the Orissa High Court as the Chief Justice and it was less than 10 months. I had unforgettable memories and experiences of working there. Before going there, I was apprehensive of lawyers' strike on some reasonable or unreasonable demands. Before taking oath, I went to Lord Jagannath to seek blessings. After darshan when I met the Judicial Officers of District Judiciary Puri, I was told that lawyers have boycotted the Court of the learned District Judge. After taking oath the next date, I called the Bar Association office bearers of the High Court and requested them to persuade the members of the Bar at Puri District Court bar to call off the strike. Mr. Yeeshan Mohanty was the President of the Bar Association. He played an important role. Though the Bench also issued show cause notice to the lawyers, but it was a surprising experience that the same day the strike was called off. Another incident occurred when a lady

lawyer was murdered in Cuttack and lawyers agitated. I requested the highest authority of the police department to investigate the case. The police acted so promptly that the accused was arrested on the same day and the lawyers did not go on strike. Another experience was that the Hon'ble High Court Judges persuaded the lawyers of Berhampur who are demanding the Bench of the High Court not to go on strike and they had accepted the request of the High Court. So, this was the basic experience regarding the strikes etc. I had unconditional support of the then Hon'ble judges, members of the Bar and the registry. I cannot forget their assistance and help they have rendered to run the High Court smoothly. I never had any difficulty with the State government. Whatever demand we had sent to the government, it was met immediately without any difficulty or any discussion. My surprising experience was when I put a demand with the Hon'ble Chief Minister that our judicial officers were not paid with some arrears as per the Shetty commission report, the arrears were released immediately in part, as I had requested the Hon'ble Chief Minister. I had a full support of all the wings of the High Court and the government. I had no difficulty on any account whatsoever working in Odisha. In fact, it was the most peaceful time of my life and I think this opportunity to thank the then members of the Bench, the registry, the office bearers of the Odisha High Court Bar Association. I'll be failing in my duty not expressing my thanks to the government of Odisha





### **JUSTICE ANANGA KUMAR PATNAIK**

*Former Supreme Court Judge*

*17.11.2009 to 2.6.2014*

My experience and relationship with the Orissa High Court fall into three parts. First, as a lawyer. Second, as a Judge of the Orissa High Court. After, I ceased to be a Judge of the Orissa High Court. So far as my experience and relationship with the Orissa High Court as a lawyer is concerned, I had a wonderful experience.

Initially, I struggled. I had no background in the legal profession in the sense that I didn't have a father or uncle who belonged to the legal profession. But yet I struggled my way through, got my briefs, argued matters, and ultimately my capabilities were recognized and I was recommended for judgeship from the Orissa High Court by the then Chief Justice, Justice Hansaria.

Soon after my appointment as Judge in 1994, in January, I was transferred to the

Guwahati High Court in February, 1994 and I came back from Guwahati High Court in 2002, April and remained as a Judge of the Orissa High Court from April 2002 to March 2005. That is for three years. During these three years, my relationship as a Judge with the Orissa High Court has been very good. I felt great when the High Court Bar gave me a very good welcome back to the Orissa High Court. And I still feel greater when on my transfer to Chhattisgarh High Court as Chief Justice, an excellent and outstanding farewell was given to me by the Bar. After I ceased to be Judge in the Orissa High Court, I lost contact with the Orissa High Court, because I was busy in my work in Chhattisgarh as Chief Justice and thereafter in Madhya Pradesh as Chief Justice. But after I was elevated to the Supreme Court, I had to take charge of various aspects of the Orissa High Court. We started the Judicial Academy. I started working with Orissa High Court for many functions.

And that time also I found a wonderful setup for Orissa High Court. Even post-retirement, I've had a wonderful relationship with Orissa High Court. They have been doing a good job.

And so far as the memorable moment of a High Court is concerned, it will all depend what important issue the High Court has decided pertaining to the rights and liberties of citizens. Whenever such events have arisen, Orissa High Court has risen to the occasion.

And if it does not rise to the occasion, it's not a memorable event. I may give an example. In Madhya Pradesh where I was a Chief Justice, the most memorable moment was when in ADM Jabalpur, the High Court upheld the right of any person to move the High Court in case his rights and liberties are affected by a writ of habeas corpus.

That judgment of Madhya Pradesh High Court was set aside by the Supreme Court. Only one Judge, Justice Khanna, said the Madhya Pradesh High Court judgment was correct. And today, people say that that judgment, ADM Jabalpur, was landmark judgment of Madhya Pradesh High Court and not set aside by the Supreme Court.

Now, that kind of a judgment of the Orissa High Court are very rare because those kinds of issues have not come to the Orissa High Court. Otherwise, whenever any issue came up to the Orissa High Court, they have delivered a good judgment. And those are the memorable events of the Orissa High Court. Not one, but many.

I have been following the events in the Orissa High Court. I have been reading many judgments also of the Orissa High Court. I have been going to the Bar also on many occasions to deliver various lectures. My message is that the Judges of the Orissa High Court must be more patient, must be independent, and very fair.

They should not be disposal minded. High Court is not meant to dispose of cases. That's a wrong mentality some of the Judges have. The proper attitude should be how to do justice in every case in a fair and independent manner. This is my message for the Judges. So the messages to the lawyers are concerned, my messages are they should work hard, become more professional, and update themselves with the changing laws or changing techniques.

In that case, they will rise. I find that so far as the Bar is concerned, it has got to become more update and compared to say Delhi, Bombay, and Karnataka. The Bar is not that updated. They have to become updated. If they become updated, they will do very well. The entire High Court will do well.





## JUSTICE VENKATE GOWDA GOPALA GOWDA

*Former Supreme Court Judge*  
24.12.2012 to 5.10.2016

Namaskar, at the outset, I must congratulate the Hon'ble Chief Justice Muralidhar, Orissa High Court and Hon'ble Chief Minister Naveen Patnaik for celebrating the 75<sup>th</sup> year of celebration of the High Court of Orissa, inviting all the former Chief Justices, former Judges of the Orissa High Court.

It is a great occasion, for every one of us to be a part of this platinum celebration functions which is being organized at Cuttack. We are all very happy that Orissa High Court has completed 75 years of administration of justice to the people of Odisha State.

I was the Chief Justice of this great High Court from 25<sup>th</sup> March 2010 till 24<sup>th</sup> December 2012 when I got elevated to the Hon'ble Supreme Court of India. I had a great experience of this court. This court was presided by a number of Chief Justices. The first Chief Justice was Bira Kishore Ray, Bachu Jagannadha Das, Lingaraj Panigrahi, R.L. Narsimham, Khaleel Ahammad,

S.B. Barman, Gati Krushna Misra, Siba Narayan Sankar, S.K. Ray, Ranganath Misra, Dambarudhar Pathak. This court had the gems of Chief Justices and the Judges who presided and adjudicated number of historical judgments from this Court went to the Supreme Court which were upheld by the Hon'ble Supreme Court of India. One of the classic cases is Binapani case is a service jurisprudence matter wherein the Orissa High Court held that principles of natural justice is required to be complied with while terminating services of an employee.

This court has produced number of Supreme Court Judges and Chief Justices to the Honourable Supreme Court of India. Justice Ranganath Misra, Justice G.B. Patnaik, Justice Dipak Misra and so also number of Supreme Court Judges, namely Justice A.K. Patnaik and I also went from this court to Supreme Court. I had a great experience in this High Court. Bar is a very strong bar, very good bar. Number of senior lawyers and junior lawyers are upcoming and their assistance is very good to the judges for adjudication of the cases. I had a great experience in deciding number of contested matters between the State and the public litigant. One of the cases, which I decided was the Vedanta case where thousands of acres of land which was allotted to a University at Bhubaneswar, I quashed the notification and told that judgment is pending in the Supreme Court.

I dealt with number of environmental matters and liberty cases, preventive detention cases, civil cases, service cases, labour cases.

The cases which came up before me, I received very good assistance from the bar.

I must congratulate the Hon'ble Chief Justice Muralidhar. He is a dynamic Chief Justice. He is a very effective Chief Justice, a good administrator and during his regime he has established Museum of Justice, Record Room Digitization Centre, Aain Seva Bhavan consisting of Arbitration Centre, Legal Service Authority and Lok Adalat courts. He has also established Virtual High Court in 20 districts and paperless courts. This shows and speaks volumes about his dynamism and his foresight in development of law and good administration to render justice to the people of this part of the country namely Odisha State.

Odisha State is in my heart. People are very poverty stricken. They require justice from the hands of the Constitutional Court and district judiciary as people are suffering from poverty, illiteracy and lack of education. They are all very sincere. I love them. I respect them. I salute them because of their hard work. The Bar is a very good Bar. During my regime, they rendered human service and assistance to me. During my time I got the Judicial Academy constructed, consisting of three acres to impart education, legal awareness, legal education and training to inculcate the skill for my Judges in the district judiciary for effective disposal of the cases and handle the cases of whichever magnitude. I also established the Arbitration Centre. I also established the Lok Adalat Centre. I gave library from out of ₹5000 crore sanctioned by the then law minister from Karnataka State who was the law minister in the Union of India. He sanctioned 5000 crores from the Finance

department. That money I utilized for the purpose of establishing the library, establishing the computers, establishing the mediation centres in the State. I was also the Chancellor of the National Law University at Cuttack. At that point of time, Mr. Mustafa was the Vice Chancellor. He was a dynamic Vice Chancellor. He is a great educationalist. He has developed that institution. Students of 20 to 22 States of the country were being educated. I must thank each of them and I must also thank the Judges who were there during my time when I was the Chief Justice here. Thereafter, number of Chief Justices came here and continued the legacy and the culture of this Jagannath land. This is a state where people are highly religious and they dedicated themselves to do justice to the people of this country.

Once again, I must thank the Hon'ble Chief Justice and the Hon'ble Chief Minister, his Cabinet colleagues and the Judges of the Orissa High Court, and the district judiciary, who have been part of in organizing this high magnitude, the 75<sup>th</sup> year of Platinum celebration of the Orissa High Court. It is a momentous occasion for each one of us to be a part of this celebration. I must salute the people of Odisha once again. I must tell the young members of the Bar to conduct themselves and protect the constitutional democracy and rule of law, and give effective assistance to the Hon'ble judges of this great culture and highly religious people of the State and to say that we all must put our efforts to render socio economic political justice to the people of the country through the constitutional methods from the Constitutional Court and District Judiciary.





## JUSTICE AMITAVA ROY

*Former Supreme Court Judge*

*27.2.2015 to 1.3.2018*

I wish to thank the Orissa High Court at the threshold, more particularly the Chief Justice and his team, colleagues for this wonderful and thoughtful gesture of inviting the former Chief Justices and the Judges of this Court for their felicitation on the occasion of the 75<sup>th</sup> anniversary of the High Court. It has been a very warm and a very commendable gesture on his part.

I had been the Chief Justice of this High Court for a short stint from later part of 2014 to first part of 2015. But though the stay was short, I have many fond memories of the short stay. Both on the administrative as well as on the judicial side we the members of the Bench could work as a cohesive unit and though we on many occasions differed in our opinions, but we differed with difference, so that we could eventually come to conclusions based on deliberations which we felt were best suited for institutional well-being.

For some reason which I can explain may be little mystical. I always have felt drawn to this place, the state of Odisha, and to be frank whenever I have set my foot on the soil of the State, I have felt a feeling of satisfaction, joy, bliss, containment, which gives me an impression that may be I have some roots in this place from my past lives. So this place is very dear to me and above all as this place is blessed by Lord Jagannath, who I am told listens very quickly and also does the needful quickly.

As a matter of fact, I stayed here for about a period of six months and then I was elevated to the Hon'ble Supreme Court. Now, as we all know, this state is very rich in its literary, cultural and historical heritage. People here are simple, free, frank, spiritual and religious minded. The Bar over the years has played a very very significant role and as a matter of fact, as the history speaks, the leading members there, had been the initial architects of this High Court. Since then, the members of the Bar who are of very high level intellectuals, they are in fact social reformers, social activists, and philanthropists. With their contribution they have in a considerable way fashioned public opinion, public policies. They have contributed formidably to the growth of this High Court. This court have on many important issues of national importance pertaining to civil rights, constitutional rights etc. have given path breaking judgments which are being referred all over the country and even in the Supreme Court.

So, in my overall assessment, the Bar and the Bench together here as one composite entity in my assessment, with my experience, I can say it is second to none. The only thing that I feel is that the members of the Bar, the members of the Bench have less exposure for which they do not enjoy the recognition which they ought to enjoy at the national and international levels.

But the fact that out of the Judges of this

court 3 have already adorned the office of the Chief Justice of India, speaks volumes of the level of knowledge, acumen, maturity, commitment to the cause of the rule of law and I am confident that with the dynamic leadership of the present Chief Justice the High Court would make rapid strides in future and soon mark its level of expectation at the national and international arena.



### **JUSTICE VINEET SARAN**

*Former Supreme Court Judge*

*7.8.2018 to 10.5.2022*

It had been an excellent experience of mine as the Chief Justice of Orissa High Court. Well I did whatever little I could do for the betterment of this High Court. That was with the help and cooperation of the State Government. It was there I managed to get land in every district, residence and court buildings. And now I am very happy to know that the present Chief Justice Dr. Justice S. Muralidhar has carried forward and buildings have been constructed in most of the Districts.

The Bar was excellent and very cooperative. The Judges are very nice and I had a very comfortable time over here as the Chief Justice.

I have been asked to give a message to on this occasion of the 75<sup>th</sup> Year celebration of the Orissa High Court. 75 years is a long period

and this court has seen a lot of development and it has grown step by step and reached one full stage. In fact, it began with the circuit which was established in 1916 and I was fortunate that in 2016 I was the Chief Justice over here and we had celebration of the centenary of the first sitting of the circuit court in Orissa. It was one good experience then organizing that function with the participation of a large number of judges of the Supreme Court as well as all the retired judges of Orissa High Court.

The Bar was very cooperative. We had a very wonderful function and so was the function yesterday over here for the 75<sup>th</sup> year celebration and it was unique then that all the former Judges, Chief Justices were honoured individually by the High Court which has never happened in any of the High Court.

I must congratulate the Chief Justice, the Chairman Dr. Justice B. R. Sarangi, and the team of all the judges of this Court who have organized this wonderful function with the cooperation of the Registry and members of the Bar.

And with this I would say that this High Court is going to be better and better in years to come and I wish all the members of the Bar and the Judges and the Registry all the best in future.

Thank you very much!





## **JUSTICE SANJAY KUMAR MISHRA**

*Chief Justice, Jharkhand High Court*

*From 20.2.2023.*

At the outset, I would like to thank my elder brother, Doctor Muralidhar, the Chief Justice of Orissa High Court, for organizing this function and I also thank the companion Judges of the Orissa High Court. The morning shows the day. The initial reception that has been given to us is really so heartening that we believe that it will be a very nice function tomorrow and the questionnaire that has been given to me by the learned trial judge, the experience as an advocate in the High Court. Unfortunately, I had no experience in the High Court as an advocate. But as the Register General of the High Court, I worked for about one and half years. And in that process, I learnt a lot regarding the administration of the High Court, because the administration of the High Court is something different from the other administrations like District Judge or other departments and that experience in administration is going in a lot of way to help me in administering the Jharkhand High Court where I am at present posted as the Chief Justice.

As a judge of the Orissa High Court, I have had the opportunity of sitting in division with all the eminent judges of the High Court starting from Justice Gowda, Justice B.P. Das, Justice L.K. Mahapatra, Justice P.K. Mohanty and from those senior judges, I learnt a lot about the Writ Jurisdiction, because I hail from district judiciary and also I was a practitioner of the trial Court. So I had no exposure of dealing with matters like writ applications and from these erudite Judges I could know the code craft and how to deal with the writ applications. And that rich experience has paid dividends when I became a senior Judge and presided over a division bench and also when I was transferred to Uttarakhand at Nainital.

My experience in the High Court of Orissa both as a companion judge in a division bench or a presiding judge of a division bench paid me rich dividends. And at the end I will say that there are many memorable moments of the Orissa High Court where we have organized several seminars, several colloquia and as the member of the Juvenile Justice Committee as well as the Judicial Academy Committee and later on as the Chairman of both the committees, I have gained rich experience which has paid a lot of dividend and developed me internally as a Judge, also as an administrator.

At the end, I will again congratulate Dr. Justice Muralidhar, the Chief Justice of Orissa High Court and his Lordship's companion Judges for making such a grand programme on the 75<sup>th</sup> year celebration of the establishment of the High Court of Orissa and wish them all well to do the best they can to provide substantive justice to the people.



### **JUSTICE SUJIT BARMAN ROY**

*Former Chief Justice, High Court of Orissa  
9.4.2003 to 21.1.2007*

One of my uncles was also Chief Justice of Orissa High Court. I think he retired around 72 or 73. He was elder cousin brother of my father. His name is S.K. Rai Barman. Now I came here on transfer from Calcutta High Court as the Chief Justice and joined Orissa High Court as Chief Justice on or about as far as I recollect, on 3<sup>rd</sup> or 4<sup>th</sup> April 2003. Since then, I worked here for less than four years and retired on 28<sup>th</sup> January 2007. My last working day here was 27<sup>th</sup> January 2007. Before being transferred to Calcutta High Court, I was in Guwahati High Court and after being transferred to Calcutta I was there for about six and half years. Prior to that I was in Guwahati High Court for about another six years as a judge. My experience here was quite good and I had no reason to be unhappy for my posting here. Some cases, I dealt with and one case you all may know. One Australian Christian missionary, along with his two minor kids who were sleeping in a winter

night somewhere in western Odisha in a vehicle where they were burnt to death alive. That was the first sensational case I had to deal with. Trial Court gave death sentence to one accused. Rest eleven were sentenced to life imprisonment. But I do not like to deal with the law involved. But I say that conviction and imprisonment for life was not legally maintainable. That was given to one man. His name was Dara Singh. So far as other 11 convicts are concerned, of them I maintained life given to 1 only.

Rest were all acquitted. There were many more sensational cases that I had dealt with one perhaps you all know that was relating to Tangarpara chromite mine case. Some political allegations, counter allegations were there about awarding. I think name of that place is Tangarpara or something like that for exploration of chromite minerals and for extraction. I interfered with it that way. I dealt with some other big cases. I was not at all unhappy that I was here. I have worked here. I found some of the lawyers to be highly competent, but in big cases, mostly lawyers were used to be brought from outside, mostly from Delhi. Some may be from nearby High courts like Calcutta and other places. But there are some lawyers here, though they may be few in number, are equally competent and good. I learned from Judges, learned from the lawyers, we learned law from them and on the knowledge so acquired we deliver our judgment. So our knowledge was enriched by virtue of the active assistance

given to us by some of the eminent lawyers of Orissa High Court. Even after my departure and retirement from here, I visited number of times in connection with marriages of sons and daughters of some of my ex colleagues in Orissa High Court and this time I am now visiting here, about three or four years after my last visit. On the whole, I say I am quite happy.

Through the assistance of lawyers, I enriched my knowledge here, and I wish the lawyers of Odisha to venture out from Orissa and establish good practice nationwide not to remain limited to Odisha alone. Some of them are competent. They can do very well if they go out and try their luck for more success.





### **JUSTICE BILAL NAZKI**

*Former Chief Justice, High Court of Orissa*

*14.11.2009 to 17.11.2009*

I congratulate people of Odisha, Bar of Odisha, Judges of Odisha on this occasion. This court has a very rich history. After being part of the Calcutta High Court, which was the first High Court in India, it has created a place for itself in the judicial history of India. I am proud to have been Chief Justice of this court. But my tenure was perhaps the shortest. I came here for few days. I got the love of the Bar and the then judges of the High Court and the staff of the High Court. I cherish those memories of that short period from then on.



## **JUSTICE KALPESH SATYENDRA JHAVERI**

*Former Chief Justice, High Court of Orissa  
12.8.2018 to 4.1.2020*

It is my pleasure that I am part of 75 years celebration of the Orissa High Court. I was Chief Justice in Orissa High Court from 12<sup>th</sup> of August 2018 to 4<sup>th</sup> of January 2020. During my tenure, it was really a nice time to be a part of the great institution which is completing 75 years. During my tenure, I have tried to work up with the Bar and the Bench try to have a smooth functioning between the Bench and the Bar and I tried to reduce the arrears of 10 percent which was a major issue for the judiciary. Though there was

initially misunderstanding between the Bar and the Bench and ultimately with the passage of time it was resolved. It is really a good Bar and coordination with the Bar and the Bench is good. I wish this institution can flourish the richness of the Bar and the potential of the junior lawyers who are upcoming in all fields of taxation and other. Wishing this function, a grand success and I wish that this institution will be on the top in all fields.



### JUSTICE MOHAMMAD RAFIQ

*Former Chief Justice, High Court of Orissa  
27.4.2020 to 2.1.2021*

I took oath as Chief Justice of the Orissa High Court on 27<sup>th</sup> of April 2020 in an extraordinary time when the entire country was passing through difficult first phase of Covid -19 wave. My stay at Odisha was rather short, roughly about 8 months but I still cherish the memories of that time. When I reached Cuttack the High Court was working in a very restricted manner on Monday, Wednesday and Friday with one division bench and then they would split to form two single benches. Immediately on arrival, I myself started sitting in division bench on all five weekdays and set up five single benches on all working days of the week and then seven single benches from the third week. From third week onwards, number of division benches was also raised to three and rest of the Judges started sitting in single benches. Since physical hearing was prohibited, lawyers at that time were allowed to appear only by video mode. I remember

Sri Krishna Mohanty, the then president and Sri Sanjay Das, the then secretary of the High Court Bar Association met me and talked about the difficulty of most of the lawyers in Cuttack, who neither had dedicated internet connection nor were technical savvy. In order to overcome such difficulty, we set up fifteen cubicles in different locations of the High Court premises, connected them with every court by purchasing 55 inches LCDs, mic system and cameras. We connected such cubicles with LAN system of the High Court so that audio and video quality was not compromised. We also provided link of the High Court LAN system to the AG office. We also put up glass partition in each court to maintain the norms of physical distancing even when the physical hearing was to commence. At that time, we were working on **JITSI**, a VC program which was a free video conferencing platform and could effectively function even on a very low bandwidth with a speed of 1Mbps. Considering that most of the members of the Bar at that time did not have high speed internet connectivity to survive the program like Cisco, Webex or Zoom, we decided to continue with **JITSI**. When however, we realized that the crowding was causing problem to regulate the hearing, we provided link to advocates in cluster of five cases only. After all such five cases were over, another cluster of five cases would be taken up. This was a successful experience. I simultaneously encouraged all lawyers, especially senior advocates, to get connection of internet from established telecom companies



like Airtel and Jio. This showed positive results and I could see many senior advocates appearing through VC being assisted by their young juniors and sometimes their grandsons and granddaughters. In fact, this was the phase of training for all of us. In course of time, all such senior advocates and of course the younger members of the Bar became very proficient in the use of video conferencing system. I even took up the matter with the State Government and persuaded them to provide us connectivity from their internet system OSWAN, not only in the High Court premises but also in all 150 old court complexes throughout the State. The idea of making the entire High Court complex wi-fi enabled was conceived at that time when I was there but it could not be immediately implemented because of my short stay. During the first phase of COVID -19, considering that there was constraint of space in hospitals and dispensaries, we set up dispensaries for our Judges, Judicial Officers and their family members in a High Court bungalow and for staff of the court in a community hall just behind that bungalow and got them attached to nearby community health centre of the State Government. That was the time when all

transport system, rail, road and air were freezed and my regret has been that I could not at that time travel to any part of the State due to such restrictions but I can never forget my stay in Cuttack because that is when my grandchild was born and for that reason my wife had to stay at Jaipur. We remained separated for the first time in life from each other for about five months.

While I was in Cuttack I was told about the glory of the old and original High Court building and legal stalwarts who adorned the seat of the Chief Justice. I all throughout sat in Court number one of the old building as a mark of respect to their inspiring memory. I got fullest of cooperation from all my colleagues on the Bench, all office bearers of the Bar and especially Advocate General Sri Ashok Parija who was also at that time heading the State Bar Council as Chairman of its special committee. I express my deep sense of gratitude to my colleagues on the bench, members of the registry and all the members of the bar for making my stay at Cuttack comfortable for whatever period I was there. I wish them all happy, healthy, joyous, prosperous and blissful life.



## JUSTICE PRAFULLA KUMAR MISRA

*Former Chief Justice, High Court of Patna  
12.8.2009 to 16.9.2009*

I took license as an advocate in the year 1968 but thereafter I did my post graduate LLM. So actually I joined practice in 1971 as a junior of late Justice R .C. Pattnaik. I continued with him till 1981 when he became a judge of the High Court. As an advocate whatever I have learnt, it is because of the blessings of late Justice R .C. Pattnaik and to some extent also late Justice B.K. Rai. Of course I had the blessings of my father late Justice J.K. Mishra. As an advocate I considered that I was fearless. I would never hesitate to argue with the court if necessity arises. At times I had controversies with many of the Judges. However, to my good fortune those Judges never bore any grudge against me. And I cannot say that I suffered because of that. But my advice to young generation of advocates would be that it is better to be polite rather than aggressive in Court. Because, ultimately, the Judge has to decide the matter. And if somebody becomes aggressive the Judge may

get annoyed and ultimately the case may be decided against the particular advocate.

As a junior advocate I had assisted late Justice R.C. Pattnaik in two important cases. One relating to ceiling proceeding under OLR Act where the question was whether, after the appellate decision in a ceiling matter revision would be maintainable. By making research I found that the word final there in OLR Act it meant that no further appeal. But it is revisable. That way late Justice R.C. Pattnaik submitted the matter and succeeded.

The other matter was relating to the scope of enquiry in a proceeding under Section 202 CrPC, where it was decided for the first time in Odisha that if the complaint pertains to a sessions triable case then the magistrate is duty bound to record the statement of all witnesses. For that decision a lot of research had to be done and ultimately I found out that there was a decision of the Kerala High Court which was relied upon by the High Court. So I can say that I still remember these two instances even though I was junior but I had assisted my senior in making proper submissions.

I became a Judge of the High Court of Orissa on 17<sup>th</sup> January 1996. Then I was transferred to Madras High Court on 24<sup>th</sup> June 2001. So I had short experience for about five and half years. I can say that as Judge, I believed in rendering substantial Justice, rather than looking at the technicality of law. I would rather find out whether justice is in favour of a particular person and I would try to

decide in that way without bothering about the technicalities of the procedural law. I continued the same attitude also in Madras High Court. As a judge I can say, of course, it may sound as if I am boosting about myself, but as a Judge I was fearless. Even when I was an Additional Judge, on one occasion there was matter in the Full Court relating to taking disciplinary action against a Magistrate who had granted bail to a lady by applying Section 437 proviso of the CrPC. However, unfortunately the Full Court initiated a proceeding and suspended her. At that time mine was the sole dissenting voice in that Full Court meeting. I said if the Magistrate is following law, how can you start a disciplinary proceeding and how can you suspend such a Magistrate. Ultimately, of course, after six months the proceeding was dropped but I remember that because I had raised that question, even though I was an Additional Judge. Subsequently, there was a very sensitive matter relating to a gang rape. The Government wanted to entrust the inquiry

to a Judicial Commission. The then acting Chief Justice consulted other Judges, but all other Judges refused to take up the matter because of the sensitive nature of the case. However, when I was contacted over telephone, I said if a duty is entrusted to me how I can say no, because I have taken oath to discharge my duty without fear or favour. I can say that throughout my judicial career I have tried to follow that oath of discharging my duty without fear or favour.

I was glad that such a programme was conducted by the high Court to celebrate completion of 75<sup>th</sup> year of completion of the high Court. It was a proud occasion for the High Court and many of the retired High Court Judges and eminent Judges attended the function. I feel that the presence of such legal luminaries would be encouraging the future generation of Judges to come. I must congratulate the High Court, the Chief Justice and all the Judges for conceiving such a programme and holding that programme without any difficulty.





### **JUSTICE LAXMI KANTA MOHAPATRA**

*Former Chief Justice, High Court of Manipur  
10.7.2014 to 10.6.2015*

I joined legal profession in 1978 January and worked with four seniors and out of the four, three were elevated to Bench and my last senior, Justice R.C. Patnaik went to Supreme Court. My experience in the Bar was excellent. Experience in the High Court was also excellent. Initially, the juniors face a lot of problem in appearing before the court, addressing the court, unless there is some sort of encouragement from the Bench, it becomes very difficult for the junior advocates. I will say that I was very lucky during my period. The Hon'ble Judges who were there in the Bench were very good so far as the juniors are concerned. They were very encouraging and used to even guide sometimes while preparing a case or presenting a case. Initially, when I was elevated to Bench, late Justice R K Patra was the senior most judge and there was no Chief Justice then. So he was the Acting Chief Justice and I was sitting with him. In fact, late Justice Patra helped me so much in the Bench and he forced me to ask questions. He forced me to write judgments. He forced me to take notes and in fact, that helped me later while

dealing with cases independently, sitting as a single Judge. I do not say that I was working alone. All my brother Judges have put their best in getting the matters disposed of.

I had the advantage of support from the Bar in the sense Bar actually used to accommodate whenever required and they used to supply me with whatever inputs required in deciding a case. And sometimes I used to do my own research work also, but Bar was a big asset so far as I am concerned.

Unfortunately, during my tenure the Academy building could not be completed. It is just behind my house. It was possible for me to look into the construction of the building day-to-day basis, but later on the building was completed after I left Odisha. I had come for inauguration of the building also. It is a beautiful building. I hope our Judicial Officers are enjoying their time along with the classes they are taking. The pendency is high, pressure is too much, but at the same time you have to face it. So do not lose your temper in the court, because that does not help. That only increases your own blood pressure. And I will also request the Bar to understand the difficulty of the Hon'ble Judges who are dealing with so many cases every day. Because if you put yourself in position of a judge, then only you will understand how difficult it is to work. Actually I will say that the Judges, not only in the High Court but also in the lower courts, put in much more work, at least 10 times more than the lawyers and that, the lawyer should understand.

I hope during my period the lawyers were very accommodative, they understood this and today also the lawyers understand this and I will request them to help the court in disposing of cases without getting any issues.



## JUSTICE JASWANT SINGH

*Former Chief Justice, High Court of Tripura  
15.2.2023 to 22.2.2023*

This is evening time when it is being recorded, so therefore good evening, but I will add very warm greetings to whosoever watches this at whatever time, since I am told it is to be housed in a museum to be viewed at different points of time. First of all, I would like to thank this court, our Chief Justice and companion Judges, and of course fully supported by the government for organizing this two day's event, this conference tomorrow, and bringing all the former Judges who served in this court in whatever capacity together at this momentous time in this 75<sup>th</sup> year of celebration of the establishment of this court. So, I thank our Hon'ble Chief Justice, my friend Doctor Muralidhar. I have served in this court, or I would say I have had the good fortune to be in Odisha, this land of Lord Jagannath, this land of art, culture, education, etc. and also serve this court as I said, 1 and 1/2 years. Prior to this last 2-3 years or I would say since last 2-3 years, there has been and I have myself experienced it in

my tenure here. There has been an exponential developmental activity in almost every aspect of justice delivery system. Of course this has been possible because of the vision and so much of zeal and efforts of our Hon'ble, the Chief Justice, Dr. Justice S. Muralidhar and his companion judges. I was here. I have myself experienced and observed that every Judge of the court was really behind our Chief Justice and took active part in the really taking this court forward. I consider myself lucky to be a part of this court during that period when this process of development was undertaken. It is for everyone to see and observe that there has been this recognition on a national level.

Our Hon'ble Chief Justices, successive Chief Justices have time and again noticed, acknowledged, and also given a message to the other courts to follow the example of the activities which have been undertaken by this Court, be it the digitization of the Court records, the development of the infrastructure, virtual courts. Various schemes have been implemented like vulnerable witness court, etc. I guess around more than 10 district headquarters of the judgements which are connected to this court in the sense that virtual high courts are at 10 different places where the litigants can file their petition through the e-mail filing, get the orders there. It is virtually being there in the High Court although they are at their respective district headquarters. I guess it is not for me to say too much because it is known to everyone, felt by everyone and that is why you know it has been possible for a court to hold such events on

a monthly basis and we have Hon'ble judges coming from the Supreme Court supporting this, I would say revolutionary development movement undertaken under the leadership of Hon'ble Chief Justice in the last 1 and 1/2 years in spite of the covid. In fact, when I came here, the first thing I was impressed about was the functioning of the virtual courts which was not there in my parent court. You had one advocate appearing here from his home, the other from court, and it was quite an eventful moment for me when I initially came here.

So, I think what has happened in last 1 and 1/2 or almost two years since Dr. Justice S. Muralidhar, the Chief Justice has come being showcased in this year which happens to be the 75<sup>th</sup> year of the establishment of this court. This is a real tribute to this court. In my 1 and 1/2 years another thing which I have very happily noticed that the government has always been very very supportive of whatever

the High Court has tried to undertake and its full implementation and organizing such events like this at such a scale. The Government has showed its commitment, real commitment, positive commitment, being a stakeholder in the successful justice delivery system. Having said that, now it is for the litigants and the advocates at the district level to really avail these benefits which are being made available to them and utilize them. They must prove themselves in the use of technology. Of course, the High Court has undertaken to give them hands on training, so they must utilize this facility and they must change their mindset now and become more receptive of these new measures which have been undertaken to really have a meaningful and effective access to justice, real justice. I wish that what has been started will keep going on and this court grows which I personally believe would still be the number one court in the country and still achieves greater heights.





## JUSTICE BASUDEB PANIGRAHI

*Former Judge, High Court of Orissa*

*31.3.1994 to 20.4.1994 and 4.6.2001 to  
9.7.2003*

I have varied experiences with the Chief Justices of High Court. During my period about 2-3 Chief Justices were there with whom I have very cordial relationship. Before 6 months of retirement, I joined CAT, as Chairman. I left High Court and during that period, I had a very wonderful experience with the Bar members, the Judges, and my colleagues and Chief Justices and staff of the high court.

I owe my gratitude to the institution and I have been enriched with profound experience as a Judge of the High Court.

We have already crossed the 75 springs of the establishment of the High Court. And I wish that this High Court will never remain grim and it will serve the purpose of the democracy and it will cater to the needs of the public.

That is my wish and I also cherish that it will cater to the public purpose of the common people.



## JUSTICE SUSANTA CHATTERJI

*Former Judge, High Court of Orissa*

*22.12.1994 to 1.4.1999*

*Bande Utkala Janani.* Life of law has taught logic. It is experience. My parent High Court was High Court of Calcutta. After more than 10 years of service there, I was transferred to Gujarat High Court. From Gujarat High Court, I came to Orissa High Court in December, 1994.

At that time, Chief Justice Mohta was there. Second was Justice G.B. Patnaik, third was Justice D.P. Mohapatra and fourth was myself. Shortly after, Justice Patnaik was transferred to Patna High Court as the Chief Justice. In the month of April, Justice Mohta retired. Justice D.P. Mohapatra became the Acting Chief Justice and I was the second man.

Institution is larger than any individual. In January, 1996, Justice D.P. Mohapatra was transferred to Allahabad High Court as Chief Justice and I became the Acting Chief Justice in January, 1996. For the first time, for more than seven months, I was there as acting Chief Justice.

I was asked what you find in Odisha. I find that in other parts, everything was there but they are losing. In Odisha, there was nothing, but everything was building up. Judiciary is one of

the four pillars of the Constitution i.e. Legislature, Executive, Judiciary and Media. I found the people of Odisha loved their mother tongue. They believe the real language is 'Othara Hasa, Akhira Luha'. The smiles and tears are the best language for communication. Judges are not expected to have weapons, Judges are not expected to have wealth, affluence, but Judges are expected to have wisdom and experience. I found judicial activism was there very much in Odisha and I enjoyed thoroughly. In 1998, it was the 50 years of celebration because Orissa High Court was born in the year 1948. I was there at that time. Again after 25 years, now 75 years is being celebrated. Orissa High Court has remembered me. I am deeply and profoundly grateful.

Bar and Bench are like a bird with two wings. A bird cannot fly without cooperation of the wings. Similarly, judiciary cannot flourish without cooperation of its two wings. Bar should be proud of the Bench and Bench should appreciate the Bar.

My only expectation is that judiciary remains independent, and impartial, no matter whoever is there. *Insaaf* is above everything. There is no truth than humanity. Odisha is a land of deities. Here every effort is made to divinize humanity and to humanize divinity. I wish young generation of Odisha to rise more and more and to lead the nation. I as a dreamer, dream one day Orissa High Court will be the most premier High Court of India and it will lead all other High Courts. I wish you in every sense. I feel proud to be a retired Judge of Orissa High Court. I retired from here about 24 years ago. My other assignment is in other States. I am still working, but I am branded as a Judge of Orissa High Court and I feel proud of it.



### JUSTICE PRADIPTA RAY

*Former Judge, High Court of Orissa  
9.1.1995 to 7.1.2003*

My experience as a Judge in the Orissa High Court is excellent. I was accepted by the members of the Bar very well so also by my colleagues. Then I was the junior most Judge here, so my colleagues accepted me very well. They taught me because of this new place, how to deal with the local people, local law, local problems. The people here were very nice. It is very difficult to speak of any particular incident, but during my tenure as a Judge, I have delivered judgments, dealt with the learned

advocates, particularly junior advocates, who were liking me very much. In one story, recently one member of the Bar has been elevated as a Judge of the High Court. He sent me a letter after his elevation remembering me and saying that how I was according to him, nice to the junior advocates. That gave me immense pleasure that even after almost 20 years, these advocates, who were practicing at that time still remember me. I consider the Orissa High Court as my High Court because out of about 10 years of my judgeship, I was here for eight years. I consider Odisha as my second home. My daughter also read here in one convent school and then in Ravenshaw College.

I like this place. You know that many of the sons of this place, particularly the Judges of Orissa High Court, also were elevated to the Supreme Court and became Chief Justices there. All of them I think earned good name and fame. I think Odisha is prospering. Everybody says that Odisha has prospered much. I think Odisha will again go up.





### **JUSTICE RATNAKAR DASH**

*Former Judge, High Court of Orissa*

*14.3.1995 to 19.12.1999*

After a long journey as a lawyer and as a District Judge, I was elevated to Orissa High Court in March, 1995. That was a memorable period in my life. During that period, there were many experienced lawyers practicing in Orissa High Court. Their able assistance and guidance helped me in deciding several matters to the best of my ability during that period. That was a remarkable period. During my period as a Judge, there was good relationship between Bench and Bar and most importantly, punctuality

was being maintained both by lawyers and the Judges. There is a congenial atmosphere in the High Court. A Judge with open mind was being appreciated by the members of the Bar.

During these 75 years, Orissa High Court has occupied a position in the Judiciary by the contribution of the eminent Judges and the lawyers. There are several important judgments rendered by the Orissa High Court, which are being relied upon by the Apex court as well as the other High Courts.

My appeal to the judicial fraternity is that long pendency of old cases are not being appreciated by many in the general public. With my long association with the general public after retirement, my impression is that people are unhappy for the long pendency of their cases. Because they do not have the direct approach to the Hon'ble Judges, they only express it to the lawyers. Presently I am associated with the general public and they express that their cases should take priority and should be decided at least during their lifetime.



### **JUSTICE PRAFULLA KUMAR TRIPATHY**

*Former Judge, High Court of Orissa*

*14.6.1999 to 6.11.2009*

The Diamond Jubilee Celebration of the Orissa High Court is an important event which has been organized by the Orissa High Court in a successful manner. Hon'ble the Chief Justice, Dr. Justice S. Muralidhar, Dr. Justice Sarangi, and all other Hon'ble Judges of the Orissa High Court have contributed to it heartily, so that the program has become a successful one. There is one part of the program in which we

participated. There are several other phases of this Diamond Jubilee celebration that would be participated at different times.

I was a judge of Orissa High Court in 1997 and the Golden Jubilee celebration was organized. Then, Honorable Justice Phukan was the Chief Justice of the Orissa High Court and Dr. Arijit Pasayat was one of the senior most judges, who were organizing everything and under him, I had been allowed to participate as a volunteer.

We had also achieved a milestone there. Diamond Jubilee Celebration is still little better than what we did in the Golden Jubilee Celebration. I wish all the success to this Diamond Jubilee Celebration and all the best to the Hon'ble Chief Justice and Hon'ble Judges in their service career as well as personal and public life and I wish that the High Court, which is here for the 75 years in dispensation of justice, should continue with it.



## JUSTICE BIMAL PRASAD DAS

*Former Judge, High Court of Orissa  
17.7.1999 to 14.11.2012*

I joined Bar in the year 1974 and I was the 1st generation lawyer in my family and you must know one has to struggle as a lawyer who does not have a backing of an office, parental guidance in the High Court Bar Association. I was determined to become a lawyer right from the beginning as my father inspired for that. But I have to face certain challenges during my course of advocacy because of the reason that I was the first generation lawyer in our family.

When I reached at Bar I find Bar is totally crowded and I have to make carve a place for myself. I took the help of my seniors. My senior was Mr. B. K. Mohanty and in those days the senior and junior relationship was very cordial. I have come across with many seniors like Prabir Palit, Late barrister Ranjit Mohanty, Mr. Ramakanta Mohapatra, Late Mr. Girija Sankar Bohidhar. Whenever I went to them for any consultation, I used to get that immediately

and they did not charge any fees from me or my client. That was the relationship between a Senior and Junior then. Bar and Bench relationship was very cordial. During my career as a lawyer, I had taken up pro bono cases more and never bothered about my fees. I always left my fees to be decided by my clients. Though I joined in a tax chamber but I ultimately came to High Court in constitutional matters. Argued in High Court in constitutional matters, in Civil as well as Criminal matters.

Relationship in Bar was very cordial. I have great experience in Bar. And that experience helped me in my later career.

When I was elevated as a Judge in the year 1999. The day I took oath, I also took an oath that the High Court order should not be ignored. So, during my career as a Judge also I have stuck to that. I always ensure that poor people get relief and our orders do not go as a piece of paper or it is not implemented by the authorities unless it is stayed by the superior Court. I have taken up Public Interest Litigations and some of them are reported cases and I feel happy to see that my orders are implemented and the poor people got their dues at right point of time. I have many memorable moments as the Chairman of Legal Services Authority. I always insisted victims of motor accidents get their reasonable dues from the insurance company. But one case I will never forget in my life, that is someday sent a newspaper clipping of Times of India or Indian Express, I don't remember but an English newspaper clipping



from which a news came up that an old lady from district of Kalahandi as I remember had not received her family pension even after the death of her husband 20 years back. She was running from pillar to post but not getting. I called upon the Inspector of Schools. He told me that her husband's pension book is not available, his service book is not available. I told him that, find out his service book. He told me it is possible only after 3 months. I asked the director of secondary education to come and told him that he first compute the adequate amount she has to get. It was computed within 7 days and admitted amount was paid within 10 days of time and it was paid in her house even. Then the rest of dues were paid within a month thereafter. And all cheques were delivered at her residence in Kalahandi.

Message to the young generation would be the lawyers' profession is not a business, it is a profession. From the lawyers, the society expects much more because they treat them as the torch bearers of the society and in case of any difficulty the lawyers come out for the benefit of the society and whenever any injustice is done.

My message to the young lawyers is that in the 75<sup>th</sup> Years of this High Court establishment, my message would be that, let not the profession be made a machinery for earning money or making business. Let the profession be for the people who are behind you, they are your clients, they are the society.

My message to the High Court of Orissa that, this is a High Court of which a circuit court was established in the year 1916. From 2016 this High Court has delivered many judgments which are exemplary judgments and they are being followed in many High Courts and also, they are confirmed in the Supreme Court. This High Court has rendered the judgment of *Krushnachandra Gajapati vs. State of Orissa*, which is a landmark judgment in the country and which still holds good. So my message is that let the High Court keep itself up and proceed and go on giving justice irrespective of caste, creed, religion and financial status. Let us not influenced by anybody's financial status or any newspaper item and any TV message which are making some trials before the trial is commenced.



## ବିଚାରପତି ଚୌଧୁରୀ ପ୍ରତାପ କିଶୋର ମିଶ୍ର

ପ୍ରାକ୍ତନ ବିଚାରପତି, ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ  
୧୭.୬.୧୯୯୯ - ୪.୧.୨୦୦୪

ମୁଁ ୧୯୭୦ ମସିହାରେ ଓକିଲାତି ପାସ କରିବା ପୂର୍ବରୁ ବିଜୟ କୁମାରଙ୍କର ସହକାରୀ ହିସାବରେ ଓକିଲାତି ବ୍ୟବସାୟରେ ଯୋଗ ଦେଇଥିଲି । ୧୯୭୦ରେ ଯେତେବେଳେ ମୁଁ ଯୋଗ ଦେଲି, ପ୍ରଥମେ ମୋର ଯିଏ ବରିଷ୍ଠ ଓକିଲ ସେ ସେତେ ରାଜି ହୋଇନଥିଲେ କିନ୍ତୁ ଅବସ୍ଥା ଚକ୍ରରେ ମୋର ଆଇନ ଜ୍ଞାନ ଦେଖି ତାଙ୍କର ସହକାରୀ ହିସାବରେ ନେବାକୁ ରାଜି ହେଲେ । ୧୯୭୧ରେ ମୁଁ ଓକିଲାତି ପାସ କଲି । ତା ଆଗରୁ ମଧ୍ୟ ୧୯୭୦ରୁ ଯେତେବେଳେ ବିଜୟ ବାବୁଙ୍କ ସିରସ୍ତାରେ ଯୋଗ ଦେଇଥିଲି, ସେତେବେଳେ ମଧ୍ୟ ନ୍ୟାୟାଳୟକୁ ଯିବାକୁ ଆରମ୍ଭ କରିଥିଲି । ଜଣେ ଓକିଲ ହିସାବରେ ୧୯୭୧ରୁ ମୁଁ ବିଜୟ ବାବୁଙ୍କ ସହକାରୀ ହିସାବରେ ଯୋଗ ଦେଇ ୧୯୮୪ ପର୍ଯ୍ୟନ୍ତ ତାଙ୍କ ସବୁ କାର୍ଯ୍ୟରେ ସାହାଯ୍ୟ କରିବାକୁ ଚେଷ୍ଟା କଲି । ମୋର ଏତେ ବର୍ଷ ରହିବାର ତାଙ୍କ ପାଖରେ ଇଚ୍ଛା ନଥିଲା । କିନ୍ତୁ ୩ ବର୍ଷ ସର୍ବନିମ୍ନ ରହିବା ପାଇଁ ମୁଁ ତାଙ୍କ ପାଖରେ ନିବେଦନ କରିଥିଲି । କିନ୍ତୁ ତାଙ୍କ ନିର୍ଦ୍ଦେଶରେ ମୁଁ ଅଧିକା ସମୟ ସେଠି ରହିଲି । ମୋର ଇଚ୍ଛା ଥିଲା ସେ ରାଜି ହୋଇ ମୋତେ

ସ୍ବାଧୀନ ଭାବରେ ଓକିଲାତି କରିବାକୁ ସୁବିଧା ଓ ସୁଯୋଗ ଦିଅନ୍ତୁ । ମୋ ଭାଗ୍ୟ ଖରାପ, ସେଇଟା ସମ୍ଭବ ହେଲା ନାହିଁ । ମୁଁ ଯେତେବେଳେ ୧୯୮୪ ଅଗଷ୍ଟ ମାସରେ ସ୍ବାଧୀନ ଭାବରେ ଓକିଲାତି ଆରମ୍ଭ କଲି, ତାଙ୍କର ଏବଂ ମୋ ଭିତରେ ବହୁ ମତ ପାର୍ଥକ୍ୟ ଦେଖାଦେଲା । ଯାହା ହେଉ ଭଗବାନ ବଡ଼ । ସ୍ବାଧୀନ ଭାବରେ ଆରମ୍ଭ କଲାବେଳେ ମୋର ନିଜର ହୁଏତ କିଛି ଓକିଲ ଓ ଡାକ୍ତରଙ୍କ ନଥି ଛଡା ପଇସା ଦେଉଥିବା ନଥି ଗୋଟିଏ ମାତ୍ର ନଥିଲା । ମୋର ଗୋଟିଏ ବନ୍ଧୁ ତାରି ଗୋଟିଏ ଆୟକର ନଥି, ଯୋଉଟା କି ମୁଁ ନିଜେ ପଢୁଥିଲା ବେଳେ କରୁଥିଲି । ସେଇଟାକୁ ଧରି ମୁଁ ମୋର ସ୍ବାଧୀନ ଭାବରେ ଆରମ୍ଭ କଲି କିନ୍ତୁ ତା ପରେ ପରେ ମୋର ରାୟଗତାରୁ ଜେ. କେ. ପେପର ମିଲ୍, ଜୟପୁର ସୁଗାର ଏବଂ ମୋର ଜଣେ ବନ୍ଧୁଙ୍କ ଦେହାନ୍ତ ପରେ ତାଙ୍କ ସେରସ୍ତାର ଦାୟିତ୍ବ ମୋତେ ଦିଆଗଲା । ସ୍ବାଧୀନ ଭାବରେ ଠିକ ସୁରୁଖୁରୁରେ ଆରମ୍ଭ ହୋଇ ଏହି ହିସାବରେ ମୋର ରୋଜଗାର ମଧ୍ୟ ବଢ଼ିଲା ।

ମୋର ରମଣ ବୋଲି ଜଣେ କନିଷ୍ଠ ସହକାରୀ ଥିଲେ, ଶେଷ ଆଡକୁ ସାତ ଜଣ କନିଷ୍ଠ ସହକାରୀ ଥିଲେ । ତାପରେ ମୋତେ ବିଚାରପତି ହିସାବରେ ନିମନ୍ତ୍ରଣ କରାଗଲା ।

ମୁଁ ଯେତେବେଳେ ଓକିଲାତି ସ୍ବାଧୀନ ଭାବରେ କରିଥିଲି ବିଶେଷ କରି ଓଡ଼ିଶାର, ବିକ୍ରୟକରର କେତେକ ପରିବର୍ତ୍ତନକୁ ଯେଉଁ ବିରୋଧ କରାଯାଇଥିଲା, ତା ଦେହରେ ଯେଉଁ Formulation ହୋଇଥିଲା ସେଗୁଡ଼ାକୁ ନେଇ ମୁଁ ଗର୍ବ କଲି କାହିଁକି ନା ସେଇ Formulation ସବା ଶେଷରେ Apex Court ଦ୍ବାରା ଗ୍ରହଣ କରାଯାଇଥିଲା । ଯେତେବେଳେ ମୁଁ ରାଜି ହୋଇଗଲି, ସେତେବେଳେ ମୋର ବନ୍ଧୁ ଏବଂ ବିଚାରପତି ଅରିଜିଟ ପଣ୍ଡିତଙ୍କର ଅବଦାନକୁ ମୁଁ ଭୁଲି ପାରିବିନି । ମୋର ବିଚାର ପକ୍ଷର କାର୍ଯ୍ୟକାଳ ୧୭ ଜୁନ୍ ୧୯୯୯ ଠାରୁ ୦୪.୦୧.୨୦୦୪ ପର୍ଯ୍ୟନ୍ତ, ମାତ୍ର

୪ ବର୍ଷ ୭ ମାସ କେତେଦିନ । ବୋଧହୁଏ ମୋ ତଳକୁ କାମ କରୁଥିବା ବିଚାରପତି ସଂଖ୍ୟା ବହୁତ କମ । ମୁଁ minimum pension ପାଇବାକୁ ହକଦାର ବୋଲି ମୋତେ ଆଗରୁ ଅରିଜିଟ ପଶାୟତ କହିଥିଲେ । କିନ୍ତୁ ମୋର ଧାରଣା ନଥିଲା minimum pension ଟା ଏତେ କମ୍ । ଯେତେବେଳେ ମୁଁ retire କରିଗଲି, pension କଥା ଆସିଲା, ମୁଁ ଜାଣିଲି ସେଇଟା ୫,୦୦୦ରୁ କମ୍ କିମ୍ବା ୪,୨୦୦ । ବିଚାରପତି କାର୍ଯ୍ୟକାଳ ଭିତରେ ମୁଁ ବହୁତ କମ୍ ଦିନ ରହିଥିବାରୁ ଗୋଟେ ଗୋଟେ ଖଣ୍ଡପାଠର ଦାୟିତ୍ବ ମୋତେ ଦିଆଯାଉଥିଲା । ମୁଁ କନିଷ୍ଠ ବିଚାରପତି ହିସାବରେ ମୋ ଜୀବନର ଅଧିକାଂଶ ସମୟ କାଟିଥିଲି । କିନ୍ତୁ ମୋର ଭାଗ୍ୟ ଭଲ ଯେ ମୋ ସାଙ୍ଗରେ ଥିବା ଖଣ୍ଡପାଠର ବରିଷ୍ଠ ବିଚାରପତିମାନେ ମୋତେ ବହୁ ସମୟରେ judgement ନବାର ଦାୟିତ୍ବ ଦେଇଥାନ୍ତି । ତାଦ୍ୱାରା ମୁଁ ପଢ଼ାପଢ଼ି କରି ସେ ଦିଗରେ ମୋର ବିବେକ ଅନୁସାରେ ଏବଂ ଆଇନର ପରିସର ଭିତରେ କରିବାକୁ ମୋତେ ବହୁତ ସୁବିଧା ମିଳିଥିଲା । ମୋର ମନେଥିବା ଭିତରେ ମୁଁ ଜାଣିଛି, ମୁଁ ଦେଇଥିବା ଗୋଟେ ବିଚାର ସର୍ବୋଚ୍ଚ ନ୍ୟାୟାଳୟରେ ବଦଳା ହୋଇଛି । ସେଇଟା ହେଉଛି ଗୋଟେ Sales Act ର ଗ୍ୟାସ ସିଲିଣ୍ଡର ଆସୁଛି ତାକୁ ଯଦି ଗ୍ୟାସ ସିଲିଣ୍ଡର ବାଲାଙ୍କୁ ଡେରିରେ ଫେରାଯାଏ, ତାହା ହେଲେ ଅଧିକା penalty । ସେଥିରେ ମୁଁ ଏଇଟା ଆଇନ ସମ୍ମତ ଭାବରେ ଟିକସ ହେବ ନାହିଁ ବୋଲି ନିଷ୍ପତ୍ତି ନେଇଥିଲି କିନ୍ତୁ ମାନ୍ୟବର ଉଚ୍ଚ ନ୍ୟାୟାଳୟ ସେଥିରେ ରାଜି ନହୋଇ ତାକୁ ପରିବର୍ତ୍ତନ କରିଥିଲେ । ଅନ୍ୟ କୌଣସି ମୁଁ ଦେଇଥିବା ବିଚାର ର ପରିସମାପ୍ତି ହେବା ମୁଁ କେବେ ଜାଣିନାହିଁ । କିନ୍ତୁ sales tax ରେ ଯେତେବେଳେ ଗୋଟେ Actରେ ଯେଉଁ ନିୟମ ହିସାବରେ ମୁଁ ଯୁକ୍ତି ବାଢ଼ିଥିଲି, ସେତେବେଳେ ବିଚାରପତି ହିସାବରେ ନୁହେଁ, ଓକିଲ ହିସାବରେ ବିଚାର ରଖିଥିଲି, ଓଡ଼ିଶା ନ୍ୟାୟାଳୟର ସେହି ନିଷ୍ପତ୍ତିକୁ ସର୍ବୋଚ୍ଚ ନ୍ୟାୟାଳୟ କାୟମ ରଖିଥିଲେ । ବିଚାରପତି ପଦରୁ ଅବସର ନେଲା ପରେ ସର୍ବୋଚ୍ଚ ନ୍ୟାୟାଳୟରେ ଓକିଲାତି

କରିବାକୁ ଉପଯୁକ୍ତ ଥିବାରୁ ମୁଁ ଯାଇ ସେଠି ଯୁକ୍ତି ବାଢ଼ିବାକୁ ସ୍ଥିର କରିଥିଲି । କିନ୍ତୁ ଯେଉଁ କମ୍ପାନୀ ତରଫରୁ ମୁଁ ଲଢ଼ୁଥିଲି ସେ ସେତେବେଳେ ବରିଷ୍ଠ ଓକିଲଙ୍କୁ ଦେବାକୁ ସ୍ଥିର କଲା । ମୁଁ ଭାରତର ଉଚ୍ଚ ନ୍ୟାୟାଳୟରେ ଏ ମାମଲା କରିବାର ତାତ୍ପର୍ଯ୍ୟ ହେଲା ଯେ ଆଗରୁ ହୋଇଥିବା ମାମଲାଟି ଯେଉଁ ଆଇନର ବ୍ୟାଖ୍ୟା କରିଥିଲା ମୋର writ petition ରେ ଯେଉଁ ବ୍ୟାଖ୍ୟା କରାହୋଇଥିଲା ତା ଭିତରେ କୌଣସି ସାମଞ୍ଜସ୍ୟ ନଥିଲା । ଉଚ୍ଚ ନ୍ୟାୟାଳୟରେ ବହୁତ ମାମଲା ଥିବା ଦୃଷ୍ଟିରୁ ବୋଧହୁଏ ସେ ବ୍ୟାଖ୍ୟାକୁ ଅନୁଧ୍ୟାନ ନକରି ଦରଖାସ୍ତକୁ ପ୍ରତ୍ୟାଖ୍ୟାନ କରାଗଲା । ବହୁତ ଦୁଃଖ ହେଲା ଯେ, ପ୍ରକୃତ ଆଇନ ମୁଁ ଯାହା ଭାବୁଛି ସ୍ଥିରୀକୃତ ହେଲା ନାହିଁ । ମୋର ଆଇନ ବିଷୟରେ ଯେଉଁ ଧାରଣା, ବିଚାର ବିଷୟରେ ଯାହା ଧାରଣା ତାର ପରିପନ୍ଥୀ । ଜେ. କେ. ପେପର ମିଲର ଗୋଟିଏ ଅନୁଭୂତି ହେଉଛି, ସେଠି ମୋର ଗୋଟିଏ ବନ୍ଧୁ ଓକିଲ ଥିଲେ, ତାଙ୍କ ନାମ ଜି. ମନ୍ମଥ ରାଓ । ଦୁଃଖର କଥା ମୁଁ ସେଠିକି ଯିବାବେଳେ ସେ ଇହଧାମ ତ୍ୟାଗ କରିଥିଲେ । ତାଙ୍କର ସେପରି କିଛି ସଞ୍ଚୟ ନଥିଲା । ବରଂ ଗୋଟିଏ ଝିଅ ବାହା କରିଥିଲା ଏବଂ ତାଙ୍କ ପୁଅଟି ପାଠ ପଢ଼ିନଥିଲା । ଜେ. କେ. ପେପର ମିଲ ମୋତେ ସେ ଚାନ୍ଦରର ଦାୟିତ୍ବ ନେବାକୁ ମଧ୍ୟ କହିଲା । ମୁଁ କଥାବାତ୍ତା କରି ସେ ଚାନ୍ଦରର ଦାୟିତ୍ବ ନେଲି ଏବଂ ସେଇ ଚାନ୍ଦରରେ କରୁଥିବା ପ୍ରତ୍ୟେକ ଓକିଲାତି କାର୍ଯ୍ୟର ପାରିଶ୍ରମିକ ଶ୍ରୀମତୀ ରାଓଙ୍କୁ ଦେବାକୁ ମୁଁ ସେଠି ରହିଥିବା ଜୁନିଅରଙ୍କୁ ନିର୍ଦ୍ଦେଶ ଦେଲି । ସେ ବନ୍ଧୁ, ଯିଏ ମୋତେ ବହୁତ ୪/୫ ବର୍ଷ ଆଗରୁ ସ୍ୱାଧୀନ ଭାବେ ଓକିଲାତି କରିବାକୁ ମୋତେ ଅନୁରୋଧ କରୁଥିଲେ, ତାଙ୍କ ଦରକାରବେଳେ ମୁଁ ଆସିଥିବାରୁ ନିଜକୁ ଧନ୍ୟବାଦ ଦେଉଛି । ନିଜକୁ ଅତ୍ୟଧିକଭାବରେ ନହେଲେ ମଧ୍ୟ ସାମାନ୍ୟଭାବରେ ମୁଁ କହିବି କି ମୁଁ ଜଣେ ବନ୍ଧୁ ପ୍ରତି ମୋର କର୍ତ୍ତବ୍ୟ ସମ୍ପାଦନ କରିଛି । ଏ. ଓ. ସିଂହଦେଓ vs ରଘୁନାଥ ମିଶ୍ର ନିର୍ବାଚନ ଦାୟିତ୍ବ ମୋତେ ଦିଆଗଲା । ସେ ଦିଗରେ ମୁଁ ଗୋଟେ କଥା କହି ରଖେ ଯେ ମୁଁ ସେତେବେଳେ ଗୋଟିଏ ଜୁନିଅର ଜଜ ଥିଲି । ମୋ ଉପରେ ଆହୁରି ବହୁତ ଜଜ ଥିଲେ । The



then Chief Justice, R. K. Patra ମୋତେ ଡାକି ଏଇ କେସର ଦାୟିତ୍ୱ ନବାକୁ କହିଲେ କାରଣ ମୋ ଉପରେ ଥିବା ଜଜମାନେ ବିଭିନ୍ନ କାରଣରୁ ସେଇ କେସ କରିବାକୁ ଅରାଜି ହୋଇଥିଲେ । ଆଗରୁ practice କଲାବେଳେ civil case କରୁନଥିଲି । ଗୋଟିଏ criminal case ରେ ଥିଲି । ସେଥିରେ ମୁଁ ନିଜେ ପରିଚାଳନା କରୁନଥିଲି । ନାଁ civil suit ଦାୟର କରିଛି ନାଁ plaint ଲେଖିଛି ନାଁ written statement ଦେଇଛି । Criminal Act ରେ ନାଁ ମୁଁ ସାକ୍ଷୀ କଣ ଜାଣିଛି ନାଁ ସାକ୍ଷୀ ଚାରିଦ କରିଛି । Evidance Act ମଧ୍ୟ ଜଣାନଥିଲା । ମୁଁ ଆଗରୁ ମଧ୍ୟ କୌଣସି ନିର୍ବାଚନ କେସ ପରିଚାଳନା କରୁନଥିଲି କି ବିଚାର କରିନଥିଲି । ଏତେ ବଡ଼ କେସର ଦାୟିତ୍ୱ ନବାକୁ ମୁଁ କୁଣ୍ଡାବୋଧ କରିଥିଲି । ତଥାପି ମୋର ଭଗବାନଙ୍କ ଉପରେ ଭରସା ଥିଲା । ଜାଣିଲି ମୋ ବିବେକ ସହିତ ବିଚାର କଲେ କୌଣସି ଅସୁବିଧା ହେବନାହିଁ । Election Case ଚାଲିଲା । Election Case ରେ ମୁଁ ଏ. ଓ. ସିଂହଦେଓଙ୍କ ଥିବା election petition କୁ reject କରିଥିଲି । ତା ବିରୁଦ୍ଧରେ ସେ Supeme Court ଯାଇଥିଲେ କିନ୍ତୁ ମୁଁ ଦେଇଥିବା ବିଚାର କାଏମ ରହିଲା ବୋଲି ମୁଁ

ପରେ ଏ. ଓ. ସିଂହଦେଓଙ୍କ ଓକିଲ ଶ୍ରୀଯୁକ୍ତ ବିଜୟ ରାୟଙ୍କଠୁ ଶୁଣିବାକୁ ପାଇଲି । ଓଡ଼ିଶା ହାଇକୋର୍ଟର ବହୁତ ବିଚାରପତି ବହୁତ ଦିନଧରି ରହିଛନ୍ତି ଏବଂ ବହୁତ ବିଚାରପତି ଭାରତର ଉଚ୍ଚନ୍ୟାୟାଳୟରେ ମଧ୍ୟ ନିଜର ପ୍ରତିନିଧିତ୍ୱ କରିଛନ୍ତି । ସେମାନଙ୍କଠୁ ଓଡ଼ିଶାର ହାଇକୋର୍ଟ ବିଷୟରେ ଆପଣମାନେ ଭଲଭାବରେ ଜାଣିବେ । କିନ୍ତୁ ମୁଁ ଯେତିକି ଜାଣିଛି ଓଡ଼ିଶାର ହାଇକୋର୍ଟ ଆଗରୁ ପ୍ରତିଷ୍ଠା ହୋଇଥିବା ଅନ୍ୟାନ୍ୟ ହାଇକୋର୍ଟରୁ ନ୍ୟୁନ ନୁହେଁ ବରଂ ବହୁତ ଅଧିକ । ଏଠି ଜଷ୍ଟିସ୍ ଜି. କେ. ମିଶ୍ର ଭଳି ଚିଫ୍ ଜଷ୍ଟିସ୍ ଅଛନ୍ତି । ଜଷ୍ଟିସ୍ ଆର. ଏନ. ମିଶ୍ର ଭଳି ଜଜ ହେଉଛନ୍ତି । ଜଷ୍ଟିସ୍ ହଂସାରିଆଙ୍କ ଭଳି ମାନବବାଦୀ ଲୋକ ଏଠି ମଧ୍ୟ ପଦାରବିତ ହୋଇଛନ୍ତି । ଓଡ଼ିଶା ହାଇକୋର୍ଟର ଯେଉଁ ଜ୍ଞାନ ଆଉ ଗାରିମା ସମଗ୍ର ଭାରତକୁ ନୂଆ ଦିଗଦର୍ଶନ ଦେଇଛି । ଯେଉଁମାନେ ଏଠି ବିଚାରପତି ହେଉଛନ୍ତି ବା ଯେଉଁ ଓକିଲମାନେ ଏଠି ତାଙ୍କର ତର୍ଜମା କରୁଛନ୍ତି ସେମାନେ ଆଜନକୁ ଠିକ ଭାବରେ ତର୍ଜମା କରି ଭାରତର ନାଗରିକମାନଙ୍କୁ ତାଙ୍କର ନ୍ୟାୟ ଦେବେ ବୋଲି ମୋର ଆଶା ।



### **JUSTICE A. SURYANARAYAN NAIDU**

*Former Judge, High Court of Orissa*

*29.9.2000 to 4.7.2010*

It is my proud privilege to be a part of the celebration continuing with regard to 75 years completion of my High Court. The High Court, an institution with all its glories has completed 75 years. That is really a time to celebrate, not only by yourself but also with all of your past members and that's why I thank my Hon'ble Chief Justice and other Hon'ble judges for arranging such beautiful celebrations to commemorate the day. My joining the bar was way back in the year 1972. When I joined the bar of Orissa High Court, I was attached to Mr. Srikanta Mohanty, the ex-Advocate General who was also the junior of Swami Bichitrananda Das, the first Advocate General of Orissa High Court and the pedigree continues. Swami Bichitrananda was the junior of Madhusudan Das. That is how the succession carried on. When I joined Orissa High Court Bar association things were little different than what they are now. We were completely within the look of our seniors, not one as a matter of fact, we are attached not only to one senior, but all other senior advocates of

the bar had an eye on us and always guided us to go ahead with the work which we were doing. High Court was full of doyens, then persons with lots of wit, lots of intelligence, lots of wisdom. They were the bar members then. Talk of Justice Biren Patnaik, talk of barrister Ranjit Mohanty, talk of Gangadhar Ratha and so on and so forth. So many doyens were there from whom you have to learn a lot in course of your practice. They were not only guiding you whenever occasion arises but also they were instructing you how to conduct the cases. Cases were many. It is always said that bar is crowded. But one thing which was put into my mind by my senior advocates and senior colleagues is that the top is always empty. It is a pyramid structure though the base is crowded, the top is empty and always an endeavour here should be made by a young advocate to reach the top. That is how we continued our journey and the relationship between the bar members and the judges was something different. The judges were very strict while they were sitting in the court, but when they moved out, they were so friendly that one cannot believe himself. Some people will say that a judge is liberal and some others say that he is very stiff. But always it is said that a judge that too a High Court Judge cannot afford to be liberal to one and harsh to the other and that is what Orissa High Court was. In fact, the glorious past is once again recapitulated. In fact, what happens now is that the litigation is surviving but the litigant is dying. That attitude has to be changed by the judiciary. Judiciary should see that a litigation once it comes, it has to come to a full stop and end and it should

not continue. The litigant should not be put to difficulties or prolonged litigation. Cost factor is also increasing. Cost is now the biggest problem for all the litigants. Litigants are not very happy nowadays to come to the courts because they are not able to afford the amount which is going to be spent for litigation purposes. That apart now we have got virtual courts and a litigant can sit in his doorstep wherever he is and appear before the court and take up the cases but with virtual cases and the virtual media and other, I have got one little doubt with me, I think which will be ironed in the due course. I feel that little development should be made in the districts where virtual litigations, virtual courts have been opened from where the people can address the Hon'ble High Court and little sensitivity should be also created among the advocates. The advocates should be sensitized, to go to the place where the High Court rooms are open,

where from they can file the litigation and they can address the courts. I hope the system will take off very soon and lots of improvements will come and many things have to be done as far as judiciary is concerned. There has to be victim compensation scheme which has now come up, witness protection schemes have to come up and so many other things have to come up to see that people really get justice and the judicial system would be adored by everybody who has any difficulty. So now also people have so much trust in the judiciary and they think that judiciary is the only saviour for them in these hard days. I wish the celebration to be a grand success. I also thank all the Hon'ble Judges, especially Hon'ble Chief Justice and others who have dreams and they thrive hard to achieve the dreams and see that the judicial system and the judiciary of Orissa once again, reaches the high portals of the country.





## JUSTICE MADAN MOHAN DAS

*Former Judge, High Court of Orissa  
20.11.2003 to 4.2.2014*

I joined the Bar about 50 years ago in 1974. At that time when we were junior lawyers, we had tremendous fear of the High Court. When our seniors used to instruct us to go and mention anything in the Court, our legs would tremble, which is totally contrary now. Now boys joining, they come forward immediately and appear before the High Court.

There are so many experiences. If I go on saying, it will take ages to describe. The Judges were very learned, when we were instructed by our seniors to make a mention before the Courts of the Chief Justice G. K. Mishra, Justice S. K. Ray and others, our legs used to tremble.

I would say my experience as an Advocate was rather extended for a period of nearly 30 years before I was elevated to the Bench. Within those 30 years there are several incidents which may be mentioned. One of such incidents was that my father who was a senior advocate of the High Court and the

President of the High Court Bar Association, used to flawlessly advance arguments and I find the Judges hearing so minutely to each of the lawyer, which I subsequently found absent in the Court, even during my judgeship. At that time the Judges had immense patience. They never lose their temper and never behave harshly. Of course I don't say that the Judges at present are behaving in such manner but the etiquettes during our judgeship are lost. I rather feel little lucky to be a part of the judicial system of this country.

Justice is to be delivered to the public. That was the motto of the Bar and the Bench. In 2003 I was elevated as a judge. I first shared the Bench with Justice Ananga Kumar Patnaik and we used to hear taxation matters. Stalwart lawyers like Mr. Chidambaram and others appeared before us and we have heard the way they advanced their arguments. Subsequently when I was sitting along with Chief Justice Barman Ray one matter came up before us wherein the vires of the State Act was challenged. That Act was ORISED Act which made provisions to impose tax on minerals. Challenging that Act many lawyers and many senior lawyers of Supreme Court, like Mr. Parasaran and Mr. Amal Ganguly appeared. Ultimately the judgment was delivered by us declaring the Act as ultra vires. And similar Acts in other States where minerals are found were also legislated which was also challenged in respective High Courts. And all those matters are now pending before the Supreme Court

before a 11 Judges Bench, which has not been taken up. That was one such experience and so many experiences I had as a Judge.

I also functioned as a company judge for about 2 years. Several cases came up before me and I have dealt with those company matters.

Every case is unique and in every case there is different knowledge to be learned. So I would not specify any memorable moment which I had as a Judge. But the entire career as a Judge about 10 and half years I enjoyed and I think I sincerely performed my duties and delivered a number of judgments which you will find in journals.

I am extremely happy that the High Court is observing 75<sup>th</sup> Year and there is a celebration going on. During the pandemic it was only our present Chief Justice Dr. Justice S. Muralidhar due to his initiative, the pandemic did not have much effect on the dispensation of justice and I think due to his efforts and ideas Orissa High Court has gone up forward and advanced in ages. It is now one of the leading High Courts in the Country in respect of IT sector. I think the Orissa High Court had made immense development with regard to preservation of records, e-filing and with regard to all aspects of disposal of cases. From core of my heart I would thank the present Hon'ble Chief Justice to have taken all these initiatives.



## JUSTICE ARUN KUMAR PARICHHA

*Former Judge, High Court of Orissa*

*5.7.2004 to 1.10.2008*

It's a great privilege and honour that I have been asked to give a message on the occasion of the 75<sup>th</sup> year of the celebration of the Orissa High Court. Well, before becoming a Judge of this High Court, I had the occasion of working as the Registrar of the High Court for some time and the experience both in the registry and also on the bench was very interesting and very fruitful. First of all, I will say an interesting experience as Registrar of the High Court. It was discovered that one box, containing the ashes of late Mahatma Gandhi, the father of the nation is there in the vault of the State bank treasury. The matter went up to the Supreme Court headed by the then Chief Justice directed that as a Registrar I should take charge of the box and give a report that it is actually the ashes of Late Mahatma Gandhi and thereafter to take the ashes along with the great grandson of Mahatma Gandhi, namely Tushar Gandhi to Allahabad for immersion in the river

of Ganges. The matter went as a national news and journalists of 80 countries assembled here. And for about a fortnight, the process went on. The report was approved by the Supreme Court and we carried the ashes of Late Mahatma Gandhi in a train to Allahabad. There, it was immersed in presence of lakhs of people. I had to hand over the keys of the box at the Triveni Sangam. After that, we all performed the rituals and then came back. Thereafter, the matter was discussed everywhere. I felt that it was really, really a God sent opportunity for me to be part of the said *mahajatra* of late Mahatma Gandhi.

The other experience as a Judge of the High Court is that, I after taking oath as Judge, I requested the Hon'ble Chief Justice, I should be put in the civil bench so that the old civil appeals could be disposed of which were lying virtually unattended. Nothing happened. The successor, Chief Justice, however, from his side, asked me to take up a civil bench. And when we started the civil bench in Court number 6, there was no appearance from the Bar because everybody thought that first appeal, second appeal which are 20 years old will not be taken up by any Judge. We started with empty Court room, word spread in the bar that actually first appeal and second appeals are being taken up seriously and judgments are being delivered, the court started to fill up. And after 2 months, we had no seats to offer to many of the advocates. I am very happy to say that 20 years, 25 years old first appeal and second appeals were disposed of expeditiously. More than 3000 appeals were



disposed of during my career in the Civil bench for 2 years. There are really many experiences, but these are some landmark experiences. Then there was always the occasion to serve the people of Odisha in division bench, in civil bench. We tried our best to serve the people. From my early days, I have been considering the Orissa High Court as a temple of Justice because for me, 99% the people of Odisha cannot afford to go to the Supreme Court and this High Court is not only their High Court but also their Supreme Court and therefore I thought and I always told my colleagues to be serious about pronouncement of judgments promptly and also diligently, so that people will not be disheartened and justice will be dispensed. This High Court, I am proud to say that it has

done its best to dispense justice to the common man for the last 75 years. A journey of 75 years is a glorious one for this High Court and I am really proud and honored to be a part of this High Court. May God bless this High Court, May God bless the process of High Court. Now, modernization has come and I feel that people will be more benefited and this High Court, this temple of Justice will serve the people more and more. 75 years, have been completed, many more years to come, and we will remember the performance, the achievements, the dedication of this High Court for all times to come, not only we, but our next generation will also remember this High Court's work. It is permanent and it will remain permanent.



## JUSTICE RAGHUNATH BISWAL

*Former Judge, High Court of Orissa*

*5.7.2004 to 31.3.2012*

I joined as an advocate in the year 1978 at Sambalpur District Court. In 1988, I was selected as District Judge and joined as Additional District Judge, Cuttack in February 1988. I worked as District Judge, Balasore and Phulbani and was posted in several other district cadre posts and subsequently elevated to the High Court in the year 2004 and retired in the year 2012. Thereafter, for about 5 years and six months I worked as President State Consumer Disputes Redressal Commission. Now I am continuing as the State Commission for Other Backward Classes.

Out of several bail orders I have passed, I still remember two bail orders very often. In one case it was alleged that the accused committed matricide, murder of his own mother. After going through the documents and the 161 statements recorded by the police, I was of the view that it was not a case of murder but the deceased died due to heart failure. There was no post-mortem report at that time. Still then my

6<sup>th</sup> sense prompted that really it is not a case of murder. The fact, in short, is that there are dispute between two brothers. They are living separately in two contiguous houses. Their mother was living most probably with the elder brother. One day the younger brother came to the house of his elder brother with his sons and started assaulting his brother in the presence of their mother, who was aged about 85 to 90 years. Seeing the assault on each other, the old mother raised hullah and then died. This was the case. Had I not given the bail order in favour of the accused, there was less chance of his going to the Supreme Court and most probably he would have been detained in jail till conclusion of the trial which normally takes minimum six to seven years. Then there should have been also stigma against the accused till he would have cleanly acquitted that he committed murder of his mother, but however this could not happen. This gives me maximum satisfaction.

In another case, the allegation was that the accused committed murder of the victim and hanged him on the fan to give an impression that the victim committed murder. There was no post-mortem report. It was an anticipatory bail. The accused was working as a constable. I went through the documents and was 90% sure that the deceased committed suicide and it was not a case of murder. I granted bail under Section 438 (Cr.P.C.). Ultimately, chargesheet was submitted against the accused for abetment of murder. It was challenged by the accused and it came to my Bench.

I had already gone through the records earlier what I had remembered. I was pretty sure

that charge cannot be made out for abetment of murder also. But still then I preferred not to take that case and directed the case to be placed in some other Benches. That also gave me maximum satisfaction. Had he not been granted bail, he could have been arrested and put inside jail. In that event, most likely he must have been put under suspension and most likely he would have also lost his job, but God saved him.

I was also satisfied with a matrimonial case where the husband was seeking divorce against the wife. The short fact which required to be stated here is that the husband was M.Com and wife is a primary teacher. Husband initially was working as a clerk. They fell in love and there they got married with the consent of their respective families.

Two to three years after the marriage, the husband got a job of lecturer. Then he did not come to his house where the wife was residing. Sometime thereafter he kept a concubine. One or two children were born to him through that concubine. Then he filed the divorce case. Ultimately, it reached to our Bench. The counsel appearing from the side of the husband submitted that the marriage has been irretrievably broken down. So as per the Supreme Court, the divorce should be allowed. The wife was asked to take some amount and

give her consent for divorce but she did not agree. She said that I do not want anything from him, but I do not want to bear the stigma of a divorcee. Then I went through the Supreme Court decision where the spouse was at fault and against him the divorce order was passed, but here the wife was not at all at fault. Still then trying to divorce the first wife. So he cannot be given a premium. Being a defaulter he should not take the advantage of what he wants to. Accordingly, I distinguished the Supreme Court decision and passed the order in favour of the wife. The husband went to Supreme Court and it was not arbitrary. As apprehending let the Supreme Court hold that I did not obey the order of this decision of the Supreme Court, but it was not so.

I am very glad to know that the Orissa High Court is celebrating its 75<sup>th</sup> year of establishment and felicitating the former Judges of this High Court including Chief Justice of the High Court. Generally after retirement nobody wants to mix with them. I do not say that it is general. So after retirement it loses its importance. The officer also by the time becomes old. So such a unique idea of the Orissa High Court to felicitate the retired judges of this High Court is highly commendable.





### **JUSTICE BISWANATH MAHAPATRA**

*Former Judge, High Court of Orissa*

*7.11.2007 to 31.3.2015*

Honourable High Court for me is the temple of learning. I learnt law not only from the law books but also from justice Arijit Pasayat who was a lawyer and my senior. I also learnt law from the stalwarts of the Bar and the discussions with my colleagues. The erudite knowledge of my senior Justice Arijit Pasayat helped me in understanding law in multiple perspective. I also learnt from the High Court Bar that the goal of a lawyer is not to earn livelihood but also to pursue for social justice and furthering the cause of nation building as envisaged by the founding fathers of the Constitution. Honourable High Court is not only a place to learn, it is also a place to earn name, fame and livelihood. It is a place where Lord Ganesh, Maa Laxmi and Maa Saraswati reside. If you have the knowledge to learn law then Laxmi will automatically follow. Though there is a saying that Laxmi and Saraswati do not reside in the same place but High Court is a place where there is an exception. As a Judge I had the golden opportunity to sit with three honourable Chief

Justices who are eminent jurists of the country. They are Hon'ble Justice A.K. Ganguly, Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Justice V. Gowda. I have learnt many things from them. They have helped me to discharge my duty as a Judge of the High Court successfully. Not only from them, as a judge I also learnt many things from the arguments of the members of the Bar. As a judge I had the opportunity to participate in establishment of law courts, even in remote villages to ensure that justice reaches the door of the litigants. So far High Court is concerned, I want to add that it is the Bar which helps the Judge with their able assistance to write good judgments. My message to the members of the judiciary is that for the poor people of the State of Odisha the High Court is the Supreme Court. They cannot afford to approach the Supreme Court. When the people fail to get justice from the two other wings of democracy, that is Executive and Legislative, they approach the Judiciary as their last hope to get Justice. The faith of the litigants is the greatest asset of Judiciary. The day the litigants lose faith that will be the darkest day for the judiciary. Therefore, I request not only Judges of the High Court but also the Judges of the district courts and the magistrates to labour hard so that people do not lose confidence in judiciary. It is also very essential that a judge should be very honest, hard-working and maintain high integrity. At the same time, it is also very much essential that they should be impartial to all and partial to none. Therefore, I request the Judges of the High Court, the judicial officers and magistrates to uphold the glory and dignity of this sacred institution.



### **JUSTICE VINOD PRASAD**

*Former Judge, High Court of Orissa*

*2.7.2014 to 27.11.2016*

I came to Orissa as a judge on 1<sup>st</sup> of July 2014 and it was my fortune that on the very first day I have taken oath along with brother Sangam Sahu and along with brother Biswanath Rath and thereafter I was very impressed by the court buildings both old and new. Very impressive and then I had the opportunity of meeting the members of the Bar, and I must say candidly that each of them were very affectionate, very polite, very courteous, very dignified. All my brother Judges, they are excellent in their work. They know how to deal with cases. Their legal acumen is at par excellence. They are very thorough in their approach and most of them are inclined to give relief in appropriate cases. So speaking for myself, my first experience as a judge of the Orissa High Court was extremely gratifying, extremely satisfying.

We were dealing with a case where one of the person was confined in jail although he was initially an accused under Section 302 (IPC), but Hon'ble High Court of Orissa acquitted him. In spite of that fact, he was kept in jail for a very long period. If I remember correctly, he remained in jail for six and seven years. Then the matter came to us. We summoned him from jail and then we inquired why he was put in jail and then we directed to set him at liberty. We also imposed some fine, although that fine was not accepted. But that was my first experience.

The second experience was that I had the opportunity of dealing with a death penalty case. It was very difficult. Anyhow with the help of my brother, we came across the case, and that was very satisfying. Every Judge, advocate, registry of the High Court, every member of the Bar, every member of the State advocacy is very fortunate to be at this place. Please do every bit of it to elevate the High Court of Orissa to a much higher level. All of you are very humane, very polite, very courteous. I do not remember any untoward incident happening in the court during my tenure as a Judge of this Court. I wish you all the very best. May Lord Jagannath bless you all, but do every bit of it to bring more laurels to the institution.



## JUSTICE BIJAY KUMAR NAYAK

*Former Judge, High Court of Orissa*

*7.10.2009 to 2.2.2018*

This year, the High Court of Orissa is celebrating its 75<sup>th</sup> anniversary under the dynamic leadership of the present Chief Justice Dr. S Muralidhar. The celebrations were started by felicitating the former Chief Justices and the Justices of the Court on 8<sup>th</sup> April 2023. Even the spouses of the former judges and even spouses of former deceased judges were also felicitated. On this occasion, I congratulate the Chief Justice, his brother judges, Doctor Justice Sarangi the chairman of the events committee and his team members, the officers and the staff of the Odisha High Court, and even members of the Bar and above all the citizens of the entire State. The idea of felicitating the retired Judges and the Chief Justices of the High Court is to reminisce and respect them who have rendered service as Judges and delivered justice and contributed to the growth of the institution and for development of law. The High Court of Orissa was established under the Orissa High Court Order 1948 and was inaugurated on

26<sup>th</sup> July 1948 with only four Judges, including the then Chief Justice Sri Birakishore Ray. Over the years, during the past 75 years the High Court has grown to a large extent. Not only the strength of the Judges has increased, but even the infrastructure facilities have also increased to a great extent.

The High court which started in 1948 with only four judges initially has now understandably a sanctioned strength of 33. During the last 75 years lakhs of litigants have been benefited by getting justice from the High Court. Large number of learned Judges have toiled hard to deliver justice during the last 75 years. Now also different new methods are being adopted, particularly in the digital form. Cases are being filed by e-filing and also hearings are also being conducted by video conferencing method. Pioneered by the present Chief Justice, the Orissa has achieved the rare distinction of being the first State in having facilities for e-filing of High Court cases and the hearing of High Court cases in 20 out of 30 district headquarters.

I was associated with the High Court in three capacities, first as a lawyer, then as the Registrar (Administration) and the first Registrar General, and then as a Judge of the High Court. Experiences in all these capacities are quite varied, good and bad both included. I can remember one thing with regard to the greatness of Judges. As a very junior and young lawyer, in course of an argument in court, I had a confrontation with the Hon'ble judge concerned. Coincidentally, shortly thereafter became the acting Chief Justice of the court



and presided over the full court which was conducting my Viva Voce test, for my selection as a direct district judge from the Bar. So I was quite afraid that irrespective of how good I perform, I was probably not going to be selected because the Judge concerned with whom I had the confrontation was presiding the full court. But once I entered into the full court and the acting Chief Justice interacted with me, all my misgivings were removed. I realized that my apprehensions were unfounded and that is the greatness of the Judge who did not have any malice or ill will against me, even though I had some altercation with him in course of argument of a case in court and ultimately that Judge went to the Supreme Court. As the Registrar Administration and Registrar General of the High Court I had also varied experiences, both good and bad. I discharge my responsibility as the Registrar and Registrar General to the best of my ability and with utmost honesty and integrity. There were also some bad experiences which I do not want to share.

I became a Judge of the High Court in October 2009, and demitted office in February 2018, and during the course of my Judgeship I have always tried my best to be true to my oath, which I had taken at the time of assumption of my Office as a Judge of the High Court. I have discharged my duty as a Judge diligently, honestly, without any fear, favour, affection, or ill will, and always in accordance with law and I also used to encourage young lawyers to argue cases. And I was telling them that when your senior is absent, you must take that opportunity. And if your senior tells you anything, you say

that Judge compelled us to argue. So that way the juniors were really getting some fearless exposition to argue in the court. However, I have seen that in some cases there are some litigants who go on Bench hunting and do not want to argue certain matters before certain Judges, but I have never encouraged that type of practice. One incident with respect to a case, I may recall that suddenly one day beyond my assignment, a case was listed before me and when I went to the court and the new counsel was appearing for one of the parties, and the counsel was a lady council who told that 10 Judges have previously recused to hear that case. When I came back during recess I verified the entire order sheet and found that in fact what she was telling was true. 10 Judges for some reason or other had recused from the case after hearing for some time and even 1 judge after hearing had already posted it for judgment but without delivering judgment he left the case and again it was listed before another Bench. The real reason I found during recess on that day that a registered envelope on my chamber table and on opening it I found that there is a complaint against me, in the sense that there was allegation that before my elevation, I was the Law Secretary of the State and one of the parties in the case was an IAS officer.

So there was an allegation that since I was the Law Secretary and another party was an IAS officer of the state government definitely I would like to show him favour and therefore I should not hear that case. From that petition itself I came to know why the other 10 Judges at some point of time recused to hear that

case. May be being afraid or having the fear that they may ultimately be embarrassed with such type of allegations or they might have received allegations against them but I never left that case till my retirement. I continued hearing but ultimately I heard a petition, and I have also passed an order as to why it was not necessary or it was not proper for so many Judges to recuse from the case for the reason that one of the parties who wanted to delay the disposal of the case, just went on filing false complaints against all the Judges. So that was it. But I have never thought of recusing from any case on whatever ground, because I have never indulged in any type of corrupt practice during my judgeship. I was also heading several important administrative committees of the High Court, and I have discharged my responsibility as a Chairman of those committees very diligently and efficiently. Officially being a Judge has its own grandeur, but at the same time it

also casts a responsibility to exercise restraint. As it is said that greater the power, more is the restraint one must exercise. After demitting the office I happily left the High Court as happily as I was during my elevation. But there are some people or some Judges who just a few months before they demit office, think that their life is over or their tenure is over and what they will do thereafter. I had no such feeling. Anyway, the High Court will go on further and further with more judges, more staff members, and more lawyers coming to court and render justice to the public. I think the glory which the High Court has achieved will continue in the future days to come. Lastly, I must congratulate again and thank the Hon'ble Chief Justice, the Hon'ble other Judges, officers and the staff of the High Court and even the lawyers who are also doing their practice in the High Court.



### JUSTICE H. S. BHALLA

*Former Judge, High Court of Orissa*

*28.10.2010 to 20.11.2011*

It was a memorable experience while I was in Odisha and today when I landed, all my memories again came to my mind. The wonderful time which I had here and the courtesy of the staff and the other members of the High Court was again to my mind. First of all before I go further with my experience here I would like to congratulate the Hon'ble Chief Justice of the Orissa High Court and all the staff and other judicial officers who are celebrating the 75<sup>th</sup> year of this High Court of Orissa. Really, I was overjoyed when I learnt that this ceremony is going to take place and we would again visit this place to enjoy the courtesy and love and affection of this High Court. It was nice to see the local officers and the other protocol staff at the airport. And while coming here I found everything in a fit and proper manner as it was about 10-12 years ago. To my mind this High Court has very good history and culture. And I am sure that the light which this High Court is illuminating in the field of justice will illumine the entire world for many more years and thousands year later also this will still be seen.

It will give solace to innumerable hearts. Now reverting back to my memories here. When I came here, since it was a short stay, I did not opt for the residential house and I stayed in the High Court Guest House and all my brothers looked after me and converted that rest house into like my sweet residential house. I am really grateful to all those my brothers who were with me who were my colleagues who were sharing Bench with me and specially to the then Chief Justice Mr. Gowda who really looked after me and it was nice to share one Full Bench also with him with regard to the seniority of judicial officers. I am really grateful to all the members of this High Court for thinking of us and always looking after us in spite of the effect while sitting at Chandigarh also they keep on sending me all their love and affection through their letters and the latest news of Odisha is always given to me by them. There are number of memorable moments but at the same time while I was Inspecting Judge here, I do not remember the name of the district now, but when I went there, my judicial officers were very reluctant to have a dinner hosted by me because they wanted to host the dinner but I told them that I would attend the dinner only if it has to be hosted by me, and I invited all my judicial officers with their families and children. Rather, I issued a direction to them that their children should also attend that dinner. And we all had a very family get together there on that dinner and I really remember that event and it is always in my mind. So thank you very much for all the love and affection and once again I congratulate everyone including the Hon'ble Chief Justice and the other Hon'ble Judges for organizing the 75<sup>th</sup> year celebration of establishment of the High Court of Orissa.





## JUSTICE BIRA KISHORE MISHRA

*Former Judge, High Court of Orissa*

*25.1.2011 to 1.6.2013*

When computerization system was introduced first in the High Court, I was then the Deputy Registrar (Judicial and Establishment) Orissa High Court and Chief Justice was Mr. V. A. Mohta. At that time we faced lots of resistance from the staff. They were opposing tooth and nail. We first took them to confidence and I said that you have nothing to worry but you will be greatly benefited if computer system is introduced.

Then they said that no Sir, many things will happen. Cases will not be listed and raised so many points. But ultimately they agreed to this proposal and computerization started during my tenure as the Deputy Registrar (Judicial and Establishment). Then enough power had been given to the Deputy Registrar (Judicial and Establishment). I was that man who was single handedly managing that matter and the Judges

had tremendous confidence on me that I will definitely fulfil their dreams and the dream of the Supreme Court and that of the government. We have nothing to do with the government, but we are concerned with the Supreme Court and of the High Court and later on list was also prepared. Cause lists, weekly and monthly, were prepared and the lawyers are terribly happy. So I have worked with a happy state of mind drawing inspiration from God that service to mankind is service to God. Without expecting anything in return, God has posted me and I was occupying that post by the grace of God. Now I cannot do any injustice.

High Court is the highest judicial system of the State. People think that it is the Supreme Court. People of our State are not that monetarily so sound that they can go to Delhi in each and every matter. So any case decided by the High Court is like a judgment of the Supreme Court. And to the best of my knowledge and ability, I say that our Judges are dispensing justice even-handedly.

I am born in this State. I have become a Judge of the Orissa High Court. So that is my greatest desire and that is my greatest fulfilment as a Judge of this State. One of my memorable things is that my little judgments which I have delivered are being respected and followed by the Supreme Court. The judgment which I have delivered in the unmanned level crossing train accident case is being followed all over the country.



### ବିଚାରପତି ରଘୁବୀର ଦାସ

ପୂର୍ବତନ ବିଚାରପତି, ଓଡ଼ିଶା ଉଚ୍ଚ ନ୍ୟାୟାଳୟ

୪.୧.୨୦୧୩ - ୧୩.୨.୨୦୧୬

ହାଇକୋର୍ଟରେ ଜଜ୍ ହିସାବରେ ମୋର ଅଭିଜ୍ଞତା ବିଷୟରେ ମୁଁ ଯାହା କହିବାକୁ ଚାହୁଁଛି, ଶପଥ ଗ୍ରହଣ ଉତ୍ସବରେ ଯେଉଁଠା କି ମୁଁ ପ୍ରଥମ ଦିନ ହାଇକୋର୍ଟରେ ଜଜ୍ ହିସାବରେ ତାକୁ କେବେ ବି ଭୁଲି ହେବ ନାହିଁ । ଆଉ ଠିକ୍ ସେମିତି ଶେଷ ଦିନ ବି ଯେଉଁ ହିସାବରେ ମୋତେ ସେଠି ସି ଅଫ୍ କରାଗଲା, ସେଇଟା ବି ସବୁଦିନ ପାଇଁ ମୋର ସ୍ମୃତିରେ ରହିବ ।

ତା ଭିତରେ ଜଜ୍ ହିସାବରେ ମୋର ଜୀବନଟା ଭାରି ସୁରୁଖୁରୁରେ କଟି ଯାଇଥିଲା । କେବେ କାହା ସହିତ କୌଣସି ଅପ୍ରୀତିକର ପରିସ୍ଥିତି ସୃଷ୍ଟି ହୋଇନାହିଁ ଆଉ ସୁନ୍ଦର ଭାବରେ ମୋର ସେଇ ପିରିୟଡ୍‌ଟା କଟିଯାଇଥିଲା ।

ଆଉ ବିଶେଷ ଭାବରେ ଗୋଟିଏ କଥା ମନେପଡେ, ଦିନେ ଆମ କୋର୍ଟ କାମ ଚାଲିଥିଲା ଆଉ ହଠାତ୍ ବିକ୍ଲିଙ୍ଗ ଦୋହଲିବାକୁ ଲାଗିଲା । ସମସ୍ତେ ଛାନିଆ ହୋଇଗଲେ । ଶେଷକୁ ଆମେ ସମସ୍ତେ ପଳେଇ ଆସିଥିଲୁ । ଦେଖିଲା ବେଳକୁ କଣ ନା ସେଇଟା ଗୋଟେ ଭୂମିକମ୍ପର ପ୍ରଭାବ ଥିଲା । ଯାହାଦ୍ୱାରା କି ପୁରା ବିକ୍ଲିଙ୍ଗ ଦୋହଲି ଯାଇଥିଲା । ଯେତେବେଳେ ବି ସେ ହାଇକୋର୍ଟର ସେ ନୂଆ ବିକ୍ଲିଙ୍ଗକୁ ମୁଁ ଦେଖେ ସେଇ କଥା ପ୍ରାୟ ମନେପଡ଼ିଥାଏ ।

୭୫ ବର୍ଷରେ ଯୋଉ ସବୁ ପ୍ରାକ୍ତନ ଜଜ୍‌ମାନଙ୍କୁ ଯେଉଁ ସବୁ ଅଭ୍ୟର୍ଥନା ଦିଆଯିବାର ଅଛି, ବହୁତ ବଢ଼ିଆ ଗୋଟେ ପଦକ୍ଷେପ । ଆଉ ସେଇଟାର ସଫଳତା ମୁଁ କାମନା କରୁଅଛି ।



## **DR. JUSTICE DURGA PRASANNA CHOUDHURY**

*Former Judge, High Court of Orissa  
17.4.2015 to 3.7.2018*

I have got various experience in High Court of Orissa as an advocate after enrollment in the Bar council, I was in the profession for about 1 year or 1 and half year and there after I joined the Judicial Service. While I was in profession, I have got very good experience of appearing in various Courts and the High Court. I remember that the experience I have gathered from the Court of Hon'ble Justice R.N. Mishra, Hon'ble Chief Justice. I was appearing in a case for the accused and I had to obtain an order by making some argument. that accused should get relief in a Criminal case to at least save his own right. I know that Justice Mishra was very rigid in giving relief, but at the same time was very liberal to the junior Advocates. He was very much strict in adjudication of law and I am fortunate to appear in his court. When I argued the matter, I wanted my accused to face the trial in day-to-day basis. Accordingly, I made the prayer but he asked

me what is the Law? I clearly admitted that the accused wanted day to day trial, because he was from a far-off place like Nuapada. So he tested me by asking some provisions. I tried my best to convince his Lordship. Then he gave me order and I was very happy on that day. That is one of my experiences that I got an order from the Court of the Hon'ble Chief Justice. I have appeared for the accused there and also got him acquitted in the lower court.

I have got another experience of appearing in a second appeal before the then senior Judge Justice P.K. Mohanty, who also asked me several questions and I had satisfactorily answered even if I was a new comer to the Bar and I also got relief. Like this, I have got various experiences of appearing before courts of different judges. By that I got confidence that I can handle the difficult cases also.

After I joined the service in 1982, I have got various experiences in my judicial career. In my judicial career I have travelled to various places in Odisha. Besides also I have been deputed to Central Excise Gold Control Appellate Tribunal, Delhi and stayed there for 5 years and I remember that while the 4<sup>th</sup> year was going on I had to take permission from the Orissa High Court to extend my deputation. At that time the then Chief Justice was kind enough to extend my deputation. I was there in that Tribunal. It was a unique experience at Delhi and I got exposure there. I also have experience of working at different places and also being deputed to Law Department to work



and there also I have got various experience of working as an officer of State Government. Not only this, but also, I have got experience of being a teacher as the Director of the Judicial Academy. So, I have served there for 4 and half years. That was a very beautiful experience in my life, organizing different seminars, national and regional seminars and State seminars and workshops etc. Due to the active role of the Judicial Academy Committee and Hon'ble High Court and also my participation now you see the beautiful building of judicial Academy standing. My tenure at the Judicial Academy was very memorable one. Giving training to the Judicial Officers is a unique experience and also preparing the curriculum and getting in touch with the State Government. It was a unique experience. High Court has given me that scope to gain all sorts of experience. I also have got experience as the District Judge of Bhubaneswar where now a new Judicial Complex building is coming up. I remember that the Chief Justice and the Judges at that time helped us very much to go ahead with my judicial career for about 30 years or more.

Thereafter, I was elevated to the High Court. I also have got better experience as Judge of the Orissa High Court. As Judge of the Orissa High Court I have got varied experience by sitting with the Hon'ble Chief Justice and the senior Judges I have got better experience of handling different assignments. I remember the judges like Justice Indrajeet Mohanty, Justice Sanju Panda, Justice S K Mishra, Justice B K Nayak and Justice Sarangi, Justice Pujahari and also various colleagues with whom I

have shared bench and also authored various Judgments.

I remember the important judgment I have given in the case of appointment of teachers in Ravenshaw College and also, I have got better experience in delivering the judgment in the case of Joranda about the dispute of the property between those sadhus. Besides I have handled Criminal Cases, Second Appeal and the Criminal Appeals, Criminal Revisions, Bails and the Writ matter, service matters and various matters. For all the assignments I will give my thanks to my Hon'ble Chief Justices, with whom I have worked. Justice Amitav Roy, Justice Gowda and Justice Vineet Saran, Justice Goel and other Chief Justices whom I have worked with were all very cordial and very nice to me. And this is only I have got due to the blessing of Orissa High Court. I can't forget about our High Court for the reason that my father had started his career in the High Court in 1948 and he also retired from this High Court. So, I can say I have taken birth in this High Court and I have also completed my judicial career in this High Court. So it is a unique memory in my life. As a Judge of Orissa High Court I have very good memory while celebrating the centenary of the High Court and Patna High Court combination and in that occasion also it was a grand ceremony like the one that is going to happen on 8<sup>th</sup> April.

Our High Court has gone very far, so far digitization of records, live streaming of programmes. I will definitely thank the present Hon'ble Chief Justice Muralidhar and also I will give thanks to Justice D Y Chandrachud, who was always a guiding factor to take our High

Court ahead. This particular progress in High Court what is going on if it continues will be a milestone for our High Court. And I am sure that our High Court is one of the best High Courts in India.

As a Judge I am proud of being part of it. To my knowledge 3 Hon'ble Judges, Justice R.N. Mishra, Justice G.B. Pattnaik and Justice Dipak Misra from this High Court have become Chief Justices of India. So what our High Court has not produced. Apart from that many Judges from this High Court have also become the Judges of the Supreme Court of India. We are proud of it.

When we are going to celebrate the 75<sup>th</sup> year, it is really remarkable for all of us because nobody knows what is stored for tomorrow. Even after 75 years this High Court is still young, it is not old. We have achieved so much due to the contributions made by the Hon'ble Chief Justices, present sitting Judges, present Chief Justice and Former Judges. All have tried their

best to develop the Law and the institution. First of all we must say that our priority should be for the institution. We will ever be thankful to our present Chief Justice, Justice Muralidhar, who has taken pain to develop the institution and take the institution ahead. For this not only the Judges but also the Judicial Officers and the Staff have also contributed a lot. On the 75<sup>th</sup> day I will say as a former Judge of the Orissa High Court that the Judicial Officers and Judges who are here have to work hard with the correct vision of the seniors to take this institution ahead so that we can see this institution in a new dimension. For that collective effort of everybody is required. We have given many decisions for development of Law and will continue to develop it more and more. I remember that while the Academy was inaugurated by the then Chief Justice of India he had stated that this is a premier institution in India. So on 75<sup>th</sup> year we will definitely declare our High Court as a premier institution in India. I can't forget my High Court as this is my second home.



## JUSTICE JATINDRA PRASAD DAS

*Former Judge, High Court of Orissa*

*17.4.2015 to 19.5.2019*

So far as my experience as a judge in the High Court of Orissa, I will tell in two words, it was memorably pleasant. I had an unique privilege that nobody else had in the High Court, that prior to my elevation as a Judge, I had worked 15 years in the registry of the Orissa High Court, starting from the post of Assistant Registrar upto the Registrar General. And moreover, out of 38 years of my judicial service, I had spent 19 years in Orissa High Court and I had the privilege of having good rapport with the members of the Bar, the staff of the court office.

So the four years I spent on the bench, I had absolutely no problem. I never remember a single occasion of any unpleasantness or any untoward situation in the court. I had full cooperation from the Bar. There were

dismissals, there were refusals, there were cancellations, but nobody ever walked out of my court with a hanging face. Everybody was happy and that was of course the grace of God.

So far as any other experience, I will simply say that I had also the privilege of working with a number of Hon'ble Chief Justices, who got elevated herefrom to the Hon'ble Apex Court, the Supreme Court of India. On administrative side and also on judicial side, I had occasions to interact with the Hon'ble Chief Justices from outside the state and that helped me learn a lot, both on judicial side and administrative side.

So far as any memorable experience, time is short, I can recollect even more than hundreds of incidents when I had the occasion of interacting with the Hon'ble judges and those are memories for lifetime.

As far the message on the occasion of 75<sup>th</sup> year celebration, I had the privilege of being a part in 100 year celebration of Orissa High Court's first circuit sitting in 2016 and now it is 75<sup>th</sup> year of establishment of Orissa High Court. I really feel privileged to be a part of an institution that gave me my identity, the position that I had and have today.

My best wishes for the grand celebration, and not only grand but most successful celebration of 75<sup>th</sup> year of the establishment of Orissa High Court.



**Dr. JUSTICE AKSHAY KUMAR MISHRA**

*Former Judge, High Court of Orissa*

*19.11.2018 to 8.11.2020*

I feel honoured to extend my warmest congratulations to Orissa High Court on its 75<sup>th</sup> anniversary. During past 75 years, Orissa High Court have contributed a lot to national judiciary and have protected the rights of the State and also its people. I feel honoured to recollect, recognize and express my gratitude

to those persons who have contributed to the success of Orissa High Court. It is a great privilege that as a former Judge of Orissa High Court, I have experienced a lot, both chilling and exciting by working in the Bench. Orissa High Court has implemented recently a technological access to common people and all the stakeholders and to my interest the judicial archive is going to preserve the oldest records and the judicial heritage of Odisha. It is unique and it is commendable. Steps taken by Orissa High Court in expanding the digital task is already applauded nationally. While observing the 75<sup>th</sup> anniversary, I feel everybody should renew their commitment to the judiciary and justice and re-dedicate themselves for the upliftment and dignity of the Orissa High Court for which it stands.





## JUSTICE PRAMATH PATTNAIK

*Former Judge, High Court of Orissa*

*24.9.2014 to 31.12.2014 and*

*8.2.2019 to 14.6.2021*

At the outset, I would like to extend my warm greetings to all on the auspicious occasion of celebration of 75<sup>th</sup> year of establishment of High Court of Orissa.

My journey as an Advocate started in the year 1986 when I started my practice under the able guidance and tutelage of my father Late Durga Prasanna Pattnaik, in Civil, Criminal, Service and Labour matters. Subsequently, I shifted my practice to Cuttack in December 1995. After undergoing the rigors of the profession, I was appointed as Government Counsel in the year 2000. And I almost completed 9 years of my experience as a Government Counsel. After couple of years of practice as a private counsel again I was appointed as a Government Counsel prior to my elevation.

After my elevation as a Judge of Orissa High Court I took oath on 24<sup>th</sup> September 2014 by the then Chief Justice Hon'ble Justice Amitav Roy, who later on became the Judge of the Supreme Court and retired as a Judge of the Supreme Court.

Personally speaking, taking oath as a Judge of the High Court was the most memorable day of my life as a Judge. Another momentous occasion was in the year 2016, when the centenary celebration was held by the High Court of Orissa where many judges of the Hon'ble Supreme Court including the Chief Justice of India and other Judges from various High Courts were invited to grace the occasion. During the tenure of my career as a Judge I have had the privilege and opportunity of getting the support from my esteemed brother and sister Judges. Equally the support extended by the Bar Association and the entire Registry overwhelmed me.

So far as our High Court is concerned, it was constituted in the year 1948 and the first Chief Justice of Orissa High Court was Justice Bira Kishore Ray. I am honoured and privileged to have been invited to the function in the august presence of many erudite Judges and the learned senior members of the Bar. During the last more than 7 decades our High Court has made many strides in fulfilling the constitutional obligations. It is heartening to note that during last couple of years our High Court has made spectacular progress in the digitization of records, computerization and establishment of paperless Courts.

On the momentous occasion of the 75<sup>th</sup> year of establishment of High Court of Orissa I am quite sanguine that in the years to come by the concerted efforts of esteemed Judges and with the active cooperation of the Bar, our High Court will achieve greater heights of excellence and will continue to render speedy and efficacious justice to the litigant public, so as to achieve the averred objective of dispensation of justice. I am sure our High Court will achieve many more milestones and will be among the best in the annals of the judicial history of India.



## JUSTICE BISWAJIT MOHANTY

*Former Judge, High Court of Orissa*

*20.6.2013 to 21.10.2022*

I joined my profession in the year 1986 January by getting attached to Mr. Prabir Palit, a leading practitioner of that time. And my experience as a junior of Mr. Palit was really good and I learned the basic things of the profession from him and his senior most associate Mr. Ramakanta Mohapatra, who has later worked for many years as Government Advocate in our High Court. A couple of months after I joined Mr. Palit's chamber, a retired head master approached me for filling a case relating to payment of his arrear salary. As was the practice then, I sought permission of my senior who on account of his busy schedule immediately did not give me any indication. Therefore I did not proceed in this matter. But 2-3 days after he asked me suddenly- "Biswajit, What was happened to your client? Did you file that case relating to that Head Master?" I said, "No sir. Since there was no permission forth coming from you, I have refused." He

said, "No you should not have done that. But remember one thing if he comes back to you, file that case." And fortunately for me he came back and I filed that case. The main problem in that case was limitation. He was claiming 10 years arrear salary and fortunately for me at that point of time a division bench presided by Hon'ble Justice R C Pattnaik (as his lordship then was) was functioning in Court no 1 in the building and the other Hon'ble Judge was Justice Pasayat. And he very quickly picked up the point and asked the Government Advocate to take instructions and simultaneously he told him that he should see to it that justice is done. They did not issue notice. Because they knew there may be some problem relating to limitation. And for this the then Government Advocate, I remember probably Mr. S K Nayak, coming outside told me that, "Biswajit no doubt your client has suffered but limitation problem is there. Probably that's why the Court has not issued notice and asked me to take instructions to see to it that justice is done." And ultimately the case was registered after 6 weeks and by the time the person, the petitioner has got all his dues and accordingly I withdrew my case. This was my experience with my first brief and sometimes after when Justice Hansaria joined as Chief Justice, I was assisting my senior in a difficult matter before his Court. The matter went on for 2 to 3 days. Thereafter the judgment was reserved.

On the next day evening, when I was sitting in my senior's chamber probably that

was a Saturday and usually our chamber did not function on Saturdays, there was a ring in the phone and I picked up since nobody else was there, and from other side I heard the voice of Chief Justice Hansaria. He wanted to speak to Mr. Palit. I was stunned. But since my senior was not there, I politely told him that, my senior was not there and no sooner he comes down, I would intimate him. And 2 to 3 hours after, at 10 pm in night my senior came to the chamber. I intimated him immediately and he contacted Chief Justice Hansaria over phone. That was a matter relating to a writ petition pending in High Court and the Chief Justice wanted to come down to our chamber to have a discussion on same. And my senior was politely requesting him not to do that and the problem would be taken care of and ultimately after the phone conversation got over, my senior told me that there is a particular case and Chief Justice

himself wants to file an affidavit making things clear. So he was advising against that. But ultimately Chief Justice Hansaria prevailed. Affidavit was prepared and ultimately it was filed. It was an out of ordinary experience for me, handling a Chief Justice filling an affidavit.

So far my career as Judge is concerned, I must say one thing, task of a Judge is a difficult task. Adjudication is not that easy. Many things have to be taken into account and future consequences are also to be kept in mind. In all my years as a Judge in the bench, I have no hesitation to say that, I have enjoyed the task of judging.

I understand that the Hon'ble Chief Justice and all the sitting Hon'ble Judges have taken a lot of pain to organize a function to celebrate the 75<sup>th</sup> year of establishment of our High Court. I wish them all success in such endeavor.



## JUSTICE SUJIT NARAYAN PRASAD

*Former Judge, High Court of Orissa*

*12.3.2015 to 21.11.2018*

I was elevated on 26<sup>th</sup> September, 2014 as a Judge of Jharkhand High Court and remained there for about 5 months. I was transferred to Orissa High Court and took oath on 11<sup>th</sup> March, 2015. That was a very memorable day of my life. I want to share one thing that the day before departing from Ranchi in Jharkhand to Cuttack, I was a little bit nervous that how I will be able to perform my duty as a Judge. But the moment I came to Cuttack, the behaviour of brother and sister Judges was very much appreciable and that made me very comfortable. I performed my duty as a Judge at Orissa High Court for a period of about four years. During that period, the cooperation of my brother and sister judges, who were there at that time and some of them still are Judges in the Orissa High Court, has given me a brotherhood feeling like that of a guardian and I have not felt any feeling that I am an outsider, who came from Ranchi. I must

confess that I learnt judging only at the Orissa High Court and that is only due to the comfort, which was given to me by brother and sister Judges of Odisha.

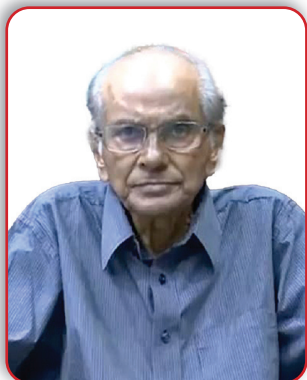
When I departed from Ranchi, I have been given an impression that Bar is very tough in Orissa High Court. But I must confess that I have not felt any disturbance from the members of the Bar of the Orissa High Court rather all the learned members of the Bar, including junior and senior members, cooperated with me in discharge of my judicial function without any grievance. I must confess that those four years as a Judge of Orissa High Court, I will not forget till my last breath. The reason is that I have learnt judging from Orissa High Court and I have the occasion to decide so many difficult cases of various nature. So, I must show my gratitude to Lord Jagannath that he has transferred me to the Orissa High Court for enabling me to render service to the people of Odisha and it had also given me an occasion to have darshan of Lord Jagannath. In my opinion and also in the opinion of my entire family, Orissa High Court is a very good High Court. I always remember the Judges and the members of the Bar.

I must say that the Orissa High Court has celebrated the centenary of establishment of 100 years of Circuit Bench in 2016 and fortunately I was part of that centenary function. Today the Orissa High Court is celebrating 75<sup>th</sup> anniversary of the day of its establishment in the year 1948. On 26<sup>th</sup> April, 1948, the Orissa High



Court had begun its journey as a full-fledged High Court to look into the judicial issues of the people living in Odisha. I wish and pray to Lord Jagannath that the achievement which has been achieved by the Orissa High Court in the last 75 years be more and more by dispensing justice to the needy people of the State of Odisha. The arrangement and the hospitality extended to us by the convenor of this function have been

such that I have no words to say anything. I will remember being a part of this 75<sup>th</sup> anniversary of Orissa High Court. I consider myself fortunate that I had been sent to the Orissa High Court in the year, 2015 that is the reason why the Orissa High Court, Hon'ble the Chief Justice and the other Judges have remembered me for being a part of this function.



## JAGANNATH PATNAIK

*Former Advocate General*

*(AG between 6.10.1999 and 8.3.2000)*

I joined as an advocate in the High Court of Orissa in the year 1968 November and it is almost 55 years I spent as an advocate. The life of an advocate is not smooth always. I had to also go through long years of juniorship and struggled hard to be an independent practitioner in the Hon'ble High Court of Orissa. I cherish my life as an advocate very much and this is a noble profession. If somebody becomes sincere and is devoted to duty as an advocate and keeps his integrity high then he will not starve.

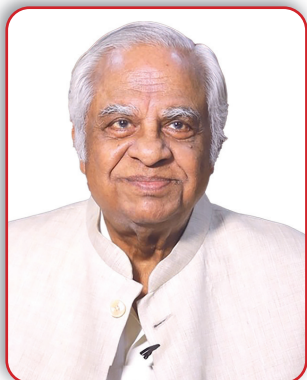
That is my lesson of being an advocate of the High Court and that is my message also to my junior associates and junior friends in the profession. As an advocate of the High Court of Orissa, I have defended many cases and notable being, I was specially appointed to defend the Odisha entry tax the virues of which was challenged and I got success in the said case. But one thing is certain that my period as a junior and my period as an independent

practitioner are very pleasurable also and I have got the blessings of my seniors. To spend time inside the courtroom is very precious for any advocate who is on the path of being an independent practitioner. Probably because of my performance I was appointed as an Advocate General in the year 1999, in which we saw the Super Cyclone in the month of October. As an Advocate General the chief work is the appointment of law officers. In my feeling the appointment of the law officers should be on merit basis, not on party basis. As an Advocate General one has to see the distribution of work amongst the law officers in the High Court. That is very important and another important thing as an Advocate General is the opinions to be given to the government for any matter or policy matter. My journey as an Advocate General though was brief, it was a very good experience for me and one of my memories as an Advocate General is to appear as Advocate General on behalf of this State before the Hon'ble Supreme Court of India in a contempt case. When I appeared in the Supreme Court of India, I was under great mental tension because I am in a contempt case representing the State government before the Supreme Court of India. So this is my feeling that being an Advocate General is a heavy responsibility and you have to check and cross check with your the Law officers and have exchange of views with the Law officers. During my time, the number of the law officers was very meagre and we had to work with the law officers but they were very efficient and hardworking. Compliance of the court's order is an important

part of being an Advocate General to see that the courts orders are complied with soon and the State Government files its opposition to matters in the High Court as soon as possible.

It is a great thing that the High Court of Orissa is celebrating its 75<sup>th</sup> year, and I must convey my congratulation to the organizers and to the Hon'ble Judges of the High Court and the Hon'ble Chief Justice of the High Court. My feeling is that, we are proud of being in the 75<sup>th</sup>

year of the establishment of the High Court. It was a proud moment for me as an advocate of the High Court of Orissa, to be elected as the Chairman of the Bar Council of India. It was a pride for all of us that from our High Court there were three Judges in the Supreme Court at a time. According to my feeling, this institution is the last hope of the common man. Judicial institution or the judiciary must be protected and strengthened.



## BIJAY KRUSHNA MAHANTI

*Former Advocate General*

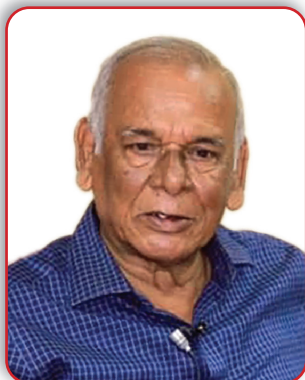
*(AG between 7.6.2004 and 10.6.2009)*

My first experience is a day to day counsel asking for time. On May 1959 I argued a matter before the High Court, where Justice Harihara Mahapatra was the standing council and I succeeded in that case. And from that date I have no looking back. My experience in the High Court in the 65 years of practice has been very good, very cordial with the Judges and with my friends. As an advocate General, my experience is slightly different. The best I tried to persuade the Government to respond to the matters before the court was not very helpful. The next memorable day in my life was arguing a matter in 1981 before the Supreme Court on

the question of literal interpretation. A challenge was made under section 52 of the Income Tax Act where I succeeded.

My message to the Court or the lawyers is that there should be more communication apart from the court between the Judges and the lawyers. And there should be also more communication between the Chief Minister and the Chief Justice of which there was always a meeting in every month which has since not been happening. And to the young lawyers, my request is to join in great numbers and have a passion for practice.





### **ASOK MOHANTY**

*Former Advocate General*

*(AG between 10.6.2009 and 12.9.2014)*

First, let me take the opportunity of greeting all of us on the 75<sup>th</sup> year of the establishment of the Orissa High Court. So far as my experience, in Orissa High Court goes, I came little bit late to this profession in the year 1972, I have already completed 50 years. The experience, as an advocate is that of a young Junior having a lot of dreams at the time of entering into the profession with a commitment to advance the cause of the downtrodden, lower strata of the society. Over the years it is a long travel. I established, my independent practice and at various times I have held various responsibilities for the State Government and different Publics Sector Undertakings including that of Utkal University and Sambalpur University and also a senior standing counsel for sales tax senior, senior standing counsel for Central Government, then standing counsel for the OSRTC. I also became the Advocate General for the state from 2009 to 2014. The experience as an Advocate of the High Court of Orissa has taught me one thing that an advocate

should have a strong commitment towards the profession and towards the independence of the judiciary and there must be a good rapport in between the Bar and the Bench for which everybody should strive. The experience as an advocate in Odisha is nothing new. It is just like discharging duties to any other client, save and except, the onerous responsibility that is cast on the Advocate General to defend the State and protect its interest in all sorts of litigation. I have tried to discharge the responsibility bestowed on me to the best of my ability. I will definitely say that I am proud and privileged to hold this office of the Advocate General of the State. I am thankful to the Government, for reposing that sort of confidence, giving me complete independence above the partisan affairs to conduct my cases in a professional manner and protect the interest of state.

One of the most memorable moments of the practice is in the year 1975 when the High Court Bar Association decided to rise to the occasion and protest against the imposition of the emergency in the State, and probably, Orissa High Court Bar Association was the first in the country to come out on the street protesting against the imposition of the emergency resulting in curtailing of fundamental rights.

This is a noble profession. I am little bit shocked to note that this profession is rather turning to be a commercial preposition and youngsters joining today, though brilliant, they think that this is a profession like any other profession to earn money but this is a profession primarily to serve the society. No doubt, everybody is here to earn their livelihood but they should not behave like a mercenary.



## **SURYA PRASAD MISRA**

*Former Advocate General*

*(AG between 22.10.2014 and 25.6.2019)*

I have lot of wonderful experiences in the High Court of Orissa. When I joined the profession, I never thought I will continue for so long. Now about 46 years have passed in the mean time. When I joined, actually, I joined with a Civil law practitioner, Justice PC Mishra. He was one of the best in civil law on the subject in question and I really got enriched myself working with him for a short tenure of about 6 and half years before his elevation to the bench.

I have the privilege to work both in the trial court, also in the High Court. At that time the number of Judges was very less, but the work was very heavy. We had to work really hard on different first appeals, second appeals and writ applications which were there in the High Court. I had the privilege to do all such type of cases, including matters relating to interpretation of law in different courts particularly in the court

of Chief Justice and I really enjoyed my work, which I have done. And the most enjoyable part of my life is that that when I get ready in a case and argue to the best of my satisfaction, that gives me the best pleasure.

My experience as an Advocate General is different because I had the occasion to be a Government Advocate for about 6 years from 1995 to 2001, but that was not the same experience as I had when I became the Advocate General. When I was appointed to the Advocate General by the State Government, it was a really memorable day for me and I really felt that I have done something in this profession for which the Government and the court has recognized me and the workload was there and the executive work, administrative work and the judicial work really gave me immense pleasure because I felt I have done my duties to the best of my satisfaction and ability. It is up to the others to say about my competence during my tenure as an Advocate General of the State of Odisha. But I think I have done the best and I tried my best and it was a different experience for the reason that I was trying to develop the law and try to impress upon the court that law has to be in judiciary, law has to be protected. And we should see that eventually justice prevails.

There were lot of memorable moments. I cannot just identify anyone of them during my tenure, but it was definitely a memorable moment when I took charge as the Advocate General of the State Government, and it was

really a moment to cherish for myself that I have kept the dream of my father who wanted me to be a lawyer.

My message to the young lawyers and the Judges also would be that, I have seen lot of Judges actually since the time of justice G.K. Mishra and subsequently all the Chief Justices, all the puisne Judges. I have worked almost in all the courts if I rightly remember and I still feel that with hard work and perseverance with dedication, with honesty and integrity, a man can definitely prosper in this profession. Legal profession is a noble profession and I am proud to be a lawyer. Let us keep this profession in the highest esteem and the image of the High Court at a very high state. We are proud to be there in the Odisha High Court. The best of judgements that has been delivered by Odisha High Court judges has still remains to be valid for years to come and still been followed by different High Courts and the Supreme Court as well. The High Court has a large legacy and the Present Chief Justice is also doing wonderful job in this Corona period. I don't want to praise anyone

of the Chief Justice but all have tried to do the best. E-filing and video conferencing and all those things have been developed which really is quite an amazing thing that has happened in this High Court and we enjoy it. I hope this image of High Court would be kept alive and will be the best of thing can be done by the young lawyers who can follow the footsteps of their seniors and respect in regard each one of the lawyers and the Judges in the court and outside. The one last thing I can say if I rightly remember the 75<sup>th</sup> year was celebrated by inviting all the past retired High Court judges of Odisha High Court and the retired Chief Justices of Odisha High Court and were felicitated by the High Court by Hon'ble Chief Justice and other sitting judges, with the cooperation of the staff and all of the members who really made the 75<sup>th</sup> year celebration a memorable one. It is a wonderful occasion and we really enjoyed it and I think this is one of the lifetime event that has taken place for which the entire credit goes to the High Court.



## **J. K. TRIPATHY**

*Senior Advocate*

My message on the occasion is that, the judges and the advocates should feel that they are the members of a family. One cannot survive without the other. Both are working for the cause of people. So, the cause of people needs to be satisfied and the lawyers and advocates should cooperate with the people. That is my message. That was, there and is there but it is almost remaining in silent. So, that must be activated and everybody must understand his own duty.





## G A R DORA

*Senior Advocate*

After serving for four and half years, I resigned from the Indian Civil Service and joined this profession from the bottom rung of the ladder. My journey for more than half a century in this profession had many ups and downs. During 54 years of my practice, I have conducted hundreds of cases, and a few civil and criminal cases. I had just completed one year when I got a case and that left a great impression on me. That being my first case, it left great impression on me. The case was relating to carpentry inam. After the death of the carpenter, his brother claimed ownership. There was a dispute between the carpenter's brother and the deceased carpenter's only widow daughter. So the Sub-Judge instead of deciding the ownership, even in the absence of the pleading, held that his brother perfected his title and he did not decide on merit regarding the ownership.

Then the District Judge instead of deciding the ownership of his brother, whether after his brother's death the title automatically passed to his brother and without also dealing with the adverse possession which was not pleaded before the lower court, held that after abolition of the estate, the inam vested with the government. So I filed the second appeal before the Hon'ble High Court. The Hon'ble Single Judge dismissed it on the ground that in the original suit there is no mention that my client, the only widow daughter of the carpenter, was in possession. I submitted that I am ready with the amendment mentioning that my client was in possession and also prayed for the recovery of possession. The Hon'ble Single Judge did not accept the amendment petition and dismissed my second appeal. There is a provision in the High Court that against Second Appeal, A.H.O. (Appeal against High Court Order) could be filed. I file the AHO. The Division Bench presided over by Late Hon'ble Chief Justice G.K., put the same question. The Division Bench said that the Single Judge was right because there was no mention in the original suit that your client was in possession as he did not pray for recovery of possession if she was not in possession. So, I said, My Lord, the law is well settled that amendment can be entertained even at the level of Supreme Court and I wanted to file it. The Hon'ble Single Judge rejected it. This is the law that after abolition of the Zamindari estate, Carpentry inam, Dhobi

inam, Barbery inam, do not vest with the State. The Division Bench was pleased and was very happy and allowed my AHO. Being my first case, that left great impression on me.

I was fortunate to fight many legal matters with all the legal luminaries of the State. Although in the court we fought tooth and nail to prove our point but once we stepped out of the court, we were friends and did not hold any grudge

against one another. An advocate should be fully equipped when a case comes. He should not be found wanting in any respect. So when a case comes, an advocate should master the facts and go on thinking how to present the case, what will be the question and how to answer. An advocate should have commitment, dedication as a lawyer and devotion to the profession.



## SHAKTI DHAR DAS

*Senior Advocate*

I joined as an Advocate in the high court of Odisha in the year 1970. In the meantime, I have completed 53 years of my legal profession. My practice is all along in the high court. Very rarely, I have gone to any other court. During my practice tenure, in the 16<sup>th</sup> year of my practice, the then Chief Justice of Hon'ble Supreme Court of India, Justice R.S. Pathak had visited the high court of Orissa, and I was one of the members who had an occasion to interview him. This is one of my very good experiences with him. He asked me one question, "How many years you have put in as an advocate?" I said "16 years." He said "more than I had" then I asked him, "What was your year of practice?", he said, "I have 13 years of practice and I was elevated as a judge". During my career, I had been working in almost all the branches of law. In the field of taxation, I have less practice but in the year 1998, I was appointed as the Senior Standing Counsel of the Commercial Tax and thereafter in the year 2009, I served as the Assistant Solicitor General of the Government of India. I had the

occasion to work in the Wadhwa commission of inquiry, in the year 1999. In the commission, Hon'ble Justice D.P. Wadhwa, the then Judge, Supreme Court of India, was appointed as the one-man Commission to enquire into the death of a Christian missionary at Anandapur and the work during that period was very novel. So I had a very good experience during that period and I learnt many things, how a Commission works. As an advocate in the High Court, I had mixed experience of good and bad, but I must say the good was much more than bad. As regards other experiences, I had the occasion to argue before various Judges, who are appointed in this Hon'ble Court from the State of Odisha and those who came on transfer to the state of Odisha.

But as I found, if you are well prepared there will be no difficulty of any judge accepting you. So, a lawyer must be always well prepared to face a Judge rather than blaming a Judge that the Judge did not listen to me. Last but not the least, statement regarding the 75<sup>th</sup> of the High Court.

Incidentally, the year in which High Court was established, I was born in that year. I am also approaching 75 years. Incidentally. My experience is that the High Court has grown. When I joined, there were only five judges. Now, It has more than much more than that. And the number of cases has also increased and type of cases have also increased. I expect the young boys who are joining this profession would educate themselves, properly to face the situation in future and I hope the High Court will prosper, more and more. Even though I will not be there to see it.



## **BASUDEV PANDA**

*Senior Advocate*

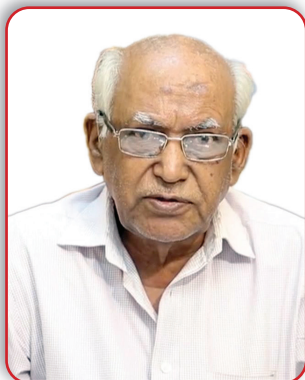
I joined in the profession in the year 1969 and a practiced in civil, Criminal and taxation branches of a law in the high court of Odisha, and also in lower forums.

Experience as a professional, I gained very good reputation in the profession. I joined in the profession in the year 1969 as an advocate in civil branches of a law, taxation, criminal, and also simultaneously other branches of the law. I also conducted cases in lower forum and also up to the Hon'ble High Court level. I have got rich experience. I got the cooperation of the Hon'ble Judges due to my decent behavior,

submission and my reputation also, but as far as my message is concerned, now, the tremendous development I have seen in the last about 52-53 years of my profession.

I am very much grateful to the present Chief Justice and Hon'ble Judges of the High Court. Tremendous development has been made. We never expected that in the fag end of our lives we will see this development that we have achieved. I wish, let the Hon'ble Court flourish and let the standard of advocates in profession progress like anything.





## BHAKTAHARI MOHANTY

*Senior Advocate*

I joined bar on 11<sup>th</sup> February 1961. I was associated in the office of Sri Bijoy Kishore Ray who was the elder son of late Chief Justice Bira Kishore Ray. After joining the Bar I came in contact with many senior advocates and also the Judges and I found all of them very homely and co-operative. Then I travelled all these years through ups and downs. My experience is diverse. It is not practically possible to pen down all the facts and circumstances under which I had to proceed in this profession. On the whole I dare to say that I found this profession very interesting. All the Judges I came across were co-operative and all the senior advocates, even though I am not associated, were very cordial

and everyone is ready to help those who are not so efficient. Therefore, on the whole I found this profession and this court, this atmosphere very helpful, cordial and co-operative. Anyway, every subject, every object, everything in this world has plus and minus both sides. All the time we cannot expect good and similarly all the time we cannot expect or we cannot apprehend a bad thing. I learnt to love the juniors and co-operate with all my friends from this profession. And one thing I want to say to my young juniors something which we learnt by going through The Ramayan and Mahabharata. Respect merit and respect the meritorious. ଗୁଣର ଆଦର କର, ଗୁଣିକୁ ସମ୍ମାନ ଦିଅ । ଗୁଣିକୁ ଆଦର କର, ଗୁଣର ସମ୍ମାନ ଦିଅ ।



## **NARASINGHA MISHRA**

*Advocate*

I enrolled myself as an advocate in the year 1964. Though I completed my law degree in 1963. At that time for one year, there was internship. As an internee, I worked for one year. Essentially, I was a district court practitioner. But then in 1990, I became a minister of law. And after I completed as a minister for five years, I enrolled myself as an advocate in the Orissa High Court. And during my practice in the High Court, I had argued three Public Interest Litigations besides other things. One was to protect the interest of the farmers. That was the case, Nakula Merlee versus State of Orissa and others. In that case, interpreting the constitution and the law, a remarkable interim judgment was passed, not an interim order, but an interim judgment was passed by the then Chief Justice, where he observed that the farmers in the State are being exploited by the unscrupulous government servants and the mill owners, and directed that the government should directly purchase paddy from the farmers, paying minimum support price. Time to time, petitions were filed, drawing the attention on the Hon'ble High Court that though the order was passed,

which is unique of its kind in the whole of the country, and though the order was confirmed by the Supreme Court, it was not executed. The High Court has no executing agency. So as and when the orders are not carried out, a petition for contempt is filed. Time to time, contempt petitions were filed, but unfortunately, no action was taken and practically the order, though repeatedly passed, was not carried out. In other words, the judgment remained in black and white. But at the grass-root level, the order could not be carried out and the farmers suffered a lot. Ultimately, the court dropped the case without taking any action on any of the contempt petitions. So that really shocked me. The result is people start losing confidence in the Judiciary. Naturally, a question will arise, what for we go to the court and get a favorable order and still not get the relief. I remember when Justice Hansaria was the Chief Justice of Orissa High Court. He used to initiate many, even sou motu, contempt proceedings. There were criticisms from various quarters, but then in an interview to an, English journal, I had firmly supported as a minister, the stand taken by the then Chief Justice. And I said it's the only way to ensure execution of the order of the Hon'ble High Court. And after my statement, everything cooled down and things started improving. And Justice Hansaria had a copy of that journal and told me that it has come to my rescue to a great extent. The second PIL that I argued for a long time is in which I drew the attention of the court to the rampant corruption in mining field. Citing several instances, the prayer was that this corruption charges should be investigated by the CBI. The State Government, paying heavy fee, brought a lawyer from the Supreme Court. Then they paid

25 lacs a day, whether the case was taken up or not, plus other expenses. It was argued for days together. Justice Gowada was the Chief Justice. Again, unfortunately, my bitter experience is, after the argument was over and the judgment was reserved, for one year eight months judgment was not passed. Justice Gowada was promoted as a Judge of the Supreme Court. Subsequently, I'm told the matter was dropped. The third case that I argued was when the Calcutta Port's jurisdiction was extended up to Paradeep Port, practically making seven of the small ports, non-major ports, non-functional. Then I represented before the Minister of Central Government in charge of the department. He didn't listen to me. Then PIL was filed against the Union of India and Calcutta Port. That was the first case of its kind in the whole of the country under the Indian Ports Act, a 100 years and more old law which was enacted by the British government. There was no citation. Again, that case was heard by Justice Gowda, a Chief Justice. And a historical order was given quashing the notification issued by the central government and the Calcutta Port, thereby protecting the Dhamara Port and other small ports like Subarnarekha and others in all seven non-major ports. Thereby, the interest of the state was protected. The central government went to the Supreme Court and the Supreme Court dismissed it. Our stand was vindicated. These are three major experiences I have in Orissa High Court.

Orissa High Court has a glorious history. It had outstanding Judges who could be compared with any other great Judge or good Judge at the national level. But sorry to say the democracy in the country is dwindling. Out of the three pillars of the constitution, the legislature, the executive, and the Judiciary, two of the pillars

have already crumbled. Now the legislative wing has become non-functional. People have lost trust in the executive. They had a great hope in the Judiciary. In fact, earlier, the Judges were treated as gods because they were dispensing justice. Now, gradually, the third pillar, that is Judiciary, has also started crumbling. It may not be appropriate at this stage to make many comments, but if people lose faith in Judiciary, where exists democracy? What is the value of the Constitution of India? Now, therefore, the Judges should rise to the occasion to gain the confidence of the people. As rightly observed, few days back in the High Court, the Court is meant to protect the interest of its citizens, citizens of the country. How to protect? Poor and downtrodden cannot knock the door of justice, either in the High Court or in the Supreme Court. Therefore, people resort or PIL was recognized at the national level. But it is neither the case is taken out nor, as I said, the order is passed, it is carried out. Take for example, in the case of Jagannath temple, what the Supreme Court said, the Chief Administrator should not be assigned with any other job except the administration of the temple. How long they took? And lastly, when Supreme Court was about to issue a content, a full-time administrator was appointed. Similarly, Supreme Court has directed different States to enact police laws and has given the guideline also. But I find in Orissa and in many other states, they don't carry out the guidelines and the Supreme Court doesn't take any action against the State. So I wish our High Court with the able leadership of the present Chief Justice, should rise to the occasion. People should not feel any Judge to be pro-government or anti people. Justice must be delivered. Constitution and democracy must be upheld.



## **NARASINGHA PATRA**

*Advocate*

I am Narasingh, Patra, advocate, M.com, LLB. I passed law, in MS. Law College. I passed Master in Commerce from Utkal University in the year 1967. Though, I got the licence in the year 1965, I practically started my practice in the year 1968, due to my post graduate study in commerce. I joined the office of late Shri Ranjit Mohanty in the year 1968 and continued up to 1985. Thereafter, I started my own independent practice and my son Arun Kumar Patra who is also an Advocate of this High Court, joined sometime in 2003 or 2004 and we have jointly practicing and for the last, few years, I am not keen about going to the Court but I am practicing in the chamber. With regard to the experience as an advocate in the High Court

of Orissa, the relationship between the Bar and the Bench is well appreciated by all. The seniors are given proper respect and equally they love that Junior friends. My overall experience in the Bar is good, my senior Late Ranjit Mohanty was always encouraging us to write books in law subjects. But unfortunately, I could not fulfill his desire during his lifetime, as he died before, completing age of 60, I wrote a book on Excise law in Orissa in the year 2006 with able assistance of my son Arun Kumar Patra, who is practicing advocate in the High Court. The book consists of about 600 pages with commentary and case laws, which is helpful for the Bar and the bench. In the past, Golden Jubilee of the High Court was celebrated and now 75 years of the High Court is celebrated by Bench and Bar and I wish the celebration a good success. It is generally said the law is a noble profession. There are Law Universities almost in every State and teaching of law has improved with introduction of integrated law and information technology. In my opinion there is no profession, comparable to legal profession. Everybody should know at least civil law, Criminal law and Constitution of India, which is very essential in public life and society as a whole. Lastly I wish the 75 year of the high court a good success.





*Illuminated Heritage Building of The High Court of Orissa*



# PHOTO GALLERY





## ***Judges of the High Court of Orissa who were elevated as the Chief Justice of India***



**Justice Ranganath Misra**

16.1.1981 to 14.3.1983

*Served as 21<sup>st</sup> Chief Justice of India from*

25.9.1990 to 24.11.1991



**Justice Gopala Ballav Patnaik**

1.6.1983 to 18.5.1995

*Served as 32<sup>nd</sup> Chief Justice of India from*

8.11.2002 to 19.12.2002



**Justice Dipak Misra**

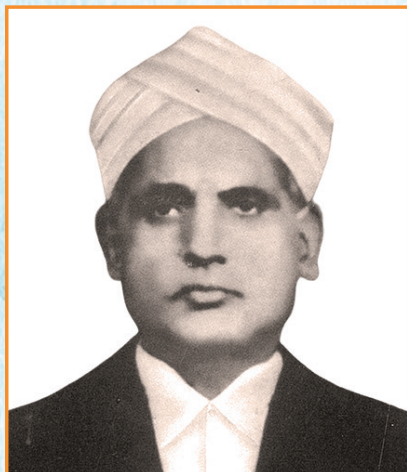
17.1.1996 to 2.3.1997

*Served as 45<sup>th</sup> Chief Justice of India from*

28.8.2017 to 2.10.2018

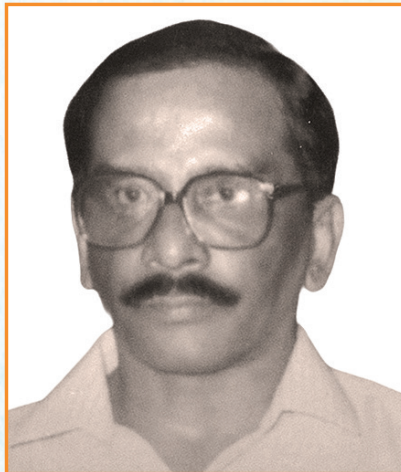


## **Chief Justices / Judges of the High Court of Orissa who were Elevated to the Supreme Court of India**



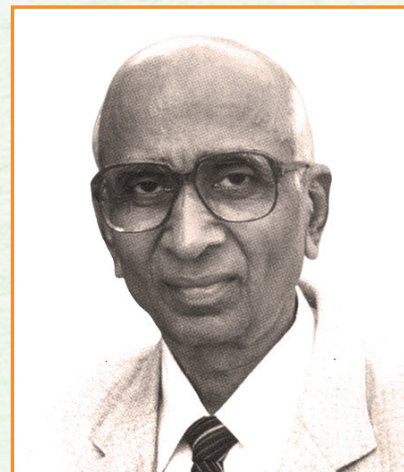
**Justice Bachu  
Jagannadha Das**

*31.10.1951 to 3.3.1953  
Elevated as Judge of  
the Supreme Court of India  
on 4.3.1953*



**Justice Radha Charan  
Patnaik**

*18.9.1981 to 2.12.1991  
Elevated as Judge of  
the Supreme Court of India  
on 3.12.1991*



**Justice Banwari Lal  
Hansaria**

*Sworn as the 13<sup>th</sup> Chief  
Justice of High Court of Orissa  
on 22.2.1990. Elevated as  
Judge of Supreme Court of  
India on 14.12.1993*



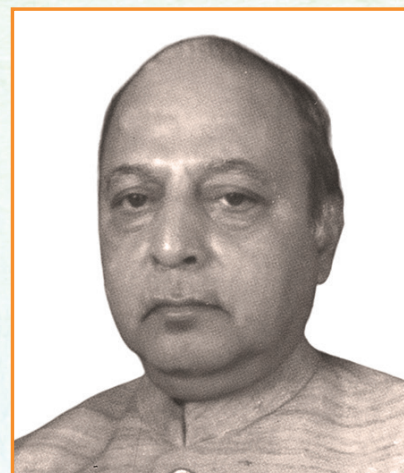
**Justice Girish Thakurlal  
Nanavati**

*Sworn as the 14<sup>th</sup> Chief  
Justice of High Court of Orissa  
on 31.1.1994. Elevated as  
Judge of Supreme Court of  
India on 6.3.1995*



**Justice Deba Priya  
Mohapatra**

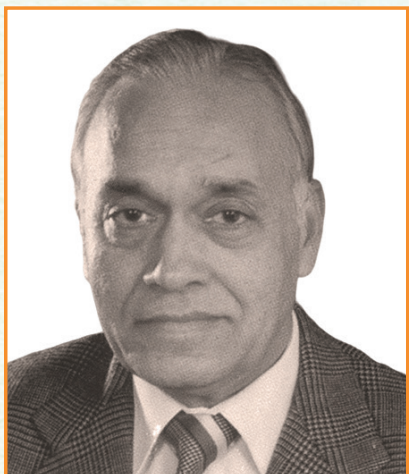
*18.11.1983 to 15.2.1996  
Elevated as Judge of Supreme  
Court of India on 9.12.1998*



**Justice Sailendu Nath  
Phukan**

*Sworn as the 16<sup>th</sup> Chief  
Justice of High Court of Orissa  
on 2.8.1996. Elevated as  
Judge of Supreme Court of  
India on 28.1.1999*





**Justice Biswanath Agrawal**

*Sworn as the 17<sup>th</sup> Chief Justice of High Court of Orissa on 18.11.1999. Elevated as Judge of Supreme Court of India on 19.10.2000*



**Justice Arijit Pasayat**

*20.3.1989 to 19.9.1999  
Elevated as Judge of Supreme Court of India on 19.10.2001*



**Justice P. Krishna Ayer Balasubramanyan**

*Sworn as the 19<sup>th</sup> Chief Justice of High Court of Orissa on 5.12.2001. Elevated as Judge of Supreme Court of India on 27.8.2004*



**Justice Asok Kumar Ganguly**

*Sworn as the 21<sup>st</sup> Chief Justice of High Court of Orissa on 2.3.2007. Elevated as Judge of Supreme Court of India on 17.12.2008*



**Justice Balbir Singh Chauhan**

*Sworn as the 22<sup>nd</sup> Chief Justice of High Court of Orissa on 5.12.2001. Elevated as Judge of Supreme Court of India on 11.5.2009*



**Justice Ananga Kumar Patnaik**

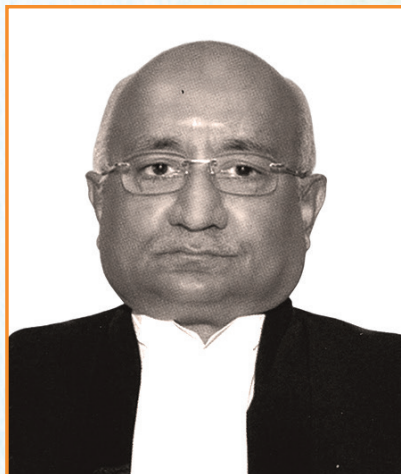
*13.1.1994 to 6.2.1994 and 15.4.2002 to 13.3.2005  
Elevated as Judge of Supreme Court of India on 17.11.2009*





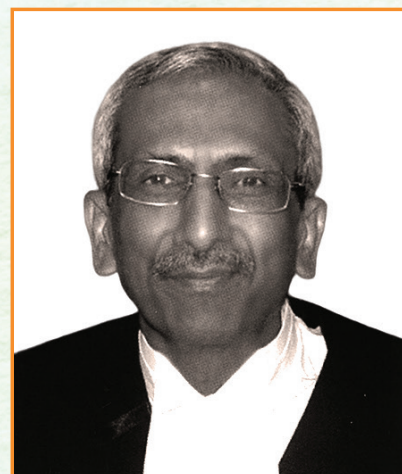
**Justice V.G. Gopala Gowda**

Sworn as the 24<sup>th</sup> Chief Justice of High Court of Orissa on 25.3.2010. Elevated as Judge of Supreme Court of India on 24.12.2012



**Justice C. Nagappan**

Sworn as the 25<sup>th</sup> Chief Justice of High Court of Orissa on 27.2.2013. Elevated as Judge of Supreme Court of India on 19.9.2013



**Justice Adarsh Kumar Goel**

Sworn as the 26<sup>th</sup> Chief Justice of High Court of Orissa on 12.10.2013. Elevated as Judge of Supreme Court of India on 7.7.2014



**Justice Amitava Roy**

Sworn as the 27<sup>th</sup> Chief Justice of High Court of Orissa on 6.8.2014. Elevated as Judge of Supreme Court of India on 27.2.2015



**Justice Vineet Saran**

Sworn as the 29<sup>th</sup> Chief Justice of High Court of Orissa on 26.2.2016. Elevated as Judge of Supreme Court of India on 7.8.2018



## Chief Justices of the High Court of Orissa who also became Chief Justice in other High Courts



**Justice D.H. Waghela**

Served as the 28<sup>th</sup> Chief Justice of High Court of Orissa from 4.6.2015 to 14.2.2016. Transferred to **Bombay High Court** as Chief Justice on 15.2.2016



**Justice Mohammad Rafiq**

Served as the 31<sup>st</sup> Chief Justice of High Court of Orissa from 27.4.2020 to 2.1.2021. was previously the Chief Justice of **Meghalaya High Court** from on 13.11.2019 to 26.4.2020, was Chief Justice of **Himachal Pradesh High Court** from 14.10.2021 to 24.5.2022 and 1<sup>st</sup> Chief Justice of **Madhya Pradesh High Court** from 3.1.2021 to 13.10.2021

## Former Judges who served as Chief Justice of other High Courts



**Dr. Justice Braja Nath Misra**

5.1.1981 to 9.7.1986  
**Sikkim High Court**  
20.1.1990



**Justice Radha Krishna Patra**

22.6.1992 to 8.7.2003  
**Sikkim High Court**  
9.7.2003



**Justice Prafulla Kumar Misra**

17.1.1996 to 23.6.2001  
**Patna High Court**  
12.8.2009 to 16.9.2009



**Justice Laxmi Kanta Mohapatra**

16.9.1999 to  
16.10.2012  
**Manipur High Court**  
10.7.2014





**Justice Pradip  
Kumar Mohanty**

7.3.2002 to 10.4.2016  
Jharkhand High Court  
24.3.2017



**Justice Indrajit  
Mahanty**

31.3.2006 to 13.1.2018  
Rajasthan High Court  
12.10.2021



**Justice Sanjay  
Kumar Mishra**

7.10.2009 to  
10.10.2021  
Jharkhand High Court  
20.2.2023



**Justice Jaswant  
Singh**

8.10.2021 to 13.2.2023  
Tripura High Court  
15.2.2023

### **Chief Justices of the High Court of Orissa**



**Justice Bira  
Kishore Ray**

26.7.1948 to  
30.10.1951



**Justice Bachu  
Jagannadha Das**

31.10.1951 to 3.3.1953



**Justice Lingaraj  
Panigrahi**

4.3.1953 to 21.3.1956



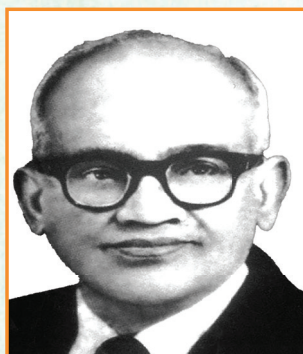
**Justice Ramaswamy  
Laxman Narasimham**

22.3.1956 to  
27.12.1964



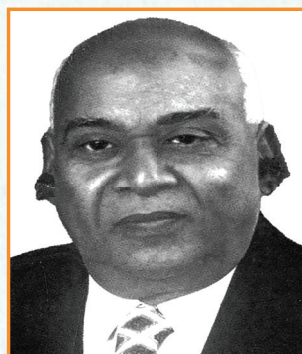
**Justice Khaleel  
Ahmed**

18.1.1965 to 5.4.1967



**Justice Satya  
Bhusan Barman**

6.4.1967 to 30.4.1969



**Justice Gati  
Krushna Misra**

1.5.1969 to 30.10.1975



**Justice Siba  
Narain Sankar**

1.11.1975 to 12.10.1977



## Chief Justices of the High Court of Orissa



**Justice Sukanta  
Kishore Ray**  
13.10.1977 to  
4.11.1980



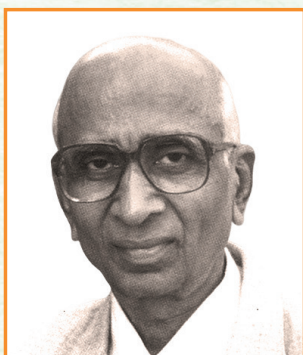
**Justice Ranganath  
Misra**  
16.1.1981 to 14.3.1983



**Justice Dambarudhar  
Pathak**  
11.8.1983 to 28.2.1986



**Justice Hari Lal  
Agrawal**  
1.5.1986 to 31.7.1989



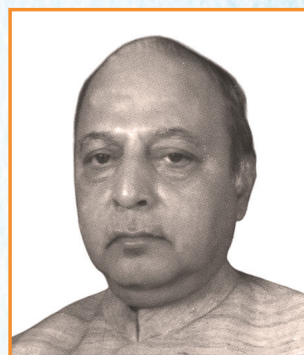
**Justice Banwari Lal  
Hansaria**  
22.2.1990 to  
13.12.1993



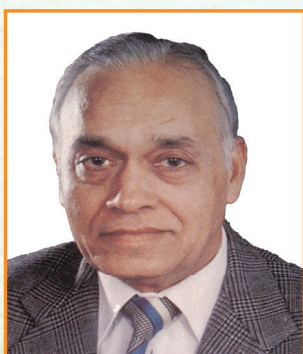
**Justice Girish  
Thakurlal Nanavati**  
31.1.1994 to 27.9.1994



**Justice Vallabhdas  
Aidan Mohta**  
28.9.1994 to 25.4.1995



**Justice Sailendu  
Nath Phukan**  
2.8.1996 to 27.1.1999



**Justice Biswanath  
Agrawal**  
18.11.1999 to  
18.10.2000



**Justice Nyaka  
Yellapa  
Hanumanthappa**  
17.2.2001 to 24.9.2001



**Justice P.  
Krishna Ayer  
Balasubramanyan**  
5.12.2001 to 10.3.2003



**Justice Sujit  
Barman Roy**  
9.4.2003 to 21.1.2007



## Chief Justices of the High Court of Orissa



**Justice Asok  
Kumar Ganguly**  
2.3.2007 to 18.5.2008



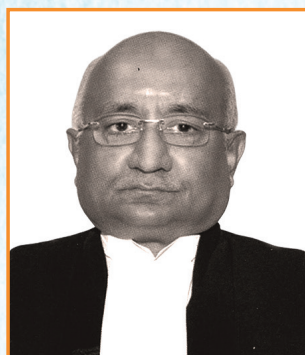
**Justice Balbir  
Singh Chauhan**  
16.7.2008 to 10.5.2009



**Justice Bilal Nazki**  
14.11.2009 to  
17.11.2009



**Justice V.G. Gopala  
Gowda**  
25.3.2010 to  
23.12.2012



**Justice C.  
Nagappan**  
27.2.2013 to 18.9.2013



**Justice Adarsh  
Kumar Goel**  
12.10.2013 to 6.7.2014



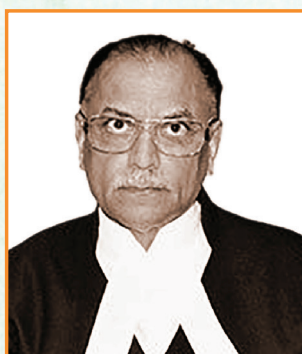
**Justice  
Amitava Roy**  
6.8.2014 to 26.2.2015



**Justice D.H.  
Waghela**  
4.6.2015 to 14.2.2016



**Justice Vineet  
Saran**  
26.2.2016 to 6.8.2018



**Justice  
Kalpesh Satyendra  
Jhaveri**  
12.8.2018 to 4.1.2020



**Justice  
Mohammad Rafiq**  
27.4.2020 to 2.1.2021



**Dr. Justice S.  
Muralidhar**  
From 4.1.2021



## Former Judges of the High Court of Orissa



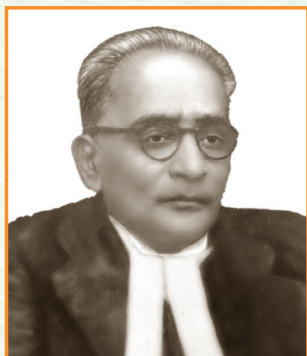
**Justice Souri Prasad Mohapatra**  
2.5.1952 to 23.1.1961



**Justice Jagannath Mohanty**  
23.4.1953 to 3.1.1954



**Justice Pitambar Mishra**  
18.8.1954 to 19.8.1955



**Justice Paramkusam Venkata Balakrishna Rao**  
26.8.1954 to 28.1.1959



**Justice Gopal Chandra Das**  
9.8.1956 to 11.1.1962



**Justice Jaya Krishna Misra**  
10.11.1959 to 10.11.1961



**Justice Raj Kishore Das**  
10.10.1960 to 1.11.1967



**Justice Abhimanyu Misra**  
19.7.1967 to 14.1.1972



**Justice Bala Krushna Patra**  
3.4.1968 to 14.6.1974



**Justice Sachidananda Acharya**  
6.5.1968 to 31.7.1980



## Former Judges of the High Court of Orissa



**Justice Birendra  
Chandra Das**  
31.8.1970 to 2.8.1972



**Justice Bijay  
Kishore Ray**  
3.1.1972 to 30.6.1979



**Justice Kunja  
Behari Panda**  
9.3.1972 to 30.9.1980



**Justice Prafulla  
Kishore Mohanti**  
2.1.1974 to 15.7.1984



**Justice Naba  
Kumar Das**  
27.1.1975 to 4.5.1982



**Justice Jugal  
Kishore Mohanty**  
12.7.1978 to 20.1.1986



**Justice Bala  
Krishna Behera**  
18.9.1981 to 5.9.1987



**Justice Purna  
Chandra Mishra**  
1.6.1983 to 23.12.1994



**Justice Krushna  
Prasad Mohapatra**  
20.6.1984 to 11.4.1990



**Justice Sarat  
Chandra Mohapatra**  
20.6.1984 to 27.4.1994



**Justice Lingaraj  
Rath**  
21.3.1986 to 3.5.1994



**Justice  
Vemulakonda  
Gopalaswamy**  
3.8.1987 to 27.10.1990



## Former Judges of the High Court of Orissa



**Justice Amiya  
Kumari Padhi**

18.4.1988 to 14.9.1995



**Justice Jagneswar  
Dash**

20.3.1989 to 22.1.1990



**Justice Jiban  
Mohan Mahapatra**

5.4.1989 to 23.4.1992



**Justice Kishore  
Chandra Jagadeb  
Roy**

8.5.1989 to 7.3.1994



**Justice Subhransu  
Kumar Mohanty**

21.9.1990 to 2.2.1995



**Justice Debendra  
Mohan Patnaik**

7.1.1991 to 31.8.1999



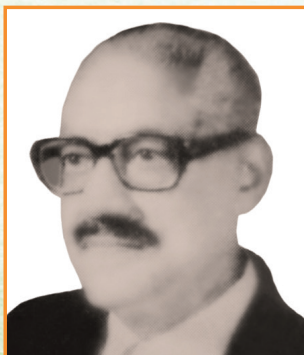
**Justice Bichitra  
Nanda Dash**

7.1.1991 to 7.8.1995



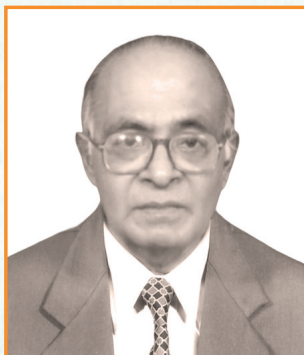
**Justice Basudeb  
Panigrahi**

31.3.1994 to 20.4.1994  
and  
4.6.2001 to 9.7.2003



**Justice Kanhaiya  
Lal Issrani**

28.4.1994 to 20.3.1995



**Justice Bijay  
Narayan Patnaik**

30.6.1994 to 25.7.1994



**Justice Prakash  
Chandra Naik**

11.4.1994 to 14.4.2002



**Justice Susanta  
Chatterji**

22.12.1994 to 1.4.1999



## Former Judges of the High Court of Orissa



**Justice Pradipta  
Ray**

9.1.1995 to 7.1.2003



**Justice Ratnakar  
Dash**

14.3.1995 to 19.12.1999



**Justice Pradyumna  
Kumar Mohanty**

17.1.1996 to 1.1.2007



**Justice Chira  
Ranjan Pal**

17.1.1996 to 30.6.2002



**Justice Sambhu  
Charan Datta**

2.4.1996 to 31.8.1998



**Justice Anup Deb**

2.4.1996 to 26.12.1997



**Justice Prafulla  
Kumar Tripathy**

14.6.1997 to 6.11.2009



**Justice Choudhury  
Pratap Kishore Misra**

17.6.1999 to 4.1.2004



**Justice Prasanna  
Kumar Patra**

17.6.1999 to 21.2.2002



**Justice Mutika  
Papanna**

29.9.2000 to 3.3.2004



**Justice A.  
Suryanarayan Naidu**

29.9.2000 to 4.7.2010



**Justice Arun Kumar  
Parichha**

5.7.2004 to 1.10.2008



## Former Judges of the High Court of Orissa



**Justice Nityananda Prusty**

14.7.2004 to 15.10.2008



**Justice Jaya Prakash Mishra**

29.9.2004 to 18.2.2007



**Justice Ashoke Kumar Samantaray**

29.9.2004 to 19.2.2008



**Justice Ishrat Masroor Qudusi**

6.12.2004 to 25.3.2010



**Justice Lalit Kumar Mishra**

17.1.2008



**Justice S.R. Singharavelu**

26.3.2008



**Justice H.S. Bhalla**

28.10.2010 to  
20.11.2011



**Justice R.N. Biswal**

5.7.2004 to 31.3.2012



**Justice B.P. Das**

17.7.1999 to  
14.11.2012



**Justice Sanju Panda**

5.1.2020 to 9.7.2021



**Justice B.K. Misra**

25.1.2011 to 1.6.2013



**Justice Madan Mohan Das**

20.11.2003 to 4.2.2014



## Former Judges of the High Court of Orissa



**Justice B.K. Patel**  
17.1.2008 to 23.1.2015



**Justice B.N. Mahapatra**  
7.11. 2007 to  
31.3.2015



**Justice Raghubir Dash**  
4.1.2013 to 13.2.2016



**Justice B.P. Ray**  
7.11.2007 to  
27.10.2010  
Again served as Judge  
19.3.2014 to 21.4.2016



**Justice Vinod Prasad**  
2.7.2014 to 27.11.2016



**Justice B.K. Nayak**  
7.10.2009 to 2.2.2018



**Justice Chitta Ranjan Dash**  
7.10.2009 to 19.6.2022



**Justice S.C. Parija**  
7.11.2007 to 1.7.2018



**Justice S.N. Prasad**  
12.3.2015 to  
21.11.2018



**Justice Aruna Suresh**  
28.10.2010 to  
18.2.2012



**Justice D.P. Choudhury**  
17.4.2015 to 3.7.2018



**Justice J.P. Das**  
17.4.2015 to 19.5.2019



## Former Judges of the High Court of Orissa



**Justice Akshaya  
Kumar Rath**  
20.6.2013 to 13.11.2019



**Justice Akshaya  
Kumar Mishra**  
19.11.2018 to 8.11.2020



**Justice Pramath  
Patnaik**  
24.9.2014 to  
31.12.2014 and  
8.2.2019 to 14.6.2021



**Justice Satrughana  
Pujahari**  
29.11.2013 to  
22.11.2017 and  
19.11.2018 to 23.9.2022



**Justice Biswajit  
Mohanty**  
20.6.2013 to 21.10.2022





## Chief Justice and Judges of the High Court of Orissa

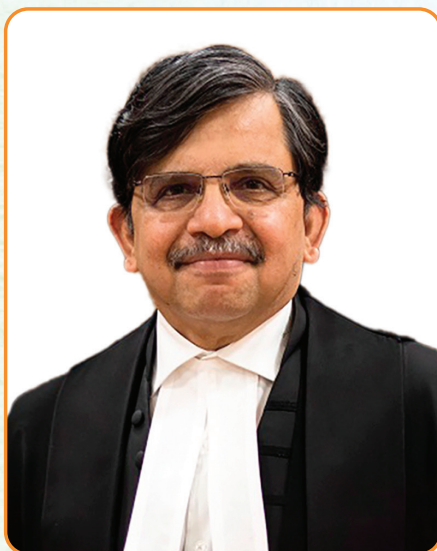
*Sitting from left to right – Justice B.P. Routray, Justice S.K. Sahoo, Justice D. Dash, Dr. Justice B.R. Sarangi,*

*Dr. Justice S. Muralidhar, Chief Justice, Justice S. Talapatra, Justice Arindam Sinha, Justice Biswanath Rath, Justice K.R. Mohapatra and  
Dr. Justice S.K. Panigrahi.*

*Standing from left to right – Justice G. Satapathy, Justice S.K. Mishra, Justice M.S. Raman, Justice Sashikanta Mishra, Justice R.K. Pattanaik  
Justice Savitri Ratho, Justice M.S. Sahoo, Justice A.K. Mohapatra, Justice V. Narasingh, Justice B.P. Satapathy and Justice Chittaranjan Dash.*



## Chief Justice and Present Judges of the High Court of Orissa



**Dr. S. Muralidhar**

Chief Justice  
High Court of Orissa  
4.1.2021



**Justice Subhasis  
Talapatra**

10.6.2022



**Justice Bidyut  
Ranjan Sarangi**

20.6.2013



**Justice Arindam  
Sinha**

8.10.2021



**Justice Debabrata  
Dash**

29.12.2013



**Justice Biswanath  
Rath**

2.7.2014



**Justice Sangam  
Kumar Sahoo**

2.7.2014



**Justice Krushna  
Ram Mohapatra**

17.4.2015



**Justice Bibhu  
Prasad Routray**

8.12.2019



## Chief Justice and Present Judges of the High Court of Orissa



**Justice Sanjeeb  
Kumar Panigrahi**  
10.2.2020



**Justice Savitri  
Ratho**  
11.7.2020



**Justice Mruganka  
Sekhar Sahoo**  
19.10.2021



**Justice Radha  
Krishna Pattanaik**  
19.10.2021



**Justice Sashikanta  
Mishra**  
19.10.2021



**Justice Aditya  
Kumar Mohapatra**  
5.11.2021



**Justice V.  
Narasingh**  
14.2.2022



**Justice Biraja  
Prasanna Satapathy**  
14.2.2022



**Justice Murahari  
Sri Raman**  
14.2.2022



**Justice Sanjay  
Kumar Mishra**  
10.6.2022



**Justice Gourishankar  
Satapathy**  
13.8.2022



**Justice Chittaranjan  
Dash**  
13.8.2022





HIGH COURT OF ORISSA

*Gate of The High Court of Orissa*





# EVENTS





## Events Celebrating the 75<sup>th</sup> Year

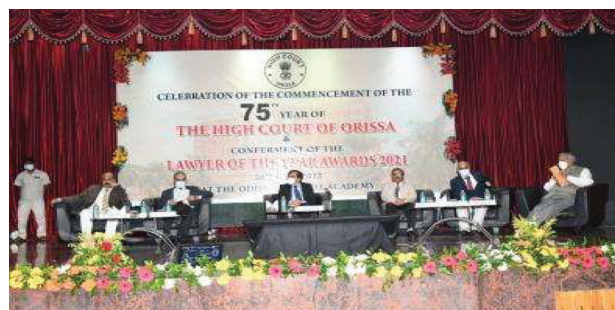
The 75<sup>th</sup> year of the High Court of Orissa commenced on 26<sup>th</sup> July 2022. Several functions and events were held to mark the occasion

under the stewardship of the Chief Justice and the Committees formed for the purpose.

- Foundation Day of the High Court of Orissa and “Lawyer of the Year, 2021 Award” Function at the Odisha Judicial Academy**

The High Court of Orissa celebrated its Foundation Day on 26<sup>th</sup> July, 2022 as well as

commencement of the 75<sup>th</sup> year of the High Court. The occasion was chosen to present the “Lawyer of the Year, 2021 Awards” to 22 young trial court lawyers of Odisha in accordance with a scheme formulated by the High Court.





## - One Year Celebration of Record Room Digitization Centre**

The Record Room Digitization Centre (RRDC) of the High Court of Orissa has completed one year and the occasion was celebrated on 9<sup>th</sup> September, 2022 in Odisha Judicial Academy in the presence of the Chief Justice of India Dr. Justice D.Y. Chandrachud, the Chief Guest in the function who attended the function virtually and Dr. S. Muralidhar, Chief Justice of the High Court of Orissa. The event was attended by Justice R.C. Chavan, Member, e-Committee, Supreme Court of India, Justice Debabrata Dash, the Chairman of RRDC Committee, Dr. Justice Sanjeeb Kumar Panigrahi, Justice

M.S. Sahoo, Justice Sashikanta Mishra, Justice B.P. Satapathy and Justice Sanjay Kumar Mishra, Members of the RRDC Committee and the Judges of the High Court of Orissa. Dr. R. Balakrishnan, the Chief Advisor to the Chief Minister of Odisha, Shri Suresh Chandra Mohapatra, Chief Secretary, Government of Odisha, Shri Prasanna Kumar Parhi, Assistant Solicitor General of India for the High Court of Orissa. Office Bearers of the High Court Bar Association also attended the event. All the staff members of RRDC whose contribution has been instrumental for the Centre's success also attended the function.







**RECORD ROOM DIGITIZATION CENTRE**  
**HIGH COURT OF ORISSA**

*Record Room Digitization Centre*

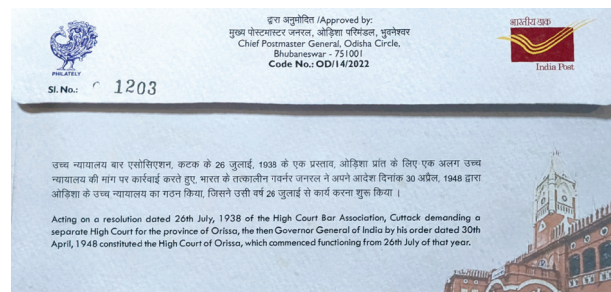
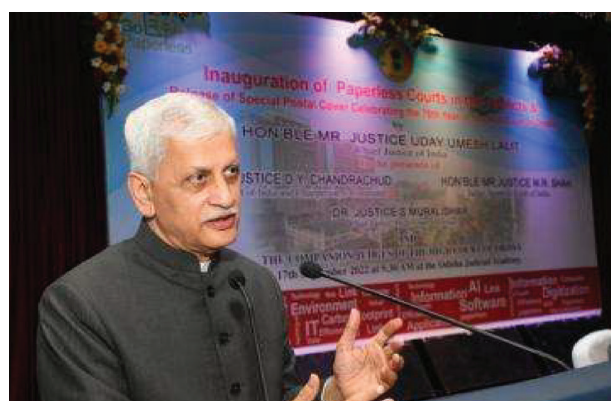


## • Inauguration of the 34 Paperless Courts in the Districts

On 17<sup>th</sup> September, 2022 as part of the celebration of 75<sup>th</sup> year of the High Court of Orissa, in a function organised in Odisha Judicial Academy, 34 Paperless Courts in all the 30 districts of Odisha were inaugurated by Justice Uday Umesh Lalit, the then Chief Justice of India in the presence of Dr Justice D.Y. Chandrachud, then, Judge, Supreme

Court of India and Chairperson, e-Committee, Justice M.R. Shah, Judge, Supreme Court of India, Dr. Justice S. Muralidhar, Chief Justice and companion Judges.

To mark the 75<sup>th</sup> year of the High Court a Special Postal Cover and cancellation cachet along with 6 Picture Post Cards featuring the High Court of Orissa was also released by the Chief Justice of India and other dignitaries in presence of Shri Suwendu Kumar Swain, Chief Post Master General, Odisha Circle.





- **High Court pavilion at the Baliyatra**

As a part of the celebration of the 75<sup>th</sup> year of the establishment of the High Court and in order to create awareness amongst the general public about the functioning of the judiciary, for the first time, a High Court Pavilion was set up at the Baliyatra this year. It was inaugurated on 8<sup>th</sup> November, 2022 by the Chief Justice.

The facade of the entrance to the pavilion and the pavilion itself was a replica of the heritage building of the High Court. Help Desks of the High Court, the Odisha Judicial Academy,

the Odisha State Legal Services Authority, the Odisha State Bar Council and the UNICEF (Odisha Chapter) were set up in the pavilion to answer the queries of the visitors. Employees of the said organizations, advocates and law students acted as volunteers. Information on how to become lawyers and judges, case statistics of the State judiciary and the citizen centric services available in the High Court and the OSLSA were disseminated to the visitors. Children from various schools visited the pavilion.



- **State Level Consultation on Effective Implementation of POCSO Act**

On 19<sup>th</sup> November 2022 a State Level Consultation on effective implementation of POCSO Act 2012 was held at Odisha Judicial Academy, Cuttack, which aimed at firstly, Ruminating and introspecting the progresses made so far and finding solutions for the impediments which essentially deter the process in realising greater objectives under the Act and identify critical actions for effective implementation of POCSO Act, 2012, with a

focus on restorative justice and victim centric approach. Secondly, developing coordination among stakeholders and concerned departments to enable them for appropriate intervention in handling such cases. Thirdly, to create greater sensitivity and awareness on the issues of Child Sexual Abuse among the stakeholders and discuss on the actionable recommendations to enhance the implementation of the POCSO ACT 2012 in the State and finally to review the implementation of POCSO Act, 2012 over the last 10 years.





### • ***Inauguration of Digitization Hubs in 10 Districts***

On 12<sup>th</sup> December, 2022 District Court Digitization Hubs (DCDH) were inaugurated in 10 districts of Odisha namely Angul, Bhadrak, Jharsuguda, Kalahandi, Keonjhar, Koraput, Malkangiri, Mayurbhanj, Nayagarh and Sonepur by the Chief Justice of India, Dr Justice D. Y. Chandrachud in virtual mode

in presence of Dr. S. Muralidhar, Chief Justice and the Judges of High Court of Orissa. Justice D. Dash, Chairman and the members of the RRDC Committee of the High Court were present on the occasion. The District Judges, Judicial Officers, Office Bearers of the Bar Associations and the officials of the district administration attended the event through virtual mode.



- **Release of Judicial Calendar, 2023**

On 18<sup>th</sup> December, 2022, for the second consecutive year, the High Court of Orissa released the Judicial Calendar featuring

paintings of school children in Justice Gati Krushna Mishra Auditorium of the Odisha Judicial Academy.





- ***Sports Meet of the employees of the High Court***

As a part of celebration of 75<sup>th</sup> year of the High Court of Orissa, Sports Meet of the employees of the High Court was held. The Sports Meet involved various events such as cricket, badminton, carom, chess and musical chair. The league matches of the indoor games were played on 10<sup>th</sup> and 11<sup>th</sup> December, 2022 at Jawaharlal Nehru Indoor Stadium, Cuttack while the cricket tournament was held from 24<sup>th</sup> to 27<sup>th</sup>

December, 2022 at Sunshine Field, Cuttack. On 8<sup>th</sup> January, 2023, the closing Ceremony of High Court of Orissa Sports Meet, 2022-23 was held at Jawaharlal Nehru Indoor Stadium.

In the closing ceremony the finales of Badminton Men's and Women's singles, Carom and Chess as well as Musical Chair were played in presence of Chief Justice Dr. S. Muralidhar and the Judges of the High Court of Orissa. The employees performed cultural programmes during the ceremony.





- ***Foundation stone laying ceremony of the Centre for Judicial Archives and the High Court Employees' Residential Complex***

On 28<sup>th</sup> January, 2023 foundation stone laying ceremony of the Centre for Judicial Archives and the High Court Employees' residential complex was held under the aegis of the High Court of Orissa at the construction site

for the Centre for Judicial Archives at Sector-1, C.D.A., Cuttack.

The foundation stones for both the projects were laid by Shri Naveen Patnaik, Chief Minister of Odisha in presence of Justice Vineet Saran, former Judge, Supreme Court of India and former Chief Justice of High Court of Orissa, Dr. S. Muralidhar, Chief Justice and the sitting and former Judges of High Court of Orissa.





- ***Inauguration of Virtual High Courts in 10 Districts of Odisha***

On 3<sup>rd</sup> February, 2023 Virtual High Courts were inaugurated by Dr. Justice D. Y. Chandrachud, Chief Justice of India in 10 districts

namely Sambalpur, Ganjam at Berhampur, Bhadrak, Kalahandi at Bhawanipatna, Khurda at Bhubaneswar, Bolangir, Koraput at Jeypore, Puri and Sundargarh at Rourkela.



- ***District Judges' Conference, 2023 and Release of Annual Report, 2022***

District Judges' Conference, 2023 was inaugurated in the Auditorium of Odisha Judicial Academy at Cuttack on 11<sup>th</sup> February, 2023 by Justice Sanjiv Khanna, Judge, Supreme Court of India in presence of Dr. S. Muralidhar, the Chief Justice of the High Court of Orissa

along with sitting and former Judges of the High Court. Annual Report, 2022 of the High Court of Orissa was released on the occasion. Such a report has been published consecutively for the second year after the Annual Report, 2021 released after a gap of seven years in the District Judges' Conference, 2022 which itself was held after a gap of nine years.





- **Cultural Programme of the employees of the High Court**

On 19<sup>th</sup> February 2023, the employee of the High Court of Orissa organized a colorful cultural programme as part of celebration of 75<sup>th</sup> year

of the High Court of Orissa. Solo dance, group dance, singing, mono act, standup comedy drama and many other items were presented by the employees in the jam-packed auditorium of the Odisha Judicial Academy.



- ***Inauguration of e-Libraries in 24 outlying stations***

On 20<sup>th</sup> February, 2023 e-Libraries for the Bar Associations of 24 outlying stations of Odisha were inaugurated by Justice K.M. Joseph, Judge, Supreme Court of India

in virtual mode. Dr. Justice S. Muralidhar, Chief Justice and Judges of High Court of Orissa were present on the occasion. The District Judges, Judicial Officers and Office Bearers of the Bar Associations of the respective Districts, virtually attended the event.





## • *Inauguration of the Museum of Justice*

On 25<sup>th</sup> February, 2023 the refurbished Museum of Justice inside the Barabati Quila, Cuttack was inaugurated by Professor Ganeshi Lal, Governor of Odisha in the presence of Dr. Justice S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa.

Former Chief Justice of India Justice G.B. Patnaik, former Judges of the High Court, Advocate General, Bar members and senior

Government officials attended the inaugural function. Members of the Consultative Committee of the Museum Dr. Justice A.K. Misra, Historian Dr. Nivedita Mohanty, Shri A.B. Ota, Director, Tribal Museum, Prof Nihar Ranjan Pattnaik, Smt. Suchismita Mantry, Deputy Director, Odia Language and Culture and Smt. Mallika Mitra, Director, INTACH were present on the occasion. Among others, students and teachers of Madhusudan Law University, University Law College and Ravenshaw University were also present.



- ***Felicitation of the members of the consultative Committee***

On 10<sup>th</sup> March, 2023 the refurbished Museum of Justice set up by the High Court of Orissa inside the Barabati Quila, Cuttack was opened for public in the presence of Dr. S. Muralidhar, Chief Justice and the Judges of the High Court. The Museum had been inaugurated by Professor Ganeshi Lal, Governor of Odisha on 25<sup>th</sup> February, 2023.

Besides studying the collection, storage, conservation and exhibition protocols of different Museums of the country, a consultative committee of historians, conservation experts and legal experts had been formed to advise the High Court on the contents of the proposed

Museum of Justice. Dr. Justice A.K. Misra, Shri A.B. Tripathy, retired IPS, Shri B.B. Mishra, retired IPS, Dr Nivedita Mohanty, Historian, Shri A.B. Ota, Director, Tribal Museum, Shri Sanjib Chandra Hota, retired IPS, Prof Nihar Ranjan Pattnaik, Shri Bhabani Shankar Chayani, Collector, Cuttack and Smt Mallika Mitra, Director, INTACH were the members of the consultative committee.

On the occasion of opening the Museum for the public, a function was organized in its premises to acknowledge the contribution of the members of the consultative committee where Dr. S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa felicitated them.

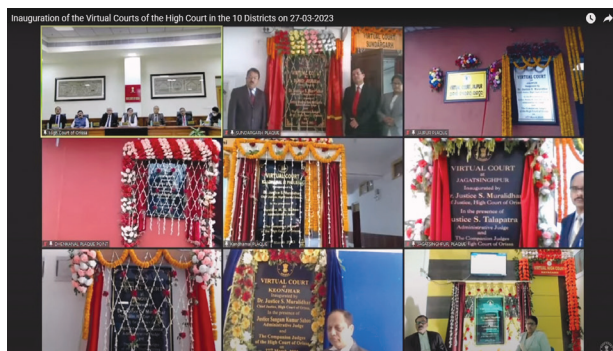
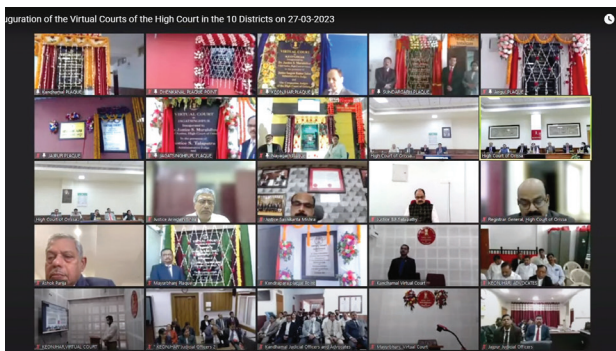
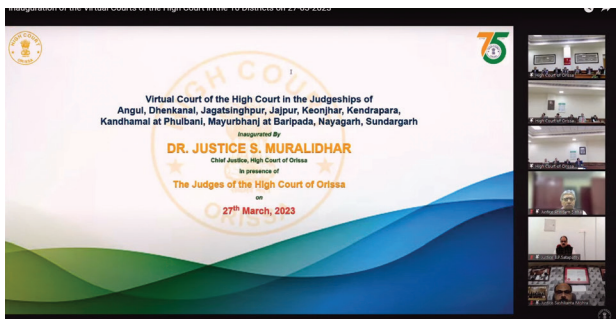




- ***Inauguration of Virtual Centres of the High Court in 10 Districts of Odisha***

On 27<sup>th</sup> March, 2023 Virtual Centres for High Court were inaugurated by Dr. Justice

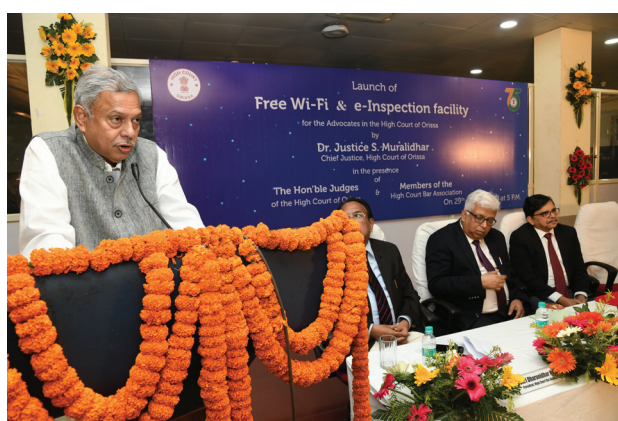
S. Muralidhar, Chief Justice of High Court of Orissa in 10 districts, in the second phase, namely Angul, Dhenkanal, Jagatsinghpur, Jajpur, Keonjhar, Kendrapara, Kandhamal at Phulbani, Mayurbhanj at Baripada, Nayagarh and Sundargarh.



- ***Free Wi-Fi facility and e-Inspection facility for the members of the High Court Bar Association***

On 29<sup>th</sup> March, 2023 'free Wi-Fi facility' and 'e-Inspection facility' for the members of the High Court Bar Association were launched by Dr. Justice S. Muralidhar, Chief Justice in

presence of the Judges of High Court of Orissa. The Advocate General of Odisha, Deputy Solicitor General of India for the High Court of Orissa, newly elected President and office bearers and the members of the High Court Bar Association attended the event.





- ***Inauguration of the High Court Guest House at Puri***

On 30<sup>th</sup> March 2023 the new High Court guest House at Puri was inaugurated by Dr. Justice S. Muralidhar, Chief Justice in

presence of the companion Judges of the High Court of Orissa. The need to have a new guest house was felt as the old guest house did not have sufficient rooms to accommodate the guests.



- ***Felicitation of the Legal Assistants having completed 30 years in their profession & release of a welfare stamp for their Association***

On 31<sup>st</sup> March, 2023, as part of the celebration of its 75<sup>th</sup> year, the High Court of Orissa felicitated the members of the High Court of Orissa Legal Assistants' Association who have completed 30 years in their profession in a function held in the Odisha Judicial Academy.

Dr. S. Muralidhar, Chief Justice and the Judges of the High Court felicitated 68 such Legal Assistants in presence of the members of the High Court of Orissa Legal Assistants'

Association. Among others, the members of the High Court Bar Association and the Judicial Officers attended the event.

A welfare stamp for the Legal Assistants' Association was released on the occasion. Considering the struggles involved in the professional lives of legal assistants the High Court has decided to amend its rules making provision for mandatory affixture of welfare stamp worth Rs.10/- on every vakalatnama and appearance memo filed by the Advocates. The stamps will be supplied by the Legal Assistants' Association on payment of Rs.10/- for each stamp.





- **40 hours' mediation training workshop for the advocates of western Odisha**

On 1<sup>st</sup> April 2023 at 9.15 a.m., Hon'ble Shri Justice S. Talapatra, Judge, High Court of Orissa and Chairman Mediation Monitoring Committee & Executive Chairman OSLSA inaugurated the 40 hours' mediation workshop for Advocates of Western Odisha in presence of Hon'ble Shri Justice K.R. Mohapatra, Administrative Judge, Sundargarh Judgeship, Hon'ble Miss

Justice S. Ratho and Hon'ble Shri Justice M.S. Sahoo, the Judges of the High Court of Orissa and members of the mediation monitoring committee. 22 advocates from the Judgeships of Sambalpur, Jharsuguda and Sundergarh underwent the training. The valedictory ceremony was held on 5<sup>th</sup> April, 2023 in the presence of Hon'ble Mr. Justice Biswanath Rath, Judge, High Court of Orissa and Member, Mediation Monitoring Committee of the High Court of Orissa.



- ***Felicitation of the former Chief Justices and former Judges of the High Court of Orissa***

Celebrating the 75<sup>th</sup> year of its establishment, the High Court of Orissa has been holding several programmes throughout the year. As part of the celebration the High Court felicitated its former Chief Justices and Judges in a function held in the Jawaharlal Nehru Indoor Stadium, Cuttack on 8<sup>th</sup> April, 2023 presided over by Justice B.R. Gavai, Judge, Supreme Court of India in the

presence of Dr. S. Muralidhar, Chief Justice and the Judges of the High Court.

The function was held to acknowledge the contribution of all the former Chief Justices and Judges of the High Court of Orissa in the successful journey of 75 years of the High Court. The Advocate General Mr. Ashok Kumar Parija, the President of High Court Bar Association Mr. Dharanidhar Nayak, the members of the Bar Association, Government officials and the High Court employees attended the function.







Group photo of present and former Judges of the High Court of Orissa with  
Hon'ble Mr. Justice B. R. Gavai, Judge Supreme Court of India



- **State Level Law Quiz-2023 for Law Students**

Celebrating the 75<sup>th</sup> year of its establishment, the High Court of Orissa organized the first ever State Level Law Quiz for the law students of Odisha in collaboration with an expert organization QShala. The quiz had 4 zonal rounds and the grand finale. To ensure participation of law students from all the districts the state was divided into 4 zones - Sambalpur, Berhampur, Bhubaneswar and Cuttack.

The zonal round of Sambalpur was held

on 7<sup>th</sup> April, 2023, Berhampur on 9<sup>th</sup> April, 2023, Bhubaneswar on 14<sup>th</sup> April, 2023 and Cuttack on 15<sup>th</sup> April, 2023. The grand finale was held in the afternoon of 15<sup>th</sup> April, 2023 at Odisha Judicial Academy, Cuttack in the presence of Dr. S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa. Students and teachers of various Law Colleges and Universities witnessed the final competition. The questions asked in the quiz were on the topics of Law, Politics & Social Studies from the lens of history, culture, music, movies, art and technology.

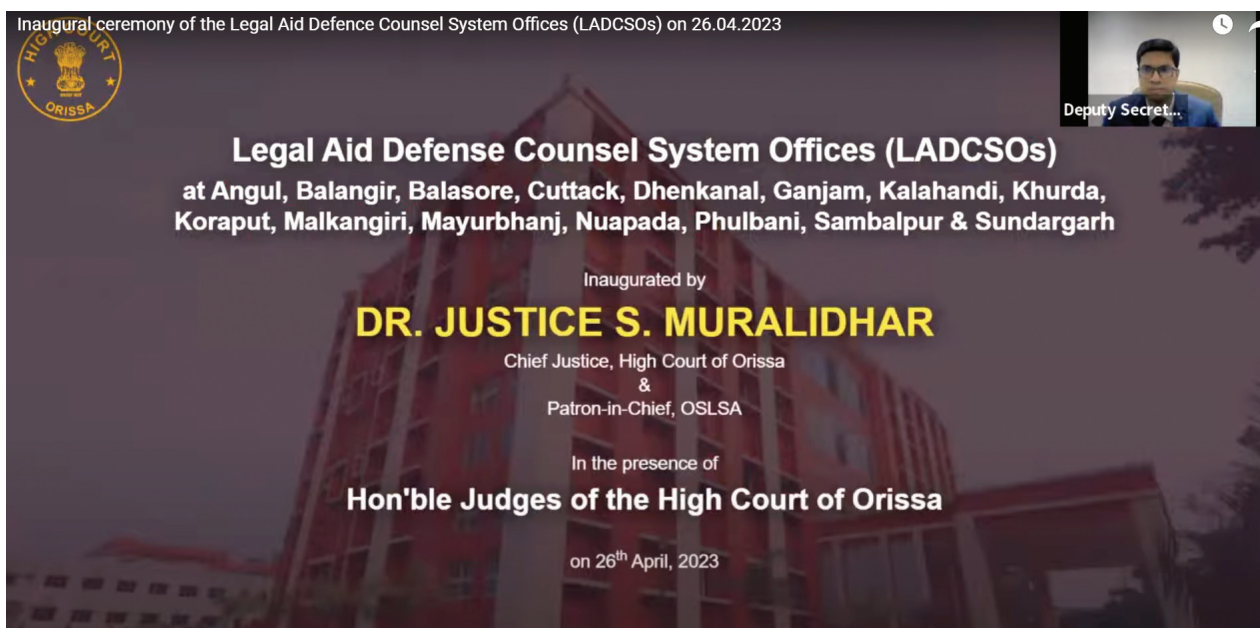




### • **Offices of the Legal Aid Defense Counsel**

During the 1<sup>st</sup> Phase, steps were initiated by OSLSA to establish Legal Aid Defense Counsel System Offices in 15 districts. On 26<sup>th</sup> April, 2023, Dr. Justice S. Muralidhar, Chief Justice, High Court of Orissa

and Patron-in-Chief of OSLSA inaugurated the Legal Aid Defense Counsel System Offices in the districts of Angul, Bolangir, Balasore, Cuttack, Dhenkanal, Ganjam, Kalahandi, Khurda, Koraput, Malkangiri, Mayurbhanj, Nuapada, Phulbani, Sambalpur & Sundargarh in the august presence of the Hon'ble Judges of Orissa High Court.



- **Observance of Lawyers' Day: Felicitation of the Lawyers of High Court having completed 50 years of practice along with former and present Advocates General and the "Lawyer of the year-2022" awardees of the District Courts**

As part of the 75<sup>th</sup> year of the High Court of Orissa, the Lawyers' Day was observed in a special way on 28<sup>th</sup> April, 2023 in a function organized at Odisha Judicial Academy. Lawyers' Day is observed every year by the legal fraternity of Odisha commemorating the birth anniversary of Utkala Gourava Madhusudan Das and coincidentally, this was the 175<sup>th</sup> birth anniversary

of the doyen when the High Court is celebrating its 75<sup>th</sup> year.

29 senior lawyers of the High Court Bar Association who had completed 50 years in legal profession, former and present Advocates General of Odisha were felicitated along with 18 District Court lawyers who had been adjudged Lawyers of the Year-2022, were also felicitated in the function presided over by Justice Dipak Misra, former Chief Justice of India in the presence of Dr. S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa. Arvind P. Datar, Senior Advocate, Supreme Court of India was the Chief Speaker in the function.





## • **National Conference on Digitization, Paperless Courts and e-Initiatives**

To explore the possible ways of use of technology in the legal system a two days National Conference on Digitization, Paperless Courts and e-Initiatives was inaugurated on 6<sup>th</sup> May, 2023 by Dr. Justice D. Y. Chandrachud, Chief Justice of India in the presence of Justice Rajesh Bindal, Judge, Supreme Court of India, Dr. Justice S. Muralidhar, Chief Justice, High Court of Orissa, Justice Bipin Sanghi, Chief Justice,

High Court of Uttarakhand, Justice Tarlok Singh Chauhan, Acting Chief Justice, High Court of Himachal Pradesh, the Judges of the High Court of Orissa and all other High Courts as well as the Central Project Co-ordinators representing all the States.

All the High Courts of the Country participated in the Conference through their Judges and Judicial Officers. Besides, the delegates from the Department of Justice, Government of India and the e-Committee, Supreme Court of India also attended the Conference.



- ***Celebration of one year of Centre for Judicial Archives, Odisha***

On 10<sup>th</sup> May, 2023 completion of one year of the Centre for Judicial Archives was celebrated under the aegis of the High Court of Orissa at Odisha Judicial Academy, Cuttack.

Dr. Prabhu Prasad Mohapatra, Professor of History, Delhi University was the Chief Guest of the function. Dr. Justice S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa were present on the occasion. Justice Debabrata Dash, Chairman and members of the

RRDC Committee were also present. Among others, Dr. Lalatendu Das Mohapatra, Director-cum-OSD of the Centre, Dr. Basanta Kumar Mallick, Consultant, History, Dr. Bijoy Chandra Mohapatra, Consultant, Law, the employees of the Centre, eminent historians along with teachers and students of various educational institutions attended the function.

Website of the Centre for Judicial Archives was launched and a Booklet on the activities of the Centre was released on the occasion.





- **40 hours' mediation training workshop for the advocates of Koraput, Malkangiri, Nabarangapur, Rayagada and Kalahandi**

On 28<sup>th</sup> June 2023, Hon'ble Shri Justice S.K. Panigrahi, Judge, High Court of Orissa and Administrative Judge of Koraput Judgeship, inaugurated the 40 hours' mediation workshop for the advocates of Koraput, Malkangiri,

Nabarangpur, Rayagada and Kalahandi in presence of Hon'ble Miss Justice S. Ratho and Hon'ble Shri Justice M.S. Sahoo, the Judges of the High Court of Orissa and members of the Mediation Monitoring Committee. 24 advocates from the Judgeships of Koraput, Malkangiri, Nabarangapur, Rayagada and Kalahandi underwent the training.



## • State Level Quiz for Judicial Officers

Celebrating the 75<sup>th</sup> year of its establishment, the High Court of Orissa organized the first ever State Level Quiz for the Judicial Officers of Odisha in collaboration with an expert organization QShala. The quiz was organized in 3 phases- 2 Preliminary Rounds, 6 Zonal Rounds and the Grand Finale.

There were two online Preliminary Rounds common to all the 30 districts on 11<sup>th</sup> June, 2023 where 432 Judicial Officers of various cadres

participated individually. The top 3 winners of each district formed the team to represent the respective district in the Zonal Rounds. The winning team of each zonal round participated in the Grand Finale held at Odisha Judicial Academy, Cuttack on 2<sup>nd</sup> July, 2023 in the presence of Dr. S. Muralidhar, Chief Justice and the Judges of the High Court of Orissa. The questions asked in the quiz were on the topics of Law, Politics & Social Studies from the lens of history, culture, music, movies, art and technology.





## • ***Inauguration of 50 Paperless courts***

On 3<sup>rd</sup> July, 2023, 50 Paperless Courts covering 23 Districts of Odisha were inaugurated in virtual mode by Dr. Justice S. Muralidhar, Chief Justice, High Court of Orissa in presence of Justice S. Talapatra,

Chairman, Artificial Intelligence and Information Technology Committee of the High Court of Orissa. Members of the Artificial Intelligence and Information Technology Committee and the Judges of the High Court of Orissa were also present.



## • **National Conference on Judicial History and Archiving**

A National Conference on “Judicial History and Archiving” was organized by the High Court of Orissa in the Odisha Judicial Academy, Cuttack on 15<sup>th</sup> and 16<sup>th</sup> July, 2023. Judicial History of Odisha and the importance of archiving the judicial records is the focal point of the Conference. Eminent historians and scholars from across the country and students of various educational institutions participated in the conference. The conference

was inaugurated on 14<sup>th</sup> July, 2023 by Justice Shripathi Ravindra Bhat, Judge, Supreme Court of India in the presence of Professor Partha Chatterjee, Professor Emeritus of Anthropology and of Middle Eastern, South Asian and African Studies, Dr. Justice S. Muralidhar, Chief Justice, High Court of Orissa, the Judges of the High Court of Orissa. A book titled “Judicial History of Odisha, Volume-I” published by the Centre for Judicial Archives of the High Court of Orissa was released on the occasion by Justice Bhat and Professor Chatterjee.





## Statistics (upto 30<sup>th</sup> June, 2023)

With a view to bringing the performance of State Judiciary to public domain the High Court of Orissa has been publishing the case statistics on its website. With the end of the first half of 2023, the High Court has published the case statistics of the period from January to June which reflects the performance of the judiciary.

Details such as period-wise institution, disposal and pendency of cases, judgement delivered, time devoted to judicial work in terms of working hours, case clearance rate (CCR) of the first half of 2023 along with comparative

analysis of the statistics of corresponding periods of 2021 and 2022 of the High Court and the District Courts have been published. The statistics also reflects the rate of increase in disposal in the first half of 2023 in comparison with that of the first halves of 2022 and 2021.

### High Court statistics

Comparative Chart showing Institution, Disposal, Case Clearance Rate of the first halves of 2021, 2022 and 2023 along with rate of increase/decrease in disposal by the High Court in each of these periods is as follows:

Period (January to June)	Institution			Disposal			Case Clearance Rate (%) Disposal vis-à-vis Institution	Rate of increase in Disposal in comparison with the corresponding period of previous year (%)
	Civil	Criminal	Total	Civil	Criminal	Total		
<b>2021</b>	26,210	16,068	<b>42,278</b>	23,685	15,574	<b>39,259</b>	92.85	48.58
<b>2022</b>	34,815	18,340	<b>53,155</b>	38,111	21,739	<b>59,850</b>	112.59	52.44
<b>2023</b>	29,735	19,900	<b>49,635</b>	39,620	23,249	<b>62,869</b>	126.66	5.04

Cases are disposed of in the High Court by way of orders as well as judgments. The number of judgements delivered by the High

Court during the first halves of 2021, 2022 and 2023 are as follows:

Year	No. of Judgment Delivered
2021 (January to June)	341
2022 (January to June)	982
2023 (January to June)	1368

It can be seen from the first-half yearly statistics of 2021, 2022 and 2023 that irrespective of the institution of cases, the disposal has steadily grown every year and it has been the highest in the first half of 2023. While **49,635** cases have been instituted and **62,869** cases have been disposed of in the first half of 2023 at a case clearance rate of **126.66%**, **53,155** cases were instituted and **59,850** cases disposed of at a case clearance rate of **112.59%** in the first half of 2022 and further, **42,278** cases had been instituted and **39,259** cases disposed of at a case clearance rate of **92.85%** in the first half of 2021.

The disposal in the months of May and June of 2023 dropped as the High Court was in summer vacation and only the vacation courts were functioning during the period. However, even excluding these two months which had vacation, the case clearance rate from January to April of 2023 has been **141.71%**. On comparison of the statistics of the first halves of 2022 and 2023 it can be seen that **3,019** more cases have been disposed of in the first half of 2023 with a net **14.66%** improvement in case clearance rate.

It can be seen from the statistics that the rate of increase in disposal in 2021 in comparison to that of 2020 had been **42.58%**, the rate of increase in disposal in 2022 in comparison to that of 2021 was **52.44%** and the rate of increase in disposal in 2023 in comparison to that of 2022 has been **5.04%**.

The numbers of judgments delivered by the High Court in the first halves of 2021, 2022 and 2023 have also steadily grown every year.

While **1,368** judgments have been delivered in the first half of 2023, the number of judgments delivered in 2021 and 2022 were **341** and **982** respectively.

The half yearly statistics of the High Court for the first half of 2023 has been encouraging due to substantial increase in disposal as well as case clearance rate. This has resulted in steep decline in the pendency of cases in the High Court which has come down to **1,46,582** as on 30<sup>th</sup> June, 2023 from **1,89,847** cases as on 30<sup>th</sup> June, 2022.

The steady improvement in performance of the High Court can be attributed to various factors such as the increase in number of Judges, the e-initiatives of recent years and more particularly, considerable reduction in loss of working hours.

Abstention from court work by Bar, reference on demise of Judges and lawyers and leaves of Judges have been the major factors contributing to loss of judicial hours in yesteryears. However, after the orders dated 12<sup>th</sup> December, 2022 and 14<sup>th</sup> December, 2022 of Hon'ble Supreme Court in TP(C) No. 2419 of 2019 (M/s. PLR Projects Pvt. Ltd. v. Mahanadi Coal Fields and others) the scenario has changed and since January, 2023 there has been no abstention from work by the Bar and considerable decline in loss of judicial hours due to references on the demise of Judges and lawyers. Resultantly, the total loss of judicial hours in the High Court in the first half of 2023 came down to **913.6** from **1395.65** in the first half of 2021 and **1559.15** in the first half of 2022.



## District Court statistics

Comparative Chart showing Institution, Disposal, Case Clearance Rate of the first

halves of 2021, 2022 and 2023 along with rate of increase/decrease in disposal by the District Judiciary in each of these periods is as follows:

Period (January to June)	Institution			Disposal			Case Clearance Rate (%) Disposal vis-à-vis Institution	Rate of increase in Disposal in comparison with the corresponding period of previous year (%)
	Civil	Criminal	Total	Civil	Criminal	Total		
<b>2021</b>	35,704	1,53,611	<b>1,89,315</b>	16,718	73,520	<b>90,238</b>	47.67	--
<b>2022</b>	41,243	1,93,657	<b>2,35,620</b>	37,032	1,18,680	<b>1,55,712</b>	66.09	72.55
<b>2023</b>	41,635	1,90,728	<b>2,32,363</b>	46,248	1,55,962	<b>2,02,210</b>	87.02	29.86

Cases are disposed of in the District Judiciary by way of orders as well as judgments. The number of judgements delivered by the

District Court during the first halves of 2021, 2022 and 2023 are as follows:

Year	No. of Judgment Delivered
2021 (January to June)	36,403
2022 (January to June)	60,632
2023 (January to June)	71,368

It can be seen from the first-half yearly statistics of 2021, 2022 and 2023 that irrespective of the institution of cases, the disposal by District Judiciary has steadily grown every year and it has been the highest in the first half of 2023. While **2,32,363** cases have been instituted and **2,02,210** cases have been disposed of in the first half of 2023 at a case clearance rate of **87.02%**, **2,35,620** cases were instituted and **1,55,712** cases disposed of at a case clearance rate of **66.09%** in the first half of 2022 and further, **1,89,315** cases had been instituted and **90,238** cases disposed of at a

case clearance rate of **47.67%** in the first half of 2021.

The disposal in June of 2023 dropped as the District Judiciary was in summer vacation and only the criminal courts were functioning during the period. On the other hand, the disposal in February, 2023 considerably increased due to Lok Adalat held on 11<sup>th</sup> February, 2023 and the withdrawal of cases by various departments of the Government including Excise and Forest Departments.

The statistics of the District Judiciary

reveals that the rate of increase in disposal in 2021 in comparison to that of 2020 had been **15.20%**, the rate of increase in disposal in 2022 in comparison to that of 2021 was **72.55%** and the rate of increase in disposal in 2023 in comparison to that of 2022 has been **29.86%**.

The numbers of judgments delivered by the District Judiciary in the first halves of 2021, 2022 and 2023 have also steadily grown every year. While **71,368** judgments have been delivered in the first half of 2023, the number of judgments delivered in 2021 and 2022 were **36,403** and **60,632** respectively.

Like High Court, the half yearly statistics of the District Judiciary for the first half of 2023 has also been encouraging. There has been steep decline in the pendency of cases in the District Judiciary which has come down to **18,56,253** as on 30<sup>th</sup> June, 2023 from **18,68,897** cases as on 30<sup>th</sup> June, 2022.

In the beginning of 2021, there were **8,998** cases pending in the Trial Courts of District Judiciary which were stayed by orders of the High Court. In the meantime by operation of the order of Hon'ble Supreme Court of India in Asian Resurfacing case the number of stayed cases in the Trial Courts has considerably reduced and come to **1,798**.

The pendency of 25 years old cases at the beginning of the year 2021 was **12,317**.

Since then there has been a steady decline of such cases. The figure as on 1<sup>st</sup> January, 2022 stood at **9,701**. It further came down and as on 1<sup>st</sup> January, 2023 the pendency was **4,669**. The pendency now stands at **3,747** as on 30<sup>th</sup> June, 2023.

The steady improvement in performance of the District Judiciary can be attributed to various factors such as opening of various new courts, rationalization of case loads among the Trial Courts, the increase in number of Trial Court Judges by recruitment, the e-initiatives of recent years and more particularly, considerable reduction in loss of judicial hours.

Factors such as abstention from court work by Bar, reference on demise of lawyers and leaves of Judges were the major problems in the District Judiciary. However, the orders of Hon'ble Supreme Court in TP(C) No. 2419 of 2019 (M/s. PLR Projects Pvt. Ltd. v. Mahanadi Coal Fields and others) have brought change in the scenario. Since the beginning of 2023 there has been no abstention from work by the Bar Associations of the State and it has resulted in considerable decline in loss of judicial hours. Resultantly, the total loss of judicial hours in the District Judiciary in the first half of 2023 came down to **38.98** from **2,41,605** in the first half of 2021 and **1,11,223.8** in the first half of 2022.

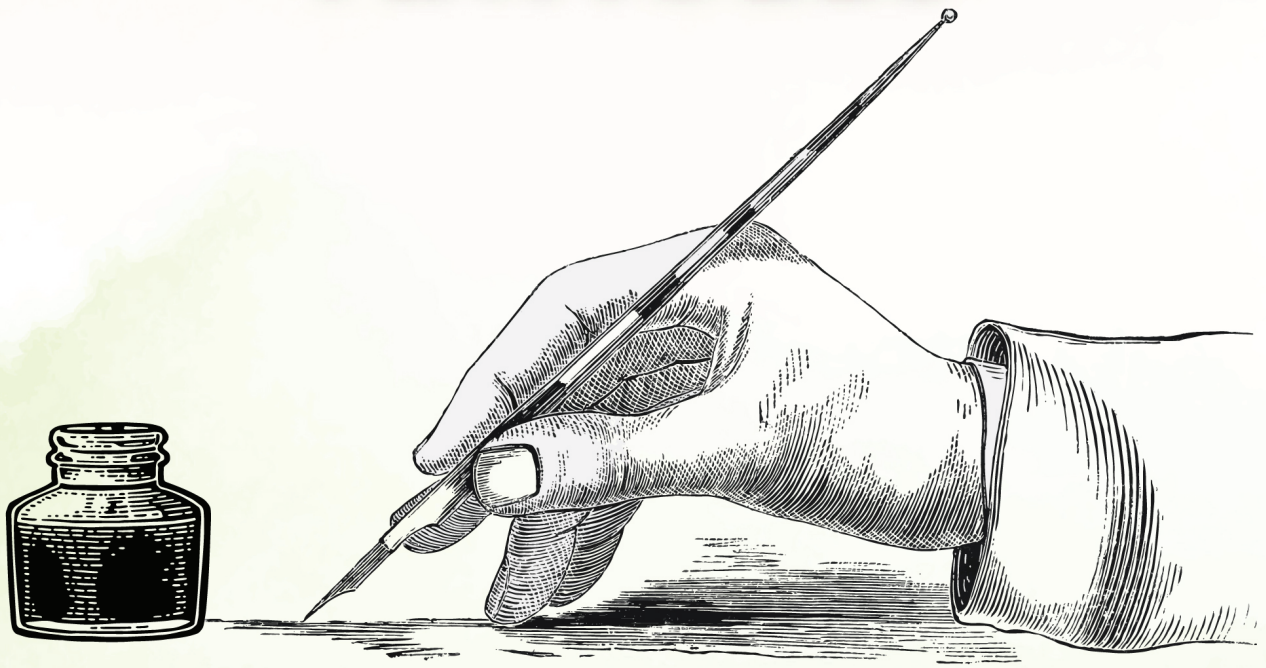




Aain Seva Bhawan



# ARTICLES





## Relationship Between Bar & Bench



**Dr. JUSTICE BIDYUT RANJAN SARANGI**

*Judge, High Court of Orissa*

### Introduction:

The Bench and the Bar are both the wheels of Justice and if one wheel is left unrepaired, the machinery for the administration of justice is bound to creak dangerously, if not stop altogether. It is very often said “Bar & Bench is the two sides of the same coin”. This speaks a volume of things, namely, Bar & Bench is inseparable, they have to work together for dispensation of justice delivery system. Without one it is not possible to discharge the obligation under the constitution for the citizen of the country. The Bench and the Bar both are the instruments of justice and justice cannot be effectively administered if the relationship between the two is grossly imbalanced or one is favoured at the expense of the other.

### Source of Member of the Bar

Whether a person is member of the Bench or is a member of the Bar he comes from the same category of persons, namely, the law

graduates who opt to work for the legal side. In many cases judges are taken from the lawyers and thus wherever you may go, whichever State you may travel, you will come across persons who were sometimes members of the Bar and are now the members of the Bench, or who sometimes were the members of the Bench are now the members of the Bar and besides this you will come across persons who are not satisfied as members of the Bar and want to join service and persons who are not satisfied as members of the Bar and want to join service and persons who are not satisfied as Judges and want to join practice. This being the state of affairs, one can simply say that they are two sides of the same coin or they belong to the same noble profession and it is all a difference in degree and not in kind and in fact there is no difference at all as lawyers are also equally the Judicial Officers of the Court. Therefore, ‘Bar’ is called the mother of the ‘Bench’.

### What an Advocate can Possess?

**Abbot Parry** advocated seven lamps of advocacy, such as, Honesty, Courage, Industry, Wit, Eloquence, Judgement and Fellowship, along with worthy character and exhorted to practise them in their professional life. The profession is not without its dilemma sometimes. A situation may arise when a lawyer has to submit to the Court that he has no case, but he shall not do so when a new legal principle he wants to lay before the Court, even while citing an overruled decision contrary to his own contention. **Justice Venkatachaliah**, while

reminding his father, who was his senior, advised the members “to keep the silver lamp of learning bright and not remain a mere professional robot, and therefore, read everyday, at least ten pages of reading a general classic and ten pages of legal classic a day”, (which could keep the devil of ignorance away!). It is true that the life of an advocate can be divided in three places, viz., his home, chambers and the open Courts, but if his home makes him a man, his chambers a professional, it is the Court which makes him a true, dignified and committed lawyer, reminding him the rights and duties caste on him by his noble profession. Professional competence could be earned only by hard work.

**Edmund Burke** said: “The law sharpens the mind by narrowing it; but in a few of our great judges law has lifted the mind to a level of comprehension and has kindled degree of human ardour unsurpassed in any other profession. The profession of lawyer is undoubtedly great.

**Jerold S. Auerbach** writes in his book on ‘Unequal Justice; “Law is a mirror of social forces. It reflects what is in society but often it exerts autonomous power to channel special problems and public issues into its own constricted framework of legitimacy and procedure. Then it may become detached from its social moorings. Consequently, the Bar must be judged by two standards but not by double standards): its sensitivity to the values and mores of society and its implementation of the obligation to provide equal justice under law. In theory, the Bar assumes both transient and transcendental responsibilities to serve clients and to serve justice. Although the lawyers equate these and

assume that they do one when they do the other, it is not so. A total commitment to the former may preclude any commitment to the latter”.

**B. R. Ambedkar**, the Constitution maker, described our Indian Judicial system as “one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, civil law or the criminal law”.

There was a time when a lawyer was regarded as a family friend. He commanded awe and respect. And for good reasons. Prominent freedom fighters belonged to the legal fraternity and played a leading part in the framing of our constitution.

### ***What is the present status***

At present the public image of lawyers in far from flattering. They are seen as fortune seekers rather than seeking to serve, a selfish class, who, on account of their special knowledge and expertise, provide service on such terms as they please. In short, the profession of law is regarded as a money making racket.

### ***What an advocate should do***

There are three ideas involved in a profession; organisation, learning and spirit of public service. These are essential. The urgent need for the legal profession is to become people oriented and to reorient themselves towards the service of the people. They must show recognition of what is meant by the service ethics of dealing with a fellow human being's need without consideration of self-interest. Lawyers must serve as healers, not makers, of human conflicts and suffering.



A lawyer because of his importance in society and the respect that is accorded to the black gown, he has certain obligations to discharge both inside and outside the Court. A lawyer has a duty to his client and to the Court. His duty to the Court requires not only that he will be prepared to assist the Court but also that he must be fair in pleading his case before the Court because he is an officer of the Court. He must not make a statement of fact which he knows to be false. In particular, in criminal matters it will be misconduct on the part of a lawyer to implicate an innocent person deliberately in order to secure an acquittal for his client. Court expects lawyers to cite cases which have relevance and are important for the determination of the issues before the Court irrespective of whether the decided cases will help the lawyer's case or otherwise.

### ***Role of senior advocate***

Senior lawyers have an obligation to train and encourage junior members of the Bar and should not deny entry into their chambers to juniors who are keen to learn and have a commitment to practise law. A competent well-trained junior Bar is an essential adjunct to the administration of justice. The role of a senior lawyer is not merely to familiarise the junior with case law and the relevant statutes. The habit of independent thinking and questioning should be inculcated. And, above all, the Junior must be exposed to and imbibe the noble traditions of the Bar, the tradition of truthfulness, the tradition of fearlessness, the tradition of fairness and the tradition of service to the indigent and the disadvantaged.

The members of the bar many have to play a dynamic role. It may perhaps become necessary for the leading members of the bar to come out of their ivory chambers and take a more active part in public life. The bar, it has been said, has so many organs of expression by which it can make vocal thoughts and sentiments that might otherwise be uncommunicated and hidden. There are the law journals, increasing year by year alike in number and power; there are the bar associations with their committees, their reports, their multiform activities; and now, with developing importance, there are the banquets and luncheons and receptions of these associations. And above all there are the conventions like the present. Through such media the members of the bar can nourish the rule of law and not merely create an awareness of its vital importance but also ensure its effective functioning.

### ***Status of a Judge***

Chief Justice **Y.V. Chandrachud** had stated that the Judges were not living in an Ivory Tower. They are also the persons coming from the same community of persons who have passed the law examination and who have joined as members of the Bench or members of the Bar and have all the qualities of ordinary individuals so far success and failure and concerned. Whereas it can be said of the Judges that they are not living in Ivory Towers, it can equally be said of the advocates that they are also not living in Ivory Towers and their lives are also the very houses of the miseries of an ordinary individual and that these persons also face the same.

So far as the District Judiciary is concerned there are a number of factors which are to be seen and considered. Sometimes when a very senior member of the Bar appears before a very junior member of the District Judiciary and he finds that even the basic approach to the question which is being put forward by him before the Judge is not being considered and at a time when arguments may be at the advanced stage, the judicial officer may be busy in signing the court vouchers or attendance register or doing certain other miscellaneous jobs, it gives a sense of prejudice to the said senior member of the Bar. Similarly, when the arguments advanced by the lawyer are not being cared for by the members of the judiciary or when a lawyer feels that unnecessary remarks are being made by the Court touching the personal integrity of the advocate appearing before the Court or affecting the Court in any personal manner he feels hurt and loses respect for the Court. It is the Chair that receives the respect. In case the lawyers feel or have some wrong notions about a particular Judge, it may be difficult for them to have personal regards for the said Judge but this does not mean that in the court room they have to show any disrespect for a particular judicial officer. Similarly, there may be some lawyers who may be very well accused of certain offence having been committed by them or who have followed certain code of conduct or in other manner who may be guilty of certain acts of omission or commission or whose conduct towards the clients may not be good.

Seasoned Advocates or Advocates of status, when rudely or discourteously treated might be taken aback, but not thwarted. A Junior Advocate, habitually ill-treated, might

even be subjugated by terror. Very few would find the courage to stand up to such a Judge. Self-respect is dear to all and to those weaker in spirit, even dearer than their client's case. In all such cases, a bitter and unpleasant relationship of personal feud builds up between the Judge and the Advocate. Good arguments are lost in the unpleasantness that follows. The hapless litigant is the silent spectator to it all. He wonders if he has briefed "the wrong Advocate." His dreams of obtaining justice evaporate. The faith of all in the administration of justice is severely shaken. The decorum of the Court is destroyed and its dignity sullied.

### ***Protection to Judge Under Law***

The Judge is well protected, both in Criminal and Civil law. The Judge is amply protected in criminal law by the provisions of sections 77 and 499 (Seventh and ninth exceptions) of the Indian Penal Code, in respect of anything done while acting judicially or words spoken in the course of judicial proceedings. In civil law, the Judge gets the protection of the Judicial Officers Protection Act, 1850, in respect of any act done in the discharge of his judicial duty. In both cases, the only requirement is that good faith, which is presumed, until the contrary is proved. Even if protection is enjoyed by the Judge, but that does not mean it permits the Judge to transgress the limit, rather, he or she should be courteous, patience, cordial, amicable in his behaviour, eager to learn and assist the junior member of the bar, then only relationship between the bar and bench shall remain strong.

On the ideal relationship between the Bench and the Bar a Rule was framed by the American Bar, which says "A self-respecting



independence in the discharge of professional duty, without denial or diminution of courtesy and respect due to the Judge's station is the only proper foundation for cordial personal and official relations between the Bench and the Bar."

There can be no doubt that the position and status of the Judge entitles him to complete protection and immunity in the discharge of his duties fearlessly. Those who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely without fear or favour. The ends of justice would be better secured, if a steady balance is maintained in the relationship of the Bench and the Bar.

### ***Court room behaviour***

So far as the court room is concerned, it should be treated like a sacred place. The Judges are to be respected and honoured. Similarly, the lawyers should receive good treatment from the presiding officers. No lawyer expects a personal favour to be shown to him by the Court. The lawyers are satisfied if their cases are heard and if their view points are allowed to be ventilated so that they and their clients have the satisfaction that so far as they are concerned, they have stated everything which was required to be done according to their labour or thought, which they had put up while preparing the brief.

### ***Challenges faced by Advocates***

One of the problems that the legal profession today is facing the over-crowding of advocates in it. When the number of professionals increases all won't get enough remuneration. This will tempt them to adopt

methods and habits which would derogate from the high standards of professional ethics, manners and behaviour patterns. This in the result will lower the prestige and usefulness of this time-honoured and noble profession. So it is absolutely necessary to check the flow of hands into the legal profession. Now some advocates have more than enough briefs while some others have no briefs at all. This also is not an ideal situation. Accumulation of too many briefs in some hands will itself cause delay to the disposal of cases. On the other hand, those without enough files will resort to unscrupulous habits which militate against professional values, standards and prestige.

There is then the problem of law's delays and the backlog of arrears. Again, there is the question of unequal fight, irrespective of merit of case, between the party with ample resources and the indigent in dire need of but without adequate legal aid. The feeling is there that the cost of fighting a case, whatever might be the justice of the matter, is too exorbitant which most citizens can ill-afford to bear. This must necessarily make the average citizen sceptical of the judicial process. If our legal system is to prove effective and retain the faith and confidence of the average man, it must find an answer to the above mentioned problems.

### ***Technology vis-a-vis Bar & Bench***

Computerisation, digitisation, e-filing, e-court, examination of witness through virtual mode, vulnerable court rooms, paperless courts, e-library are the various modes to adopt for speedy delivery of justice. Technology is now playing a vital mode for dispensation of justice. Therefore, bar as well as bench has to cope

themselves to match with the urgent situation. No doubt the strength of judges is much less in comparison to the number of cases filed in India. Increase in population, filing of cases and adjudication thereof are high in comparison to other countries of the world. There may be some error while passing the order by the judge. That itself should not prejudice any bar member, rather they should accept it sportively and test the veracity. Failure and success are the part of the human life. In view of such position, the bar member should adhere to the same with patience and do the needful for betterment of their client.

### ***Suggestion***

If the bench and the bar are to be treated as part and parcel of the scheme of and wheels of justice, the Bar in particular faces two formidable challenges: one, to keep the streams of justice pure and clean, and two, to improve the standard of the profession. Both go together and have to be taken up together for treatment. Unless the people get equal justice under the Constitution, and justice is taken to the door of

the poor, the legal profession will have to bear the cross that Justice is yet to be done.

### ***Conclusion:***

For an independent judiciary or the independence of the bar, all should unitedly fight against it, irrespective of political affiliations. In these matters, there should be no divisions in the bar on political lines. A lawyer has to abide moral obligation to uphold the rule of law and give effect to many of its principles in his daily work. In our secular state, a lawyer should strive to make reverence for the law the religion of the nation, and make sure that nothing is done to lower the prestige and authority of the judiciary by anyone, however high or mighty.

With the noble vision, not by mere words but by deeds and by practising the profession of law in the spirit of public service, restoration of status, the dignity and the image of our profession and play our rightful role in society and provide much needed service to the community and become a model for emulation to others.



## To My Mind



**JUSTICE BISWANATH RATH**

*Judge, High Court of Orissa*

### **A. Reasons in increase in case filings in High Court**

#### **Writ Petition side-**

1. No timely action by Competent Authorities at different level involving pending representations in the matter of promotion, fixation of scale, grant of increments, grant of final pension, family pension, grant of T.I. on Pension, Provisional Pension, Regularisation, subsistence allowance and several other aspects. No appropriate action after D.P. recommendations, non-settling of retiral dues even after D.P. finality taken place after superannuation, action on non-communicated C.C.Rs., keeping promotions after promotions in sealed cover on the plea of pendency of D.P., non-settling of claim dispute by Insurance Authorities, non-disposal of complains by Development Authorities. No timely consideration of Passport Application, non-renewal thereof etc.

2. No following of natural justice by Disciplinary Authorities, No timely disposal of appeals against D.P. orders.
3. Poor/delayed disposal made by quasi judicial authorities.
4. This Court even faced situation where writ petitions filed for direction for admission of appeals/revisions under O.P.L.E. Act, Appeals under O.C.H. & P.F.L. Act, O.L.R. Act, O.E.A. Act, Regulation-II, Public Premises, Mutation, Orissa Survey Settlement, Provisions by Competent Authorities even not admitted after four or six years of filing. No timely disposal of Mutation Cases even based on decree of Civil courts and or registered sale deeds, no timely action by the Tahasildar even on asking for correction of record of rights based on authenticated documents or as an outcome of litigation.
5. No timely action by the Competent Authority on settlement of land applied by landless persons.
6. Lot of Writ Petitions coming to High Court involving bizarre disposal of OPLE or OGLS Original Proceedings.
7. **Poor or bad performance by authorities Tender and or lease matters.**

#### **A Lower courts side-**

No timely disposal in judiciary side even including Family Courts, M.A.C. Tribunal, Railway Claims Tribunal, D.R.T., D.R.E.T., Authorities under State Legal Services Authorities Act, Authorities under the Workmen's compensation side and P.F. Authorities.

## **B. Criminal Side-**

Anticipatory Bail even involving offence under Section 506, Inaction of Police on F.I.Rs, No timely consideration of Section 125 Cr.P.C. matters, execution thereof, rampant filing of proceeding for quashing cognizance in High Court straightway entertainment of which here resulting in delaying of trial involve resulting in frustrated state of affairs with witnesses.

Ex.-C.J.I., Hon'ble Mr. Justice N.V.Ramanna in the all India Chief Justices & Chief Ministers Conference at New Delhi in 2022 stated inaction in administrative side is one of the main reasons to inflow of larger number of litigations to High Court.

### **8. Suggestions on both A & B -**

There should be State level conferences of High Courts and Heads of Departments involving Secretaries of the Department, Director General of Police, Superintendent of Police, different Organisations / Authorities at least in each six months to deliberate as a guide major to cease unnecessary litigation to High Court.

High Court level, District Judges Conference should also include Family Courts, Courts under Legal Services Authorities Act, Judges also dealing with proceeding under Family Courts Act, Judges holding juvenile justice proceeding and relied Act to deliberate as a guide major to timely disposal of matters at their end.

Adjournments should be controlled at every litigation level and adjournments should be rare and exceptional/ unavoidable circumstance.

If we can have provision restricting time limit in filing written statement in Civil

matters and charge-sheet in Criminal matters, why cannot we have time limit in filing counter affidavits in writ side and other statutory litigations. We may also impose cost if contesting Opposite Parties do not file their response in reasonable time.

State Judicial Academy can also hold State Level conferences involving all above categories to give a proper shape to litigations at all levels.

I am here reminded of declaration by Hon'ble Dr. Justice D.Y.Chandrachud that "Tarikh Pe Tarikh" culture must come to end.

### **9. Amendment required-**

Looking to large number of TRP under Section 24 of C.P.C. filing in last four years and invariable filing of applications at the instance of working women as well as men against non-working women, Family Court Act needs necessary amendment in place of filing of Petitions under Sections 9, 12, 13 and or 14 of the Hindu Marriage Act. Bringing in filing of such cases at least at the place of residence of unemployed wife at least to have a check on filing of such cases initially in Family Courts not within their reach and the filing of T.R.P. in High Court becomes the only alternative. Similarly working women and working men, if bring family litigation, there should be provision for bringing such litigations at particular place at least not creating inconvenience to either side in attending to timely disposal of such cases.

### **10. Few Suggestions from my experience;**

In representation disposal matters - Instead of issuing notice and keeping such matters pending here for years in



the wait for instruction and/or counter, since a decision is ultimately required to be taken by the competent authority, better if we can dispose of such matters directing the authorities concerned to show timely action on such issues. But however, such directions be issued only after going through the representation to find out if such representation deserves consideration, keeping in view that many occasions mischievous representations even where this Court has no jurisdiction are filed and attempt made to create a right thereby disposing such writ petition giving timely disposals.

In cases requiring request in proceedings pending before the quasi judicial authorities instead of issuing notice better disposing it giving reasonable time, as keeping such matter pending for instruction/counter, it becomes difficult for listing in fresh admission and a representation disposal even may not be done unless the Writ Petition finally disposed of.

#### **11. Suggestion in Matrimonial matters**

My experience in dealing with transfer application by wife involving 125, Cr.P.C. or Section 9, 12 and 13 of the Hindu Marriage Act matter, I used to dispose such matters with orders as deemed fit and proper on the date of first admission and without notice, however keeping scope of review open for the party aggrieved. I found maximum five cases out of 1000 disposals came back by way of review and/or recalling at the instance of husband involved. In my practice days, I had marked a respected Judge of this Court, who ultimately retired as the Chief Justice of India, in sitting in

Court No.10 was even disposing Civil Revisions involving Trial Court rejection or allowing of miscellaneous matters at the stage of admission but however, keeping the scope open for Opp.Party, if aggrieved to ask for review, so that trial may not be unnecessarily delayed and/or affected.

#### **12. Suggestions on Writ Appeals**

I have one bad experience that though a few judgments of Single Judge taken in writ appeals, the writ appeals very often admitted with stay of judgments and such writ appeals do not see final disposal for years. Such pendency creates a doubt in the mind of Single Judge and as a consequence, subsequent or pending Writ Petitions on same line get stuck unnecessarily.

#### **13. On Judges appointment on the way easing backlogs.**

In my opinion if Indian Judiciary will be giving its actual judges strength in each High Court then there may not be so much backlogs. Each High Court based on inflow of cases over years, disposal strength, support of otherwise manpower after involving a technical expert opinion through committees headed by senior judges provided for specific requirement. Unfortunately, I find no High Court in India is ever getting its full strength. Presently, some High Courts functioning at 75% of strength, some High Court with 50% to 60%. Some High Courts even at 40% strength. I do not think there is dearth in eligible advocates in any High Court. If we can pick up our Chief Justice of India, at least a month ahead of vacancy in such post why cannot there be selection

of Judges at least one month prior to vacancy being caused by initiating process of selection may be through whatever modes in the field. I am involved in this High Court for over 37 years; 29 years as an Advocate and almost 9 years as a Judge of this High Court. I share here some suggestions, particularly on finding suitability. There is good practice followed by the Ministry of Law and Justice where in case of anticipated vacancies in the Post of Chief Justice, the Law Minister writes to the Hon'ble Chief Justice of India to recommend the name of next Chief Justice, then why such practice cannot be followed in asking High Court Collegium recommendation on names of Advocates or District Judges as the case may be to be elevated by writing to the Chief Justice of particular High Court at least three months ahead of such vacancy so that next man will be ready to occupy the vacancy on the next date itself. With the system of Chief Justice from outside having specific assignments is getting opportunity to deal with selected advocates obviously very senior counsel, who mostly deals with Chief Justice's assignments and a very very few experienced young counsel who usually appears before such Court and some particular Government counsel continuing for long time even in such court. Similarly, sometime Judge No.1 is from outside. Above is also the situation here. There are so many good advocates also practising in so many Single Benches and may not have more Division Bench cases to their pockets and the Chief Bench; Judge 1 and Judge 2 all since hold Division Bench certainly unable to trace

such lawyers. So my advice here will be, let Brother Judges completed at least 5 years should be requested to provide their choices then the Collegium may commence its process of selection from amongst such pull. No doubt the Collegium is taking the final call. It is always quality in Judges shows good performance and quantity alone cannot be able to meet such exigency. In the prevailing system, there is possibility of non- consideration of quality Advocates. I may not hesitate to place here for long time our Chief Justice, Judge 1 and Judge 2 were all from outside and one can imagine the difficulty in pickups unless each such Bench has variety of assignment and even functioning some time as single judge. While dealing with transfer of Judges to occupy the position of Judge 1 and Judge 2, the apex Court should also keep in mind to have at least one local Judge in the Collegium at least to avoid to have completely outside judges in collegium in any High Court in the Country. Further, to achieve no vacancy in any High Court, for my suggestion, there should be a High Level Committee at apex level even including Chief Justices of some High Courts and senior judges of High Court under able Coordinator to function at least three months to follow timely filling up vacancy in each of the High Courts. Once we give full and qualitative strength to every High Court, we will surely find drastic reduction in pendency and once this achieved, there may be possibility to think over reducing the strength of each High Court of course dependent on case position ratio in each High Court.

Here, I would like to give a statement on



number of judges and pendency for over 20 years published in a vastly circulated English Newspaper, “The Times of India”, Bhubaneswar Edition in its Publication dated 29.8.2022. As per the data as on 1st August, 2022 mentioned therein, the number of Judges is 1108 and the total pendency of cases is 2.52 lakh.

#### **“No. of Judges & Pendency in 25 High Courts**

Total sanctioned	- 2014	-984
Strength of Judges	- 2022	- 1,108
Working Strength	- 2014	- 639
	- 2022	- 728
Vacancies	- 2014	- 345
	- 2022	- 380
New Posts created since -2014		- 124
Pendency of Cases	- 2014	- 41 Lakh
	- 2022	- 60 Lakh

(Note: The 2022 data is as on Aug, 1 : **(Source: Union Law Ministry)**

#### **14. Suggestions on assignment**

It is my sincere request while considering assignment of particular subjects to the Judge having expertise, it is better if the Judges having long career should be made part of the Division Bench with different assignment for at least their hearing and experience which will ultimately benefit in achieving speedy justice when these Judges are entitled to lead Division Bench.

- Judges appointed from Bar but for short period should be having expertise in local laws or civil or criminal, this will also achieve the goal

of speedy justice.

- With 11 thousand Criminal Appeals pending in High Court, High Court needs dedicated Bench(s) to hear Criminal Appeals but with rotation of Judges holding such Bench at least in six months and this Bench should not be assigned with any other matter.

I would like to give an example here that I have in my career as a Judge has been in assignment with Revenue Laws may be with almost a year gap. Whenever I sat in such Bench I have decided so many matters on OLR Act, Regulation-II of 1956, OPLE Act, OCH & PFL Act, Mutation Manual etc. and matters under the Survey and Settlement Act but in my next sitting, I marked, even after a year gap, there is not a single above subject matter got disposed. There should always be rotation of all subjects to provide experience and skill in all Judges taking up single assignments. I have the assignment in service matters for quite a long time. I have also opportunity of holding Civil Bench for quite a long time and to my experience, my practice as an Advocate worked out. My view here will be irrespective of past experience, all Single Judges should get different assignments but in rotation, which will not only enhance their skill and experience but certainly reduce the huge backlog.

JAY HIND

BANDE UTKAL JANANI

## Orissa High Court - A Transformative Institution



### JUSTICE MRUGANKA SEKHAR SAHOO

*Judge, High Court of Orissa*

On April 30, 1948, the then Government of India consented to establish a new High Court. It issued the Orissa High Court Order, 1948, under Section 229 (1) of the Government of India Act, 1935. The Orissa High Court solemnly started functioning on July 26, 1948, with four Honorable Judges.

Thus far, the journey of this august institution for 75 years is replete with several milestones of professional excellence and rectitude. I have had the privilege of working as a lawyer in this premier institution for more than twenty-two years and as a Judge since October 2021. With a certain degree of confidence, I can state that this Court has protected the rights of the citizen and contributed to the development of jurisprudence. It has set benchmarks and has played a significant role in upholding the rule of law. The High Court has immensely contributed to the development of law, justice, and jurisprudence, and it continues to do so.

The Honorable Judges and Members of the Bar and Staff of the High Court deserve to be complemented and congratulated on this unique occasion for their past achievements.

As we are all aware, an independent judiciary is an important pillar of a democracy. The judicial system is the mechanism to uphold the rule of law. The High Court, being a Constitutional Court, is indispensable for constitutional governance and the development of constitutionalism in our great country. The Orissa High Court has been regarded as an institution of high standards with strong ideals and principles, well known for its legal acumen and intellectual erudition. The Bench has seen some of the finest legal minds, three of the Honorable Judges having become Chief Justices of India, and seventeen Honorable Judges went on to become Judges of the Supreme Court of India. The Bar has produced a large number of advocates of eminence, some of whom have also excelled in public life of the State as well as the Country.

The Orissa High Court has not only been the temple of justice but has also been a center for disseminating knowledge. Since its inception on July 26, 1948, the High Court has rendered great service to the people of Orissa through landmark decisions in diverse fields of law. It has been sensitive to the needs of society such as social, political, and cultural and has made a lasting impact on the system of governance that has influenced the life of the people on various issues including personal liberty, prison



reforms involving the rights of under-trials, protection of the environment, gender equality, protection of vulnerable classes of society and women, primary education, higher education as well as higher technical fields of education, improvement of public health and public health services, food and nutrition for the economically weaker section, freedom of expression and speech including freedom of the press, privacy of individuals, planned development of old cities like Cuttack, development of natural resources including resources held by the State in public trust such as mineral resources and so on and so forth.

It is a great achievement that today the Orissa High Court has emerged as one of the most modern and technology-driven courts in the country. The High Court has been at the forefront of adopting technology to make the justice delivery process efficient and accessible through initiatives such as digitization of records, adoption of e-filing, publishing judgments and orders on the website of the Court. Technology has also been adopted in the administrative work of the Court by implementing Odisha Judicial Workflow Automation System (OJWAS). The Orissa High Court, to increase access to justice and to ensure opportunities for securing justice for the citizens of the State across its length and breadth, has made the unique initiative of establishing virtual courtrooms of the High Court at twenty places across the State that has helped people to get access to justice at their doorstep. To enable vulnerable witnesses to participate in a trial without any fear, without compromising the right of the accused to a fair trial, Vulnerable Witness Deposition Centers have been established in all 30 districts of the State.

Successive Chief Justices have formulated various ways and means of providing speedy justice. This Court has been promoting alternative dispute resolution through Lok Adalats, Mediation, and Arbitration. A dedicated *Aain Seva Bhawan* has been established to provide all these legal services to the citizens in one place.

Many activities have been taken up by this Court in the pursuit of achieving excellence in the sphere of law. There have been several initiatives for enhancing knowledge through technology, such as providing a facility for e-filing of cases throughout the State, provision of an e-library for the lawyers at the district level as well as the outlying stations.

This Court has been striving to play the role of a transformative institution, for transforming the unequals into equals and achieving the constitutional goals of equality before the law and equal protection of the law. May all of us rededicate ourselves to maintaining high values and ethos and the standards set by the predecessors, who adorned this institution for the pursuit of achieving excellence in the delivery of justice and the administration of justice. We have to continuously strive hard by maintaining the determinative role in the development of law. All the stakeholders must strive to uphold the greatness of this Institution, high standards of professionalism, and commitment to justice. May we reiterate the solemn assurance to the citizen that rights shall be safeguarded and their just causes are to be espoused whenever called upon.

## The Consciousness of Justice



### JUSTICE SASHIKANTA MISHRA

*Judge, High Court of Orissa*

The Dharmashastras of our country place the greatest emphasis on Dharma, loosely translated as righteousness and considered a second name for Justice. A Shanti Mantra chanted at the end of religious worships exhorts the ruler to traverse the path of justice to ensure maximum welfare to the maximum people.

स्वस्तिप्रजाभ्यः परिपालयन्तां न्यायेन मार्गेण महीं  
महीशाः। गोब्रह्मणेभ्यः शुभमस्तु नित्यं लोकाः समस्ताः  
सुखिनो भवन्तु।।

*Let good things occur to the king of the country, Who looks after his people well, in the path of justice, Let the material and intellectual resources be well-protected, Let all people be happy*

**Of Dharma, it is said –**

धर्म एव हतो हन्ति धर्मो रक्षति रक्षितः। तस्माद्धर्मं  
त्यजेन्नैव मा नो धर्मो हतोत्वधीत्।।

**नित्यनीतिः ३४**

*Dharma destroys him who destroys  
Dharma. Dharma does protect him who protects*

*it. Dharma therefore should not be abandoned.  
Dharma that is abandoned shall destroy us.*

**यतो धर्मस्ततो जय**

*Where there is justice, there is victory.*

It is universally held that without justice, there can hardly be good governance. Our Constitution acknowledges this by committing itself, among other things, to promote Justice-economic, social and political to the citizens.

But, the reverse can be catastrophic. In the words of Reginald Heber Smith, writer and former Director of Boston Legal Aid Society, “nothing rankles in human heart more than a brooding sense of injustice. Illness we can put up with. But injustice makes us pull things down”. Kautilya warns in his Arthashastra of Matsyanyaya (situation of the strong oppressing the weak drawing analogy of the bigger fish swallowing the smaller fish) unless there is concerted effort by the ruler to govern following the path of justice.

### **What then is Justice?**

According to Aristotle, justice means giving people what they deserve, giving each person his due. Now, what is the person's due depends on several factors and facts and circumstances. The word comes from the Latin ‘Jus’, meaning right or law.

This is true not only for the modern day executive but also in the context of our judicial system. The judicial system functions to dispense justice wherever and whenever needed. But the system does not work as



an automaton; human beings have to man it. It therefore, becomes imperative that the person who mans the system is himself alive to the demands of justice in all his dealings. Otherwise, it would be a mismatch between the ideals sought to be achieved and his actions.

***Few examples would suffice:***

A judge trying a case of cruelty (Section 498-A IPC) against a woman finds serious allegations leveled by the woman against her husband and in-laws, ones that appear on the face of it, outrageous. But when the judge searches for evidence of the misdemeanors he finds none. He is caught in the conflict between morality and justice. Regardless, he/she goes on to convict the accused holding it necessary to 'curb the growing menace of crime against women in the society'. In another case, an accused is found entitled to default bail for non-submission of charge-sheet in time, yet the judge rejects his prayer 'looking at the huge quantity of contraband seized from his possession and the possible impact it would have on the young people of the society.' The mandate of Article-21 is thrown to the winds as the liberty of the accused is continued to be trammled regardless of the fact that it is not in accordance with procedure established by law.

Both judges may have felt morally justified to act in the manner described. But was it justice?

A heightened sense of morality or anxiety to deter similar crimes from being committed may be a laudable trait but justice demands something more. As already discussed, justice is giving to a person what is due to him. One may argue that having committed the crime the

accused was entitled to punishment. But there lies a subtle but potent distinction between what the judge thinks to be morally or ethically correct and what is legally expedient. In the two examples cited, both judges exceeded their briefs by digressing into areas that were, strictly speaking not within their domain.

Yet another judge notices the lack of evidence but still convicts the accused with a thought tucked in the corner of his mind, 'let the man get his relief from the higher court, why should I take the risk of incurring wrath of my superiors?'. So, the man languishes in jail despite lack of evidence against him while the judge, fearful of castigation by his superiors feels himself 'safe' for not having committed any misadventure.

On the other hand, in a case where a young girl is gang-raped and murdered with her dead body thrown into a pond, the judge finds no legally admissible evidence connecting the accused persons to the crime. He is shocked by the horrific crime personally but not finding any evidence, he finds himself legally obliged to acquit them. He does so. The media or even the theologians may cry foul but the judge must be held to have acted as per the norms of justice.

The point is judges cannot be guided by considerations of morality, ethics, social norms and the like. It would be a travesty of their oath to act 'without fear and favor, affection or ill-will'. He must essentially have an innate sense of justice ingrained in his very vitals, as it were and be conscious of it at all times while discharging his duties. If he possesses it, he would hardly falter on his path, for his vision would then be trained on truth and truth alone.

The Dharmashashtras have set lofty standards for judges.

अर्थानर्यावुभौ बुद्ध्वा धर्माधर्मौ च केवलौ । वर्णक्रमेण  
सर्वाणि पश्येत् कार्याणि कार्यिणाम् ॥२४॥

*Understanding both 'desirable' and 'undesirable' to be only 'justice' and 'injustice,' he shall look into all the suits of the suitors.*

राजा तु धार्मिकान् सभ्यान् नियुक्त सुपरीक्षितान् ।  
व्यवहार धुरं बोधं ये सक्तः सद्भाव इव ॥ धर्मशास्त्रार्थ  
कुशलः कुलीनः सत्यवादिनः । शमः शत्रौ च मित्रे च तुर्पसे  
च्युः सभासदः

*Let the King appoint, as member of the courts of justice, honourable men of proved integrity, who are able to bear the burden of administration of justice and who are well-versed in sacred laws, rules of prudence, who are noble and impartial towards friends or foes.*

Knowledge of the laws is an essential pre-requisite of a judge but then, of what avail is such knowledge if it is not applied along with a sense or consciousness of justice. Bereft of this, a judge may sentence a person who steals a diamond ring out of greed and a person who steals a loaf of bread out of sheer hunger with the same punishment.

These are undoubtedly, simplistic examples but do prove the point that knowledge

is necessary but not sufficient to dispense justice.

A lot depends on the judge as a person too. Imagine a judge with a troubled marriage dealing with matrimonial cases in his court. More often than not, he would have that tiny prompt of his mind now and then to view the opposite gender as the villain, leave aside the evidence or the lack of it on record. If he can rise above such promptings, he would have a better chance of handing out the right verdict in the end. It depends on how strongly conscious he is of the principles of justice.

One may even go to the extent of saying - a good man may be a bad judge but a bad man can never be a good judge! 'Bad', as in a general sense to depict a man without the fundamental qualities required of a judge, foremost of which is consciousness of justice.

To sum up, it takes a lot to be a judge, greater still to fulfill the expectations of society. It is only with a strong consciousness of justice-innately ingrained – that it can be achieved.

And this seems to be the need of the hour.



## Transformation : GST to GST via VAT



**JUSTICE MURAHARI SRI RAMAN**

Judge, High Court of Orissa

### The Introduction :

The title, "TRANSFORMATION: GST TO GST VIA VAT" [General Sales Tax regime to Goods and Service Tax regime via Value Added Tax scheme] aims at informing the stakeholders about evolution and transformation of Tax on Sale of Goods into Supply of Goods and Services via Value Added Tax regime governing the constitutional and statutory domains as applied to the State of Odisha.

### The Tax- Perspective :

*"Just as the bee draws honey but at the same time leaves the flowers uninjured, so the king should take wealth from men without harming them. One (a bee) may search each flower (for honey) but should not cut the very root, just like a garland-maker not like a coal maker."*:UDYOGAPARVA: THE MAHABHARATA

### The Domain :

The introduction to Seventeenth Edition of

the Book authored by Kanga & Palkhivala titled "THE LAW AND PRACTICE OF INCOME TAX" way back in the year 1967 described thus:

*"In the law of income tax the main principles are fairly simple,- the whole difficulty arises in their application. The first question, what is income is the dark cat in the bag of the income tax code."*

The same remains true for indirect taxation as of date.

### The Constitutional Provisions:

Article 265 envisions, "No tax shall be levied or collected except by authority of law". Restrictions in promulgating law by State are contained in Article 286 of the Constitution of India.

*Part XIII of the Constitution of India deals with "TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA"*

### The History- Odisha Specific:

The State of Odisha proposed to introduce "THE ODISHA SALES TAX BILL, 1946" invoking Rule 70 of the Odisha Legislative Assembly Rules, 1937 with the Statement of Objects and Reasons dated the 17<sup>th</sup> August, 1946, indicating that said Bill sought to levy a tax on the sale of goods to cater to requirement of larger revenue to finance expenditure on post-war reconstruction. The Governor of Odisha was pleased to direct the Odisha Sales Tax Act, 1947 (Odisha Act XIV of 1947) to apply to all the partially-excluded areas of the State

of Odisha. Subsequently, by virtue of Section 4 of the Extra-Provincial Jurisdiction Act, 1947 (XLVII of 1947) read with the Notification of the Government of India in the Ministry of States No.172-I.B., dated 23.03.1948, amendment was brought to the Administration of Odisha States Order, 1948, whereby “for the words, ‘Province of Odisha’ or ‘Odisha’ wherever they occurred in the Odisha Sales Tax Act, 1947, the words ‘Odisha State’ was substituted. The Odisha Sales Tax Act, 1947 came to be applied in the “Mayurbhanj State” vide Government of Odisha in Home Department Notification bearing No.6604-States, dated 1<sup>st</sup> April, 1949, in exercise of powers conferred under Section 4 of the Extra-provincial Jurisdiction Act, 1947 (XLVII of 1947) read with the Notification of the Government of India in the Ministry of States No.388/P-48, dated the 31<sup>st</sup> December, 1948.

Initially twenty-eight items were selected for levy of tax on sale of such items. With passage of time not only all articles not specified elsewhere in the schedule of goods were subjected to tax, but certain items were slated for claiming exemption by dint of notification issued under Sections 6 and 7. Gradually, certain goods were specified for levy of tax at the first point of sale and at the purchase point with the same rate of tax as that of sale of goods by virtue of power conferred under Section 8. Said provision conferred on the State Government the power to notify the points in the series of sales or purchases by successive dealers at which any goods or classes or description of goods may be taxed or exempted from taxation. However, said provision provided that goods shall not be taxed at more than one point in the series of sales or purchases by successive dealers.

### ***Introduction of Taxation on Contracts Excluding there from Labour and Service Charges and the like charges for the purpose of Levy of Sales Tax:***

A piquant situation was faced when unworkability as to levy of sales tax on composite or turnkey contracts arose which was unsuccessfully defended by the tax-gatherers before the Supreme Court. In *State of Madras Vrs. Gannon Dunkerley & Co. (Madras) Ltd., (1958) 9 STC 353 (SC) = AIR 1958 SC 560* it was held that there can be no sale unless there is an agreement between the parties for the purpose of transferring title to goods which presupposes capacity to contract, that it must be supported by money consideration and as a result of the transaction, property must actually pass in the goods. Law imposing sales tax is a law relating not to sale of goods, but to tax on sale of goods. It is not one of the matters enumerated in concurrent list of Schedule VII of the Government of India Act, 1935, or over which dominion Legislature is competent to enact law. But it is a matter exclusively within the competence of the Provincial Legislature under Entry 48 of the List II. Thus, while sales tax could be levied on transfer of property in goods, supply of services could not.

In order to obviate such position, the matter was referred to Law Commission of India which in its 61<sup>st</sup> Report suggested various ways to contain problem to levy tax on goods involved in the composite/indivisible contracts. The *Sixty-first Report of The Law Commission of India inter alia* examined the following alternatives:

- (a) amending State List, Entry 54, or
  - (b) adding a fresh entry in the State List,
- or



(c) inserting in Article 366 a wide definition of 'sale' so as to include works contracts.

The Commission preferred the last one. Accordingly, clause (29A) was sought to be inserted in the definition clause, i.e., Article 366 of the Constitution of India *vide* the Constitution (Forty-sixth Amendment) Bill, 1981. To circumvent the disability of the State Legislatures in subjecting certain objects of taxation as they were considered as service rather than goods, amendment to the Constitution was brought in by introducing said Bill in Parliament. The Bill being passed, an Act called "*The Constitution (Forty-sixth Amendment) Act, 1982*" came to exist which successfully widened the scope of definition of "sale", granting power to the State Legislature to promulgate relevant laws.

The Supreme Court then expressed its view in *Geo Miller & Co. Pvt. Ltd. Vrs. State of MP*, (2004) 136 STC 241 (SC) that, Article 366(29A) does not define the term "sale", but enlarges its scope by including transfer of goods in the execution of works contract within this definition of sale.

In tune with the Constitutional amendment, the Odisha Sales Tax Act, 1947 brought to force the Odisha Sales Tax (Amendment) Act, 1984, by amending the term "sale" in clause (g) and inserting the term "works contract" in clause (jj) in Section 2.

In *Srei International Finance Ltd. Vrs. State of Odisha*, (2008) 16 VST 122 (Ori) it was held that any State law with respect to "deemed sales" covered by sub-clauses (a) to (f) of clause (29A) of Article 366 must conform to the requirements of Article 286 and the provisions of the Central Sales Tax Act, 1956. For the purposes of taxation, a "deemed sale"

cannot be distinguished from "ordinary sale. With the amendment of Article 366, both the "actual sale" and the "deemed sale" fall within the same genre. As a result of the Forty-sixth Amendment, the contract which was single and indivisible has been altered by a legal fiction into a contract which is divisible into one of goods and other for supply of labour and services and as a result such a contract which was single and indivisible has been brought at par with a contract containing two separate agreements.

### ***The Introduction of Service Tax:***

This possibly prompted the Central Government to think about taxing service element. The year 1994 confronted with introduction of Chapter V in the Finance Act, 1994, whereby service tax was sought to be levied for the first time by the Union Government. Though Entry 9C was inserted in List-I to the 7<sup>th</sup> Schedule appended to the Constitution of India delineating field "taxes on services" by way of the Constitution (Eighty-eighth Amendment) Act, 2003, it was not given effect to. However, service tax continued to be levied by virtue of powers under Article 246 under the field envisaged in Entry 97 – "Any other matter not enumerated in List-II or List-III including any tax not mentioned in either of those Lists"- of List-I appended to the Seventh Schedule. The validity of such levy of service tax was carried up to the Supreme Court which held that by virtue of constitutional amendment, a contract of catering is treated as a composite contract for supply of goods, which involved both service as well as sale. By legal fiction it is treated as deemed sale, empowering the State Legislature to levy sales tax/value added tax by virtue of the power conferred on them by Entry 54 of List II of the Seventh

Schedule to the Constitution, in so far as value of goods involved in the execution of contract.

Though the 46<sup>th</sup> constitutional amendment enabled the State to provide for levy of tax on composite/indivisible/turnkey contracts, which involved both transfer of goods and supply of services, by bifurcating “labour and services”, the Centre could not levy service tax on such contracts. Nevertheless, while answering the question:

“whether, service tax could be levied on Composite Works Contracts prior to the introduction of the Finance Act, 2007, by which the Finance Act, 1994 came to be amended to introduce Section 65(105)(zzzza) pertaining to Works Contracts?”, the Supreme Court was candid in *Total Environment Building Systems Pvt. Ltd. Vrs. Deputy Commissioner of Commercial Taxes*, (2022) 17 SCR 883 to hold that:

“.....service tax was not leviable on the indivisible/composite works contracts....”

### **Shift of Taxation Policy to Integrate Levy of Tax on Sale of Goods and Supply of Services:**

Globalization of trade, investments and services necessitated reforms in the economic structure of the State. The efforts to reform India’s tax system began in mid-1980s when the Government announced a Long Term Fiscal Policy, 1985. This policy recognized that the fiscal position of the country is going downhill and there was a need to make changes in the taxation system. In that decade, a technical group, to review and rationalize the Central excise, was established which led to introduction of Modified System of Value Added Tax (MODVAT) in 1986..

By introduction of the Odisha Value Added Tax Act, 2004, single-point taxation system as in vogue was done away with and multi-point destination/consumption based taxation system has been put in place with facility of availing input tax credit (commonly known as “ITC”). The objective of implementation of VAT Act in lieu of Sales Tax Act was to boost the economic perspective of the State so that it targeted to benefit common people, traders and industrialists. Such introduction of VAT regime strived for replacing annual assessment system with self-assessment system of determination of taxes.

### **Hurdle in Implementation of pure Vat:**

One of the major hurdles in the introduction of a complete value added tax in India was the constitutional sharing of taxing powers between the Central Government and the State Governments. Whereas excise duties and service tax were being leveled by Central Government, sales tax was under the domain of the State Governments. Thus, introduction of VAT was considered to be forerunner for transforming into the harmonized GST regime with mechanism for the Centre and State to act in tandem for the general revenue.

### **Entering into GST regime:**

The Constitution (One Hundred First) Amendment Act, 2016 allows both the Centre and States to levy respective Goods and Services Tax (GST) simultaneously. Before the 2016 amendment, taxation powers were divided between the Centre and the States. The 2016 amendment replaces various Central and State taxes such as excise duty, service tax, sales tax, entry tax and entertainment tax with GST. While most of the goods and services are covered



within the domain of GST, alcohol for human consumption and petroleum products are kept outside its purview. Under the GST framework:

- (i) the Centre levies and collects the Central GST,
- (ii) the States levy and collect the State GST,

on supply of goods and services within the State, i.e., GST on intra-State transactions of sale of goods and supply of services. It is the subject of the Centre to levy the Integrated GST (IGST) on inter-State supply of goods and services, and apportion the State's share of tax to the State where the goods or services are consumed. The 2016 Act requires Parliament to compensate States for any revenue loss owing to the implementation of GST.

### ***Impetus to the tax-payers:***

The concerned are required to manage their affairs in such a manner that they can avoid taxation, if they are so advised. In the words of the Hon'ble Supreme Court "Every person is entitled so to arrange his affairs as to avoid taxation, but the arrangement must be real and genuine and not a sham or make-believe..." [*vide Jiyajeerao Cotton Mills Ltd. Vrs. CIT, (1958) 34 ITR 888 (SC)*].

### ***Caution to the tax-gatherer:***

Our own High Court in *Larsen & Toubro Limited Vrs. State of Odisha, (1998) 111 STC 75 (Ori)* and *Boskalis Dredging India Private Limited Vrs. STO, (1999) 112 STC 113 (Ori)* described the taxing authority as "watch-dog", but advised not to be "blood hound".

### ***Introspection:***

One can thus easily visualize that transformation of the General Sales Tax regime

(when the Odisha Sales Tax Act, 1947 was in force) into the Goods and Services Tax regime via VAT regime leads to conversion from single point-levy concept to multi-point levy with scheme for availing input tax credit. Whether the pious objective for which such transformation was conceived and implemented throughout the territory of India to bring about uniformity in indirect tax structure, to particularize ruling out cascading effect of tax, is achieved, is best left to be perceived by the readers.

Being thus the nature and characteristic of 'tax', its evasion and avoidance cannot be ruled out. To conclude, the following extract from *McDowell & Company Limited Vrs. Commercial Tax Officer, (1985) 59 STC 277 (SC)* would be pertinent:

*"The shortest definition of tax avoidance that I have come across is 'the art of dodging tax without breaking the law.' Much legal sophistry and judicial exposition have gone into the attempt to differentiate the concepts of tax evasion and tax avoidance and to discover the invisible line supposed to exist which distinguishes one from the other. Tax avoidance, it seems, is legal; tax evasion is illegal."*

So, a clear message has to percolate to all quarters that the State administration and the judiciary- at all levels- do not beseech to protect the violators of the provisions of the GST Act which will help in enhance realization of the revenue which otherwise gets stuck in unnecessary litigations. Readers of this article may ponder whether the application of stringent provisions of drastic measures be subject to the following:

*"As the leech, the calf, and the bee take their food little by little even so must the king draw from his realm moderate annual taxes."* - MANU.

## ***Celebrating the Contribution of High Court of Orissa to Enrichment of Legal Jurisprudence***



### **ASHOK KUMAR PARIJA**

*Senior Advocate*

*Advocate General, Odisha*

On the 75<sup>th</sup> anniversary of the Hon'ble High Court of Orissa, we are not only celebrating the 75 long years of pride and glory of this custodian institution, but we are also celebrating its everlasting commitment to uphold the rule of law and more so, to do justice. This long-time span also symbolises the fact that our High Court has lived up to the trust and faith reposed upon it by the citizens of our State.

Before I dive into the topic at hand, I would like to share my journey with this great institution in the year 1984. I joined the chambers of Senior Advocate and former Advocate General, Shri B.K Mahanti. I had the great privilege to work as a junior to Shri Gangadhar Rath, (Senior Advocate and the longest serving Advocate General of the State), Barrister Ranjit Mohanty, and Senior Advocate Shri Prabir Palit.

There were all doyens of the Bar and working with them enriched my skills as a lawyer. The number of lawyers in the Bar were few hundreds and the relationship between the Bench and the Bar was very cordial. We used to have long final hearings which stretched from days to weeks, and this was a great learning experience.

Over the last 75 years, the High Court of Orissa made significant contributions to the evolution of Indian jurisprudence by delivering various landmark judgments. Our High Court has been at the forefront in the interpretation and application of the Constitutional norms. In *K.C. Gajapati Narayan Deo v. State of Orissa* AIR 1953 SC 375, affirming the judgment rendered by our High Court, the Hon'ble Supreme Court of India held that the doctrine of colourable legislation did not involve any question of 'bona fides' or 'mala fides' on part of the legislature. In *Basanti Mohanty v. State of Orissa*, 72(1991) CLT 127, the Hon'ble High Court widened the scope 'authority' in Article 226 of the Constitution by holding that it applies not only to statutory authorities but also to any other body performing a public duty such as private educational institutions.

In the landmark verdict of *Dr. Binapani Dei v. State of Orissa* AIR 1965 Orissa 81, this Court for the first time laid down that principles of natural justice are attracted to administrative decisions, even when they result in civil



consequences. The decision was upheld by the Hon'ble Supreme Court and continues to be cited widely in Courts across the nation.

In *Jogendra Nahak v. State of Orissa*, 1999 CriLJ 305, the Hon'ble High Court held that the Investigating officer cannot be compelled to examine anyone as a witness. The Supreme Court affirmed the decision and added that it was not open for a Magistrate to record statements of those approaching them directly. In *Thogorani v. State of Orissa*, 2004 (II) OLR 183, it was held that collection for blood samples for DNA testing would not be a violation of the right to privacy or the right against self-incrimination.

Right from its inception our High Court has been a beacon of hope for the helpless and its doors have always been open for the voiceless and destitute. In *A. Narain Murty & anr. V. The King* ILR 1949 Cuttack 244, the Hon'ble High Court of Orissa recognized that a prisoner's right to legal assistance was a basic right that was integral to citizens of a free country. The judgment was ahead of its time given that the Constitution of India had not yet come into force at that time. The Hon'ble Court, in *Bhaskar Nayak v. State of Orissa*, 84 (1997) CLT 392, mandated urgency in cases involving petty crimes considering the right to a speedy trial guaranteed under Article 21 of the Constitution. In *Oriental Fire and General Insurance Co. Ltd. v. Brajakishore Sahu*, 61 (1986) CLT 394, the Hon'ble High Court directed the creation of a special cell in the State Legal Aid and Advice Board for providing legal services to the claimants of motor accidents. This step was

taken to minimize litigation costs even before the Legal Services Authorities Act, 1987 came into force in 1996.

Continuing with the tradition of safeguarding public interest and human rights, the Hon'ble High Court has recently taken formidable steps in dealing with public interest litigation. In *Krushna Prasad Sahoo v. State of Orissa* and 2021 SCC OnLine Ori 216, the Hon'ble Court has given directions for monitoring the conditions of prisons and initiated multi-stakeholder consultations for introducing prison reforms. In *Bipin Bihari Pradhan v. State of Odisha* 2021 SCC OnLine Ori 1089, the Hon'ble High Court constituted a committee to look into the adequacy of healthcare facilities for leprosy patients in the State. In line with the objectives of the Ramsar Convention, the Hon'ble Court periodically monitors the maintenance as well as restoration of the biosphere around the Chilika Lake. Pursuant to a news report citing the death of 800 Olive Ridley turtles in the State, the Hon'ble Court took suo motu cognizance of the issue and is actively supervising the efforts in this regard.

The High Court of Orissa has been making strides in digitisation with the establishment of the Record Room Digitisation Centre and installation of e-reading devices in the courtrooms. The Hon'ble High Court has led the way in adopting technological tools, in fulfilment of its mandate to make justice more accessible. In 2021, as an initiative to increase transparency in the judicial process, the proceedings of the High Court of Orissa began to be live-streamed. In 2023, for the first time in the country, ten virtual

High Courts were inaugurated in ten districts of Odisha, equipped with video-conferencing and e-filing facilities. The initiative has improved accessibility for litigants as well as lawyers from different parts of the State. The stellar efforts made by the High Court of Orissa under the aegis of Chief Justice S. Muralidhar towards digitization has been greatly appreciated by the Supreme Court of India.

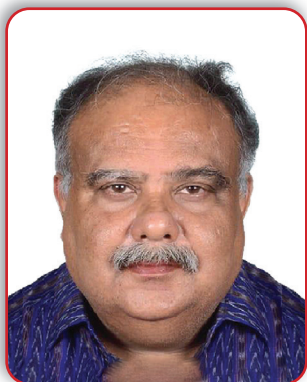
For the last 75 years, the Hon'ble High Court of Orissa has stood tall, in its and harboured not only great jurists and eminent

lawyers but also holds the faith reposed on it by every single litigant who knocked its doors in the hope of justice. It is a testament to the efforts put in by every single legal assistant, clerk and administrative staff-member, who shoulder the institution and make every day transaction of justice possible.

As lawyers practising before this glorious institution, we have a duty to preserve and strengthen its rich legacy. We must be conscious of our duty towards the society and aid this Hon'ble Court in its pursuit of truth and justice.



## Artificially Inteligent or Intelligently Atrificial



**GAUTAM MUKHERJI**

*Senior Advocate*

In the context of Lawyers or Law Students, we have always looked for tools to assist us in our Legal work. From thick, dog-eared registers where notes of cases and some certain facts used to be roughly scribbled for future use by Lawyers seated on teak wood deewans reading their cases for the Court the next day to Commentaries with Glossaries and Bare Acts containing notes of cases. Various Barristers and astute Lawyers of yesteryears are also known to shepardize their Law Journals, carefully writing besides each case, as to where it has been followed by another Court or has been overruled by Appellate authority.

Cut to 2010 and research for Lawyers has begun shifting to Westlaw, Supreme Court Cases Digital, Manupatra and other web 2.0 platforms.

But now we have before (and around) us a (developing) Web 3.0, which integrates Artificial Intelligence (AI), machine learning

and decentralised storage and transmission of data that can be provably immutable. Self-healing computer programs which learn, evolve and equip themselves better to solve the users needs. AI is now being used in Cars which require little of no intervention as also to assist Doctors in reaching veins and tissue the most trained human hand might not be able to. But what are its application in the field of Law and should young Lawyers be worried that the competition for them would be the self-same tools which they grew up learning on? The answer is not so simple.

As early as 2016, an artificial-intelligence Lawyer chatbot had successfully contested 160,000 parking tickets across London and New York for free.

Dubbed as “the world’s first robot lawyer” by its 19-year-old creator, London-born second-year Stanford University student Joshua Browder’s AI service DoNotPay helps users contest parking tickets in an easy to use chat-like interface. The program first works out whether an appeal is possible through a series of simple questions, such as were there clearly visible parking signs, and then guides users through the appeals process. The results speak for themselves. In the 21 months since the free service was launched in London and now New York, Browder says DoNotPay has taken on 250,000 cases and won 160,000, giving it a success rate of 64% appealing over \$4m of parking tickets. On January 9<sup>th</sup>, 2023, Broader tweeted “DoNotPay will pay any lawyer

or person \$1,000,000 with an upcoming case in front of the United States Supreme Court to wear AirPods and let our robot lawyer argue the case by repeating exactly what it says.”

In another case, David Wakeling, head of London-based “Big Law” firm, Allen & Overy’s markets innovation group, first came across law-focused generative AI tool “Harvey” in September 2022. He approached OpenAI, the system’s developer, to run a small experiment. A handful of his firm’s lawyers would use the system to answer simple questions about the law, draft documents, and take first passes at messages to clients. The trial started small, Wakeling says, but soon ballooned. Around 3,500 workers across the company’s 43 offices ended up using the tool, asking it around 40,000 queries in total. The law firm has now to use the AI tool more widely across the company. One in four at Allen & Overy’s team of lawyers now uses the AI platform every day, with 80 percent using it once a month or more. Other large law firms are starting to adopt the platform too, the company says.

The rise of AI and its potential to disrupt the legal industry has been forecast. But the rise of the latest wave of generative AI tools, with ChatGPT at its forefront, has those within the industry more convinced than ever.

In a new initiative, the Supreme Court of India created history by using artificial intelligence software to start live transcription of hearings last month. The Supreme Court used the AI technology prepared by a Bangalore based start-up. The AI engine was used to translate court arguments into text during live proceedings of the constitution bench hearing

on the Maharashtra political controversy.

The company named Technology Enabled Resolution (TERES), was founded by three techies hailing from Bangalore, Vikas Mahendra, his brother Vinay Mahendra and Badarivishal Kinhal. The trio’s AI system helped the judiciary to put out the text of the hearing on the Maharashtra political controversy by evening on the same day. Union Minister of Law and Justice, Kiren Rijiju extended congratulations to the Chief Justice of India for using Artificial Intelligence for the first time in Judiciary. The Chief Justice of India has often been vocal about how the Supreme Court has begun to use AI to translate Judgments into local languages and has been encouraging other Lawyers to make the best of AI tech.

In Hollywood movies beginning from the Terminator series and the Matrix right upto Johny Depp’s Transcendence in 2014, it has been illustrated as to how AI has become Sentient or self-sustaining. That future if not already begun is close to beginning. AI is learning by the nanosecond. AI applications are most visible in the field of Mergers and Acquisitions and Intellectual Property Rights Law. Here AI bots can be leveraged to crawl through thousand of pages of documents and images and can put up red flags while conducting due diligence for an acquisition or carrying out a Trademark search.

There will be many views and questions as to how AI can never replace a well-trained, crafty and split second presence of mind of a human lawyer in the Court Room where Court Craft is uncoded and cannot be processed by a machine so as to read the mind of a Judge through their questions, mood and facial



expressions. But isn't the same AI transcribing the arguments of India's most reputed Counsels before the Supreme Court? It is already and is not (yet) out to obliterate the Human ability of learning through service of skill, leave alone Legal Arguments, Drafting and litigation strategy. But if it could go from appealing parking tickets in America in 2016 to answering Legal Questions at Big Law firms to transcribing complex Supreme Court of India arguments, how long before it could begin drafting appeals?

### **Views-**

1. AI is good at recognizing patterns from data that is already fed to it to learn. But the ability to formulate a legal proposition that is based not only upon patterns but the context in which the proposition is to be made will continue to evade it for some time to come due to the complexity of use of language and expressions in law.
2. **Bias** - Data is not properly curated and removed of all bias, if fed into AI systems, will render the AI being biased in its decision-making. This aspect is to be explored
3. **Unpredictability** - A truly aware system will make independent decisions, independent of its human creators.

What will then be the driving factor behind such decision making? What limitations must an AI be inherently subjected to so that its actions do not prejudice human interest and well-being?

4. **Correctness in decision making** - To understand a query and formulate an answer in real time is commendable. However, construction of grammatically correct sentences does not imply that the responses are correct. More often than not, AI will form a well-structured, grammatically sound paragraph in response to a contextual legal question that may be totally wrong. Try asking it a question on whether an intra-court appeal is maintainable when the dismissal of a writ petition from the order of an appellate authority under the Payment of Gratuity Act is under challenge.
5. What should be extent of its use in the legal field and how should it be used in the legal profession?

## *Within the hallowed portals*



**SUBIR PALIT**

*Senior Advocate*

The colour red always had an instant cognitive connect with me because of its association with High Court building as it stood originally in all its grandeur and glory. An imposing reminder of the colonial architectural style. For the inhabitants of Cuttack city, the High Court has always been a source of everlasting pride and reverence. I started my practice in the office of my father 'Late Prabir Palit' Senior Advocate. Of course at home my connection with the colour red started right from my childhood because of my father's passionate involvement with left politics (Communist Party of India), where he held various leadership position. Infact, politics was always his first choice. He passionately championed the causes of the down trodden and the poor in the court rooms. Such was his commitment to his ideology that he never appeared against any workmen.

Therefore, in that sense my transition to the hallowed portals of the awe inspiring red building was almost seamless. Of course, being

the son of Late Prabir Palit was a blessing. I vividly remember my first day on a cold wintery morning when Mr. Biswajit Mohanty, (later Justice Biswajit Mohanty), an associate with my father, took me to the High Court premises. I also remember him introducing me to his close friend Mr. Bidyut Ranjan Sarangi (later Dr. Justice B.R Sarangi), the illustrious associate of the towering personality Mr. Gangadhar Rath also a Senior Advocate. At that time the Bar was graced by pantheon of great senior lawyers, like Mr. Bibhudendu Mishra, Barrister B.M Pattanaik, Mr. Gangadhar Rath, Mr. Ramakanta Mahapatra, Mr. Bipin Bihari Ratho, Barrister Govinda Das, Mr. S.S Basu and of course my father Late Prabir Palit, Mr. Bijay Krushna Mohanty and Mr. Ashok Mukharjee. Another extremely illustrious name i.e. Mr. Ranjit Mohanty had unfortunately passed on by then. It was a highly learning experience to listen to the extremely incisive, erudite and flamboyant arguments of each of these great lawyers. The sheer scholarship and research which went behind the incisive arguments on various branches by these great jurists was simply unfathomable. The benches of the High Court were also adorned by equally illustrious Judges. Chief Justice B.L Hansaria, Chief Justice V.A Mohta, Justice G.B Pattanaik, Justice D.P Mohapatra, Justice S.C Mohapatra, Justice Arijit Pasayat, Justice R.K Patra, Justice Pradyumna Mohanty, Justice Amiya Kumari Padhi, Justice D.M Patnaik, Justice P.C Misra, Justice G.B Pattanaik who later on went on to become Chief Justice of India. Justice D.P. Mohapatra, Justice Arijit Pasayat went on to join

him which was a matter of great pride for the High Court of Orissa and the lawyer community of our State. Subsequently, Justice A.K Pattanaik, and Justice Dipak Mishra were also elevated to the Supreme Court. Orissa High Court has a formidable reputation of having produced some great lawyers who were also eminent social figures. They had besides achieving excellence in the legal profession also contributed very very substantially and remarkably to the society and to social causes.

Within a few years thereafter, another group of eminent Advocates were designated as Senior Advocates by the High Court of Orissa, prominent among them were Mr. Bijan Ray, Mr. Bijay Pal, Mr. Jagannath Pattanaik, Late Amal Krishna Ray, Late S. B. Nanda and Jugal Kishore Tripathy. There have been many other highly distinguished and illustrious Senior Advocates, since then who have all had a formidable range of practice but the paucity of time and limitation of space prevents me from embarking upon an attempt to chronicle their achievements. Some amongst them are late Rajat Rath, Late Ashwini Kumar Mishra, Late Biswamohan Pattanaik, Late Ganeswar Rath, Mr. Saktidhar Dash, Mr. Sanjit Mohanty, Mr. Jayant Rath, Mr. Ishan Mohanty, Mr. R.K Mohanty, Mr. Jagandhu Sahoo, Mr. Budhadev Routray, Mr. Manoj Mishra, Mr. Dharanidhar Nayak, Mr. J.K Mishra, Mr. Y. Das, Mr. S. K. Padhi and Late Puranjan Roy. Similarly, the Benches subsequently also have seen many erudite and eminent Judges like Justice Mr. P.K Mishra, Justice Mr. B.P Das, Justice Mr. L. Mohapatra, Justice D.M Pattnaik, Justice Mr. Pradip Mohanty, Justice Ratnakar Das,

Justice M.M Das, Justice Pramath Pattnaik, Justice Ch. P.K Mishra, Justice P.K Tripathy, Justice Indrajit Mahanty, Justice Sanju Panda, Justice S. K. Mishra (Now Chief Justice of Jharkhand High Court), Justice C. R. Dash (Now Judge at Calcutta High Court) and many others. They have all left behind their stamp of immense scholarship and wisdom as reflected in their judgment and now the baton has passed on to the new Judges who have been elevated in last few years and they hold extraordinary promise to carry forward the torch of Justice for the years to come and vindicate the great tradition of our High Court and live upto the high standards set by their forebearers. I would be failing in my duty, if I do not mention about the excellent work done by the present Chief Justice Dr. S. Muralidhar alongwith his highly learned and illustrious colleagues particularly in becoming the torch bearers in the entire country in initiating the process of digitization of case records and computerisation. Orissa High Court stands second to none in such endeavour.

Orissa High Court has also has had very eminent Senior Counsels who have graced the office of the Advocate General during my tenure of practice starting from Late Sovesh Chandra Roy, Late Indrajit Roy, Late Jayant Das, Mr Jagannath Pattnaik, Mr Ashok Mohanty, Mr Bijay Krishna Mohanty, Mr. S.P Mishra and Mr. Ashok Parija (at present).

The last few years have also seen the advent of very bright and hardworking youngsters into this noble profession, who have been excelling as junior counsels and hold out great promise for the future.



## Random Milestones: Small & Big

*Remember to celebrate milestones as you prepare for the road ahead.*

**- Nelson Mandela**



**GAUTAM MISRA**

*Senior Advocate*

As we celebrate 75 years, it may be appropriate to reflect on certain milestones; milestones some of which are extremely popular and some which are lesser known. If we go back to the fifties, sixties and seventies, Orissa High Court was a major contributor in shaping the law of the country. Certain major constitutional issues emanated from Orissa. This piece as the title suggests attempts to reflect on some interesting cases.

### **A. The bizarre case of Ram Bahadur Thapa.**

State of Orissa v. Ram Bahadur Thapa,  
[1959 SCC OnLine Ori 22: AIR 1960 Ori 161:  
1960 CriLJ 1349]

1. Jagat Bandhu Chatterji and his Nepali man Friday Ram Bahadur Thapa visited Rasgovindpur in April 1958 to purchase aeroscrap from the nearby abandoned

aerodrome. The locals including the nearby tribals believed that the abandoned aerodrome was frequented by ghosts on Tuesdays and Saturdays. Mr. Chatterji was inquisitive about the ghosts and on 20<sup>th</sup> May 1958 he along with Ram Bahadur and a few other locals proceeded to the abandoned aerodrome to have a glimpse.

2. In paragraph three of the SCC Online report the Hon'ble High Court records the subsequent facts in the following manner:-

*".....While passing through camp No. IV they noticed a flickering light at a distance of about 400 cubits from the path-way. There was a strong wind blowing and the movement of the light in that breeze created in them an impression that it was not ordinary light but 'will-o' the wisp.' They also found some apparitions moving around the flickering light. They thought that some ghosts were dancing round the light and they all ran towards that place. The Nepali servant reached first, and with his 'khurki' he began to attack the ghosts indiscriminately. Krishna Chandra Patro (P.W. 26) arrived there sometime later, but the respondent did not notice him and one of his Kurki blows caused a severe injury to Krishna*

*Chandra Patro who screamed aloud saying that the Nepali had injured him. In the meantime other injured persons also raised a cry of distress and then the respondent stopped attacking the people. It was subsequently discovered that the persons whom he attacked and injured were some female Majhis of the locality who had collected under a 'Mohua' tree with a hurricane lantern for the purpose of gathering 'Mohua' flowers at that hour of the night. In consequence of the indiscriminate attack by the respondent with his 'Kurki' one Gelhi Majhiani was killed, and two other females namely Ganga Majhiani (P.W. 28) and Saunri Majhiani (P.W. 27) were grievously injured. In addition, Krishna Chandra Patro (P.W. 26) as stated above, was also injured."*

3. The Sessions Judge acquitted Ram Bahadur Thapa by accepting the defence available u/s. 79 of Indian Penal Code, 1860 (mistake of fact). The Hon'ble High Court confirmed the order of acquittal. It would be pertinent to mention that this case is often discussed while analysing the defence available under Section 79 IPC. The Division Bench relied on three judgments and held inter alia:

**"9.** *The benefit of Sec. 79 I.P.C. is available to a person who by reason of mistake of fact in good faith, believes himself to be justified by law in doing an act. In view of the clear evidence of P.W. 29 to the effect that the respondent*

*thought that he was attacking ghosts he would be entitled to the benefit of that section, unless from the facts and circumstances established in the case it can be reasonably held that he did not act in good faith. Good faith requires due care and attention — see Section 52 I.P.C., but there can be no general standard of care and attention applicable to all persons and under all circumstances. As pointed out in Emperor v. Abdool Wadood Ahmed, ILR 31 Bom 293 :*

*"The standard of care and caution must be judged according to the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusion of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to the habits of reasoning."*

*"The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acts..... The law does not expect the same standard of care and attention from all persons regardless, of the position they occupy — See Bhawoo Jiwaji v. Mulji Dayal, ILR 12 Bom 377*

*"What is due care and attention depends on the position in which a man finds himself and varies in different cases" -see Po Mye v. The King, 1940 Rang LR 109 (at p. 118) : (AIR 1940 Rang 129 at p. 132).*

10. *The respondent is a Nepali servant, who was a new corner to the place. He was a firm believer in ghosts. The aerodrome had acquired a notoriety as being haunted by ghosts on Tuesday and Saturdays and this created in him almost a certainty that ghosts would be there at about midnight on that date. The party also left Rasgovindpur for the purpose of seeing the ghosts. Neither the respondent's master (P.W. 29) nor his landlord (P.W. 26) made any effort to remove this impression from his mind. On the other hand they confirmed that impression by themselves offering to go with him for the purpose of seeing the ghosts...."*

### **B. Conviction of a former Advocate General for contempt; Reversal in Supreme Court.**

Sarat Chandra Biswal vs. Surendra Mohanty [1968 SCC OnLine Ori 43: AIR 1969 Ori 117: 1969 CriLJ 763]

4. On 30<sup>th</sup> January 1968, one Sri Santosh Kumar Sahu filed a representation criticising certain events which took place at the flag hoisting event in the premises of High Court of Orissa on 26<sup>th</sup> January 1968. The petition was signed by Sri Santosh Kumar Sahu, Advocate and was presented by Sri Dinabandhu Sahu as an Advocate appearing for him.
5. Sri Dinabandhu Sahu was a senior member of the Bar, former Advocate General and a former Minister

and he had put his signature in the vakalatnama appended to the representation filed by Sri Santosh Kumar Sahu.

6. The Hon'ble High Court in paragraphs 89, 90 and 93 (of the report 1968 SCC OnLine Ori 43) recorded as follows

*"89. As regards the Advocates, Sri Dinabandhu Sahu stated in his affidavit that the inferences drawn from the impugned representation petition are "outcomes of misunderstanding of the whole situation". Even so, both Sri Dinabandhu Sahu and Sri Raghunath took the plea of justification asserting that under the Rules made under the Advocates Act, 1961 they had a right and duty to their client (Sri Santosh Kumar Sahu) to place his case fearlessly regardless of the consequences to themselves. We have already shown that such defiant justification is wrong as such duty cannot extend to the defence of unlawful acts of clients.*

*90. At the stage of hearing all the opposite parties through their Counsel asked for forgiveness. On March 18, 1968—the first day of hearing—the learned Counsel Mr. A.S.R. Chari appearing on behalf of all the opposite parties asked for "forgiveness of the Court out of generosity" as he put it publicly in open Court, but nothing in writing*



either by way of apology or even regret was tendered in Court.

93. Opposite party No. 1 Sri Santosh Kumar Sahu is sentenced to pay a fine of Rs.800. As regards opposite party No. 2 Sri Dinabandhu Sahu, he not only signed the representation petition but is stated to have drafted and corrected it. As a very senior member of the Bar and as a former Advocate-General he is expected to have known better. We would accordingly direct him to pay a fine of Rs. 100. As regards opposite party No. 3 Sri Raghunath who is also a fairly senior Advocate, his assertion that he had “no reason to regret his engagement in the cause” amounts to a plea or justification of his conduct; but in the circumstances we think it will suffice to issue a strong admonition and warning for his conduct. As regards opposite party No. 4 Sri S.F. Ahmed, having regard to the circumstances stated by him in his affidavit and in view of the fact that he is a junior Advocate with only about two years’ experience at the Bar, we would drop the proceedings against him with the hope that he will be more careful in future.”

7. The matter was carried to the Hon'ble Supreme Court in **Dinabandhu Sahu vs The State of Orissa** (1972) 4 SCC 761 and the Hon'ble Supreme Court recorded as follows:  
 “2. ....Whatever may have

been the justification for the High Court to initiate the proceedings in respect of a matter, which in the state of the atmosphere then prevailing was likely to create a suspicion, whether justifiable or imaginary, in the public mind and particularly in the mind of the litigants, by the circumstance that a person who is a Respondent in a case where a judgment was reserved was given prominence and referred to in terms of praise or eulogy that situation had changed after the learned Chief Justice had given an explanation for the reasons why Dr.Mahtab was given a seat among the few selected persons at the Buffet lunch and other matters incidental thereto. The apology tendered was not merely an apology but was something more than an apology because what was asked of the Court out of its generosity was forgiveness; that this was sincerely meant is amply demonstrated by its being repeated again before us. We think that the contempt if any has been certainly purged in the manner in which the apology was given and the matter should have been set at rest there. It is no part of the judicial function to be vindictive or allow any personal or other considerations to enter in the discharge of its functions and since both the learned Chief Justice and Misra, J. would have been prepared to accept that apology if it was given

*by the Appellants themselves and in writing and since Mr. Chari said that the Appellants would have been prepared to give such an apology in writing, if that was the only thing that was required and even now are ready and willing to do so we feel that the apology tendered on their behalf by their Senior Advocate can well be accepted and the proceedings closed. We accordingly allow the appeals, set aside the convictions and direct the repayment of the fine, if any, and close the proceedings."*

### **C. Relief to a printing press during emergency**

Amrit Kumar Bose v. State of Orissa, [1977 CriLJ 1169]

8. On 25<sup>th</sup> June, 1975 the Central Government declared a state of emergency. The same continued till 21<sup>st</sup> March 1977. On 4<sup>th</sup> July, 1975 a press by the name of "Janaseva Printing Works" located at Jew Lane of Cuttack was taken under police control. During the aforesaid period of emergency, the keys of the press building were not returned to the owner. He filed a writ application for getting back the possession of the press which was printing a local weekly paper by the name of "Rashtra Dipa" connected with the activities of the Rashtriya Swayam Sevak Sangh. The Hon'ble High Court was pleased to allow the prayer of the petitioner and direct the State Government to

put the petitioner back into possession forthwith and the aforesaid judgment was delivered when the emergency was still in force.

9. Apart from the aforesaid case of a printing press, the Hon'ble High Court stayed the demolition orders of many buildings from the Mangalabag area of Cuttack which were issued in an adhoc manner taking advantage of the emergency.

### **D. The malady of the racket of arbitration**

State of Orissa v. Ganguram Chhapolia [1982 SCC OnLine Ori 47: AIR 1982 Ori 277: (1982) 54 CLT 214]

10. The Hon'ble High Court while granting relief to the State Government made observations in paragraphs 6 and 7 of the report 1982 SCC OnLine Ori 47 which read:

*"6. From the proceedings of Feb. 12, 1982, it does not transpire that the learned Subordinate Judge was alive to the principles. By a bald order Sri R.C. Kar, one of the persons named in the panel of names filed by the contractor, was appointed. It does not seem from the order that a hearing was given to the parties and the pros and cons in regard to the suggestion were considered. The Courts while selecting an arbitrator should bear in mind that the function is not just a routine function to be exercised casually or mechanically. Great stakes are very often involved*

*and a correct adjudication is very much dependant on the person, more on his integrity though no less on his competency. The State is not a “no party” before the law. Its exchequer is the exchequer of the people. It behoves us to remember that the parties before a court of law, the State as well as the private citizen, have the same rights and the same privileges.*

*7. It is permissible to deviate and consider a few related questions. If one were asked “what afflicts the State of Orissa?” The answer could be: “Inter alia, the malady of the racket of arbitration”. Arbitration of late is being considered as a sure way to overnight riches and affluence. It has become a big business.....”*

**E. The High Court is not a mere lifeless edifice of bricks and mortar standing on a parcel of land.**

Bhabani Shankar v. Secretary to the Government of Orissa, Home Department, [1991 SCC OnLine Ori 165: (1992) 73 CLT 567]

11. A Division Bench of this Hon'ble Court dealt with the issue of shifting of the High Court from Cuttack. After analysing Article 214 and the relevant entries in the Union List, State List and Concurrent List, the Division Bench held that the Chief Justice has the exclusive authority to appoint the seat of the High Court and to change the same. Incidentally,

the issue of setting up of benches of the Orissa High Court was also recently resolved by the Hon'ble Supreme Court in the case of **M/s. PLR Projects Private Limited Vrs. Mahanadi Coalfields Limited** vide its order dated 14.12.2022.

**F. Liquor Tragedy: Mandamus issued to the State Government to constitute a Commission of Inquiry.**

Janamohan vs. State Of Orissa [AIR 1993 Ori 157: 1992 SCC OnLine Ori 81]

12. The opening lines of the aforementioned Division Bench judgment of this Hon'ble High Court would state the background facts. The opening paragraph reads as follows:-

*“7<sup>th</sup> May, 1992 Cuttack was calm when the day dawned. Which had known that a “disaster of unprecedented proportions” was going to strike and disturb placid waters of the Mahanadi and Katha jodi? But it took place. A man-made tragedy took a great toll (124 deaths, according to the State), and it was our well known hooch tragedy. Not that the people of this State have not known about such tragedies taking place in the past, but then, it was the great dimension of the tragedy which stunned the people, so much so that they almost lost fair in all instrumentalities of the State. People started thinking whether they*



*had been left to the wolves to be killed. The question with which we are seized is about the responsibility of the State to find out why spurious liquor took the toll of 124 lives, and what steps are required to be taken to stop recurrence of such a heinous crime, at the root of which lies the naked greed for money and nothing else. Ours is a "socialist democratic republic" and its people have been promised by the Constitution a right to live and not to be killed except in accordance with the procedure established by law. Do the instrumentalities of the State owe no obligation to enforce Article 21 of the Constitution? But then, how can they do so unless they know what they are required to do in this regard? And, how would they know about it unless they find out who are the evil-doers and how they conjointly act to fulfil their evil designs? To inform the mind of the Government in this regard, should it not try to find out all the relevant facts to enable it to tailor its laws, to gear up its machinery, to plug the loop-holes and take other required steps? Why should the Government feel shy to know full facts necessary for the aforesaid purpose? And if it feels shy, does not discharge its legal obligations, remains inactive to serve an alien purpose, can this Court not direct it to discharge its duty? These are some of the questions with which we*

*are seized in these petitions, whose ramifications are too wide and too serious to soft--pedal in any way our constitutional obligation."*

13. After narrating the facts, Hon'ble Chief Justice Hansaria (as his Lordship then was) issued a writ of mandamus on the State Government to appoint a Commission of inquiry as per the Commissions of Inquiry Act, 1952 and to pay compensation to the kith and kin of those who lost their lives. The aforesaid judgment was sought to be recalled by the State Government and the matter regarding recall was dealt with in an extensive manner in a judgment reported in **State of Orissa v. Janamohan** , [1993 SCC OnLine Ori 2: AIR 1993 Ori 180: (1993) 75 CLT 352]. The opening lines of the judgment are worth noting:-

*"The mighty says to the meek that you cannot command me to act; I shall act if I like, I shall not act if I choose not to act. The meek says that I possess the strength of law to give you the command; the law, which is no respecter of person and which does not allow anybody to rise so high as to be above it. This could be the scenario if what has been submitted by Shri Patnaik, learned Counsel appearing for the State, were to be accepted by us fully."*

14. It is pertinent to mention that recall was not allowed by the Hon'ble High Court. In my view the judgment of

our Hon'ble Court in the above two cases authored by Hon'ble Justice Hansaria is a must read for every student of law particularly for the immaculate language used in the context of the case.

### **G. Constitution of a 14 Judge Bench.**

In Re. Registrar General, High Court of Orissa v. State of Odisha and Others [CONTC No. 1854 of 2019]

15. On 15th October 2019 for the first time in the history of the court a bench of 14 Judges was constituted to take suo motu cognizance of cessation of court work in some parts of the State.

### **H. Human lives and human health should not be discussed in terms of percentages.**

Mantu v. Union of India. [W.P.(C) No. 12966 of 2023 Order dated 18.05.2023]

16. While dealing with the issue of deaths of children due to malnutrition and the gaps in the implementation of various food security schemes in the State, the court made the following observation:

*"7. At the outset, this Court would like to observe that while discussing issues relating to health of persons and of children in particular, presenting statistics in terms of percentages would hide more than they reveal about the ground situation. Perhaps human lives and human health should, in the present context, not be discussed in terms of percentages but by acknowledging that they are actual persons. To have in Odisha in 2023 nearly 30,000 SAM and 86,000 MAM children is a cause for alarm not just for the State of Odisha but for the Government of India as well. If one were to understand the national percentages of 2.26% SAM and 4.75% MAM on a 1.8 billion population, and translate them into actual numbers, the severity of problem would become evident."*

17. A student of law interested in the role of courts in social justice should watch the hearing of the present matter at the following link: [https://www.youtube.com/watch?v=\\_uZX5xScq\\_E](https://www.youtube.com/watch?v=_uZX5xScq_E) (2:28 to 2:13:30)

## *The High Court of Orissa - An Evolving Institution*



**PAMI RATH**

*Senior Advocate*

History has witnessed the significant role of the Indian Judiciary in safeguarding individual freedom, maintaining the rule of law, and strengthening democracy. But the beauty of our judicial system is the two-tier Constitutional Courts. India is a country of great diversity when perceived not only from the socio-economic and cultural point of view but also geographically and topographically. The establishment of Constitutional Courts in every State is a living example of empathy the constitutional makers had for accommodating diversity. Empathy is a constitutional attitude that is very beautifully encapsulated in the term “**Fraternity**”, in the Preamble to the Constitution of India. Writing for the souvenir, on the occasion of the 75<sup>th</sup> Anniversary of the High Court of Orissa, all thoughts flow towards this constitutional attitude,

which not only emanates from the Constitution of India but has been the bedrock culture of this State. In the past few years, it has resonated in the judicial reforms this Court has undertaken.

Empathy refers to our capacity to better comprehend-through both knowledge and feeling-another’s perspective by trying to view the world from that person’s position, rather than simply observing another’s position from where we stand<sup>1</sup>. The establishment of Virtual High Courts in various districts of Odisha was a step, whereby the High Court finally addressed the concerns of all litigants and lawyers from all over Odisha to have easy access to the highest Constitutional Court of the State. This access has paved the path for replacing the divisive feeling among the Advocates from all over Odisha and the public in general with the feeling of “**Fraternity**”. It was an outcome of this institution’s ability to give up the default mode and empathetically look at the needs at the district level.

Though the pandemic led to the Hybrid mode of hearing, unlike other courts, our High Court has continued it without any break, and today it’s one of the best in the country. This continuation has been the most significant gender-sensitive step by this institution. While the Supreme Court upholds a woman’s reproductive autonomy<sup>2</sup> in the backdrop that

<sup>1</sup>Rebecca K. Lee, *Judging Judges: Empathy as the Litmus Test For Impartiality*, 82, Article 4, Issue 1, 2014.

<sup>2</sup>X vs. The Principal Secretary, Health and Family Welfare Department & Anr., [2022] 11 SCR 246



often motherhood comes with compromises on the professional front. The continuation of the hybrid mode and e-filing in our High Court erases the idea that motherhood and advocacy come as alternatives. This empathetic approach has ensured the retention of many talented female advocates. It has also greatly addressed the concerns of many prospective women advocates. This empathetic approach establishes gender inclusiveness. That she feels she can be here perpetually and simultaneously discharging all her varied responsibilities. Definitely, we have made the constitutional goal of “**Fraternity**” meaningful for her.

Recently, Supreme Court judge Justice BR Gavai, emphasized the need for inculcating the quality of empathy and not treating law as merely a profession<sup>3</sup>. The unconscious energy which any young mind absorbs the moment she or he joins the Bar is the uncanny feeling of survival, competition, and aggressiveness. The atmosphere hardly creates space for empathy. However, catching them early and allowing them to work on various issues arising in PIL matters, surely is a good way to inculcate empathy in them. Empirical studies and field visits can expose them to the living conditions of persons who for various reasons cannot access the justice system and remain deprived of some basic human living conditions. Recently the Bench has indeed engaged young counsels in

important PIL matters. On the 75<sup>th</sup> Anniversary of this Court, a more formalized system can be developed to ensure consistent engagement of young counsels in PIL matters. In this way, we can shape a new generation of empathetic lawyers, with the hope that the next step of the evolution of this High Court would happen through the contribution of the empathetic youth of this Bar.

Learnings from such exposure don't get limited to the PIL matter, but it also changes the way the lawyer would deal with non- legal persons and litigants in general<sup>4</sup>.

At this juncture, the words of Shri M.C. Setalvad, on the objective behind the formation of the Bar Association of India, become relevant. He stated, “*We aim at upholding the Constitution of India, the representative, free and democratic form of government established by it, and the promotion of the Rule of Law, we are to endeavor to apply our knowledge and experience in the field of Law to the promotion of the public good...*” One can't overemphasize the role which the Bar is supposed to play in upholding the Constitution. Often young lawyers feel the presence of this body either during the elections or during any unsettling situation. However, members often stand for each other in medical distress or any other emergency. As much as the right to form an association is an important freedom, it does not always

---

<sup>3</sup>Lecture by Justice B.R.Gavai, *On The Occasion Of The Inauguration Of The Centennial Celebration Of The Indian Law Society*.

<sup>4</sup>Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy Is A Core Lawyering Skill And Why Legal Education Should Change To Reflect Its Importance*, (2012) College of Law-Faculty Scholarship. 6. <https://surface.syr.edu/lawpub/6>

guarantee that critical and introspective voices get heard, especially of young minds. What about the realization of the words of Shri M.C. Setalvad, between two elections? Associations have to reflect empathy as a means to realize **“Fraternity”**.

Bar can help cultivate knowledge of the law beyond its use for clients. Today there are many specialized branches of law and not all of us get exposed to the varied expanses. Friday evening congregation of a small group of lawyers, in a venue like the Lawyers Library of our High Court, for sharing expertise on certain subjects, would help in inculcating curiosity in the young minds and also help them to speak up their minds. It is difficult to have a balanced exchange of words in a large gathering when the Bar calls for meetings. But these consistent and small Friday meetings can help the bar to hear the younger aspirations and get changes

to pave the path for them. This would also act as a shock-absorber and replace disruptive exchange with more introspective and constructive contribution and coordination.

The evolution of this High Court cannot be disconnected from the contribution of the Bar. In the context of the culture of Odisha, if the Bench is comparable to the “Servitors” who carry the Lord from the sanctum to the Chariot, then the members of the Bar are the “Devotees” who pull the Chariot. The Chariot celebration often reminds us of the values of **“Fraternity”**, non-discrimination, and the Lord coming down to its devotees. This cultural backdrop remains the perpetual influencer for the High Court’s evolution in the path of establishing **“Fraternity”**, empathy for all without discrimination, and continuously improving our abilities to be reachable to all.





## **The Registrar General and the Officers of the Registry**

*(Sitting from L-R)*

Abhilash Senapati, Registrar (Records), Suman Kumar Mishra, Registrar (Judicial), Pravakar Ganthia, Registrar (Inspection) Pratap Kumar Patra, Registrar General, Akhil Kumar Paschimakabat, Registrar (Vigilance) and Soumyak Patra, Coordinator, Arbitration Centre

*(Standing from L-R)*

Jitendra Das, Asst. Registrar (Admin), Satya Prakash Ray Choudhury, Central Project Coordinator, Amaresh Nayak, Deputy Registrar (Judicial), Chhayakanta Dash, Special Officer (Special Cell), Ashish Pattanaik, Additional Co-ordinator, Arbitration Centre, Debasish Mohanty, Deputy Registrar (Administration & Protocol), Asish Kumar Sahoo Assistant Registrar (Administration), Anand Dash, Additional Registrar-cum-Principal Secretary and Santosh Kumar Dash Ray, OSD (Vigilance)



## ***Alarming rate of low conviction in Odisha (Causes and measures to curb)***



**SRIKANTA MISHRA**

*Special Vigilance Judge, Kalahandi*

Justice delivery system is of paramount importance in every civilized society. In almost all ancient scripts and historic texts we find existence of a decision making body to resolve the conflicts between individuals and groups of people; and a system of rule of law, traceable in some form or other, either codified or not. Right and wrong, duties and responsibilities, liabilities and obligations, were used to be determined on the basis of some precepts, norms and principles. In order to have a peaceful living in the society, there is requirement of a robust system of adjudication mechanism. The modern society has evolved more analytical, logical, economical and scientific method to ensure justice for all and for that purpose innumerable legislation have been framed. The judicial precedents also supplement to the same. To impart swift and sure justice to the people, well equipped and technologically sound infrastructure has been provided to the courts. However, the question whether justice is actually made available to all

is still in doubt. Does the legal system satisfy the poor and rich, influential and innocent equally?

As Jeremy Bentham said – “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne.” Is the present judicial set up sufficient to satisfy the cherished hope of all the stake holders by shunning their pain to the maximum possible limit ?

The present article shall be confined to the functioning of criminal justice system, in which larger population is interested. When a crime is committed, there is harassment to someone and his/her suffering is tried to be addressed by punishing the criminal and awarding monetary compensation to the victim. But where the real culprit is acquitted, there is a failure of justice. In our adversarial form of criminal justice system, the accused, in most cases, is not required to prove anything in defence. It is for the prosecution to prove its alleged facts beyond all reasonable doubts. The accused is presumed to be innocent unless and until the charge is proved against him through convincing evidence. When prosecution is bound to go by the materials available on record, the defence, in order to secure acquittal is free to adopt several tactics.

The data on conviction rates for crimes under the IPC, as per **NCRB report 2021** shows

Mizoram leading the list with 96.7% convictions, followed by Kerala (86.5%), Andhra Pradesh (84.7%), Tamil Nadu (73.3%), Nagaland (72.1%) and Telangana (70.1%). The data further reveals that among the Union Territories, Ladakh had a high conviction rate of 91%, Delhi had a conviction rate of 86.6%, Jammu and Kashmir at 77.3%, Puducherry at 74.7% and Chandigarh at 67.9%. As against such high rate of conviction in different territories of India, **our state (Odisha) experience very low conviction rates i.e. only 5.7%.** This is most alarming. A higher conviction rate reveals that the concerned states work hard to ensure the prosecution and conviction of accused and thereby ensure justice to the victims. The low conviction rate in Odisha (less than 6% in IPC offences) gives a bad signal about the functioning of the criminal justice and administration system in this state. There is seldom a case filed by accused for compensation against the prosecutor. Hardly a case of malicious prosecution is filed. This indirectly indicates that the prosecution case was not false but could not be properly proved in courts. The reasons of failure of criminal trials are required to be enquired and necessary steps should be taken in the matter.

In this context, it would be appropriate to refer to the judgment of the Hon'ble supreme Court in the case of State of Gujarat vs Kishanbhai (decided on 7 January, 2014). The relevant observation and directives of the Hon'ble Court are quoted below:

"Every time there is an acquittal, the consequences are just the same ... The purpose of justice has not been achieved.... If he (the accused) has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed

it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused first during the trial ..and then at the appellate stage." (Para. 17)

"Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to **examine all orders of acquittal and to record reasons for the failure of each prosecution case.** A standing committee of senior officers of the police and prosecution departments should be vested with aforesaid responsibility." (Para. 20)

"On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. **A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy.** Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. ... The instant direction shall also be given effect to within 6 months... A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one

week. All the concerned Home Secretaries shall ensure compliance of the directions recorded above.”(Para.21 &22)

In view of the above decision, while acquitting an accused, the trial court is duty bound to record a finding as to whether there is any lapse in the investigation or prosecution and who is to be blamed. One may also look to the other side of the coin. In many cases, even though material evidence are there pointing to the guilt of the accused, the courts record order of acquittal, basing upon minor contradictions and discrepancies and adopt the theory of giving benefit of doubt in favour of accused. It should always be kept in mind that **“A Judge presides over a criminal trial, not only to see that no innocent man is punished but also to see that a guilty man does not escape.** Letting guilty escape is not doing justice according to law. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. (Ref. Nagesh vs State of Karnataka decided on 8 May, 2012 by Hon’ble Apex Court) As held by the Hon’ble Supreme Court in Inder Singh and another v. State, reported in AIR 1978 SC 1091, **Proof beyond reasonable doubt is a guideline, not a fetish.**

It may further be noted that insisting the prosecution to prove some facts which may be within the personal knowledge of the accused or his relatives only, is not proper. As observed by the Hon’ble Supreme Court in Trimukh Maroti Kirkanvs State of Maharashtra (decided on 11 October, 2006), in certain cases where a crime is committed inside a house, when prosecution proves its case by some evidence, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed, in view of Section 106 of the Evidence Act. Besides, it is well settled that corroboration is a matter of prudence and not the absolute rule of law, but the courts in many cases insist upon it to believe the version of victim and injured.

### **Conclusion & Suggestion**

Soft dealing with criminals having huge number of cases against them, gaining over of witnesses by influence of money, muscle and political power, improper investigation, callous prosecution, indifferent attitude of witnesses to truthfully depose in court during trial, long adjournments, insecurity and fear at all level, etc. are the proximate causes of such alarming rate of decline in conviction in criminal trials, specifically in Odisha. Considering the increase of crimes day by day, it is felt that the trying Judges and Magistrates should rise to the occasion and be more vigilant and watchful. The Courts and prosecutors are also required to take cognizance of acts of perjury against the witnesses who deliberately give false evidence in Courts and to deal with them with strong hands as per law. There must be due deliberation on the matter to bring about some procedural changes to curb the situation.



## *A Step towards Preserving Claimants' Rights*



**Dr. BHAGYALAXMI RATH**

*Presiding Officer, State Education Tribunal  
Bhubaneswar, Odisha*

To uphold the mandate of Indian Constitution in treating all its citizens equally before law irrespective of their caste, creed, gender and position in society and to secure true justice, the legislature had thought of giving exemption to certain categories of citizens in filing cases/suits in courts of law seeking redressal of their grievances. The relevant provision under section 35 of the Court Fees Act, 1987 is placed below:

***“Power to reduce or remit Fees-The Appropriate Government, may, from time to time by notification in the Official Gazette, reduce or remit, in the whole or in any part of the territories under its administration, all or any of the fees mentioned in the First and Second Schedules to this Act annexed and the Appropriate Government, may in like manner cancel or vary such order”.***

The Government of Odisha [the Law

Department] had published a notification on 7<sup>th</sup> June 1994-S.R.O. No.575/1994 in exercise of the powers conferred on it by Sec.35 of the Court-fees Act, 1870 (V.T.) of 1870 relating to exemption of court fees. The relevant portion of the notification is given below:

“The State Government do hereby remit in the whole of the State of Orissa all fees mentioned in Schedule-I and II to the said Act payable for filing or instituting cases or proceedings in any Court in Orissa by the following categories of persons, namely:

- (i) member of Scheduled Castes;
- (ii) member of Scheduled Tribes;
- (iii) women;
- (iv) minors;
- (v) physically handicapped persons;
- (vi) persons whose annual income does not exceed Rs.12,000/-; &
- (vii) persons who are entitled to legal aid under the Orissa State Legal Aid & Advise Scheme, 1981.

It is thus evident that such a provision is only applicable to the payment of fees under Schedule-I and II of the Court Fees Act. But it is not applicable to any other Acts. Consequently, those specially categorized persons are paying heavy court fees in motor accident claim cases though they are exempted from paying it in other civil cases. Thus, different state governments have adopted different methods while fixing up court fees on the claimants in Motor Accident Claim Cases. However, the government of

Odisha has not yet thought of going for an amendment in the field of imposition of court fees for the claimants in Motor Accident Claim Cases.

As per the current practice, the claimants either as legal heirs of the deceased or as victims of the fatal accidents, are coming to courts seeking compensation and they are paying court fees either at the time of filing of the claim petition or after disposal of the case before payment is made. But experience shows that such claimants feel burdened while paying such court fees as it adds miseries to their grief. On humanitarian ground also, this point seems to pose a pertinent question about the disparity in the policies and apathy of the law-makers. However, a movement can be initiated through several deliberations taking into account the desired change in the policy of the government. Thus, it is essential to ascertain if the benefits of the provision under section 35 of the Court fees Act, 1987 can be extended to the claimants in Motor Accident Claim Cases as specially categorized persons to get an exemption from paying court-fees.

Prior to establishment of Motor Accident Claims Tribunals, suits claiming damages were being filed in Civil Courts. By the insertion of Sec.110-A to Motor Vehicles Act, 1959, provision was made for the establishment of Motor Accident Claims Tribunals. Similar provisions are now made in Chapter XII of the Motor Vehicles Act, 1988. Section 165 of the Motor Vehicles Act, 1988 prescribes that the State Government may establish one or more Motor Accident Claim Tribunals for the purpose of adjudicating claims for compensation in respect of accidents involving the death of or

bodily injury to persons arising out of motor vehicles. Sec.175 of Motor Vehicles Act, 1988, provides that where any Motor Accident Claims Tribunal has been constituted, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation. Thus, Civil Court's jurisdiction is ousted. Sec. 166 of Motor Vehicles Act contemplates filing of application for compensation. Sec. 169 provides the procedures and powers of Motor Accident Claim Tribunals. Sec. 176 empowers the State Government to make rules for giving effect to the provisions of Sec. 165 to 174 & envisages that the Rules may provide the form of application for claims for compensation and fees, if any, to be paid in respect of such applications.

It is thus apparent that the fee payable in respect of the claim application is as contemplated under the Motor Vehicles Act and the Rules framed there under in exercise of the powers U/sec.176, but not under the Court Fees Act, 1987. Rule 22 (2) of Orissa Motor Vehicles (Accident Claims tribunals) Rules, 1960 prescribes for the fees payable in claim applications. In the Rule 22 (2), it is laid down that in case the claim application is allowed, the claimant shall be liable to pay the Court-fee and such court-fee shall be recovered at the time of payment of the award. Rule 22(3) prescribes that the fee for filing appeals shall be one-half of the fee payable for the claim application. However, if an exemption is granted under the Notification issued by the State Government, there would be no occasion for payment of court fees at the threshold, or after the decision. If this matter is suitably considered by State Government by amending the Rules incorporating similar provisions in Rule 22 of the Orissa Motor

Vehicle (Accident Claims Tribunals) Rules, 1960 it would save the litigants from such critical junctures and discrimination.

Hon'ble Supreme Court in the case of *State of Haryana V. Smt. Darshana Devi and others reported in A.I.R. 1979 S.C. 855* have directed the State Government of Haryana to frame suitable Rules under Motor Vehicles Act to enable claimants for compensation to be free from payment of Court fee. Accordingly, the State Government of Haryana made provision in the Motor Vehicles Act/Rule wherein a token fee of Rs.10/- only is paid by claimants in Motor Accident Claims petitions.

In a case decided by the Hon'ble High Court of Orissa in *Mangu Pangi and another Vs. Rama Chandra Padhi & others reported in 2000 (1) O.L.R. 53*, the petition of the claimant for exemption from paying court fee in Motor Accident Claim cases was rejected, but a positive view was expressed paving the way for amendment the Motor Vehicles Rules by the State Government.

The term "Compensation" means something given or received as an equivalent for the loss, suffering, lack etc. Thus, the claimant is getting only compensation. He / She never claims any civil right or title to any property through such cases. It is a proceeding based on tort and not a civil suit. So, a cases for compensation owing to loss of life or limb in vehicular accidents cannot be equated to other civil suits filed for property right etc. Therefore, a compassionate approach must be adopted in such cases all through the proceedings including payment of court fees by its claimants to ensure complete justice.

Taking note of the afore-said legal pronouncements and the predicament of claimants, it is high time to bring an amendment to the Rule and to mitigate the disparity in government policies in exempting grief-stricken claimants from paying court fees in Motor Accident Claim cases when they come under the purview of specially categorized persons of the 1994 Notification.



## Public Interest Litigation – Means to achieve Environmental Justice in India<sup>\*1</sup>

*“Law, it is without name, or colour, or hands, or feet, which is smallest of the least, and Largest of the large, all and knowing all things, which hears without ears, sees without eyes, moves without feet, and seizes without hands”.*

**-Emerson**



**Dr. PABITRA MOHAN SAMAL**

*Judge, Family Court, Jeypore*

### Introduction

Law is an immense discipline for the mind. It teaches us how to think clearly, precisely and accurately. Every word has its definite meaning and must find its proper place in its own context. In order to have a free, peaceful and stable society, it is utmost necessary that justice be made percolate to the men, women and children who, because of their complete poverty/ignorance unable to knock the doors of justice. In India, all are equal in the eyes of law and our democratic edifice is based on the equality principle. The poor is scared of fighting a legal case against the mighty and the rich. All are not

equal in terms of economic resources and this situation has created problems when there are legal battles between unequal members of the society. In this back drop, the poor, the indigent and the downtrodden are priced out of the justice market as they are unable to put up their defence against the powerful and dominant adversaries as well as against all powerful State.

Law applies to everyone but justice does not equal in form but not equal in fact. In fact access to justice is one of the fundamental and essential characteristics of any legal system. The framers of the Indian constitution had visualized such a situation. Hence, they have invented an instrument for quick redressal to the problem of the society, which is better known to us as Public Interest Litigation.

Public interest of people, who by reason of poverty and ignorance are unable to have access to the justice delivery system. The social action litigation has become more powerful instrument of protecting the basic right of the poor and indigent persons, on whose behalf some other person or institution can move the court for vindication of their rights.

<sup>\*1</sup>Dr. Pabitra Mohan Samal, Judge, Family Court, Jeypore

## ***PIL - as an effective tool of rendering justice***

The public interest Litigation developed as an effective tool of rendering justice to the poor public or determinate class litigation's province has become very wide. By virtue of Article, 32<sup>2</sup>, the Hon'ble Supreme Court has been able to widen the horizons and intervene whenever injustice is called for. The aggrieved person may write a letter in the name of Hon'ble Chief justice of India and it can be treated as PIL<sup>3</sup>. As the Hon'ble Supreme Court itself has acknowledged, the newly invented proposition of law laid down by many learned judges of the Supreme Court in the arena of Public Interest Litigation irrefutably and manifestly establish that the court's dynamic activism in the field of Public Interest Litigation is by no means less than those of other activist judicial systems in other parts of the world.

*Public Interest Litigation* has to-day become a by word for judicial involvement in social, political and economic affairs of the Indian society and State. The province of public interest litigation has widened so much that every injury, every grievances sought is, to be brought under it, Child abuse and environmental pollution and horde of other issues are attracting remedial attention of the courts. In addition to this, anything and everything every day we are witnessing, can be a subject matter of PIL. Thus the right to work, shelter, low cost housing, pure drinking water, minimum income, food, pollution free environment and other basic human needs

are claimed as guaranteed legal rights.

Hon'ble Sri Justice Krishna Iyer has explained the philosophy of the public interest litigation in the following words;

*"The urgent need is to focus on the ordinary man one might say the little man..... the paramount concern is increasingly with 'social justice" i.e. with finding procedures which are conducive to the pursuit and protection of the rights of the ordinary people. The judicial activism of the court has come to the rescue of many helpless sections of the society, in enforcing their constitutionally and legally guaranteed rights. Sometimes, the court has tried to fill the legislative vacuum existing in certain areas, by issuing comprehensive guidelines in the nature of judicial legislation. The Supreme Court has not hesitated in taking appropriate action.*

## ***Protection of Environment:***

With an advent of time and increased industrialization the whole world is getting worried about pollution problem day by day. There has been substantive decline in environmental quality due to increasing pollution, loss of vegetation cover and bio-diversity, concentrations of harmful chemicals in the ambient environment and in food chains. These happenings are causing growing risks of environment accidents and threat to life support system.

In **Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh<sup>4</sup>**,

<sup>2</sup>Article-32 Constitution of India, 1950

<sup>3</sup>*Sunil Batra Versus. Delhi Administration-1980 AIR 1579*

<sup>4</sup>*Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh, 1989 AIR 594*

the Hon'ble Supreme Court took cognizance of the imbalance to ecology and hazard to healthy environment, due to working of lime stone quarries in the Mussorie-Dehradun ranges of U.P., and ordered the closure of the mining operations. Further the court awarded Rs. 5,000/- as additional remunerations to the advocate on behalf of the losses.

The Hon'ble Supreme Court in continuation of its directions held that- "It is for the Government and the Nation and not for the court, to decide whether the deposits of limestone should be exploited at the cost of ecology and environmental considerations. The Supreme Court awarded Rs.10,000/- to the petitioner, payable by the Government towards costs. The court issued more directions regarding pollution prevention in that Hill ranges of Uttar Pradesh.

In another case i.e. **M.C Mehta v. Union of India**<sup>5</sup> which is known as Ganga Water pollution case, the Hon'ble Supreme Court considered the problem of pollution of Ganga water by the affluent discharge from the tanneries. The Supreme Court directed the owners of the tanneries to establish the primary treatment plants so as to prevent the pollution of the Ganga Water which is being used by large number of people of the country. The polluted water affects the health and life of the people. The court observed that the financial capacity of the tanneries should be considered as irrelevant while requiring them to establish

the treatment plants. At last it is resulted in the closure of tanneries, which were polluting holy river Ganga.

In **Mukti Sangarsha Movement v. State of Maharashtra**<sup>6</sup>, sought to prevent reckless exploitation of river running through some parts of Maharashtra which, was adversely affecting its bed due to reckless quarrying of its sand, while **F.K Hussain V. Union of India**<sup>7</sup>, sought to prevent lowering of underground water level on account of its reckless withdrawal by electric pumps. This case was also referred by **Kerala High Court** in this point to be noted that the right to sweet water and right to free air are attributes of the right to life, for, those are basic elements which sustain life itself.

It is pertinent to mention here that we cannot prevent natural hazards, which are endemic to our ecology, geography, climate, social and cultural settings but we can certainly strive to manage crisis more efficiently so that hazards do not degenerate into disasters. Is it necessary for environment management that a lot of human suffering and misery from large number of disasters can be mitigated by taking timely action, planning and preventive measures.

In **L.K. Koolwal V. State**<sup>8</sup>, the **Rajasthan High court observed**; Maintenance of health, preservation of sanitation and environment falls within the purview of Art.-21 of the constitution as it adversely affects the life of the citizen and it

<sup>5</sup>M.C Mehta v, Union of India ,2006(4) SCALE 336

<sup>6</sup>Mukti Sangarsha Movement v. State of Maharashtra, 1990(0) Suppl.SCC 37

<sup>7</sup>F.K Hussain V. Union of India, AIR 1990 Ker 321

<sup>8</sup>L.K. Koolwal V. State, AIR 1988 Raj 2



amounts to slow poisoning and reducing the life of the citizens because of the hazards created, if not checked.

### ***Right to Live in Healthy Environment***

The Indian Constitution is perhaps one of the rare constitutions of the world which reflects the human rights approach to environment protection through various constitutional mandates. In India the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the human rights of every individual to live in pollution free environment with full human dignity. The Constitution of India obligates the “State” as well as “citizens” to “protect” and “Improve” the environment.

In **T.N Godavarman Thirumalpad v. Union of India**<sup>9</sup>, The Hon’ble Supreme Court imposed a fine of Rs.1 crore on the Government of Himachal Pradesh for neglecting the ecology by allowing the companies to paint advertisements on eco-fragile rock faces on both sides of Rohtag-Manali road. The court said that the amount would be a part of Rs. 5 crores corpus to be created from the money to be levied on the delinquent companies. The court directed to use the money for restoring the ecology distributed by the painting of advertisements on the rock faces done by MBD Books, Coca Cola, Pepsi and Birla whites

### ***Conclusion***

There is no-doubt that living in a polluted atmosphere or environment is like dying every moment. The problem of environmental depletion has posed the highest threat to the

very existence of human beings. After all it is an established fact that there exists a vital link between life and environment.

The right to life and personal liberty includes the right to live with decency and dignity. Decency and dignity are non-negotiable facets of human rights. Thus from the above observation of the Hon’ble Supreme Court it is evident that it impliedly treated the right to live in a healthy environment as a part of Article-21 and has to be read with Articles-48-A and 51.A(g) thereby putting obligation on the State as well as citizens to protect and improve it. It is evident from the aforesaid observations that judicial activism has led to the development of a new “environmental human rights jurisprudence” in India. **Justice Holmes** has rightly remarked that “life of the law has not been logic; it has been experience” and the judges of the court are men and their heart also bleeds, when calamities like the Bhopal gas leak incident occur.

The Hon’ble Supreme Court rightly pointed out that law is a regulator of human conduct, but no law can indeed effectively work unless there is an element of acceptance by the people in society. For this, the dissemination of information, which is foundation of a democratic system, is necessary. It is therefore, necessary to keep the citizens informed about their duty as also about the obligations of the State.

True it is, that continuous efforts are being made by the legislature, executive and judiciary to control and prevent environmental depletion in order to preserve it and ecological balance, but these efforts would have been

---

<sup>9</sup>T.N Godavarman Thirumalpad v. Union of India, 2012 (3) SCC 277

better if the public extend their assistance and support. After all the sources of environmental depletion no doubt, the matters relating to environmental problems are brought before the courts by public spirited persons and voluntary social agencies. But the courts have their own limitations. They can at the most issue directions to the executives or order removal of the cause of pollution which is damaging the environment, but the empowerment thereof has to be ensured by the executive authority and much of it depends upon the public willingness to co-operate in this endeavor.

### References

- P. Leelakrishnan, Environmental Law in India, Butterworth's, Delhi (2nd edn.-2002), pp.154-56.
- Satish ch. Shastri, Environmental Law in India, Eastern Book Company, Lucknow, (2<sup>nd</sup> edn.-2005), p.310.
- P.K. Rao, International Environmental Law and Economics, Blackwell, Oxford, (2002), p.32.
- H.O.Agarwal, International Law & Human Right, Page-575, 8<sup>th</sup> edition.p.p.232-34.
- N.Maheswara Swamy, Law relating to Environmental Pollution and Protection, Asia Law House, Hyderabad (2<sup>nd</sup> edn.-2003), p.76.
- Indian council for Environ-legal Action and Others v. Union of India and Others, A.I.R. 1999 S.C.1502.
- Francis Coralie Mullin v. The Administrator, A.I.R. 1981, S.C.746.

## ***Impact of the Internet on Due Process of Law in the 21<sup>st</sup> Century: An Introduction to Cyber Law***



**SANGRAM KESHARI PATTANAİK**

*District & Sessions judge, Nuapada*

The advent of the internet has revolutionized nearly every aspect of human life including the legal system. The rapid advancement of technology in the 21<sup>st</sup> century has brought both opportunities and challenges, particularly concerning the due process of law. As the world becomes increasingly interconnected, traditional legal frameworks struggle to keep pace with the complexities of cyberspace. This essay explores the impact of the internet on due process of law and introduces the field of cyber law, which addresses legal issues arising from online activities. Due process of law is a fundamental principle that ensures fairness, transparency, and protection of individual rights within the legal system. However, the internet has posed unique challenges to the traditional notions of due process. The global nature of cyberspace, the speed of information dissemination, and the anonymity it provides have necessitated the development of new

legal mechanisms to address emerging issues.

One of the key challenges is the jurisdictional aspect of online activities with the internet transcending geographical boundaries, determining the appropriate jurisdiction for legal disputes becomes complex. Additionally, the digital environment presents difficulties in gathering evidence, verifying identities, and ensuring the integrity of information. In modern litigation, electronic evidence plays a significant role. The internet has facilitated the discovery and presentation of electronic evidence, including emails, social media posts, and digital documents. This has streamlined the discovery process and increased the availability of relevant evidence, enhancing the fairness of legal proceedings. Cyber law encompasses legal principles, rules, and regulations that govern online activities. It seeks to address the legal challenges arising from the use of the internet, including privacy, cyber security, intellectual property, electronic transactions, and digital rights. Cyber law serves as a framework to ensure due process in the digital age. Privacy concerns are one of the primary areas of focus in cyber law. The internet facilitates the collection, storage, and dissemination of vast amounts of personal information, raising concerns about data protection and individual privacy rights. Cyber law provides guidelines and regulations to safeguard personal information and prevent its misuse. Cyber security is another crucial aspect of cyberlaw. The internet exposes individuals and organizations to various cyber



threats, such as hacking, data breaches, and cyber crimes. Cyberlaw establishes legal mechanisms to address these threats and holds individuals accountable for their online actions. Intellectual property rights have also been significantly affected by the internet. The ease of digital reproduction and distribution poses challenges for copy right protection. Cyberlaw provides frameworks for protecting intellectual property rights in the digital realm, ensuring that creators are recognized and adequately compensated.

Digital transactions and e-commerce have flourished with the internet's growth. Cyberlaw regulates electronic transactions, ensuring their legality, enforceability and protection against fraud. It establishes guidelines for electronic contracts, consumer protection, and dispute resolution in online transactions. Digital rights encompass the rights and freedoms of individuals in the digital sphere. Cyberlaw recognizes and protects freedom of expression, access to information, and online participation, while balancing them with considerations of public safety and security. The internet has brought tremendous advancements to society, but it has also raised unique legal challenges. The due process of law must evolve to effectively address the complexities of the digital age. Cyberlaw serves as a crucial framework to

ensure fairness, protect individual rights, and maintain order in cyber space. As technology continues to advance, cyberlaw will play an increasingly vital role in shaping legal systems worldwide. It must adapt to new challenges, such as emerging technologies like artificial intelligence, block chain and the Internet of Things. Governments, legal professionals, and policy makers must collaborate to develop comprehensive legal frameworks that strike a balance between individual rights, societal interests, and technological progress.

Efforts are needed to enhance international cooperation and harmonize legal standards to address the global nature of cyber space. Moreover, public awareness and digital literacy initiatives are essential to educate individuals about their rights, responsibilities, and potential legal implications in the digital realm. In conclusion, the impact of the internet on the due process of law in the 21<sup>st</sup> century necessitates the development of cyberlaw. This emerging field of law addresses the legal challenges arising from online activities, ensuring fairness, protection of individual rights, and maintaining order in the digital age. As technology continues to evolve, cyberlaw must adapt and evolve along side it to provide effective legal remedies and maintain the integrity of the justice system in the digital realm.

## Application of Artificial Intelligence in the Judiciary



**PRAVAKAR GANTHIA**

O.S.J.S.

*Registrar (Inspection)-cum-AI Assisting Officer  
High Court of Orissa*

Technology resides in everybody's mind. In the present digitally empowered era, application of technology for any organization is essential. There is ample scope in the judiciary for harnessing technology for the betterment of the justice dispensation system. Application of technology in the judiciary has already started with the advent of the e-courts project, which is working under the aegis of the e-Committee of the Hon'ble Supreme Court of India. The e- courts project is now in phase-III.

Artificial Intelligence (in short AI) is a machine learning system having the capability of analyzing data and improving the efficiency of giving answers to questions like a human being the use of AI technology in cars, mobile devices, weather prediction, image recognition

etc. is widely used. Self-driving cars provide examples of AI technology.

Artificial Intelligence has made technological strides in the recent past. Different countries have applied AI in their judiciary. COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) in the United States of America (USA), Robot Judge for adjudicating small claims in Estonia, supporting sentencing decisions in Malaysia and Prometea in Argentina and Columbia for identifying urgent cases within minutes have been introduced. Similarly, transcribing court hearings in time has been introduced in Singapore. China, Mexico and Russia have extended AI based legal advice system.

AI has been introduced in the Hon'ble Supreme Court of India in the translation of judicial records. SUVAS (Supreme Court Vidhik Anuvaad Software) is an AI system helping in the translation of orders / judgments in vernacular languages. Similarly, SUPACE (Supreme Court Portal for Assistance in Court Efficiency) has also been introduced for understanding the judicial process and assisting the court in improving efficiency and reducing pendency being automated with the help of the AI system.

AI is manmade. It learns various inputs given by the users in course of time just like a child learns various things in the process of growing up. It also studies users, the way they behave the system etc. AI technology gradually provides more accuracy day by day. One of

the best examples of AI technology in the judiciary is the translation of various judgments/orders from English to vernacular languages. In the process of translation, a PDF (Portable Document Format) file is uploaded to the system and AI software translates the document within a few seconds. The major work of translation is completed by the AI and the rest is being done by human validation. The accuracy will increase with the passage of time.

Sometimes, machines do better than human minds. AI has enormous potential to assist judicial processes. Therefore, AI technology can be fruitfully deployed to yield better results in day to day judicial works.

1. Advertently or inadvertently some years old cases do not get as much attention as they require. One of the reasons is that it may not be humanly possible to track each and every record where pendency of such years old cases is huge. AI can be applied to better manage these cases so that each and every year old records cannot fall out of sight. This will ultimately reduce pendency of year old cases.
2. Adjournments of cases can be regularized by the application of AI. Some records are lingering for a pretty long period. AI can identify the cases having more/unnecessary adjournments. Posting of a case for a number of times in the same stage without any results can thus be checked with the assistance of AI.
3. AI can also be helpful in sentencing. It is true that a machine cannot judge better than a

human judge. There are circumstances in which it may not be able to differentiate between mitigating and aggravating circumstances, because each case is distinct from the other and no facts of two cases are similar. It is a human judge who studies the age factor, family background, criminal antecedents, mitigating and aggravating circumstances, future of the convicts etc, while passing a sentence. Sentencing is not the same in all cases even in the same offence. Still AI can help the judge in putting all information before him/her let them to have a better picture of the case before passing a sentence.

4. AI can also be helpful in the adjudication of MACT cases while awarding compensation in the motor accident cases. Different parameters as to the quantum of compensation are taken into account at the time of awarding compensation in MACT cases. In these, AI can be help in to arriving at an accurate calculation without much mental exercise so far as the compensation part is concerned.
5. In most of the cases one official witness such as an I.O., a doctor, a chemical examiner etc is the witness. Whenever that witness is summoned to depose courts normally post these cases in a single day for convenience. AI can be helpful in this context in identifying the witness wise cases so that it would be easier for the court to summon the witness/es in a day or two so that his/her evidence can be recorded in all



those cases. It will be convenient to both the court as well as the witness/es. The witness is not required to come to the court again and again to depose. The witness can also be examined in a number of cases through video conferencing. Courts will have better output by hearing these cases at a time.

To sum up, participation of the stakeholders in the justice dispensation system and providing access to it are the two hallmarks of the judicial institutions.

Technology is accelerating both of them. AI being the latest technological development will be an assisting tool for decision-making. It will not only improve the quality of decisions but also be productive in the long run. It will roll out an informative platform which will be instrumental in rendering qualitative decisions. Further it may promote decisional uniformity in the judiciary. It cannot be allowed to replace a human judge rather it will only aid the process of decision-making.

## ***Marital Rape in India: A repugnant form of machismo which needs to be criminalized***



**HARA PRASAD PATTNAIK**

*Additional District Judge, Salipur*

### ***Introduction:***

As per our tradition, marriage is held to be sacrosanct and it is almost blasphemous and sacrilegious to use the term 'rape' within the sphere of a marital relation. To put it differently, marital rape is more like an oxymoron when juxtaposed with the prevailing social values and mores. However, this is precisely what a whopping number of women have had to deal with in our country, irrespective of region, caste or creed, with disturbing regularity. It is almost as if it is ingrained in our psyche that marriage gives a license to a husband to have sex with his wife, anywhere and anytime, consent or lack of it on the part of the wife be damned. Women, therefore, end up being perceived as baby-producing machines where their right to bodily autonomy gets blatantly compromised. This is precisely why despite slew of amendments in penal laws, multiple law commissions

reports and new legislations, one of the most humiliating and debilitating acts against women has not been recognized, de jure, as a crime. It is not only dichotomous but also ironical that the present law prevailing in our country jealously protects woman's right to life and personal liberty, but not her body or bodily integrity, within her marriage.

### ***Legal Position in India***

Section 375 of Indian Penal Code (hereinafter referred as IPC) defines rape. To put it pithily, sexual assault involving non consensual intercourse with a woman amounts to rape. However, Exception 2 to Section 375 mandates that sexual assault by a person with his own wife, the wife not being under 15 years of age, is not rape. In other words, the Code creates a distinction between sexual assault committed upon wife below 15 years and above 15 years, with the former coming under the definition of rape. It would be condign at this juncture to mention here that the Hon'ble Supreme Court of India in **Independent Thought Vrs Union of India** decided on 11<sup>th</sup> October, 2017 was confronted with a question as to whether non consensual sexual intercourse between a man and his wife, the girl being aged between 15 and 18 years of age is rape or not and it was held that sexual intercourse with a girl below 18 years of age is rape irrespective of her marital status. It was further held that Exception 2 to Section 375 of IPC is to be read down as follows:

*“Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape”.*

In other words, an artificial distinction was created between sexual assault upon wife below 18 years and above 18 years. But the questions that loom large here is that can there be disparate yardsticks to define rape - rape of an unmarried woman and that of a married woman and is it acceptable to discriminate a woman just because she is married to the man who raped her ?

As per current law, a wife is presumed to have delivered perpetual consent to have sex with her husband after entering into marital relations. Such kind of archaic law found its resonance in the British Colonial System as women were treated as chattel of their husbands and identity of a married woman used to get merged with her husband's identity under the 'Doctrine of Coverture' which undermines a woman's inferior legal status in marriage.

Similarly, section 376-B was added by Criminal Law (Amendment) Act, 2013 which came into effect from dtd. 03.02.2013. It penalizes husband for sexual intercourse with wife living separately, whether under a decree of separation or otherwise, without her consent. This section reinforces the belief that when husband and wife live together, it raises a presumption that the wife has consented to sexual intercourse by the husband. *Uno flatu*, when wife is living separately from the husband, such consent can not be readily inferred.

Non criminalization of marital rape runs counter to the principles enshrined in Article

14 and 21 of Indian Constitution. Article 14 guarantees equal protection of rights to all its citizens whereas Article 21 includes within its fold right to live with dignity. It can not be gainsaid that exclusion of married women of certain age from the definition of rape is not based on any intelligible differentia having rational nexus with the object sought to be achieved. Similarly in light of expansive and ever expanding jurisprudence of Article 21, non recognition of marital rape as an offence is antithetical to 'right to live with dignity'.

It would be condign to mention here that a committee was constituted under the aegis of Hon'ble Justice J.S.Verma (Retd.) in the aftermath of horrific Nibhaya gangrape case in the year 2012 to make criminal law more stringent and effective to deal with ever burgeoning cases of heinous sexual offences against women. The committee in its report suggested for deletion of Exception 2 of Section 375 of IPC and also advocated that a marital relationship or any other similar relationship is not a valid defence for the accused, or relevant while determining whether consent existed or not and that it was not be considered a mitigating factor for the purpose of sentencing. However such an avante garde and progressive suggestion did not find favour with the law makers, Parliamentary Standing Committee to be specific, on the ground that entire family system will be jeopardized and that sufficient remedies already exist to deal with such kinds of situations through section 498-A of the IPC and Protection of Women from Domestic Violence Act, 2005.



## Arguments against criminalization of Marital rape

The following is an account of some of the common arguments given against the proposal of criminalizing marital rape as an offence :

- (a) ***Marital rape does not deserve legislative attention as it is not common:*** Nothing can be farther from the truth as recent study reveals that about 15 percent of all married women have encountered marital rape in some form or other. We all love to live in a bubble but this ostrich like mentality is tantamount to legitimizing a dehumanizing act against a woman perpetrated by none other than a person who has presumably taken vows to protect her from all ills. Marital rape is a sobering reality of our society and we can not simply brush it under the carpet by denying its existence.
- (b) ***Consent to have sex is implied in marriage:*** Just like much loved fictional character James Bond who has got 'license to kill', it seems that a husband has got 'license to have sex' after marrying a woman. Is it too much to expect that a rational human being understands this basic rule that expression of love through sexual intimacy is not akin to forced sex
- (c) ***Marital rape would ruin the fabric of our culture and destabilize the sanctity of the institution of marriage:*** Such an argument is specious as a marriage in which a husband rapes his own wife is already destroyed. By any stretch of imagination it can not be stated that a

husband exercising sexual superiority, by getting it on demand and through any means possible including force, is part of hallowed institution of marriage. Attempt to hold together marriages may be one of the objectives of matrimonial laws. But it cannot override the fundamental objective of law in general and that of criminal law in particular, which is to protect and preserve the bodily integrity of a human being. The law should not encourage forced cohabitation and should not definitely protect a husband bent upon raping his own wife. A glaring fallacy in this approach would be that the harms caused to women will far outweigh the perceived harms caused to society because of a broken marriage.

- (d) ***Marital rape might become a tool to harass hapless husbands:*** Such an argument does not hold much water as there is hardly any law in India which is not subject to misuse. But scrapping the law altogether or not criminalizing an act for the fear of its misuse is akin to throwing the baby with the bathwater. As per section 57 of Cr.PC and Article 22 of Indian Constitution, a person arrested without a warrant shall not be detained by police officer in custody for more than 24 hours. But experience shows that such a law is being routinely flouted across the country. The panacea for such an ill is not scrapping the law altogether, but better and stricter supervision. Indian Judiciary is robust enough to weed out false and frivolous cases that may be filed by unscrupulous

wives if marital rape is recognized as an offence. Fear of frivolous litigation should not be a stumbling block in protecting hapless women caught in abusive traps where they are denigrated to the status of sex slaves.

### **Conclusion:**

The Hon'ble High Court of Gujarat in **Nimeshbhai Bharatbhai Desai Vrs State of Gujarat** decided on dtd. 02.04.2018 dealt with the issue of marital rape in a detailed manner and batted for its recognition as a serious offence. Similarly Hon'ble Supreme Court of India in Justice **K.S Puttuswamy Vrs Union of India** decided on dtd. 26.09.2018 dealt with, inter alia, the issue of right of privacy and held that right of privacy includes an ability to make intimate

decisions primarily consisting of one's sexual or procreative nature. The aforementioned *avante garde* judgments notwithstanding, Legislature is still groping in the dark over the issue of recognition of forced sex with one's wife, irrespective of her age, as an offence. There is no cavil over the fact that marriage is sacrosanct and thrives on mutual respect, love and trust. However to put misplaced importance over values associated with marital ties above human rights and right to bodily integrity of a woman is downright atrocious and fundamentally flawed. India is one of the 35 countries which are yet to criminalize marital rape. It is about time we ended this state sponsored sexual assault upon countless hapless married women and usher in an era of substantive equality in true sense of the term.

## ***Euthanasia and the Advance Medical Directive: An Overview***



**Dr. KIRAN KUMAR PRADHAN**

*Registrar, OREAT.*

### ***Introduction***

Euthanasia or mercy killing means termination of a life by choice. It is a practice whereby the life of a person who is terminally ill, or in a vegetative stage, or where the pain or agony of a person is unbearable, is brought to an end. Euthanasia can be of two types: active and passive. Active euthanasia is killing a person by aggressive means such as injecting a lethal drug. Passive euthanasia is allowing a patient to die by not providing or withdrawing life support systems.

Life is precious for every individual and normally an individual does not desire death. In the words of Tennyson, “No life that breathes with human breath has ever truly longed for death.” However, there comes moments of physical or mental inability, agony or suffering where death becomes preferable to life. The question that comes up is should a person of incurable passivity be forced to live.

When a person is terminally ill and in unable to lead a normal dignified life, can he choose to die? What procedure is to be followed? The answers are not simple as they involve both ethical and legal issues. As there is no legislation on euthanasia, the Hon’ble Apex Court of our country in several decisions and more recently by a five judge bench in January 2023 has tried to find a way out.

### ***Types of Euthanasia***

Euthanasia can be classified in different ways:

1. Active euthanasia and passive euthanasia: In active euthanasia, a third party assists death by injecting a lethal substance. In passive euthanasia, the treatment that is essential for maintaining life is withdrawn.
2. ***Voluntary, involuntary and non-voluntary euthanasia:*** In voluntary euthanasia, the patient’s consent is taken; in involuntary euthanasia, the consent is given by another person on behalf of the patient who is in a state of coma or in a vegetative state; and in non-voluntary euthanasia, death is caused against the will of the patient. Such an act can be called a murder.

### ***Moral, Social and Religious Dimensions:***

The issue of ending a life unnaturally encompasses moral, social, family set-up and religious dimensions. Hindus and Buddhists believe in the law of Karma and rebirth, whereby



every individual has to undergo the suffering ordained for him, and to complete his cycle of birth, death and rebirth. However, some accept *prayopavasa* or giving up food and dying in a non-violent manner. Jains believe that death is the gateway to a new life. They have a tradition called '*santhara*', whereby very old and ill people stop eating in order to die. Christians believe that life is given by God and man is built in his image; hence unnatural death is unethical.

Doctors are also confronted with ethical issues. Taking the life of a terminally ill patient is contrary to the 'Hippocratic Oath' they take to save lives.

### **Article 21 of The Constitution**

Article 21 of the Constitution has been interpreted by the Hon'ble Supreme Court of India to include the right to live with dignity. The point raised here is whether this right includes the 'right to die with dignity'.

**P. Rathinam v. Union of India & Another [(1994) 3 SCC 394]** involved a challenge to the constitutional validity of section 309 of the Indian Penal Code. The Hon'ble Supreme Court held that every Article of the constitution guaranteeing a right has a positive and a negative effect. The positive effect of Article 21 is that it guarantees a right to live with dignity and the negative effect is the right to die or the right not to live a forced life. Therefore, it added that Section 309 of the Indian Penal Code was *ultra vires* the Constitution of India.

In **Gian Kaur v. State of Punjab [(1996) 2 SCC 648]** the question before the Constitution Bench was whether Section 306 of the Indian Penal Code which provides punishment for

abetment of suicide was unconstitutional, as the Hon'ble Supreme Court had held in Rathinam's case that Sec.309 Indian Penal Code, punishment for suicide was unconstitutional. The Constitution bench did not agree with Rathinam's decision that, if a person has a right to live, he also has a right not to live. It ruled that:

"Right to life' is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of "right to life". With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to "freedom of speech" etc. to provide a comparable basis to hold that the "right to life" also includes the "right to die". With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam, qua Article 21".

The Constitution Bench of the Hon'ble Apex Court in **Gian Kaur vs. State of Punjab [1996(2) SCC 648]** held that both euthanasia and assisted suicide are not lawful in India. That decision overruled the earlier two judge bench decision of the Hon'ble Supreme Court in **P. Rathinam vs. Union of India [1994(3) SCC 394]**. The Hon'ble Court held that the right to life under Article 21 of the Constitution does not include the right to die. In Gian Kaur's case (*supra*) the Hon'ble Apex Court observed that euthanasia could be made lawful only by legislation.

In **Aruna Ramachandra Shanbaug v. Union of India & Others [(2011) 4 SCC 454]**,

the Hon'ble Apex Court had to again consider the legality of euthanasia. Aruna Shaunbaug, a nurse, was the victim of strangulation and sexual assault, which led to her vegetative state of existence. She was in coma, though not brain-dead, for more than 35 years. The Court appointed a team of three very distinguished doctors to examine the petitioner thoroughly and submit a report on her mental and physical condition. The Hon'ble Court did not accept the plea for active euthanasia but laid down broad guidelines and procedures for passive euthanasia. The two conditions specified by the Hon'ble Apex Court were: (i) For the brain dead, the ventilator can be switched off and (ii) For those in a Persistent Vegetative State (PVS) the feed can be tapered out and pain-managing palliatives may be added according to laid down international specifications.

Following the Aruna Shaunbaug judgment, the issue of euthanasia was discussed by the Law Commission of India, which in its 241st Report titled "Passive Euthanasia- a Relook" stressed humanitarian outlook in such matters. It proposed a legislation on euthanasia and prepared a draft Bill titled, "The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill."

### ***Right to Die with dignity and Passive Euthanasia***

The Hon'ble Supreme Court of India in **Common Cause (A Registered Society) vs. Union of India & Anr. [(2018) 5 SCC 1]** recognized the right to die with dignity as a fundamental right, a component of the 'right to life' under Article 21 of the Constitution. The

majority view was on the inclusion of 'advanced medical directives' which describes a person's medical choices and names the people who will make those choices. Hon'ble Justice Dipak Misra preferred to use the words 'advanced medical directive' instead of 'Living will'. The following guidelines were issued:

- a) Only an individual, above 18 years of age, of sound mind, able to speak and capable of understanding the aim and implications of 'advanced medical directives' may carry out one such directive. It must be carried out voluntarily and free from coercion, undue influence or constraint. It must be in writing and explicitly state how and when medical care may be stopped or discontinued. It should state that the executor of the 'advance medical directive' is always free to withdraw the instructions.
- b) It should include the name of the care giver or immediate family member who will be permitted to consent to, decline or discontinue medical treatment in accordance with the advanced medical directive. The most recently signed advanced medical directive will be taken into account if there are multiple valid advanced medical directives.
- c) The Judicial Magistrate of First Class, who has jurisdiction over the matter must verify that the executor signed the advanced medical directive willingly and without being coerced and in the presence of two attesting witnesses. A preliminary opinion must be provided by a medical board that has been established by the

hospital and is composed of at least three medical practitioners with a minimum of 20 years' expertise in the health area. After visiting the patient, the board will determine whether to recognize the advanced medical directive or not.

- d) A second medical board that has been established by the District Collector will review the hospital medical board's certification. Following which the Judicial Magistrate of First Class will be informed of the board's decision before visiting the individual to authorize his decision.
- e) The Judicial Magistrate of First Class then had to visit the patient and after examining all aspects had to decide on whether the euthanasia directive could be implemented.

However, people desiring to register 'living wills' and removal of life support systems faced problems due to the cumbersome process, which involved family members, doctors, judicial magistrates, the collector and two medical boards. There was no time limit for medical boards to give their opinions.

### ***Recent Guidelines of Hon'ble Supreme Court of India***

A five-judge bench of the Hon'ble Supreme Court of India, headed by Hon'ble Justice K.M. Joseph and including Hon'ble Justices Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C. T. Ravi Kumar [2023 SCC OnLine SC 99] on 24.01.2023, refused to review the 2018 judgment on passive euthanasia. However, the Hon'ble Apex Court agreed to relax the

guidelines for 'living wills' an advance medical directive to make the procedure for passive euthanasia more workable - (Indian Express, January 27, 2023).

In the final order the Hon'ble Court simplified certain directions given by an earlier Constitution Bench, on how to implement advance medical directives - (The Hindu, February 3, 2023).

The Hon'ble Apex Court in the order authored by Hon'ble Justice K. M. Joseph stated that the Advance Medical Directive (AMD) needs to be signed by the executor/patient and independent witnesses in the presence of a Notary or Gazetted Officer, who would record his/her satisfaction that the AMD was voluntary and executed without coercion. The rule requiring a 'living will' to be made in the presence of two attesting witnesses and countersigned by the jurisdictional JMFC, has been modified and the living will can be attested by Notary or a Gazette rank officer. The court felt that it was not necessary to involve the JMFC in preparation of the living will.

Copies of the AMD would be handed over to the close relatives, the family physician and a competent officer of the Municipal Corporation or Panchayat concerned. The AMD, if the executor chooses, may be part of the digital health records.

At the time of its implementation, when the executor is terminally ill with no hope of cure or recovery after a prolonged treatment, the treating doctor at the hospital is required to ascertain the genuineness of the AMD, compare



it with the copy in the digital health records; consult with the relatives about the option that withdrawal of care would be the “best choice”.

The Court retained the requirement of setting up two medical boards, one primary and the other review, to examine the medical condition of the patient. The primary medical board comprising the treating doctor and two specialists should verify the condition of the patient within 48 hours. Then a secondary medical board would be constituted with the Chief Medical Officer of the district nominating the members. This board would again re-ascertain the patient's condition within 48 hours and give its findings whether to withdraw the medical care or life support.

The hospital would then convey the findings of the primary and secondary boards along with the consent of the relatives to the judicial magistrate before giving effect to the AMD. Earlier the consent of the judicial magistrate was required for conducting passive euthanasia but, according to the present

guidelines, the magistrate needs only to be informed.

## **Conclusion**

Euthanasia or the right to die with dignity has been accepted as a part of the right to life enshrined in Article 21 of the Constitution. In 2018 the Hon'ble Supreme Court had laid certain guidelines and procedure for preparation of a living will and conducting passive euthanasia. However, because of the cumbersome process, passive euthanasia was not workable. Early this year, a five judge bench of the Hon'ble Apex Court, without reviewing the earlier decision of 2018, modified the procedure to make passive euthanasia workable.

However, there is a need for legislation on “passive euthanasia”. The legislature which, according to the Hon'ble Supreme Court of India, is endowed with ‘skills and sources of knowledge’ should take early steps for the enactment of legislation for terminally ill patients wanting to stop treatment.

## ବୋଉ ନା' ରମା



### ବିଶ୍ୱେଶ୍ୱର ବିଶ୍ୱପ୍ରକାଶ ରାୟ

ମୁଖ୍ୟ ବିଚାର ବିଭାଗୀୟ ମାଜିଷ୍ଟ୍ରେଟ୍, ବୌଦ୍ଧ

ବିଶ୍ୱ ମାତୃଦିବସ ପ୍ରତ୍ୟେକ ବର୍ଷ ପରି ଏ ବର୍ଷ ମଧ୍ୟ କିଛି ଦିନ ତଳେ ପାଳିତ ହୋଇଛି । ମାତ୍ର ଏଇ ଦିବସଟି ପାଳନ କରିଦେଲେ, କଣ ପ୍ରକୃତରେ ମା ପ୍ରତି କର୍ତ୍ତବ୍ୟ କରିଦିଆଗଲା ବୋଲି ଭାବିବା । ଏହା ସେ ପର୍ଯ୍ୟନ୍ତ ସମ୍ଭବ ନୁହେଁ, ଯେପର୍ଯ୍ୟନ୍ତ, ଆମ ଭିତରେ ମୂଲ୍ୟବୋଧ ବୁଝିବା ଶକ୍ତି ଆସିନାହିଁ ।

ବାସ୍ତବିକ ଚିତ୍ର କୁ ନେଇ କାବ୍ଧନିକ ଲେଖା ଲେଖୁଛି ଓ ପ୍ରଶ୍ନ ଆସେ **ଭୁଲ କାହାର “ବୋଉ କଣ ରମା”** ।

ସେଦିନ ସକାଳ ୯ ବେଳେ, ବିଶ୍ୱାଳ ବାବୁଙ୍କ ଚା'ଟା କାହିଁକି ପିତା ଲାଗିଲା । ପଚାରିବାରୁ ଧର୍ମପତ୍ନୀ କହିଲେ, ଘରକଥା ବୁଝୁଥିଲେ ସିନା ଜାଣିବ, ଘର କାମବାଳି, ତା' ବୋଉ ଦେହ କରାପ ଅଛି କହି, ୧୫ ଦିନ ଛୁଟିରେ ଯାଇଛି, ଆଉ ମୁନାର ପାଠପଢ଼ା ଅନଲାଇନରେ ଚାଲିଛି, ଏକୁଟିଆ ଲୋକ, କେତେ କଥା ବୁଝିବି । ଚାକରାଣୀର ବୋଉ ଦେହ କଥା ଶୁଣି କାହିଁ କେଜାଣି ବୋଉ କଥା ମନେପଡ଼ିଲା ।

ସଙ୍ଗେସଙ୍ଗେ ବୋଉ କୁ ଫୋନ କରାଗଲା ଏବଂ ସେପଟୁ ସ୍ନେହବୋଲା ପ୍ରଶ୍ନ ଆସିଲା, “ତୋ ଦେହ ପା” ଭଲ ଅଛିତ ରେ, ତୋତେ ବହୁଦିନ ହେବ ଦେଖି ନାହିଁ,

ଚିକେ ଛୁଆକୁ ଧରି ଆସନ୍ତୁନି । ମୋ କଥା ଛାଡ଼େ ତୋ ହେବ କେମିତି ଅଛି ବୋଲି ପଚାରିଲେ ବିଶ୍ୱାଳ ବାବୁ । ସେପଟୁ ବୋଉର କ୍ଷୀଣ ସ୍ୱରରେ କାଶର ଶବ୍ଦ ଶୁଭିଲା । ମୁଁ ଜାଣିଛି ତୁ ତୋ ଦେହର ଯତ୍ନ ନେଉନୁ, ୫ ତାରିଖରେ ଯିବି ତୋତେ ଆଣି ଡାକ୍ତରକୁ ଦେଖେଇବି ଆଉ କୋଭିଡ଼ ଟୀକା ବି ଦେବି ।

ସେଦିନ ଗାଁ କୁ ଗଲାବେଳେ ବିଶ୍ୱାଳ ବାବୁ ପିଲାପିଲି ସହ ଗୋଟେ ସାଙ୍ଗକୁ ଡାକି ନେଇଥିଲେ । ଯଦି ବା ଉଦ୍ଦେଶ୍ୟ ସାଙ୍ଗକୁ ଘର ବୁଲେଇବା ପାଇଁ ନଥିଲା, କାରଣ ଦୁଇଜଣ ଥିଲେ ୪୦୦ କିମି ଗାଡ଼ି ଭାଗ କରିବା ଚଳେଇକି ସହଜରେ ଆସିହେବ । ଘର ପାଇଁ ମିଠା କିଣିଲା ବେଳେ, ଧର୍ମପତ୍ନୀଙ୍କ ତାରିଦ, ଘରେ ବାପା, ବୋଉ, ଭାଇ ଏବଂ ତାଙ୍କ ପିଲା ଛୁଆ ମିଶେଇ ୯ ଜଣ ଲୋକ, ତେଣୁ ଯଦି ମିଠା ଆଣୁଛ ଦଶଟି ଆଣିବ କାରଣ ପଇସା ଅଯଥା ଖର୍ଚ୍ଚ ହେବ ଆଉ ମିଠା ମଧ୍ୟ ନଷ୍ଟ ହେବ ।

ପୁଅ ଆସିବ ବୋଲି ଅତି ଶ୍ରଦ୍ଧା ରେ ପାଳିଥିବା କୁକୁଡ଼ାକୁ ମାରି ବାପା ଝୋଳ କରିଥିଲେ କାରଣ ବିନା ଆମିଷରେ ନାତି ଟୋକା ମୁନାକୁ ଖାଦ୍ୟ ରୁଚେନି । ଖରା ବେଳେ ଖାଇ ଜଳଦୀ ବାହାରିବା ପାଇଁ ବୋଉ କୁ କହିଲେ, ସେତେବେଳକୁ ବୋଉ ଗୋବର ନିପୁ ଥିଲା, କାରଣ ଘରେ ଆମିଷ ହେଲେ, ଗାଁ ଗହଳିରେ ଏଇ ଟା ନାତି କଥା ।

ବାପାଙ୍କ ମନ କିନ୍ତୁ ଭଲ ନଥିଲା କାରଣ ତାଙ୍କର କହିବା କଥା ନିଜ ଏନ୍ତୁଡ଼ି ଶାଳରେ ଛପର ହୋଇନି ବୋଲି ବର୍ଷା ଦିନେ ପାଣି ଗଲୁଛି ତାକୁ ଚିକେ ବାଗେଇ ଦେଇନଥାନ୍ତା ପୁଅ । ଏତେ ବଡ଼ ଚାକିରୀ କରିଛି, ଘରେ ଆଉ ଗୋଟେ ଭାଇ, ପୁଣି ତାର ତିନି ତିନି ଟା ବଢ଼ିଲା ଝିଅ, ଆଉ ସାନ ଟି ପାଠ ପଢ଼ିନି ।

ଭାଇ ଏତେ ଦିନ ପରେ ଆସିଛି ବୋଲି ସାନ ଭାଇ ବାବୁଲା ଅତି ଖୁସିରେ ନିଜେ ଚାଷ କରୁଥିବା ବିଲରୁ ଦେଶୀ ବାଇଗଣ, ବିଲାତି, କଖାରୁ ଓ ଯାବତୀୟ ପନିପରିବା ଗୋଟେ

ଅଖାରେ ଭର୍ତ୍ତିକରି ଭାଇ ଯାଇଥିବା ଗାଡ଼ି ଡିକିରେ ପୁରେଇ ଦେଇଥିଲା । ଯାହାକୁ ସେ ବଜାରରେ ବିକିଥିଲେ ପାଖାପାଖି ୩୦୦୦/- ଟଙ୍କା ପାଇଥାନ୍ତା । ହେଲେ କିଏ ବା ବୁଝିବ ଏଇ ଭକ୍ତି ଓ ସ୍ନେହ । ଘରୁ ବାହାରିଲା ବେଳେ ତିନିଟି ଝିଆରି ଯଦିଓ ଭଲ ପୋଷାକ ପିନ୍ଧିନଥିଲେ ଜାଣି ମଧ୍ୟ, “କେମିତି ପଢୁଛରେ ପିଲେ” କହିଦେଇ ଦାୟିତ୍ୱ ସରିଗଲା ବୋଲି ଭାବି, ଧର୍ମପତ୍ନୀ ଆଡେ ଟିକେ ଅନେଇଲେ ବୋଧେହୁଏ ପିଲାମାନଙ୍କୁ କିଛି ଟଙ୍କା ଦେବା ପାଇଁ ଚାହୁଁଥିଲେ । ଭାନିଟି ବ୍ୟାଗକୁ ଯେତେ ଖେଳେଇଲେ ବି ୫୦୦/-ଟଙ୍କା ତଳକୁ କିଛି ମିଳିଲାନି ଆଉ ଖୁରୁରା ନାହିଁ ବୋଲି ସ୍ତ୍ରୀ ଠାରିଦେଲେ । ଯୋଗକୁ ମିଠା କିଣିଲା ବେଳେ ୮୫/- ଟଙ୍କା ବଳିଥିଲା, ଆଉ ସେଇ ଟଙ୍କାକୁ ଏକ ବଡ଼ ପାଟିରେ ନିଅ ରେ ପିଲେ ଖାତା ବନ୍ଦି କିଣି ଭଲ ପାଠ ପଢିବ ଆଉ ବାକି ବଳକା ପଇସାରେ ଚକଲେଟ ଖାଇବ ।

ବାପା ଗାଡ଼ି ପାଖରେ ଠିଆ ହୋଇ କହିଲେ, କି ପାଞ୍ଚ ହଜାର ଟଙ୍କା ଦେଉ ଗଲୁନି, ଘର ଟା ଛପର କରିଥାନ୍ତି, ଆଉ ମୋ ଦେହଟା ଦୁର୍ବଳ ହୋଇ ଥିବାରୁ ହରଲିକୁ ଓ ଭିଟାମିନ ଖାଇଥାନ୍ତି । ସଙ୍ଗେ ସଙ୍ଗେ ଧର୍ମପତ୍ନୀ କହିଦେଲେ, “ଆମେ ତ ବାପା ଟାଉନ ରେ ରହୁଛୁ, ବହୁତ ଖର୍ଚ୍ଚ, ଆଉ ବାବୁଲାଙ୍କୁ (ଦିଅର) କହିଛି ଘର ପଛପେଟ ପୁରୁଣା ଟାକୁଣ୍ଡା ଗଛଟାକୁ ବିକିଦେଇ ଆପଣ ଚାହୁଁଥିବା କାମ କରିନେବେ” । ବାପା ଭାବୁ ଥିଲେ ବୋହୁ କିବା ଜାଣିବ ତା ସ୍ୱାମୀ ଛୋଟ ବେଳେ ଅତି ଆଦରରେ ସେ ଗଛଟିକୁ ଲଗାଇଥିଲା, ଆଉ ଗାଈ ଖାଇ ନଷ୍ଟ କରିଦେବ ବୋଲି, ଦିନବେଳା ସେଇ ଗଛ ତଳେ ବସି ପାଠ ପଢୁଥିଲା ।

ଏହାରି ମଧ୍ୟରେ ଗାଡ଼ି ପାଖାପାଖି ସହରକୁ ଛୁଇଁବାକୁ ହଉଥିଲା, ହଠାତ୍ ନାତି ଟୋକା ମୁନା ଛିଙ୍କି ଦେବାରୁ ତା ନାକରୁ ସିଙ୍ଗାଣି ବାହାରି ଆସିଲା, ଯାହାକୁ ବୋଉ ତାର ଲୁଗା କାନିରେ ସଙ୍ଗେ ସଙ୍ଗେ ପୋଛି ଦେଲା । ସାଙ୍ଗରେ ନେଇଥିବା ସାଙ୍ଗ ଗାଡ଼ି ଭିତରେ ଗୋବର ଗନ୍ଧ ହେଉଥିବା କହିବାରୁ ଖୋଜା ଖୋଜି କଲେ ଆଉ ଦେଖିଲେ ବୋଉ ଲୁଗାରେ ଗୋବର । ସଙ୍ଗେ ସଙ୍ଗେ ଧର୍ମପତ୍ନୀ ଚିହ୍ନି ଉଠି କହିଲେ

“ବୋଉ ତମେ ବଦଳିବନି, ଯେଉଁ ମଫ କୁ ସେଇ ମଫ” । ତମ ପୁଅ ବଡ଼ ଚାକିରୀ କରିଛନ୍ତି ସେ ହାକିମ । ତାଙ୍କର ମାନ ସମ୍ମାନ କଥା ଟିକେ ହେଲେ ଭାବ । ବୋଉ ଗୋଟେ ଦୋଷାଟିଏ ପରି ଅତି ସରଳ ଭାବାରେ କହିଲା “ମୁଁ ଜାଣି ପାରିଲିନିରେ ବାପା,” ତୁ ଏତେ ତରବର କରିଲୁ ଯେ, ମୁଁ ଲୁଗାଟିକେ ପାଲଟି ପାରିଲିନି ଆଉ ଗୋବରଲିପା ଲୁଗା ପିନ୍ଧି ପଳେଇ ଆସିଲି । ବୋଉର ସେ ଛିଣ୍ଡା ଲୁଗା ବିଶ୍ୱାଳ ବାବୁଙ୍କୁ ଛୋଟବେଳେ କେତେ ଯେ ଆନନ୍ଦ ଦେଇଛି, ତାହା ଏବେକାର ବୋହୁ କେମିତି ବୁଝିବେ । ଇତି ମଧ୍ୟରେ ଗାଡ଼ି ସରକାରୀ କ୍ୱାର୍ଟର ମଧ୍ୟରେ ପହଞ୍ଚିଲା ।

ଦୁଇ ମହଲା ଘର, ଉପରେ ବିଶ୍ୱାଳ ବାବୁ ଓ ତାଙ୍କ ପରିବାର ରୁହନ୍ତି ଆଉ ତଳେ ଚାକରାଣୀ ରମା । ସିତି ଚଢ଼ି ଉପରକୁ ଆସିଲା ବେଳେ ବିଶ୍ୱାଳବାବୁଙ୍କୁ ପତ୍ନୀ କହିଗଲେ କି ବୋଉକୁ ରମା ଘରେ ରହିବାକୁ କହିବ ରମା ଆସିଲେ, ସେ ଘର Sanitized କରିଦେବା । କେମିତି ବା କହିବେ ବୋଉକୁ ଭାବୁଭାବୁ କହିଲେ, ବୋଉ ତୋର ଆଶୁ ବେମାର, ସିତି ଚଢ଼ିଲେ କଷ୍ଟ, ତେଣୁ ତୁ ମୋର ତଳ ଘରେ ରହିଯିବୁ । ମା’ ର ଆନନ୍ଦ ଯେ ଖଟପଲଙ୍କ ରେ ନଥାଏ କି ଭଲ ଖାଇବା ଓ ପିନ୍ଧିବାରେ ନଥାଏ, ଯଦି ଥାଏ, ନିଜ ଜନ୍ମିତ ପିଲାଠାର ପାଖରେ ରହି ସ୍ନେହବୋଲା ଭଲ ପାଇବା ଯାହାକୁ ଆଶା କରି ତାର ସମସ୍ତ ଦୁଃଖକୁ ଭୁଲି ଆଗକୁ ବଞ୍ଚିବାକୁ ଇଚ୍ଛା କରେ ।

ଏଇଠୁ ଆରମ୍ଭ ହୁଏ ଅତ୍ୟାଚାର, ରମାର ଯାବତୀୟ କାମ ବୋଉ କୁ ଫୁସୁଲା ଫୁସୁଲି କରି କାମ ହାସଲ କରି ନେବାରେ ବିଶ୍ୱାଳ ବାବୁଙ୍କ ଧର୍ମପତ୍ନୀ ମାହିର । ଯେମିତିକି ଘରର ସମସ୍ତ ବାସନ ମାଜିବା, ରୋଷେଇ କରିବା, ଠିକ ସମୟରେ ଚାହା ଜଳଖିଆ ଦେବା, ଘର ପୋଛା କରିବା, ବାହାର ବାଡ଼ି ବଗିଚା ର ଘାସ ସଫା କରିବା, ଆଉ ପୋଷା କୁକୁର ବିଲେଇଙ୍କର ଯତ୍ନ ନେବା, ଏଇ ଥିଲା ବୋଉର ନିତିଦିନିଆ କାମ । ଏହାରି ମଧ୍ୟରେ ବୋଉର ଦେହ ଆହୁରି ବିଗିଡ଼ି ଯାଇଥାଏ । ଦିନେ ସଞ୍ଜବେଳେ ପୁଅକୁ ମନେ ପକେଇ ଦେବାକୁ ଯାଇ କହିଲା ଯେ- “ଟିକେ ମୋତେ ଡାକ୍ତର ଦେଖନ୍ତୁନି, ଛାତିରେ କଫ



ଜମା ହୋଇଯାଇଛି, ଦେହ ହାତ ଦୁର୍ବଳ ଲାଗୁଛି” । ମୁଁ ଆଉ କାମ କରି ପାରୁନିରେ ବାବା,” ଏତିକି ବେଳକୁ ବୋଉ ଆଖିରେ ଲୁହ ଦି ଟୋପା ଗତି ଆସିଲାଣି । ବିଶ୍ୱାଳ ବାବୁ କିନ୍ତୁ Face-book ରେ ବ୍ୟସ୍ତ ଆଉ ସିଏ କିଛି କହିବା ପୂର୍ବରୁ ତାଙ୍କ ଧର୍ମପତ୍ନୀ ପାଟି କରି ଉଠି କହିଲେ ତମର ବୋଉ କାଣ୍ଡ ଜ୍ଞାନ ଟିକେ ନାହିଁ । ଅର୍ଥସ ରେ କାମ କରି ସେ ଟିକେ ଫୁରସତ ପାଇଛନ୍ତି ନା ନାହିଁ ଆରମ୍ଭ କରିଦେଲ ତୁମ ନାଟକ ।

ଏହାରି ମଧ୍ୟରେ ୧୪ ଦିନ ବିତି ଗଲାଣି । ରମା ଫୋନ କରି ଜଣାଇଛି, ଆସନ୍ତା କାଲି ସଞ୍ଜବେଳେ ପହଞ୍ଚିବ । ବିଶ୍ୱାଳ ବାବୁ କହିଲେ ବୋଉ ତୁ ବ୍ୟସ୍ତ ହନା ତୋତେ କାଲି ନେଇ ଘରେ ଛାଡି ଆସିବି । ସଙ୍ଗେ ସଙ୍ଗେ ବୋଉ କହିଲା ମୋ ଦେହପା ଟିକେ ଡାକ୍ତର ଙ୍କୁ ଦେଖେଇ ନଥାନ୍ତୁ । ଉତ୍ତରରେ ବିଶ୍ୱାଳ ବାବୁ କହିଲେ “କେମିତି ବା ଦେଖେଇଥାନ୍ତି ବୋଉ, ତୁତ ଦେଖୁଛୁ ମୁଁ ତ କେତେ ବ୍ୟସ୍ତ, ସମୟ ଟିକେ ନାହିଁ, ଆଉ ଥରକୁ ଦେଖିବା” । ବୋଉ ନିରାହ ଶିଶୁଟିଏ ଯେପରି ହାତ ପତେଇ ଚକଲେଟ ମାଗେ କହିଲା କିଛି ନହେଲେ ନାହିଁ କୋଉତି ଟୀକା ଟିକେ କରେଇ ଦେ ହୋଉ ଦେଖିବା । କୋଉତି ଟୀକା ପାଇଁ ଅନଲାଇନ ବ୍ୟବସ୍ଥା ହେଇଚି ବୋଉ ମଧ୍ୟ ଆଧାର କାର୍ଡ ଆଣି ଆଉ ବିଶ୍ୱାଳ ବାବୁ ଏଇ କଥାକୁ ଭଲ ଭାବରେ ଜାଣନ୍ତି । ଗାଁ କୁ ଫେରିଲା ବେଳେ ବୋଉକୁ ଏକ ଡାକ୍ତରଖାନାକୁ ନେଇ କୋଉତି ଟୀକା ବଦଳରେ ଏକ ଟିଟାନାଶ ଇଞ୍ଜେକ୍ସନ ଦେଇ ବୋଉକୁ କହିଲେ ତୋ ପୁଅ ଚାକିରୀ କରିଥିବାରୁ ତୋତେ ବିନା ଆଧାର କାର୍ଡରେ କୋଉତି ଟୀକା ମିଳିଗଲା ତୁ ଭାଗ୍ୟବାନ ଲୋ ବୋଉ ।

ହେଲେ ବାଟ ସାରା ବୋଉ ମନରେ ଗୋଟିଏ କଥା ଘାରି ହେଉଥାଏ, ଯେ ମେଡିକାଲରୁ ଟୀକା ନେଇ ଫେରିଲା ବେଳେ ନର୍ସ ଦିଦିତି କାହିଁକି କହିଲା କ’ଣ ମାଉସୀ କାତରେ ହାତ କଟିଗଲା କି ? । ଗାଁ ମୁଣ୍ଡରେ ପହଞ୍ଚିଲା ବେଳକୁ

ପ୍ରବଳ ଭିଡ । ବୋଉର ସାଙ୍ଗ ଲକ୍ଷ୍ମୀ ନାନୀ ମରି ଯାଇଛି, ତେଣୁ ସେଠି ଗାଡି ରଖି ଚାଲି ଚାଲି ଯିବାକୁ ପଡିଲା । ଗାଁ ମୁଣ୍ଡରୁ ବିଶ୍ୱାଳବାବୁ ସହରକୁ ଫେରିଗଲେ, କାରଣ ଗାଁର ନୀତି ଅନୁସାରେ ଥରେ ଅଣଶୁଦ୍ଧିଆ ହେଇଗଲେ ଶୁଦ୍ଧି ପରେ ଯାଇ ଫେରିବା କଥା । ବାଟରେ ସାନପୁଅ ବାବୁଲା ଦେଖା ହେଲା, ହାତରେ ଧରିଥିଲା ବୋଉ ପାଇଁ କିଣିଥିବା ଏକ ନୂଆ ଚପଲ, ଆଉ ବୋଉକୁ ଶୁଦ୍ଧାରେ ପିନ୍ଧେଇ ଦେଇ କହିଲା, ଖାଲି ପାଦରେ ଚଳିବୁନି ବୋଉ ତୋ ସାଙ୍ଗ ନଖା ମା ର ଗୋଡ କାତରେ କଟିଯାଇଥିଲା ଆଉ ସେ ଟିଟାନାଶ ନ ଦେବାରୁ ଧନୁଷ୍ଟାଙ୍କର ରୋଗରେ ମରିଗଲା । ବୋଉ ଆଖିରୁ ଲୁହ ଧାର ଧାର ହୋଇ ବୋହି ଚାଲିଥାଏ, ଆଉ ବାବୁଲାକୁ କୁଣ୍ଡେଇ ପକେଇ କହିଲା, “ବାବୁଲାରେ ତୁ ପାଠ ପଢିନାହିଁ ମୁଁ ଭାରି ଖୁସି” ।

ଏହା କୌଣସି କାହାଣୀ ନୁହେଁ, ମାତ୍ର ଏକ ବାସ୍ତବ ଚିତ୍ର, ଯାହାକୁ ଆମେମାନେ ଟିକେ ନିରିଖୀ ଭାବିଲେ ଓ ଅନୁଭବ କଲେ, ଲାଗେ ଯେମିତି ଏହା ଅତି ନିକଟରେ କାହାପାଖରେ ଦେଖିଛି । ଯେଉଁ ବାପା ମା ନିଜ ଜୀବନର ସବୁ ସୁଖକୁ ଜଳାଞ୍ଜଳି ଦେଇ ନିଜର ପିଲାମାନଙ୍କୁ ମଣିଷ କଲେ ସେମାନେ ବଡ ହେଲା ପରେ ତାଙ୍କର ଅତି ନ୍ୟୁନତମ ଭରଣପୋଷଣ ଯାହାକି ତାଙ୍କର ମାସିକ ଜଳଖିଆ ଭଡା ଠାରୁ ବି କମ, ଦେବାକୁ ଅକ୍ଷମ ।

ବର୍ତ୍ତମାନ ସମୟ ଆସିଯାଇଛି, ଆଜନରେ ସଂଶୋଧନ କରିବାର, ଯେପରି ପ୍ରତ୍ୟେକ ସରକାରୀ ଓ ବେସରକାରୀ କର୍ମଚାରୀର ବାର୍ଷିକ ଚରିତ୍ରପଞ୍ଜିକା (Annual C.C.R.) ସେମାନଙ୍କର ପିତାମାତା ହିଁ ଲେଖିବେ ଏବଂ ତାହା ନିର୍ଦ୍ଧାରଣ କରିବ ଦରମାରେ ବୃଦ୍ଧି ହେବ କି ନାହିଁ, ପ୍ରମୋସନ ପାଇବ କି ନାହିଁ ଏବଂ ତାର ଚାକିରୀ ରହିବ ନା ଯିବ, ହିଁ ହେବ, ଏକମାତ୍ର ମାପକାଠି । ଯାହାକି ଏ ବୃଦ୍ଧ ପିତାମାତା ପ୍ରତି ହେଉଥିବା ଅନ୍ୟାୟ ଓ ଅତ୍ୟାଚାରରୁ ରକ୍ଷା କରିବାରେ ସାମାନ୍ୟ ସହାୟକ ହେବ ।

## ***Reconciling patent rights & patient rights in the Pandemic: A global concern***



**BYOMAKESH NAYAK**

*Civil Judge (Sr. Division)*

*1<sup>st</sup> Court, Cuttack*

The Covid-19 crisis emerged as a Frankenstein monster, as the virus has a deadly characteristic of geometric replication in no time through human contacts, as a result of which social distancing norm became the “grundnorm” in each and every walk of life to prevent the situation from being further aggravated, but despite all said and done, it engulfed the world and became a global pandemic, as declared by the World Health Organization on 11<sup>th</sup> March, 2020. To make matters worse, there was no effective medication to deal with the pandemic, having spread its tentacles all over the world. The apparent symptoms of the disease are akin to that of pneumonia, affecting respiratory tracts and lungs, but despite usual medication, there were no signs of downslide in the reported cases. The socio-economic activity came to a grinding halt for the major portion of the year

2020, and the struggle for survival seemed to have overcome all other considerations. In this context, the search and exploration of an alternative and full proof antedote as well as vaccination remained elusive and to make matters worse, the wide variety of strains having subtle variations in different countries exhibited through the symptoms of the patients, further led to chaos and confusion in providing an effective remedy at a global platform and the World Health Organization. The international community remained clueless for quite some time.

However, given the highest level of sophisticated technological knowhow among the pharmaceutical giants like Biocon, Cipla and Torrent Pharma left no stone unturned to explore a viable antidote, which would address the need of the hour. The Government of India, rolled out two vaccines namely Covaxin and Covishield, which would create antibodies in the persons administered the medications so that it would enhance their immunity to combat the disease. Covaxin manufactured by Bharat Biotech International Limited in collaboration with Indian Council of Medical Research (ICMR) and National Institute of Virology, while Covishield was developed by Oxford Astra Zeneca and marketed by the Serum Institute of India. However, despite such extensive vaccination programme for millions of people, being rolled out many sensitive and intricate

issues became the subject of debate and global concern, regarding the exclusivity of the right of the patent holder for use and manufacture of technology as against the need for dilution of the same to overcome the global health exigency.

### ***Trips Agreement: Broad Overview***

The Trade Related Intellectual Property Rights (TRIPS), agreement 1994 has been conceptualized as an epoch making global development to address the core issues of reconciling the conflicting interests between exclusive intellectual monopoly of the patentee as against the public health issue, which has got larger social ramifications. There is no gainsaying that the right to health is an integral and inseparable aspect of Right to Life as envisaged under Article 21 of the Indian Constitution, and the Judiciary has stepped in to enlarge the scope and ambit of the said fundamental rights in the wake of the humanitarian regime, reiterating and reminding the obligations as well as commitment of the state. However, in the wake of the existential crisis which has been triggered by the alarming situation due to the global Covid-19 pandemic crisis and the lack of an effective antidote as well as medical protocol to address the same, has put an unprecedented pressure on the existing health infrastructure of the countries for which they have been compelled to seek for better accessibility of resources and in this perspective, but it was found that there were many bottlenecks, which needed to be reconciled so that the public health receives preponderance over individual entitlement.

### ***Compulsory Licensing: Panacea for all ILLS: Trips Perspective***

India was one of the first and foremost countries, which had appealed to the international community for patent waiver or an open patent. The patent is a monopoly recognizing the exclusive right of the innovator to manufacture, and market his innovation with the intent to earn revenue from the same by monetizing the innovation. On the other hand, patent waiver implies that the exclusivity of the patentee stands diluted to the extent that, in order to meet the health exigency at hand, the use and manufacture of the life saving drugs, which has been the subject matter of the patent, would not attract the legal embargo so also the legal sanctions for its breach. In this context, it is pertinent to say here that the TRIPS agreement, 1994 has foreseen a health exigency wherein under Article 31b, it is stated that where the proposed user has floated a proposal to the patentee to use his technological innovation at reasonable commercial terms and conditions, but the efforts have proved to be an exercise in futility. Such a prior permission can be dispensed with by a member state, with a rider that the said exception can be pressed into service during national emergency or in cases of non-commercial public use.

India and South Africa have espoused the cause for expansion of scope and ambit of Article 31b by floating such a proposal before the World Trade Organization's Council for trade related aspects of Intellectual Property Rights, seeking waiver of certain impediments



in the wake of Covid-19 to overcome the shortage of medications and also urged that the medical equipments such as ventilators, dialysis machines and diagnosis kits be brought within its purview. The World Health Organization and the United Nations Aid have also supported the cause of dilution of a watertight compartmentalized IP regime. The developed countries of the world like the USA and the UK have given stiff resistance to such patent waiver, but as many as 100 countries like Russia and China also stood for the patent waiver, and hence the developed countries of the world ultimately conceded to their demands for the interest of the society at large. The International Monetary Fund (IMF) has made an assessment that the total number of medicines, which would be required for vaccination by the end of 2021, would be around 6 million doses.<sup>1</sup>

### **Patents Act, 1970: Compulsory Licensing**

Section 84 of the Patents Act, 1970 provides that, after a lapse of three years from the date of grant of the patent, an applicant, subject to condition that such invention is not available in the market at a reasonable price and such right has been imported into India or the said right has not been exercised in India, may make an application to the Controller of the Patents for grant of compulsory license. The controller shall consider the same, having due regard to the fact as to how it has a nexus

with a public utility as well as advantage and the financial capacity of the applicant.

### **Voluntary Licensing**

During the time of the Covid-19 crisis, it was mooted to grant voluntary licensing, by mitigating the rigours placed to seek prior approval of the patentee in favour of third parties, so as to manufacture medicines. The patentee would be permitted to fix a reasonable fee in exchange for the license. In this regard, it is worthwhile to reflect the findings as recorded by the Hon'ble Delhi High Court in ***Rakesh Malhotra Vs Union of India reported in 2021 SCC Online Del 1800***, decided on 19<sup>th</sup> April, 2021, the Hon'ble Delhi High Court has recognized that the rights of the patentee as well as society at large needs to be reconciled and a harmony as well delicate balance needs to be maintained between both, though emphasizing that the patent holders should be encouraged for voluntary licensing so as to tide over the crisis. However, it was also emphasized that lots of efforts were undertaken for research and technology by the patent holder and their rights and privileges should not be lost sight of, as it would have an adverse impact on their impetus to conduct research and technology in future.

The pharmaceutical giants, mostly concentrated in the developed countries having control and exclusive right of production of these medicines, have vehemently opposed to the patent waiver as they feel that, once such

<sup>1</sup>Justice Prabha Sridevan, *Patent Rights and Patient Rights in Covid-19: Is the Right to Exclusivity a Hamlet Question*, Available at <https://theleaflet.in/patent-and-patient-rights-in-covid-19-is-the-right-to-exclusivity-a-hamlet-question/>, accessed on 9<sup>th</sup> June 2023

permission is granted, in favour of the least developing or developing countries having limited or no access to such technology, they can establish their own manufacturing unit and it would have a telling impact on their profit motive. However, in order to overcome the tug of war between the conflicting interest of the pharmaceutical giants, who are hell bent to insulate their technological knowhow as well as accessibility of the world at large to such life saving medicines and right of manufacturing the same, in May 2020, the Government of Costa Rica and other partners launched the Covid-19 Technology Access Pool, (C-Tap) which was endorsed by 45 member states so also by the member states of the World Health Organization (WHO), the entire world was united for a holistic purpose known as “Global Solidarity Call for Action” to remove the bottlenecks and provide a conducive atmosphere to save mankind.

### **Conclusion**

The WTO and TRIPs members should

explore ways and means to find a middle way so that the commercial right of the patent holder can be safeguarded, but simultaneously facilitating technology transfer as per the obligations under various multilateral treaties. So that the under developed and developing countries can benefit from the same. The respective municipal laws of the state should incorporate the provision for compulsory licensing so that they could derive benefits of globalization and specialized technological advancements in other countries. However, it must be borne in mind that, with the dilution of the international borders so also globalization, the rich and affluent countries should not have monopolistic access to the technology, to the deprivation of a large chunk of the community, which is staring at an unprecedented health crisis or exigency and in the eventuality such countries are deprived from utilizing the invention and innovation of technology, it would have a deleterious impact in the wake of international humanitarian regime.

## Access to Justice and role of the Legal Aid Service Authority

*Let New India arise .....Let her arise out of the peasants' cottage, grasping the plough; out of the hut of the fisherman, cobbler and sweeper, let her spring from the grocer's shop from beside the oven of the fritters-seller. Let her emanate from the factory, from the marts and from the markets. Let her emerge from groves and forests, from hills and mountains."*

*By Swami Vivekananda*



**KUMUDINI MUDULI**

Secretary, DLSA, Sonapur

Justice is a concept involving the fair, moral and impartial treatment of all persons. A just man is a man in just the right place, doing his best and giving the precise equivalent of what he has received. It is an eternal right which is based on five golden principles of constitutional justice such as **Satya, Ahimsa, Swaraj, Antodaya and Sarvodaya**.

The first core value of justice i.e. Satya derived from the Sanskrit root "Sat" means "exist" i.e. which cannot be derived. In English it is "just" said as truth. Justice means the right norms, which stand still across time. Our Upanishad starts its prayer from "*Satyam Vadishyami*" i.e. I will speak truth, which is used today for dispensing justice. The National

Emblem of Indian Government quotes the Manduka Upanishad hymn, "*Satyam Eva Jayate*"- Truth alone wins. Satyam i.e. Justice is immortal and eternal because it is God.

Securing Justice-Social, economic and political for all citizens is one of the key mandates of the Indian Constitution. In a democracy, legislation intends to bridge the gap between the haves and have-nots, but in practice it has ended up doing just the exact opposite, further widening the existing Chasm unfortunately, like everything else, justice has also been commoditized today. More often, the indigenous have no access to justice as they do not have the resources to approach constitutional justice.

In recent years, indigenous people live without the fundamental freedoms of action and choice. They often lack adequate food, shelter, education and health. They are often exposed to ill treatment by institutions of the State and society and powerless to influence decisions affecting their lives. In our country, there are villages which are seriously affected by poverty under develop villages which I have witnessed during my visit to the villages for legal awareness. Due to their poverty they are living in serious unhygienic conditions. Above all, government's apathy to these villages make



it different for them to survive. Due to lack of proper monitoring systems, disparity in the distribution of funds/ facilities/ loans among beneficiaries was seen at many places in the villages. The deserving are exploited and deprived of their right to getting benefit. They don't know anything about the implementation procedures and the benefits available under various schemes.

Even 75 years after independence, the dropout rate among school-going pupils is alarming. Primary schools are poorly administered. There is rampant mismanagement in the implementation of the midday meal programme in schools. Due to the unavailability of electricities in almost all houses of the village, children find it difficult to read and write at night in their houses. Free books supplied to them by the Government also do not reach these poor students.

People still rely on age-old agricultural practices and use inefficient tools. No modern technology has been adopted in this region. Lack of irrigation facilities is also one of the greatest hurdles in their way of getting a good harvest. People are also ignorant about the benefits of soil conservation. Various agriculture oriented schemes are either not implemented, or the authorities have not taken proper steps to generate awareness about such schemes.

Another serious concern in villages is health and medical facilities. There is an acute problem of safe drinking water and poor people are mainly dependent upon the borewell, which produces water with high iron content that is hazardous for health. The government

agencies have failed miserably in providing drinking water supply connections to all villages. Though the schemes have been in place to provide the same, in reality these have been confined to pen and paper and have not been translated into action. People in villages are not aware about their legal right and justice. Being illiterate, mass they are even unaware about their right to information.

It is high time we thought about and acted upon this. Perpetual problems such as land alienation, indebtedness, bonded labour, shifting cultivation, unemployment, housing, education, health, safe drinking water, communication, malnutrition are to be addressed otherwise we can't think of socio-economic justice. Both fundamental rights and directive principles of state policy have enshrined constitutional provisions relating to right to food, education, health, shelter and livelihood. It may not be out of place here to mention that the Indian judicial mechanism through legal aid services can work in such circumstances so that judicial process becomes accessible to the disadvantaged/ marginalised sections of society. It has been rightly said that ***“Government is a trust and officers of government are trustees”; Both the trust and the trustees are created for the benefit of people.***

It is only the judiciary which can shoulder the responsibility of interpreting the law in a way that it meets the requirements of justice. The judiciary is duty bound to save the process of the law towards actualizing constitutional values to secure equal justice for all through Legal Aid Service. Hence they can play a vital role for the recognition of of inherent rights of

the indigenous people, which derive from their political, economic and social structure.

The **role of Legal** Aid Services Authority, a wing of the judiciary, has become more sensitive in the wake of the present scenario. Constitutional justice has become a far cry and different organs of the government are fast crumbling and falling apart. The **Legal** Aid Services Authority has heeded the need of the hour and has introduced measures to ensure that justice is delivered at the door step of the deprived class of society.

***Judges shall discharge their duties objectively and impartially, so that they can earn the trust and affection of the people.***

***(- Kautilya'3.20.24)***

To ensure excellence in promoting constitutional justice to indigenous, the role of Legal Aid Service Authority is pivotal. It will facilitate a more effective and better co-ordinated approach towards the function of judiciary. Judges are the central player in processes which would ensure the prevalence of the rule of law. We need to consistently work on refining our attitudes in order to maintain the dignity and ideals of constitutional justice. We should have a dynamic personality that leaves a long lasting impression on people by taking inspiration from our oath. We must focus on our duty rather than other factors and I hope and believe it will shower divine blessing on the path of our service and we will be able to ensure constitutional justice.

This assignment is an attempt to reconcile the principles of rights-based approach to development with practical application in the context of state-supported programs of the Legislature, Executive and the Judiciary for all citizens. Adding the dimension of rights to the discourse of development signifies attaching specific duties on the part of the state to respect and protect at the first instance and promote and fulfil, if need be, the rights of the people. The immediate implication of such an initiative is that the formulation and implementation of development policies by the state need to be undertaken in the knowledge that it is accountable to people for any violation of human rights arising from such policies.

Eradicating such discrimination in our society is under a very difficult task. The question now arises whether the existing trend can be halted, reversed and turned towards creativity whether the depending darkness can be converted into a glowing dawn, whether this hell can be transformed into a heaven. The answer can be a "yes" but the precondition is that the elite take up the responsibility of diverting the tides of time.

*We as a nation , we as an individual, have to give a much better account of ourselves, in the near future, than we have ever done in the past. Let us lose no time but prepare for the task from today.*

## Alternative Dispute Resolution: A solution or an empty promise?

*It is the spirit and not the form of law that keeps justice alive.*

**- Earl Warren**



### NEHA DAS

*Secretary*

*District Legal Services Authority, Jharsuguda*

### Introduction

It is known to all that justice delayed is justice denied but also justice hurried is justice buried. Having said that and keeping in mind the vision of justice, there is a growing need for embracing the concept of alternative dispute resolution in our legal system. Litigation is something generally people seek to avoid as it is expensive, time consuming, unpredictable and emotionally draining until the case is decided by a judge. The increasing number of litigations pending in courts in India is a major concern for which alternative dispute resolution has emerged as a powerful weapon for resolution of disputes between the parties. The conception of alternative dispute resolution is not newfangled to our legal system, as in ancient India, disputes

between parties were mostly settled through the intervention of the village panchayats by way of conciliation and mediation as a forum of settlement. Instead of knocking the doors of the courts, people in rural India, found it convenient to resolve their disputes amicably through the intervention of some third party. In recent times, the legislature as well as the judiciary are striving hard to ensure that alternative dispute resolution practices are resorted to before commencement of a trial in order to give speedy and effective relief to litigants and to reduce pendency in courts.

### Alternative Dispute Resolution: An encapsulation

The meaning of “alternative dispute resolution” is self-explanatory which provides an alternative forum to parties for settlement of their disputes. Alternative dispute resolution can be understood as a process whereby the parties come together to settle their disputes with the aid of an impartial adjudicator either before or after the institution of a case. It mainly aims at providing a cost effective and timely solution to the parties without involving the process of court and thereby, reducing the pendency of cases in courts. It has been observed time and again that in matrimonial disputes, commercial disputes and a few civil and criminal disputes relating to family matters, the result achieved by adopting one of the mechanisms of ADR for



resolving the disputes between the parties, is more satisfactory. In India, an institution called ICADR (The International Centre for Alternative Dispute Resolution) has been established to provide a complete regime of ADR procedure and services required there, both at domestic and international levels.

Various modes of alternative dispute resolution include arbitration, mediation, conciliation, judicial settlement and lok adalat.

### **1. Arbitration**

As per WIPO, arbitration is defined as a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the disputes. It is a confidential procedure and the decision of the arbitral tribunal is final and easy to enforce. In India, laws relating to arbitration are governed by the Arbitration and Conciliation Act, 1996. The objective of arbitration is to provide speedy justice outside the court. However, arbitration is like a court procedure where parties submit evidence similar to a trial in a court and the third party hears both the sides and arrives at a decision binding on both parties.

### **2. Mediation**

Mediation is a voluntary, flexible, confidential and informal process where an impartial third party assists the parties to settle their disputes amicably. In recent times, mediation is the most common form of alternative dispute resolution and in medieval India too, people preferred to settle their disputes through mediation as in this forum the parties arrive at a favourable outcome which is agreed upon

by both the parties. Mediation can take place between parties either prior to litigation or even during the litigation process. In India, mediation has shown a significant results in many cases as an alternative dispute resolution mechanism.

### **3. Conciliation**

Conciliation is a persuasive process where the parties in disputes agree to resolve their dispute amicably. In conciliation, the parties can discuss and arrive at a mutually agreeable settlement by the help of a conciliator who is a qualified and trained neutral person. Part-III of the Arbitration and Conciliation Act, 1996 deals with conciliation proceedings. Conciliation is considered the oldest and effective mode of dispute resolution between parties. This form of alternative dispute resolution existed in ancient India and mostly, compared with the panchayat system in India. Conciliation is seen as a better alternative to the formal justice system.

### **4. Judicial Settlement**

The term Judicial settlement has been defined under Section 89 of the Code of Civil Procedure, 1908. Judicial Settlement is a form of alternative dispute resolution wherein if a court deems fit that there exists a chance of settlement of dispute between the parties outside the court, it can refer the same to either arbitration, conciliation, mediation or Lok adalat.

### **5. Lok Adalat**

Lok adalat is one of the mechanisms of alternative dispute resolution which is referred to as “people’s court”. The forum has been established and governed under Legal Services Authorities Act, 1987 with a motive to

avoid expensive trials and lengthy procedures of courts. It is a forum wherein disputes/cases pending in a court or at a pre-litigation stage are settled amicably. The cases which are dealt with lok adalat are matrimonial disputes, family disputes, compoundable criminal offences, land acquisition cases, motor vehicle accident claims, etc. Every decree passed by a lok adalat is to be deemed as a decree of a civil court and it binds the parties to the dispute.

### ***Judicial intervention in implementing ADR mechanisms for resolving disputes***

As there is a growing concern amongst litigants regarding settling their disputes at the earliest, the judiciary is also making efforts to incorporate the mechanisms of alternate dispute resolution in to the legal system. This statement can be substantiated by citing certain recent case laws. Prior to that, it is imperative to refer to the provisions of ADR mechanisms in law.

**Section 89** of Civil Procedure Code deals with the settlement of disputes outside the court. - (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for

- (a) arbitration
- (b) conciliation

- (c) judicial settlement including settlement through lok adalat or
- (d) mediation.

**Order 10 Rule 1A.** Direction of the Court to opt for any one mode of alternative dispute resolution. After recording the admissions and denials, the Court shall direct the parties to the suit to opt for either mode of settlement outside the Court as specified in sub-section (1) of section 89. On being informed of the option of the parties, the Court shall fix the date of appearance before such a forum or authority as may be opted for by the parties.

In ***Afcons Infrastructure and Ors. v. Cherian Verkey Construction and Ors. 2010 (8) SCC 24***, the Hon'ble Supreme Court has clearly discussed the legal position on whether reference to ADR processes is mandatory as per Section 89 of CPC and Order 10 Rule 1 A of CPC. It has been observed by the Hon'ble court in the above landmark case that "Section 89 has to be read with Rule 1-A of Order 10 which requires the court to direct the parties to opt for any of the five modes of alternative dispute resolution processes and on their option, refer the matter. The said rule does not require the court to either formulate the terms of settlement or make available such terms of settlement to the parties to reformulate the terms of possible settlement after receiving the observations of the parties. Therefore, the only practical way of reading Section 89 and Order 10, Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court

will have recourse to section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes”.

In ***K.Srinivasa Rao vs. D.A. Deepa (2013) 5 SCC 22***, the Hon'ble Apex court held that “in terms of Section 9 of the Family Courts Act, the Family court shall make all the efforts to settle the matrimonial disputes through mediation. Even if the counselor submits a failure report, the Family court shall with the consent of the parties, refer the matter to the mediation centre”. It has been also held that “all mediation centres shall set up pre-litigation desks/clinics, give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.”

## **Conclusion**

Lately, legislature as well as the judiciary have made several attempts to promote the mechanisms of alternative dispute resolution in our legal system to provide its utmost benefits to the litigants. In many cases, it is seen that

in order to overcome the ordeal involved in court proceedings, litigants are opting for the best option available to them in the form of ADR. However, the method of alternative dispute resolution has not always proven to be effective and efficient in every case. At times, it seems futile and a wastage of time. There are many criticisms and disadvantages of ADR mechanisms like lack of trained professionals, no guarantee of resolution, no appeal. Nevertheless, the hope of resolving disputes by alternative dispute resolution mechanisms has never faded. The foremost advantage of adopting ADR mechanisms by the parties is that it is a confidential process. Even if the outcome of settlement of disputes through ADR mechanisms is one percent it is worth taking a chance by adopting it at pre-litigation stages. The law regarding ADR mechanisms is constantly changing as per the necessity that arises out of the difficulties faced by litigants and adjudicators. In the near future, it is expected that there will be more productive results by adopting ADR mechanisms in resolving disputes of the parties and the goal of achieving justice at the door step can be accomplished.



## ***A Study of Partition and Maintainability of Partial Partition***



### **DHANANJAYA NAYAK**

*Civil Judge cum J.M.F.C,  
Kesinga, Kalahandi*

Partition is supposed to be a non-ideal scenario in the Indian context. However, the number of partition suits Indian legal system witnesses tells an altogether different story. The true test of partition of property as per Hindu Law is the intention of the members of the family to become separate owners. The concept of partition under the domain of family law is considered one of the most comprehensive and complicated matters. As observed in various cases, families get parted away due to property related conflicts. It is a well-settled principle of law that a suit for a division of a portion of the family property can not lie as a suit for partial partition is not maintainable. In the case **Kenchegowda Vs Siddegowda (1994) 4 SCC 294**. Hon'ble Apex Court of India held that "when all the joint family properties are not made the subject matter of the suit, nor the co-sharer have been impleaded, the suit for partial partition is not maintainable.

### **Law governing Partition Suits**

In Hindus, the laws relating to the partition of property is governed by the following:

- (I) The Hindu Succession Act.1956 (Amendment Act.2005)
- (II) Code of Civil Procedure, 1908 (Section-54, Order-20 Rule 18 and Order- 26 Rule-13 &14).

Hence, in India, the law governing the partition of ancestral properties are covered under personal religious law. There are two schools of Law namely

**Mitakshara-** Applicable in other parts of India.

**Dayabhaga-** Applicable only in Bengal and Assam.

These schools of law govern the law of succession of HUF. Partition under the Mitakshar School is different from that under the Dayabhaga School. Under Mitakshar School, partition means severance of status or interest and actual division of properties in accordance with the shares by metes and bounds. But under the Dayabhaga School of law, partition means only division of property by metes and bounds. Mitakshara follows the rule of survivorship, i.e if one coparcener dies, the other coparcener inherits his share in the ancestral property. But in Dayabhaga, if a coparcener dies, his share in the ancestral property is given to his legal heir.

### **Rule relating to Partition of Self-acquired Property**

The legal scenario with respect to partition of self-acquired property and the right of son over the self-acquired properties of father has been clarified by the Apex Court of India as well as Hon'ble High Court of Orissa in various judgments. In different cases, the Hon'ble Apex Court has observed that a son has no legal right in the self-acquired property of his parents unless he has proof of contribution towards the acquisition of the property. He may be allowed to use the property with permission from his parents, but they are not obligated to allow to live there.

***Partial Partition is also maintainable under certain circumstances.***

If we focused on forgoing discussions, it is clearly seen that law permits only partition of whole ancestral in one partition suit not any partial partition. No coparcener can enforce a partial partition against the other coparceners, even though the partition may be partial by mutual agreements of the parties. Provided that under certain circumstances partial partition is also maintainable in the eye of law, Hon'ble Supreme Court of India and Hon'ble High Court of Orissa on different occasions have permitted partial partition. The Hon'ble High Court of Orissa has issued a guideline in respect of partial partition in the case of- **Guddu @ Purushottam Mohant and others Vs Smt.Saimani Mohantiani(dead) her Lrs 2016(II)OLR-680.**

In the above judgment Hon'ble High Court of Orissa held that a partition suit should embrace all the joint properties of the parties concerned in the suit. Violation of that rule will result in multiplicity of litigation, which all parties and court must avoid and discourage. Rule is preliminary based on considerations

of equity and convenience; it belongs more to the province of adjective law than substantive law: However, relaxation in certain cases and a partial partition can be allowed-

- (a) where different portions of the property lie in different jurisdictions, or
- (b) when some portion of property is at the time incapable of partition, or
- (c) when the property from its nature is impartible, or
- (d) the property held jointly with strangers who can't be joined as parties to a general suit for partition, or
- (e) where the co-tenants by mutual agreement decide to make partition of a part of the joint property retaining the rest in common.

So in exceptional circumstances, partial partition can be permitted. The Hon'ble Apex Court of India in the case of- Karruppiiah and another Vs C.Muniyappan and Others 2014(20CTC 706 held that so far as the objection of partial partition is concerned, the said objection can be raised only by a sharer not alienee. So, if the issue of partial partition is not raised by the co-sharers in the initial stage or in WS, the suit for partial partition is maintainable. partial partition is permissible amongst Mohemmedans, as under Mohammedan law, heirs of a deceased Muslim succeed to a definite fraction of every part of his estate. Muslim co-sharers are not obliged to file a general suit for partition of all properties in which they are interested and there is nothing to preclude them from seeking a portion of partition.

## ***Modernization of Courts through virtual hearing***



**ARUNIMA DASH**

*CJ-JD cum JMFC Rampur*

Virtual hearings, which started as a necessity during the COVID pandemic, has gone a long way in ensuring easy access to justice to one and all. In the initial phase, virtual hearings were conducted by Trial Courts in a haphazard manner as there was no uniform prescribed rules for the same. Each Trial Court adopted a procedure which would be convenient to them considering the infrastructure available to them. In order to deal with the issue, the Hon'ble High Court of Orissa framed extensive rules in the year 2020 and the same was notified in the gazette vide Notification No.1206/R Dtd.02.11.2020 as the Orissa High Court Video Conferencing for Courts Rules, 2020.

Through the VC Rules, 2020 and its subsequent amendments, the Hon'ble High Court of Orissa has framed various rules to govern the trial proceedings conducted through virtual mode. The VC Rules prescribe that all

the statutory provisions applicable to judicial proceedings including Cr.P.C., C.P.C., Indian Evidence Act, I.T. Act, and Contempt of Courts Act shall be equally applicable to proceedings conducted through video conferencing. As per the Rules, hearing through virtual mode can be initiated either at the instance of the Court or by application of any of the parties. The VC Rules further provide for setting up of various Court Points and Remote Points through which the concerned stakeholders can attend the proceedings. One very important requirement prescribed in the rules is that the entire Court proceedings conducted through VC is to take place under the supervision of an authorized official nominated as per the provisions of the VC Rules and that a digitally encrypted audio-visual recording of the examination of the concerned person is to be preserved for future reference.

The entire procedure for examination of a witness through video conferencing including the identification of the concerned witness, the manner in which oath is to be administered to the witness, the manner in which documents are to be shown to the witness before marking the same as exhibits, the manner of recording of his testimony and the procedure to be followed by the Courts in case of poor connectivity, etc. are succinctly laid down in the rules. In order to make the procedure more litigant friendly, provision has also been made for use of portable video conferencing facilities for examination of



sick and physically infirm persons at their own places of residence.

This concept of virtual hearing has been beneficial to all the stakeholders in the legal system. By introducing this concept, not only has the Indian judiciary kept pace with globalization and the advancements in modern digital technology, but also it has ensured better dispensing of justice to the litigants. The provision of virtual hearing is extremely beneficial to the Trial Courts in ensuring quick and effective disposal of cases. Prior to initiation of the hybrid mode of trial, one of the main bottlenecks faced by the Trial Courts was the non-attendance of witnesses. Although, CrPC provides for various steps which can be taken in case of non-attendance of witnesses, it is usually difficult to adopt those procedures when Courts do not receive the service return of the summons on time. Sometimes, old records linger for recording of evidence of official witnesses like Investigating Officers, Medical Officers and Scientific Officers as they have been transferred outside the jurisdiction of the concerned Court by the time the case record comes to the stage of hearing. Since such official witnesses are posted in far off places, asking them to attend the Courts again and again physically for the purpose of deposing hampers their official duties and causes unnecessary wastage of time. Usually, the official witnesses are detained for the whole day in Court and this may cause hardship to the general public as well. For example, when a doctor is called for to depose in a case, his patients are deprived of receiving proper treatment for that day. The VC Rules, 2020 has gone a long way to address

this issue. As per the provisions of the Rules, recording of evidence of official witnesses including Scientific Officers, Police Officers, Medical Officers and anyone who is to depose in official capacity shall ordinarily be done by Video Conferencing subject to the concerned Court making all arrangements and giving the witness a precise time slot for recording of his / her evidence. Since the concerned official witness can now remain present at the remote point nearest to him at a precise time for recording of his testimony, it saves valuable time of both the Court and the Government.

Similarly, in case of medically ill witnesses or witnesses whose presence cannot be secured without undue delay or expense, Courts can now have their testimonies recorded immediately by sending portable video conferencing unit to the place where they are situated. This helps the Courts ensure that there is no impediment in recording the evidence of important prosecution witnesses on time so that the interests of justice are met. The VC Rules also empowers the Courts to resort to Video Conferencing for the purpose of remanding accused persons, recording their statement or the statement of witness and framing charges. Therefore, with the implementation of the VC Rules, a new window of opportunity has been opened for the Trial Courts to dispose off old cases which were pending since long due to non-attendance of witnesses and also in disposing off new cases in a time-efficient manner.

Another important provision available in the rules ensuring easy access to justice to the litigants and victims is that the DLSAs and

the TLSCs of the State can make use of video conferencing in proceedings related to Legal Aid Clinics, Camps, Lok Adalats or Jail Adalats. As such, a victim who may be situated outside the jurisdiction of the Court at the time of Lok Adalat, need not waste money and time in physically appearing in the Court for redressal of his grievance. He can avail the benefit of virtual hearing and be examined from a remote point nearest to his location.

The concept of 'open Courts' has been amply preserved in virtual hearings. Provision has been made in the rules to ensure that members of the public desirous of following the Court proceedings may view the same through external links provided to them for the said purpose. This, alongwith other provisions like preservation of an audio-visual recording of the Court proceedings, ensures transparency of the Court proceedings. It ensures that the litigants know that the proceedings were free and fair.

No doubt, the concept of virtual courts has benefitted our legal system in various ways like ensuring transparency, better efficiency, providing timely and swift justice, and ensuring quick disposal, etc., however, the effective implementation of the system is not without its own bottlenecks. Lack of proper digital infrastructure in some of the Trial Courts prevents the Court from adopting the mode of virtual hearing in appropriate cases. In addition, botchy internet connection in rural areas is also a serious bottleneck faced by the Courts. This is because if internet connection is disrupted in the middle of recording of evidence of the witness and the entire process cannot be successfully

completed, Courts have to begin the process anew or resort to physical mode of recording evidence. Moreover, digital literacy in rural areas is low. The stakeholders want to remain set in their orthodox ways. Litigants are more often than not very reluctant to adopt the new mechanism even though it will be beneficial to them.

Regardless of the bottlenecks, virtual hearing and other e-courts initiatives of the judiciary are most certainly the way to the future. In order to keep pace with modernization, Courts need to more actively adopt virtual hearing as the main mode of conducting trial. With technological advancement, issues presently faced by Courts like faulty internet connectivity can be remedied. The Hon'ble High Court of Orissa is also ensuring that necessary infrastructure is provided to the District judiciary at the earliest. Hands on training is also being provided to the judicial officers to make them more conversant with this new mode of conducting trial. With the Government's initiatives at making India digitized, the common man is also slowly becoming more conversant with use of technology. In the current scenario, the initiatives of the judiciary like NJDG, virtual hearing, paperless Courts, e-Courts, e-filing, e-payment of Court fees, etc. ensures that our Courts do not fall behind in the race to make India a developed country. This system is however, at the nascent stage. In order to make it a complete success, the combined efforts of all the stakeholders in the legal system is absolutely essential.

## ***A critical analysis of the trend, pattern and cause of rise of juvenile crime among older juveniles in India and Odisha***



**BISHWA BHUSAN NAYAK<sup>1</sup>**

JMFC-Kujanga

### ***Abstract***

*Juvenile delinquency is a terrible reality in India. In India, the rate of juvenile offenses committed by older youths aged between 16 to 18 years has increased significantly over the last decade. These children have recently been accused with some of the most heinous crimes, such as Murder, Rape and Gang rape. This alarming surge in adolescent delinquency is a societal issue. In recent years, sexual offenses have made up the vast bulk of juvenile crime. To remedy this, the new JJCPC ACT, 2015 specifies that 16- to 18-year-olds who commit a heinous crime may be tried as adults under*

*certain conditions, regardless of when they were arrested. The researchers want to know if there has been an increase in violent crime among older juveniles aged 16 to 18 in both India and Odisha.*

**Key Words:** Juvenile, Crime, JJCPC Act -2015, Criminal Liability, offences, IPC & SLL Offences

### ***Introduction***

The frequency of adolescent infractions in India has recently grown by leaps and bounds. Juvenility criminality is a serious problem in both India and Odisha, destroying the lives and careers of the vast majority of young people. The issue affects not just the victims of the crime, but also the juvenile offender's family, future, and society at general. Over the last ten years, the rate of juvenile offenses committed by older adolescents between the ages of 16 and 18 years of age has considerably grown in India. From 21657 Juveniles aged in between 16 to 18 years apprehended under both the Indian Penal Code and Special and Local Crime/offence in 2011, the figure has risen to 28539 in 2021, a 31.77% increase<sup>2</sup>. In 2021, the majority of juveniles in conflict with the law apprehended under the IPC and SLL charges were between the ages of 16 and 18 years (28,539 out of 37,444)<sup>3</sup>. Similarly, during 2020,

<sup>1</sup>The Author had cleared UGC-NET in Law, and published 6 Research Articles in reputed International and National Journals listed in Scopus and UGC-CARE list.

<sup>2</sup> Crime in India 2021 | National Crime Records Bureau. (n.d.). Crime in India 2021 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2021>

<sup>3</sup> Crime in India 2021 | National Crime Records Bureau. (n.d.). Crime in India 2021 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2021>



the majority of juveniles in conflict with the law apprehended under Indian penal code & SLL offenses (76.2%) (26,954 out of 35,352) were in the age group of 16 to 18 years<sup>4</sup>. The figures on overall Juvenile Crime is likewise dismal. Murders increased from 531 in 2002 to 1,007 in 2013, and then significantly decreased to 842 in 2020<sup>5</sup>. Rape and assault with the intent to violate women's modesty increased from 485 and 522 respectively in 2002 to 1, 884 and 1, 424 respectively in 2013, and then decreased to 937 and 1154 respectively in 2020<sup>6</sup>. These young people have recently been charged with some of the most heinous crimes, such as murder and gang rape. In 2015, the majority of adolescents apprehended for IPC violations were between the ages of 16 and 18 (27,986 out of 39,074). Such teenage criminal behaviour is a disturbing trend that affects the entire society. Juvenile criminality is a scourge in our culture. In recent years, sexual offenses have constituted the vast bulk of juvenile offences. According to the NCRB's 2015 Report, 22.6% of all SSL incidents (2,037 cases) involving children were reported under the 2012 POCSO

Act, accounting for the vast majority of cases against minors<sup>7</sup>. Theft accounted for the majority (19.3%) of juvenile cases filed, followed by rape (5.4%), kidnapping & abduction (5.2%), and criminal trespass/burglary (8.3%)<sup>8</sup>. According to NCRB, 2015 data, the number of cases filed under the Indian penal code and Special and local law against minors decreased by 6.4% (from 33,526 cases in 2014 to 31,396 cases in 2015) and 59.6% (from 5,039 cases in 2014 to 2,037 cases in 2015) during the course of 2015 compared to 2014<sup>9</sup>. In 2015, 1206 children were apprehended in Odisha on different IPC and SLL criminal titles, including 29 for murder, 35 for attempted murder, 105 for rape, and 6 for gang rape<sup>10</sup>. Poverty, illiteracy, malnutrition, unemployed parents, drug abuse, peer pressure, easy access to firearms, fractured households, lavish lifestyles, and having too much independence from their parents are the primary causes of youth delinquency. Out of 41,385 juveniles apprehended in 2015, 4,757 were illiterate; 14,229 had just completed basic school, while 19,056 had completed secondary school but had not yet graduated from high

<sup>4</sup> *Crime in India 2020 | National Crime Records Bureau. (n.d.). Crime in India 2020 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2020>*

<sup>5</sup> *Crime in India 2020 | National Crime Records Bureau. (n.d.). Crime in India 2020 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2020>*

<sup>6</sup> *Crime in India 2020 | National Crime Records Bureau. (n.d.). Crime in India 2020 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2020>*

<sup>7</sup> *Crime in India Year 2015 | National Crime Records Bureau. (n.d.). CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. <https://ncrb.gov.in/en/crime-india-year-2015>*

<sup>8</sup> *ibid*

<sup>9</sup> *Supra note 6*

<sup>10</sup> *Supra note 6*

school<sup>11</sup>. These rates correspond to 11.5%, 34.4%, and 46.0% of all imprisoned minors, respectively<sup>12</sup>.

The December 16, 2012 gang rape in Delhi resulted in substantial changes to India's criminal laws because the perpetrator of the famous Nirbhaya rape case was a juvenile who was just short of the age of 18. The obligation to rebuild and reform our juvenile justice system was one such change. To address the major challenges of juvenile justice, it was proposed to abolish the then-JJ Act of 2000 and re-enact the 2015 Juvenile Justice (Care and Protection of Children) Act. To address concerns concerning the execution of juvenile justice, the JJ Act 2000 was amended several times. Total replacement was used to update the Juvenile Justice Act of 2000. by the Act, which was signed into law by the President on December 31, 2015. It is a statute that amend and integrates child-related laws. A child-friendly approach is employed in the processes that are offered, the institutions that are built, and the bodies that are formed in order to decide cases in the best interests of children and for their rehabilitation. It is an act to consolidate and revise the law pertaining to children who are accused of being in conflict with the law and who are judged to be in need of care and protection, with the goal of meeting their

fundamental requirements through appropriate care, protection, development, treatment, and social reintegration.

## ***Trend and Statistics of Crime by Juveniles in India***

The National Crime Records Bureau has found that, particularly in some categories of heinous offenses, the number of crimes committed by children between the ages of 16 and 18 years is increasing at an alarmingly high rate. The number of 16 to 18-year-olds detained under the IPC and SLL Crime/offence increased from 21657 in 2011 to 28539 in 2021, a startling 31.77% increase<sup>13</sup>. The bulk of young people in conflict with the law who were arrested in 2021 for IPC and SLL offenses (28,539 out of 37,444) fell within the age range of 16 to 18 years. Similar to this, the majority of adolescents in conflict with the law who were detained in 2020 (26,954 out of 35,352) were between the ages of 16 and 18<sup>14</sup>. In 2015, the bulk of children detained for IPC violations (27,986 out of 39,074) were between the ages of 16 and under 18 years old<sup>15</sup>. Sexual offenses have accounted for the majority of adolescent offences in recent years. According to NCRB's 2015 Report, the majority of SSL incidents involving minors—22.6% of all occurrences, or 2,037 cases—were reported in

<sup>11</sup>CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. (n.d.). CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. <https://ncrb.gov.in/en/crime-india-year-2015>

<sup>12</sup>ibid

<sup>13</sup>Crime in India 2021 | National Crime Records Bureau. (n.d.). Crime in India 2021 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2021>

<sup>14</sup>Crime in India 2020 | National Crime Records Bureau. (n.d.). Crime in India 2020 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2020>

<sup>15</sup>CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. (n.d.). CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. <https://ncrb.gov.in/en/crime-india-year-2015>

compliance with the 2012 POCSO Act. 41,385 teenagers were detained in 2015, of whom 38,877 were being held for the first time and 2,508 were repeat offenders (recidivists)<sup>16</sup>.

4,757 of the 41,385 minors apprehended in 2015 were illiterate, 14,229 had only finished elementary school, and 19,056 had finished middle school but were not yet in their senior year of high school<sup>17</sup>. It is important to highlight that the % of juvenile crime to the total crime reported under IPC, 1860 increased slightly from 0.9 % in 2001 to 1.1% in 2011 & again decreased to 0.7 % in 2021<sup>18</sup>.

### **Odisha Information**

The total number of juveniles apprehended in the state of Odisha during 2021 under various IPC & SLL criminal titles was 1334, according to the NCRB's Crime in India, Report of 2021<sup>19</sup>; this figure is 21.82% higher than the total number of juveniles caught in 2020, which was 1095<sup>20</sup>.

The total number of juveniles apprehended in the state of Odisha during 2015 under various IPC & SLL criminal titles was 1206,

which is 11.35% greater than the total number of juveniles caught in 2014, which was 1083, according to the NCRB's Crime in India, 2015 report<sup>21</sup>. Among them, 29 were held for murder, 35 for attempted murder, 105 for rape, six for gang rape, nine for dacoity, and 49 for robbery<sup>22</sup>. These offenses constitute, in turn, 3.72%, 3.80%, 6.73%, 7.22%, 5.05%, and 5.54% of the crimes committed by young people from Odisha in India in 2015 under the same heading<sup>23</sup>. The fact that 205 of the juveniles apprehended in the state of Odisha were illiterate, 456 had finished elementary school, 343 had finished upper elementary school but had not graduated, and 91 had finished matriculation or above, is also important to mention<sup>24</sup>.

### **Causes of Juvenile Crime:**

When children are given tender care and attention, they can develop in a healthy way since they are innocent from birth. Children are more likely to realize their full potential when they are growing physically, mentally, morally, and spiritually. However, unfavorable circumstances, a disdain for necessities, the

<sup>16</sup>*ibid*

<sup>17</sup>*Supra note 14*

<sup>18</sup>*Crime in India 2021 | National Crime Records Bureau. (n.d.). Crime in India 2021 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2021>*

<sup>19</sup>*Crime in India 2021 | National Crime Records Bureau. (n.d.). Crime in India 2021 | National Crime Records Bureau. <https://ncrb.gov.in/en/Crime-in-India-2021>*

<sup>20</sup> *ibid*

<sup>21</sup>*CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. (n.d.). CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. <https://ncrb.gov.in/en/crime-india-year-2015>*

<sup>22</sup>*ibid*

<sup>23</sup>*Supra note 20*

<sup>24</sup>*CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. (n.d.). CRIME IN INDIA YEAR 2015 | National Crime Records Bureau. <https://ncrb.gov.in/en/crime-india-year-2015>*



wrong company, and other wrongdoings can turn a young child into a juvenile offender. A child is like an uncut diamond; the community determines how it is formed. In India, there is a National Policy for Children that claims that children are a national asset and account for about 40% of the population. The majority of youngsters in India still endure difficult living conditions. There are many different factors that contribute to adolescent crime, but some of them include:

- Rapid urbanization; insufficient discipline; family and environment; broken families and households; unemployed parents; cinema and media
- Excessive parental autonomy;
- Expensive lifestyles
- Addiction to drugs;
- Anti-social peer pressure;
- a lack of recreational opportunities
- Unfriendly living conditions;

- Illiteracy;
- Household criminalization
- starvation, poverty, and unemployment
- easy access to firearms & Gang culture
- Excessive parental autonomy.

### ***Judiciary on Juvenile Justice System:***

The Supreme Court upheld the legality of the JJ Act, 2000 in the cases of *S. Bali v. Union of India*<sup>25</sup> and *Dr. S. Swamy v. Raju*<sup>26</sup> insofar as it allows all children in conflict with the law to be dealt with through the helpful juvenile justice system regardless of the gravity of the offense. In *Salil Bali*, the Supreme Court emphasized that the JJ CPC Act, 2000, and the rules enacted under it, which provide for the rehabilitation and re-integration of children in conflict with the law into mainstream society, are restorative rather than punitive. The Honourable Supreme Court declared in *Salil Bali v. Union of India*<sup>27</sup> that by inflating juveniles' ages, they were treated as adults and sent to jails instead of being taken before the Juvenile Justice Board.

<sup>25</sup>( 2013) 7 SCC 705

<sup>26</sup>*Dr. Subramanian Swamy. vs. Raju*, (2014) 8 SCC 390

<sup>27</sup>( 2013) 7 SCC 705

## Global scenario on the age of juvenile criminal liability<sup>28</sup>

Country	UK	USA	France	Canada	South Africa	Germany	India (earlier JJ Act, 2000)	India(JJ CPC ACT, 2015)
Minimum age of minors prosecution for crimes	10 Years	It ranges from 6 to 10 years of age.	Decided on a case by case basis	12 Years	10 Years	14 Years	7 Years under IPC, 1860	7 Years under IPC, 1860
Minimum age of minors prosecution for crimes as an adult.	17 Years in Wales, England and Northern Ireland & for Scotland- 16 years but can be lowered in exceptional cases	13 Y	16 Y	14 Y	16 Y	14 Y	There was no provision for treating Juveniles as an adult.	16
Penalty provided for CCL who are treated as an Adult.	Similar as adults. Life imprisonment is allowed but no death penalty	Similar as adults but No Life imprisonment or death penalty is provided.	Similar as adults, but decided individually for each situation. Life imprisonment is allowed	Murder-7 to 10 years, max. punishment for other offence is 3 year. life imprisonment not allowed & death penalty not allowed.	Similar as adults. No life imprisonment & No death penalty	10 years, life imprisonment not allowed & death penalty not provided.	N.A	Similar like adults but With the chance of release, life imprisonment allowed but death penalty not allowed.
Types of offences under which juvenile offenders can face trial as an adult.	Rape, Murder, Causing explosion.	Murder, Assault, robbery, aggravated sexual abuse, drug offence & firearm offences.	Rape, Robbery, Murder, drug offence	Murder, Aggravated sexual assault, serious bodily harm.	Rape, Murder, robbery	Child abuse leading to death, sexual abuse,	N.A	Serious offences where punishment is 3-7 years like cheating, counterfeiting or heinous offence having more than 7 years punishment like Rape, Murder & robbery

<sup>28</sup>Legislative Brief, JJ(CPC) Bill-2014, PRS Legislative Research, 2014

## Conclusion and advice

- The researcher revealed that, according to NCRB statistics, crimes committed by children aged 16 to 18 are increasing at an alarming rate in both India and Odisha, notably in numerous categories of serious and heinous offence. As a result, the provisions of the JJCPC ACT, 2015 are justified to some extent in allowing children between the ages of 16 and 18 charged with heinous crimes to be tried and sentenced as adults, despite the fact that doing so would violate India's obligations under the UN Conventions on the Rights of the Child and would not serve the interests of society as a whole. It is also true that the implementation of the 'transfer system' and 'preliminary assessment' violates the procedural fairness principles provided by the Indian Constitution and goes against the spirit of the juvenile justice system, which emphasizes reformatory, restorative, and rehabilitative justice.
- In order to strike a balance between the wider interests of society and the child in violation of the law, the government should take appropriate action to carry out the requirements of the JJCPC Act, 2015 and its Rules in both text and spirit.
- The government should take immediate action to address the fundamental causes of juvenile delinquency, such as starvation, malnutrition, unemployed parents, drug abuse, peer pressure, easy access to firearms, broken households, luxurious lives, and excessive parental independence.
- In every backward district in India, as well as in every district of Odisha, where there is a severe shortage of highly skilled and experienced medical professionals, the juvenile justice board's "preliminary assessment" may not be accurate, capable, or knowledgeable enough to assess a child's mental capacity to commit an offense, a very complex procedure. Instead, the "Preliminary Assessment" should have been handled by an experienced medical board formed by a government medical college and hospital.
- It is not in the best interests of the child or society at large to send CCL between the ages of 16 and 18 years who commit terrible crimes to the adult criminal justice system based on a potentially defective and misleading "Preliminary assessment" by the juvenile justice board. Because every district is required to have a JJ Board, effective and proper justice cannot be provided to these older juveniles/CCL, due to a lack of experienced and highly qualified doctors in every remote district of Odisha and in India, unless the JJCPC ACT, 2015 is amended to create an expert medical Board in every Government or private medical college and Hospital in every State to assist JJ Boards in "Preliminary assessment."



## ***Section 143-A of Negotiable Instruments Act, 1881- A critical analysis of its jurisprudence and grey areas of its interpretation***



**SIDDHANT MISHRA**

*JMFC I (Cognizance Taking), Sambalpur*

### ***Introduction***

The Negotiable Instruments Act, 1881 (hereinafter referred to as 'The Act') is one of the robust legislations of Indian legal system that has withstood the test of time, advancement of technology and advent of globalisation. The Act was enacted with an intent to 'define and amend laws relating to promissory notes, Bills of exchange and cheques'. With the passage of time and advancement of digital marketplace, the Act has included within its ambit the validity of electronic cheques, digital signatures and extended criminal liability to body corporates etc having regard to subsequent enactments of Information Technology Act, 2000 and Companies Act, 2013. The Act being quasi-civil in nature usually invites ambiguity as to whether the provisions of Criminal Procedure Code, 1973 (hereinafter referred to as 'CrPC') or that of the Civil Procedure Code, 1908 (hereinafter referred to as 'C.P.C') would apply

while disposing of petitions/applications under it. In general practice, courts usually take liberties while applying any of the aforementioned procedural laws according to the pleadings made before them by the parties. One of such common instances of ambiguity in practice is encountered while disposing of petitions for substitution of legal heir(s) upon the death of a complainant. Usually, pleaders file such petitions under Order 22 Rule 3 of the C.P.C, despite there being an opportunity available to them under Section 256 read with Section 302 of the CrPC. There is a plethora of judgments of several High Courts and the Supreme Court on the subject which validate the procedure available under CrPC. However, there are certain other areas under the Act which may be termed as an 'unchartered territory' of legal practice due to lack of academic literature available on those subjects and variations in their interpretations made by several High Courts. One such provision is Section 143-A of the Act which provides for 'power (of the Court) to direct interim compensation'.

### ***The Negotiable Instruments Act, 1881***

#### ***Chapter- XVII of Penalties in case of Dishonour of certain Cheques for insufficiency of funds in the Accounts***

#### ***Section 143A: Power to direct interim compensation.***

**143A.** (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant-*

- (a) *in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and*
- (b) *in any other case, upon framing of charge.*
- (2) *The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque*
- (3) *The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.*
- (4) *If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.*
- (5) *The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).*
- (6) *The amount of fine imposed under Section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."*

The provision was inserted by The Negotiable Instruments (Amendment) Act, 2018. Introduced as Negotiable Instruments (Amendment) Bill, 2017 the object and purpose of this amendment was to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques, and to discourage frivolous and unnecessary litigation which would save time and money. This amendment was necessitated after the observations made by the 213<sup>th</sup> Law Commission report titled "**Fast track magisterial courts for dishonoured cheques..**", (2008), wherein it was stated that cheque bounce cases constitute about 20% of the total pendency of cases in the country. Over time, complex judicial procedures have been manipulated by unscrupulous drawers to their advantage which has severely marred this objective, although, apparently there has been constant judicial effort to iron out the irregularities as evident from various judgements of the Hon'ble Supreme Court of India.

### **The jurisprudence of Section 143A of the Act and the grey areas**

Being a relatively new provision inserted into the time tested principal Act, the literature available on the subject is scarce. Though the trial courts have usually resorted to purposive interpretation of the provision with the aid of the Statement of Object and Reasons envisaged in the Negotiable Instruments (Amendment) Act, 2018, there are areas that require judicial intervention of the Honourable Supreme Court and the High Courts to settle the ambiguities that have become a commonplace in legal practice. In **G.J Raja v. Tejraj Surana, AIR 2019 SC 3817** the Honourable Apex Court held the section to be prospective in operation and that the

provisions of said section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of the said section 143A in the statute. This was because the accused in such cases were now subjected to a new disability/liability. Another conflict was resolved by the Honourable Apex Court in **Noor Mohammed v. Khurram Pasha, (2022) 9 SCC 23** wherein a three-judge bench of their Lordships U.U. Lalit, S. Ravindra Bhat and Sudhanshu Dhulia, JJ. while allowing an appeal challenging the decision of the Honourable Karnataka High Court which had upheld the conviction order passed by the trial court under Section 138 of the N.I. Act, without providing the appellant an opportunity to cross examine the respondent, observed that *“the provision concerned nowhere contemplates that an accused who had failed to deposit interim compensation could be fastened with any other disability including denial of right to cross-examine the witnesses examined on behalf of the complainant. Any such order foreclosing the right would not be within the powers conferred upon the court and would, as a matter of fact, go well beyond the permissible exercise of power”*. Thereafter the learned trial court was directed to allow the appellant to cross examine the respondent and to take the proceedings to a logical conclusion.

These are some areas that have been dealt with by the Honourable Supreme Court in relation to this provision and have assumed the status of ‘settled positions of law’. Another area within the domain of this Act, that is yet to be conclusively resolved is parameters/test that should be adopted by the trial courts to allow/reject an application under section 143-A of the Act. The provision begins with a *non-obstante*

clause and further goes on to provide that the Court trying the offence **may** order the drawer to pay interim compensation to the complainant. The usage of the term ‘may’ denotes that the trial court has to exercise its discretion while allowing or disallowing the applications, but in the absence of a uniform parameter/guidance, the discretion sought to be exercised in such cases ceases to become a ‘guided discretion’. In this parlance, the Honourable High Court of Jammu and Kashmir and Ladakh, in **Nazir Ahmad Chopan v. Abdul Rahma n Chopan, CRM(M) No. 50/2020 pronounced on 23.12.2022**, in a single judge bench observed that *“though no guidelines for grant of interim compensation have been laid down in Section 143-A of the NI Act, yet this discretionary power is to be exercised on well-recognized principles supported by reasons. The court has to spell out the reasons for grant of interim compensation in favour of the complainant and it has also to justify in its order with reasons the quantum of interim compensation that is being awarded by him as the said quantum can vary from 1% to 20% of the cheque amount”*. The court further added that *“some of the reasons for granting interim compensation may be that the accused absconds and avoids to appear before the Court despite service or there is overwhelming material on record to show that the accused is liable to pay an enforceable debt or that the accused is guilty of protracting the proceedings by avoiding to cross-examine the witnesses or producing his evidence”*. Similarly, the Honourable Karnataka High Court in **V. Krishnamurthy v. Dairy Classic Ice Creams Pvt.Ltd., 2022 SCC Online 1047**, observed that while deciding an application under this provision, priority is to be attached to the ‘conduct of the accused’. It further went



on to observe that *“if the accused has been unnecessarily evading the proceedings by seeking adjournments, consideration of the application would become imperative as the amendment itself is introduced to compensate such payees of delay tactics adopted by unscrupulous drawers of cheques”*. Having said that, the orders passed by the Honourable Courts are not exhaustive and preserve some room for discretion at the behest of the trial judge.

The ambiguity pertaining to this provision further increase, after the judgment rendered by the Honourable High Court of Chhattisgarh in **Rajesh Soni v. Mukesh Verma, 2021 SCC Online Chh. 1761** wherein it was held that the word “may” used in Section 143A be treated as “shall” and the provision is thus not discretionary, but becomes directory in nature, once the accused pleads not guilty in summary/ summons cases or upon framing of charge in any other case. This opened up floodgates of application under this section and the trial courts were riddled with confusion while disposing of them. On the other hand, the Honourable Delhi High Court in **M/S J.S.B Cargo and Freight Forwarder Pvt. Ltd v. State and another, 2021 SCC Online Del. 5425** observed that *“Section 143A of the Negotiable Instruments Act of 1881 is a directory provision rather than a mandatory one”*. The court also noted that *“the use of the word “may” in Section 143-A(1) of the Act conveys that the granting of interim compensation is not mandatory and a discretion was conferred upon the Court, to either grant or not to grant interim compensation”*. This observation is consistent with that of the judgment in **V. Krishnamurthy (Supra)** wherein the court opined that *“the provision is directory in the beginning snowballs into becoming*

*mandatory and penal by the time the realization of the deposit amount is made.”* These variable interpretations made by the Honourable High Courts of several jurisdictions have led to ambiguity and non-uniformity of legal practice concerning cheque bounce cases. Having regard to such lack of clarity, the applications under this section have now assumed the proportions of a ‘mini-trial’ and have started to defeat the very purpose for which the provision was inserted into the Act via an amendment.

### **Conclusion and Suggestions**

It is needless to say that jurisprudence of Section 143A is currently at its nascent stage. The position of law for this area is not yet settled insofar as the differential interpretations adopted by several High Courts are concerned. Furthermore, all the aforementioned decisions on the subject rendered by the High Courts were presided over by a single judge. In other words, these propositions of law are yet to be tested by a larger bench and/or by the Honourable Apex Court. Non-uniformity in interpretations will have the effect of causing prejudice to litigants and the public in general. For instance, Section 143A operates as a mandatory provision for the courts within the supervision of the Honourable High Court of Chhattisgarh whereas the rest of the jurisdictions have the liberty to deal with the applications in a relatively liberal sense. Therefore, an immediate intervention of the Honourable Apex Court to settle the position of law on the subject would be immensely beneficial to the trial Courts and litigants. Furthermore, academic researches, if undertaken by law schools and State Judicial Academies on this subject can also guide trial judges to better understand the jurisprudence of it.

## Corruption in the Electioneering Process: Investigative Identification, Institutionalised / Legal Sanction & Reformative Recommendations



**REETI TRIPATHY**

Civil Judge-cum-JMFC  
Khariar, Nuapada

### Abstract

Corruption, undeterred by ineffective regulation of political campaign financing, has resulted in adoption of policies that disproportionately favour the electoral contributors at the cost of public welfare, the price of popular sovereignty of the world's largest democracy and the eternal value of the constitutional mandate of the "right to free and fair elections". Therefore, there is a visible linkage between degradation of political equality and the electioneering process *in toto*. The overarching impact of corruption on Indian polity has especially left a rather disparaging imprint on the system of election campaign finance in India, necessitating its effective regulation. Corruption is a manifestation of questionable political contribution made by those who want governance to cater to their social interests as opposed to *pro bono publico* service and welfare

of the State. In that sense, our electoral law has been unable to preserve the fundamental idea of democracy of a vote being the voter's proxy for participation in governance. This calls for ensuring financial accountability, fairness, transparency and judicial integrity in the entire electioneering process by collective cooperative federalism in defining stronger popular sovereignty by the incorporation of the real Universal Adult Franchise in alienation from all the appendages of the electoral corruption prevalent in India.

### Introduction

*"Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the king's revenue. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves)."*

**-Kautilya**

India inherited a legacy of corruption from its ancient rulers who always expected some gifts (in the form of the *nazarana*) from their subjects. Being the world's largest democracy, India undoubtedly should envisage the true spirit and credo of free and fair elections with the power of selecting leaders rests in the hands of the population. Unfortunately, financing of elections by corporates and others with

vested interests resulted in the nexus between politicians and businessmen lobbying to protect their interests and this has long tarnished the image of the Indian Polity ever since 1950. India liberalized its economy in 1991, drastically reducing tax rates, tariffs, and detailed micro-control of economy activating. At the same time, they opened up sectors previously reserved for the public sector to private, including foreign entry. These changes were expected to bring an end to the corruption that plagued India particularly since the 1970s. Yet in 2011, two decades after liberalisation, an economically resurgent India, faced a crisis of governance. Scams and scandals dominated the headlines. A Cabinet Minister was jailed after resigning on charges of corruption pertaining to the allocation of telecommunication spectrum.

The symbiotic relationship between politicians and their financiers has been brought to light thereby illuminating the consequent corruption that erodes the country's resources. This vicious cycle of corruption had almost become the face of disgraced Indian Electoral system. Primarily the objective of such heavy financing of elections is to win vote banks. In India this is done either by distribution of freebies, often liquor, rice and electronic goods to win the votes of an illiterate voter who is incapable of making an informed choice. He then votes for a party that gives him a momentary material gain.

From one perspective, the ability of formal government institutions and civil society initiatives to identify and target the corrupt demonstrates the resilience and corrective power of India's political system. But the question arises as to

why corruption is so widespread and pervasive in India even after economic liberalisation. We argue that there are two key drivers of corruption in India. One, economic liberalisation has not ended the government's discretionary powers over resource allocation in numerous domains. Two, flawed political party funding and election expenditure laws drive parties and politicians to misuse the government's discretionary powers over resource allocation to raise funds for election campaigns and political parties.

A well-functioning democracy requires vibrant political parties and competitive elections. Political parties perform several crucial functions, which include:

- (1) *the integration and mobilisation of citizens;*
- (2) *the articulation and aggregation of interests;*
- (3) *the formulation of public policy;*
- (4) *the recruitment of political leaders; and*
- (5) *the organisation of Parliament and government.*<sup>1</sup>

In order to function effectively and to fulfil these roles, to run for and win office, or to serve as an effective opposition, political parties and their candidates need significant financial resources. India has had a mixed record in coming to terms with this reality. However, in reality, the political parties participating in the elections are creating problems in the electoral process such as communalism and politics, money power, booth capturing and violence and criminalisation of politics.

<sup>1</sup>Bartolini, S. and Mair, P. (2001). *Challenges to Contemporary Political Parties*. In Diamond, L. and Gunther, R. (eds.), *Political Parties and Democracy* (pp. 327–344). Baltimore: Johns Hopkins University Press.



Traditionally, political parties in India financed themselves through private donations and membership dues.<sup>2</sup> Corporate contributions to political parties were legal, subject to certain restrictions, and had to be declared in the company's accounts. The Representation of the People Act (RPA) of 1951 introduced limits on the amount that could be spent on election campaigns. Candidates who exceeded these limits faced the prospect of disqualification and annulment of their elections.<sup>3</sup>

### **Concept and Meaning:**

The public office centered corruption is defined as a behaviour that digresses from the formal public duties of an official for reasons of private benefit. J.S. Nye provides an example of a public office-centered definition

*Corruption is behaviour, which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private- regarding uses).*

Corruption in India has passed through three different stages: (a) *gaining legitimacy* (b) *widespread indulgence*, and (c) *shameless defence*.

### **Legislative, Legal and Institutional Status Quo and Developments as Election Reforms for Elimination of Corruption in Electioneering Process:**

In India, the Election Commission is the apex authority that has the power to control and regulate elections and electoral spending.<sup>4</sup> It is an autonomous and independent body that upholds the virtues of a democracy. The improvement in the current situation is only possible by the diligence of the election commissions. Strict laws are passed by the legislative aid this. However laxity lies in their implementation. Be that as it may, there has been a slow but constant metamorphosis of the Indian electoral system assisted by the legislature and the Election Commission. An attempt to treat such malaises can be seen the evolution of laws ranging from the Representation of People Act, 1951; the Presidential and Vice Presidential Act, 1952; and the Conduct of Election Rules 1961. <sup>5</sup>However, these acts failed to address key issues of the flow of money in elections and the use of manpower to win elections.

<sup>2</sup>E. Sridharan, *Electoral Finance Reform: The Relevance of International Experience*. In V. K. Chand (ed.), *Reinventing Public Service Delivery in India: Selected Case Studies* (pp. 371–5). New Delhi: Sage.

<sup>3</sup>Ramadevi, V. S. and Mendiratta, S. K. (2000). *How India Votes: Election Laws, Practice and Procedure* (pp.378–80, 391–95). New Delhi: Butterworths India; Gowda, Rajeev M.V., and E. Sridharan, *Reporting India's Party Financing and Election Expenditure Laws*, *Election Law Journal*, Volume 11, Number 2, 2012, <http://casi.sas.upenn.edu/system/files/Gowda-Sridharan,+ELJ+paper,+Reforming+India's+Party.pdf> [accessed on: 1 September 2013].

<sup>4</sup>Chief Election Commissioner of India, 2009 General Elections: *Challenges and Opportunities*, [http://eci.gov.in/ECI\\_Main/DJ/Speech%20for%20European%20Business%20Group,%20Mumbai%20-%202012.01.2010.pdf](http://eci.gov.in/ECI_Main/DJ/Speech%20for%20European%20Business%20Group,%20Mumbai%20-%202012.01.2010.pdf) , [accessed on: 3 September 2013].

<sup>5</sup>Chopra, Joginder K., *Politics of Election Reforms in India*, Mittal Publications, 1998 Edition, at p. 293.

By the 1960s, there were concerns in policy circles about a nexus between black money and political fund-raising. “Black money” is the term applied to funds on which taxes have not been paid or to money raised through illegal activities. The reports of the Santhanam Committee on Prevention of Corruption (1964) and the Wanchoo Direct Taxes Enquiry Committee (1971) both shed light on the problem of black money infiltrating the political system.<sup>6</sup> Black money was generated by businesses and individuals who evaded corporate and income taxes. This became prevalent because of the high taxation regime and highly regulatory and protectionist policy framework that was instituted from the 1950s onward. Some of this black money tended to be pumped back to political parties and candidates to garner favourable policy decisions.

In 1968, Prime Minister Indira Gandhi banned corporate donations to political parties. The ostensible reason for the ban was to prevent large business groups from exercising undue influence on politics.

However, there has also been speculation that she may have introduced this measure partly because she feared that corporate interests would fund right-wing opposition parties. The ban on corporate donations to political parties was not accompanied by state funding as a substitute for corporate funds. This tended to greatly increase politicians’ reliance on black money for election campaigns, as there was no

other adequate and legal source of funds.

In **Indira Nehru Gandhi v. Raj Narain**,<sup>7</sup> Justice HR. Khanna observed- “the principle of free and fair election is an essential postulate of democracy which in turn is a part of the basic structure of the Constitution of India. This leads us to peruse the provisions of the Constitution in the light of established principles of free and impartial election”.

**Khanna, J.** further observed- “Democracy can indeed function only upon faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.”

In 1974, the Supreme Court of India ruled in the case of **Kanwar Lal Gupta v. Amar Nath Chawla**<sup>8</sup> that party spending on behalf of a candidate should be included in calculating that candidate’s election expenses in order to determine whether the election expenditure limit had been violated. In response, Parliament amended the RPA in 1975 to nullify the Supreme Court’s judgment. Specifically, Parliament amended Explanation 1 to Section 77(1) of the RPA, such that party and supporter expenditures not authorised by the candidate did not count toward the calculation of a candidate’s election expenses. This made the limit on election expenditures largely ineffective, as it was limited to a candidate’s direct expenditures only, while the party and the candidate’s supporters could spend without any limit.

<sup>6</sup>Committee on Prevention of Corruption, 1962 was headed by K Santhanam; The Wanchoo Committee was appointed in 1971 to examine and suggest legal and administrative measures for unearthing black money and countering evasion and checking avoidance.

<sup>7</sup>AIR 1975 SC 2299.

<sup>8</sup>AIR 1975 SC 308.

In 1990, the National Front government set up the Dinesh Goswami Committee on Electoral Reforms. The Goswami Committee Report recommended some state funding in the form of limited support in kind for vehicle fuel (usually the main campaign expense), rental charges for microphones, the issuance of voter identity slips and additional copies of the electoral rolls. It did not include spending by independent supporters in the election expenditure limit but made such unauthorised spending a penal offence (as in the United Kingdom). The committee also advocated a ban on corporate donations to political parties. These recommendations left a gap in the parties' campaign finance requirements. While banning corporate donations, they did not provide for an adequate substitute in the form of public funding.

In 1993, Indian industry became publicly concerned about the issue of political funding for the first time. The Confederation of Indian Industry (CII) set up a Task Force which recommended that corporate contributions be made tax-deductible and that shareholder confirmation of board decisions about political contributions be required. CII also recommended state funding of elections with the funds to be raised either by a cess (earmarked tax) on excise duty or through contributions by industry to an election fund pool managed by the state. Money would be distributed to parties through a formula. This proposal, in effect, proposed a tax on industry to finance campaigns.

Two important developments took place in 1996. In the case of **Common Cause v. Union**

**of India**,<sup>9</sup> the Supreme Court issued notices to political parties to file returns by February 20, 1996, as required by the Income Tax and Wealth Tax Acts. Parties had previously failed to respond to notices in this regard issued by the Income Tax Department. In this judgment, the Supreme Court also interpreted Explanation 1 of Section 77(1) of the RPA so that election expenditures by a political party would not be included with that of a candidate for the purpose of determining compliance with the expenditure ceiling, only so long as the party had submitted audited accounts of its income and expenditures. No political party had submitted audited accounts. Political parties were forced to declare their annual incomes; this brought about a degree of transparency in party finance.

This matrix of the Supreme Court decisions shows the involvement of the courts as a balancing agent and guardian angel of the democratic set up in India. The judiciary has also played a quintessential role in electoral reforms in India as seen in **Peoples Union for Civil Liberties (PUCL) & Anr. v. Union of India**<sup>10</sup>; in which under the direction of the Supreme Court the Election Commission made it mandatory for the electoral office to submit affidavits disclosing the assets and liabilities of candidates.

A 1998 report of the Indrajit Gupta Committee on State Funding of Elections (Gupta Committee) recommended partial state funding, mainly in kind. The Gupta Committee also recommended that parties that failed to maintain and submit audited accounts and income tax returns be denied state funding. Under this recommendation, all parties

<sup>9</sup>AIR 1996 SC 3081.

<sup>10</sup>2003 SCC 399.



receiving a state subsidy for campaigns would be required to file a complete account with the Election Commission in the format prescribed by the latter.<sup>11</sup>

### ***Tenets of Unethical Electoral Offences as a Manifestation of Corruption in Elections:***

The Supreme Court of India in ***Shiv Kripal Singh v. V.V. Giri***<sup>12</sup> held that:—“*What amounts to interference with the exercise of an electoral right is tyranny over the mind*”.

The unethical practice of ‘paid news’ that is spreading its tentacles all over media, as an electoral crime or corrupt practice is affecting the roots of democracy.<sup>13</sup> In recent years, corruption in the Indian Polity through media houses has gone way beyond the corruption of individual journalists and specific media organisations—from planting information and views *in lieu* of favours received in cash or kind, to more institutionalised and organised forms of corruption wherein newspapers and television channels receive funds for publishing or broadcasting information in favour of particular individuals, corporate entities, representatives of political parties and candidates contesting elections, that is sought to be disguised as “news”.

In the Andhra Pradesh elections of 2004, the ugly head of ‘paid news’ along with varied manifestations of exaggerated misinformation

were noticed in one district and by 2009 elections spread its tentacles all over the state and beyond. By the next Assembly Elections in 2009, the news spread, and the individual and isolated phenomenon in a few constituencies became well organised, widespread, and deep rooted with systematic collection as per unwritten tariff. Paid news was institutionalised and journalists sold space to achieve fixed targets. It was resurrected with full vigour in every general election and is happening in more focused and concentrated manner in every by-election.

This is not just an unethical practice but a new form of crime on par with economic, white collared and organised crimes of rich and powerful. It has characteristics of perjury, misrepresentation, deceit and cheating, which are well defined crimes under the Indian Penal Code, 1860 and the Representation of People Act, 1951. The “undue influence at elections” which could potentially curb free exercise of electoral rights is an election crime under Section 171C of the Indian Penal Code, 1860 and Section 123 of the Representation of People Act, 1951. Healthy campaign is ‘due’ influence which is valid. Voters can be influenced with statements of the good deeds of the candidates and their achievements, but these should not be “undue” and tantamount to “abuse of influence”.<sup>14</sup> Even an attempt to interfere with free exercise is an electoral offence.

<sup>11</sup>Report of the Committee on Electoral Reforms (Indrajit Gupta Committee), Ministry of Law and Justice, Legislative Department, Government of India, Delhi, 1998, pp. 11–45, 55–56

<sup>12</sup>AIR 1970 SC 2097.

<sup>13</sup>The International Workshop on—Key Challenges for Journalism in India|| on August 8, 2012 at New Delhi, organised by International Federation of Journalists.

<sup>14</sup>Bachan Singh v. Prithvi Singh, AIR 1975 SC 926.

### Reformative Recommendations:-

- i. To ameliorate the grim reality of Indian polity and its electoral system and practices it is paramount *to instil greater transparency in the electioneering system*. Promotion of transparency, objectivity and merit in selection and appointment to important public offices including the regulatory bodies.
- ii. Transparency at every level of the election process must be instituted with the public's demand for stricter laws, *amendments to current incompetent law and an active role of the judiciary* in safeguarding the rights and interests of the common man.
- iii. The ethos of the polity in India needs to be refurbished and this is possible only *by imposing a stronger Model Code of Conduct. This should be given statutory status and be penal in nature*.
- iv. *Financial Accountability* can be ensured by '*imposing contributory limits*', '*elements of contributory agents*', '*tenets of contributory process*', '*value of contributory financing*' and '*rationales of contributory electioneering governance*'.
- v. Imposition of *reasonable restrictions on the constitutional recognition of the fundamental right to freedom of speech and expression and that of press*, to instil in the media personnels, media organisations and media corporate entities ordeals of ethics, equity, judiciousness, and good conscience for enabling appreciable popular sovereignty by holding free and fair elections.
- vi. The outreaching appendages of law can reach paramount heights and cosmopolitan party depths, if fraudulent or false publication or suppression for cash gets noticed. No law on the earth, however, can punish '*paid silence*' or '*paid suppression*' or '*paid deletion*'. There is a need for aligning intellectual thought process in making this aspect of election an offence to be penalised.
- vii. Establishment and constitution of Special Courts or Election Tribunals for the expeditious trial of electoral offences in relation to the Representation of People Act, 1951 and the Prevention of Corruption Act, 1988.
- viii. Assigning plans, policies, programmes and propagand to *ensure electoral competitiveness*. Lower contribution limits prove to reducing the incumbents' considerable financial fundraising advantage.
- ix. Innovation and implementation of "*Election Campaign Finance Regulations: Expenditure Regulations, Transparency and Disclosure Regulations*" and of regulative mechanisms to combat yellow journalism in electoral process of the Election Commission of India in collaboration with the Press Council of India.
- x. Incorporation of *an Independent and Impartial feature of the Election Commission of India*.
- xi. Realisation of the "*political bonds*" for advancing financial assistance to the political parties during elections.
- xii. Citizens should be empowered to resist the demand for bribes by instituting mechanisms like "*Anti Bribery Hot Lines*" or "*Whistle Blower provisions*" so that citizens can report solicitation of bribes which should then be followed by prompt action. Citizens should also be persuaded and convinced to desist

from paying bribes through awareness and education campaign.

- xiii. Provision of the “*National Anti-Corruption Strategy*” and “*Lokpal*” to combat electoral offences in relation to corruption and electioneering process.
- xiv. Concealment of ill gotten wealth should be made difficult by ensuring traceability and transparency of all transactions and investments through the use of instruments like UID, Benami Act and Anti-Money Laundering provisions.
- xv. Proper functioning of the Global Organisation of Parliamentarians against Corruption (GOPAC) which was established in 2002, as an international network of parliamentarians dedicated to good governance and combating corruption throughout the world. It attempts to build alliances amongst parliamentarians in developing codes of conduct and indicators of performance of parliamentary oversight and to create forums for training parliamentarians on their budgetary and financial oversight role.

### **Conclusion:**

Electioneering process and corruption are, indeed, considered conjoint twins. The institution of democracy thrives on the conduct of ‘*free and fair*’ elections. Political parties and candidates require huge funds to build and sustain themselves, garner support and contest elections. The need to raise funds for election expenses paves the way for collecting

and diverting huge amounts of money through illegal route and thereby turning politics into a “*dirty business*”. In spite of the statutory limit on election expenditure, the elected members of the national and state legislatures blatantly violate the same and also undervalue their expenses in audit accounts to be submitted to the Election Commission. Due to absence of adequate and legal sources of funding, politicians tend to rely heavily on black money to fund their campaigns. Sumantra Bose has observed that “*the culture of corruption is deeply intertwined with the ways in which power is won, exercised and retained in India’s democracy.*” J. P. Naik said that-“*Power is the spoiler of men and it is more so in a country like India, where the hungry stomachs produce power hungry politicians*” and very rightly so. This statement is appropriate to describe the power hunger of Indian politicians. The major chunk of the vote bank remains illiterate even today and can be bought over by the distribution of freebies that only ridicules the democratic setup. However, no law or its instrumentation can encounter the powerful nexus of leaders and funders that share a symbiotic relationship of monetary gain through elections and coming to power. The rampant corruption in India, as exposed by the recent scams and the abundance of black money sources from tax havens abetted by the taxing regime in India further provide resources to this nexus to protect its interests while clamping upon the basic epitome of Indian democracy.



## ***Celebrating 75 Years of Judicial Excellence : High Court of Orissa***



**KRUSHNA SUBUDHI**

*JMFC (L.r) Deogarh, Odisha*

High Court of Orissa, one of the oldest and most esteemed Judicial Institutions in India, is commemorating its 75<sup>th</sup> anniversary. Since its establishment on 26<sup>th</sup> July 1948, the court has been instrumental in upholding the principles of justice, safeguarding the rights of the people, and contributing significantly to the legal landscape of the state of Odisha. This milestone is not only an occasion to celebrate the court's achievements but also an opportunity to reflect on its rich history and remarkable impact it has had on the lives of millions.

### ***Historical Background***

The roots of the High Court of Orissa can be traced back to the British era when the region was part of the Bengal Presidency. Initially, the judicial administration was carried out by the Circuit Courts and Sadar Adalats. However, the need for a separate High Court to address the increasing legal requirements

of the province became evident. On 18<sup>th</sup> March 1916, the Orissa High Court was established under the Bengal, Agra and Assam Civil Courts Act, 1887. It had jurisdiction over the undivided Odisha, including present-day Odisha, parts of Bihar, and the princely states of Sambalpur. Subsequently, on 1<sup>st</sup> April 1936, Odisha became a separate province, and the High Court of Orissa came into existence.

### ***Evolution and Progress***

Over the years, the High Court of Orissa has witnessed significant growth and development. Initially functioning from a rented house, the court moved to its current premises in Cuttack in 1948. The journey from a modest setup to a state-of-the-art institution reflects the court's commitment to providing and efficient and accessible justice system. The High Court of Orissa has played a crucial role in shaping the legal framework of the state. It has made significant contributions in the areas of civil rights, constitutional matters, criminal justice, land disputes and public interest litigation. The court's judgement have not only set legal precedents but also influenced the legal landscape of the country. Throughout its history, the High Court of Orissa has upheld the principles of justice, fairness and impartiality. The judges and legal professionals associated with the court have consistently demonstrated their dedication and commitment to delivering justice to all sections of society. The court's

commitment to protecting individual rights and preserving the rule of law has earned it a reputation for excellence.

### ***Commitment to Access the Justice***

The High Court of Orissa has consistently strived to ensure access to justice for all. “Justice has always evoked ideas of equality, of proportion of compensation. Equity signifies equality. Rules and regulations, right and righteousness are concerned with equality in value. If all men are equal, then all men are of the same essence, and the common essence entitles them to the same fundamental rights and equal liberty... In short, justice is another name of liberty, equality and fraternity” (Dr. B.R. Ambedkar). Hence, the High Court of Orissa has been proactive in promoting legal awareness and literacy. It has organized various outreach programs, including legal aid camps and workshops, to empower the public with knowledge about their rights and legal remedies. These initiatives have played a crucial role in bridging the gap between the judiciary and the common people. The High Court of Orissa has also taken steps to enhance the efficiency of its functioning. It has introduced alternative dispute resolution mechanisms like mediation and arbitration, encouraging parties to resolve their disputes outside the courtroom. This approach has not only expedited the resolution of cases but has also helped in reducing the backlog of pending cases.

**1. Protection of Civil Rights:** The High Court of Orissa has been at the forefront of protecting and promoting civil rights. It has played a crucial role in ensuring

access to justice, safeguarding individual liberty and upholding the principles of equality and non-discrimination.

- 2. Constitutional Matters:** The Court has addressed numerous constitutional matters, including interpretation and application of the Constitution of India. Its judgements have contributed to the development of constitutional jurisprudence and helped establish the principles of constitutional governance.
- 3. Criminal Justice:** The High Court of Orissa has played a vital role in ensuring a fair and effective criminal justice system. It has dealt with a range of criminal cases, including heinous crimes and has been instructional in maintaining law and order in the state.
- 4. Land Disputes and Property Rights:** Given the agrarian nature of Odisha, land disputes have been prevalent. The High Court of Orissa has played a crucial role in resolving land related conflicts and protecting property rights, providing relief to individuals and communities.
- 5. Public Interest Litigation (PIL):** The court has been receptive to PILs, allowing citizens to seek redress for matters of public concern. It has addressed critical issues related to environment, human rights, social justice and governance, thereby empowering citizens to hold authorities accountable.
- 6. Judicial Activism:** The High Court of Orissa has embraced judicial activism

when necessary, utilizing its powers to bridge gaps in legislation, protect fundamental rights and promote social justice. It has set exemplary standards for judicial intervention to address pressing societal issues.

### ***Embracing Technology and Modernization***

In the recent year, the High Court of Orissa has embraced technology to enhance efficiency and accessibility. The court has implemented e-filing systems, online case management and video conferencing facilities to streamline legal process and reduce administrative burdens. These advancements have not only expedited the resolution of cases but have also made justice more accessible to litigants across the state with more transparency. This progressive approach has helped reduce the burden on the court while providing effective and timely resolution of conflicts.

### ***Contribution to Legal Domain***

In addition to its judicial functions, the High Court of Orissa has made significant contributions to legal landscape. The court has consistently produced high-quality judgements, characterized by meticulous legal reasoning and in-depth analysis. These judgements have not only provided guidance to lower courts but have also contributed to the development of legal principles and doctrines which include.

1. ***Protection of Civil Rights:*** The High Court of Orissa has been at the forefront of protecting and promoting civil rights. It has played a crucial role in ensuring

access to justice, safeguarding individual liberties and upholding the principles of equality and non-discrimination.

2. ***Constitutional Matters:*** The Court has addressed numerous constitutional matters, including interpretation and application of the Consitution of India. Its judgements have contributed to the development of constitutional jurisprudence and helped establish the principles of constitutional governance.

3. ***Criminal Justice:*** The High Court of Orissa has played a vital role in ensuring a fair and effective criminal justice system. It has dealt with a range of criminal cases, including heinous crimes and has been instrumental in maintaining law and order in the state.

4. ***Land Disputes and Property Rights:*** Given the agrarian nature of Odisha, land disputes have been prevalent. The High Court of Orissa has played a crucial role in resolving land-related conflicts and protecting property rights, providing relief to individuals and communities.

5. ***Public Interest Litigation (PIL):*** The court has been receptive to PILs, allowing citizen to seek redress for matters of public concern. It has addressed critical issues related to environment, human rights, social justice and governance, thereby empowering citizens to hold authorities accountable.

6. ***Judicial Activism:*** The High Court of Orissa has embraced judicial activism



when necessary, utilizing its powers to bridge gaps in legislation, protect fundamental rights and promote social justice. It has set exemplary standards for judicial intervention to address pressing society issues.

The High Court of Orissa has also nurtured legal talent through its judges, many of whom have gone on to occupy the highest positions in the judiciary and legal academia. Their expertise and insights have enriched the legal landscape of the country, contributing to the growth and evolution of the legal profession.

### **Conclusion**

As the High Court of Orissa commemorates 75 years of its distinguished service, this is a moment to celebrate its rich legacy and significant contributions to the legal domain. The Court has been a pillar of justice, ensuring that the rights of the citizens

are protected, and the rules of law is upheld by fostering a just and equitable society. It has evolved with the times, embracing technology and modernization to enhance its efficiency and accessibility. In future, the Court will continue to uphold the principles of justice, fairness and equality, ensuring that the spirit of the law prevails for generations to come.

### **Bibliography:**

Historical perspective, accessed on June 1, 2023, from [www.orissahighcourt.nic.in/history.pdf](http://www.orissahighcourt.nic.in/history.pdf)

JaiBheem access Justice, retrieved on July 1, 2023 from <https://jaibheemaccessjustice.org/>

Chief Justices/Judges Elevated to Supreme Court, accessed on July 1, 2023, from <https://www.orissahighcourt.nic.in/judges/chief-justices-judges-elevated-to-supreme-court/>

## ***Liability of Internet Service Providers (ISP) for Copyright Infringement under Copyright Act, 1957 & IT Act, 2000***



**SANDEEP KUMAR MOHANTY**

*JMFC (LR & LTV), Berhampur, Ganjam*

### **1. Introduction**

Copyright is one of the oldest intellectual property rights (hereinafter refer to as “IPR”), whereby law protects the rights and generates benefits to intellectual creators i.e the authors of literary, dramatic, musical, and artistic works and producers of films and sound recordings. Infact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation, and translation of the work. Online copyright infringement occurs when a copyrighted work such as a song, movie, drawing, artistic work or text is copied, modified, displayed, or performed electronically in cyberspace without the copyright owner’s authorization. When a copyright in a work of a person is infringed electronically, it is immensely difficult to find the infringer in the cyber domain space and to bring him to justice. The debate is whether any liability can be fixed on the

internet service providers (herein after refer to as “ISPs”) for example, owners of the website which serves as platform for online publishing of information, e.g.: YouTube, facebook, twitter, Instagram etc., and if the answer is yes, to what extent can these service providers be held liable for or what shall be their duties or responsibilities.

The issue of online copyright infringement for Internet Service has been debated worldwide ever since the rise in the use of internet. The question as to the liability of ISPs in relation to the infringement of copyright has been a matter of debate for quite a long time now. On one side of the argument, it can be said that ISPs are to be made liable as it is difficult to point out and impose liability on individual users, whereas, on the other hand, we may say that the ISPs are mere passive carriers of information, just like telecom companies, and therefore, must be granted some limitation from liability regarding copyright infringement. Also, making ISPs liable could also stifle the growth of the Internet.

### **2. Analytical Framework**

For this purpose, it is important to identify an ISP. In India, the Information Technology Act, 2000 (hereinafter refer to as IT Act) refers to ISP as network service provider and defines the same in section 79 (a) as an “intermediary”. The intermediary is further defined u/s 2(w) of the IT Act as “*intermediary with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message*

or provides any service with respect to that message". The telecom service providers, internet service providers, web-hosting service providers, search engines, online payment platforms and sites, online auction sites, online marketplaces, e-commerce sites and cyber cafes are examples of intermediaries under the Act.

Is the internet service-provider liable for each and every act of infringement, which is taking place in digital world by using internet? The Copyright Act, 1957 (hereinafter refer to as Copyright Act) does not expressly cover the liability of ISP whereas IT Act provides the stringent supplementing provisions to the Copyright Act.

### **3. ISP Liability under Copyright Act, 1957**

Section 51 of the Copyright Act provides for activities which amounts to copyright infringement.

Section 51 Copyright in a work shall be deemed to be infringed

- (a) *When any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act-*

(i) .....

(ii) *permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground*

*for believing that such communication to the public would be an infringement of copyright.*

In the context of infringement over internet and liability of ISP, it can be read that words '*any place*' would include the place of the business premises of ISPs where the computer servers and other telecommunication facilities are located and they could be held liable for the communication of any of the infringing work. Words '*permits for profit*' emphasize that, to be liable for copyright infringement, the ISP should be financially benefiting from the infringing activities.

Section 2 (ff) of the Act lays down the meaning of communication to the public as "making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available." Further, "any person who knowingly infringes or abets the infringement of copyright" is made criminally liable u/s section 63 punishable with imprisonment for a term which shall not be less than six months but which may extend to three years.

### **4. Liability of ISP under IT Act, 2000**

The provisions in relation to ISPs are provided under the IT Act U/s 79, which limits the liability of ISPs. According to the section for the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under



this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such as offence or contravention. Here, network service-provider is referred to as “intermediary” and “third party information” means any information dealt with by a network service-provider in his/her capacity as an intermediary.

The section limits the liability of the ISPs in two ways:

- ISP has exercised all due diligence to prevent commission of offence and
- Offence so committed is without the knowledge of ISP.

## 5. Significant Judicial Pronouncements

In **Super Cassettes Industries Ltd. v. Yahoo Inc. & Anr [CS (OS) No. 1124 of 2008]**<sup>1</sup> the Hon'ble High Court of Delhi issued notice to Yahoo Inc. and its Indian subsidiary Yahoo Web Services (India) Pvt. Ltd on a suit filed by Super Cassettes Industries Limited (herein after refer to as SCIL) owner of the Indian music label “T- Series” for infringement of their copyright caused by unlicensed streaming of SCIL's copyright works on Yahoo's portal video.yahoo.com

The plaintiff filed the suit for permanent injunction, restraining infringement of copy rights etc. The plaintiff claimed that it has a robust copyright licensing program under it

‘TPPL Scheme’ and routinely grant licenses to other exploiters of music such as restaurants, hotels, resorts, shopping malls, retail outlets, nightclubs/discotheques, airlines, FM radio stations, TV broadcasters etc., for the use of works in which it enjoys copyright.

Subsequently, the plaintiff found that the defendants are infringing the copyright of the plaintiff by hosting and streaming the songs, partially and full video clips of audio-visual songs in which the plaintiff owns the copyright, on its website, **www.video.yahoo.com**. Legal notices were served but it was found that the copyrighted works were not removed by the Company.

Order was passed by the Hon'ble court restraining defendants and/or their officers, servants, agents and representatives are restrained from reproducing, adapting, distributing or transmitting in any manner on their website, ‘www.video.yahoo.com’ or otherwise infringing in any manner, the cinematograph films, sound recordings and/or the underlying literary or musical works of the plaintiff, in which the plaintiff claims copyright, without obtaining an appropriate license from the plaintiff.

Similarly, in another case of **Super Cassettes Industries Limited v. YouTube & Google [CS (OS) No. 1124/ 2008]**<sup>2</sup> SCIL claimed that the business model of YouTube allows, encourages, and profits from the use of copyrighted work uploaded on the website without obtaining any license or permission from the rightful copyright owners and without paying them any royalty. The Hon'ble High Court

<sup>1</sup>Retrived from Scconline.com as on dated 31.01.2023

<sup>2</sup>Retrived from Scconline.com as on dated 31.01.2023

passed the order against YouTube and Google restraining them from reproducing, adapting, distributing, communicating, transmitting, disseminating or displaying on their websites or otherwise infringing ... any audio-visual works in which the plaintiff [SCIL] owns exclusive, valid and subsisting copyright.

Further, Delhi High Court granted Super Cassette Industries an interim stay order, restraining Indian website [www.santabanta.com](http://www.santabanta.com) from streaming audio and video content from some movies for which T-Series has music rights. In this case, T-Series had alleged that Santabanta.com was publishing songs from the movies like Salaam-e-ishq, Honeymoon Travels, without any authorization from the Company.

Similar complaints were filed by Super Cassettes Industries Limited against websites like, Rediff.com, My Space, in which as interim stay order was granted in favour of SCIL restraining these websites from streaming the videos like songs and movies, whose rights are owned by SCIL. Recently, in May 2010, SCIL also filed a complaint against the owner of the website Guruji.com for copyright infringement of its music.

**In My Space Inc. vs Super Cassettes Industries Ltd. [(2017) 69 PTC1 (Del)]** the Hon'ble Delhi High Court passed a programme in judgement:-

My Space, a social networking platform was liable to take down copyright infringed content within 36 hours of the "actual knowledge" of the infringement. The case had arisen in 2007 when Super Cassettes Industries Limited

had filed a suit against My Space alleging that it allowed its users to upload and share Super Cassette's copyrighted work without permission. The judgement passed on December 23, 2016, by a division bench of the Court reversed an earlier 2012 decision of a single bench of the Court that had held My Space liable for the infringement despite its having no specific knowledge of the infringement. In the 2016 judgement, the Court held that, in case of internet intermediaries, Section 51(a)(ii) of the Copyright Act, 1957 stipulates actual knowledge of the infringement and not general awareness. Thus, this judgement strengthened the safe harbour immunity given to intermediaries in India under Section 79 of the IT Act, 2000 and relieved My space from pre-screening user-generated content.

## **6. Discussion**

The Copyright (Amendment) Act, 2012 has attempted to strike a harmonious balance between the liabilities attached to publishing the online content along with creating specific provisions relating to voluntary and valid publishing or making available the content over internet. The section 52(1) (b) states that "the transient and incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public" would not constitute copyright infringement. Further, section 52(1) (c), would state that the "transient and incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder,

unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy” would also not constitute copyright infringement. These provisions have been incorporated keeping in mind the protection of websites like YouTube and yahoo in relation to user generated content uploaded by users such as film songs and other such similar content, which are not owned by the uploading website.

With the rapid mushrooming of the ICT there is a dying need for express provisions in the Copyright Act, 1957 prescribing liability of ISP for copyright infringement in the light of Title III of the Digital Millennium Copyright Act, 1998 of U.S. Recently, District Court of United States in its landmark judgment **Viacom v. YouTube [676 F.3d 19 (2d Cir. 2012)]** held that the defendant YouTube was to be qualified for the protection under 17 U.S.C Sec 512(c) against the claims for direct and secondary copyright infringement. The court laid down the **Red Flag Test** consisting of a subjective and objective component to determine whether YouTube had actual knowledge of infringing content. In determining whether the service-provider was aware of the ‘red flag’ the subjective awareness of the service provider of the facts or circumstances in question must be determined. However, in deciding those facts and circumstances constitute red flag i.e. whether infringing activity would have been apparent to a reasonable person operating under the same

or similar circumstances the objective standard should be used.

## 7. Conclusion

It is clearly evident from the above discussions and judicial pronouncements that the internet, and subsequently the transmission of data over it is increasing at a meteoric rate, this is giving rise to knotty legal issues such as copyright infringement. Although, it is not possible to restrict the activities in cyberspace, some precautionary measures can be taken regarding the same so that the rights of the producer or the author can be protected and safeguarded under the Copyright Act.

Issues concerning ISPs should be taken seriously as the legal position in India on ISP liability appears to be in limbo. Though new provisions have been incorporated in Copyright Act, these changes do not throw any light on the liability of the ISP. There is need for such a precedent set in the above mentioned case and a clear and well-defined liability standard for ISP for the healthy promotion of intellectual property in the digital environment of the country.

ISPs must also be conscious that the data being stored, transferred, transmitted and disseminated through their servers placed at different parts of the world must not infringe copyright and thus help in ensuring a steady and a harmonious relationship with the owner of the intellectual property.





ODISHA JUDICIAL ACADEMY

75 YEARS  
THE HIGH COURT OF ODISHA  
CONSTITUTES THE  
LAWYER OF THE YEAR AWARDS-2021  
2021-2022  
AT THE ODISHA JUDICIAL ACADEMY

ଓଡ଼ିଶା ନ୍ୟୁଜିଆଲ୍ ଆକାଡେମୀ

Odisha Judicial Academy













*Museum of justice*