



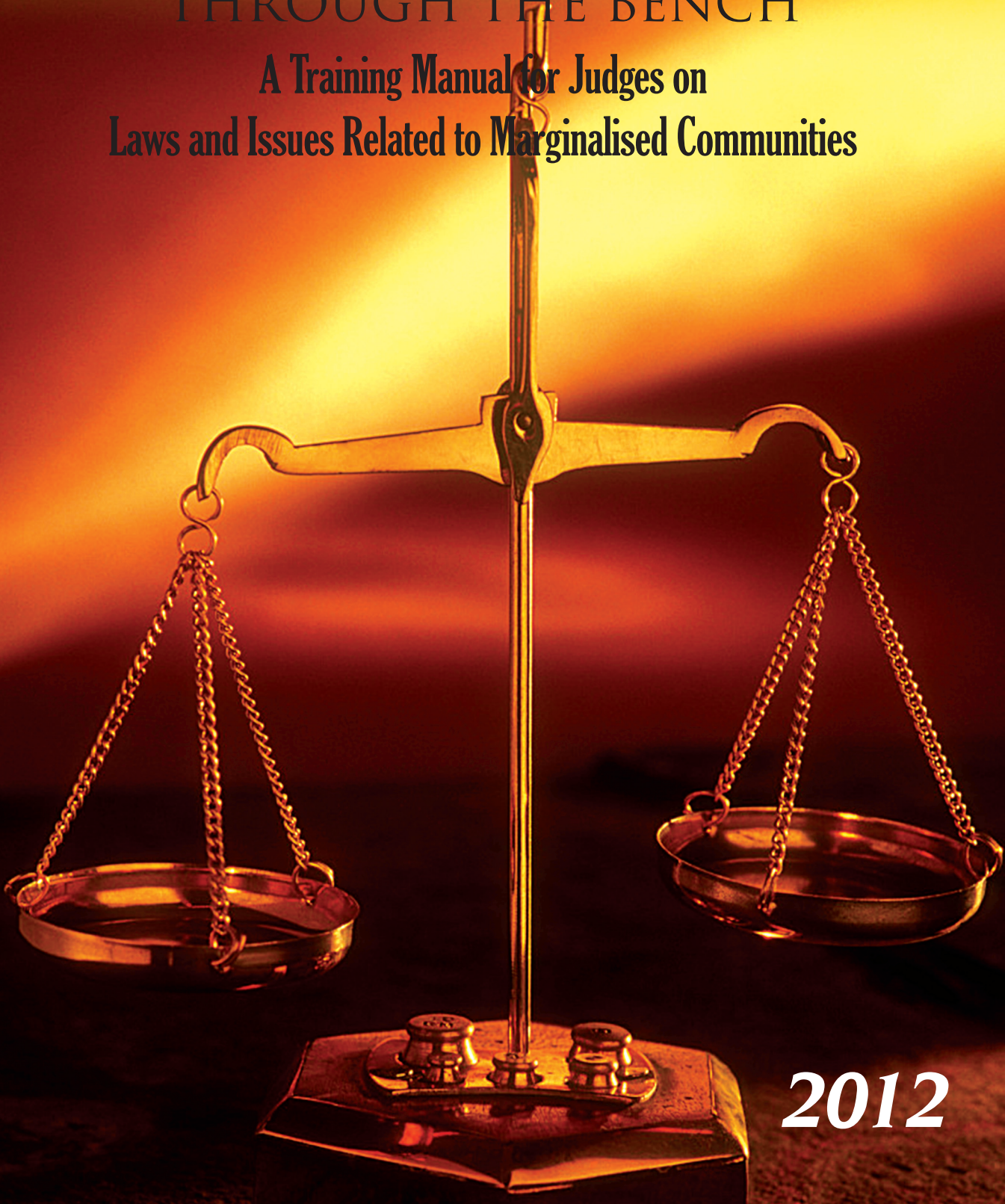
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REMOVING BARRIERS THROUGH THE BENCH

A Training Manual for Judges on
Laws and Issues Related to Marginalised Communities



2012



REMOVING BARRIERS **THROUGH THE BENCH**

A TRAINING MANUAL FOR JUDGES ON LAWS AND
ISSUES RELATED TO MARGINALISED COMMUNITIES

2012

PUBLISHED BY
GoI AND UNDP INDIA

Disclaimer : The views in the publication are those of the authors and do not necessarily reflect those of either the Government of India or the United Nations Development Programme.

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Abha Singhal Joshi

2012

DoJ and UNDP



MESSAGE

Ensuring access to justice for the most vulnerable and marginalized groups is a pre-condition for a healthy democracy and a peaceful society. The Department of Justice, through its project on Access to Justice for Marginalized People, is implementing access to justice initiatives for marginalized groups with a view to create replicable models of legal empowerment and justice delivery. The term 'marginalized' has come to include a diverse range of communities and peoples who may be traditionally or situationally marginalised. Class, caste, gender, age, occupation, physical health and disability are amongst some of the other variables that contribute to marginalization of people. These marginalized groups, regardless of the reason, need protection of the State and recognition of the multiple barriers that they face in accessing justice.

The role of the judiciary in ensuring the rights of marginalized people - based on recognition of the experience of marginalisation and the steps required to creating positive changes - cannot be over emphasized. In India, the judiciary has been at the forefront in ensuring access to justice for these groups. The jurisprudence developed by the higher courts, recognizes the rights of the marginalized and the responsibility of the State in upholding them. That is a useful guide for the courts at the lower levels to ensure quicker and quality justice to the marginalized people.

To assist the ongoing efforts by judicial academies in sensitizing judges to the requirements of these disadvantaged groups, Department of Justice and UNDP have supported the development of this training manual as another useful guide. This manual is expected to serve as a tool to be used by judicial academies for their training programmes. The manual addresses the intersection between the justice system and marginalized communities. It sets the tone in terms of efficient pedagogy that could be adapted by judicial academies to provide training and information to the judges. It also identifies action areas that should facilitate increased awareness amongst judges in terms of jurisprudence and practical judicial reforms. The manual can also be used by judges as an updated information guide on the development of rights based jurisprudence as well as an overview for understanding of issues.

Heightening the awareness of the judges on problems that the marginalized groups face in accessing justice, will help them in rendering practical judgments grounded in the context of those who approach the courts seeking justice. This will also hold true to the Universal Declaration of Human Rights which states that "...it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

D.K. Sikri,
Secretary,
Department of Justice,
Ministry of Law and Justice,
Government of India

FOREWORD

This guide for trainers has been prepared under the auspices of the Government of India and UNDP project on “Access to Justice for Marginalized People.” The document aims to provide guidance to judges dealing with criminal and civil cases, family law matters and migration and employment issues and highlights the challenges faced by Scheduled Caste, Scheduled Tribes, women, children and minorities in accessing justice.

This innovative training module is based on new learning technologies and includes landmark judgments, case studies, power point presentations, scripts for role plays and films. A separate section has been dedicated to addressing the specific issues women face and includes detailed information on domestic violence, sexual harassment, rape, dowry deaths and property rights.

As a global institution that provides technical assistance programmes 100 countries aimed at increasing access to justice and strengthening the capacity of justice delivery institutions, UNDP recognizes that an independent judiciary is essential for ensuring the justice is administered in a way that ensures equity and upholds human rights. UNDP is proud to support the efforts of the Department of Justice to find innovative mechanisms for ensuring the justice systems reach persistently excluded groups.

UNDP would like to thank everyone involved in the production of this manual including the lead consultant, Department of Justice, project partners and the colleagues who have dedicated their time to read and re-read drafts of the manual. We also wish to acknowledge the contribution of the judicial academies who have assessed, reviewed and helped with the finalization of the content and methodology.



Lise Grande

UN Resident Coordinator and
UNDP Resident Representative

ACKNOWLEDGEMENTS

MAKING A TRAINING manual on laws and issues for use by the judiciary has been an intense learning experience. The vistas of possibilities for justice for the poor and deprived of this country opened up with every step as we set about putting together this manual. With it has grown the realisation for the need for a product such as this, and this is a small beginning towards a wholesome and complete curriculum which will enable judges at all levels to easily assimilate the skills, knowledge and attitudes that would give the required fillip to the Constitutional goal of access to justice for all.

The Manual has received the largest and most valuable research and writing inputs from Advocates Ms. Seema Misra and Mr. Brijesh Sharma, who were instrumental in conducting the Needs Assessment as well as a large chunk of the legal research and preparation of Case Studies for various segments. I am also grateful for the inputs and assistance from Law Researchers Ms. Ritwika Jeordar, Ms. Palak Rai, Ms. Sana Siddiqui, Ms. Zeenat Malick and Mr. Saptarshi Mandal and for film documentation and research to media professional Ms. Ritu Bhardwaj.

I am grateful to the and Access to Justice For Marginalised People Project of the Department of Justice and the UNDP for conceiving of the need for such a product and for putting behind it all the resources in terms of time, money and institutional support that were required.

The preparation of this manual has been an undulating process from the time it began and the Access to Justice Project, in the face of all its own logistic and institutional pressures, has patiently supported our oft-repeated stand that 'the preparation of this manual is a process and not a project'. I am particularly grateful to Ms. Kanta Singh and Ms. Sumeeta Banerjee of the UNDP for bearing with the slightly unconventional approach and methodology followed in the making of this Manual. On the part of the Department of Justice, I am grateful for the time and concern of the Secretaries Ms. Neela Gangadharan and Mr.D.K. Sikri and Joint Secretaries Ms. Snehlata Shrivastava and Mr. Atul Kaushik.

This Manual would not have been made but for the co-operation, patience and understanding of Ms. Swati Mehta, Project Manager, Access to Justice Project who, herself being a legal professional, hand-held the Manual from ground zero to the present shape and was very open and receptive to ideas and explanations. Her team Mr. Ashutosh Srivastava, Ms. Meenakshy Rana and Ms. Sripriya Pandurangan have been wonderful in their responsiveness and logistic support.

This Manual is the result of inputs from a range of people including individuals who are themselves marginalised and suffering from a lack of access to justice. We thank all the people in Madhya Pradesh and Bihar who helped to identify issues and place them in the correct perspective by sharing their experiences with us and by giving us the impetus to do a good job of it by their sheer belief in the concept of justice, in the face of all odds and negative experiences. Adharshila, Madhya Pradesh and Koshish Trust, Bihar ably assisted the Project to identify and reach out to these marginalised persons.

I would particularly like to mention the inputs received during workshops with judges, prosecutors and policemen at the Haryana Police Academy, Madhuban, Karnal and at the Orissa Judicial Training Academy, Cuttack, whose Director Dr. D.P.Choudhary's interest and support has meant a lot. The detailed inputs from Mr.V.N.Rai, Director National Police Academy, Hyderabad and Ms. Santosh Snehi Maan, Director Academics, Delhi Judicial Academy, were invaluable in refining and finalising the Manual.

The project has been efficiently partnered by Multiple Action Research Group (MARG) who gave administrative and infrastructural support.

Lastly, I am thankful to Matrix, Delhi and ThinkStudio Hyderabad for typesetting, designing and printing the various versions of the Manual over a period of nearly six months since its first draft.

Abha Singhal Joshi

Consultant

Project on Training Manual for Judges
on Laws and Issues for Marginalised Communities

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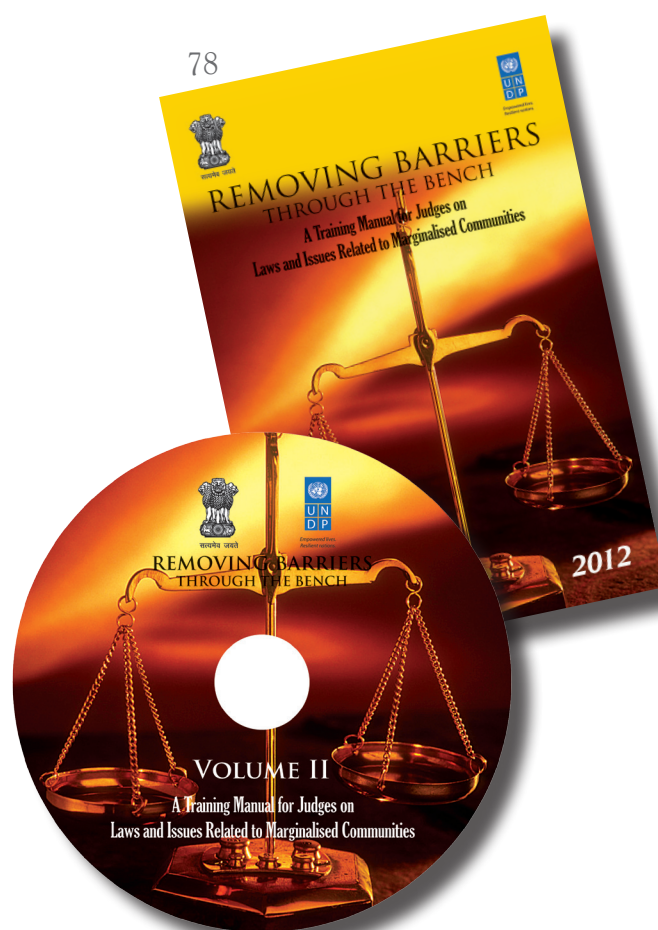
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About this Manual

This Manual has been created for use in Judicial Training Academies, to assist in designing and delivering content pertaining to Marginalised Communities. While this Manual aims at heightening the awareness of the special problems of Marginalised persons, it also provides an application-oriented practical framework for judges.

This Manual has been created for use in Judicial Training Academies, to assist in designing and delivering content pertaining to Marginalised Communities. While this Manual aims at heightening the awareness of the special problems of Marginalised groups and persons, it also provides an application-oriented practical framework for judges.

The subject of 'marginalisation' has been dealt with holistically and includes persons and groups who may be traditionally marginalised, or situations which create marginalisation.

The Manual focuses on the interface of the marginalised person with the justice system in a way that the justice system is able to perceive the situation of marginalisation, as well as the ways in which it may be mitigated through the intervention of the courts through powers vested in them in various laws. It seeks, moreover, to stretch the understanding of both these aspects through making the judiciary cognitive of the positive, path-breaking and supportive legal developments through the higher courts over a period of time, ultimately generating a percolation of good practices and rights jurisprudence throughout the legal system at all levels.

This Manual aims at:

- Assisting Judicial Academies to delineate areas where judges need to be aware of, sensitive about and knowledgeable about the law applicable to the problems of the marginalised communities as well as the situation of a marginalised person when he or she tries to access justice.
- Assisting Judicial Academies in designing session plans on different topics by using any of the training tools such as case studies, films, power points or questionnaires.
- Assisting Judicial Academies to design their own creative modules using the ideas in this Manual as a base.
- Introducing effective and innovative methods for judicial training.

Using the Manual

Law is an organic and growing mechanism for justice and every day there is a growth in our understanding through new or amended laws, through legal interpretation, etc. This Manual therefore aims to give flexibility to accommodate these changes and growth.

This Manual is in two parts:

Volume I : PRINTED

Volume II : DVD (Inserted in back cover)

This Manual has been created as a simple reference tool to strengthen judicial education and training, which meets the needs of an expanding jurisprudence of rights as well as judicial reforms.

This Manual can be used for reference by faculty of training institutions for making creative changes in their teaching methodology. While a departure from the traditional forms of 'teaching' may seem a difficult process, the tools and methodologies in this Manual in the two Volumes are set out in an easy format. For example, essentials of a lecture are set out in the printed volume (Volume I) . More on effective lectures can be read by using the accompanying DVD (Volume II) encased in the back cover of this book.

As judicial training comprises of the application of laws, accompanying contents in the DVD have a high focus on legal provisions which form the basis of all legal procedures relevant to Marginalised communities or persons. Power Point Presentations can be used as outline of lectures for the Faculty as well as for trainees. The DVD also contains an important tool like Case Studies which can be used for putting together a simple group exercise for analysing legal provisions and problem solving.

This Manual can also be used for training lawyers and other stake holders in the legal system such as prosecutors and police.

It is advisable that the contents of the DVD be transferred to the user's hard drive or computer for safety of the data. This will also enable institutions to add to and update the contents as and when required.



Segment I

Marginalised Communities & The Law

Individuals or groups who are driven to the fringes or edge of society-ie, do not or are not able to participate in the mainstream of society can be termed as 'marginalised'.

About Marginalised Communities

Please see attached DVD-Volume II- FOLDER A-A for additional information and readings



“Every litigation has a touch of human crisis... it is but a projection of life’s vicissitudes

-Justice V.R. Krishna Iyer

Who are ‘Marginalised’

Individuals or groups who are driven to the fringes or edge of society-ie, do not or are not able to participate in the mainstream of society can be termed as ‘marginalised’. Deprivation of rights is both a cause and an effect of marginalisation. Marginalisation is compounded by lack of access to justice.

Persons or groups may be marginalised due to a ‘class condition’ which has come about due to certain social or sociological factors, such as that experienced by women, or Dalits, or sex workers. It can also be because of being ‘different’ in terms of physical capacity or condition- such as persons with physical or mental disabilities, old persons, or persons with different sexual conditions or preferences such as transgenders, homosexuals or lesbians, or persons with HIV/AIDS.

A person may be generally marginalised due to his or her condition of poverty. Entire communities could also be marginalised due to poverty, loss of land and livelihoods due to development, natural disasters etc. they could also face marginalisation due to their exploitation, such as adivasis or tribal communities. People may also be marginalised because of being in religious or cultural minority. People could be marginalised for their political beliefs or for expressing dissent.

Effect of Marginalisation

Marginalised persons need protection from all the State agencies. The marginalised person or group facing is so mired in the situation of helplessness that the avenues for justice available for the ordinary citizen may not be the obvious choice for him or her. Such people lead a poor quality of life and would invariably be in situations of dire want and exploitation, contrary to the Constitutional goals. To enable and encourage people to approach the avenues of justice, they need to be made more accessible and friendly to the person approaching it. This can be done only by the judiciary appreciating the real situation of the marginalised person when he or she is before it, and giving relief and succour through using the powers encapsulated in the legal framework.

Marginalised Communities and the law

In democratic regimes, generally there are Constitutional provisions which protect the rights of marginalised communities while attempting to enhance their status. In India, the Constitutional provisions give good coverage and are supported by legislation in the form of special provisions in laws as well as special statutes. Yet, it appears that Marginalised communities are not getting the benefit of these laws due to the incapacity of the justice delivery system in having a fuller understanding of the provisions. While the Constitutional Courts and Courts of Appeal have given meaning to the laws and protections, it is at the level of the subordinate judiciary that these provisions must be given effect to in order to give true access to justice.

Various forms of marginalisation need attention and relief and protection from all the State agencies. The person or group which faces marginalisation is so mired in the situation of helplessness that, very often, he or she may not even be able to approach the avenues for justice that are presumed to be available for the ordinary citizen. The person pushed to the extremes then would lead a poor quality of life and would invariably be found in situations of dire want and exploitation, weighing down the entire social, economic and political system and going contrary to the Constitutional goals. To avoid the huge cost involved, the avenues of justice need to be made more accessible and the experience of trying to access justice needs to be made more friendly to the person approaching it. This can be done only by the judiciary appreciating the real situation of the marginalised person when he or she is before it, and giving relief and succour through using the powers encapsulated in the legal framework.

“The Preamble of the Indian Constitution imbued among its people with pride of being its citizens in an integrated Bharat with fraternity, dignity of person and equality of status. But caste-ism; sectional and religious diversities and parochialism are disintegrating the people. Social stratification need restructure. Democracy meant fundamental changes in the social and economic life of the people, absence of inequitous conditions, inequalities and discrimination. There can be no dignity of person without equality of status and opportunity.

Denial of equal opportunities in any walk of social life is denial of equal status and amounts to prevent equal participation in social intercourse and deprivation of equal access to social means. Humane relations based on equality, equal protection of laws without discrimination would alone generate amity and affinity among the heterogeneous sections of the Indian society and a feeling of equal participants in the democratic polity. Adoption of new ethos and environment are, therefore, imperatives to transform the diffracted society into high degree of mobility for establishing an egalitarian social order in Secular Socialist Democratic Bharat Republic.

Supreme Court of India: State Of Karnataka vs Appa Balu Ingale & others SC 1993

Women

Women face disabilities at various levels whether within the family, at the workplace or in matters of public space such as physical security or access to employment. Within all spheres of marginalisation, women have always been a segment which bears an additional burden because of the vulnerability born from harmful practices against them. This is a phenomenon universally. India is no exception and its women are victims of several harmful practices resulting in their marginalisation. These harmful practices occur all around us and are unfortunately, not just ignored but are not even noticed. They spring from practicing gender inequality in various forms, resulting in control, denial of rights and violence ranging from verbal abuse to extreme forms such as rape, disfiguration and murder.

India is very favourably placed in the matter of Constitutional provisions and legislation. There are several laws protecting the rights of women in almost every sphere. The law has also developed exponentially in the matter of feminist jurisprudence at the level of superior courts. The lacuna exists in the full understanding and application of these developments by the functionaries and institutions at the cutting edge-the subordinate judiciary being one of them. Besides equal protection of all laws, there are several special legislations enacted for women. These laws will be effective in combating gender inequality only when the essence of these laws is absorbed into the judicial system, resisting the tendency of Courts to give in to cultural inhibitions which almost veer towards finding ways out to mitigate the gravity of offences committed against women by holding them responsible in some way-such as the offence of rape or domestic violence, or resenting the tendency to demand rights such as equality in employment or the right to property.

“The Report of the Committee on the Status of women in India (1974) gives us the facts of backwardness of women in three fields (a) Economic. Particularly in relation to employment. In paragraph 5.221, the Report says, “Their proportion to total workers, which was more or less constant at 3.3 per cent declined to 2.5 per cent in 1968. In the category of clerical and related workers, the number of women with the only exception of 1962, has gone up from 0.37 lakhs in 1960 to 0.79 lakhs in 1968. For the same period their proportion to total workers in this category has gone up from 4.2 per cent to 7.6 per cent.” (b) Regarding Education. “Educational experts now admit that the delay in the achievement of the Constitutional directive (for increasing elementary and secondary education among women) is mainly due to the slow progress of education among girls, scheduled castes and scheduled tribes. The discrepancy in the progress of education between boys and girls may be seen in the marked difference in the percentage of boys and girls of the corresponding age groups enrolled in primary, middle and secondary schools.” (para 6.12 of the Report).....(c) Social backwardness of women is well-known. The Report says, “Every legal measure designed to translate the constitutional norm of equality or special protection into actual practice has had to face tremendous resistance from the legislative and other elites,the revolution in social and political status of women for which constitutional equality was to be only the instrument, still remains a very distant objective.....though women do not numerically constitute a minority, they are beginning to acquire the features of a minority community by the three recognised dimensions of inequality : Inequality of class (economic situation), status (social condition) and political power. If this trend is allowed to continue the large masses of women in India may well emerge as the only surviving minority continuously exposed to injustice..... The chasm between the values of a new social order proclaimed by the Constitution and the realities of contemporary Indian society as far as women’s rights are concerned remains as great as at the time of independence.... .the norms and attitudes regarding a women’s role in society remains traditional. In this sense, the new rights prove to be only concessional.” (The Report: paragraphs 7.96, 7.97, 7.98, 7.99 and 8).

High Court of Delhi : Charan Singh & Ors v UOI & Ors DEL 1978

Nature of Marginalisation	Concerned Laws	Focus of Training	Training Methodology & Tools (Volume II)
Inequality in various spheres	Constitution of India	Growth of equality through law	Judgments Case Studies
Inequality within family	The Divorce Act, 1869 Muslim Personal Law The Dissolution of Muslim Marriages Act, 1939 The Hindu Marriage Act, 1955 The Special Marriage Act, 1956 The Hindu Adoption and Maintenance Act, 1956 The Code of Criminal Procedure, 1973 The Protection of Rights on Divorce Act, 1986 The Protection of Women from Domestic Violence Act, 2005 The Indian Succession Act, 1925 The Hindu Succession Act, 1956 Muslim Succession Law	<ul style="list-style-type: none"> • Right to Marriage of choice • Equitable application of grounds for divorce • Rights of Maintenance • Right to Succession 	Case Studies, Judgments, PPT
Violence within the family	Indian Penal Code, 1860 Protection of Women from Domestic Violence Act, 2005 Pre-conception and Pre-natal Diagnostic Techniques Act, 1994 The Dowry Prohibition Act, 1961	<ul style="list-style-type: none"> • Different kinds of violence, • Right to safe family environment 	Judgments, Case Studies, PPT, Films
Violence at the workplace	IPC, SC Guidelines on Prevention of Sexual Harassment at the Workplace		Judgments, Case Studies, PPT
Discrimination at the workplace	Constitution of India, Minimum Wages Act, 1946 Maternity Benefit Act, 1961 Equal Remuneration Act, 1976		Judgments, Case Studies, PPT
Gender Crimes such as rape, assault, etc	The Indian Penal Code 1860 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Immoral Traffic Prevention Act, 1956		Judgments, Case Studies, Films

Children

Children often face a range of issues which make them vulnerable to abuse and exploitation, thereby creating an extremely debilitating environment for their growth and development, which at times could even be life-threatening. This entails not just an individual human cost but also stunts the development of society and the nation.

Children are in a special category requiring special protections under the law. Although several Constitutional provisions and statutes guarantee this protection, the incidence of child abuse and exploitation whether within the home, at school, at the workplace or in society at large is increasing alarmingly. More and more children are being physically and emotionally attacked, trafficked for sex, organ trade, sports or terrorism and inducted into drug abuse and crime. Apart from offences committed against them, denial of physical and emotional care, health and nutrition, education and recreation results in a child being a victim of neglect, incapable of developing into a happy adult and a good citizen. Children are also the worst hit in situations of family illness, unemployment, natural disasters, riots and displacement.

The failure to protect children from abuse is generally the result of an inability of the duty-bearers to be cognitive of their situation and to take appropriate or timely action.

The judiciary needs to be very conscious of the fact that children are one segment of our society who lack the ability and even standing to approach or represent themselves before the Courts. Since they will be before the judiciary through a State authority or through a next friend or guardian, the judiciary has to take on the mantle of testing the situation independently on the paramount principle of 'best interest of the child'.

“It is submitted that India is home to 19% of world’s children. More than one-third of the country’s population around 440 million is below 18 years. India’s children are India’s future. They are the harbingers of growth, potential fulfilment, change, dynamism, innovation, creativity. It is necessary that for a healthy future, we must protect, educate and develop the child population so that their citizenry is productive. Resources must be invested in children proportionate to their huge population.

As far as the total expenditure on children in 2005- 2006 is concerned, it was 3.86% and in 2006-2007 it was increased to 4.91%. It is highly inadequate looking to the population of children. In a report submitted by the Ministry of Women and Child Development, 40% of India’s children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 16, 17, 21, 23 and 24 of the Constitution. The concerns of child and the paradigm of child rights have been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Inter Country Adoption, 1993. India has ratified the UN Convention on the Rights of the Child in 1992. The Convention inter alia prescribes standards to be adhered by all state parties in securing the best interest of the child.”

Supreme Court of India: Bachpan Bachao Andolan v Union Of India & Ors SC 2011

Nature of Marginalisation	Concerned Laws	Focus in Training	Training Methodology and Tools Volume II
A child who is alleged to have committed an offence (child in conflict with the law)	The Juvenile Justice (Care and Protection of Children) Act, 2000	<ul style="list-style-type: none"> • Age of Juvenile • Apprehension and detention • Bail • Orders that may be passed/not passed 	Case Studies, Judgments, PPT
Child against whom an offence has been committed	The Indian Penal Code Code of Criminal Procedure Indian Evidence Act Juvenile Justice (C&P C) Act	<ul style="list-style-type: none"> • Sexual Offences • Kidnapping, beggary, trafficking • Emotional abuse, etc. 	Films, Case Studies, Judgments, Field Visits
Child who is socially, economically or physically needy, deprived (Child in need of care and protection)	The Juvenile Justice (Care and Protection of Children) Act	<ul style="list-style-type: none"> • Who is a child in need of care and protection • Procedure of CWC 	Films, Questionnaire, Field Visits
Child engaged in prohibited labour	The Child Labour (Prohibition and Regulation) Act 1986	<ul style="list-style-type: none"> • What is child labour, • Procedures 	PPT, Films, Field Visits
Child whose personal or social rights are affected	Hindu Adoption and Maintenance Act, CrPC Section 125, The Prohibition of Child Marriage Act 2006	<ul style="list-style-type: none"> • Adoption • Custody • Maintenance • Child marriage 	Case Studies, Judgments, PPT



Scheduled Castes and Scheduled Tribes

Dalits and Tribals are a part of our society who face marginalisation in every sphere of national activity- social, political and economic. While Constitutional goals and provisions have clearly stated the special protection given to dalits and tribals because of their situation of vulnerability, in reality, the benefits of Constitutional and statutory provisions have failed to reach down due to lack of sensitivity and responsiveness of the key duty-bearers. Dalits face marginalisation in every aspect of their lives from being debarred from basic livelihood to social and cultural hindrances. Tribal communities face the negative side of 'governance' in the form of corruption and violence by state agencies such as the police, forest department, etc, they also typically, lack access to the formal justice systems due to their backwardness, poverty, lack of literacy and lack of support systems. In this milieu, what is needed is a sensitive response to their situation and a patient consideration of their needs when they are arrayed as litigants.

The practice of untouchability is the worst offender of the right to equality and has been the core reason for many kinds of inequality in India's society. This one practice has a negative impact on many other rights including the very right to life and personal liberty. The Constitution therefore unequivocally wipes out this practice in any form and makes it obligatory for the state to ensure that it is not practiced. It also specifically makes the practice of untouchability by private persons a punishable offence.

The most important thing that a person expects is that his life should be secure and protected and that he should be safe from any form of discrimination and indignity. A person's basic needs must be secured and all those conditions must be created which make life complete and dignified. The duty to secure all these rights is on the state. Protection of life and personal liberty, freedom and equality are composite rights and have been declared by the courts to mean several things. These Rights include :

- the right to protection against the state and its instrumentalities from anyone's life being taken away or being attacked
- the right to a dignified existence
- the right to live free from fear and oppression
- the right to protection of one's life and property by the state and its instrumentalities.
- the right to fair procedure in all matters including arrest, appointments, dismissals, contracts and tenders with government, acquisition of land by government, etc.
- the right to have access to means of livelihood
- the right to a safe and healthy environment
- the right to safety measures at the workplace

A stream of judgments by the Supreme Court have expanded the meaning of the "Right to life and personal liberty" to bring in many if the aspects mentioned above. These principles have been used in various ways by the courts of the land have been included in the day to day functioning of government through making appropriate changes and additions in laws, rules and procedures.

The judiciary needs to be proactive and weave into the process of adjudication all the protection that is guaranteed on paper to these communities. In order to do this, judges must familiarise themselves with these questions: What are Scheduled Castes and Scheduled Tribes (SC & ST) ? What are the special provisions guaranteed to SC & ST under the law? Why? What economic disability is the SC/ST litigant facing? What social disability is the SC/ST litigant facing? What substantive and procedural provisions of law can be used to give relief and justice to the litigant?

“Poverty and penury made the Dalits as dependants and became vulnerable to oppression. The slightest attempt to assert equality or its perceived exercise receives the ire of the dominant sections of the society and the Dalits would become the object of atrocities and oppression. The lack of resources made the Dalits vulnerable to economic and social boycott. Their abject poverty and dependence on the upper classes in Rural India for livelihood stands a constant constraint to exercise their rights - social, legal or constitutional though guaranteed. Thus they have neither money capacity, influence nor means to vindicate their rights except occasional collective action which would be dejected or flattered away by pressures through diverse forms. Consequently most of the Dalits are continuing to languish under the yoke of the practice of untouchability.

The statue of Swami Sampuranand at Varanasi when unveiled by no less than the Dy. Prime Minister of Free India in February, 1978, Sri Babuji, Jagjivan Ram, it was believed to have been defiled and was purified ceremoniously with water brought from Ganges with all religious fervour, a repetition of Mahad Tank water purification with mounds of cow dung, cow urine and milk, an episode of March 1927 when Ambedkar and his colleagues drank water taken from the tank. At a dinner hosted by the Speaker of the Rajasthan Legislative Assembly in honour of the Chief Minister, Shri Jagannath Pahadia, the wife of the Speaker trembled to serve food to the Chief Minister thinking to have been polluted. A Central Minister's son highly-educated and economically well off, when had inter-caste marriage, the bride's father, whose annual income is not a month's salary of the Manager of the boy, i.e. even of humble means, neither celebrated the marriage nor visited her house, nor even permitted her to visit his house for the past ten years. On October 30, 1978, the Doctor in Govt. Hospital in Monger did not admit a Sweeper Dalit woman, who was struggling for life. (Vide Dr. Khosla's Myth and Reality of the protection of Civil Rights Law, p. 67). A Dalit Judge in north India High Court could not secure a house and had to get posted to another place whereat he has his abode. A Judge of a south- India. High Court has not touched even water in the houses of Dalit or backward class judges. Even in Delhi, the capital of the country, in 1991 the Dalit officer had to vacate the rented house due to practice of untouchability (vide 21st report of SC & ST Commission, p. 165). Mass murders from Belchi in North to Tsundur in South India, gang rapes of Dalit women and arson of their huts; the mass movement by women volunteers to stop blatant practice of untouchability in the hotels in Chittoor Dist. of Andhra Pradesh organised by Gita Ramaswamy, a noted social worker and journalist reported in an article titled “Ambedkar to Ayodhya” in the Main-stream dated January 5, 1991 are only illustrative of the relentless practice of untouchability, let alone, humiliations to countless Dalits which are of every day's routine. Thus even persons who improved their social status, economic position or holders of constitutional offices are no exceptions to the wrath and plague of untouchability and are self evident truths. So Dr. Ambedkar is right when he wrote that “untouchables are born and die as untouchables” and the scorn and scoff is carried from birth to graveyard. The emphasis here is not on individuals but to highlight the acuteness of the problem and the urgency to eradicate the evil; the insensitivity which the Dalits are subjected to; the remedy provided under the Act and the acute need to implement the law strictly.

Supreme Court of India: State of Karnataka v Appa Balu Ingale & Ors SC 1993

“The development paradigm as conceived by policy makers has always imposed on these communities... causing irreparable damage to these sections. The benefits of this paradigm have been disproportionately cornered by the dominant sections at the expense of the poor, who have borne most of the costs. Development which is insensitive to the needs of these communities has inevitably caused displacement and reduced them to a sub-human existence. In the case of tribes in particular it has ended up in destroying their social organization, cultural identity and resource base... which cumulatively makes them increasingly vulnerable to exploitation.... The pattern of development and its implementation has increased corrupt practices of a rent seeking bureaucracy and rapacious exploitation by the contractors, middlemen, traders and the greedy sections of the larger society intent on grabbing their resources and violating their dignity.”

Report of an Expert Group to Planning Commission, Government of India (New Delhi, April, 2008)

Supreme Court of India: Nandini Sundar & Ors v St of Chhattisgarh & Ors SC 2011

Nature of Marginalisation	Concerned Laws	Focus of training	Training Methodology & Tools (Folder Volume II)
Inability to access education, employment, dignity due to historical discrimination	Constitution of India	Needs of SC/ST reflected through legal provisions Understanding legal developments in entitlements such as reservations in electoral offices, education and jobs	Case studies, PPT, Role Play, Seminars
Crimes against SC/ST due to their vulnerable situation	Constitution of India, IPC, Protection of Civil Rights Act SC & ST (Prevention of Atrocities) Act	Understanding specific provisions and procedures for addressing crimes against them	Role Play, Films, Case Studies, PPT
Further marginalisation due to processes such as industrialisation, displacement, environmental degradation	Constitution of India Land Acquisition Act, 1894 Wildlife Protection Act, 1972 Forest Act, 1927 Forest Rights Act, 2006 Environment Protection Act, 1986	Understanding impact of displacement etc and judicial responses	Case Studies, Films, Field visit, Seminars



Persons Living with HIV-AIDS

The law is meant to protect the life and liberty of every person and it has to change and meet up to the challenges in different spheres and in different times. Each era has its issues and concerns. Social, economic and even natural developments cause certain people to become exceptionally vulnerable and thereby marginalised, thus requiring the pro-active intervention and protection of the justice system. The law is meaningful only if it responds in a timely and appropriate manner. HIV/AIDS is one such concern-possibly one of the major threats facing our world today. It has thrown individuals and societies into confusion and trauma, not only because of the threat to the physical well-being of persons that it represents, but also because fears of contracting HIV/AIDS are adversely affecting human relations. These fears are often born out of misconceptions and misinformation, yet they convert into reactions and responses which are discriminatory, inequitable, and even grossly violent, seriously undermining the human rights of persons so discriminated against. In the face of such a challenge, the law must be in the forefront to protect and assure those affected that their rights will be protected. Violations of the rights of persons living with HIV/AIDS (PLWHIV/AIDS) must be countered unequivocally by underscoring the fact that they are as equal as anyone else in their claims to mainstream life whether in the realm of family, employment or society in general. Their right to special health and medical care also needs to be protected. At the same time, the rights of the community at large to be protected and made safe from the condition also need to be protected.

Judicial Officers, being at the centre of society's many dilemmas, must understand the context of the PLWHIV/AIDS seeking justice. A litigant who is a PLWHIV/AIDS will be subject to many inhibitions and disabilities when faced with the legal system. Judicial officers must be conscious of the fact that such a litigant is facing all the rigours of litigation along with the added burden of physical weakness, possibly loss of employment, rejection by family and society and general discrimination.

“In our opinion, the State and public Corporations like respondent No. I cannot take a ruthless and inhuman stand that they will not employ a person unless they are satisfied that the person will serve during the entire span of service from the employment till superannuation. As is evident from the material to which we have made a detailed reference in the earlier part of this judgment, the most important thing in respect of persons infected with HIV is the requirement of community support, economic support and non-discrimination of such person. This is also necessary for prevention and control of this terrible disease. Taking into consideration the widespread and present threat of this disease in the world in general and this country in particular, the State cannot be permitted to condemn the victims of HIV infection, many of whom may be truly unfortunate, to certain

economic death. It is not in the general public interest and is impermissible under the Constitution. The interests of the HIV positive persons, the interests of the employer and the interests of the society will have to be balanced in such a case. If it means putting certain economic burden on the State or the public Corporations or the society, they must bear the same in the larger public interest. Therefore, in every such case, the test of medical fitness prior to employment or even during employment has necessarily to be co-related with the person's ability to perform the normal job requirements and any risk of health hazard he may pose to others at the workplace.

High Court of Bombay: Mr.X of Bombay v M/S ZY BOM 1997

Nature of Marginalisation	Concerned Laws	Issues of focus in training	Training Methodology and Tools Folder Volume II
<ul style="list-style-type: none"> • Discrimination and stigma in education and employment • Discrimination, stigma and violence within the family 	Constitution of India IPC, Labour Laws, Matrimonial and Succession laws, Protection of Women from Domestic Violence Act	Understanding adverse impact of discrimination on other rights at the workplace and in the family	Judgments, Case Studies, Films
<ul style="list-style-type: none"> • Refusal to render medical aid or health facilities by health professionals • Violation of right to privacy by medical and other agencies • Inability to access medical aid due to financial constraints • Neglect by medical authorities especially blood banks • Inability to get rightful insurance claims 	Constitution of India, Law of Tort, Insurance Law	Understanding the protections for PLWHIV/AIDS in the context of fundamental rights	Judgments, Case Studies
<ul style="list-style-type: none"> • Inability to access their rights due to physical and financial condition 	Procedures under CPC and other Laws for speedy trial, etc.	Understanding the need to give expeditious and timely relief to such persons in order to minimise the trauma and pressure of litigation	Case Studies



Disabilities/Mental Health

When it comes to the Right to Equality and the Right to Life and Personal Liberty guaranteed under Articles 14, 15, 16 and 21 of the Constitution, a large section of society is discriminated because of disability. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature. In our country where terms like disabled, physically/mentally challenged, handicapped, impaired are used interchangeably to address or refer to a person with disability, it is difficult to protect and affirm the rights and entitlements of persons with disabilities, as it adds to further complexity and confusion about the limitations they have and their rights they possess. The Constitution guarantees every person-including those with disabilities- the full range of civil, political, economic, cultural and social rights. The Directives principles of State Policy command the state to protect the disabled, within the limits of its economic capacity. India is also a signatory to the proclamation on the Full Participation and Equality of Persons with Disabilities in the Asian and the Pacific Region

There are millions of disabled persons in India, While the Census of 2001, in respect of the persons with disabilities shows that there are 22 million disabled persons in India, the actual number of Indians with temporary and permanent disability could be as high as 50 million.

Disabilities of varied nature stop a person from enjoying even a fraction of the rights guaranteed under the Constitution. Not only do they have inadequate medical and rehabilitation facilities, but they also face severe rejection and discrimination in personal and public spheres only due to a lack of understanding of their condition as well as lack of simple access facilities. In some cases persons with physical and mental disabilities face severest forms of offences committed on them within the family and in state institutions.

The higher Judiciary has played a significant role in transforming and broadening the concept of human rights by the bold interpretation of Fundamental Rights to extend their protection to the disabled. The judiciary at the level of trial courts needs to be as pro-active in understanding the situation and needs of persons with disabilities and using the statutory and inherent powers to the fullest extent to give protection and relief in cases before it. For example, Magistrates have often used their powers under Section 97 CrPC to order the rescue of disabled or mentally ill persons illegally confined by their own families or by others.



“Like other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But this can only be done only on one condition that all applicants must be given an equal opportunity along with others who qualify for the same post. The selection test must not be arbitrary and technical qualifications and standards should be prescribed where necessary. In this case, in our view, there is violation of the right of the writ

petitioner under Art. 16(1) which provides for general rule, that there should be equal opportunity for citizens in matters relating to “employment” or “appointment to any office” under the State, matters incidental to employment both prior and subsequent to the employments which form part of the terms and conditions of such employment. In this case, the writ petitioner was in the first instance denied equal opportunity as given to other applicants from appearing in the entrance examination on the ground of disability which was not mentioned as a condition in the advertisement.

.....

The primary object which is guaranteed by Art. 16(1) is equality of opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner under Art. 16(1) of the Constitution.”

Supreme Court of India: Amita v UOI & Anr SC 2005

“The difficulty is that when a prisoner is lodged in jail on the ground that he is of unsound mind, and therefore, required to be kept in safe custody, the custody becomes so ‘safe’ that the prisoner has no opportunity of ever getting out of it even though he has become sane and the raison d’etre of his custody has disappeared...”

The Supreme Court of India: Veena Sethi v St of Bihar & Ors SC 1983



Nature of Marginalisation	Concerned Laws	Issues of focus in training	Training Methodology and Tools Folder Volume II
<ul style="list-style-type: none"> • Lack of medical and rehabilitation facilities • Inability to access places and facilities • Refusal of employment • Denial of rights within the family • Social stigma 	<p>The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995</p> <p>The Rehabilitation Council of India Act, 1992</p> <p>The Mental Health Act, 1987</p> <p>National Trust for the Welfare of Persons with Mental Retardation and Cerebral Palsy Act, 1999</p> <p>Employees State Insurance Act, 1948</p> <p>Exemptions on Income Tax Act</p> <p>The All India Service (Special Disability Leave) Regulations, 1957.</p>	<ul style="list-style-type: none"> • The conditions and vulnerabilities of disabled; • The problems that disabled people encounter while trying to seek protection within the law; • The difficulties, discrimination and rights of disabled people concerning: <ul style="list-style-type: none"> • Right to education • Right to employment • Rights within family • Rights to property • Right to have barrier free access etc. 	<p>Judgments & case Studies</p>
<p>Wrongful confinement of persons with mental health issues, especially in institutions like asylums,</p>		<ul style="list-style-type: none"> • Careful scrutiny of persons alleged to have mental health issues, especially accused persons and persons in matrimonial and property disputes • Procedures to be followed for persons of unsound mind 	<p>Judgments & Case Studies</p>



Labour

A large section of people in our country do manual work in the informal sector as agricultural labourers; construction workers; home-based workers such as beedi workers; brick-kiln workers, etc. Many amongst them migrate far away from their homes to work, where they may not know anyone except the person who brought them nor the language. Often they are exploited and not given even minimum wages. They fall outside the protection of the numerous beneficial labour legislation as there is very little monitoring of their situation by government functionaries and they themselves are not in a position to complain due to control of their employers and the fear of losing jobs. As per the Survey carried out by National Sample Survey Organisation in the year 2004-2005, the total employment in both organized and unorganized sector in the country was of the order of 45.9 crore. Out of this, about 2.6 crore were in the organized sector and the balance 43.3 crore in the unorganized sector, that is more than 90% of the workforce is employer in the unorganized sector. Out of 43.3 crore workers in the unorganized sector 26.8 crore workers were employed in agriculture sector, 2.6 crore in construction and remaining in manufacturing and service.

“the right to health and medical care is a fundamental right under Article 21 read with Articles 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person. Right to life includes protection of the health and strength of the worker and is a minimum requirement to enable a person to live with human dignity. The State, be Union or State government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life with health and happiness. The health and strength of the worker is an integral facet of right, to life. Denial thereof denudes the workman the finer facets of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a workman assured by the Charter of Human Rights, in the Preamble and Arts. 38 and 39 of the Constitution. Facilities for medical care and health against sickness ensures stable manpower for economic development and would generate devotion to duty and dedication to give the workers' best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

Supreme Court Of India : CERC v UOI & Ors SC 1995

“There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article 23 therefore says that no one shall be forced provide labour or service against his will, even though it be under a contract of service.”

Supreme Court of India: PUDR & Ors v UOI & Ors SC 1982

Nature of Marginalisation	Concerned Laws	Issues of focus in training	Training Methodology and Tools Folder Volume II
<ul style="list-style-type: none"> • No choice of appropriate employment • Low wages • No facilities or protection from health hazards • Exploitation by employers and others • Vulnerability due to lack of legal identity such as ID proof, legal residence, etc. • Lack of basic facilities such as medical, education for children 	<p>The Equal Remuneration Act, 1976</p> <p>The Payment of Wages Act, 1936</p> <p>The Contract Labour (Regulation and Prohibition) , Act, 1970</p> <p>The Employees Compensation Act, 1923</p> <p>The Maternity Benefit Act, 1961</p> <p>The Inter-state Migrant Workmen’s (Regulation of Employment and Conditions of Service) Act, 1979</p> <p>Building and Other Construction Workers(Regulation of Employment and Conditions of Service) Act, 1996</p>	<ul style="list-style-type: none"> • Understanding working conditions and vulnerabilities of labour in general and those who migrate for work ; • Lack of responsiveness from legal systems such as Labour Officers, Inspectors etc. • The problems that labour encounter while trying to seek protection within the law; 	<p>Films</p> <p>Judgements</p> <p>Case Studies</p>



Criminal Justice System

The Criminal Justice System is meant to give security and protection to people and is considered as the first repository of the right to life and personal liberty guaranteed in Article 21 of the Constitution of India.

However, the Criminal Justice System is perceived by the many who come into contact with it, as something to be feared and which brings with it more trauma than succour or justice. This is the case with all segments of people who are affected by it—victims, accused and witnesses. There are many cases relating to delayed trials, illegal arrests, custodial torture, custodial deaths, inability to punish the culprits. Equally well-known are the causes and the remedies for the same. Higher Courts and Commissions have repeatedly pointed out the loopholes and urged all the authorities to be mindful of the rights of people, yet the violations continue.

The Magistrates and Criminal courts sit at the cutting edge for the protection of the right to life and personal liberty. It is this juncture alone, of the Criminal Justice System, that all the players including victims, complainants, accused, witnesses and the investigating agencies come into the actual physical periphery of protection. It is at this level, therefore, that violations need to be prevented, noticed and addressed. This can be done only by thoroughly internalising through training, aspects of the justice system which are neither visible nor apparent in the everyday bustle of the Courtroom. To the eye of a judge trained in the knowledge, perception and skill of observing in the situation more than just what appears on paper or is put forth by the police, prosecution or lawyers.

There is a wide array of issues which face a litigant in the criminal justice system negatively. However, there are a corresponding set of legal procedures which can be used to mitigate the negative circumstances.

The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem — of the journey which an accused must necessarily undertake once faced with an implication.

Supreme Court of India: P. Ramachandra Rao vs St Of Karnataka 2002

“Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to

appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to : satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family, It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor.”

High Court of Gujarat: Natia Jiria v St of Gujarat & Ors 1984

“Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent’s rights, we hold that bail covers both-release on one’s own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

Even so, poor men-Indians in monetary terms indigents, young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances put whatever reasonable condition you may.

It Shocks one conscience to ask a mason like the petitioner to Furnish sureties for Rs. 100,000/- The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution. enacted by ‘We the People of India’ is meant for the butcher , the baker and the candle - stick maker - shall we add , the bonded labour and pavement dweller.”

Supreme Court of India: Moti Ram v State of MP SC 1978

“One of the principle objects of the Criminal Justice System is to vindicate the Right to justice of unfortunate victim. Novel concept of victimology is a step towards fulfilling the avowed promises made by our Constitution makers. Thus, the Judicial Administration Mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.”

High Court of Rajasthan: Suo Motu v State of Rajasthan RAJ 2005

Nature of Marginalisation	Concerned Laws	Issues of focus in training	Training Methodology and Tools Folder Volume II
Victims: <ul style="list-style-type: none"> • Social pressures • Lack of awareness of correct remedy/forum • Lack of response from the police • Threats and inducement from accused as well as police • Poor knowledge of legal processes • Fatigue with dealing with legal processes • No assurance of timely justice 		<ul style="list-style-type: none"> • To understand common violations of law affecting people in the criminal justice system. • To understand how criminal laws are most often used to suppress poor and marginalised people • To understand what interventions can be made at appropriate stages to ensure lack of arbitrariness and illegality in the criminal processes and give relief to victims. 	Role Play, Case Studies, Judgments, Films
Accused: <ul style="list-style-type: none"> • False implication • Threat of violence • Inability to afford/get adequate legal help • Inability to get sureties/bail • Demand for illegal gratification • Fatigue with dealing with legal processes • Social pressures • No assurance of timely justice 			
Witnesses: <ul style="list-style-type: none"> • Fear of threats from all concerned parties • Susceptible to inducement • Harassment by police, lawyers and court officials • Fatigue with dealing with legal processes • Social pressures 			

Urban Poor


Cities and big towns afford employment opportunities for many persons who migrate from villages and small towns seeking livelihood. While educated and professional classes get opportunities for a better life where they are able to better their social, economic and educational prospects, there is a large multitude of persons who move to urban areas out of sheer necessity brought on by extreme deprivation or adverse circumstance such as drought, floods and famine. Whereas the cities afford opportunities to a large workforce in semi-skilled and skilled occupations, the overall existence of the poor living in the urban areas is fraught with a tinge of ‘illegality’ which stems from lack of ‘legal identity’ such as ID cards, legitimate residence, lack of ‘legitimate’ livelihood options and lack of sufficient family and social networks. The poor often complain that the agencies of governance whether revenue or civic agencies, food distribution system or the police, are not adequately sensitive to their condition and often treat them with a presumed criminality of being ‘outsiders’, encroachers’ and ‘criminals’

The judiciary has been sensitive to the needs of the urban poor, especially in the case of ensuring that there is some legal protection of their livelihoods and homes. However, poor people trying to survive in an urban environment face a multitude of factors which marginalise them in many ways in addition to the hardships of surviving in an alien and hostile environment. A litigant who is a poor person in a city could be facing problems related to displacement, bail, accidents, non-payment of dues from informal employment. Women and children face a range of issues from sexual abuse and forced labour to the threat of abduction and trafficking. A sensitive approach by judges towards litigants who are already facing severe adversity is required for the protection of their fundamental rights.

“In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.”

Supreme Court of India: Chameli Singh & Ors. v. State of U.P. & Anr SC 1996

Nature of Marginalisation	Concerned Laws	Issues of focus in training	Training Methodology and Tools Folder Volume II
Illegality attached to every situation including homes, livelihood, etc. Vulnerability of informal and unprotected employment, exposure to crimes and criminal syndicates such as begging rackets	The Constitution of India, Municipal Laws, IPC, CrPC	To understand the inherent vulnerability of poor persons in urban environment so that their access to justice can be heightened and not lessened	Case Studies, Judgments, Films



“Many of the Judges of England have said that they do not make law. They only interpret it. This is an illusion which they have fostered. But it is a notion which is now being discarded everywhere. Every new decision-on every new situation-is a development on the law. Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole-building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends.

—The Discipline of Law, Lord Denning, pp. 20-21

Understanding the Judicial System

Please see attached DVD-Volume II- FOLDER A-B for additional information and readings

Judges and the people

The judiciary is undoubtedly the strongest protector of the rights of people. Without judicial remedies any guarantee of a constitutional, legal or statutory right would be meaningless. Judges therefore hold the key for the notion of justice to be played out in a meaningful manner.

While the Constitution of India is a strong document mandating equality and justice in its various forms to every citizen, many factors work at stripping a person of the protection of these rights. The judiciary therefore is positioned at the cutting edge of the system and can ensure that the rights of a person can be protected even though he or she may be otherwise disempowered and weak due to personal, social or economic factors.

At first cut, the burden of providing justice while battling against a flood of factors which are outside the control of the judges themselves- which they are neither responsible for creating nor responsible for addressing, may seem an impossible task which would deter a judge from attempting any bold steps of redressal. However, a closer and more nuanced look will show that it is that very situation of being in the judicial process that can not only turn the tide in favour of a marginalized person but can change the entire social and legal culture.



“Military qualities are required only in a few circumstances. Civil virtues which characterize a true judge, have an influence every moment on public facility.”

- Napoleon

The Beijing Statement of Principles of the Independence of the judiciary in the LAWASIA region were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary.

The objectives of the judiciary mentioned in the Beijing Statement are :Objectives of the Judiciary :

The objectives and functions of the judiciary include following :

- (a) to ensure that all persons are able to live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State.

—Quoted in *Vishaka v State of Rajasthan* AIR 1997 SC 3011

To enable a judge to cater to the aspirations of people, in particular, marginalised people, they need to delve a little deeply into the life and psyche of the litigant who comes before him for justice either as a plaintiff or a defendant, as a petitioner or a respondent, as a victim or an accused, or even as a witness. Undoubtedly, a judge must be impartial and that is the way the best justice is delivered. Yet, it is important to be not just free from prejudice or bias, but also to appreciate and apply the law correctly in order to achieve the spirit behind the Constitution and the law. Judges must be sensitised to the larger vision which encompasses the situation of marginalisation.

When a person enters the justice system, he comes with certain expectations and with little knowledge of the working of the system. At the same time, he carries certain notions about the system—both positive and negative. In general, the perceptions and experiences which make a marginalised person extremely vulnerable in the process of accessing justice are related to the following factors:

Lack of awareness of the judicial system

A majority of marginalised persons who enter the judicial system are illiterate and poor, with a low awareness of the legal system. They are therefore wholly dependent upon the lawyers and other court staff for any process that takes place in the courts. The whole system is alien to such a person, and as he gets deeper into it, it becomes not just a strange experience but also an unsympathetic and unyielding one.

Lack of proper legal representation

While the process of accessing justice is heavily dependent on the lawyers, the quality of proper representation of a person's case in all its manifestations to get the best justice for the aggrieved person leaves a lot to be desired. At the level at which the most important processes of the basic pleadings and evidence take place which can affect the entire outcome irreversibly, lawyers often do not press the various provisions for marginalised persons, thereby depriving them of the benefit of the laws specially enacted for them. The burden then rests on the judiciary to fill the gap and ensure that justice does not suffer due to certain matters not being raised by the lawyer.

In spite of a 'legal aid system' in place, many marginalised persons are practically without representation at the crucial stage. Even where lawyers are provided through legal aid, many litigants complain that such lawyers ask for additional payment. There are many complaints of the cases being pursued poorly and negligently.

What constitutes accountability especially in or in relation to legal profession? Ordinarily accountability is confined to professional ethics, discipline and professional regulation.....in the context of legal profession constitutional goals and the role of legal profession in achieving the same would constitute a parameter of accountability.....the determinant is the involvement of professional interest with public interest and their ultimate co-incident.....(but) on achieving the monopolistic status a general outcry against it is heard—it is said that they are exclusive; they are elitist; they do not represent the people; they show no concern even for the basic problems of the people; their contribution to society is minimal

—Law Commission of India 31st Report © GOI

Delays

While it is true to some extent that in order to do complete justice, all processes are important and they will be time-consuming, most litigants find the processes too lengthy and harrowing. For litigants from marginalised groups the delays are positively back-breaking. Delays could be perceived or actual. For example, where the law sets a mandatory time period for any process, it may seem too long to a suffering litigant, but it cannot be lessened. However, many of the delays are unnecessary and the process becomes unending and meaningless with endless rounds of the courts. Provisions in the laws for expediting the procedures must be identified and strictly implemented in order to ensure justice.

Expenses

A majority of marginalised people just cannot afford litigation costs, howsoever small. The hand to mouth existence of most of the marginalised groups leaves them with no 'extras'. Litigation expenses therefore are ruinous not just for the individual but for the whole family. Most of the poorer persons speak of amounts which may seem rather small- "Rs.500 per hearing", (travel+lawyer+court clerks+ police) which may be once a month or once in two months. But for most people, even this amount is hard to bear. Even persons getting free legal aid often complain of having to make payments to lawyers and court staff on the pretext of 'expenses'

1.5 The Constitution of India through Article 14 guarantees equality before the law and the equal protection of the laws. Article 39A of the Constitution mandates the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and ensure that the same is not denied to any citizen by reason of economic or other disabilities. Equal opportunity must be afforded for access to justice. It is not sufficient that the law treats all persons equally, irrespective of the prevalent inequalities. But the law must function in such a way that all the people have access to justice in spite of economic disparities. The expression "access to justice" focuses on the following two basic purposes of the legal system:

- 1. The system must be equally accessible to all.*
- 2. It must lead to results that are individually and socially just.*

1.6 Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man a court is the place where justice is meted out to him/her. But the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy, ignorance, procedural formalities and the like.

1.7 To get justice through courts one has to go through the complex and costly procedures involved in litigation. One has to bear the costs of litigation, including court fee and, of course, the lawyer's fee. A poor litigant who is barely able to feed himself will not be able to afford justice or obtain legal redressal for a wrong done to him, through courts. Further a large part of the population in India is illiterate and live in abject poverty. Therefore, they are totally ignorant about the court procedures, are terrified and confused when faced with the judicial machinery. Thus, most of the citizens of India are not in a position to enforce their rights, constitutional or legal, which in effect generates inequality.

1.53 Public confidence in the Judiciary is the need of the hour more than ever before. The Judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution. While maintaining their aloofness and independence, the Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people.

—Law Commission of India 222nd Report © GOI

Demand for illegal gratification

An ordinary litigant's sufferings multiply when demands are made for illegal gratification at different levels of the litigation process. Even when the Judicial Officer is not open to such accusation, the general perception that 'everyone is involved' tends to prevail. This perception has, in fact, been gaining in credence over a period of time because of the exposes under the scams in which the Judicial Officers have also been allegedly involved. As the demand for illegal gratification can seriously erode confidence of litigants, it is important that the courtroom is monitored strictly by the Presiding Officer when it comes to dealing with poor and marginalized people who do not have means to meet such demands and whose need for justice is at times more pressing.

Attitudes

Litigants, especially poor and marginalised litigants, dread and fear the courts. Many claim that the judges are not always sensitive to their needs. While it is a fact that judges cannot be seen to be 'sympathetic' or 'sensitive' to any one party, yet efforts should be made so that they are sensitive to the predicament of the marginalised groups including women, Schedules Castes, adivasis etc. The judge's conduct of the court must, therefore, be one in which the litigant has an assurance of the even-handedness and fairness of the judge. "Justice should not only be done but should appear to have been done". The role of the judicial process ought to be to minimise the negative and enhance the positive.


"Justice Cardozo has courageously confessed:

I have spoken of the forces of which judges avowedly avail to shape the form and content of their judgments. Even these forces are seldom fully in consciousness. They lie so near the surface, however, that their existence and influence are not likely to be disclaimed. But the subject is not exhausted with the recognition of their power. Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man whether he be litigant or judge..... The great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by..... We shall never be able to flatter ourselves, in any system of judicial interpretation, that we have eliminated altogether the personal measures of the interpreter. In the moral sciences, there is no method or procedure which entirely supplants that subjective reason. We may figure the task of the judge, if we please, as the task of a translator, the reading of signs and symbols given from without. None the less, we will not set men to such a task, unless they have absorbed the spirit, and have filled themselves with a love, of the language they must read. The British echo of this judicial weakness is heard in Prof. Griffith's words:

These judges have by their education and training and the pursuit of their profession as barristers, acquired a strikingly homogeneous collection of attitudes, beliefs and principles, which to them represents the public interest.

—Akhil Bharatiya Soshit Karamchari Sangh (Railway) Represented Vs. UOI & Ors.

AIR 1981SC 298



“As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge.....

I have repeatedly emphasized the rule of law and not of the judge..... view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial.”

—Dr. Barrak:

“The Judge in a Democracy”

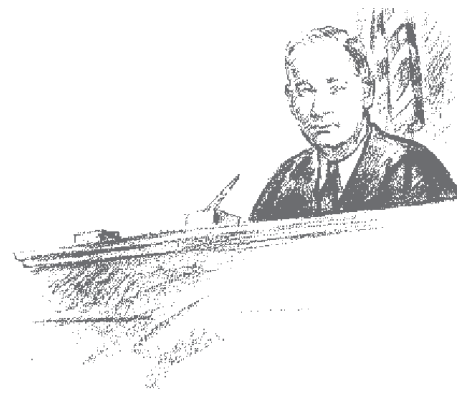
About Judicial Training

Please see attached DVD-Volume II- FOLDER A-C for additional information and readings

The judicial system in India, although inherited from a colonial past, has grown into being recognised as the protector of the rights of the people. In spite of its drawbacks with regards to the speed or accessibility of justice, the judiciary has retained its relevance in the lives of the people. For the marginalised, it is the last bastion short of resorting to retribution or ‘squaring’ by illegal or violent methods. However, there is now a growing perception that the justice delivery system as a whole has failed to deliver timely and appropriately to the mass of people, within which many suffer from marginalisation and disabilities which border on life-threatening.

The only alternative, therefore, is to prepare and mend the system towards catering to the development and growth of the constitutional goals of equality and justice for all.

For many years, the Indian judiciary found itself hedged in by its colonial trappings and saw itself in the role of implementers of the law in the letter. Gradually, however, the jurisprudence of rights emerged and grew exponentially and expanded the ambit of the outreach of the justice institutions to those who could not access it. The Supreme Court of India pro-actively raised the issues of constitutional rights and insisted on the protection of the rights of people at every level.



“Good judges are made rather than ordained by fate; second, however, **they make themselves through learning rather than being taught.**”

L. Armytage

In the present times, judicial education and training too is a must, which may be called an effective and rather indispensable means to enhance fair administration of justice. Education enhances knowledge and sensitivity, whereas training revolves round skills, attitude and professionalism. The two reinforce each other in judicial performance.

—Vasudevan V. A. v. State of Kerala, AIR 2004 Kerala 43

Need for Training

The need for training for any field of functionaries, even judges, is well recognized now and training has been seriously and systematically taken up with the establishment of State Judicial Academies and the National Judicial Academy.

1.1 Any organisation—service—oriented in character—can be appraised in terms of

(a) effectiveness in the achievement of its objectives goals—results, and (b) promotion of internal 'efficiency' in order to achieve the results. What are the goals or object to achieve which justice delivery system was devised? Indian Judicial System is admittedly colonial in origin and imported in structure. Without even a semblance of change in the last four decades since independence, in its mode, method of work, designation, language, approach method of resolving disputes, it has all the trappings of the system established by the foreign rulers. On the attainment of independence, this system was overnight expected to be an effective instrument of ushering in social revolution in Republican India. On the enforcement of the Constitution January

1950, this system was expected to adapt itself to facilitate the transformation of Indian society into a nation and to become an effective instrument for carrying out the mandate of Article 38. Judiciary being an important instrumentality for exercise of state judicial power, it had to shoulder the burden along with other wings to set up a welfare State in which Justice—social, economic and political—shall inform all the institutions of national life. It must also shoulder the primary responsibility of eliminating inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas engaged in different vocation. It had the added responsibility of becoming a guardian angel for the protection of fundamental rights of the citizens. Thus, from a purely colonial institution operating more or less as a wing of law and order enforcement machinery, it was to become a sentinel on the qui vive.

Human resources constitute a critical element of any organization; the quality and quantity of human resources significantly influence the level of effectiveness as well as efficiency of organization. The criticality of human resources is reflected in the oft-repeated adage that any organization (its structure and systems included) is only as good as the people who operate it. The nature and degree of knowledge, skills and ethics of the people on the one hand, and clarity in their appreciation of and commitment to, the objectives on the other, are critical to the internal efficiencies and external effectiveness of organization. If the human resources of an organisation thus form a very important part of an organisation, it is undeniable that it must remain up-to-date both with regard to changes in the hopes and aspirations of the people, demands from the justice system and contemporary need of the society, research in the field of law, new and revised methods of resolving disputes in the society, the concept of quality in a society consisting of unequals and the goals of the Constitution. Further, the Indian society is in a constant state of flux. Under the impact of technological advances coupled with development plans, it is facing new challenges and problems, Bhopal gas disaster has thrown up numerous challenges to the Indian Justice system and necessarily the personnel manning the same, and yet what the Chief Justice Warren Burger said while addressing the American Bar Association mutatis mutandis applies to the present day Indian justice delivery system. He said, "In the final third of the century, we are still trying to operate courts with fundamentally the same basic methods, the same procedures and the same machinery, Roscoe Pound said, were not good enough in 1906."

—The Law Commission of India 117th Report

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Why a Manual for Marginalised Communities

While it is presumed that judges, coming from a background of both academic and experiential learning are aware of most issues related to marginalized communities, yet, specialized module focusing on the marginalized communities will go a long way in helping to achieve the required level of application to the constitutional goals of social equity and justice, for the following reasons:

- Judges have a heavy work-schedule and it is not always possible for them to do extensive reading to cover all issues. Training is therefore a time when they are relatively free from their day-to-day workload and can get in-depth exposure to a range of issues.
- Judges are heavily dependent on the Bar for raising issues and bringing forth the nuances of the matter through citing the law-which they may or may not do. Most marginalized sections are not adequately or effectively represented in judicial proceedings. Judges, therefore, invariably, need to make an independent assessment of the issues and the law in its totality, in order to do complete justice to the parties. For this, an overview and deep understanding of issues is necessary.
- The nature of the work keeps a judge away from the mainstream, thereby sometimes creating a vacuum in the trends of social and political developments.
- Judicial developments in the realm of rights jurisprudence in India have been vast. It is necessary to track and understand the trends through focused study, which can be done in the course of training.
- Certain issues may act as bottlenecks to access to justice for marginalized communities and the detailed and nuanced application of the law is necessary. While this may not always be possible in the ordinary course of judicial proceedings at the trial level, training gives sufficient time to seek answers to certain complex issues through peer-group discussions and focused study sessions.
- Besides the legal aspects, there are certain social and political aspects that a judge needs to imbibe in order to make the environment of justice delivery conducive to the most marginalized who approach the system for relief. This can be done through exposure in the course of training to the 'behind-the scenes' reality of marginalized groups. This can be done through exposure visits and field placements.

The judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seamless web of life. The great tides and currents which engulf the rest of the men do not turn aside in their course and pass the judges idly by. Law should subserve social purpose. Judge must be a jurist endowing with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections.....The Judge must also bear in mind that social legislation is not a document for fastidious dialects but means of ordering in the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable of expanding freedoms of the people and the legal order can, weighed with utmost equal care, be made to provide the underpinning of the highly inequitable social order..... Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc.

The Judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs, make meaningful the right to life and give effect to the Constitution and the will of the Legislature.

—State Of Karnataka vs Appa Balu Ingale And Others AIR 1993 SC 1126



Segment II

Training Methodology & Tools

While it is widely recognized that **judicial training is imperative**, very little thought seems to have gone into **developing active methodology** for the same.

“Judicial training is an “absolute requirement” in the fight to end violence against women..... Judges and magistrates need to understand the social underpinnings that inform the promulgation of legislation on the issue.

Training cannot be overemphasized..... persons sitting on the bench need to have an awareness of the real life problems that people experience in their everyday activities.

—Chancellor (ag) Justice Carl Singh,

About Training Methodology

Please see attached DVD-Volume II- FOLDER A-D for additional information and readings

Training Methodology and Tools

While it is widely recognized that judicial training is imperative, very little thought seems to have gone into developing active methodology for the same. 'Classroom teaching' appears to be the most preferred mode of 'training' and possibly misses the objective of enabling learning to a group such as judges. In order to combine knowledge-enhancement with sensitisation and skill development, the methodology has to be aligned towards the following precepts of judicial training:

“To be meaningfully effective, any formalized process of judicial education should facilitate individualized learning which is self-directed, reflective, and promotes the capacity for rigorous self-critique.”

-L. Armytage

.....the educational characteristics of judges as learners are relevant in the development and design of any programme of judicial orientation. Judicial learning is a complex process, and one about which not a great deal is yet known.....The educational strategies which underpin any approach to educating judges should rest on foundations of adult learning theory. These foundations must, however, be specifically designed to support the distinctive requirements of judges who exhibit characteristics, styles and practices as learners which are distinctive, and which have direct and important implications for educators.....any model of judicial orientation should embody the following precepts:

a) Voluntary, Judge-led Process - there is a doctrinal imperative for a voluntary, independent education process, in addition any to the humanistic rationale for learning which must depend for its effectiveness on motivation, recognition of need and perception of benefit. The credibility of any education process for judges is critically dependent on the ability of any education provider to preserve judicial independence from any risk of indoctrination, whether actual or apparent.

b) Procedural Knowledge - Judicial education should explore the domain which extends beyond the realm of professional competence. In simple terms, this involves developing the professional artistry of judges. A study of the literature of educational philosophy reveals the need for the practice of judicial education to promote the development of judicial skills, disposition and attitudes, in addition to the cognitive acquisition of information.

c) Facilitated, Individualized Learning - To be meaningfully effective, any formalized process of judicial education should facilitate individualized learning which is self-directed, reflective, and promotes the capacity for rigorous self-critique. In this sense, the purpose of education relating to judicial disposition, attitudes and values is to promote a continuous critical analysis of received assumptions, common sense knowledge and conventional behaviour. This process should accommodate the distinctive styles in which judges prefer to learn and practice. Judicial education should be seen in humanistic terms as a process which builds on the preferred learning styles and practices of judges through facilitating self-education. Consequently, there is also a need for the development of instructional strategies which promote self-managed learning, and are facilitative rather than didactic in technique. Finally, the instructional design of judicial education should focus on individualised learning strategies: while instructional design and delivery based on group learning does offer a valuable opportunity for the exchange of experience for judges, who otherwise practice in isolation, the educational adequacy of group learning for judges is limited.

-‘Judges As Learners’ By Livingston Armytage

This Manual is an attempt to keep training tools flexible to suit the faculty, availability of time and demands of curriculum. The content from the Manual may be used with equal ease by regular, as well as guest faculty. It tries to combine different methodologies and tools to deliver the training sessions and highlights the following:

- Lectures
- Judgments & Readings
- Case Studies
- Role play
- Literature
- Films
- Slides & Power Point
- Questionnaires

Methods	Tools/Aids	Equipments	Techniques
Refer to how subject matter is going to be dealt with in a broad sense, e.g. group discussion, lecture, role-play, demonstration, clips, models, etc.	Refer to the various variations of supporting materials used eg slides, posters,	Refer to the infrastructure, eg overhead projectors, slide projectors, etc.	Refer to the variations of the broad headings eg Small Group Discussion

In order to answer the ‘how’ question, you can point out that active learning workshops use a variety of training methods in order to engage participants in the learning questions”

- Is the method suitable for the objectives?
- Does the method require more background knowledge or skills than the participants possess?
- How much time does it take to prepare and then to use it in the learning session?
- Is that sort of time available with the adult educator and adult learners?
- How much space does the learning session take?
- Is that kind of space available at the venue of learning sessions?
- Is the method appropriate for the size of the learning group?
- What kind of teaching materials does it require?
- Are those materials available?
- Does the method require special skills to use?
- Does the adult educator possess these Skills?

10.2.1 Knowledge-based Learning Sessions

- The broad factor guiding the selection of methods is the focus of learning. If the focus of learning is increasing knowledge then the methods used may be lectures, field visits, demonstrations, self, study, etc.
- Adult educators need to keep in mind that they need to talk about only those facts which the participants need to know. It is important to get the participants’ attention before explaining why they need to know the topic. Tell a story that shows why it is important.”

–Participatory Training and Research in Adult Learning



Lectures

Please see attached DVD-Volume II- FOLDER A-D for additional information and readings

Most training institutions admit that lectures are the most, sometimes the only mode of training used. It is, likewise admittedly not the most effective methodology and unless the speaker is exceptionally engaging, powerful and knowledgeable, does not result in high levels of absorption. This Chapter aims at enabling faculty and resource persons to deliver lectures that are effective, thought-provoking and knowledge-enhancing.

A lecture can be of two types

- A 'formal' lecture- this is usually delivered by a subject expert, or a well-known personality. In this type of lecture, usually, the speaker has a command over the topic, informs as he entertains, but does not generally interact with the trainees.
- An 'informal' or "Teaching lecture"- In a scheduled and planned training, the lecture delivered will be a 'teaching lecture' and will be interactive to be most effective.

A lecture should have a structure

- A lecture should have a beginning and an end
- A lecture should cover all main aspects of the topic
- A lecture should cover latest developments in the law
- A lecture should enable trainees to research and learn further

A lecture for judges would generally include the following

- Choosing the topic
- Methodology
- Addressing controversial subjects/concerns/issues (eg: response to terrorist activities, reservations for weaker sections, women's rights)
- Leaving the trainees with answers
- Leaving the trainees with questions



“a student’s rate of retention drops off significantly after the first 10-15 minutes of a lecture and picks back up at the end. In addition, the retention rate for a lecture is about five percent after 24 hours. In comparison, the rate of retention for active learning goes up dramatically.”

-Dynamicflight.com/avcfibook/methods

“Lecture : The lecture method is an effective way to introduce new information or concepts to a group of learners. The learners always appreciate a concise, stimulating and well -delivered lecture. The lecture method primarily used to build upon the learners’ existing base of knowledge. The lecture must always be suited to the learners’ level. Asking some relevant and effective questions can help elicit information. Thereafter, the adult educator will have to make constant efforts to situate the new information in the context of the training by continuously providing examples and illustrations to relate it to the learners’ context.

Lectures are useful for conveying new information and concepts to the learners and for providing context so that learners can relate what has been learnt to a conceptual framework. Lectures are also good for stimulating and motivating learners for further enquiry and for presenting a specialized body of external information.

To lecture effectively, the lecturer needs to prepare for the lecture, become very familiar with the subject matter, identify and prepare supporting aids to illustrate the points. One needs to provide examples to link the subject matter to the lives of the learners and ask questions to check whether the learners are following the lecture. A good lecture provokes the learners to ask questions and note key points. It is advisable that the lecturer maintains eye contact with the learners to assess whether they are following or not, whether they are interested or bored. The seating arrangement has be such that all can see the aids equally well and hear the lecture and maintain time stipulations. It is important to be aware of one’s own body movements and facial expressions and speak clearly, loudly and use simple language. Given below are the advantages and disadvantages of the lecture method.

Advantages	Disadvantages
Allows the presentation of facts, information and concepts in a relatively short span of time.	The world view of the speaker dominates the knowledge.
Makes possible interaction of learners with multiple resource persons with different points of view.	It does not promote interaction in most cases.
Is possible to use for illiterate learners	The input may be too abstract if not related to real life situations.
A diverse range of supportive materials can be used to support the content areas, e.g. slides, charts, posters, etc.	The pace of learning is determined by the lecturer
A large number of learners can be accommodated at one time”	

Participatory Research And Training:Methodology and Materials-Mandakini Pant

www.unesco.org/education/aladin/paldin/pdf/.../unit_12



Choosing the topic and structuring the lecture

Most often the topic for a lecture will be according to the syllabus prescribed for the trainees. Apart from the need to cover the ground for any given topic, there is also the objective of preparing trainees sufficiently well to be able to pass the test or exam with reasonable success.

Further, the aim is that the trainee judges should absorb and retain the information imparted in the lecture. In spite of that, it is important to choose which aspect of the entire subject or topic will be taken up in a particular lecture.

In general, the topic for a lecture should have a direct connection with that drawn out in the syllabus, but should highlight some of the important components in detail, while covering or reiterating the general aspects so as to set a context.

A lecture should have a beginning and an end

The beginning can be a poser, a statement which is challenging and incites discussion or response. The end should conclude with positive interventions that can be made by using aspects of the law.

Methodology

Preparation for a lecture has the following components:

- Establishing the objective and desired outcomes
- Researching the subject
- Organizing the material and
- Planning productive classroom activities

A lecture is primarily based on the communication/oration skills of the trainer, but the quality of a lecture can be greatly enhanced by combining speaking with any of the following tools:

Using power point presentations and slides to generate discussions

Using Power Point Presentations (PPt) and slides helps to keep a sequence to the lecture and also helps to highlight the main points. PPt should be interesting but not too visually distracting, although visuals or pictures/photographs and illustrations help retention and recall, as well as take away from the tedium of running text.

PPt slides should have bold text clearly visible. It should contain short points and should not be cluttered. Often, in a law lecture, long sections are pasted onto slides, which the lecturer then uses to read out. This should be avoided and only short points should be highlighted.

Using Stories/Readings/Case Studies

- Use story /extract of reading to highlight any aspect of a marginalised group.

Using Films/audio-visual clips

- Use film to start a discussion.

Questionnaires

- Circulate questionnaire on the topic to be discussed
- Discuss responses using Power Point to demonstrate legal developments related to the questions

Leaving the class with answers

Judges, like others, should not be expected to be repositories of all understanding, sensitivity or knowledge. A lecture should address common misconceptions and gaps in knowledge of the law. The knowledge of personal law of minority communities such as Muslims or Christians is not very well known or understood. For example, the following misconceptions need to be clarified in the course of a lecture on Muslim Personal Law.

Common Understanding	Answer / Legal Position
A Muslim male can marry upto four times	A Muslim male can marry more than once only if he can ensure equal rights to all wives financial, emotional and physical
A Muslim woman is not entitled to maintenance after divorce, beyond the period of iddat	As per the ratio of Daniel Latifi v Union of India , a Muslim woman is entitled to get maintenance from the husband who is divorcing her for her entire lifetime, but it must be settled within the period of iddat (explain the concept of ‘iddat’)
A Muslim woman has no inheritance rights	Muslim women have inheritance rights as per a fixed share to be carved out for wives, mother and daughters (explain broad categories and shares of heirs using PPt)
Muslims can marry within the family	There is a detailed list of prohibited relationships under Shariat law based on consanguinity as well as relationship by marriage, within which marriages are prohibited (Read out list of prohibited relationships using PPt)
Only a Muslim man can divorce his wife	A Muslim woman can also have her marriage dissolved through Talaq or through a court under the “Dissolution of Muslim Marriages Act” (Discuss salient features of Act using PPt)
A Muslim man can divorce his wife after pronouncing oral talaq in any way	Oral talaq is acceptable only under certain circumstances. It can be challenged in a civil court (Discuss High Court and Supreme Court rulings on Oral Talaq using PPt)

Leaving the class with questions

Often, a lecture deals with difficult questions of perspective, which may be ingrained in the minds of judges. In such cases, it is usually not possible to supplant the thinking with a new idea and introduce a radical change in thinking. On such issues, the lecture should be directed at effectively leaving the class questioning its own value-judgments which enable them to entertain a possible different view in the future.

Perspective	Question
Most of the cases on 498 A IPC (cruelty in the matrimonial home) are false	When we say 'most', what percentage do we mean, are there any statistics to support this conclusion, what could be the reason that such a large number of women report an incident that has not happened
Persons accused of heinous crimes such as terrorism, rape do not deserve the protection of Human Rights and the law	How would we identify the actual perpetrator without procedures, what different procedures should be followed for such persons, what will be the larger impact of not following fair procedures.
A poor person will normally jump bail and so bail should be denied while investigation is on	On what factors can it be judicially gauged whether a person will jump bail or not. What is the importance of the rule of criminal jurisprudence which states 'bail not jail'. What could be the reason that Indian law supports this rule?

Sample - I

Topic: Gender Justice- concept and constitutional scheme

Time: 1hour

The lecture should cover the following aspects of Gender Justice

- How gender discrimination originates (sociological factors)
- How gender discrimination manifests itself in family, society, nation
- How gender discrimination results in leaving females out of the mainstream, thereby making them marginalised and even leading to the commission of grave offences: sexual abuse of girls and women, trafficking in women, unpaid or under- paid labour, sexual harassment at the workplace, domestic violence, matrimonial offences and imbalance in gender ratio.
- The lecture should end with distinctive features of the law which promote gender justice. (Constitution of India, International Laws and Special Laws)

Tools: Film, Ppt.

Sample - II

Topic : Human Rights and Rights of Arrested Persons

The objective of the session should be to:

- Enable judicial officers to identify violations of criminal procedure as violations of human rights
- Promote understanding of the international human rights regime which is binding on Indian laws and legal institutions
- Enable judicial officers to understand specific legal provisions in order to be able to make interventions in their sphere of work to prevent or redress violations.

The lecture should cover the following aspects of arrest:

- Ways in which illegal arrests are made-specific examples of illegal arrest such as – use of force beyond permissible limits
- Who are the persons more vulnerable to illegal arrests
- International human rights regime on arrest
- Constitutional provisions on arrest
- Provisions of Code of Criminal Procedure related to arrest
- Supreme Court rulings on arrest

Methodologies

Role Play: divide the class into four groups with an outline of a situation to enact an arrest (15 minutes) and ask them to enact the situations (30 minutes)

Case studies: Divide the class into four groups to discuss case studies on arrest for discussion of the various aspects (20 minutes)

Power Point Slides: Use Power Point Slides to demonstrate common violations of human rights & international human rights regime and legal protections under Indian Law.



Judgments & Readings

Please see attached DVD-Volume II- FOLDER A-F to O for Judgments and Readings



“Don’t wait for
the last judgment
- it takes place
every day.”

-Albert Camus

Reading and writing judgments is an inevitable part of a judge’s life. The judgment in a case is the culmination of the process of litigation- it concludes the process of seeking justice (for then), it gives shape and form to the rationale behind the decision, thereby satisfying not just the immediate legal necessity but also the larger social need of following, understanding and believing that justice was done.

Reading and analysing judgments is therefore the bedrock of judicial training. While all students of law would have read judgments as part of their academic curriculum, judges must read judgments and analyse from an entirely different perspective and with a different purpose in mind:

- To know where legal reasoning currently stands in the country and to apply it accordingly.
- To absorb the nuances of legal reasoning pertaining to different situations of conflicting claims, thereby developing the ability of understanding a variety of factual matrixes and their differences.
- To learn to convey correctly the juxtaposition of facts and decisions taken, in order to clearly convey the reasoning to all concerned.
- To follow the patterns of litigation and its outcome. This is particularly important in the context of training judges in issues related to marginalised communities, as legal developments relating to them may have to be culled out from scattered case-law from different courts.
- Knowing a range of judgments also equips a judge to support his reasoning from other jurisdictions or fields of law.

Selection of judgments for training

Selection of judgments for judicial training must serve a larger purpose than just knowing 'latest case-law' or 'precedent'. Since law is dynamic and may not just change, but may be applied differently according to the situation, judgments must be selected from a diverse range, covering the following:

- Precedents and landmark judgments

These are important for judges to know the established position of law and the principles which have been followed in judicial decision-making. Judges must be aware that precedents can be used across the board, where the principle is the same, although the facts or situation arising in the litigation may be very different. For example, a precedent like "*Maneka Gandhi v UOI*" has been used in support of a variety of fundamental rights ranging from administrative law to rights of slum dwellers and marginalised persons. Such judgments must form part of the core readings on any issue.

- Judgments on specific aspects

Every subject and field of litigation develops in its own way. A selection of judgments should therefore be used from every field in order to assist judges to hone their skills to appreciate facts and do legal analysis of the same. Reading several judgments also makes judges nuance and distinguish different situations which come before them in litigation.

- Judgments where the development or history of the issue is covered in detail

Judgments to be read by faculty and to be used in training can include judgments of different courts which have tracked the history of any particular legal aspect, as that would give a consolidated overview of the law as one reading. For example, "*Selvi v Karnataka*" traces the entire law on self-incriminating evidence and the constitutionality of different aspects of evidence.

- Judgments with dissenting opinions

To develop a skill for legal reasoning and differentiation, judgments which are better known for their contra opinions must be included in training as judges must develop openness of mind to see another view also. Justice H.R.Khanna's dissent in "*ADM Jabalpur v Shukla*" is one such judgment

- Judgments which make strong statements

Judgments which have been 'controversial' or path-breaking must be included in training curriculum to expose judges to creative and progressive thinking. Several of Justice Krishna Iyer's judgments or Justice Bhagwati's judgments in the '*Hussainara Khatoon*' cases are an example.

- Readings

Readings on a subject may be selected from good journals, reports, magazines, newspapers or books. Readings for judicial training need not be overly heavy or scholarly. A large range of good readings can be selected from the web and links/ soft copies can be given to avoid bulky printing and judges should be encouraged and trained to use the web effectively.

- Reports of the Law Commission of India are particularly useful in tracking the history of any legislation or legal issue and to understand the progress and change in legal trends. Law Commission reports are very informative and easily available on the net at <http://lawcommissionofindia.nic.in> Selected Judgments and Readings can be given in training as brief packs pertaining to a particular training session.

Judgments used in Volume II Folder A are unedited
downloads from Indian Kanoon

www.indiankanoon.org

a free website which is easy to access and search
and quite reliable. Some judgments have been
downloaded from Manupatra. Judgments are
unedited and are for use only as supporting
material in training. It is recommended that
equivalent citations in AIR/SCC etc be
used for hand-outs and reading packs.



Case Studies

Please see attached DVD-Volume II- FOLDER B for additional case studies

Case studies are the ideally suited methodology for judicial training as it involves all important aspects such as problem analysis, peer discussion and self-learning. Case studies can be used for an interactive session on any topic. They relieve the monotony of a spoken lecture and several aspects of a topic can be covered in detail in a shorter time-frame.

Recreating a situation through brief facts is effective for visualising, pre-empting and analyzing a problem or case that may come before a judicial officer in the discharge of his or her functions. This is an effective way to encourage thought, response, expression of ideas as well as doubts in the relatively protected domain of a small peer group. Case studies can be used to highlight important aspects of law or the marginalization of persons approaching the system for redressal.

“In a case-study method, the group gets to reflect upon and analyse their experiences to derive new ideas. The learners own experiences, values, feelings an opportunity to look at others’ experience in the form of a case. The learners, form the basis of analysis of others’ experiences. The adult educator may present case studies in written or verbal or even in the form of films or songs, depending on the background and experiential level of learners.Case study method helps to convey complex theoretical concepts in a simple way. It makes the group reflect on its own situation in the context of others’ experiences and it gives a chance to discuss complex situations. This exercise sharpens learners’ diagnostic and analytical skills and expose them to situations they might not experience in their own lives. It exposes learners to similar experiences elsewhere to enable them to feel as sense of solidarity and validation. In addition it helps in creating new knowledge through collective reflection, analysis and synthesis.”

Participatory Research And Training:Methodology and Materials-Mandakini Pant

www.unesco.org/education/aladin/paldin/pdf/.../unit_12



“Because stories about the law (both fictional and real) allow us to visit the **psychological and moral realms of legal actors both before and after they make decisions or take actions.....**”

-Carrie Menkel - Meadow

Case studies are simple to acquire and make. Case studies can be drawn from:

- News Reports, fact finding missions, etc. (Sample I)
- Fiction/Literature (Sample II)
- Oral or written testimonies of people (Sample III)
- Judgments of courts of any level and even from facts of various petitions, suits, legal documents such as Deeds, FIR, etc. (Sample IV).

Samples of Case Studies

Sample I

News Report: Retired Dalit officer's car and furniture 'cleansed'

–April 08 2011, Thiruvananthapuram (Indian Express)

The Kerala Human Rights Commission has registered a case and sought an explanation from the secretary, taxes department, after the office and car used by a Scheduled Caste state government officer was allegedly cleansed with cowdung after his retirement from service.

Former Inspector General of Registration A K Ramakrishnan, who retired on March 31, petitioned the rights panel, saying the “inhumane behaviour” had insulted him and all backward communities. The panel has sought a report by May 7.

Ramakrishnan said the incident took place on April 1, after the new IG assumed office. On the first day, a section of officials reportedly sprayed cowdung-mixed water on the office furniture, the threshold and the official vehicle. Ramakrishnan claimed that in order to refute allegations that this was done because he was a Dalit, cowdung-water was sprayed in the entire office the next day.

Ramakrishnan said a section of officials had borne a grudge against him since he took over five years ago, and cracked down on some of them. “That might have provoked a section in the office. On the day I retired, there had been celebrations by bursting crackers,” he said.

Calling it an insult to the SC community and a violation of their human rights, Ramakrishnan said if a senior officer could be treated like this, one could well imagine what officials at junior levels might be facing.

Suggested points for discussion:

- Do you think that these news items are false or exaggerated ?
- Has education helped change attitudes towards issues of caste and untouchability ?
- What are the protections under law to deal with such instances?

Fact Finding

A 35 year old adivasi man Khemla from village Gumdiya Khurd of Niwali Block, Budwani District, Madhya Pradesh was beaten to death in police custody.

Khemla was allegedly accused of theft. Police picked him up from his home in the wee hours of 14th June 1993. He was handcuffed and beaten up brutally in front of others who had been rounded up and brought to the police station. Consequently, Khemla started vomiting blood. His brother Sayba who had already been taken into police custody on similar charges, was witness to what happened to Khemla. When Sayba tried to give his injured brother some water to drink, local Sub Divisional Police Officer (SDPO) who was said to be present there, kicked him in the stomach. Sayba has reported all this to members of a local NGO.

Soon after this, Khemla fell unconscious. The police then dragged him out of the lock up. Subsequently they took him to the local hospital, and later to the Budwani Government Hospital. However, attending doctors pronounced that Khemla was already dead by the time the body reached their hospital.

Police then went to Khemla's home and informed his wife that her husband was seriously ill and

took her to the hospital. Thereafter, she was taken to the morgue of Budwani Hospital and asked to identify Khemla's body. It is alleged that the police then forcibly took her thumb impression on blank sheets of papers, and handed over Khemla's dead body to his wife.

Meanwhile, the police released the other inmates in their custody, who had been witness to the brutal beating inflicted on Khemla. The police ordered these persons to go far away and not to be seen in the vicinity for the next 3-4 months.

The suspicious circumstances surrounding Khemla's death infuriated all adivasis living in the area. Seething with anger, they came out in large numbers and sat in a protest dharna in front of the Collectorate and office of the Superintendent of Police.

The police officials who were said to be present during Khemla's physical abuse were absconding. The tribals demanded immediate arrest of these police officials.

Suggested points for discussion:

- Do you think such instances are possible ?
- Do you think prompt and proper action is taken where such instances occur?
- What are the legal procedures relevant to such incidents under:
 - A) The Constitution of India
 - B) The Code of Criminal Procedure
 - C) Any other law
- Can Judicial Officers/Magistrates take cognizance of such incidents on the basis of a newspaper report giving facts of the Post Mortem and photographs of the victim?

Sample II

Excerpts from Literature : English translation of "Paydaan"
-a novel by Sona Choudhary

As I grew up a bit, certain incidents of my childhood got embedded in my heart and consciousness, like a poisonous snake all coiled up. Deaf bhaiyya gradually faded out. By and by, as I tried to unravel the folds of that period of my life, I came face to face with all that is base in this world. Like a ravenous animal refusing to let go of a piece of flesh, even if that be of its own progeny, my younger uncle too had clawed at me. I and Pratima, my elder uncle's younger daughter, would sleep together at night. Driven out of the inner rooms of the house, we slept in the sitting-room outside. There were always a lot many cots there, for till late in the evening someone or the other would come visiting grandpa. Nothing was fixed as to who would sleep where. Grandpa usually slept at one end of the room. The lights out, hands moving silently, our uncle and one of his friends would fondle us all over as we lay eyes closed, holding our breath, speechless and still. Grandpa would be there, asleep, face turned.

Each one of us- Pratima and I- knew that the other was awake but never- then nor in the broad light of the day- did we talk about any of this. Something there was in our upbringing that made us take it all in our stride. Always fearful lest uncle and his friend be found out in the act, physically listless and inert, we would be mentally alert with tension. Once the two of them, tired and done with, went to sleep, it would not take us also long to go into slumber. How much could a child's body endure, how much the mind exert ?

The uncle and his friend, on the cots adjacent to ours, would take turns fondling-soundlessly, continuously. During the day, in the absence of others who were gone to the fields, the uncle would

again take advantage of the situation. In the classroom, I would be thinking of the nocturnal goings-on, afraid, hating myself from within, contemplating the impending night with fear. Sometimes, trapped in the fields, we, children as yet in class one or two, would be forced to catch hold of their secret organs and name them. We talked of revealing it all to our parents; they threatened us with dire consequences- they would kill us, or our brothers-sisters, and parents. The customs of the family made everyone blind to it all- and, fearful of the consequences, we dared not tell anyone. We began sleeping with our parents, citing one reason or the other. But caught on our way back from school, we were again threatened, ominously. It all continued as before-sleeping in the outer sitting-room, getting caught in the fields now and then- I remember not for how much more time.



My sister had been provided a sports kit by the school. The first day, I went to the stadium in my shirt and pyjama. Thereafter, I wore my brother's long underwear as I didn't have shorts of my own. My sister's companions were all her age-group. I would look on as they twisted their bodies into various postures. As they ran at the bidding of the coach, I too would join in. Occasionally, the senior coach would just come and have a look. The lady coach exhorted me to be respectful towards him, and I would greet him with a 'namaste', nodding at whatever he said to me. A few days later, he said, "you'll have to be taught separately" - and then he led me into a room. The door ajar, he would make me replicate the same body-twisting postures that I saw the other youngsters adopt. But soon he started touching parts of my body in the process of giving support - thighs, hips, even the breasts; at times his face would be just about touching mine. Catching hold of my legs, he started making me practice stand upside down for minutes together; my shorts and shirt would, in this posture, slip downwards. Intermittently, he would tightly squeeze my legs. The head-stand routine would be repeated quite often.



I was in salwar-kameez and a sweater. The astrologer having won the confidence of Mummy, had convinced her of being a mahatma; to me, he appeared a lout, eyes full of lust. The two doors in the room were closed; he made me stand before him. "Do as I tell you and you will gain the skies. There is a mole on your neck; the mark of the moon between your shoulders - ain't I right?" He came towards me and stood behind me - turning down the collar of my shirt, he started caressing my shoulders. "One is most likely to have a mole or a mark somewhere on the body", I thought - and said as much. Angry, he sat by Mummy, and complained - "this girl does not follow my instructions; she'll be ruined." Mummy, perturbed, more or less hypnotised by him, asked me to do as he said. He asked me to take off my sweater. Failing to reason with Mummy, I hesitantly did as asked. But when he asked me to take off the shirt, I refused point blank.

Mother, blinded by faith, exhorted me to go on, assuring me of the man's credentials, saying that her presence should reassure me. He said that the large mark of a mole between my breasts had to be "tamed". I stood my ground; he acted hurt, and started frightening my mother. Mother, in sheer fright, started raising my shirt - I brusquely wrenched it from her.



Railway Road. Suddenly, a vehicle with two men in it, coming from behind, passed us by. I became alert - and a bit nervous. The rickshaw wallah too speeded up. The vehicle turned back, went back past us, and started pursuing us. As it came up by our side, a hand with all fingers outspread threw a hint, and the car went ahead. A little distance from us, it again halted, waiting for us. The shops lined up back to back, no small street or turning in view, I asked the rickshaw wallah to go on straight ahead and not to stop till I asked him to. He nodded and went on ahead at his normal pace; we had both closed our eyes to the reality, thinking that paying no attention to the impending danger would somehow help us avoid it. I wonder what he must have been thinking - about me and about

those in the vehicle. I wished I could stop but for a safe place around. Just a few minutes back how pleasant this lonely road had seemed to me ; now everything looked confusing – and fearful. Nobody was to be seen on the road. I thought them to be just a group of wayward boys – that they would move on in a little time. I was, though, stuck in a fearfully perplexed state of mind.

Even as I was engrossed in these thoughts, the rickshaw turned on to another road. The hostel was now not very far. We were now at the back of the bus stand – bustling with activity during the day, now a large vacant space. On the other side, two lifeless buildings of schools, interspersed with a house or two. Absolutely lifeless road – such that not even a murder would be taken notice of. Goel’s large mansion, with ever new cars parked outside ; I never could bring myself to believe that he was a lawyer – or that the office within the compound was a regular, legal one. Inevitably, whenever I crossed this house, I would associate it with smuggling.

What was I doing ? Acting the ostrich ? I couldn’t do that for long. Just near the turning they tried pushing our rickshaw off the road on to the pavement. Had the rickshaw wallah not veered off the road, we would definitely have collided. I was now in a state of consternation – and extreme fear. The fear was born not of death, but of being a girl. I had then, for the first time, realised what it meant to be a girl. They were advancing. Not speaking, just gesticulating. Menacingly indecent, uncouth, loathsome. My hostel was now very near. Their vehicle moved on ahead. I thought they were gone. That was what I had all along been wishing for, hoping for, imagining. I had not the wherewithal to look up and see – and did not realise that they were actually still laying the trap.

Suggested points for discussion:

- Do you think instances such as those narrated above are common for girls and women?
- What are the reasons for such acts?
- What is the ideal response for such situations from:
 - A) The person concerned
 - B) Families
 - C) Society
 - D) The legal system

Sample III

Personal Testimony I

Subrata Bhattacharya (name changed), a resident of Ranchi District – Jharkhand says he is a victim of Police torture and narrates his story in this manner:

“On the morning of 17th August 2004, I went to the Police Station - Ranchi to inquire about a local friend Sukumar (name changed) who was arrested the previous night. I asked the concerned Police official for giving me the permission to meet him and the reason to his arrest. They started asking my relationship with the accused and asked me to sign on a bond paper as a witness of the arrest, to which I refused as I was not present at that moment of arrest and came simply to meet him. One of my three mobiles which I used for my business purpose was ringing. Hearing the mobiles ring, suddenly the Officer in Charge came towards me and started slapping, punching and kicking me in front of the S.P. He was abusing me saying that I was bossing around and showing off my influence. He ordered one of his men to lock me up in the cell. I showed him my Business / visiting card but it all went unheard. I was stripped of all my belongings (Mobile, Money etc.) and informed that the concerned S.P. would be coming and only he could set me free. Remembering the big poster of

Mahatma Gandhi hung inside the Police Station, I started wondering how they could beat and abuse an innocent person in custody. After 3 hours the S.P. arrived. I was taken out of the cell and the interrogation started. They started abusing me to reveal the hideout, mobile number etc. of a local criminal 'PD'. I told them that I had no idea about that person and the series of torture began. They slapped, kicked and caned me. I was asked to lie down flat on the ground and started caning my soles with my socks on as it would hide any external injury. I cried with pain, I could feel my blood rushing to my brain through the neck which felt as if it would burst, my left hand side went numb and paralyzed. I was cursing myself for my foolishness of going to the Police Station. My mind was full of confusion and fear. I fainted and lost my consciousness. I recovered from coma after 21 days. I came to know that I was taken to the Sharda hospital by the police and admitted there as a person who had a road accident and then referred to RMC hospital. During that time the media was full of my story and the Police were afraid of the outcome. They sent a mediator, who threatened my father that he could not do anything against the concerned police officers, only thing which could happen was that they would be suspended but after which they would never leave his son alone. They asked my father to discharge me from the RMC hospital and send me out of Ranchi to Vellore which is in Tamil Nadu and all the expenses would be taken care of by them. My family did not want any money from them and did not negotiate, but my father was confused and worried, fearing more inhuman action from them. He broke down and pleaded them to leave his son alone, assuring them that he would not file any case against them. After my discharge from the hospital, I went through a series of physiotherapy classes. I feel disgusted when I see myself half paralyzed, unable to take the salt with my left hand. I developed a habit of getting angry, specially when I remember the Officer-in-Charge who tortured me. Often the O.C. used to call me and my family, psychologically threatening us. A CID officer phoned me and wanted to meet me at his office. Maybe he was trying to help me get justice but I was afraid to meet him in the Police Station. I told him that whatever information he wanted it was all in the newspaper. I did not want to do any case against my perpetrators for personal reasons. I have a father who is suffering from cancer and has to go regularly for radio therapy and a younger sister yet to get married. I fear that they might trouble my father on his way to treatment and falsely charge me again which would hamper my sister's marriage as no one would tie knot with her whose brother is booked as a criminal. I got married last year on 29th November 2008 and felt that this might change my life but I often got into small-small quarrels which led to our separation. She is now staying with her parents. I wish she comes back and forgives me for treating her badly. I would like to make my testimony public with my name and perpetrators name changed.

(Testimony given to PVCHR Varanasi & Rehabilitation and Research Center for Torture Victim (RCT), Copenhagen)

Suggested points for discussion:

- Which Fundamental Rights of the victim of torture are violated in the above narration?
- What are the international conventions applicable in such cases?

Personal Testimony II

Safina (name changed) got married to Zafar (name changed) in the year 1986 according to Muslim customs and rites. Two children were born out of the said wedlock. Safina's husband was a Professor by profession and would earn remuneration of Rs. 9,000/- per month. He would keep his wife and children under economic constraints as he had the habit of spending most of this money on / with his friends. Due to this there were regular fights at home. On February 2003, Safina along with her son had gone to their bank branch in order to extract a statement regarding their fixed deposit. The bank statement showed that her husband had withdrawn all the money from the fixed deposit. This created a huge rift between the husband and wife and Safina left home. On June 2009, Safina filed

a case under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) against her husband. The order in the case was passed granting her residence order, allowing her to live in the shared household, Rs. 10, 000/- as monthly maintenance and Rs. 60, 000/- as compensation, both payable by her husband. But her husband sought a stay on the order and the same was granted. According to Safina, her counsel was partly responsible for this stay order. The Magistrate had clearly mentioned that copies of the order need to be sent to certain places like the concerned Police Station, the Protection Officer, the head of the college the respondent was employed in, etc before the respondent husband can file an appeal, for the execution of the order to take place. But the counsel failed to do so and the appeal was filed and stay was granted. Further Safina stated that the male judges seem to be either ignorant or against the PWDVA. On one occasion the magistrate presiding over the case had asked her that since she has never been physically or sexually abused, then why a case under PWDVA was filed by her.

Suggested points for discussion:

- Is allegation of physical or sexual abuse necessary for filing a case under the PWDV Act?
- What are the kinds of Domestic Violence that the PWDV Act covers ?
- Do you agree that most women face this kind of disappointment with the judicial system? Why?

Sample IV

Court Judgments I

Jagdev is under surveillance by the police. Frequently the chaukidar of the village and sometimes police constables awake him in the night and thereby disturb his sleep. They shout at his door and sometimes enter inside his house. On a number of occasions they compel him to get up from his sleep and accompany them to the police station which is three miles from Jagdev's village to report his presence there. When Jagdev leaves his village for another village or town, he has to report to the chaukidar of the village or at the police station about his departure. He has to give information regarding his destination and the period within which he will return. Immediately the police station of his destination is contacted by the police station of his departure and the former puts him under surveillance in the same way as the latter does. The chaukidar of the village keeps a record of the presence and absence of Jagdev in a register known as chaukidar's Crime Record Book. All the entries in this book are made behind Jagdev's back and he is never given the opportunity of examining or inspecting these records.

Suggested points for discussion:

- Are any rights of Jagdev violated in these circumstances?
- What is the law related to surveillance?

Reference: **Kharak Singh v. State of U.P. and Others** AIR 1963 SC 1295
Gobind v State of Madhya Pradesh & Anr AIR 1975 SC 1378



Court Judgments II

Section 30 of the Punjab Excise Act, 1914 (for short “the Act”) prohibits employment of “any man under the age of 25 years” or “any woman” in any part of such premises in which liquor or intoxicating drug is consumed by the public. Anju is a young hotel management graduate and is seeking employment in Delhi, where this Act is also applicable. Anju is unable to get a proper job because most of the good restaurants and hotels have bars attached to them and are restricted by the provisions of this Act. Anju’s parents say that she should come back to her hometown and find some other job.

Points for discussion:

- How relevant is this provision of Punjab Excise Act in today’s times?
- Do you think such a provision is good and should be retained in the interest of young people, especially young women?
- On what grounds would you challenge this provision if you were Anju?
- On what grounds would you defend this provision if you were representing the State?

Reference: Anuj Garg & Ors v Hotel Assn of India & Ors AIR 2008 SC 663

Court Judgments III

A, the complainant, has deposed that a borewell was being drilled at a distance of about 15 feet from Harijan colony and water sprouted from the well on the date of the incident at about 9.30 p.m. At that time many persons including X,Y & Z and some Harijans including B & C were present there. Two young girls of the Hindu community performed pooja. Thereafter 10/15 Hindus took water from the well for performing pooja at the temple. He further stated that he along with five other persons including A,B & C, who were all Harijans, also brought pots for taking water from the well. At that time X,Y & Z told the Harijans not to take water from the well as they were “mahars” and that there was a separate well for them. They further obstructed the Harijans from taking water saying that if the Harijans insist on taking water the result would be unhappy. X told his men to bring a gun from his house and threatened the Harijans with dire consequences. A further stated that he said that the Harijans have also right to take water from the well. On that X,Y & Z told the Harijans not to persist on taking water from the well otherwise the consequences would be serious. The Harijans thereafter left the well without taking water and went to their colony.

Points for discussion:

- What would be the approximate year in which this event took place?
- Which fundamental right has been violated here and whose?
- Can you recall any similar incident in recent times?
- What will be the legal redress for A,B C and people like them if this incident were to happen now?

Reference : State Of Karnataka vs Appa Balu Ingale & Ors AIR 1993 SC 1126

Slides & Power Point Presentations

Please see attached DVD-Volume II- FOLDER C for Slides and Power Points

Power Point (PPt) presentations are an effective modern tool commonly used in training sessions in most training institutions. All judicial academies are equipped to use PPt.

PPts are a good way to:

- keep the lecture/discussion structured and focussed
- facilitate recall by visual /audio-visual
- facilitate recap of main points
- facilitate the use of pictorial slides for starting the discussion on a topic
- Use as a docking point for short audio-visuals for starting a discussion or conveying a particular situation.

Power Point should, however, be used with caution. Over-dependence or over-use of PPt may lead to over-simplification, lack of group engagement or even kill creativity in teaching.

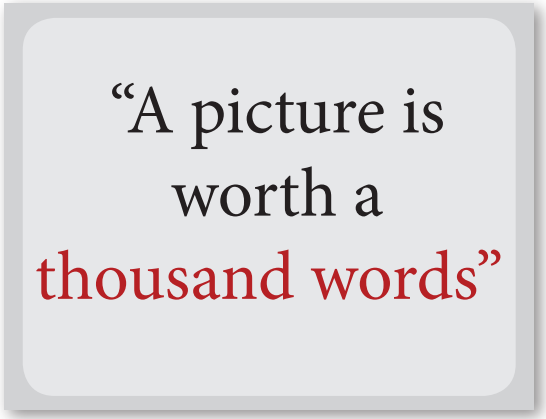
Power Points must be brief and clear. Many faculty members use power point to paste sections of law and then read out from a printed hand-out. PPt is only a physical aid and should not be taken to be the gist and soul of the subject. PPts with dense text should be avoided.

Sample:Volume II (DVD)-Folder C-Criminal Justice

Use PPt to:

- Ask the group if such instances happen
- Ask the group whether the actions shown are according to law
- Ask the group to identify specific violations of law
- Take the group through each one again, pointing out the legal provisions

(PPt 'Arrest,Detention,Bail' can be used for going through the legal provisions)



“A picture is worth a thousand words”

Role Play



“I regard the theatre as the greatest of all art forms, the most immediate way in which a human being can share with another the sense of what it is to be a human being.”

-Oscar Wilde

Role play or a theatrical representation of a situation enables a judge to put himself or herself in the shoes of the other person and helps to look at the problem from the other side and feel the incapacity or disempowerment in accessing the system. Theatre has been effectively used as a means of not only creating empathy with all stakeholders but is also therapeutic and ‘renews’ people who are facing stratification in their day to day functioning.

The Resource Person must understand:

- The logic of a role play
- Methodology of role play
- Taking a response on role plays and evaluating the message of a role play

Is Role Play an appropriate methodology for Judicial Officers?

Response of Judicial Officers after participating in Role Plays in Symposium on Human Rights held in different districts of Andhra Pradesh in 2005:

“The role plays have been extremely significant and very important because what it has done both for people who were watching and for the people who were performing the role play was that it was not just entertainment. It was a reflection of the predicament of the people who come before us. And it was an internalizing of that predicament, which we don’t do on an everyday level. We are sympathetic to the people who come before us and we deliver justice to them but we don’t often get the opportunity to internalize those problems and present it in the way in which we have. It has given a very refreshing and rich way of looking at these problems and understanding them.”

Responses of Judicial Officers in Symposium on Laws and Issues Related to Women and Children held in Orissa Judicial Training Academy in 2011:

“Very good and practical; fantastic; it is practical learning and most effective; like a natural litigant, my emotions came to the fore; I felt delighted after performing the role plays; role plays improve creativity; fine; euphoric; excellent; should be done more often; I thought about the facts of the case with legal provisions again; real case thought about marginalized community; it depicted the picture and trauma of people outside the court.”

Methodology

- Divide the participants into equal groups by random counting. The groups should be briefed as under:
 - Time for discussion of case/situation and preparation of Role Play: 20 Mins
 - Time for Role Play presentation: 10 minutes each
 - Men should be encouraged to play the role of women and vice versa
 - It should be mandatory for each person in the group to have a role
- Role plays should normally depict both the problems well as the solution
- Role plays should be used to highlight the difficulties, and handicaps of the judiciary such as lack of resources and infrastructure, issues with the Bar and Clerical staff, vulnerability of witnesses, poor investigation, lack of co-ordination between different agencies of the justice system and the ways of tackling them practically.
- Outline of the role play can be given in the form of a story or a problem or short facts
- After each group has performed, responses should be taken from the other participants on issues such as:
 - 1) Whether reality was well reflected
 - 2) Whether the legal solution was well reflected
- The messages of the Role Plays should be culled out and analysed by the resource persons so that the social and legal messages and learning are highlighted.

Samples of Role Play Outlines:

Any of the Case Studies in Vol II Folder B can be used as Role Play outlines. Role play outlines can be made up of a few lines or a long story. Participants must be encouraged to use their imagination and add characters or situations to the given outline.

Sample I

Savitri, a poor and uneducated woman of a 'lower' caste is a social worker in her village and is involved in a government campaign to eradicate the practice of child marriages in the region. Once, she tries to stop a child marriage of an upper caste family from taking place and advises them that it is bad for the child and is also against the law. Enraged by her daring attitude for challenging the actions of the upper caste, a group of persons assault and rape her and attack her husband. After some hesitance, Savitri informed the police of the incident and a FIR was lodged for an offence under Section 376 IPC.

The trial judge, in his order acquitting the accused of the crime of rape, remarks that:

- 1) It is beyond comprehension that 'respectable' men of 'upper caste' will gang rape a lower caste woman in front of each other.
- 2) It is unnatural for Savitri to say that she was afraid to go to the police station because it was night time and because she was afraid of the accused.
- 3) Savitri's version cannot be relied upon as there are some discrepancies in her statements.

Issue: Mindset against women and poor common in our system.

Sample II

Sudha is a middle class graduate working as an ad hoc teacher in a primary school in a small town. Her father died, leaving behind a house and some cash from his pension benefits, which are in the control of her brother. Sudha has not been given any share of the property as they say that she is a girl and is only a temporary member of the family. While her salary is needed in the family, her work is not much respected. Her neighbours often comment on her talking to her male colleagues. Her family resents her wearing good clothes and having her own routine. Her brother insists on her handing over the entire salary to him for running the house. When she told her family that she is intending to marry a colleague who is not from the same caste, her brother threatened to eliminate them both.

Issue: Discrimination and domestic violence against women.

Sample III

A woman Neera Mathur qualified for a job in a government Corporation. Amongst the procedures for appointment, the following form was to be filled

“6. To be filled in by female candidates only in the presence of the Medical examiner:

- a) Are you married— Yes.
- b) If so, please state:
 - i) Your Husband’s Name in full & occupation
 - ii) State the number of children, if any, and their present ages:
 - iii) Have the menstrual periods always been regular and painless, and are they so now?
 - iv) How many conceptions have taken place? How many have gone full-term?
 - v) State the date of last menstruation:
 - vi) Are you pregnant now?
 - vii) State the date of last delivery:
 - viii) Have you had any abortion or miscarriage?

Issue: Are such practices humiliating to the dignity of women? In what ways does this mindset still pervade our legal system?

Sample IV

Mohammed Amin is a poor labourer from Gaya district in Bihar. He has migrated to Chandigarh with some other fellow-villagers in search of work. He works as a loader in a wholesale trader’s shop. After working the whole day, he eats at a roadside dhaba and sleeps wherever he finds place, usually in some park. One night, he went to sleep on a Bench in the Parade Ground. Two beat constables woke him up and asked his name. He told his name and address in Bihar and his occupation. They said he looked suspicious and told him to accompany them to the Police Station. Mohammed Amin agreed to go with them, but the two constables tied his hands behind his back with a rope and took him to the police station, where he was made to sit in the lockup all night and the whole of the next day. The day after that, a case of theft and under the Arms Act were registered against him and he was produced before a Magistrate. The Magistrate asked the police why they had arrested him instead of issuing a notice. Police replied that he was a dangerous character. The Magistrate sent Mohammed Amin to 14 days judicial remand. After 15 days, bail was offered to him on condition of producing a surety of Rs.5,000/-.

Issue: Vulnerability of poor people in the Criminal Justice System.

Sample Case Study for Role-Play and Mock Court

Issue: Trafficking

Methodology: Divide the participants into groups as given under

Time for preparation: 1 hour

Time for presentation: 30 minutes

Kavitha is a young girl of 16 years living in a suburb on the outskirts of Bangalore. One Girish came to live in the neighbourhood and gradually became friendly with Kavitha. He said he was working in a software company and travelled frequently between Bangalore and Delhi. As their association gradually grew, he told Kavitha that he can get her a good job in Delhi. Kavitha's family was of a humble background and they sent Kavitha with Girish.

When they reached Delhi, one Praveen had come to the station and Girish told Kavitha to go with him as he would take her to her new employer. Kavitha was brought to GB Road by Praveen and handed over to one Najma who put Kavitha into prostitution. Two persons-Najma and Kanta were running the Kotha on GB road, where many other girls from different parts of the country were kept in prostitution.

Eight months later, in a raid by Delhi police, Kavitha, Heena and other girls were rescued and Najma was arrested. After investigation, Praveen was also arrested but Girish and Kanta were declared PO. In the investigation, the following facts came to light:

Kavitha and Heena disclosed that whatever payment was made by the customers from their prostitution, it was shared by Najma and other accused Kanta (PO) and whatever baksheesh was given by the customers that also used to be taken by Kanta. Whenever, they asked to send them back to their homes they were told that they would be sold at some other kotha. They also disclosed that many girls who insisted for going back to their homes were sold at different kothas. Heena stated that she did not know the owner of kotha, but one Praveen had forced her to indulge in prostitution and all her earnings also used to be taken away. Some of the other girls stated that they did not know who is the owner of the kotha and they were doing prostitution of their own free will.

Group I: Victim Kavitha, Kavitha's parents, Heena, Girish, Praveen

Tasks:

- To show circumstances which make a girl like Kavitha vulnerable to being trafficked
- To show modus operandi of trafficker
- To show process of trafficking and chain of trafficking

Group II: Police raiding party

Tasks: To show procedures for raiding party and correct behaviour/procedures for victim prostitutes

Group III: Accused Najma and Girish, other trafficked women

Tasks: To show the typical defences and behaviour of Accused traffickers

Group IV: Witnesses, Prosecutor, Defence, Judge

Tasks: To show how to conduct effective prosecution, to show how to treat victims sensitively in the judicial process, to show rehabilitation mechanisms.



“The theater-goer

in conventional dramatic theater says: Yes, I’ve felt that way, too. That’s the way I am. That’s life. That’s the way it will always be. The suffering of this or that person grips me because there is no escape for him. That’s great art — Everything is self-evident. I am made to cry with those who cry, and laugh with those who laugh.

But the theater-goer in the epic theater says: I would never have thought that. You can’t do that. That’s very strange, practically unbelievable. That has to stop. The suffering of this or that person grips me because there is an escape for him. That’s great art — nothing is self-evident. I am made to laugh about those who cry, and cry about those who laugh.”

Questionnaires

Please see attached DVD-Volume II- FOLDER D for Questionnaires

Questionnaires on attitudes, minor points of law which are often overlooked to the detriment of persons seeking justice, are an effective way of self-learning and self-questioning in a non-intrusive manner. Judges will be able to answer these and evaluate the responses without the help of external faculty.

For example, questionnaires may be used for aspects of :

- Gender
- Equality
- Criminal procedure
- Communalism
- Socio-economic rights

Methodology:

Time required for each Questionnaire: 15 minutes

Objective of the Questionnaire: This questionnaire is not being administered as a TEST. It is meant to encourage a judge to think about aspects of the law and to seek answers within himself, to identify areas of knowledge where he needs to focus more and to understand the links between the social, psychological and legal aspects of a situation.

Step I

The questionnaires are handed out to be filled in. Filling in the name and other details for identifying the respondent are better left optional as a person may be hesitant to commit to being 'politically incorrect', or not knowing the appropriate legal framework. It should be clarified that it is not a test but an exercise to:

- evaluating the group responses
- open the house to individual perspectives from peers
- identify and respond to gaps in knowledge/information

Step II

A fixed time is given to fill out the questionnaire. Generally, 15 minutes are enough as the responses sought to be elicited are more in the nature of 'pre-programmed' attitudes and information.



“To raise new questions, new possibilities, to regard old problems from a new angle, **requires creative imagination and marks real advance in science.**”

-Albert Einstein

Step III

The questionnaires are collected and tabulated to get the responses in the form of numbers for each response.

Step IV

Ideally, ALL responses must be dealt with to elicit the rationale behind them. Alternatively, standard /majority responses can be dealt with as one set and responses which reflect a different viewpoint can be dealt with individually.

Step V

A summarizing of the main point of attitude/knowledge should be done for each question and closed. Summaries can also be done with the aid of a power point presentation.

Where time is a constraint, questionnaires can be used a base for general discussion with the participants after dividing them into groups.

Sample Questionnaire - Domestic Violence

- 1) Domestic violence means:
A) Beating B) Shouting C) Dowry demands D) None of these E) All of these
- 2) Domestic violence usually occurs in:
A) Lower economic and social segment B) Rural and Uneducated classes C) Upper Classes
D) All classes
- 3) Most women lie about domestic violence
A) Yes B) No
- 4) Domestic violence relates to:
A) Torture by husband of wife B) Torture of children by parents C) Torture of daughter-in-law
D) All of these
- 5) Which of the following are versions of domestic violence:
A) Hitting and insulting one's daughter B) Not allowing sister to go to college
C) Threatening mother to sell the house she owns D) Forcefully taking away wife's earnings every month
- 6) Which of these women can be an aggrieved person under Protection of Women from Domestic Violence Act 2005 (PWDV) Act :
A) Wife B) Sister C) Mother D) Living- in Girlfriend
- 7) The PWDV Act 2005 is a :
A) Civil law B) Criminal Law C) Neither D) Both
- 8) The following are listed as 'Domestic Violence' in The Protection of Women from Domestic Violence Act:
A) Physical violence B) Emotional Violence C) Economic Violence D) Sexual Violence
- 9) PWDV Act gives powers to a Magistrate to make the following orders:
A) Residence Orders B) Maintenance C) Divorce D) All these E) None of these

Literature

Please see attached DVD-Volume II- FOLDER E for list of literature and films

All forms of literature have always attracted thinking and sensitive persons. In the field of judicial training, literature and law have a strong linkage for the reason that judges must develop both the ability for refined thinking, as well as sensitivity to human situations.

'Law and Literature' has always had a close connection and is part of the psyche of professionals as well as the common man. For example, Portia's appeal to the court that 'the quality of mercy is not strained' in Shakespeare's 'The Merchant of Venice' or the simple plea of Jumman's Khala to Alagu- "*beta-kya bigaad ke darr se imaan ki baat na kahoge*" ("son, will you not speak honourably just for fear of spoiling your relationship?") in Premchand's 'Panch Parmeshwar' can never fail to bring home the basic truth of the deep desire for justice amongst human beings.

The deep-rooted relationship between law and literature therefore needs no emphasis and is, today, even taught as a separate course in major law universities such as the University of California, New York University and the George Washington University in the USA.

Modern training institutes in India have the twin advantages of being in a country with a rich literary tradition as well as access to the best world literature.

Literature can help judges to delve deep into the situations, psyche and dilemmas of people who come before them for justice and expand their abilities to understand facts as well as analyse them effectively.

Analysis of literature, précises and original writings will also enhance skills of presentation and writing judgments, in which a judge can hone his or her skills and have the benefit of inputs from a peer group.

Indian literature is replete with stories, writings and poetry about various marginalised persons and groups. Judges should be prescribed a selection of readings as part of the mandatory course curriculum and time should be set aside for class-room discussions around the same.

Excerpts from literature can be used for generating discussion around a subject, such as women's position in society, problems of the poor, tribal traditions and conditions, etc.



“Literature adds to reality, it does not simply describe it. It enriches the necessary competencies that daily life requires and provides; **and in this respect, it irrigates the deserts that our lives have already become.**”

- C.S. Lewis

A recommended list of readings is given in PART II Chapter ‘Literature and Films’. It is recommended that Academies compile their own lists and create a library for literature and law. Seminars around this theme will also yield good inputs on this subject.



Films

Films are an effective way of communicating not just ideas, ethos and pathos but also information. Different kinds of films can be used to draw out messages. Good subject documentaries and feature films can be used for highlighting the vagaries of the litigation process or other aspects of the lives of marginalized persons. It is an excellent medium for a process that requires enhancing sensitivity to the plight of particular groups or persons. It also gives trainees a welcome break from classroom teaching.

Films can be used in different ways depending on the availability of time and resources.

When to show a film

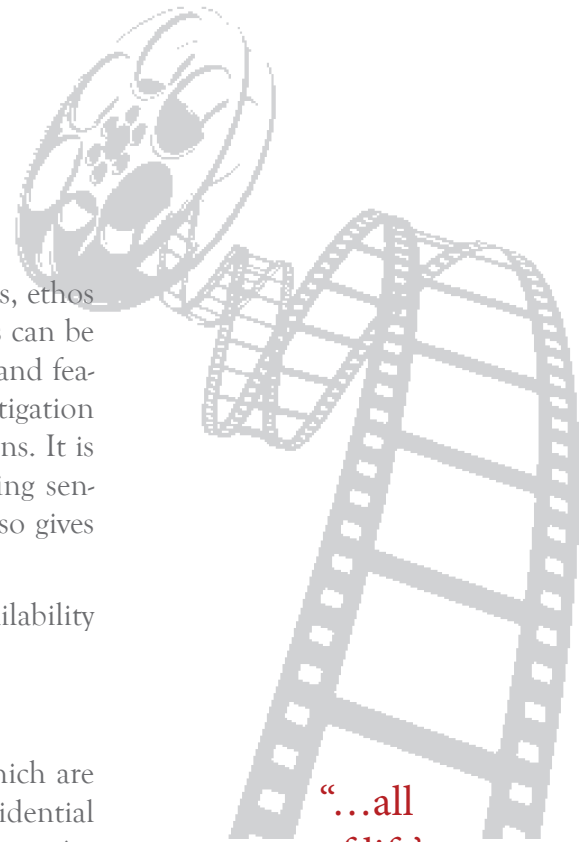
Long/Feature Films: These can be used in workshops which are for two days or more or for continuing induction/residential courses where the film can be watched outside of the regular training hours.

Short Documentaries: These can be used during the training session provided they are not very long. Ideally, a documentary between 10-20 minutes can be used during a session. The session can then be a group discussion based on some specific questions on perspectives or even information.

Film clips: Clips from films can be used to generate discussion. These can be used in conjunction with a Power Point Presentation.

Selecting a film

Almost any available film can be used to generate discussion on a range of subjects. However, there are some films which are very appropriate as well as interesting.



**“...all
of life’s
riddles are
answered
in the
movies”
-Steve Martin**

Samples of using films

Sample I

Do Bigha Zameen

Issue: Rural & Urban Poverty

The story is about a farmer and his family who are dependant for their survival on a piece of 'Do bigha zameen'. The story depicts the relationship of a farmer with the piece of land which he owns as the only means of survival.

Zamindar`s debt trap on Shambhu

Shambhu Mahto, his wife Paro, his little son Kanhiya and Shambhu`s father were dependant on the earnings raised by the agricultural land they possessed. The land was only two bighas and along with this property they also had their own house to reside peacefully. But the zamindar, Thakur Harnam Singh of the village along with some businessmen from the city had another plan for him. They wanted to set up an industry on the land area of the Zamindar and amidst his lands was the Shambhu`s piece of land and if he did not sell his land to the Zamindar there was no possibility of the industrial unit to be set up. Shambhu had taken some debt from the Zamindar which was still due to him. The Zamindar filed a recovery suit in the court wherein Shambhu was asked to pay Rs.235.50 claimed by the Zamindar. Although, it was incorrect that he owed this much money to Thakur but in the absence of any receipt or witness with the defendant, Shambhu the court had to believe Thakur`s version.

Thakur had asked for payment of the dues by attachment and auctioning of the lands and house of Shambhu`s property which court did not accept. On the contrary, keeping in view of the financial condition of the defendant court ordered him to pay the whole amount within three months. It was also held that if he fails to do so, his property will be attached and the repayment will be done by selling it.

Points of Discussion/Activities

- Discussion on-Legality of compound interests by the village zamindars and accountants which is still practiced without giving any formal receipt etc. What can court do to keep a check on the intentions of money lenders when such recovery case is brought before them?
- Keeping in view of the constitutional guarantee of right to life and when it is related to ones livelihood and right to have shelter, how would you justify your decision 'to deprive of a farmer from the piece of a land which is the only source of income for him'?

A move to Kolkata

Shambhu decided to go to the city to earn the required amount. He was followed by his young son too. They were surprised to see the fast life of the city and Shambhu started asking for work from everyone and anyone. But very soon he realized that nothing will work and they should go to back to their village but his belongings were stolen that night and they had left with no money to even go back. By that time Kanhiya had become friends with a shoe polisher boy and they went to sleep with him. From there they found a place to stay in the slum wherein the landlord, Daadi helped them to learn for their livings by pulling the Cycle Rickshaw. Kanhiya also started polishing boots and was adding to the savings by his father. After 3 weeks they sent some money to their home where his pregnant wife and father were waiting for them.

Both father and son were trying hard to collect the required amount and they used to send money to home so that the repayment could be done within the time but for want they had yet to pay 50 Rupees when Shambhu got injured in an accident and could not go to work.

At the village his wife, Paro had also started working to feed for him and her father in law.

Kanhiya, met with another boy who prompted him to pick pocket as the means of earning money and he bought fruits etc for his father but Shambhu condemned it and Kanhiya also apologised. But promising to God as the last time wrong doing he snatched a woman`s purse and got Rs.100.

But, on Shambhu`s father desire Paro had left for the city to bring her son and husband home but was looted by a man and she met her husband in injured condition. For buying blood for her life all the savings were spent.

Points of Discussion/Activities

- In the light of the story is the system responsible for bringing juveniles into delinquency? Discussion on need based criminal activities of the juveniles.

Loss of the property

Shambhu's father had become insane waiting for his children. His house and land was attached and auctioned and a big industrial unit was established there. His father used to be roaming around the village and then they came to see for the last time their lost means of life and livelihood.

Points of Discussion/Activities

- Since the loss of source of income had pushed a farmer and his family to take shelter in the city wherein he loses his self respect and dignity every day, what is the alternative available for stopping such departure? Discussion to follow as this can be one reason why people had to leave their roots and find shelter in big cities which is not that welcoming for them.

Sample II

Pranali

Issue: Trafficking of Women/Prostitution

The story is about a girl called Pranali who was living in the border of Maharashtra and Karnataka where in her village drought was prevalent for last few years and inhabitants were made to eat even rats as grains were not at all available.

Amidst this, the priest of the temple passed by her place and cast an evil eye upon her. Pranali was the most beautiful child in the whole village. After seeing her, he stops and asks her parents to make her 'the Devdasi' as this was the reason why there was drought in the village and if they do not devote their child for the service of God then the misfortune and agony of this village will never end. The mother though opposed this saying that this practice was abolished by the government long before so why should they send their child. But, the father who was convinced by the priest's contentions says that if this will bring fortune and happiness for his villagers, he would go ahead with it even if it amounts to sacrificing their child.

Making of a Devdasi

Pranali was very happy and questions her mother as to why was she crying when her daughter was to marry the God. She gets married to the deity but when she didn't find her husband, she enquired the priest of his whereabouts as she had to serve him. Then the priest came to his motive and rapes her saying that instead of the God she has to serve him. She cried and perhaps could then understand her mother's agony. She was constantly raped by the priest, she had to clean the temple, learn dancing and then quench the priest's thirst for lust this became her routine. She matured doing all these.

Recently the devadasi system has started to disappear, having been outlawed in all of India in 1988. However, devadasis still exist in India today, as shown in a 2004 report by the National Human Rights Commission of the Government of India. According to this report, "after initiation as devadasis, women migrate either to nearby towns or other far-off cities to practice prostitution" (p200). A study from 1990 recorded that 45.9% of devadasis in one particular district were prostitutes, while most of the others relied on manual labour and agriculture for their income. The practice of dedicating devadasis was declared illegal by the government of the Indian state Karnataka in 1982 and by the government of Andhra Pradesh in 1988. However as of 2006 the practice was still prevalent in around 10 districts of northern Karnataka and 14 districts in Andhra Pradesh.

<http://en.wikipedia.org/wiki/Devadasi>

Points of Discussion/Activities

- What is the judicial system's response to such situations?
- Do you think that those who do not wish to continue as Devdasis should be rehabilitated? If yes, please say how?
- Since this practice is illegal, should a Court be able to take cognisance of the offence to get a case registered against the priest and the parents in case a minor girl is seen and reported as practising Devdasi.

Life in prostitution

This too did not satisfy the priest and he offered Pranali to the minister and took her to his place. He also tried to rape her though after hitting him she ran to the police station for reporting about this minister but her report was not written as the police had the duty to inform the minister first. Pranali had to pay the price of her denial to the minister and she was sold to a brothel in Mumbai.

In the brothel, she came to know about the apathy of other girls/women who were forced to practice this as the only available means to survival because of social denial towards them and to meet their economic need.

Pranali also had to submit to her destiny. But her life took another turn when she conceived and she was asked not to give birth to the child which was more for the concern of the child's future as the chances were that it would also be not accepted by the society.

Denial in school admission

But, despite all the odds Pranali gave birth to a baby girl. The girl, Roshni grew about 3-4 years now and wanted to go to the school. So, Pranali took her for admission in the school but when the management came to know that she was the daughter of a prostitute, admission was denied on the ground that if they admit her in the school, other parents will withdraw their children. Pranali came back hopelessly. But one more attempt was made for Roshni's admission not only Pranali but by their agent along with four five other women from there. But, no fruitful result came out although, due to attacking the management the agent was arrested and while in the court he raised the question that why a child should be not admitted in the school? What is their fault and they are also part of the society. Though, he got bail but Roshni did not get admission.

Points of Discussion/Activities

- Was it not the violation of Roshni's fundamental right of education? What would you do help her?
- Do you think that in forms of all sorts in school/college /passport/I.D.Card /ration card etc only mothers name should be asked as to ascertain the identity? Give reason for your answer.

Demand for legalising prostitution

Then, Mr. Vijay a researcher from U.S. met Roshni on the way and he then met Pranali and others in the prostitution and explains them that he was doing a research on the lives of prostitutes. He also explains them that they should demand for their profession to be legalised so that they could be given social security and other rights as the other citizens of the country. He informs them that in many countries this has been done and women are getting benefits out of it. Thus, he ignites a sense of self dignity amongst the sex workers and they joined together under Roshni's leadership to demand for legalizing their profession and this demand was publicised by newspapers and T.V.Channels. A discussion regarding that began in all corners of the country.

They, met the ruling party leaders who said that it is not possible as other group will say that it will increase immorality etc. They went on the strike and prostitution 'the bazaar' was shut down. But due to monetary need to feed the child one of them had to serve the customer. After which, the researcher took responsibility of helping them in their demands. The strike went for 20 long days. Because of the strike of the sex workers, rape cases were increased as many in numbers as was recorded during last six months. It had become difficult for ordinary women to come out of their homes. Government contended that legalising the profession will give way for the traffickers so, they cannot be done. Since this was the time of election so opposition party also came and promised them that if they win they will legalise the profession. The strike had become a movement and it started getting support from international NGOs and from those countries where this is legalised like Canada etc.

Finally, the strike had to be called off since the ruling party has agreed for legalising it through due process of law which meant that the sex workers had to return to their work till the law is drafted and passed by the parliament. This way they

did not get what they won but they did not lose also. The actual scenario is the same in the country some NGOs support it while others contend that will I allow this as a career option for my child?

Discussion/Activities

- What is your opinion about legalising the profession? Support your answer with reasons.

New light for Roshni after calling off the strike

After the government`s promise when the strike was called off Pranali had decided not go on for work again and when Vijay offered her to come along with him she will stay here in India to fight for their rights but she want her daughter to grow up in a good environment. So, Roshni goes along with him and becomes his daughter.

After many years his wife came to see Pranali and her other friends who had left the profession with a cheque. It was the Royalty on a book on her life by Vijay. She was also called to speak in the third launch of the book on her life. But, the profession is not legalised till date.

Discussion/Activities

Why can`t India not legalise the profession since its already being run all over the country and they are unable to curb it-Discussion.



Field Visits and Placements

Please see attached DVD-Volume II- FOLDER F for list of suggested field visits and placements

Once in full-time judicial service, a judicial officer rarely gets time to see the 'other' or practical side of the system of which he or she is an important functionary. To enhance the understanding of and sensitivity to the various situations on which the marginalized groups live, a direct exposure is a must. Accordingly, some part of the training schedule must be put to field visits and placements which enable a judge to appreciate the condition of marginalized groups. Most of the academies do have visits to jails and custodial institutions as part of the training, but these are in the nature of short, casual visits during which sufficient observation or absorption cannot take place. More time needs to be set aside for outdoor placements which should be treated as part of the curriculum.

Why a field placement is important

In the feedback from a cross section of lawyers, prosecutors, public and civil society received at the time of designing this training, a large number said that judges must have first hand exposure to the reality of the poor and marginalized people. The overall feeling is that judges are in an ivory tower and they cannot connect to the real problems of people. Secondly, it helps to see their own work in the correct perspective.

Steps for Field visits and placements :

- Identification of the institution or area where the placement is to be done
- Fixing schedules for the placement visits
- Taking requisite permissions etc. for custodial institutions - jails, observation homes, nariniketan,
- Briefing trainees on the concerned placement
- Developing parameters for observations
- Documenting observations of field visits and placements
- Presentations on the findings in plenary sessions to share the experiences and observations.

Types of field visits/ field placement

A field visit to any area or institution can give lasting insights into the lives or problems of any particular marginalized community. However, the visit has to be undertaken with specific objectives of observation, learning and assimilation. The following field visits can be undertaken by trainee judicial officers and judges of any level and seniority:



“A few observations and much reasoning lead to error; many observations and a little reasoning lead to truth.”

-Alexis Carrel

Any rural area where :

- there is high incidence of drought, crop failure
- there is shortage or insufficiency of basic amenities such as schools, medical facilities sanitation, water
- where there is high incidence of liquor consumption
- where families have been displaced due to projects or due to natural factors
- where villages/people have been displaced due to conservation, land acquisition for projects
- where people have suffered communal violence
- where people are facing adverse environmental impact
- where there is high incidence of human trafficking, bonded labour, etc.

An urban area where:

- there are street children
- there are slums and slum dwellers
- there are sex workers
- there are homeless persons

Any institution where:

- destitute or delinquent children are kept (state observation homes, children's homes run by NGOs, etc.)
- schools where poor children study
- destitute or homeless persons are kept (beggars home, rain basera, etc.)
- persons with disabilities work or learn
- persons with mental health problems are kept
- persons are detained for crimes (police stations and jails)
- there is high public interface such as Collector Office, panchayat office or land records office
- mediation and such other proceedings are carried out (Mediation Centres and Gram Kachehri)

Any organisation which works at the grassroots with:

- women
- children
- adivasis
- physically disabled or mentally challenged persons
- legal awareness or legal aid
- unorganized/migrant/construction labour
- sex workers

Preparing for a field visit

A field visit could be to an institution or to an area. Although most Judicial Officers and judges would be aware of ground realities to some extent, a hands-on experience is always desirable. Nothing can really prepare one for the reality of people “out there” (or “in there”, in the case of custodial institutions) but some orientation is a must to make the most of the visit. Accordingly, it would be good to have a short briefing on a few facts and factors regarding the place to be visited. Besides this, some orientation is necessary for appropriate behaviour and interaction in the field.

Parametres for observation

A rough framework for observation and understanding is important for the field visit or placement. Judicial Officers will have to be oriented about the necessity of the visit and this should be treated as part of the curriculum.

- Culture and history
- Demography
- Economic aspects such as occupations, livelihood options and living conditions
- Social aspects including education, especially of girls, attitudes towards women and minorities, castes and sub-castes, social problems like excessive drinking and resultant violence/bad behaviour, problems caused by gambling, etc.
- Aspects of governance such as functioning of civic bodies, panchayats and utilization of government funds.
- Government schemes and programmes applicable to the village, which can be used for the people
- Legal issues pertaining to all of the above and other legal issues with which people are faced.

Two sides of the same coin

A group of about 30 newly appointed judges were taken for a visit to a village close to their training institute. There, chairs were laid out for them in a semi-circle and the villagers mostly sat on the ground or stood around. After introducing the judges, the village elders conducted the meeting and requested everyone to speak up. The police from the local police station, who are a part of the Community Policing Programme were also present. Cold drinks and water were served to the judges but most of them refused to take them.

The husband of the woman Sarpanch conducted the meeting. A group of women started complaining about some people who get drunk and misbehave with them. They wanted that the liquor shop should be shut down and also those selling liquor illegally should be stopped and prosecuted. Another group complained that the water from the village pond was seeping out and around and causing damage to their houses, besides creating unsanitary conditions around.

Some of the judges then took a round of the village and talked to the people. Most of them were impatient to leave. At the time of leaving, an elder folded his hands and said, "forgive us if there was any mistake on our part". The young judge looked down at him and said "its ok-just improve yourselves".

The feedback from the judges on the field visit was very negative. Many of them said that it was a useless exercise.

One part of group responded :

- "There was no banner telling the people that judges have come"
- "We were made to sit like ordinary people"
- "People discussed the civic problems with which judges have no concern "
- "The experience was for sensitizing us but did not serve any purpose as we did not have a solution"
- "We were not happy about the way it was conducted as we were not given a chance to talk-only the villagers kept talking about their problems"
- "Nobody told us the problems of legal system but they talked of other things"
- "The problems narrated were the problems within the whole country-nothing new"

Another part of the group responded:

- "The visit was very useful. It helps judges to become cognitive of problems which turn into conflicts and offences"
- "The village visits helps judges to put the litigants in a context"
- "We learnt that a woman sarpanch does not come for meetings- she was represented by her husband"
- "We could see the social divisions in our short tour around the village"
- "People do not go to sarpanch"
- "People do not go to gram sabha"
- "People are not active to avail of their rights"
- "We saw common things between these villages and those of our state "
- "People are divided and not united in taking up their concerns"
- "People are prone to aggression and violence because they are never heard"
- "There is a communication gap between people and government functionaries"

Sample I

Visit to a Jail or other custodial institution

If the visit is to a jail, the following information is important :

- Provisions of the state Jail Manual (especially regarding medical facilities, etc.)
- General idea of Supreme Court directives for jails (for example, on women, children of inmates, etc.)
- General idea of the nature of crime in the area
- General idea of facilities of Observation Homes mandated under the Juvenile Justice Act
- General idea of types of inmates in Nari Niketan, etc.

A visit to a jail always impacts a person deeply. It is the place where the most cherished of human and fundamental rights of a human being – personal liberty- is curtailed and severely restricted. Incarceration (imprisonment) is the most common mode of punishment known to society-even in the most progressive societies- better options are still not known or widely followed, although probation, open jails etc. are mandated by many laws, including the laws of India.

Prisons and other custodial institutions are some of the most non-transparent places due to the very nature of the purpose they serve. Prison management itself is a complex and tricky job and given the general lack of infrastructure and other problems of lack of transparency and accountability and low level of awareness of rights and legal provisions, these are places where violations of rights take place, sometimes of the extreme nature.

While most of the case law on prison justice in the country has developed out of interventions made by the High Courts and Supreme Court in response to Writ Petitions, the toll for ensuring the safety, security and protection of the prisoners lies in the hands of the lower judiciary, in particular the Magistrates. This is so, because Writ jurisdiction is often invoked ex post facto, after the damage has been done. On the other hand, judicial officers are in a position to observe violations first-hand and have wide powers to intervene.

Visits to jails therefore gives judicial officers a ‘behind the scenes’ feel of a prison and often it is found to be very useful in understanding the context in which violations may possibly be taking place.

There are several problems with the prison system, which the judge must be aware of, in order to take preventive steps for stopping violation of rights. In spite of ‘whitewashing’ when visitors are expected, a judicial officer will easily be able to observe and make note of deviations in the law by the physical environment, the registers maintained in the jail and some casual conversations with the staff and inmates.

The most common problems which will be noticed are:

- Overcrowding
- Lack of basic amenities
- Poor infrastructure and buildings
- Lack of staff
- Non-appointment or absence of mandatory officials such as a Doctor
- No visits or reports by official or non-official visitors
- Lack of provisions for children of inmates
- Exploitation of woman inmates
- Incarceration of mental health prisoners

- Bribery for allowing meetings with families and lawyers
- Ill-treatment and torture
- Non-production of accused on dates for extension of remand
- Incarceration of juveniles along with adults
- Lack of legal representation
- Delayed trials
- Prolonged detention of inmates eligible for bail

Suggested Observation Format For Visiting Prisons

Prisons or institutions where persons are incarcerated or kept under the care of the state can be of the following types:

Central Jail

District Jail

Sub-jail

Special Jail

Women's Homes

Children's Homes or Observation Homes

The special things to be conscious of while visiting such an institution is that being away from the public gaze, they can often be sites of gross human rights violations and illegality. The main things to observe therefore, are, whether the institution is function in furtherance of its objective stated under the law.

Prisons: The objective of a prison is to keep persons sentenced or remanded by courts under care and supervision and to bring about a change in their behaviour. This has to be done humanely and without prejudice, keeping in mind all the constitutional and statutory requirements.

The legal regime for prisons is governed by the Prisons Act 1894, the Jail Manuals of the state, Court judgments and directions and government circulars from time to time. This covers the following :

- *Living conditions: allocation of sufficient space, cleanliness and provision of basic necessities such as toiletries etc. as per the fixed allotment.*
- *Food and nutrition according to quotas fixed by the concerned authorities*
- *Health and Medical facilities*
- *Access to family and visitors as per norms*
- *Access to lawyers*
- *Access to legal aid*
- *Access to means of correspondence as per norms*
- *Access to complaint mechanisms*

Besides the physical infrastructure, certain illegalities and deviations which impact the rights of prisoners should be observed, such as:

- *Are there any juveniles in the jail*
- *Are there any mentally ill persons in the jail*
- *Are there persons who have no legal representation*
- *Are there persons who are not being produced in court on the dates for extension of remand, etc?*
- *Are there persons who have any signs of torture?*
- *Are the Boards under the Right to Information Act put up with sufficient information?*
- *Do members of the District Level Committee and Non-Official Visitors visit regularly? Do they interact with prisoners?*

Suggested Readings:

Standards Behind Bars, CHRI 2010 (available on website humanrightsinitiative.org)

Sample II

Attending a Gram Sabha

The system of panchayats is designed to percolate power down to the grassroots. Schemes and other development work and important livelihood support such as employment under the NREG Act, 2005 are also routed through the Panchayat. However, a look at most of the Panchayat functioning indicates that the ordinary villagers hardly have any say in the way the panchayat works and therefore they continue to remain deprived of their rights. This will help a judge to understand the social and political weakness from which a majority of marginalized groups suffer and the fact that they often fail to represent themselves or their interests even in their own milieu, leave alone in an alien environment such as courts of law.

Common problems which will be noticed are:

- Gram Sabha has not been publicized in accordance with the legal provisions.
- People are either not aware of it or are not interested in it.
- People are not aware of their own role in Gram Sabha.
- Gram Sabha is conducted without quorum being present.
- Important decisions are taken without the participation or approval of the people behind closed doors.
- There is little or no participation of women or Scheduled Castes.
- Sufficient information on income, expenditure or budgets is not given as per the requirements of law.
- There is hostility between different groups present.
- The sarpanch has little say in the process and the the Secretary dominates the proceedings.
- The gram sabhas under PESA Panchayats in Scheduled Areas are not able to exercise their full powers in the matter of issues such as those related to land acquisition, etc.



Faculty and Resource Persons

Please see attached DVD-Volume II- FOLDER G for suggested list of Resource Persons

Training Academies are generally found to have a paucity of faculty, as it is not feasible for them to have a large full-time faculty and visiting faculty is not always on call as per the schedule. It is therefore advisable to have on hand a resource pool of good faculty of different levels experts which can be drawn upon for the scheduled trainings as well as for refresher courses and workshops.

Selecting the Resource Person

Faculty and resource persons for judicial training must be creatively and thoughtfully chosen in order to fulfill the needs of knowledge, good communication skills, sensitivity, availability and logistic convenience. Faculty may have to be chosen on one or a combination of these factors but the essentials must not be compromised-i.e, knowledge of the subject and communication skills. Many good resources are locally available as visiting faculty. Once in a while, faculty from other regions can also be invited where resources permit.

For judicial training, a listing of the following categories of resource persons should be done by every institution on the basis of recommendations and subsequent observation.

It is always good to maintain some regularity of visiting faculty as far as possible, as that establishes a rapport between the resource persons and the institution which finally results in refinement of the methodology and increased knowledge of the required content. Annual contractual faculty is also recommended as that gives the faculty member a stake in the institution and sense of commitment and the institution is also assured of faculty as per the planned schedule. Faculty for judicial training could be drawn from:

- Senior members of the bar and the judiciary
- Academics from the central and state universities
- Members from civil society groups
- Members of local bodies such as sarpanches



“A teacher affects eternity; he can never tell where his influence stops.”

-Henry Brooks Adams

- Revenue officials such as patwaris, tehsildars
- Police officials
- Affected persons/stakeholders

A state-wise and subject-wise list of recommended Resource Persons is given in Part II. This can be used as a baseline and more can be added.

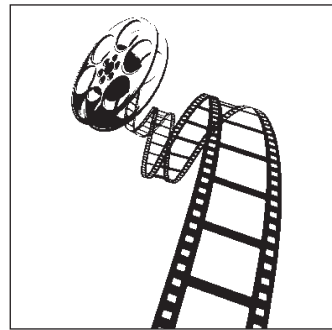
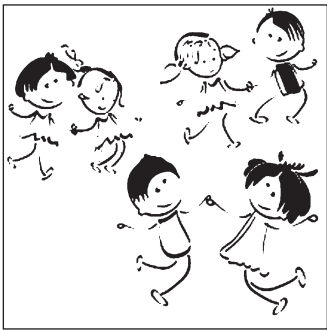
Briefing the Resource Person

In general, Resource Persons get a short one-line topic for the lecture or session to be taken. As the span of most of the subjects is quite wide, the session may not achieve the intended outcome. It is therefore always advisable to give the resource person a clear break-up of the session in terms of :

- Issues to be covered-in terms of social or academic debates and developments
- Particular laws and sections to be covered, along with judicial developments on the same
- Expected learning outcome of the session
- Materials recommended as preparatory or follow-up reading

It is advisable to share the training curriculum or workshop objectives with the resource persons, so that they can prepare accordingly. The materials (power points, readings, case studies) in this Manual can also be shared as indicative of the suggested scope of the session or as methodology.







Segment III

Sample Session Plans

These sample **session plans** are in the nature of a suggestive design for **effective judicial training**. They **focus** on **tools** where there is more peer interaction and self-learning.

Sample Session Plans

Volume II- FOLDER H

These sample session plans are in the nature of a suggestive design for effective judicial training. They focus on tools where there is more peer interaction and self-learning. Sample Session Plans have been given only to show how a teaching module can be put together and devised according to the topic, time available and training resources available. The objective of these samples is to assist faculty to devise modules for interactive teaching by using content from latest case-law, etc.

These Session Plans consist of a combination of the methodologies and training tools contained in Volume I & Volume II :

- Lectures and Interactive Sessions
- Case Studies
- Role Play
- Films
- Field Visits and Placements
- Questionnaires
- Statutory Provisions& Judgments
- International Instruments
- Readings from literature

Faculty and Resource Persons can construct Session Plans easily, according to the topic and availability of time and resources by going through the materials available on each subject in Volume II.

Session Plan on Fundamental Rights

Fundamental Rights

The Context

Fundamental rights are the soul of Indian law and ensure protection in different forms. While the Constitutional enforcement through courts can be done through the higher courts only, the judiciary at the cutting edge needs to understand and imbibe the spirit behind the many laws which come into play in the course of litigation. For example, the right of equality, non-discrimination and special protections contained in Articles 14, 15, 16 and 17 are all reflected in statutes like the family laws, labour laws, protection of civil rights, etc., which have to be adjudicated at the level of the Magistrates and other trial courts. Likewise, all processes related to the criminal justice system have been interpreted in the light of the protections under Articles 20, 21 and 22 and must pass through that filter at every stage. A deeper understanding of the vast realm of rights and legal protections that an individual enjoys in our legal regime therefore needs to be engendered through constant study of the developments in this field.



“Now, what are the fundamental rights? They are embodied in Part III of the Constitution and they may be classified thus: (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, (vi) right to property, and (vii) right to constitutional remedies. They are the rights of the people preserved by our Constitution, ‘Fundamental rights’ are the modern name for what have been traditionally known as ‘natural rights’. As one author puts it : ‘they are moral rights which every human being everywhere at all times ought to have simply because of the fact that in contradistinction with other beings, he, is rational and moral’. They are the primordial rights necessary for the development of human personality. They are the rights which enable a man to chalk out his own life in the manner he likes best. Our Constitution, in addition to the well-known fundamental rights, also included the rights of the minorities, untouchables and other backward communities, in such right.”

– I. C. Golaknath v. State of Punjab AIR 1967 SC 1643

This session can be conducted to have an overview of protections available to marginalized persons and the legal responses required in that context. For fundamental rights, interactive sessions are best and most effective for internalizing the concepts.

Objectives : It is expected that Judicial Officers have a fair academic knowledge of fundamental rights and develop

Faculty : Senior Constitutional Lawyer/Judge having knowledge of Constitutional Law/ Academic in Constitutional Law

Methodology : Case Studies on different aspects can be constructed out of judgments, reports, etc. (See VOL II Folder B). A few samples are given below. The session must be in the form of a controlled debate, starting with the group discussion on and presentation of the groups of the Case Studies. The faculty must act as a Moderator and channelize the discussion, recapping the important milestones in the jurisprudence of Fundamental Rights.

Readings

Time: Two hours

Case Study I

Section 30 of the Punjab Excise Act, 1914 (for short “the Act”) prohibits employment of “any man under the age of 25 years” or “any woman” in any part of such premises in which liquor or intoxicating drug is consumed by the public. Anju is a young hotel management graduate and is seeking employment in Delhi, where this Act is also applicable. Anju is unable to get a proper job because most of the good restaurants and hotels have bars attached to them and are restricted by the provisions of this Act. Anju’s parents say that she should come back to her hometown and find some other job.

Suggested points for discussion:

- How relevant is this provision of Punjab Excise Act in today’s times?
- Do you think such a provision is good and should be retained in the interest of young people, especially young women?
- On what grounds would you challenge this provision if you were Anju?
- On what grounds would you defend this provision if you were representing the State?

Case Study II

A, the complainant, has deposed that a borewell was being drilled at a distance of about 15 feet from Harijan colony and water sprouted from the well on the date of the incident at about 9.30 p.m. At that time many persons including X,Y & Z and some Harijans including B & C were present there. Two young girls of the Hindu community performed pooja. Thereafter 10/15 Hindus took water from the well for performing pooja at the temple. He further stated that he along with five other persons including A,B & C, who were all Harijans, also brought pots for taking water from the well. At that time X,Y & Z told the Harijans not to take water from the well as they were “mahars” and that there was a separate well for them. They further obstructed the Harijans from taking water saying that if the Harijans insist on taking water the result would be unhappy. X told his men to bring a gun from his house and threatened the Harijans with dire consequences. A further stated that he said that the Harijans have also right to take water from the well. On that X,Y & Z told the Harijans not to persist on taking water from the well otherwise the consequences would be serious.

The Harijans thereafter left the well without taking water and went to their colony.

Points for discussion:

- What would be the approximate year in which this event took place?
- Which fundamental right has been violated here and whose?
- Can you recall any similar incident in recent times?
- What will be the legal redress for A,B C and people like them if this incident were to happen now?

Case Study III

Ram Narain, a young student in Basti, Uttar Pradesh, delivered a speech to an audience of about 200 persons, mostly villagers. The gist of his speech was this :

“Mothers and sisters were obliged to sell their honour in order to support themselves. Labourers were obliged to beg. Thousands of cultivators and labourers were famishing for want of food. School fees and railway fares were increased two-times and four-times so that cultivators may not remain happy. In the Congress regime thousands of Sitas were being abducted and women were turning into prostitutes for the sake of food and clothing. Taxes were being imposed on deaths and births. Cultivators’ and labourer’s blood was being sucked through foreign capitalists. Labourers of U. P. had now organized themselves. Now they will not beg for pity but will take up cudgels and surround the ministry and warn it that if it did not concede their demands it would be overthrown.

If it was thought desirable that cultivators and labourers should rule the country, every young person must learn the use of swords, guns, pistols, batons and spirit bottles, because without a fight the present Government would not surrender. Governments have not been overthrown without the use of batons. Cultivators and labourers should form associations and raise an army.

If they wanted a Government like the Chinese Government, they should raise an army of volunteers and train them in the use of guns and pistols. Taimurlung, Aurangzeb, Sher Shah and other tyrants did not divide the country but Jawaharlal Nehru turned out to be such a big traitor that he divided the country into two parts.”

Suggested points for discussion:

- Do you think this is an offensive speech?
- Do you think this speech can incite people to violence and to overthrow the state?
- Should such speeches be curtailed? How?
- Should such speeches be punishable?

Case Study IV

The residents of a prominent residential locality of a Municipality in Madhya Pradesh were facing a lot of nuisance and unhygienic and unhealthy conditions due to lack of sanitary facilities on the roads, lack of public conveniences for slum dwellers who were using the road for that purpose, and no prevention of the discharge from the nearby Alcohol Plant of malodorous fluids into the public street. The Municipality was oblivious to the statutory obligation envisaged in s. 123 M. P. Municipalities Act, 1961 and did not do anything to improve these conditions. The residents filed a complaint before the SDM under Section 133 of the CrPC. The Municipal Council contested the petition on the ground that the owners of houses had gone to that locality on their own choice, fully aware of the insanitary conditions and therefore they could not complain. It also pleaded financial difficulties in the construction of drains and provision of amenities.

Suggested points for discussion:

- Was the Magistrate's response right? Why?
- Do you think people should take some action on their own and solve these issues rather than burdening government with everything?
- How would a situation like this relate to the work of the police?
- Which fundamental rights have been violated?

Case Study V

In a rural area, large tracts of land are under acquisition proceedings for a large SEZ project. There is a lot of litigation going on between parties and from time to time, the Courts have been giving directions to the government so that people can be evicted and rehabilitated in accordance with fair procedures. Since this was not happening, a group of villagers decided to take out a vehicular procession in the state capital. When they did so, they came into confrontation with the police and some verbal altercations took place. The police then arrested several of the demonstrators under Section 151 CrPC and also on other charges which were denied by the demonstrators. They were detained at the police station for three days and then remanded to judicial custody.

Suggested points for discussion:

- Is it proper for people to come out onto the streets in this manner?
- Should the police have acted in this manner?
- What should be the procedure adopted if such demonstrations take place? Why?
- Which fundamental rights have been violated?



Session Plans on Women

Women I

Why women are 'marginalised':

Women face disabilities at various levels whether within the family, at the workplace or in matters of public space such as physical security or access to employment. Within all spheres of marginalisation, women have always been a segment which bears an additional burden because of the vulnerability born from harmful practices against them. This is a phenomenon universally and India is no exception and its women are victims of several harmful practices resulting in their marginalisation.



THE NATURE OF "HARMFUL PRACTICES" AGAINST WOMEN

"Harmful practices" are the result of gender inequality and discriminatory social, cultural, and religious norms, as well as traditions, which relate to women's position in the family, community and society and to control over women's freedom, including their sexuality. While some cultural norms and practices empower women and promote women's human rights, many are also often used to justify violence against women. Women are engaged as perpetrators in the commission of "harmful practices". Women throughout the world may be exposed to a wide range of "harmful practices" across their life cycle, including prenatal sex selection and female infanticide, child marriage, dowry-related violence, female genital mutilation, so-called "honour" crimes, maltreatment of widows, inciting women to commit suicide, dedication of young girls to temples, restrictions on a second daughter's right to marry, dietary restrictions for pregnant women, forced feeding and nutritional taboos, marriage to a deceased husband's brother, and witch hunts. The ways in which culture shapes violence against women are as varied as culture itself. For example, the phenomena of "date rape" and eating disorders are tied to cultural norms but are not often labelled as cultural phenomena. New "harmful practices" are constantly developing, and existing "harmful practices" have altered as a result of globalization and migration. There is therefore no exhaustive list of "harmful practices" against women."

See United Nations Division for the Advancement of Women (2008) Final report of the expert group meeting on good practices in legislation to address violence against women, available online at:

[http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf), <http://www.un.org/womenwatch/daw/vaw/vhandbook.htm>.

Nature of Marginalisation	Concerned Laws	Focus of Training	Training Methodology & Tools (Volume II)
Inequality in various spheres	Constitution of India	Growth of equality through law	Judgments Case Studies
Inequality within family	The Divorce Act, 1869 Muslim Personal Law The Dissolution of Muslim Marriages Act, 1939 The Hindu Marriage Act, 1955 The Special Marriage Act, 1956 The Hindu Adoption and Maintenance Act, 1956 The Code of Criminal Procedure, 1973 The Protection of Rights on Divorce Act, 1986 The Protection of Women from Domestic Violence Act, 2005 The Indian Succession Act, 1925 The Hindu Succession Act, 1956 Muslim Succession Law	<ul style="list-style-type: none"> • Right to Marriage of choice • Equitable application of grounds for divorce • Rights of Maintenance • Right to Succession 	Case Studies, Judgments, PPT
Violence within the family	Indian Penal Code, 1860 Protection of Women from Domestic Violence Act, 2005 Pre-conception and Prenatal Diagnostic Techniques Act, 1994 The Dowry Prohibition Act, 1961	<ul style="list-style-type: none"> • Different kinds of violence, • Right to safe family environment 	Judgments, Case Studies, PPT, Films
Violence at the workplace	IPC, SC Guidelines on Prevention of Sexual Harassment at the Workplace		Judgments, Case Studies, PPT
Discrimination at the workplace	Constitution of India, Minimum Wages Act, 1946 Maternity Benefit Act, 1961 Equal Remuneration Act, 1976		Judgments, Case Studies, PPT
Gender Crimes such as rape, assault, etc	The Indian Penal Code 1860 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Immoral Traffic Prevention Act, 1956		Judgments, Case Studies, Films

Indian law and harmful practices against women

India is very favourably placed in the matter of Constitutional provisions and legislation. There are several laws protecting the rights of women in almost every sphere. The law has also developed exponentially in the matter of feminist jurisprudence at the level of superior courts. The lacuna exists in the full understanding and application of these developments by the functionaries and institutions at the cutting edge-the subordinate judiciary being one of them. Besides equal protection of all laws, there are several special legislations enacted for women. The essence of these laws needs to be absorbed into the judicial system to give full effect to these provisions in letter and spirit.

Objective of this module

This Module will assist trainers and faculty of judicial academies to use training tools in order to help trainee judicial officers to:

- Identify and understand the various situations which push women to marginalisation
- Identify and understand the effect of marginalisation on women's lives
- Identify and understand the typical instances of judicial response where women may find it difficult to get legal relief
- Identify and understand the laws for the protection of women
- Identify and understand minor points of law and legal interpretation which can be correctly applied to ensure that women get access to justice

Women and Domestic Violence

Duration: 1 Hour

The Context

Violence within the home is one of the most debilitating factors and impacts a woman's existence and growth as an individual and as a citizen. For a long time, the issue of violence within the four walls was a taboo subject and only surfaced when an extreme offence such as a dowry murder had been committed. However, over the last few years, the consciousness has grown that there are many more aspects of domestic violence which need the attention of law and protection mechanisms. Violence within the home ranges from offence such as Insult, Hurt, Attempt to Murder, Murder, Abetment to suicide, assault and rape. Violence within the home spans several acts which were hitherto dismissed as 'personal' or 'family' issues which could not be the subject matter of legal intervention. This was coupled with the dilemma of women who have very few alternatives to the same violent home. The Protection of Women from Domestic Violence Act 2005 has sought to make an intervention balancing these factors.

The success of the Act in containing the incidence of domestic violence depends on Judicial Officers having full grasp of the coverage provided by the Act so that effective and timely orders may be passed to give relief.

Objectives of the session:

To assist Judicial Officers in understanding the coverage of the PWDV Act in terms of

- the social framework of domestic violence
- the acts against which protection can be sought
- who is covered by the Act
- powers of judicial officers
- hurdles faced by women in getting relief

Readings:

Methodology and Tools:

This session is best conducted through a combination of Case Study Method and PPT/Lecture as it helps Judicial Officers to analyse the problem that is likely to come up before them and then get clarity on the legal position.

Session Part I (5 minutes)

Introduce the subject and the structure of the session briefly, covering:

- Current status of women
- Current status of women affected by Domestic Violence (Use updated statistics)
- Need for sensitive judicial response

Session Part II (15 minutes)

- Form groups and hand out the case studies
- Ideally, 4 groups will be formed. The group should ideally be of not more than 6-8 persons.
- Each group will be given one of the following case studies so that there is at least one copy between two of them.
- Explain to the groups that it is meant to be a GROUP discussion and not individual study, so that different view-points can be brought out.
- The groups will study the case and come to their findings.

Case Studies on PWDV Act

Case Study 1

Safina (name changed) got married to Zafar (name changed) in the year 1986 according to Muslim customs and rites. Two children were born out of the said wedlock. Safina's husband was a Professor by profession and would earn remuneration of Rs. 9, 000/- per month. He would keep his wife and children under economic constraints as he had the habit of spending most of this money on / with his friends. Due to this there were regular fights at home. On February 2003, Safina along with her son had gone to their bank branch in order to extract a statement regarding their fixed deposit. The bank statement showed that her husband had withdrawn all the money from the fixed deposit. This created a huge rift between the husband and wife and Safina left home. On June 2009, Sajina filed a case under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) against her husband. The order in the case was passed granting her residence order, allowing her to live in the shared household, Rs. 10, 000/- as monthly maintenance and Rs. 60, 000/- as compensation, both payable by her husband. But her husband sought a stay on the order and the same was granted. According to Safina, her counsel was partly responsible for this stay order. The Magistrate had clearly mentioned that copies of the order need to be sent to certain places like the concerned

Police Station, the Protection Officer, the head of the college the respondent was employed in, etc before the respondent husband can file an appeal, for the execution of the order to take place. But the counsel failed to do so and the appeal was filed and stay was granted. Further Safina stated that the male judges seem to be either ignorant or against the PWDVA. On one occasion the Magistrate presiding over the case had asked her that since she has never been physically or sexually abused, then why a case under PWDVA was filed by her.

Suggested points for discussion:

- What are the kinds of Domestic Violence that the PWDV Act covers?

- Is allegation of physical or sexual abuse necessary for filing a case under the PWDV Act?
- Do you agree that most women face this kind of disappointment with the judicial system? Why?
- What can judicial officers do to facilitate the processes so that this disappointment doesn't happen?

Case Study 2

Anita was married to Rajendra Singh according to the Hindu customs and rites in 2002. From the wedlock a son was born on 21/10/2004. According to Anita, ever since her marriage her husband and his family members physically abused her and harassed her for dowry, demanding one lakh rupees and a Maruti car. Even after the birth of the son they did not bother about her welfare and in 2004 her husband left her at her parents' home. Anita then filed a case u/s 498A IPC against her husband and his family members and under section 125 CrPC in the Family Court in Jaipur. Rajendra Singh and his family members, in order to pressurize her to withdraw the cases, threatened her over the telephone regarding her and her son's safety and even blocked her way when she would go to court.

In 2007, Anita filed an application under Section 12 of the Protection of Women from Domestic Violence Act along with an application for interim relief against her husband, his mother and his brother. The learned Additional Chief Judicial Magistrate No. 4 Jaipur City, Jaipur passed an interim order and directed the Petitioner to pay a maintenance of Rs. 1500/- to Anita, and Rs. 1000/- to their son, along with Rs.500/as rental amount for alternative residential place. He also issued a protection order against the husband and his mother and brother not to threaten her or contact her.

The husband and his family members appealed against this order on the grounds that Anita has been living away from her husband since 2004 and that the Act is not applicable with retrospective effect. Moreover, they also argued that no woman can be made a respondent in a case under this Act.

Suggested points for Discussion:

- Has Anita suffered any kind of domestic violence?
- What relief, if any, is Anita entitled to PWDV Act ?
- Can the Trial court pass an order u/s 23 of the Act to protect the safety of Anita and her son? If yes, then what can be the order?
- Can any order be made against Anita's mother in law in her application under Section 12 of the Act?
- Could Anita have asked for relief under the PWDV Act in the proceedings before the Family Court u/s 125 CrPC ? Under what provision of law could she have done so?

Readings: Smt. Neetu Singh Vs Sunil Singh AIR 2008 Chh 1

Case Study 3

Shakuntala Devi is 80 years old. She has 4 married daughters and 3 sons. Shakuntala Devi's husband had a shoe manufacturing factory in Agra and when he died he willed her 1/4th share of all his business. Her sons, on the pretext of managing the business, took signatures on several

blank papers and even blank stamp papers. Shakuntala Devi alleges that her sons have deprived her of immovable property, cash and gold. Till 2004 she lived with her middle son and then due to ill treatment and negligence she moved into her elder daughter's house in Kanpur and has been living with her since then. She now suffers from many ailments and her health is deteriorating day by day.

In 2006 Shakuntala Devi filed an application under Section 12 of the Protection of Domestic Violence Act. The Learned Metropolitan Magistrate granted her maintenance of Rs. 45,000/- per month ordering each son to pay Rs 15,000/- per month u/s 20 and compensation of Rs 25,000 /- from each son.

The three sons appealed against this order saying that the Shakuntala Devi was living separately since 2004 well before the Domestic Violence Act was enacted and the law cannot be applied retrospectively. Moreover, Shakuntala Devi has alleged ill treatment at the hands of the middle son and not the other two sons, so no order can be passed against them. The sons also alleged that the application under the Protection of Domestic Violence Act is nothing but a ruse to extract money from them to give to the daughters.

Suggested points for discussion:

- i) In these circumstances do you think Shakuntala Devi is an Aggrieved Person under the Protection of Women from Domestic Violence Act?
- ii) Do you think Shakuntala Devi is entitled to relief under the Protection of Domestic Violence Act even though she moved to her daughter's house in 2004?
- iii) What type of violence has Shakuntala Devi been subjected to?
- iv) What is your opinion on the amount of money granted by the Magistrate's court to Shakuntala Devi? How much would you award her and what would be your basis of deciding the amount?

Readings: Sikakollu Chandramohan and 2 Vs Sikakollu Saraswathi Devi; Criminal Revision Case No. 1093 of 2010; Andhra Pradesh High Court.

Case Study 4

Sheela and Amar Singh have a history of a bad marriage since 1992. (17 years). Sheela says that the marriage was performed "dhoomdhaam se" in Rajasthan. She says that the first three months of the marriage were alright but soon after his father's death he started abusing and beating her. She says her devar also beat her once but Amar Singh did nothing to protect her.

Her main complaint is that he has a suspicious nature and on the basis of suspicion, beats her badly and ill-treats her. She says that she used to earn some money (around 1600-1800 by stitching saree falls, but as soon as he got a job, he stopped her from going out. He used to use filthy language for her (Ra@#%\$#@!-equivalent of 'prostitute'). He even suspected her when she talked to other women and used to beat her.

In March 2008, she complained to an NGO. They 'summoned' him but he did not turn up. She says she stopped working and going out alone and did "all the things that a wife should do such as washing his clothes, etc", but after some days he started beating her again. In September 2008 they made a complaint to the police. Sheela says that they had agreed to

stay separately and now they do not live as husband and wife-he stays upstairs and she stays downstairs in one room with her children. She says they had agreed to live separately and he would give maintenance for the children but he does not give money regularly, only when the police intervene.

She says he does not allow her out of the room and she has to stay on the bed and has become like a sick person. She is not allowed to talk to other women. She says she wants to be able to go out and earn so that she can secure her children's future. Sheela sounds like she is psychologically affected by the treatment meted out to her.

Amar Singh works as a security guard in the Metro Rail. He says that in the 17 years of marriage, Sheela has lived her life "as she wants". She has no relationship with him. She does what she wants, goes anywhere without his permission, doesn't listen to him, he doesn't like her behaviour. She keeps bad company. He feels she has contacts with friends over the phone. She goes off to meet these ladies or men- sometimes on the pretext of school, sometimes on the pretext of hospital. If he questions her, she says that it is none of his business. He says he has seen her with 'gairmard' - her sister's husband and his brother. He says her family has broken off relations with him for the last ten years and they are the ones responsible for the breakdown of their marriage. He says he has not been able to 'control' her. He admits that he beats her but says that beating is not a solution as "jo insane zubaan se nahinsamajhta who maarne se nahinsamajhta"

Sheela says emphatically that she does not want to "compromise" in any way with her husband. She wants that her space (room) should be secured so that she can be secure with her children. She says they have eight rooms and the one in which she lives on the ground floor should be given to her. She wants maintenance for herself and her three children. If she cannot manage in Rs.3000/-, she wants to work as she cannot manage the children's expenses in that much amount.

Suggested points for discussion:

On these allegations:

- Would Amar Singh be liable to be booked under Section 498A IPC?
- Can the Magistrate who is dealing with the application under the PWDV Act take cognizance of any offence committed against a woman who applies for relief under the PWDV Act?
- Would Amar Singh be liable to pay her maintenance?
- Draft a Protection Order for Sheela under the PWDV Act.

Session Part III (20 minutes)

Presentations by the groups

- The groups will present their case studies one by one (5 minutes each)
- To save time, the Case Study of each group can be put up on the Projector
- The faculty member will take notes of the responses

Session Part IV (20 minutes)

Responses from other trainees and faculty member (PPT W2)

- Faculty will ask other groups to respond briefly to the presentations
- Faculty member will then take the class through a Presentation clarifying the points raised on the case studies and also answering any additional queries
- Faculty member will recap the main provisions of the law on Domestic Violence and will give the class further readings



Women II

Sexual Offences

Duration: One hour

The Context

Women are the victims of sexual offences at all ages and at all locations ranging from homes to the workplace to custodial institutions and public places. The extreme offence of rape is often also combined with other serious offences such as murder. In spite of several radical changes in the laws over time, the range and frequency of sexual offences is unabated. Sexual offences are also highly unreported, the main reason being the negative response of the criminal justice system. At the level of the police, there is most often a dismissal of such complaints, investigation may be tardy and may be a cause of further harassment to the victim. Moreover, the victim is often made more vulnerable to threats, intimidation and social disapproval and is made to feel more guilty than the perpetrator of the crime.

In this scenario, sensitive and efficient handling of these cases by the judiciary, speedy trials and appropriate sentences are a must for deterrence to operate sufficiently. Some of the main issues concerning sexual offences are:

- Lacunae in reporting such as delay and minor discrepancies
- Appreciation of evidence, especially medical evidence
- Examination of X



“Rape is the `ultimate violation of the self’. It is a humiliating event in a woman’s life which leads to fear for existence and a sense of powerlessness. The victim needs empathy and safety and a sense of re-assurance. In the absence of public sensitivity to these needs, the experience of figuring in a report of the offence may itself become another assault. Forcible rape is unique among crimes, in the manner in which its victims are dealt with by the criminal justice system. Raped women have to undergo certain tribulations. These begin with their treatment by the police and continue through a male-dominated criminal justice system. Acquittal of many of facto guilty rapists adds to the sense of injustice. In effect, the focus of the law upon corroboration, consent and character of the X and a standard of proof of guilt going beyond reasonable doubt have resulted in an increasing alienation of the general public from the legal system, who find the law and legal language difficult to understand and who think that the courts are not run so well as one would expect.”

–Law Commission of India, 84th Report

“It needs no emphasis that the physical scar on a rape victim may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame.”

–Supreme Court of India in Motilal v State of MP 2008

Objectives

This session is for assisting Judicial officers to understand the following in relation to sexual offences:

- Nature of sexual offences, such as rape, assault
- Psychological and social effects of sexual offences
- Social responses to the offence of rape
- Ingredients of the offence of rape
- Common defences- consent, lack of medical evidence, discrepancies or delay in FIR, etc.

Methodologies and tools

This session can be conducted by using a combination of case studies, role play and lecture by using a PPT.

Session Part I (5 minutes)

Introduce the subject and the structure of the session

Session Part II (15 minutes)

Case Studies and presentation

- Form groups and hand out the case studies
- Ideally, 4 groups will be formed. The group should ideally be of not more than 6-8 persons.
- Each group will be given one of the following case studies so that there is at least one copy between two of them.
- Explain to the groups that it is meant to be a GROUP discussion and not individual study, so that different view-points can be brought out.
- The groups will study the case and present the discussions of the group

Case Studies on Rape

Case Study I

Bhanwari, a poor and uneducated woman of a 'lower' caste is a social worker in her village and is involved in a government campaign to eradicate the practice of child marriages in the region. Once, she tries to stop a child marriage of an upper caste family from taking place and advises them that it is bad for the child and is also against the law. Enraged by her daring attitude for challenging the actions of the upper caste, a group of persons assault and rape her and attack her husband. Bhanwari filed a complaint in the Police Station. The trial judge, in his order acquitting the accused of the crime of rape, remarks that:

- 1) It is beyond comprehension that that 'respectable' men of 'upper caste' will gang rape a lower caste woman in front of each other.
- 2) It is unnatural for Bhanwari to say that she was afraid to go to the police station because it was night time and because she was afraid of the accused.

Suggested points for discussion:

- Are considerations like the above relevant for disproving or proving an offence? Why?
- When a woman, especially a poor woman, complains to the police of rape, sexual harassment or assault, usually, the police does not register an FIR, or take steps for investigation. Women usually have to hear crude remarks about their own behaviour, social status or physical attributes

when they take recourse to the law. What can the judicial officers do to ensure that victims of these kind of crimes are not doubly victimized by the legal procedure?

- Minor discrepancies often creep into the statements etc. given by victims who are poor, socially backward and illiterate. As in the above case, courts often rely upon these to acquit the accused. Can the legal procedures be made more conducive to the majority of the people who are brought before the courts?
- Are court procedures sensitive towards a victim who has suffered such kind of an offence? How can judicial officers ensure that the dignity of a victim is protected in such cases?
- If the victim in a case like this is known to be a prostitute or of 'loose morals', is she still entitled to this protection from the legal system?

Case Study II

The victim X was a five and an half year old girl living with her mother and elder brother and sister. Her father had expired a few years before the incident. They lived in the ancestral house. X's grandparent, aunt and uncle lived in different portions of the house. On 29.3.2001, her mother had gone to cut grass along with the elder two children. When she returned in the evening around 7 p.m., she found her youngest daughter X lying below a cot on the roof of the house. Her salwar and shirt had blood stains. There was blood on the bed sheet and a towel lying on the cot. She looked into the private parts of the victim and found blood and inflammation therein. On being asked, the X said that Gian Chand the brother of her aunt had committed Bura Kaam, with her. The father of the accused defended his son saying that he could not have indulged into such a wrongful act. On the third day, that is on 31.3.2001 the mother of the victim went and reported the incident at the local police station.

The X was medically examined and her report said:

'No external injury. On retracting the labia - erythema seen. Hymen torn - irregular edges. Posterior vaginal wall tear about 0.5 cm in length. No blood clot seen. No evidence of healing, no pus seen - foul smell. Tenderness. No sperms were seen. The observations noted by the doctor were that the X had changed her clothes and taken a bath also on the next day of the incident. The victim had passed urine and stool about one hour after the incident. There was no external injury on any part of the body of the victim. The doctor opined that possibility of commission of rape on X on 29.10.1991 could not be ruled out.'

X was 8 years old when she deposed and said that she knew the accused as he was the brother of her aunt. On the date and at the time of the incident the accused came to her house in the absence of her mother or any other member of the family, untied the string of her salwar and also untied the string of his kachcha (underwear). Thereafter the accused put his organ into her private part. The learned Sessions Judge has noted in the statement of

the witness that the witness had specifically stated that the accused had inserted his penis into her private part and due to the act committed by the accused blood had started oozing out of her.

There was difference in the statement of X and her mother of the place of occurrence of rape. According to X the rape occurred on the roof on the first floor of the house. Whereas according to PW1 (the mother of X) the rape occurred in the room on the first floor. The learned Sessions Judge did a spot inspection and noted that the place was secluded and cannot be seen from the road and the room and roof are right next to each other. The Sessions Judge convicted the accused of raping a minor.

The High Court acquitted the accused holding that the story of the X was doubtful on the following grounds:

- There was undue delay in filing of the FIR.
- Confusion as to the exact place where the X was raped. Shifting scene of incident of rape, according to the PW1 the rape occurred in a room on the terrace while the X said that it happened on the roof;
- Non-examination of two or three little girls of the aunt of the X who were playing with the X soon before the incident;
- The suggestion made in the cross examination of the doctor that injury of the nature found on hymen of X could be caused by a fall.

Suggested Points for discussion:

- Do you agree with the High Court's grounds for acquittal, please address each ground while giving your answer?
- Is this kind of incident of rape/sexual abuse within the family common in our society or it is a rare and unusual case?
- In many cases the father has been accused of raping their own daughters. Do you think there is a high possibility that these are false cases instigated by the mother?
- What are the steps should the court take to ensure that the X of this age is able to give her evidence properly.

Reading: State Of Himachal Pradesh Vs Gian Chand SC 2001

Case Study III

Meenu was 7 years old. Her mother worked as a domestic servant and used to be away from the house. One day her 'jija' (brother-in-law) picked her up and inserted his finger in her vagina. He repeated this twice. Meenu told this to her mother when she came home. When her father came home, they went to the police and reported the incident. The police registered a case under Section 376/511 IPC but in committal proceedings it was remanded to the MM by the ASJ, saying that only a case under Section 354 was made out. During the trial Meenu's mother died and her father approached the Court for compounding the offence saying that the accused was a relative of his and he had settled the case with him upon an apology being tendered.

Suggested points for discussion:

- Was the charge under Section 354 IPC appropriate in this case?
- What should be the charge in case some other object such as stick etc. is used for the assault and injures the victim?
- Should the court permit compounding in cases such as this one?

Reading: Tara Dutt v State High Court of Delhi, 2009

Case Study IV

On 17.1.2002 at 1735 hours X lodged report at police station that on the said date at 11 O'clock she was in the field taken on share basis by her husband, in which gram and wheat were sown. As usual, she had gone to the field for guarding. One hut was situated there, in which she lives and cooks and eats food at that place. At the said time she was alone in the hut. Her husband had gone to village Rajnagar. Accused who was resident of same village, came there and enquired from her about her husband. She told him that he had gone to Rajnagar, and he went away. She started sweeping with broom, inside the hut. After some time, Ramlal forcibly entered her hut and knocked her down

on the floor. He pulled up her saree and committed sexual intercourse. She kept shouting to break free, but there was no body. Then he ran away. Being knocked down by Ramlal, her bangle on the right hand had broken and ankle had bruised. When her husband returned from Rajnagar, she narrated the incident to him. Then she and her husband went to Hannu Pal and informed him about the incident. Report was lodged and on the basis of aforesaid facts offences were registered under Sections 452, 376 IPC. The said First Information Report (in short the `FIR') was recorded by Sub-Inspector.

X was sent for medical examination. Doctor performed the medical examination. The Sub-Divisional Officer, prepared spot map of the place of incident during the investigation and from the place of incident, pieces of broken bangles found were seized vide seizure Panchnama.. On 18.01.2002 the statements of X, her husband, Habbu and Manua were recorded. On 19.1.2002, accused was arrested vide arrest Panchnama and one of his used underwear which was bearing some stains was seized vide Seizure Panchnama -Exb.P.6. Accused was sent for medical examination regarding his capability of performing intercourse. After completion of investigation, chargesheet was produced before Chief Judicial Magistrate. On 18.2.2002 the case has been committed from the said court to the Court of Sessions. Considering the evidence, more particularly of X, conviction was recorded.

Accused preferred an appeal before the High Court on the ground that the uncorroborated version of X should not have been relied upon by the trial court and the High Court.

Suggested points for discussion:

- Are there any grounds on which the prosecution and conviction can be sustained in this case?
- Can a conviction be sustained only on the statement of the prosecuterix in a rape case?

Reading : Moti Lal v State of Madhya Pradesh SC 2008



Women III

Sexual Harassment at the Workplace

Nature of Marginalisation	Concerned Laws	Focus of Training	Training Tools in Part II
Inability to have favourable and conducive working conditions due to sexual harassment, Working under pressure or losing employment, etc	IPC, Supreme Court guidelines in Vishakha v State of Rajasthan, Employment and Service Rules	Understanding the nature of sexual harassment and the forms it takes, understanding the impact of sexual harassment at the workplace on women	Case studies, PPT, Role Play

Duration: 4 Hours

The context

Women have been struggling to be part of the mainstream workforce. The marginalisation of women from the workforce and its serious social and economic consequences are now well-known. Although more and more women are taking up employment both in conventional and unconventional sectors, yet the work environment is extremely debilitating and negative due to several factors, sexual harassment being one of them. Women are often compelled to leave work, reduce their work, or take up work which is not commensurate with their qualifications or financial worth.

Besides the lack of a legal framework, what has been responsible for the continuance of sexual harassment at the workplace is the lack of acceptance that a certain kind of behaviour can be unacceptable and harassing for a woman.

Session Part I (15 minutes)

Introduction of the participants and resource persons

Session Part II (30 minutes)

Introduction to the concept of 'Sexual Harassment'

Resource Person should take a round of responses on what kind of behaviour they think would amount to 'sexual harassment'.

Resource Person should outline the broad contours of the kind of sexual advances, harassment and crimes that are faced by women.

Session Part III (15 minutes)

Group work on case studies

Case Study-I

In the year 2009 Sheela was working as a Head Constable (Radio Operator) with Central Reserve Police Force ("CRPF") and was attached with 1st Signal Battalion. On 30.10.2009 Sheela was informed that she has been promoted to the post of Assistant Sub-Inspector and that she is required to submit her health card with the department so that further action could be taken and formal orders released pertaining to her promotion.

Sheela says that happy as she was on learning that she had earned a promotion, which would not only enhance her status but would give her additional finances to bring up her children as unfortunately she had been widowed at a young age, at about 3:00 PM on 30.10.2009, she was proceeding towards the administrative block to obtain her health card and as she was climbing the stairs in the administrative block to proceed to the room on the first floor wherefrom she had to obtain her health card, SI M.J.Prakash behaved inappropriately with her inasmuch as he patted her on the back and, having an innuendo, said: “Sheela you are looking very smart these days. You are being very warm towards your colleagues. Why don’t you think about me? You are a widow. You are entitled to a full life.”Sheela claims to have responded that he should not speak like that. I am here to work and I behave properly with everybody. At that SI M.J. Prakash tauntingly said that she was making a sham of being a chaste woman and calling her a bitch and the product of an illicit relationship. He said that if she could flirt with others why not him. She gave a complaint in writing to the superior.

Suggested Points for discussion:

- Are such interactions common at the workplace?
- Do you think that such instances are casual in nature and can easily be ignored by a person.
- What action should the superior take on Sheela’s complaint?

Case Study II

Anamika joined a company as a Group Product Manager in the month of September, 2001 and was provided with the sitting accommodation with Mr.Raman in the same A.C. Chamber wherein he had been sitting since 1997. Within a very short span of time Anamika felt that Mr.Raman was frantically trying to develop personal and close relation with her and taking advantage of loneliness inside the chamber She felt that he intended to insult and outrage the modesty and started using slang language by exhibiting gestures which badly hampered the privacy and security of the plaintiff. The language being used by him was provocative and vulgar as a result of which the working environment in the chamber became unsafe. Anamika tried to restrain him by requesting him to amend his nature and not to use any vulgar language. In spite of that he provoked the plaintiff with unwelcome sexual demands by words and gestures. Anamika was compelled to stay in the office even after 5 p.m. when all other employees of the company left the office and taking the said advantage Mr.Raman extended his sexual advance which was refused by her as a result of which he became furious and threatened to oust the plaintiff from the A. C. Chamber. On 18th December, 2001 the plaintiff was ousted from the chamber with the aid and assistance of two other colleagues who all along supported Mr. Raman. They would start discussing their sexual life with some other ladies and Anamika was compelled to participate in such obnoxious discussion. They also expressed their desire to her to accompany them after office hours and to spend and drink with him for his mental pleasure.

Being annoyed Anamika brought the matter to the notice of Mr.Poddar, Chairman of the company by the letter dated 21.6.2002. Between 8th August and, 14th August, 2002 the company had a meeting at Taj Bengal, Calcutta. Mr. Raman made continuous efforts to allure Anamika to satisfy his ill-desire. Anamika had to attend the meeting in a conference hall at the behest of Mr. Raman. On 12.8.2002 when Anamika requested Mr. Raman to instruct the attendants to switch off the A. C. Machine, he said “... come close to me, you will start feeling hot”. On 13.8.2002 Mr. Raman abused Anamika in the presence of the Senior Officers of the company for arriving at about 9 a.m. and not reaching at 8.30 a.m. Since the highest authority of the company did not extend his help and cooperation, Anamika lodged a formal diary in Bowbazar Police Station on 12.9.2002. On

27.9.2002 a written complaint was filed in Bowbazar P. S. against Raman and his colleagues and the Bowbazar Police Station initiated a criminal case being Bowbazar P. S. Case No. 335 dated 30.10.2002 under Section 509 of the Indian Penal Code.

Points for discussion:

- Do you think Anamika should have refused to share a cabin with a male colleague at the very first instance?
- Why do you think Anamika took three months of misbehaviour from Mr.Raman before writing to the head of the Company?
- No other woman employee has ever alleged anything against Mr.Raman. Do you think this supports the idea that Anamika was making up this story against him?
- If Anamika's matter had been taken up within the Company itself, should she still have reported the same to the police?

Case Study III

Jhunias husband was a driver and died while in the service of a private company. His medical records showed that he had died of AIDS. Jhunias is around 45 and has no means to support herself. The Company gave her a job as a sweeper on a contractual basis. Jhunias was also HIV positive and was being treated at the local government hospital, for which she would sometimes take leave. The Company used to deduct her payment for the days when she was not present. Off and on, Jhunias would go back from work early after informing her supervisor, saying that she was not well.

Her supervisor started making lewd remarks to her, saying that since she was already HIV+, she could enjoy a good sex life, as she was now free from her husband. Jhunias listened quietly and did not reply. One day, the supervisor came up to her while she was cleaning an isolated part of the building and started fondling her. She pushed him aside and ran away, saying that she would complain to his senior. However, many days passed and she did not do anything except maintaining a distance from him. After a couple of months, her supervisor reported to the management that Jhunias was not doing her work satisfactorily and was not regular.

Suggested Points for discussion:

- Do you think there are women like Jhunias who face this kind of treatment at the workplace?
- In the inquiry by you, you get a hint about the Supervisor's behaviour. How will you get the facts out from Jhunias?
- What action will you take if during the inquiry you find that there was sexual harassment by the supervisor but there was also some neglect of the work by Jhunias?

Case Study IV

A large Company in Gurgaon employs many young people. They come from all over India, some from small towns, some from big cities. They usually 'hang out' together in the office during breaks and also socialise after work. They are also connected through social networking sites. In one such group, Rahul is very jovial and witty. He has been sending messages to Kavita on facebook with which she was uncomfortable as they made references to her dresses, her way of walking and talking. She gave some polite responses initially and then stopped responding. Finally, she removed Rahul from her friends list. This got around the group at the workplace and everyone started teasing her, saying she was being a 'bhenji' and getting 'hyper' as Rahul is such a fun guy, he doesn't mean anything.

Suggested Points for discussion:

- Do you think this kind of thing amongst young people amounts to sexual harassment at the workplace?
- At what stage would you say some action should be taken?
- What action would you suggest?
- Is there any way to limit interaction between employees so that they do not get intimate in any way?

Session Part IV (60 minutes)

Presentations of groups by Role Play and analysis of the presented cases by the participants

Session Part V (15 minutes)

Break

Session Part VI (60 minutes)

Using PPt

Laws and judgments related to sexual harassment in India

- Offences
- Processes related to prevention of sexual harassment at the workplace

Session Part VII (45 minutes)

Q&A and conclusion



Sample of Lectures Using Multiple Aids

Topic I : Gender Justice- concept and constitutional scheme

Time: 1hour

Objective of the lecture

To highlight the various dimensions of gender discrimination and to indicate areas of law which address and redress these

Required research

Readings: CEDAW, Constitution of India Chapter III

Judgments:

Articles:

Structure of the lecture

The lecture should cover the following aspects of Gender Justice

- How gender discrimination originates (sociological factors)
- How gender discrimination manifests itself in family, society, nation
- How gender discrimination results in leaving females out of the mainstream, thereby making them marginalised and even leading to the commission of grave offences: sexual abuse of girls and women, trafficking in women, unpaid or under- paid labour, sexual harassment at the workplace, domestic violence, matrimonial offences and imbalance in gender ratio.
- The lecture should end with distinctive features of the law which promote gender justice. (Constitution of India, International Laws and Special Laws)

Methodology- Sample I

- I. Circulate Questionnaire for responses (10 minutes)
- II. Take responses on the questionnaire through groups or analyse yourself and identify critical issues which judges would deal with (15 minutes)
- III. Use PPt to track basic legal developments on these issues

Methodology Sample II

- I. Show film (15 minutes)
- II. Take responses on issues of discrimination identified (15 minutes)
- III. Use PPt to track basic legal developments on the issues (30 minutes)

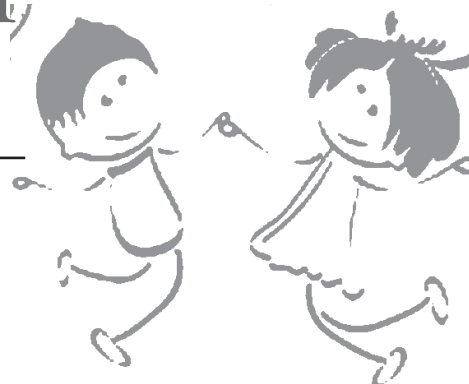
Methodology Sample III

- I. Circulate extract from story for reading (15 minutes)
- II. Take responses on issues of discrimination identified (15 minutes)
- III. Use PPt to track basic legal developments on the issues (30 minutes),

Methodology Sample IV

- I. Divide the class into 4 groups and circulate case studies for discussion (15 minutes)
- II. Ask groups to make presentations of 5 minutes each (20 minutes)
- III. Take the groups through each case study and the related law using PPt

Session Plan on Children



Children

Nature of Marginalisation	Concerned Laws	Focus in Training	Training Methodology and Tools Volume II
A child who is alleged to have committed an offence (child in conflict with the law)	The Juvenile Justice (Care and Protection of Children) Act, 2000	<ul style="list-style-type: none"> • Age of Juvenile • Apprehension and detention • Bail • Orders that may be passed/not passed 	Case Studies, Judgments, PPT
Child against whom an offence has been committed	The Indian Penal Code Code of Criminal Procedure Indian Evidence Act Juvenile Justice (C&P C) Act	<ul style="list-style-type: none"> • Sexual Offences • Kidnapping, beggary, trafficking • Emotional abuse, etc. 	Films, Case Studies, Judgments, Field Visits
Child who is socially, economically or physically needy, deprived (Child in need of care and protection)	The Juvenile Justice (Care and Protection of Children) Act	<ul style="list-style-type: none"> • Who is a child in need of care and protection • Procedure of CWC 	Films, Questionnaire, Field Visits
Child engaged in prohibited labour	The Child Labour (Prohibition and Regulation) Act 1986	<ul style="list-style-type: none"> • What is child labour, • Procedures 	PPT, Films, Field Visits
Child whose personal or social rights are affected	Hindu Adoption and Maintenance Act, CrPC Section 125, The Prohibition of Child Marriage Act 2006	<ul style="list-style-type: none"> • Adoption • Custody • Maintenance • Child marriage 	Case Studies, Judgments, PPT

The context

Children may come in contact with the courts and the legal system in many circumstances. All children are vulnerable and would tend to get marginalised and face serious and irreversible violations of their rights unless there is proactive intervention on the part of the law enforcement agencies at the right time. All applicable laws and principles therefore need to be pressed into service in order to protect children.

Sample Session Plan I

Child in Conflict with Law

OR

The Juvenile Justice (Care and protection of Children) Act 2000

- Age of Juvenile
- Apprehension and Detention of Juvenile
- Bail of Juvenile
- Orders that may be passed against juvenile
- Orders that may not be passed against juvenile

Preparation for session:

- 1) Copies of questionnaire
- 2) PPt (See PPt C I)
- 3) Bare Act
- 4) Related Judgments
- 5) Copy of film

Time: 1 Hour

Introduction: Interactive Session-15 minutes

Methodology: Circulate questionnaire to generate discussion on whether and why children need special protection.

OR

Show film Platform No.5 and take responses on the vulnerability of children who may commit offences and what should be the legal response.

Discussion: Go through responses and pick a few for discussion, narrow down on why children accused of offences should be treated differently: 15 minutes

Explanation: Go through PPt and explain the legal position

List of Readings for the Resource Person/Faculty

- The Juvenile Justice (Care and Protection of Children) Act 2000
- Girraj S/o Shri Banwari Yadav Vs. The State Of Madhya Pradesh on 23 March, 2006
- Ram Suresh Singh Vs. Prabhat Singh @ Chhotu Singh & Anr. on 5 May, 2009
- Pawan Kumar @ Vickky Kumar Jha The State Of Bihar on 18 January, 2011
- Rajinder Chandra Vs. State Of Chhattisgarh And Another, 2002-(002)-SCC -0287 -SC
- Mohan (In Jail) Vs. State Of Chhattisgarh 2005 Cri L J 3271
- Hari Ram Vs. State Of Rajasthan & Anr. on 5 May, 2009
- Master Salim Ikramuddin Ansari & Anr Vs. Officer-in-charge, Borivali Police Station, Mumbai & Ors Bombay

Sample Session Plan II

Session: "Rights of the Child"

Time: One day

Methodology:

Divide the day into four sessions:

Session I:

Need for special protection for children

Time : 1 hour

Methodology: Questionnaire, followed by discussion and explanation

Content : International Instruments, Constitution of India,
Special Laws

Session II

Understanding different aspects of child rights

Time : 2 hours

Methodology: Group work on Case Studies followed by presentation and discussions:

Case Studies on

- 1) Juvenile in Conflict with law
- 2) Child Labour
- 3) Child Marriage
- 4) Adoption

(Case Studies I, II, III, IV)

Methodology and Tools:

This session is best conducted through a combination of Case Study Method and PPT/Lecture as it helps Judicial Officers to analyze the problem that is likely to come up before them and then get clarity on the legal position.

Session Part I (15 minutes)

- Introduce the subject and the structure of the session briefly

- Circulate questionnaire to generate discussion on whether and why children need special protection (See Questionnaire C-I)
- Go through responses and pick a few for discussion, narrow down on why children accused of offences should be treated differently

Session Part II (15 minutes)

Form groups and hand out the case studies

- Ideally, 4 groups will be formed. The group should ideally be of not more than 6-8 persons.
- Each group will be given one of the following case studies so that there is at least one copy between two of them.
- Explain to the groups that it is meant to be a GROUP discussion and not individual study, so that different view-points can be brought out.
- The groups will study the case and come to their findings

Explanation: Go through PPT and explain the legal position

Case Study on age of children

Prateek was accused of an offence under Section 302 IPC and apprehended on the same day. He claimed that he had not completed 18 years on the date of the offence and was therefore liable to be proceeded under the Juvenile Justice Act 2000. At the enquiry, on behalf of the accused, marksheets of Class VIII and high school, birth certificate, horoscope and entry in Kotwar book were tendered in as documentary evidence. In all of these documents, the date of birth of the accused was the same. In oral evidence, mother of the accused, father of the accused, Headmaster of the school where the accused took his primary education, Assistant Teacher of the high school where the accused had taken subsequent education and whereat his date of birth was entered into records on the basis of the transfer certificate issued by the primary school, Assistant teacher, examination centre, Kotwar who brought the birth and death register wherein the factum of birth of the accused is recorded, were examined.

The learned Magistrate and the learned Sessions Judge scrutinized the evidence adduced on behalf of the accused by applying the principle that it was the accused who was claiming the benefit of the Juvenile Justice Act, and therefore the onus lay on him to prove that he was a juvenile and inasmuch as the oral and documentary evidence adduced by him left open room for doubt, the onus could not be said to have been discharged. The accused was also subjected to radiological examination. In the ossification test report, he was opined to be of 17-18 years of age. The learned Sessions Judge, by reference to Modi's Medical Jurisprudence, held that a variation of 2 to 3 years on either side was permissible in the result of the ossification test, and therefore, on the basis of such test no definite opinion could be formed.

Suggested points for discussion:

- Is reliance on documentary proof of age sufficient for determination of the age of a juvenile?
- What are the circumstances in which documentary proof can be said to be unreliable and a radiological examination can be ordered?
- In case of borderline age in radiological examination, on which side should the benefit of doubt be given? Would this apply where in cases of heinous crimes also?

Reference: Rajinder Chandra V. State Of Chhattisgarh And Another 2002 SCC 287
Hari Ram v State of Rajasthan SC 2009

Case Study on Bail

Pawan Kumar is a juvenile in conflict with law, facing charges punishable under Sections 392 and 411 of Indian Penal Code. He is not named in the F.I.R. The looted motorcycle is said to have been recovered from the house of an accused where he was found present. He lives in a joint family headed by his grandfather who is ready to become a bailer in case the petitioner is released on bail. Referring to the averments made in the bail application, it is submitted that he has no criminal antecedent.

A report from the concerned Probation Officer was called for, in which it was mentioned that the two brothers of the petitioner are engaged in higher studies. One of them is a student of Bachelor of Technology. Several persons of the locality including Ward Member vouched for the petitioner. The JJ Board declined to release him on bail, saying that his release would 'defeat the ends of justice'.

Suggested points for discussion:

- Is the above order of the JJ Board reasonable and correct?
- What should be the considerations for bail in the case of a juvenile?

Reference: Pawan Kumar @ Vicky v State of Bihar Patna 2010

Case study on bail

Employers of a child of about 16 years report a theft from their house. The police arrest the child and produce him before the Magistrate. The police request remand for four days in order to recover the stolen goods. The child is sent to the jail and then not produced before the Magistrate on the next 6 consecutive days when remand is extended.

Suggested points for discussion:

- Should the Magistrate have proceeded with the case?
- Should the Magistrate give any directions to the police or any other authority? What?
- What enquiries should the Magistrates take in such matters?

Reference: Master Salim Ikramuddin Ansari & Anr V. Officer-in-charge, Borivali Police Station, Mumbai & Ors Bombay 2004

Case study on bail

Sunit, a 16 year old school boy is accused of committing rape on a schoolmate who is only 15 years old. In the enquiry before the JJ Board, Sunit's parents apply for bail. The JJ Board orders an enquiry into the age and says that Bail will be considered after the age question is decided.

Suggested points for discussion:

- Should a juvenile accused of a heinous crime be released on bail?
- At what point of the proceedings can a juvenile be released on bail?
- What orders can the JJ Board pass if Sunit is found to have committed the rape?

Reference: Girraj S/O ShriBanwari Yadav vs State Of Madhya Pradesh MP 2006
State of Mizoram v. Rualhleithanga Guwahati 2005

Case study on determination of age

Police station Laxmangarh registered a case against Ranbir under Sections 147, 148, 149, 302, 452, 323 and 379, IPC in 1993. Ranbir was arrested on April 5, 1996 and learned Additional Sessions Judge proceeded with the trial and convicted and sentenced Ranbir for the above offences in 1997. It was later contended that Ranbir was less than 18 years on the date of commission of the offence.

Suggested points for discussion:

- Can the conviction of Ranbir be upheld after coming into force of the JJ Act?
- What should be the procedure for cases which are pending trial after coming into force of the JJ Act?

Reference: Mahender Singh v State of Rajasthan Raj 2003

Case study on detention of juvenile

One salim was arrested on 16th November, 2001 when he was about 15 years of age by Borivali Police Station, under Sections 392 and 397 of the Indian Penal Code. A charge-sheet was filed on 14th February, 2002 before the Additional Chief Metropolitan Magistrate. Thereafter, the case was committed to the Court of Session and during that Salim was produced twice before the Metropolitan Magistrate at Borivali and then shifted to judicial custody on 23rd November, 2001.

Salim was then shifted to Mumbai Central Prison and thereafter, he was never produced before the Metropolitan Magistrate, Borivali. He was not produced on as many as ten consecutive dates of Court-hearings, i.e., 7-12-2001, 21-12-2001, 3-1-2002, 16-1-2002, 30-1-2002, 14-2-2002, 20-2-2002, 6-3-2002, 20-3-2002 and 3-4-2002. He was neither produced in Court when a charge-sheet was filed on 14th February, 2002, nor when his case was committed to the Court of Session on 3rd April, 2002, nor when the Sessions Court granted him bail on 17th October, 2002. But despite of the bail order granted to him he was not released because he could not fulfil the financial conditions attached to the bail order.

Later salim's advocate moved an application raising the pleas of juvenility and Salim's case, a medical examination was ordered separated and transferred to the Juvenile Justice Board by an order dated 11th December, 2003. Registrar of the Sessions Court duly transmitted the said order of 17th December, 2003, but due to negligence the same never came within the knowledge of the jail authorities and the reason given for the same was that the staff was very busy because, though the capacity of the Jail is only 804 prisoners, presently, there are 3200 prisoners lodged therein.

Suggested points for discussion:

- What is the procedure which has not been followed in Salim's case?
- What law is applicable in such situation?
- Would it be considered as illegal detention?
- What should be the further course of action?

Reference: Master Salim Ikramuddin Ansari And Another V. Officer-in-charge, Borivali Police Station, Mumbai And Others, 2005-(111)-CRLJ -0799 -BOM

Session Part III (20 minutes)

Presentations by the groups

- The groups will present their case studies one by one (5 minutes each)
- To save time, the Case Study of each group can be put up on the Projector
- The faculty member will take notes of the responses

Session Part IV (20 minutes)

Responses from other trainees and faculty member

- Faculty will ask other groups to respond briefly to the presentations
- Faculty member will then take the class through a Presentation clarifying the points raised on the case studies and also answering any additional queries

- Faculty member will recap the main provisions of the law Rights of children and will give the class further readings.

Session III

Common violations of law which judicial officers should take note of

Time: 2 Hours

Methodology: Group discussion and presentation through Role Play

Identify and prepare role play on:

- Violations within family
- Violations at the workplace
- Violations in school
- Violation in the criminal justice system

Session IV

Time 1 Hour

Recap, round up and feedback



Child Labours

Context

“The issue of child labour is hardly an issue in a country that houses the largest number of child labourers in the world! But it is less of a surprise when one learns that the official position of the country has been insouciant, accepting it as a “harsh reality”, intrinsic to its status as a developing country. Among the many implications of such a position, the most obvious one is that of poverty as the prime causal factor that perpetuates the supply of labour. As long as there is poverty, it is expected that there would be an unrelenting supply of child labourers. This also muffles the lurking status of Constitutional provision of universal elementary education. Though the historic evidence and the experience within the country do not support the exclusivity given to the poverty argument, the state has been able to hold on to it since independence. At the same time, the occasional spurt of attention that the issue of child labour gained in the past, and especially in the wake of globalization in the public debates have raised only a cacophonous noise instead of a concerted scathing voice.” (PIUSH ANTHONY AND V GAYATHRI)



Child labour is a concrete manifestation of violations of a range of rights of children and is recognized as a serious and enormously complex social problem in India. Working children are denied their right to survival and development, education, leisure and play, and adequate standard of living, opportunity for developing personality, talents, mental and physical abilities, and protection from abuse and neglect. Notwithstanding the increase in the enrolment of children in elementary schools and increase in literacy rates since 1980s, child labour continues to be a significant phenomenon in India. Irrespective of what is shown in the official statistics, we say that the phenomenon of child labour is significant because, the Child Labour (Prohibition and Regulation) Act, 1986 is a legislation to address hazardous industrial child labour in a limited way as the purview of the Act covers only the organized sectors of production. As it is inbuilt in the law, this Act has excluded a vast section of toiling children in the unorganized sectors, as over 90 percent of the labour force in India is accounted for by the unorganised sectors of production. The political weight behind the initiatives towards government legal intervention has been very dissimilar across states of India.

Judicial Officers, being at the centre of societies many dilemmas, must understand the context of the Child labourers seeking justice. The main issues concerning them are:

- Considering children as individual entities, and not extensions of their parents.
- That when a child is working, there has been a violation of her/his basic rights to childhood, development, protection and participation.
- That children would not be on streets if for instance their right to housing or right to family or right to freedom from violence etc. were ensured
- Refusal of their Right to Education
- Unheard and hidden discrimination and violence
- Inability to raise their voices and inability to even understand the violation
- Inability to access their rights due to physical and financial condition

Time: 2 Hours

Methodology :Film, Case Studies, PPT

Readings: VOLUME II-Folder A



Faculty: One legal person and an NGO/labour department official person familiar with the various aspects of child labour

Session I

Introduction (30 minutes)

This session can be conducted by taking a round of responses on :

- What are causes of Child labour?
- Is poverty the only reason?
- Is child labour and unavoidable evil of a developing society like ours?

OR

Using Questionnaire

Round off the session by concluding on main points

Session II

Group work on Case Studies & presentation of Case Studies through Role Play (20+40 minutes)

Make 4 groups and give the following Case Studies for discussion and then presentation through role play:

Case Study I

In a carpet factory there were around 10 child labourers found working. The inspector made an inspection and gave the report the text of which was that there was no child labour found working in the carpet factory. Subsequently, carpet factory owner was served with four notices from the office of the Asstt. Labour Commissioner the substance of which is that as a result of Inspection/survey conducted at carpet factory, child labors listed in the notices, were found working and accordingly, he was called upon to pay compensation referred to in the notices within 15 days for rehabilitation of the child labours. The petitioner, it is alleged, entered a reply, abjuring therein the engagement/appointment of any child labour in his establishments and attributed issuance of notice to reasons stemming from disinformation.

Suggested points for discussion :

- Do you think this is any violation of rights or mere a technical issue?
- What legal action as a next step should be taken as a judicial officer?
- What legal rights are being violated of children and what legal remedy do children have?

Reference : Anil Kumar Agarwal vs Assistant Labour Commissioner, 1998 (3) AWC 2300, 1999 (81) FLR 43

Case Study II

Raghu is a 10 years old child, he has two sisters aged about 12 and 11 years. Raghu works in a Beedi making factory while his sisters work from home, the factory owner sends raw material to them and they make beedis at home. They are paid Rs 10 for 100 beedis. This way all the three together able to make a living for themselves and support their parents.

Suggested points for discussion

- Is there any violation of rights? What are those rights?

- Is there any difference in violation of rights of Raghu and that of his sisters?
- Can such establishment /factories be punished for the violation?
- If Raghu and his sisters are stopped from working as child labourers, how would they survive? Does law provide for them?

Reference : *Rajangam, Secretary, District.. vs State Of Tamil Nadu And Ors* 1991 SCR, Supl. (2) 357 1992 SCC (1) 221

Case Study III

“S” a minor and a rape victim gave birth to a male child who was illegally given in adoption. The minor girl was a domestic worker with a placement agency. The minor girl, the placement agency sold her infant to a couple. During the course of investigation one Preeti wife of Vinod was arrested. According to Preeti, “S” had come to them when she was already pregnant. Though “S” was not married she decided to retain the child with her where as Preeti and her husband wanted to sell the child. They contacted one Santosh for this purpose. After a male infant was born to “S” they handed him, over to Santosh and informed “S” that her child had been born dead. Santosh in, turn sold the infant to one Veena for Rs. 23,000/- and the money was shared, between Santosh, Preeti and Vinod. “S” disclosed that when she, protested, Preeti, Vinod and Santosh confined her in their premises.

Suggested points for Discussion

- What laws are applicable in this matter?
- Was the adoption as per law? If not what law has been flouted?
- Do you think that domestic workers are living on an edge when it comes to violaion of their rights?
- Does S has a right to keep her child with her?

Reference : *Child Welfare Committee vs Govt. Of Nct Of Delhi* on 3 September, 2008

Case Study IV

The Ragpicker’s Daily Routine

Source <http://www.abfindia.net/ragpickers.html>

As a street child, between 5 and 18 years of age, these children earn their livelihood by polishing shoes, washing cars, finding parking spaces, rag picking (recycling garbage), selling lottery tickets and news papers, etc. They also work as coolies and helpers in automobile repair shops, construction sites, and hotels. Their average earnings vary between 25 Rupees to 40 per day, while the more experienced ones earn 50 to 75 Rupees. However, these are the lucky ones. The Girls are mostly forced into prostitution at an early age.

Arising at dawn, the rag picker children start their rounds. With feet bare and backs aching, they carry the heavy gunny bags that contain the day’s pickings. Sometimes on foot they travel over 20 kilometers each day for the best pickings. Their clothing is filthy, tattered, ill fitting, and wholly inadequate for protection especially, when the weather is wet and cold.

Life is very hard as they rummage (competing and fighting with stray dogs and cattle) through every filthy garbage heap in the city and railway stations. All recyclable garbage is collected and sorted: paper, plastic, bottles, bones, metals and rotting discarded food thrown out by households and railway passengers. With this they fill their bags and often their starving bellies. If the day’s collection is bad, they resort to stealing for survival. If good, they rush to the nearest wayside shop to ease their hunger.

All have regular scrap dealers to buy their loot. They receive a meager pittance, and sometimes this pittance is withheld to repay a previous enforced loan. Some days they starve. If a better price is negotiated by another dealer, the child is frequently beaten and tied up.

However the issue of greater concern is related to their pattern of spending, where a major part of their income is spent on drugs, alcohol, solvent abuse (sniffing solvents), and gambling. They frequently become involved in street fights. With little money and too much freedom, they are vulnerable and fall prey to any number of situations that threaten life and soul.

Late in the afternoon they resume their second round of collection. Then after sorting and selling their loot, they spend their nights on the streets or in graveyards, where they are exploited and abused. Older rag pickers and perverted people give them drugs or threaten them for sexual purposes, thus exposing them to AIDS, and many more sexual and life threatening diseases.

A rag picker is not a beggar. He works hard and considers rag picking a profession of choice. It enables him to earn money, daily, and offers him ample amounts of free time. They are very loyal and protective of each other, sharing food and money. The rag picker is proud and feels that he is master of his own life.

Suggested points for discussion:

- Do you think state has some responsibility towards them?
- What are the relevant laws to protect them?
- For protection and preservation of their rights What actions you can take as judicial officers? Against whom?
- What would children, who are highly vulnerable, do in the circumstances to get out of such life? Or do you think they have by choice living such life?

Session III (30 minutes)

Child and Labour legislation

Conclude the session by going through the legal aspects of Labour Legislations using the PPT.

Slumdog Millionaire can also be screened as to help them build the perspective and understanding of the lives of such children.

Conclusion:

Courts must be conscious of the difficulties that such persons may have in accessing the justice system and deal speedily and sensitively with their cases.

Discriminatory laws, administrative instructions, executive actions etc. are violative of articles 14, 19 and 21 of the Constitution of India



Sample Session Plan IV

Labour/ Migrant Labour

Labour/ Migrant Labour

Time: 2 hours

Context

A large section of people in our country do manual work in the informal sector as agricultural labourers; construction workers; home-based workers such as beedi workers; brick-kiln workers, etc. Many amongst them migrate far away from their homes to work, where they may not know anyone except the person who brought them nor the language. Often they are exploited and not given even minimum wages. They fall outside the protection of the numerous beneficial labour legislation as there is very little monitoring of their situation by government functionaries and they themselves are not in a position to complaint due to control of their employers and the fear of losing jobs.

As per the Survey carried out by National Sample Survey Organisation in the year 2004-2005, the total employment in both organized and unorganized sector in the country was of the order of 45.9 crore. Out of this, about 2.6 crore were in the organized sector and the balance 43.3 crore in the unorganized sector, that is more than 90% of the workforce is employer in the unorganized sector. Out of 43.3 crore workers in the unorganized sector 26.8 crore workers were employed in agriculture sector, 2.6 crore in construction and remaining in manufacturing and service.

Some of the legislations that protect the unorganized workers are :

- The Equal Remuneration Act, 1976
- The Payment of Wages Act,
- The Contract Labour (Regulation and Prohibition) , Act,1970



- The Employees Compensation Act, 1923
- The Maternity Benefit Act, 1961
- The Inter-state Migrant Workmen's (Regulation of Employment and Conditions of Service) Act, 1979
- Building and Other Construction Workers ((Regulation of Employment and Conditions of Service) Act,1996

Objectives :

To assist the judicial officers to understand:

- issues concerning people working in the unorganized or informal sector;
- the working conditions and vulnerabilities of labour who migrate for work ;
- the problems that labour encounter while trying to seek protection within the law;

Methodology and Tools:

- Interactive session based on films and case studies

List of Readings & Films-Volume II

1. Employees Compensation Act , 1923,
2. Contract Labour (Regulation and Prohibition) Act, 1970,
3. Steel Authority of India Ltd. and ors. vs. National Union Water Front Workers and ors. AIR2001SC3527
4. People's Union for Democratic Rights and OrsVs Union of India and Ors, AIR1982SC1473
5. BandhuaMuktiMorchaVs Union of India and Ors ; AIR1992SC38,
6. Consumer Education and Research Centre and OrsVs UOI; AIR1995SC922
7. Contract Killings : Silicosis amongst Adivasi Migrant Workers by AmitaBaviskar , 21st June 2008 Economic and Social Weekly.
8. Special Report to Parliament of India on Silicosis , NHRC ,23.8.2011.
9. Regional Director , Employees' State Insurance Corporation VsBabubhaiKalidas. High Court of Gujarat at Ahmedabad, First Appeal No 3449 of 1999; 26/10/1999.
10. Silicosis ..a Culpable Homicide Part 1 &2
<http://www.youtube.com/watch?v=vn2wTDOBelc>
<http://www.youtube.com/watch?v=sN92XSkV17U>

Session Part I (20 minutes)

Introduce the subject and the structure of the session briefly

Screen a documentary, on testimonies of migrant adivasi labourers from Madhya Pradesh suffering from silicosis. Documentary is for 10 minutes.

Name of the film : Silicosis ...a Culpable Homicide Part 1& 2.

Silicosis.....a Culpable Homicide

Part 1.<http://www.youtube.com/watch?v=vn2wTDOBelc>

Silicosis..... a Culpable Homicide Part 2.

Take a feedback from the judicial officer on what was shown in the documentary .

Session Part II (15 minutes)

Form groups and hand out the case studies

- Ideally, 4 groups will be formed. The group should ideally be of not more than 6-8 persons.
- Each group will be given one of the following case studies so that there is at least one copy between two of them.
- Explain to the groups that it is meant to be a GROUP discussion and not individual study, so that different view-points can be brought out.
- The groups will study the case and come to their findings

Case 1

JUSTICE HAS NEVER BEEN IN THEIR DICTIONARY

-Based on a Fact-finding by Action-Aid Bolangir.

Meta Majhi of Nagaphena village of Tureikela block: Bolangir , Orissa had migrated to Hyderabad Brick Kilns site with 60 other people of his village. From day one the owner had started behaving like a beast with all these laborers. Since he knew that those laborers had no other options but to continue there with him to sustain their livelihood and because they had no money to even go back to their village; he had been behaving like a master over the slaves, not sparing even a single person. He did not pay any money to them and forced them to work. This thing continued for quite sometime. The situation reach such an extent that the workers did not have food due to none payment of wages . At this point Meta Majhi demanded their dues from the owner. In return, the owner dragged Meta in front of all laborers and started stabbing him with a sharp knife wherever possible on his body and said before leaving Meta Majhi being drenched with blood and down on the ground senseless: “ If any one of you would dare to ask me your payments he or she would face the same consequences.” The rest of the laborers had sealed their mouths in fear. They did not dare to go to police, since they knew from the beginning that all the local police people were on the monthly pay roll of that owner. They knew that if they go to police and lodge a complaint they would not get justice, on the other hand, they would be booked in false cases by the local police being bribed by the owner and would suffer further in custody.

Some how they managed to come back to their village by train without ticket. Not one of them had received any payment from the owner. The Brick kiln work was over. But the scars of the stabbing marks are still visible on the entire body of Meta Majhi. In his village, some people, after coming to know about the incident, recognized the daring attitude of Meta Majhi, however, some termed it as a misadventure. Still all those 60 people who had migrated from the same village with Meta Majhi do not know whether Meta Majhi had done the right thing or the wrong. Still, they are not sure if they need people like Meta Majhi or not. When asked, the simple unanimous reply was that: “It is our fate and the curse of the Bhagban on us. We have to live with this fate as long as we live.”

Suggested Points for discussion

- What do you think makes people like Meta Majhi vulnerable ?
- Are there any laws which protect migrant workers such as Meta Majhi ? Which are these laws ?
- From the above account it is clear that the laws are not being implemented , why do you think this is so ?

Case Study 2

DEADLY DUST Info Change News & Features, February 2010. (Extracts) – Chitragada Choudhury

“I am turning thin and weak. My appetite is gone and I cannot eat. My bones are coming out. Am I also going to die?” asks Mahesh Patelpur in Undali village of Dhar, Madhya Pradesh, where three young men who went to work in the same factory as he did in Godhra, Gujarat have died in the last weeks. “When inspectors would come for checking the factory staff would make us run away from the factory and hide in the fields. Once a doctor came and tested us and went away. We later asked the factory owner if the work was dangerous. He said the testing was to get a factory licence, nothing will happen to us. We went to work there in a sukhasaal (drought year) and are crushed for life.”

Though many migrant workers from south Madhya Pradesh have died of the incurable workplace disease called silicosis contracted from inhaling quartz dust in stone crushing factories in Gujarat, the public health system has carried out no comprehensive survey to identify the disease, which is often passed off as tuberculosis and many factories have not installed anti-pollution systems.

“He kept coughing...became more and more weak...so thin that his bones started to show. I took him to the district hospital, to Jhabua, and then to Indore, wherever I could...sold my farm and spent Rs 60,000. But every doctor said Bimaaripakadmeinnahiaati (We cannot treat the illness). No treatment worked.” On a chilly November morning weeks ago, Kan Singh cremated his nephew, Phul Singh, who was in his early twenties.

Villagers in Undali in Madhya Pradesh, 400 kilometres south of the state capital of Bhopal, watched the orange flames reduce Phul's corpse to ashes. But for his lungs. “They remained behind and when we tore them open, there were fistfuls of white dust inside,” recounted Kan Singh on a recent evening, as darkness descended on this village that is without electricity.

A fatal and incurable workplace disease called silicosis, picked up in the course of backbreaking labour in the stone-crushing factories of Gujarat has, according to partial government estimates, already taken the lives of over 300 Bhil villagers in arid southern Madhya Pradesh. Many more are headed towards death, similarly ill from inhaling the deadly quartz dust while working in the factories on below minimum-wage work as distress migrants.

Across the three districts of the region (Jhabua, Alirajpur and Dhar), there is still no systematic and in-depth medical testing by the state to ascertain how many villagers are dead and how many have the fatal illness, and how to arrest the avoidable phenomenon.

In recent weeks, when AmulyaNidhi did a survey for the central government, he found that 60% of the adult population in 22 villages had migrated in search of work to survive. Work under the National Rural Employment Guarantee Act (NREGA) in the villages did not last more than 50 days instead of the legally binding 100 days of work. In Dhyana village, panchayat secretary KhurbanTomar pulled out a ‘Death Register’, to show the names of 79 villagers who have succumbed to silicosis in the past five years.

About 200 kilometres away, in the industrial complex of Godhra in eastern Gujarat, at the Hindustan Mineral Products unit, where desperate Bhils from Undali had found employment, owner Suman M monitored daily production figures. Toying with the remote control of the split air-conditioner in his chamber, the suave, bearded businessman said in the manner of a patriarch: “Tribals from south MP-90% of my workers-are so poor that when they come to me for work, they have been hungry since two or three days. They ask me for money to buy food before they can start work in my unit.”

Suman said “the nuisance” caused by the non-governmental campaign highlighting deaths from the silica dust pushed him to install dust-control mechanisms in his unit in 2008. But he laughed off any responsibility for the deaths: “After tribals work here, how do I know where they go and what do they do in the other months? Do they drink or do they smoke? It is all a big lie that our factories caused silicosis.”

Points for discussion

1. Are there any laws which can protect the young Bhil men who go to work in the glass factories in Gujarat? What are these laws and how do they protect these workers.
2. Can owners of factories such as Suman M be held liable for the health condition of these workers and how?
3. The factory owner says that the glass factories in Gujarat cause silicosis is a lie and NGOs are only causing nuisance.

Case Study 3

Contract Workers of ACC (Holcim) begin indefinite dharna in Bhilai For Implementation of The High Court Order Directing Regularisation 5th APRIL, 2011 From an appeal for support.

The Cement Wage Board Award, a tripartite agreement between the Government, the Cement Manufacturer's Association and the Central Trade Unions in force since 1978, has prohibited the use of contract labour in all cement manufacturing operations except loading and unloading of raw materials and packing, and even in those operations contract workers are expected to be paid at the same rate as regular workers. In actual practice, the use of contract workers in cement plants is rampant. In Chhattisgarh alone, it is estimated that there are 3232 permanent workers and 11,000 contract workers in cement plants. The contract labour in the ACC Jamul Cement Works, under the leadership of the Pragatisheel Cement Shramik Sangh (PCSS) founded by the legendary trade union leader of Chhattisgarh - Shankar Guha Niyogi, have been agitating for their regularisation and implementation of this award. In 1989 after a 56 day strike and indefinite hunger strike by Shankar Guha Niyogi, the coal-gypsum loading/unloading workmen started getting cement wage board rates. In July 1992, after 17 industrial workers including 3 from ACC Jamul lost their lives in the brutal police firing on a Rail Roko Satyagraha during the historic “Bhilai movement” when workers of dozens of factories joined together against the illegal contract system, the ACC management was forced to regularize about 120 casual workmen. After the recommendations of the Inquiry Commission into the Police Firing, the State government referred the dispute of the workmen for regularisation to the State Industrial Court. The management began to remove workmen from the reference list by illegal retrenchment, denying medical facilities and simply depriving them of work to force them to opt for “voluntary” retirement. While other workmen who only got minimum wages were allowed to continue, the directly employed “casual workmen” had to face 10 months of “zero payment” forcing many of them to accept the so-called “Voluntary” Retirement Scheme (VRS). The union succeeded to obtain an interim order from the court not to change working conditions, the management managed to coerce about 300 workers who had been working for 2-3 decades in the cement production processes to resign. In the meantime the company changed hands and became a unit of Holcim. Finally on 28.2.2006 the Industrial Court reached, in its own words, “the inescapable conclusion” that the 573 workmen deserved to be regularized since their contractual employment was a mere paper arrangement and the contractors mere name lenders. Those who had been dismissed or coerced into leaving had to be reinstated by the company. The company was directed also to implement

the Cement Wage Board. The company appealed the order in the High Court and requested a stay on the award. While granting the stay, the High Court directed the company to pay “full wages last drawn” to employees whose re-instatement was being stayed, during the pendency of this appeal. The High Court has on 21st March, 2011 upheld the Industrial Court’s ruling that the contracts with the workers are “sham and bogus” and directed to company to regularize the contract workers, numbering well over a hundred, who are still working in the company. The company is refusing to implement the High Court order and to regularize any one of the more than hundred eligible Union employees. In fact the Union had to send the copy of the Judgment by Registered Post since the company representatives refused to accept the copy from Union representatives. Therefore, the Union has launched an ongoing indefinite dharna in Bhilai seeking immediate implementation of the High Court order.

Points for discussion

1. Under which provision of law did the High Court direct the company to pay the last drawn wages to the workmen entitled to re-instatement during the pendency of the appeal ?
2. The agitating workmen are well protected by various labour welfare statutes , why do you think it is so difficult for them as is illustrated in the appeal above to enforce their rights. ?
3. Do you think agitations like the one in the case study are harmful to the development and progress of the country?

Case Study 4

The 54 workmen who came in appeal to the Court were at the relevant time working in Alembic Glass Industries Limited at Baroda. They were working in Crushing Plant and such other sections where various chemicals and minerals like Dolomite, Silica, Quarry etc. are being crushed and used for manufacturing glass articles. The working environment of the plant is such that the workmen are continuously exposed to the fine particles of minerals present in the atmosphere. Due to inhalation of such mineral particles, the workmen contracted a dreaded disease known as ‘Silicosis’ making it difficult for the workmen to survive. It is alleged that several workmen of Alembic Glass have succumbed to death on account of Silicosis. It appears that on representations made to the Institution of Occupational

Health, a primary investigation and medical examination was held and the disease Silicosis was diagnosed and each of the workmen was issued a certificate to the said effect on or around September 19, 1985. The Medical Board after examining the workmen came to the conclusion that the workmen suffered 0% partial permanent disablement. Under the ESI Act , the workers appealed to the Medical Appellate Tribunal which declared that the workmen suffered partial permanent disablement in the range of 15% -40 % . The workmen then preferred second appeals u/s 54-A (1) of the ESI Act to the ESI Court. The ESI Court allowed the Second Appeals by quashing and setting aside the judgments and orders passed by the Medical Appellate Tribunal, as well as the Medical Board and assessed the permanent partial disability ranging from 40% to 90% in a given case. Both the ESI Corporation and the workmen came in appeal to the High Court. According to the Counsel for the ESI Corporation criticised the judgments of the ESI Court by contending that the conclusion arrived at by the ESI Court is on the basis of general nature of the disease Silicosis without examining any evidence whatsoever or without referring to any medical reports whatsoever to determine as to what according to the documentary evidence on record is the nature, extent and quantum of the disability suffered by the workmen. According to him the disability in each employee will have to be determined depending on the age, constitution; years of service , pathological tests of the lungs and it would

vary from person to person. Merely contracting the disease Silicosis is no ground for awarding any compensation for permanent partial disability unless the actual extent of the disability is determined in accordance with law. The counsel for the workmen argued that the workmen had suffered 100% total permanent partial disability and are entitled to receive compensation for 100% permanent total disablement. He further submitted that the disease Silicosis has been described as an occupational disease in Part III of the Third Schedule to the ESI Act. It is deemed to be an “employment injury” arising out of and in the course of employment as contemplated by section 52-A of the Act and since the Silicosis is an incurable disease, the assessment of permanent partial disability is not provisional but final and, therefore, the consequential benefits to receive disablement benefit for life time are required to be granted. On the basis of the literature placed before the ESI Court it was well established that amongst the occupational diseases, Silicosis is the major cause of permanent disability and mortality and it is caused by inhalation of dust containing silica and silicon dioxide and there is no effective treatment for Silicosis. Fibrotic changes which have already taken place cannot be reversed. It is also clear that Silicosis can be controlled before it is being contracted by rigorous dust control measures or by regular physical examination of the workers, but once it is contracted, there is no effective treatment for it and the person has to die. There is no dispute with regard to the fact that all the 54 workers have been diagnosed as the patients of Silicosis. Regional Director , Employees State Insurance Corporation Vs Babubhai Kalidas, First Appeal No 3449 of 1999 Gujarat High Court, dt.26.10.99

Points for discussion

1. In the background of the arguments and the facts , do you think the workers have permanent partial disablement or permanent total disablement under ESI Act and why?
2. The counsel for ESI Corporation stated that merely contracting the disease is no ground for compensation unless the extent of disablement is determined. Comment on this.
3. Do you think there have been any hindrances in these 54 workers getting relief and what are they?
4. If there were migrant workers employed by this factory , how different would their situation.

Session Part III (20 minutes)

Presentations by the groups

- The groups will present their case studies one by one (5 minutes each)
- To save time, the Case Study of each group can be put up on the Projector
- The faculty member will take notes of the responses

Session Part IV (20 minutes)

Responses from other trainees and faculty member

- Faculty will ask other groups to respond briefly to the presentations
- Faculty member will then take the class through a Presentation clarifying the points raised on the case studies and also answering any additional queries

Faculty member will recap the main provisions of the law on Domestic Violence and will give the class further readings.



Session Plan on Scheduled Castes And Scheduled Tribes

Schedule Castes and Schedule Tribes

Nature of Marginalisation	Concerned Laws	Focus of training	Training Methodology & Tools (Folder Volume II)
Inability to access education, employment, dignity due to historical discrimination	Constitution of India	Needs of SC/ST reflected through legal provisions Understanding legal developments in entitlements such as reservations in electoral offices, education and jobs	Case studies, PPt, Role Play, Seminars
Crimes against SC/ST due to their vulnerable situation	Constitution of India, IPC, Protection of Civil Rights Act SC & ST (Prevention of Atrocities) Act	Understanding specific provisions and procedures for addressing crimes against them	Role Play, Films, Case Studies, PPt
Further marginalisation due to processes such as industrialisation, displacement, environmental degradation	Constitution of India Land Acquisition Act, 1894 Wildlife Protection Act, 1972 Forest Act, 1927 Forest Rights Act, 2006 Environment Protection Act, 1986	Understanding impact of displacement etc and judicial responses	Case Studies, Films, Field visit, Seminars

The Context

Discrimination and atrocities against the Scheduled Caste and the Scheduled Tribes violate the right to live with dignity of a large section of society. The Scheduled Castes and Schedule Tribes are subjected to various kinds of indignities, humiliation and offences on account of their caste, tribe or birth. In present times people's attitudes and behaviour towards them has not changed significantly. Even with the improvement in the socio economic conditions of the SC/ST and spread of education amongst them they are still vulnerable. They continue to be humiliated and subject to de-

meaning behaviour when they assert themselves and demand their rights. For example, even today they are not allowed to take out wedding processions through a village or are paraded naked or the students studying in professional colleges are harassed or given tea in separate glasses at dhabas or kept as bonded labour, etc. The Protection of Civil Rights Act, 1951 and The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were enacted to prevent, punish the specific type of offences committed against them and ensure that they are able to access justice.

Time: 2 Hours

Objectives of the session:

- To recognise and acknowledge that atrocities against SC/ST are committed today in cities as well as villages.
- To assist Judicial Officers in understanding the coverage of the Protection of Civil Rights Act & SC/ST Act in terms of
 - what is an atrocity under the both the laws.
 - the special provisions related to investigation and trial.
 - the hurdles faced by the SC/ST to access justice under the Acts.

Methodology and Tools:

- Role Play
- Case Studies
- PPT

List of Readings

- The Scheduled Caste Scheduled Tribe (Prevention of Atrocities Act), 1989
- State of M.P. vs Chunnilal @ Chunni Singh (2009)12SCC649
- AshabaiMachindraAdhagale vs State of Maharashtra and Ors .(2009)3SCC789
- Swaran Singh and Ors. vs State through Standing Counsel and Anr ,(2008)8SCC435
- State of M. P. and Anr.vs Ram Krishna Balothia and Anr., Civil Appeals Nos. 1343 with 1344-1400 of 1995
- State of Madhya Pradesh vs Bhooraji and Ors., (2001)7SCC679
- Gangula Ashok &Anr. vs State Of A.P. AIR 2000 SC 740,
- MasumshaHasanashaMusalmanvs State Of Maharashtra, (2000)3SCC557

Session Part I (10 minutes)

Introduce the subject and the structure of the session briefly

Session Part II (40 minutes)

Form groups and hand out the case studies for discussion and preparation of role play.

- Ideally, 4 groups will be formed. The group should ideally be of not more than 6-8 persons.
- Each group will be given one of the following case studies so that there is at least one copy between two of them.
- Explain to the groups that it is meant to be a GROUP discussion and not individual study, so that different view-points can be brought out.

- The groups will study the case and come to their findings
- The groups will present their findings in the form of a ROLE PLAY

Case Studies on SC/ST (Prevention of Atrocities)Act

Case Study 1

The complainant lodged a report at the Police Station on 29-12-2005 at about 3.45 p.m. about an incident which had occurred on 28-12-2005 at about 8 p.m. In the report, he alleged that he belongs to Mahar community which is a Scheduled Caste. He is Sarpanch of Gram panchayat Harangul (Bk.). On 28-12-2005 at about 8 p.m. meeting of Gramsabha was being held at Vithal Mandir. Some members of Gram panchayat, Up-Sarpanch, Gramsevak and other people of the village were present.

According to the complainant, when the meeting was in progress, the present applicants began to create obstruction in the meeting. When the complainant requested them to keep silence, they insulted him in the name of caste, abused and physically man-handled and also threatened to kill. Up-Sarpanch and other persons who were present intervened and thereafter, the applicants left the spot. At the bottom of the first information report, there was a note that caste certificate was annexed. It was also mentioned that the complainant is 'Mahar' to the knowledge of the accused persons and the accused persons belong to Reddy (Yellam) caste. On the basis of this report, the aforesaid offence came to be registered by the Police.

The accused contended that in the body of the report, the complainant had not stated that the accused persons do not belong to Scheduled Caste or Scheduled Tribe and therefore, the offence under the Atrocities Act or under Civil Rights Act could not be registered nor investigation could be initiated. It is contended that in view of this, the Police Officer committed error in registration of the offence and therefore, the F.I.R. to the extent of the offences punishable under the Civil Rights Act and Atrocities Act, are liable to be quashed and set aside.

Suggested points for discussion:

- What offences, if any are made out on the above facts and under which laws?
- In your opinion is the accused correct in contending that the FIR is liable to be quashed and set aside as the FIR does not mention that the accused are not Scheduled Castes ?

Reference : Bhalchandra And Ors. vs State Of Maharashtra And Ors 2006 (6) MhLj 209

Case Study 2

The prosecution case is that the victim Nandabai who belongs to the Bhil community was residing with her father, handicapped brother, and lunatic sister. She had illicit relations with PW9 Vikram and had given birth to his daughter and was also pregnant through him for a second time. Vikram belongs to a higher caste and his marriage was being arranged by his family with a woman of his own caste. On 13.5.1994 at about 5.00 P.M. when the victim Nandabai was at her house the four accused went to her house and asked why she had illicit relations with Vikram and started beating her with fists and kicks. At that time the accused Kailas and Balu held her hands while accused Subabai @ Subhadra removed her sari. The accused Subhash then removed her petticoat and accused Subabai tore the blouse and brassiere of the victim Nandabai. Thereafter the accused Subabai and Balu paraded the victim Nandabai on the road of the village and at that time the four accused herein were beating and abusing the victim Nandabai. At about 8.40 p.m. an FIR was lodged at Taluka Police Station and after investigation a charge-sheet was filed. It appears that the accused are powerful persons in the village in as much as that all the eye-witnesses have turned hostile out of fear or

some inducement. Although many of the witnesses have turned hostile, there is the evidence of the victim Nandabai PW4 herself. In fact, PW9 Vikram supported the prosecution case to some extent, even though he did not support the actual incident. He has accepted his illicit relations with victim Nandabai and admitted that he had a daughter from her and she was pregnant for a second time through him. PW2 Narendra Kalamkar has proved the spot panchanama Exh. 12. He stated that the panchanama was drawn in front of the house of PW4, the victim Nandabai. At the time of the panchanama, Nandabai was accompanied by the police and she had shown the entire area from her house to the place in front of the shop of PW3 Shankar Pawar. The police seized the clothes in torn condition, produced by PW4 Nandabai. There were pieces of bangles lying in front of the house. Dr. Ashok Ingale PW8 proved the medical certificate Ex. 26 and stated that there were two contusions on the person of the victim.

Suggested points of discussion:

- As per the facts of the case under which sections of the IPC and SC/ST Atrocities Prevention Act should the FIR be registered.
- As a number of witnesses turned hostile, what could be the grounds for sustaining a conviction?
- The defence of the accused in denying the incident is that stripping could not have taken place as the people belonging to the Bhil community live in torn clothes as they do not have proper clothes to wear. Please give your comments on this defence.
- In the appeal the High Court upheld the conviction under IPC but acquitted them of charges under SC/ST Atrocities Prevention Act on the ground that the Caste Certificate was not produced and investigation by a Police Officer of the rank of Deputy Superintendent of Police was not done. Do you think these were technical matters, the accused should not have been acquitted under the SC/ST Atrocities Act? Give reasons.

Reference : Kailas & Others v State of Maharashtra

Case Study 3

Retired Dalit officer's car and furniture 'cleansed',

-April 08 2011, Thiruvananthapuram Indian Express

The Kerala Human Rights Commission has registered a case and sought an explanation from the secretary, taxes department, after the office and car used by a Scheduled Caste state government officer was allegedly cleansed with cowdung after his retirement from service.

Former Inspector General of Registration A K Ramakrishnan, who retired on March 31, petitioned the rights panel, saying the "inhumane behaviour" had insulted him and all backward communities. The panel has sought a report by May 7. Rama krishnan said the incident took place on April 1, after the new IG assumed office. On the first day, a section of officials reportedly sprayed cowdung-mixed water on the office furniture, the threshold and the official vehicle. Rama krishnan claimed that in order to refute allegations that this was done because he was a Dalit, cowdung-water was sprayed in the entire office the next day.

Rama krishnan said a section of officials had borne a grudge against him since he took over five years ago, and cracked down on some of them. "That might have provoked a section in the office. On the day I retired, there had been celebrations by bursting crackers," he said. Calling it an insult to the SC community and a violation of their human rights, Ramakrishnan said if a senior officer could be treated like this, one could well imagine what officials at junior levels might be facing.

Suggested points for discussion:

- Do you think that these news items are false and made up ?
- Do incidents like this still occur in place / region where you work or belong to ?
- Do you think education has helped change attitude as far as untouchability is concerned?
- Do you think most of the cases registered under Prevention of Atrocities Act are false?

Case Study 4

The prosecution case is that in Uttar Pradesh a marriage party of 40 people belonging to the Dom cast, who are Scheduled Caste, were passing through a village called Kafalta Malla around 5 pm. There 4 women accused nos. 29 to 32 met the marriage party near the house of accused no.13, Lachman Singh Bangari, i.e. in the beginning of the village. These women stopped the doli of the bridegroom and asserted that these Doms could not take their bridegroom on a doli in front of the house of Thakurs and Brahmins. The complainant's side replied that when Brahmins and Thakurs could do it, the Doms had also right to do it. Then these women shouted for their men folk of the village and all the male accused, along with others, came at the spot. In all there were 70 to 80 persons from the village, and they were armed with lathis, dandas, stones. When the marriage party reached near the house of one Nari Ram, PW-8, a resident of this village one Khima Nand Fauji attacked one of the marriage party, with a knife who received injuries. Khima Nand Fauji wanted to attack again. Then the bridegroom's father tried to snatch the knife from him and in this scuffle the knife struck Khima Nand. (This Khima Nand died after a few days). When the knife struck Khima Nand and he got injured, the members of the marriage party started running helter skelter. Some of them entered into the house of Nari Ram as this Nari Ram was of their own caste. In order to save themselves these persons bolted the door of Nari Ram's house from inside. The accused assailants bolted it from outside and after making a hole in the roof, they put indried grass, sprinkled kerosene oil and put it on fire. Some members of the marriage party ran else where to save themselves but they were attacked with lathis and stones etc. resulting in death of several persons.

Complainant Narendra Prasad (PW 1) was also in the marriage party. He was injured. Some how he was able to escape and reached his house after dark. Then he went to Patwari's office which is at a distance of two or three kilometers from his house and six kilometers from the place of occurrence and lodged a written report at 10 p.m. the same night. Before the report was lodged by the complainant the accused No.2 Inder Singh also lodged a report in the same Patwari's office at 9.30 p.m. The version given in this report was that the marriage party reached the village at 5 p.m. In the village there is a temple of Badri Nath where bridegroom of every caste has to get down from doli. Then the marriage party was asked that they should also take the bridegroom on foot in front of the temple: but the members of the marriage party did not agree and started quarrel. They attacked Ram Singh accused no.10. As alarm was raised in the village, the villagers assembled. The members of the marriage party did not yield to persuasion. They took out knife and were bent upon assaulting, and they started it. They attacked Khima Nand with knife. Khima Nand received serious injuries and became unconscious. In this scuffle the marriage party, which consisted of fifty persons, dispersed while the accused No.2 & No 20 had come to lodge the report on being asked by the villagers. According to the accused, there were 50 to 60 persons in the marriage party.

Some of the accused pleaded that the marriage party was passing through the passage and the bridegroom was on doli. The marriage party had crackers and guns with which they fired. Ram Singh, who returned from the feast of Khiali Ram, requested the members of the marriage party to take down the bridegroom from the doli, because of the custom that the people go on foot in the village boundary, there being the temple of Badri Nath. The members of the marriage party did not agree and proceeded ahead, they tried to threaten and scare the villagers with a knife and lathi.

Khima Nand also asked the members of the marriage party to take down their bridegroom from the doli and go on foot in view of the village custom; but the members of the marriage party quarreled. Two of them, caught hold of Khima Nand's hands and Diwani Ram inflicted knife injuries to Khima Nand due to which Khima Nand died and the marriage party dispersed. In cross-examination it was suggested that the house of Nari Ram caught fire due to crackers of the marriage party and the other invitees who had come to Khiali Ram's house might have indulged in this episode.

The post mortem report on the dead bodies showed that six persons had died of burns or suffocation. One of them also had head injury. Eight other persons had lacerated wounds, contusion and abrasion. Out of the fourteen people who had been killed, six of them were burnt. This incident took place when PW 8Nari Ram's house was burnt in which five of the victims had been locked in. Nari Ram testified that his was the only scheduled caste Family in the village and he has stated, that he witnessed the act of the burning of his house. He stated that he was coming back from his field at about 6 P.M. when he heard the noise in his court-yard. He saw two of the accused (gave their names) who were spraying kerosene oil on his house. According to him , they were putting the house on fire from below by putting the light. He found his wife and children standing outside in the court-yard and they were crying. Some of the processionists, who were members of the marriage party were inside the house and they had been locked from outside. The house, as well as his belonging inside, were burning and at that time "swarnas injured me also". He stated that he was injured as a result of the lathis blows and stones being thrown on him. Nari Ram's evidence has been rejected by the High Court for two reasons. Firstly, it has been observed that before the Investigating Officer on the day after the incident he had stated that he came to his house after it had been set on fire and he did not know who had lit the fire and who killed the members of the marriage party. The second reason for not accepting his testimony is that he did not name who were the assailants. The people he named in his evidence as lighting the fire to his house have been named by the other witnesses also.

Suggested points for discussion:

- This incident occurred in 1981. Do you think based on the facts the accused have committed any offence under " The Protection of Civil Rights Act" ? Give reasons and which sections would apply?
- In your opinion was there an unlawful assembly the common object of which was to attack and kill the members of the marriage party who were scheduled castes ?
- Do you agree with the High Court's rejection of Nari Ram's evidence ? Give reasons for your answer.

Reference: State Of U.P vs Dan Singh And Ors, Supreme Court 1997.

Session Part III (40 minutes)

Presentations by the groups

- The groups will present their case studies one by one (10 minutes each)
- To save time, the Case Study of each group can be put up on the Projector
- The faculty member will take notes of the responses

Session Part IV (30 minutes)

Responses from other trainees and faculty member

- Faculty will ask other groups to respond briefly to the presentations
- Faculty member will then take the class through a Presentation clarifying the points raised on the case studies and also answering any additional queries

Faculty member will recap the main provisions of the law on Protection of Civil Rights and SC/ST Prevention of Atrocities Act and will give the class further readings.



Sample Session Plan

Rights of Persons Living With HIV-AIDS

Rights of Persons Living with HIV-AIDS

The Issue in context

The law is meant to protect the life and liberty of every person and it has to change and meet up to the challenges in different spheres and in different times. Each era has its issues and concerns. Social, economic and even natural developments cause certain people to become exceptionally vulnerable and thereby marginalised, thus requiring the pro-active intervention and protection of the justice system. The law is meaningful only if it responds in a timely and appropriate manner. HIV/AIDS is one such concern—possibly one of the major threats facing our world today. It has thrown individuals and societies into confusion and trauma, not only because of the threat to the physical well-being of persons that it represents, but also because fears of contracting HIV/AIDS are adversely affecting human relations. These fears are often born out of misconceptions and misinformation, yet they convert into reactions and responses which are discriminatory, inequitable, and even grossly violent, seriously undermining the human rights of persons so discriminated against. In the face of such a challenge, the law must be in the forefront to protect and assure those affected that their rights will be protected. Violations of the rights of persons living with HIV/AIDS (PLWHIV/AIDS) must be countered unequivocally by underscoring the fact that they are as equal as anyone else in their claims to mainstream life whether in the realm of family, employment or society in general. Their right to special health and medical care also needs to be protected. At the same time, the rights of the community at large to be protected and made safe from the condition also need to be protected.

Judicial Officers, being at the centre of society's many dilemmas, must understand the context of the PLWHIV/AIDS seeking justice. The main issues concerning them are:



- Discrimination and stigma in education and employment
- Discrimination, stigma and violence within the family
- Refusal to render medical aid or health facilities by health professionals
- Violation of right to privacy by medical and other agencies
- Inability to access medical aid due to financial constraints
- Neglect by medical authorities especially blood banks
- Inability to get rightful insurance claims
- Inability to access their rights due to physical and financial condition

Time: 2 Hours

Methodology : Questionnaire, Case Studies, PPt

Readings: VOLUME II-Chapter A

Mx Of Bombay Indian Inhabitant vs M/S. Zy And Another AIR 1997 Bom 406

Rathnam Kotaji vs State Of A.P., AP High Court 2006

Sri Pratap Kumar Nayak vs State Of Orissa & Others, Orissa High Court 2011

Mr.X v Hospital Z (1998) SCC 296

Mr X v Hospital Z (2002) SCC 701

Mr.Y v Virudhnagar District madras High Court 2011

Mr.X v Chairman State Level Police AP High Court 2005

Faculty: One legal person and (optional) one medical/para-medical person/NGO/SACS person familiar with the medical aspects of HIV/AIDS (SACS). The faculty member from legal background can also deal with basic medical aspects after going through the readings.

Session I

Introduction (30 minutes)

This session can be conducted by taking a round of responses on :

- What causes HIV/AIDS
- When is HIV/AIDS infectious
- Is HIV/AIDS life-threatening
- Ways in which the rights of a PLWHIV/AIDS could be affected

OR

Using Questionnaire

Round off the session by using PPt to address and clarify the above.

Conclusion: HIV/AIDS can be contracted ONLY in certain conditions. It is not possible to 'contract' the condition by being with, sitting with, working with or talking with someone. Discriminatory treatment therefore, being completely baseless is illegal and violates the rights of the affected person.

Session II

Group work on Case Studies & presentation of Case Studies through Role Play (20+40 minutes)

Make 4 groups and give the following Case Studies for discussion:

Case Study I

In a government office in a district town, Hari Prasad works as a Junior Division Clerk is known to have been tested positive for HIV. His Head of the Department passed a circular asking a separate arrangement to be made for him to sit and work. The office peon would not take or give files to him and slowly no work was sent to him. Other employees protested about his using the common toilet so he was asked to go outside. His seniors suggested that it would be better for him not to attend the office and they would see to it that his attendance was marked. When he did not agree to this, the guard posted at the gate of the office threatened him and said that he had orders not to allow him to enter the office building.

Suggested points for discussion

- Is such a circular reasonable or legal?
- Have any rights of Hari Prasad been violated? Which?
- What legal remedy does Hari Prasad have?

Case Study II

'X' was working as a casual labourer in a public sector company. In 1993 he was subjected to medical tests including blood tests along with other workmen and was found to be HIV+. His name was removed from the muster of the company. The doctor who had conducted the test had noted that in spite of his HIV+ status, he was physically fit to do the work he was doing.

Suggested points for discussion

- Can companies conduct medical tests on its workers?
- Could the Company have removed his name from the list of labourers on the basis of the medical test?
- Does 'X' have any legal remedy?

Case Study III

Gopal's son X was admitted in a hospital for severe loose motions and fever. Since he had become anaemic, he was advised blood transfusion. Gopal approached a blood bank and took two units of blood marked "HIV I & II Negative". The hospital went through the Report of the blood bank and administered the blood to Gopal's son. Gopal's son was discharged after a few days. When his condition did not improve in a few days and a blood test was done on him, it tested positive for HIV. Gopal was advised to sue the hospital and the blood bank for compensation as it appeared that infected blood had been given to X.

Suggested points for discussion:

- Are the hospital and the blood bank liable to compensate Gopal for the blood taken by him voluntarily?
- What factors will be taken into account for deciding the liability of the hospital and of the blood bank?

- Why should hospitals and blood banks be held liable to compensate people like Gopal and X ?

Case Study IV

Shyamala is a commercial sex worker. Knowing that she is exposed to the risk of HIV/AIDS, she insists on her client using a condom. A client refused to use a condom so she refused to have sex with him and asked him to leave. He insisted, saying that since he was paying her, she could not refuse on any ground. He forced her to have sex with him. Shyamala went to the police to complain but she was told that since it is known that she is a commercial sex worker, they cannot make out any offence to have been committed against her.

Suggested points for discussion:

- What should women like Shyamala, who are highly vulnerable to contracting HIV/AIDS, do in the circumstances?
- Has any offence been committed against Shyamala?
- What factors will lie in the Court's mind while deciding whether to charge her client with an offence or not?

Session III (30 minutes)

Legal Rights of PLW HIV/AIDS

Conclude the session by going through the legal aspects of PLW HIV/AIDS using the PPT.



This Manual has been created to assist Judicial Training Academies in designing and delivering content pertaining to Marginalised Communities. While this Manual aims at heightening the awareness of the special problems of marginalised groups and persons through sensitization, it also provides an application-oriented, practical framework for judges.

The subject of ‘marginalisation’ has been dealt with holistically and includes persons and groups who may be traditionally marginalised, or situations which create marginalisation.

The Manual focuses on the interface of the marginalised person with the justice system in a way that the justice system is able to perceive the situation of marginalisation, as well as the ways in which it may be mitigated through the intervention of the courts through powers vested in them under various laws. It seeks, moreover, to stretch the understanding of both these aspects through making the judiciary cognitive of the positive, path-breaking and supportive legal developments through the higher courts over a period of time, ultimately generating a percolation of good practices and rights jurisprudence throughout the legal system at all levels.