ADVOCACY

TMV's Lokmanya Tilak Law College's

QUARTERLY eMAGAZINE

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Articles invited for the next issue, interested candidates can mail your articles on advocacytmv@gmail.com

FOREWORD

World Press Freedom Day

I am delighted to share the third issue of our eMagazine known as **"ADVOCACY"** with all of you, which will provide insights on various legal aspects.

In December 1993 the United Nations General Assembly proclaimed that every year worldwide 3rd May would be celebrated as World Press Freedom Day also known as World Press Day. This was done on the recommendations of the UNESCO's (United Nations Educational, Scientific and Cultural Organization) General Conference and to mark the anniversary of Windhoek Declaration held in Windhoek, Namibia, from 29 April to 3 May 1991.

Every year to mark the significance of this day a Global Conference is organised by UNESCO since 1993 in order to provide an opportunity to the journalists, national authorities, academicians and the general public to discuss about the various changing and challenging aspects of "Freedom of Press." Also to suggest safety measures to protect the life of the journalists and to work together to identify solutions to the emerging problems or challenges in this arena.

In furtherance, this day promptly reminds the various governments that they need to honour their commitment towards the "Freedom of Press". It also provides a platform to the media professionals to have access to the position of "Freedom of Press" in various parts of the world, to suggest measures to protect the media in case of attack on their independence and also to pay homage to the journalists who had lost their lives in discharge of their duties.

The Windhoek Declaration is a guideline containing principles on "Freedom of Press" which was taken up by African Journalists in 1991 for the development of a free, independent and pluralistic Press. Since then for more than 30 years now, the Windhoek Declaration has served as a catalyst for "Freedom of Press", Independent journalism, and Media Plurality around the world. After the Windhoek Declaration further regional declarations, such as the Declaration of Alma Ata in Kazakhstan in 1992, the Declaration of Santiago de Chile in 1994 and the Declaration of Sana'a in Yemen in 1996, in 1997 the Declaration of Sofia were also made to propagate "Freedom of Press" worldwide. This historic document, which was endorsed by the 25th UNESCO General Conference which marked the beginning of an international commitment to address the need to foster

an enabling environment for journalists and media workers to exercise their right to freedom of expression and to contribute to the consolidation of democracy and the enhancement of sustainable development.

The Windhoek Declaration is based on the idea that trustworthy and verifiable information is for the benefit of the public benefit, and that persons who contribute to it should be protected not only for the sake of their own rights, but also for the good of society. All UN member states have endorsed the Development Goals till the year 2030, which recognize that the promotion and protection of human rights and fundamental freedoms, as well as universal and reliable information, are essential components of sustainable development.

This year the World Press Freedom Day took place in Nambia from 29 April to 3 May, marking the 30th anniversary of the 1991 Windhoek Declaration. The participation for the event came in from more than 150 countries with over 3000 participants.

The theme of this year's World Press Freedom Day is "Information as a Public Good." It also seeks to defend and promote the right to freedom of speech, including the right of individuals to receive, and transmit information of all sorts, through defending and supporting media freedom and the safety of journalists.

I would take this opportunity to congratulate and thank each one of you for all your efforts who participated in giving inputs for this 3rd issue. We are working together to give our students a platform to seek pleasure from writing. We hope this eMagazine will take students of Tilak Maharashtra Vidyapeeth a step further in their journey to research, explore and write.

With best wishes,

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Indian Judiciary – Evolution

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Introduction

Human society began its journey way back since the era of Primates, i.e., several million years ago. Concept of society came into being since people started settling down at one place together. Concepts like Private property, family, relationships, exchange, commerce, religion evolved gradually. We can trace the birth of every religion, cult into local natural settings. Gradually religious beliefs, taboos getting consolidated to form opinions, personal as well as societal. The human being can now define what is good, what is bad, what is ethical, what is unethical, what is legal, what is illegal, etc.

Ancient Indian literature and various manuscripts like Dharmashastra, Arthashastra, Vedas, Manusmriti, etc., mainly derived from the religious beliefs and practices that played a significantly influential role in governing society time. Vedic literature posts like ***sabhapati*** are related to today's of the judge, i.e., the person responsible for delivering justice. During that era, punishments were quite severe. Also, the punishments varied according to hierarchical position in the varna system i.e. though there was a justice delivery system, it was not according to the principle of equality before the law.

Many Hindu kings, Mughal rajas ruled Indian subcontinent and had their own justice delivery mechanisms in the past. At the village level group of seniors, upper cast people were responsible for delivering justice in petty local matters. These institutions still exist in the north Indian pockets, popularly known as Khap panchayats. Mukhiyas, Patils, Deshmukhs, Zamindars were primarily responsible for maintaining order in the locality. We come across such pieces of evidence in the correspondences during the era of Chhatrapati Shivaji.

The advent of the East India Company brought along with them the European (English) judicial system. Initial years of Company Britishers were primarily interested in trade only and avoided indulging in local, cultural, religious issues of Indians. Gradually, to consolidate their feet on the Indian subcontinent, they introduced the British administrative and judicial system to earn maximum profits. With increasing territorial jurisdiction, they also expanded their scope into the personal affairs of Indians.

We can trace the origin of today's modern Indian judicial system into the Mayor's Court at Madras in 1726, i.e., almost 300 years ago. The East India company being politically prominent in Bombay And Calcutta, also established courts in those provinces.

Warren Hastings first time established Diwani and founder Adalats at the district level to handle civil and criminal matters, respectively. European judges headed courts during the early British period. In 1834, the law commission was set up under the chairmanship of Macaulay to suggest reforms in the Indian judicial system. Few most significant enactments are the outcome of the suggestions from Macaulay's law Commission are namely the Indian penal code (IPC)1860, Criminal procedure code (CrPc)1861 etc. These are still relevant and are very much in use in today's criminal justice system.

Post-1857 revolt, East India Company was abolished, and the British government took direct charge of the Indian colony. Britishers in the English judicial system established High courts at Calcutta, Bombay, Madras under the Indian High court Act 1861. Subsequently, High courts at Allahabad in 1864, Patna in the year 1916, and Lahore in 1919 were established. British judicial system, unlike earlier ones, had now codified legal statutes and they introduced the concepts like the Rule of Law, Separation of powers between the Executive and the Judiciary.

Though the new English judicial system was egalitarian, it increased the distance between citizens and the justice system; uneducated Indians could not understand this new complex process. Also, there was a huge language barrier leading to the dominance of lawyers in the justice delivery system; it was also quite expensive than earlier, it delayed the justice delivery due to procedural delay. Local Indian never related to it.

After independence, India adopted constitutional democracy. We adapted a judicial mechanism that is mainly influenced by the American criminal justice system.

The Indian Constitution in its Part V Chapter IV and Part VI Chapter V defines everything about Union judiciary and High Courts in detail. It gives every detail like the constitution appointment, powers, functions, removal, jurisdiction, etc of the Courts. The Supreme court of India is the highest court of the land, and below it, each state having its High courts. Some states have High courts in common. We currently have 25 High Courts in the country. The Constitution makers ensured the independence of the judiciary. Political executives cannot interfere in matters of judiciary directly though, parliament has powers in some instances. Our constitutional framers well maintained the mechanism of checks and balances between the executive judiciary and legislature.

Judiciary, i.e., the Supreme Court and High Courts, interprets the constitution from time to time to give more liberal and elaborative meanings to the provisions under the constitution which makes our democracy more vibrant. The Supreme Court, through a mechanism like Judicial Review**,** played its role very effectively. The top court also balances federal equations, i.e., disputes between the states and between union and state. It is because of Judicial Activism we citizens can enjoy our fundamental rights. Under Article 32 and Article 226 the Supreme Court and High Court entertains the writ petitions directly filed by individuals, making administration and executive more

responsible towards citizens. The Courts in India are free and conducts open trials. Also, the state provides free legal aid to the poor and needy. Judicial activism led to invent of Public interest litigation (PIL), Lok Adalat, Nyapanchayats, e-Court, etc., ensuring more and more accessibility to needy ones.

At the district and taluka level, we have subordinate courts established under respective high courts by the state government. They entertain civil and criminal matters under their respective jurisdictions. Our society evolves with globalization and modernization, more specialized and more complex issues creating new challenges in the judiciary. To handle such complex matters, we need more dynamic legislations, laws and also need specialized courts headed by specialists. We have been establishing more and more tribunal and specialized courts like a central administrative tribunal, national green tribunal, consumer courts, armed force tribunal, tax, labour, copyright, etc.

Today Indian Judiciary is facing various challenges as follows:

- Our judicial setup has a long history. We have inherited it from colonial masters, and we have been using that old mechanism leading to monotonous work and red-tapism
- India has substantial geographical, religious and cultural diversity still we have standard code to handle all personal, civil matters leading to alienation and detachment.
- We have a small ratio of population to judge, one of the worst in the world, and we urgently need to recruit more staff.
- Sadly, in India, criminal matters take on an average of thirty years to conclude, and civil matters are hardly disposed of and due to huge vacancies, justice is delayed. In Subordinate Courts, we have around 2.84 crore cases pending,43 lakh cases are pending in all High courts together, in the Supreme Court, we have more than 50000 pending cases.
- Judiciary in India always insisted on transparency in administration and governance but paradoxically kept itself out of the ambit of RTI, leading to corruption in the judicial system.
- We have, unfortunately huge no of undertrials (4.2 Lakhs) waiting to get bail. This is nothing but a violation of their human rights just because of their inability to pay.
- We have been following age-old practices despite technological up-gradation in other parts and professions. Inability to use appropriate technology in functions and procedures delaying justice.[1]

[1] Available at https://legodesk.com/legopedia/solutions-speed-indian-judiciary/ last seen on 15/04/2021.

[2]

It can be concluded that all four pillars are equally crucial for retaining and expanding Indian democracy. Judiciary can be considered as the most important of all as it still enjoys faith of people because of its political neutrality and progressive verdicts in the interest of masses which can also be depicted by the quote of Caroline Kennedy," *The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing*."[3]

[2] Available at https://legodesk.com/legopedia/solutions-speed-indian-judiciary/ last seen on 15/04/2021
[3] Avaialble at https://www.ijlmh.com/paper/independence-of-judiciary-in-india/ last seen on 16/04/2021.

India's "Justice League"- Torchbearers of Justice for Modern India

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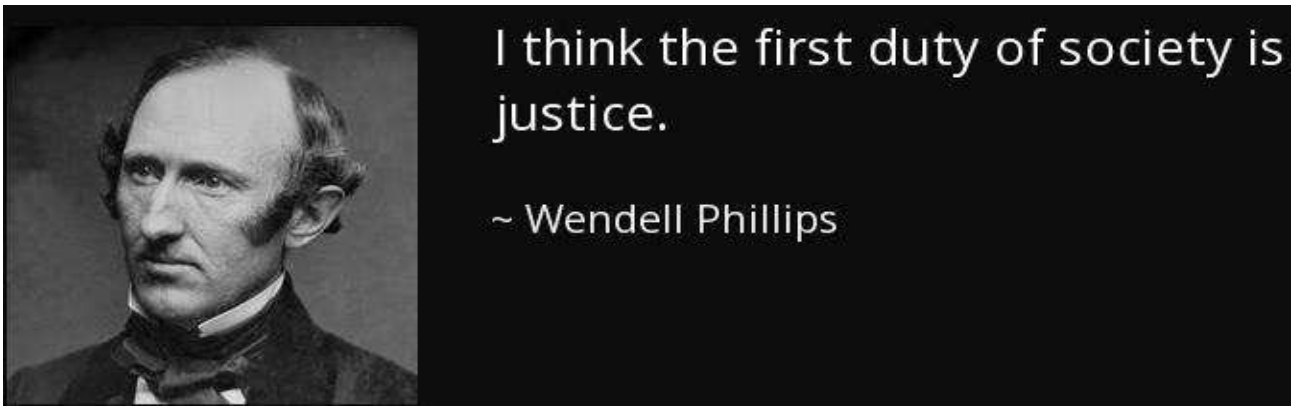


Introduction

Justice, the state or characteristic of being just of fair, is the back bone of any society. It ensures order and equilibrium while keeping the values of the society upright and the customs and ideologies that its people subscribe to, intact. Indian Democracy stands on three pillars- the Legislature, the Executive and the Judiciary. Though under the Constitution of India, they are separated by the doctrine of separation of powers, the fabric that binds and weaves these institutions and the society itself together, not just incidentally, is Law. It is not a surprise that, the efficiency of a just and equitable society in a Democracy relies on the extent of the Rule of Law of the land.

The Constitution of India empowers the Legislature to perform functions relating to enactment, amendment and repeal laws, and as such are known as the lawmakers. The executive are entrusted to perform functions and duties with regards to implementation and enforcement of law. It is however, the judiciary, the institution that ensures and is vested with the administration of justice. This relationship of the institutions of democracy only naturally coronates the upkeep of justice in the hands of those authorised with the duty to administer justice, the Bar and the Bench, above the rest. Needless to say, the Bar and the Bench are harbingers of the upright values that a society aims to uphold while keeping its ideals and customs intact.

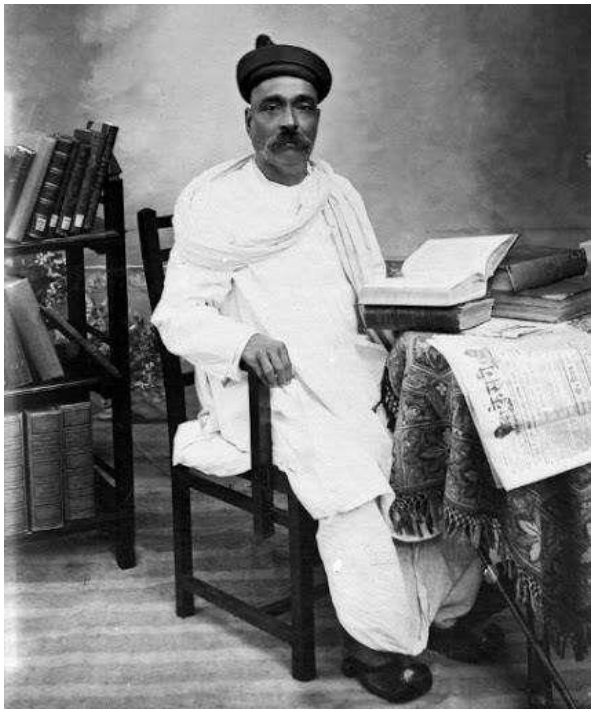
The coronations of the Royals in dynastic regimes, brought upon them apart from Royalty, a plethora of burdens and duties, sacrifice in spirit of righteousness and justice. Royals were considered living examples of highest standards and were expected to show it with their upright values and high ideals. Naturally, such analogous coronation to administrators of justice, baptises them to

hold high moral grounds to achieve the upright values and ideals that their society aims to achieve. It is thus impertinent that supreme level of ethics and moral conduct is demanded from those entrusted and desirous to be torchbearers of justice in the society. The Bar and the Bench, are two limbs of the institution of judiciary and it is only when these two legs stand on an equal footing dispassionately and impartially will significant grounds be achieved on the justice turf.

Both pre-independence and post-independence India have seen stalwarts who are exemplary symbols of honour, dignity, ethics and ideals which have led to historical milestone achievements in history of India. It is with the understanding of their contribution lead by examples of spirit of selfless sacrifice in honour of justice, we can understand the remarkable and extraordinary feat they achieved in doing justice, to administer justice.

Pre Independence Era:

First amongst the most venerated torchbearers of what I call India's "Justice League" is the name of **Bal Gangadhar Tilak born as Keshav Gangadhar Tilak** an Indian nationalist, teacher and freedom fighter. He was one of the first and strongest advocates of ***Swaraj*** a strong radical in Indian freedom consciousness, such that the British Colonial authorities called him *"The father of the Indian unrest"*. Mahatma Gandhi called him *"The maker of Modern India"*, while Jawaharlal Nehru referred him as *"Father of the Indian Revolution"*.



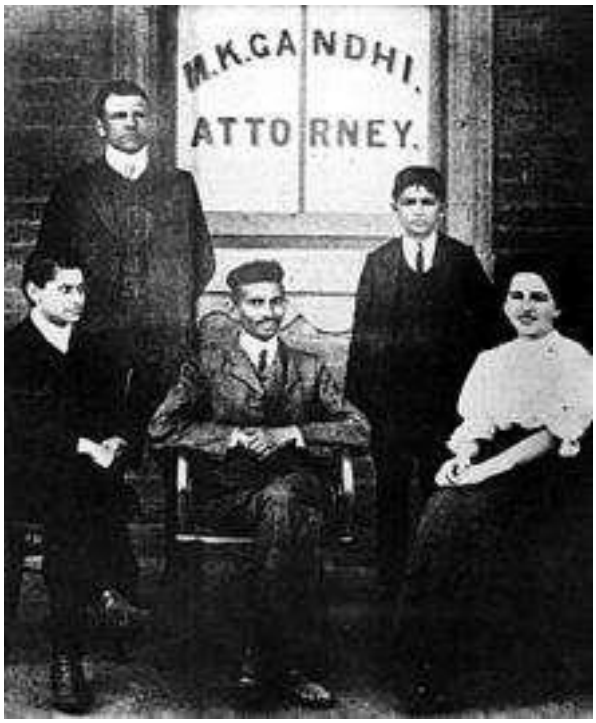
Lokmanya Tilak is an example of rare and eminent personalities, from the field of law, having graduated from Government Law College, has shown stellar contributions and achievements in fighting for justice to the society be it in the field of teaching or in uniting people in mass movement for Indian autonomy from British colonial rule. He was seen actively participating in public affairs.

He began as a teacher in a school and soon developed the institution into a university college after founding the Deccan Education Society (1884). But when he learnt certain members who were expected to follow an ideal of selfless service were keeping outside earnings for themselves he resigned. He turned to the task of awakening political consciousness through two weekly papers *'Kesari' published in Marathi and 'Mahratta' published in English*, through which he criticised the British Rule vociferously and those nationalists who advocated re-

forms along western lines. He sought to widen popularity of nationalist movement in his own way by promoting Hindu symbolism in names of Ganesh festival and Shiv Jayanti.

While his activities aroused the sentiments of the Indian populace it also alarmed the British government, the reason for which is evidenced in one of his many thought-provoking quotes *"Swarajya is my birthright and I shall have it"*. The British government prosecuted him for sedition and sent him to jail in 1897. The trial and sentence conferred upon the title of "Lokmanya" which means *"accepted by the people (as their leader)*. He was released after 18 months. Thereafter he went on to be a strong and eminent voice in India's fight for justice and freedom.

The father of the Nation, **Mohan Das Karamchand Gandhi,** fondly known as *"Mahatma Gandhi"* is another stellar example of lawyers of pre-independence era who had morals and worked on their principles of ethics. As a lawyer Gandhiji was a brilliant draftsman and his representations to the government were always logical, unambiguous and succinct.



Gandhi himself was honest enough to admit that he didn't have the skills the best lawyers of the time like Pherozeshah Mehta or Badruddin Tyabji were known for, like exhaustive knowledge of the statutes, the ability to recite case laws at will and exemplary oratory skills. But contradictory to this, he went on to became a torchbearer of justice as a lawyer and later as public leader to shaking up countries, continents and the gargantuan Dynasty to its very core.

He had moved to Bombay with the idea of using his qualifications as a barrister in London but failed to get a single brief in the High Court and once appeared in a Small Causes Court ending up in embarrassment and loss of words amidst cross examination of the opposite party. The adversities of his career as a lawyer in Bombay as against his success as a lawyer and a writer in London was a paradox of kinds. After failing to established himself in Bombay, Gandhi was forced to return home to Rajkot.

Though able to establish a moderately good practice, success remained elusive. It was eventually at being reprimanded by Ferozeshah Mehta as being *"hot-blooded"* and his advice *"Tell him he has yet to know life"* which came as a turning point in Gandhi's life which led to his role in the freedom struggle. But before that the desire to earn money led him to South Africa. The barely

known fact is that it was legal case that took Gandhi to South Africa and which would significantly impact how he would practice law and eventually conceive the freedom movement.

The case involved a dispute between members of a muslim trading family. He reached Durban and was to travel to Pretoria where the case was being heard, but during the journey he was thrown off the train twice because of his race and the third time he was asked not to sit in the first-class despite having a ticket. While working on the case, it made him realise the value of facts and through them the value of truth. He wrote *"Facts mean truth, and once we adhere to truth, the law comes to our aid naturally".* I urge my readers and brethren of the legal fraternity to pause here for a moment and reflects on these words. These words were what he began to live by in his legal practice, where he came to be known for his devotion to truth, even giving up cases mid-argument if he realised the client had lied to him.

We hardly need to know the chain of events that took place and how he rightfully came to be known as *"Mahatma"*, not only because of his endless sacrifices and relentless struggle for freedom but because this very devotion to truth became the cornerstone philosophy upon which he carved the idea of the freedom movement as "Satyagraha" or the struggle for truth.

It is not a mere coincidence that two exemplary venerated heroes and their deeply just characters collude with their fame and their ability to move the masses while gathering superhuman achievements against the largest Dynasty and the Colonials. Truth has an ability to gather momentum and force in the journey to achieving justice while garnering enough fame and respect on the way.

Post-Independence Era

Belonging to a middle-class family, **Nani Palkhivala** was a first generation lawyer. The striking and remarkable trait of this icon of "Justice League" of Modern India was that as opposed to the misconstrued notion of lawyers being shrewd and cold, Palkhivala was infact one of the most compassionate lawyers the Indian legal fraternity has ever seen. The most prominent name in the history of legal fraternity of India, his expertise on subjects of law, economics and taxation amongst others were par excellence. A rare and once in lifetime spectacle- watching Nani Palkhivala come out and give the budget speech, an annual feat that was a national sensation cherished by millions. Whenever in crisis the government would rely on his advice. While there is ample literature and

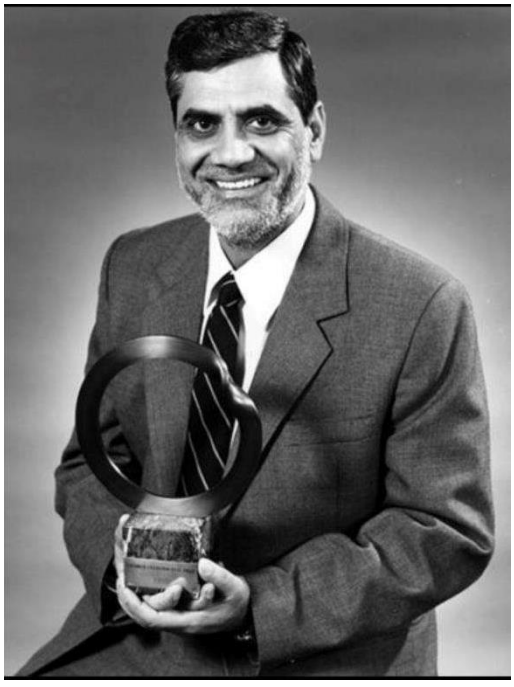
biographies on Nani Palkhivala, to do justice to subject of this article I would like to bring out an unreported fact of remarkable influence he has made in the instance of the landmark Kesavananda Bharti case.

Every member related to the field of law in India is well versed with Kesavananda Bharti case, but what is not known is the background story behind it. It is not a very known fact that an attempt was made to revive the Kesavananda Bharti Case. He wrote a letter to the then Prime Minister Indira Gandhi expressing his unwillingness to side the government on its decisions to challenge the verdict, an excerpt from the letter read as:

"I beseech you, dear Indiraji, to consider the consequences of seeking to have the judgment in Kesavananda case overruled. We have reached a historic moment when two roads diverge in the woods and our own decision at this juncture can have an imponderable impact for the good of the country. Please forgive me or inflicting this long letter on you. I would not have done so but for my conviction that you always have an open mind and that your decision can save the Constitution, ensure the onward march of the nation on our chosen path, prevent several months of waste of the court's time. Parliament's amending power to be limited, but it is based upon my belief that it would be a great gesture on your part to withdraw the state's plea for unsettling the law."[4]

The nation was on a definite road to collision had such honest, upright and daring stand in fight for justice not been taken by Palkhivala. The Constitution may have been crumpled at its very foundations, and the ideals of administering a just and equitable democracy that India stands on, would have been long lost.

A present day "Justice League" hero, ***Mahesh Chander Mehta***, belongs to a small village in district Rajouri in the State of Jammu and Kashmir (India). He is popularly and fondly known as M. C. Mehta a firebrand public interest lawyer who has single-handedly has won numerous landmark judgements from India's Supreme Court since 1984. He is a committed environmentalist by choice, he has made the fight to protect India's environment his unending mission. He has pioneered legal activism for environmental protection and is a living proof how one man can make a difference.



His career as a Supreme Court lawyer began in 1983, when he migrated to Delhi. In 1984, he began focusing on environmental litigation.

In the words of **Ms Smita Gate**"*Often described as the One Man Enviro-legal Brigade, Mr Mehta is prob-*

[4] reproduced in Nani A Palkhivala- A Life, by MV Kamath

ably the only Supreme Court lawyer to have taken up legal cudgels with the polluting Indian Industries and come out victorious. A dedicated, fearless and extremely honest man, he pursues his goals with single-minded devotion. He has been conferred with several prestigious awards"[5]

In 1993, after a decade of court battles and threats from factory owners he brought victory to India when the Supreme Court ordered 212 small factories around Taj Mahal to shut and another 300 factories were placed on notice. 250 towns and cities were ordered to line up sewage and 5000 factories around the Ganga river were ordered to put pollution control devices while 300 factories were closed. There are several such victories for the environment of India that this one man brigade has endeavoured. He has been instrumental in doctrines and principles being established into practice through various M. C. Mehta cases like *'principle of absolute liability', 'polluter pays', 'public trust doctrine'*. His indomitable spirit for truth and justice symbolises the spirit of warrior empowered with the sword of law and advocacy.

Conclusion

India as a nation takes pride in its culture whose roots lay on the foundations of honesty and truth. From mythological epics like Ramayan to Mahabharata, from religious texts like Gita, Quran, Bible, Guru Granth Sahib, Zend Avesta and many more- India is a cultural haven for various faiths that unite India and all of which at their root advocate the importance of justice and truth, peace, spirit of selfless service in public duty and welfare of others. As evidenced the freedom struggle of India too found its roots in the very heart of India culture based on these very principles.

The strength of a society is gauged on how ably and efficiently it administers justice, law and order. To great dismay and misfortune, India today is struggling with the same evils its cultural roots so proudly renounce. Justice is an undeniably expensive and rare luxury, one that comes at a cost, a very heavy cost. The country is today fighting a malignant cancer of corruption, delayed justice and malice in administration of justice. It is a well known fact that justice delayed is justice denied.

The onus is on the torchbearers of justice and herein I account the **Bar and the Bench**, who need to appreciate, imbibe and practice the very value of the institution they represent, the Justice system, which struggles to administer justice for public welfare in the spirit of righteousness, selfless service and public duty. Success in the practice cannot be achieved in defiance of the same value and principle the institution strives to administer, i.e. Justice. I would like to conclude on a note in ***Lokmanya Tilak's*** golden words, to bring home the point succinctly:

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[5] *reproduced on http://mcmef.org*

"Religion and practical life are not different. To take sanyas (renunciation) is not to abandon life. The real spirit is to make the country, your family, work together instead of working only on your own. The step beyond is to serve humanity and the next step is to serve God."[6]

It is these words of our venerated hero that needs to become the anthem for India's torch-bearers of Justice.

[6] https://motherandsriaurobindo.in

Virtual Courtroom System: Future of India's Judicial System

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Introduction

The current situation in the world is deteriorating and has lead to economic depression thereby affecting employment rates in various sectors due to outbreak of Corona Virus and pandemic situation. In addition, people are facing various other problems, such as hunger, homelessness & many

such. The impact of Covid -19 on the Indian Judicial system can also be felt. Traditionally, India was brought to justice after following the legal system for many years, the work was done on paper, and justice was restored a few years later but today the Indian judiciary is being modernized as even in these turbulent times, the country's judicial system has made long-term technical decisions using virtual mode. Therefore, this virtual court system technology should not be abandoned, even after we get rid of Covid-19 because this is indeed the future of India's judicial system.

Concept of Virtual Courtroom System

The Supreme Court has exercised its powers in accordance with Article 142, instructing the entire judiciary of India to establish a mechanism for the use of technology in this pandemic, usually a virtual court system. [Virtual courtroom is one which need not exist anywhere but electronical-

ly.][7]Therefore a virtual court is a court that uses a digital telecommuting tool system containing various programs and tools. [The Black Law Dictionary defines "open court" as a court to which the public is entitled.[8]] The main purpose of using a virtual court system is to prevent traditional procedure of litigation restraining lawyers from entering the courtroom and to resolve cases online. Therefore, the virtual court system is a system that resolves cases in the presence of a well qualified judge with complete technical infrastructure. Another important purpose of the system is to automate the process to ensure transparency and accountability in providing information to stakeholders. The headlines also indicated that another motivation for adopting and using the virtual court system is to increase productivity in terms of quantity and quality, and to make the judicial system affordable and profitable.

Since it is very important to first determine the types of cases that can be effectively resolved by virtual courts, the following types of virtual court cases in India can be considered as possible to be resolved by the digital technology under the pilot project:

- Offences under Motor Vehicles Act, 1988 (Traffic Challan Cases).
- Petty Offences where summons can be issued under Section 206 of The Code of Criminal Procedure, 1973.

Merits of Virtual Courtroom System

Advantages of the virtual court system are quite a lot since it is a full-fledged online court system that can help reduce court costs and expenditures by reducing investment in infrastructure, personnel, and security. Other major advantage of this system is that parties involved in a particular case do not have to enter the court in person and wait for their case to arrive, which ultimately reduces the parties travel time and will thereby make the procedure cost- efficient and relaxing, cheap and easy. It will also provide swift justice to the people. The adoption and digitization of technology will also improve the governance and accountability of the country's judicial institutions. At the beginning of the court video conference, people were not forced to leave their homes, which greatly reduced the spread of Covid-19 thus Judiciary played a very crucial role in curbing the virus alongwith delivering speedy justice to the people without any compromise& delay.

[7]Virtual Courtroom: concept and overview, by Chitranjali Negi, Advocate dated 16th April, 2016 published on SSRN.https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2765766

[8]Virtual Courts: Can they replace open court hearings?, by Senior Advocate Arijit Prasad dated 19th June, 2020 published on lawstreetindia http://www.lawstreetindia.com/experts/column?sid=410

One of the most salient edge of virtual courtroom system is that due to the use of digital technology, the work of the court has become flexible and feasible. In addition, large number of cases have accumulated and are therefore pending before the court and delay in judicial work have caused citizens to distrust the country's judicial system. With the adoption of the virtual court system the procedure will be given a thrust and the adjudication of the cases will be done in time bound manner. Thus, introduction of a virtual court system will speed up the judgment process and provide efficient services.

Demerits of Virtual Courtroom System

Everything that follows has advantages and disadvantages, and digital technology is no exception. The following are some disadvantages of virtual courtroom system technology:-

Firstly, there will be various legal issues related to the authenticity and enforceability of the identities of the witnesses and the witnesses provided in the court, including the use of technology because technology abuse is not new, so data security and privacy poses a big threat. One of the other biggest challenge of the digital system is the large investment required to install the basic functions of the digital court system, because there are 24 High Courts and more than 600 district courts in India. As a result, the development of the virtual court system requires huge technical improvements and large investments. A more important aspect that has not attracted attention is the quality of prompt enforcement of justice. The quality of justice may deteriorate due to the rapidization of justice. Therefore, we must ensure that the efficiency and effectiveness of the judiciary does not depend on the speed of justice. In order to be able to use an effective judicial system, the technology must be easy to use and accessible to everyone.

Transition in Indian Legal System due to outbreak of Covid - 19

Courts all over the world have made very interesting rulings and extremely exciting decisions. The first is regarding hearing of matters. For example, the United States Supreme Court has executed away with oral hearings until further notice on account of Covid circumstances. The Supreme Court of India also ruled a list of the most effective cases. Our definition of "urgent" has been reassessed. This will definitely affect how we continue to assess the "urgency" of the problem and cases after the situation returns to normal. The introduction of video conference hearings has finally been implemented: this will sincerely show that it is an important means of hearing cases in the future. If we conduct adequate inspections, we can ensure that all activities can start from our daily residence, which can save high prices and avoid delays. Reassess the prison and its functions. The Supreme Court of India ordered all states to remember to release certain types of prisoners. The understanding of the principles of criminal law is constantly increasing. When does the margin expire? Why

do we imprison so many people who are undoubtedly awaiting trial? Is the binding incorrect? Will prisoners suffer unnecessary physical health threats? Once the pandemic is under control, these ideas can be discussed.

Future of Virtual Courtroom System Post Covid -19 and Pandemic Situation

Justice D.Y Chandrachud, who chair's Electronic Committee viz. VCS of the Supreme Court, said that virtual court hearings will not replace physical courts in the future. Therefore, the digitalization of courts, including electronic courts, should be standardized. . It is expected that in the near future, with the introduction of a new electronic application module, the way that cases are submitted to the Supreme Court will change dramatically.

This module provides each registered lawyer with personalized information about the cases they have submitted, their own list of cases, the details of the claims they have submitted, and the claims filed by others. The service is available 24/7. This means that lawyers can file a lawsuit at any time of the day, regardless of whether the register is open or not. Of course, this requires a social revolution to transfer the status quo into a completely different framework. The Supreme Court can choose a combination of a physical court system and a virtual court system. This will help the court have the best of both worlds: increase productivity, reduce costs and time, while maintaining fairness.

Conclusion

In order to make the Judiciary system of the country stronger by the delivery of speedy justice, it would be advisable to keep the option of e-conferencing hearing available even when the situation of the country becomes normal, the physical work in the court resumes and the lockdown is over. This will help in taking the legal system towards digital also it will greatly help the staff, the Bar and the Bench to get used to this digital procedure and will also help us to understand it's flaws and correct it .The situation of Covid -19 since 2020 has changed the overall working of the legal system of the country as the Judiciary has proceeded towards digital capitalism and the virtual courtroom is the new emerging trend in the legal field. The advantages of the legal profession in the digital era are quite many and the technology has a wide scope as well, but it does require substantial amount of training, discipline and some more basic infrastructures all of which can only be achieved if all the stake holders of the country undertake the opportunity of achieving this milestone in the Judicial administration system of the country. Therefore to convert the Judicial System into a remote-working successful virtual world, the technological up-gradation and investment in court are quintessential.

Medical Jurisprudence- A Connection between Law and Medicine

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Introduction

Medical Jurisprudence is the field of science which is becoming essential in t he legal field day by day. Jurisprudence means "The science or philosophy of law, body or system of laws, a branch of law." It is the science that is, a systematized body of knowledge of t he law. Medical Jurisprudence is the application of medical knowledge and expertise to the processes of law. It is the branch that treats the application of the principles and knowledge of medicine to the purposes of the law, both civil and criminal. This medico-legal term brings both the professions together, that is, medicine and law.

Importance

Nowadays, many lawyers need advice from medical experts for various criminal cases. Many criminal cases include murders, injuries, unnatural death, suicide, requiring proper medical knowledge to get evidence or get the points to prove it into the Courts.

Medical jurisprudence is essential for both doctors and lawyers. Sometimes, there is a lack of knowledge about each others ' profession while practicing their profession. So while practicing the medical profession, many doctors are unaware of the laws, rules, Acts. So due to this, it leads to negligence.

In the legal profession, lawyers are unaware of various medical facts, which can be vital in solving the cases. In every trial for manslaughter or for the offence of causing hurt to the human body, opinions of medical experts are invited to ascertain the cause of death. Cases related to the injuries, the probable weapon used, the effect of medicines, poisons, the consequences of wounds, whether they are sufficient in the ordinary course of nature to cause death, the duration of injuries, and the probable time of death. So it is essential to take consultancy of the medical expertise in such cases. To cross-examine the witness properly, the lawyer must know medical aspects in respect to the questions to be asked.

Three sciences are related to medico-legal cases. They are mentioned as below:

1. Forensic Medicine
2. Medical Jurisprudence
3. Toxicology

These subjects deal with all the aspects of law and medicine.

Application

In cases like murders and suicide, the lawyers need medical knowledge to prove whether it was suicide or murder. In the postmortem report, various findings are mentioned about the body of a dead person. Still, due to the lack of knowledge about the medical facts and terms, lawyers cannot find the crucial findings that can help them solve complicated cases due to the availability of less evidence to prove.

- In Postmortem reports, rigor mortis is mentioned. It is such an essential thing that by which we

can determine the timing of death. In court trials or cross-examination of the witness, such points are always helpful to the lawyer to argue or prove his point in the court.

- The other thing which is essential from a legal aspect is the time of death of that person. The rigor mortis can determine the time of death, as we discussed above. The other factor by which we can determine the time of death is stomach content found in the stomach of that dead body. The undigested or digested form of content determines the duration between the meal and the death. By this, the exact time o f death is determined. This all comes under forensic science, but in complicated cases, sometimes such small facts can make a big difference when it comes to solving the case.
- Cases in which the death is caused due to the severe injuries on body parts or due to the neck cutting, or the cases in which the victim has various injuries; in such cases the type of injuries plays a very important role. Wounds are of different kinds like an incised wound, lacerated wound, stab wound, punch wound, etc. These types of wounds are depended upon the weapon used in the attack by the accused. One sharp weapon causes incised wound which has definite margins. The weapon having an irregular edge causes a lacerated wound that has indefinite margins. The stab wound is so deep that it leads to heavy blood loss. So it is essential to get such findings that help the lawyer, and ultimately it gives justice to the right person.

- For example, A complainant accusing a defendant of attacking him and causing injury which was dangerous to his life. According to the complainant, the defendant's injury was with the help of a `hacksaw blade,` but the wound was incised wound. The wound had substantial margins. Hack saw blade had teethed edge that is an irregular edge. So it will not cause sharp wounds with definite margins. It will create a wound with indefinite margins. Hence, in such a case, the defendant's defense can say that the weapon which mentioned by the complainant will not cause such a type of injury. For finding such points to argue or to prove, a lawyer needs an advice from medical experts.

In Khomanlal vs. State of Chhattisgarh, 2013 Cri LJ 924, it was held that the question of motive is concerned , chopping of head by knife and causing other injuries itself sufficient to prove the grave intention of the appellant of causing the murder of a deceased person.

There are several cases, like rape cases, where medical opinions matter the most.

In Puttan vs. State, 1972 Cri LJ 2 71, the medical opinions made it clear that the intercourse was committed with the girl's consent. The Court held that it is in the medical evidence

that there was no external injury of any kind whatsoever either on the girl's body or that of the appellant male. If the girl had struggled, there would have been some scratches on the face.

The complete absence of any injury or blemish on the person of the appellant and the victim suggests clearly that the intercourse was not forcible. The Court, therefore, found that the sexual intercourse was not forcible but was with the consent of the girl.

So here, in such cases, medical opinions play a very crucial role.

Medical Negligence

It is the misconduct by a medical practitioner or doctor by not providing enough care resulting in the breach of their duties and harming the patients' consumers.

Medical negligence has caused many deaths as well as adverse results in patient's health.

In Spring Meadows Hospital and Another vs. Harjot Ahluwalia and another 1998 CPR (SC), the hospital was negligent in employing unqualified people as a nurse and entrusting a minor child to her care. There had been considerable delay in reviving the child's heart, and this delay damaged the brain. So here, negligence by the hospital was proved.

Conclusion

Medical jurisprudence helps lawyers gain clarity about the facts and know more about medical terms. Hence, lawyers take the opinions of medical experts in complicated cases more seriously. So medico-legal field is newly budding branch, many medical experts are opting for this field. It makes both the profession aware of each other's field,that is, law and medicine.

Hospital Fires- Laws for Prevention, Protection and Fire Fighting Installations (As per National Building Code 2005)

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Introduction

Recently we have seen so many Hospital Fires in Maharashtra specially the Fire at a paediatric ward in a Government Hospital at Bhandara district on 19th Feb 2021, which claimed 10 deaths of new born infants, Vijayvallabh hospital fire Virar Mumbai, thirteen Covid19, patients charred to death, from August 2020 till date there were 24 hospital fires, 13 were small fires with less losses but other fires happened in March and April 2021, which claimed 43 deaths in Maharashtra alone out of 93 all over India.

Though various reasons are said to be the causes of fires such as overloading of hospitals, unaudited electrical installation, overloading of electricity due to extensive use of AC ,ventilators and other electrical operated systems in hospitals. Now even it is said that the extensive use of oxygen for covid 19 patients has increased the concentration of oxygen content in covid wards and the high use of sanitizers has lead of high concentration of alcohol fumes in covid wards, due to which even a spark produced by electric switches is enough to produce flash fires in covid hospitals.

However, taking into consideration the heavy demand due to overflow of Covid19 patients in India, specially in Maharashtra Temporary Hospital's , Jumbo Covid centres also present their own challenges, they are temporary structures made of highly inflammable material, where automatic fire fighting system like sprinklers and automatic detectors is very difficult to install. Only basic equipments like fire extinguishers are kept which is not a remedy in case of fire emergency. However, some of the Jumbo Covid centres are given fire protection by keeping standby Fire Fighting Vehicles with trained fire fighters round the clock. Also fire fighting installations such as Fire Hydrants are also installed. But the heavy use of highly flammable material for construction of temporary structures still is a question unanswered and can create a disaster.

Other than Covid 19 patients, there are other different types of patients in hospitals who are injured, sick, unconscious, recieving vital treatments or connected to machines. Hence, in case of fire, it is very necessary to evacuate them to a place of safety in case of emergency as early as possible to save them.

Hence, Hospital buildings in India should be designed and constructed as per the provisions in the National Building Code of India (NBC) 2005, latest updated in 2016.

As per the provisions of this Code, Hospital buildings are divided into the following three categories:

1. Fire Prevention
2. Life Safety and
3. Fire Protection

When we talk of Fire prevention in Hospitals, there is a separate part in the NBC 2005, which is part 4 of the NBC.

All requirements of structural fire protection are defined ie. the approach road width to a hospital building, type of construction, material of construction, width of staircase- passage- lobby- exits etc, number of staircases, number of lifts, Refuge Areas, building Height restrictions, lighting arrestors, marginal open spaces around the building, terraces, balconies etc. All these provisions are very important to consider so as to have an easy access to fire vehicles and fire fighters and also evacuation in case of fire or any emergency.

Also Life safety provisions are very much useful in case of fire emergencies. When fire occurs there is lot of smoke, which creates panic in the occupants of the hospital. For safe evacuation of the building, the size and width of the exits such as doors, stairs, ramps, corridors, safety signage's, smoke control etc play an important part in evacuation. There should be staircase and lift lobby pressurization, smoke exhaust and ventilation systems installed.

Passive fire fighting and detection systems such as smoke detection, public addressing systems, fire doors to stairs and lobbies should be installed for safe evacuation.

Standard Operating Procedures to be adopted, fire fighting training to hospital staff, provision of trained fire staff in High-rise Hospital buildings and Conducting regular Fire drills is a important part of life safety in hospital buildings.

The Fire Protection requirement is related to selection and installation of correct type of fire fighting systems in a hospital building as per the height of of the building, floor area on each floor, number of patients, the fire load on the building etc. This is of use in case of fire in building. The fire fighting system consist of Automatic/Manual Fire Hydrant systems (IS 908- 1975), Automatic sprinkler systems (IS 9972-2002), pressurised water mist systems(15519 - 2004), Gas suppression systems(IS 6382-1984) and Installation of Portable fire extinguishers as per the provision in the BIS 2190-1992) etc.

In Hospital fires, one case study is very important to know and understand as follows:-

AMRI Hospital fire in Kolkata, happened in 2011, has claimed 91 lives, on investigation of the case following are the facts/findings:

- The fire in the hospital started in the basement where highly flammable medical equipment was illegally stored.
- Hospital staff abandoned the hospital when the fire started and did not try to rescue any patients.

- The local fire brigade arrived after 90 minutes since the fire was started.
- Windows and doors were locked due to central AC system; Windows had to be broken to get access inside for fire fighting and rescue.
- Most of the deaths were due to smoke inhalation.

From the above facts, it is learnt that the hospital did not follow the guidelines of NBC 2005 for Hospital buildings. The basement is not meant for storage of any flammable material, in case of AMRI hospital, the rules were flouted, fire staff was not trained to use fire fighting installation and rescue. No proper training for evacuation of building. Failure of communication equipment and working of alarm system delayed to report fire to fire department and inmates of hospital, fire prevention guidelines were aso flouted. No smoke management lead to asphyxiation of patients to death.

Conclusion:

From the above discussion it is very clear that separate provision regarding planning, designing and construction is provided in the National Building Code of India,` 2005. The regular servicing and maintenance of electrical installation, fighting equipment smoke ventilation systems etc is very important and should be audited regularly. Following the Standard operating procedures, proper training to hospital staff and periodical mock drills lead to perfection and confidence building amongst the staff and other emergency authorities. Preparation of On-site emergency plans also lead to additional safety measures and also a mandatory provision as per the law.

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