

WOMEN AND CHILDREN - ROLE OF COURTS

by

**Hon'ble Mr. Justice P.Sathasivam,
Judge, Supreme Court of India on 23.03.2013 at
Tamil Nadu State Judicial Academy during the Special Programme
for District Judges and Chief Judicial Magistrates on "Women and Children"**

A very Good Morning and warm greetings to each one of you assembled here today. At the outset, I must applaud the enduring efforts of the Tamil Nadu State Judicial Academy to organize at frequent intervals conferences like these on topics of contemporary relevance, which no doubt benefit the legal fraternity at large. After all, it is only with constant thinking and deliberations, we can ensure that statutes do not remain mere statutes, but evolve into a legal system responsive and sensitive enough to meet the challenges of present times with an eye on future.

It is with this very idea that the State Judicial Academy is organizing today's session. It is heartening to know that the highest body in the state for training judges has undertaken such an endeavor to sensitize judges who form the foundation of the judicial pyramid in our country.

The topic of my address is "Women and Children - Role of Courts". To begin with, we all agree that in a democratic country like ours, the courts, as the guardian of rights, play a crucial role in enforcing the rights of the people as enshrined in the Constitution and elaborated in various acts. Without enforcement, rights remain mere paper promises. As judges, we are often called upon to perform a 'twin role' of balancing conflicting rights of the persons or groups who approach the courts and simultaneously restore faith of the public in rule of law.

In the last 65 years of independence, if there is one concern, which has been the subject of much debate and has constantly encompassed the judicial mind is the rights of women and children in India. Counted together, they form more than the majority population and yet their voices and choices continue to be in minority. Their social and economic disadvantages further disable them to seek legal remedies. It is in this background that judiciary has exhibited extra precaution in deciding civil and criminal cases involving women and children. Courts have given a purposive interpretation to the legislations to undo age old inequalities and extend the benefits favorably.

In spite of timely interference by legislature and judiciary, the equal status of women and children has not translated into actual reality. The vulnerable status of women and child is the only element, which has not witnessed radical change in this globalized and liberalized world. However, the eternal truth remains that no country can

see the full swing of development both economic and social until their women and children prosper.

Recent statistics of rape, child abuse, sexual harassment, child marriages and female foeticide depict the grim reality, which prevails today. Violence and its various manifestations point to the fact that discrimination against women and children is not mere local issue. In this light, the judicial wing of the State has to play a vital role in elimination of such discrimination in particular and for the upholding of women and children rights in general.

India is a diverse country with its multicultural, multi-ethnic and multi-religious population where the protection of human rights become sine qua non for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have defined Human Rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993. The women and children are entitled to the same human rights as individuals. This was envisaged by our Constitution makers and the same has to be enforced by the judiciary.

It is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. The Apex court and High courts are armed with writ jurisdiction to check the violation of fundamental rights. The Procedural laws delineate various powers and functions of the district judges at every stage both pre-trial, during trial and post-trial. I am confident that you are aware of these provisions and the same require no repetition. However, I wish to remind you that these powers and functions bestowed upon you are to be exercised as public trust in full compliance with the Constitutional mandates of fair and speedy trial. As District Judges and Magistrates you have a greater calling while discharging statutory functions. Hence, it is a moral imperative as well as a duty upon the district judges to reduce disparity in society.

CONSTITUTIONAL COMMITMENTS IN SAFEGUARDING WOMEN AND CHILDREN

The framers of the Indian Constitution took note of the adverse and discriminatory position of women and children in society and took special care to ensure that the State must take positive steps to give them equal status. The framers have bestowed two kinds of rights based on role of State i.e. firstly, positive rights which obliges the State to actively undertake welfare measures and secondly, negative which prohibits discrimination. Together, Fundamental rights and Directive principles of State policies are an amalgam of these two kinds of rights.

Positive Rights

Article 14: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Article 15(3) enables the State to make special provisions for children.

Article 21A and 45 provide for free and compulsory education to child below 14 years of age.

Article 39: “The State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 42: “The State shall make provision for securing just and humane conditions of work and for maternity relief”.

Article 47 stipulates that it is the duty of the state to raise the level of nutrition and health of the children.

Negative rights

Article 15(1): “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”.

Article 16(2): “ No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

Article 23 & 24 specifically prohibits trafficking, forced labour and child labour.

The Directive Principles under **Article 39 (e) & (f)** bars all forms of exploitation prejudicial to any aspects of the children’s welfare.

Though the concept of rights of the child was not very lucid at the time of making of the Constitution, it still envisioned children as the assets of the country who need

protection to develop into a complete being capable of steering the nation to development. These provisions only highlight the fact that our Constitution makers were fully aware of their responsibility towards women and children.

Apart from constitutional guarantees there is a plethora of legislative enactments and policies that have been passed to give effect to the constitutional mandate.

This has been further supplemented and implemented by judicial precedents with passage of time. Next, I wish to highlight the jurisprudence relating to gender justice and then subsequently on child rights.

WOMEN EMPOWERMENT THROUGH JUDICIAL PROCESS

Upliftment and advancement of women has been at the centre of constitutional mechanism. Various provisions of the Constitution as earlier stated and the amendments providing 33.3 percent reservation for women in local self governance aim at achieving the two ideals of the Preamble i.e. equality of status and equality of opportunity.

While there are several schemes and programmes relating to education and health of women in rural and urban areas indicative of the continuous efforts on part of executive to ensure equality, the question to be asked is what has been and what is the role of courts in achieving gender equality.

It is my view that the judiciary has attempted to venture into the critical role of a social reformer by upholding the rights of women. It continues to play a progressive, dynamic, creative and proactive role for social, economic and cultural transformation. The role of the judiciary can be further discerned from a number of progressive decisions rendered over the decades. For an organized reference, I have clubbed the cases under two different heads viz. Equal opportunities and Equal Status.

EQUAL OPPORTUNITIES

A. Ending Discrimination in Public Employment and More Representation through Reservation.

The difficult task before courts is to harmonize gender equality with gender differentiation in order to ensure gender justice in its truest sense. This requires careful balancing and must depend on facts and circumstances of each case. I may refer to two case laws to illustrate this approach that courts in my view must adopt.

In ***C.B. Muthamma, IFS vs. Union of India*** (1979) 4 SCC 260, the validity of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 was challenged which forced women diplomats to obtain a written permission from the government before marriage could be solemnized and left it to government's satisfaction to terminate services marriage. Although the petition was dismissed as the government amended the particular rules, the case brought to light the discrimination faced by women even in high

government posts. Writing the judgment, Justice Krishna Iyer observed:

“..We do not mean to universalize or dogmatise that men and women are equal in all occupation and all situations and do not exclude the need to pragmatism where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern”.

In **Government of Andhra Pradesh vs. PB Vijay Kumar** (1995) 4 SCC 520, the court upheld the government’s notification reserving 30% seats for women in public services and also the preferential treatment in posts better suited for women. Giving wide meaning to the term ‘special provision’ under Article 15(3) to include both reservation and affirmative action, the Court observed that:

“Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16”.

B. Sexual Harassment

The role of court in laying down guidelines for public and private employers in order to curb sexual harassment is well acknowledged. The fact that these guidelines have been in operation for 15 years and only in 2012, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2012 was enacted which points to dynamic role of courts in enforcing equal opportunity to women at workplace in compliance with international convention against discrimination.

In **Vishaka and others vs. State of Rajasthan**, (1997) 6 SCC 241, the Supreme Court held that sexual harassment of working women at her place of employment amounts to violation of rights of gender equality and right to life and liberty enshrined in Articles 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further, the Supreme Court, in this case said that, as there is no law relating to sexual harassment in India, therefore, the provisions of International Conventions and norms are to be taken into consideration, and charted certain guidelines to be observed at all work places or other institutions until a legislation is enacted for the purpose.

In **Apparel Export Promotion Council vs. A.K. Chopra**, (1999) 1 SCC 759, again the Supreme Court reiterated Vishaka ruling and said that the attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Articles 14 and 21 of the Constitution. The Court further stated that international instrument such as the convention on the Elimination of All Forms of

Discrimination against Women and the Beijing Declaration casts obligations on the State to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

Recently in ***Medha Kotwal vs. Union of India***, (2013) 1 SCC 297 a three Judge Bench of the Supreme Court heard a PIL raising the grievance that the guidelines in *Vishaka* case are not followed in substance and spirit. The court took note of the fact that there is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and issued necessary directions on the same.

C. **Plight of Women Workers - from equality to empowerment**

The plight of women workers has been brought to the attention of courts in several cases. They form one of the most neglected sections of the society as mostly employed in the unorganized sector. A very important and useful provision of women's welfare and well-being is incorporated under Article 42 of the Constitution. It imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, and the like.

In the case of ***Dattatraya Moreshwar Pangarkar vs. State of Bombay*** AIR 1952 SC 181, the Supreme Court held that legal provisions to give special maternity relief to women workers under Article 42 of the Constitution do not infringe Article 15(1). In the case of ***Municipal Corporation of Delhi vs. Female Workers (Muster Roll)*** (2000) 3 SCC 224 the Supreme Court held that the benefits under the Maternity Benefits Act, 1961 extend to employees of the Municipal Corporation who are casual workers or workers employed on daily wages basis. This applies to the claim of non-regularized female workers for maternity relief.

By giving favorable interpretation such as extending maternity benefits to all women whether employed on regular, casual, daily wages or on muster roll basis, it can be said that court have moved a step ahead from equality to empowerment.

It is noteworthy to mention the case of ***Associate Banks Officers Association vs. State Bank of India*** (1998) 1 SCC 428, wherein the Apex Court held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In ***Air India Cabin Crew Association vs. Yeshaswinee Merchant and Ors.*** (2003) 6 SCC 277, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour.

EQUAL STATUS

The Supreme Court delivered a very significant judgment when it ordered in **Velamuri Venkata Sirprasad vs. Kothuri Venkateshwarlu**, (2000) 2 SCC 139 that equality of status was integrated to the concept of basic structure of the Constitution and was an important dimension of gender justice.

In **Yusuf Aziz vs. State of Bombay**, AIR 1954 SC 321 the validity of Section 497 of IPC (adultery) was challenged under Articles 14 and 15 (1) of the Constitution. Section 497 of the IPC only punishes a man for adultery and exempts the women from punishment though she may be equally guilty as an abettor and this section was held by the Supreme Court to be valid since the classification was not based on the ground of sex alone, thus relying on the mandate of Article 15(3). Even Section 354 of IPC (assault or criminal force to woman with intent to outrage her modesty) is not invalid because it protects the modesty only of women and Section 125 is valid although it obliges the husband to maintain his wife but not vice versa. Similarly, Section 14 of the Hindu Succession Act, 1956 converting the women's limited ownership of property into full ownership has been found in pursuance of Article 15(3).

Another landmark judgement was given by the Apex Court in **Gita Hariharan vs. Reserve Bank of India**, (1999) 2 SCC 228. In this case, the Court interpreted Section 6 of the Hindu Minority and Guardianship Act, 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

In **Arun Kumar Agrawal vs. National Insurance Co. Ltd** (2010) 9 SCC 218, a significant question which arose for consideration was the criteria for determination of the compensation payable to the dependents of a woman who dies in a road accident and who does not have regular source of income. The court, while raising the amount of compensation has rightly observed the following:

"In India, the Courts have recognized that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may

volunteer to render some of the services to the family which the deceased was giving earlier”.

To reiterate, it is the duty of the courts and tribunals to factor these considerations in assessing compensation for housewives who are victims of road accidents and fix just compensation. Thus, courts have a role in giving such an interpretation to beneficial and welfare legislation which serves to ameliorate the status and conditions of women in our society.

Apart from these cases, there are many other cases in which the Apex Court had given the judgments, helping to give a dignified status to the women. The judiciary, definitely, filled the vacuum created owing to inadequacies in laws.

ARTICLE 21- DIGNITY OF WOMAN AS AN INDIVIDUAL

Article 21 contains provisions for protection of life and personal liberty of persons. In the case of ***State of Maharashtra vs. Madhukar Narayan Mandikar***, (1991) 1 SCC 57, it was held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy. This article has also been invoked for the upliftment of and dignified life for the prostitutes.

The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women was held in ***Shri Bodhisattwa Gautam vs. Subhra Chakraborty***, (1996) 1 SCC 490; ***Chairman, Railway Board v. Mrs. Chandrima Das***, (2000) 2SCC 465.

Article 21 has to be read together with Article 51 A Clause (e) as added by the Forty-Second Amendment which gives a mandate and imposes a duty on Indian citizens “to renounce practices derogatory to the dignity of women”. The duties under Article 51-A are obligatory on citizens, but it should be invoked by the Courts while deciding cases and also should be observed by the State while making statutes and executing laws.

FAST AND FAIR SETTLEMENT OF MATRIMONIAL DISPUTES TO BRING RELIEF TO WOMEN AND CHILDREN

In the last decade or so, there has been an enormous upshot in matrimonial disputes which are often a hybrid of civil and criminal proceedings. This leads to further delays as parties approach multiple courts with their claims and counter claims. The rigor of legal procedures is disruptive of normal family life and has a direct bearing on future of many women and children litigants. Thus, only fast and fair settlement of matrimonial disputes can bring just relief to them.

In a recent judgment pronounced on 15th March this year, in ***Jitendra Raghuvanshi vs. Babita Raghuvanshi***, Cr. Appeal No: 447/2013, the Supreme Court upheld the inherent power of High Courts to quash criminal proceedings in non-

compoundable offences under Section 498A and 406 provided a mutual settlement is arrived between matrimonial parties. The court further observed that:

“The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction”.

I believe that there are higher chances of successful mediation in matrimonial disputes when done at initial stage itself. Here, the role of district courts and subordinate judiciary in encouraging amicable settlement assumes primary importance and is very much within the statutory mandate of Section 89 of the Civil Procedure Code. The Apex Court is conscious that the subordinate courts are in the best position to help parties arrive at a meaningful settlement favorable to both. Keeping this in mind, the Supreme Court while allowing transfer petitions in matrimonial matters has been issuing directions to district family courts to make all endeavors for early settlement and disposal.

ROLE OF MAGISTRATES IN DOMESTIC VIOLENCE CASES:

Domestic violence is a serious infringement of human rights of women, which needs to be eradicated completely. Previously, when a woman is subjected to cruelty by her husband or his relatives, her only remedy was under section 498A IPC. However, with the enactment of the Protection of Women From Domestic Violence Act, 2005 (*hereinafter as ‘the Act’*), the civil remedy to women in such offences was recognized. In precise, this act was enacted to effectively protect rights of women who are victims of violence within the family and to provide expeditious civil remedy to them. The Magistrates role becomes very vital for reaping the full benefits of this act.

Magistrates should be pro-active and inform the applicant of her legal options, including securing maintenance, custody and divorce. All efforts should be made to deal with applications for protection orders promptly. Each case of physical abuse, sexual abuse, verbal and emotional abuse must be treated seriously, fairly, expeditiously and with sensitivity. Section 14 of the Act also entails the magistrate at any stage of the proceedings to direct the respondent or the aggrieved person, either singly or jointly, undergo counseling.

Further, under section 9(2) of the Act vests control and supervision with the concerned Magistrate to oversee the various duties which are performed by the Protection Officer. The Magistrates must make all endeavours to dispose of applications for relief within a period of 60 days from the date of first hearing. Giving such speedy relief is the mandate of Section 12(5) and also in concurrence with the larger objective of

ending violence against women which is occurring within four walls of the house.

RECENT CRIMINAL LAW (AMENDMENT) ACT 2013

The Criminal Law (Amendment) Act 2013 has been recently passed by Parliament on 19th March amending IPC, CrPC and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum 20 years for gang rape has been prescribed.

The amended law places additional duties on magistrates to ensure fair and speedy disposal of crimes against women especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions.

- Newly amended Section 164(5A) expects the Judicial Magistrate to record the statement of the person accused in offences punishable under Section 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police.
- In Section 273 CrPC, a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination.
- Section 309 (1) now mandates completion of inquiry or trial for rape within a period of 2 months from date of filing of chargesheet as compared to earlier proviso which contemplated relevant date from commencement of examination of witnesses.

Next, I wish to focus on child rights jurisprudence.

ROLE OF COURTS IN UPHOLDING CHILD RIGHTS

The courts have aimed at equal rights for women and children, it is always their welfare and interest which is of paramount consideration. Courts are often called upon to exercise their *Parens Patriae* (Latin term for “Parent of the Nation”) jurisdiction and decide cases involving children with utmost care and caution applying human touch to the problem.

BEST INTEREST OF CHILD

To fulfill this role of courts effectively, judges should be not only conversant but also give due weightage to certain rights of children fundamental to their well-being. These can be summarized as follows:

- The ***civil rights of children*** include the right to a name and nationality, birth registration, protection from torture and maltreatment, special rules governing the circumstances and conditions under which children may be deprived of their

liberty or separated from their parents, etc.

- The **economic rights of children** include the right to benefit from social security, the right to a standard of living adequate to ensure proper development, and protection from exploitation at work.
- The **social rights of children** include the right to the highest attainable standard of health and access to medical services, the right to special care for handicapped children, protection from sexual exploitation and abduction and the regulation of adoption.
- The **cultural rights of children** include the right to education, access to appropriate information, recreation and leisure.

There is an urgent need for recognizing another important inalienable right of the children, which is the '**Right to petition**'. In precise, children must have the right to be heard by the courts in deciding issues, which affect them directly. Already a start has been made in this regard, as in most child custody cases; interaction of the judge with the child to gauge his/her preferences has become standard procedure. I hope that this good practice is adhered to in all district courts of the State.

CHILD PROTECTION

There is no issue concerning children that is not potentially in some way related to child protection. Often, protection concerns lie hidden beneath the surface of issues that seem unrelated. For example, the concern of lack of sanitation in schools is intertwined with safety of girl students who may be vulnerable to sexual abuse. Further, it acts as a barrier in coming to school adversely affecting their right to education. Thus child protection links closely to all aspects of children's well being and is very much a concern for courts today. Child protection means protection from abuse and violence.

The need of the hour is for the courts to award stringent punishment in offences against children. In **Childline India Foundation vs. Alan John Waters and Ors.** (2011) 6 SCC 261, complaints of physical and sexual abuse of children kept in shelter homes in Mumbai were before the Supreme Court. Convicting the accused who deserved no leniency the court observed as follows:

"Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation".

India has witnessed an increase both in crimes committed by children and those committed against them. Children who are likely to come in contact with the judicial system may be children in conflict with law or juveniles and children who are victims or witness in the case.

In ***Sheela Barse vs. Children Aid Society and Ors.*** (1987) 3 SCC 50, a petition was moved for the plight of children in observation and homes the court issued several directions with regard to trial of cases against juveniles and establishment of special courts presided over by special cadre magistrates trained suitably for dealing with cases against children. We now have in place the Juvenile Justice (Care & Protection of Children) Act as amended in 2010, which lays down the special procedure to be followed in cases of children in conflict with law. The challenge before courts is to balance goals of deterrence and reformation. Both of which are extremely relevant when children come in conflict with the law.

The moot point is that courts have to be sensitive to the fact that children are not one homogenous category. All children are not similarly placed. Further, there vulnerabilities differ in type and extent. Children in difficult circumstances include orphans, street children, migrant children, children affected by manmade and natural disasters, drug addicts, refugee children, slum and migrant children and children of commercial sex workers.

Taking note of this fact, in ***RD Upadhyay vs State of Andhra Pradesh and Ors.*** AIR 2006 SC 1946, the court issued directions for the development of children with their mothers who are in jail either as under trial prisoners or convicts. While observing that the best interest of the child is the primary consideration in our Constitution, it was held that such children shall not be treated as an under trial or convict while in jail with his or her mother. Further, they are entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

Deciding cases involving children becomes even more challenging as courts are pitted against economic and social malaise, which can't be undone by judiciary in one go. An illustration of this is the issue of child labour in light of extreme poverty prevailing in the country. The courts are not immune to this reality and have admitted public interest litigations on behalf of children exploited as bonded labourers in stone quarries, employed in firework factories, construction industry and circuses. The landmark case of ***MC Mehta vs. State of Tamil Nadu*** (1996) 6 SCC 756 is reflective of court's pragmatic approach in dealing with issue of child labour. While upholding children's right to education, the court also suggested measures such as provision for alternative employment to parents.

Time and again, the courts have dwelt on the obligations of the state and society towards children and recalled India's commitment by acceding to the UN Convention on Rights of Child. Thus, judges must adopt pragmatic approach while dealing with cases

involving child rights and remedy the gaps in access to justice for them.

ENSURE CHILD FRIENDLY COURTS

Whether children come into contact with the law as victims, witnesses, offenders or complainants, it is equally important that they are met with a system that understands and respects both their rights and their unique vulnerability. There have been some progressive developments in the last few years, which have provided children the right to be heard in court. Perhaps the most significant among them is the in-camera trial for sexually abused children. Prolonged and delayed trials keep children and their aggrieved families away from seeking any legal redressal at all and they give up mid-way. To counter this, courts must adopt child friendly procedures and easy access to child victims and child witnesses.

Guidelines have been laid down in ***Sakshi vs Union of India*** (2004) 5 SCC 518 with regards to holding trial in cases of child rape or abuse such as screen to be placed between victim and accused, sufficient breaks to be given to child during testimony etc. District Judges and magistrates must give their special attention that these directives are strictly followed both in letter and spirit.

Further, it is important to create an enabling environment wherein the children are able to express themselves. This clearly calls for new and additional infrastructure and change in the existing infrastructure in all courts dealing with children. It also calls for a change in the functioning of the courts. The newly enacted The Protection of Children from Sexual Offences Act, 2012 provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as the paramount importance at every stage of the judicial process. Likewise, the Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. The Act is a progressive step and must be implemented in its full spirit.

Children need to be informed about their rights under the laws and in the legal system. This can be achieved only by propagation of awareness among the children. The District Legal Aid Committees must ensure that legal aid and advice reaches to children who seek legal representation.

MEASURES NECESSARY TO IMPROVE COURT'S ROLE IN PROVIDING SPEEDY JUSTICE TO WOMEN AND CHILDREN: A REMINDER

1. Prioritize cases where women or children are party by early listing and hearing without unnecessary adjournments.
2. Ensure that cases of rape, molestation, kidnapping, eve-teasing, murder for dowry, cruelty by husband/relatives, trafficking of girls are referred to Fast Track courts set up for the purpose.

3. Although there is no outer time limit for completion of trials, judges should try to achieve the mandate of Section 309(1) of CrPC that:

*“in every inquiry or trial the proceedings shall be held as **expeditiously** as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from **day to day** until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*

4. Timely and proper recording of dying declaration of the victim by the judicial magistrate is crucial for final conviction and officers must be adequately trained in this regard.
5. Trial in rape cases must be in-camera as per Section 327(2) of CrPC. The provision seeks to protect the identity of the victim and must be adhered to. However, under the proviso, the presiding judge may allow support person to accompany the victim on written application. Such a request should be allowed if favorable to recording victim's testimony.
6. Create an enabling environment for child victims/witnesses inside the courtroom. Children should not be forced to have contact with alleged perpetrators and, where appropriate, audio-visual or closed-circuit television technology should be made available to facilitate the process. Children should be asked straightforward questions in language that they understand.
7. Legal aid and advice should be made available round the clock. District Legal Aid Committees should take the lead in the same and take special measures to reach out to women and children.
8. Setting up of all women courts and child friendly courts is a positive development. However, gender-sensitive training must be necessary part of training for judicial officers and other court staff.
9. Organization of Lok Adalats to encourage settlement in matrimonial disputes should be adhered too.

Thank You!