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High Court of Tripura

Agartala

The Hon’ble Chief Justice
and the Hon’ble Judges of the High Court

Hon'ble Mr. Justice Deepak Gupta
The Chief Justice

Hon'ble Mr. Justice U. B. Saha
Judge

Hon'ble Mr. Justice S. C. Das
Judge

Hon'ble Mr. Justice S. Talapatra
Judge

SPEECH OF HON'BLE MR. JUSTICE DEEPAK GUPTA, FIRST CHIEF JUSTICE OF THE HIGH COURT OF TRIPURA AT THE TIME OF INAUGURATION ON 26.03.2013.

My Lord Hon'ble Mr. Justice, Altamas Kabir, Chief Justice of India, Sri Manik Sarkar, Hon'ble Chief Minister of Tripura, Hon'ble Mr. Justice Aftab Alam, Judge, Supreme Court of India, Hon'ble Mr. Justice Adarsh Kumar Goel, Chief Justice Gauhati High Court, Sri Tapan Chakraborty, Hon'ble Law Minister of State of Tripura, my esteemed brother judges, Sri Pijush Kanti Biswas, President High Court Bar Association, Mr. S.K. Panda, Chief Secretary of Tripura and other official present here, Mr. D.P. Kundu, Advocate General of Tripura, Registrar, High Court of Tripura, Judicial Officers, learned members of the Bar, Ministerial staff of the High Court and sub-ordinate courts, ladies and gentlemen.

The establishment of our own High Court is the result of a long struggle. This is a great moment for the people of Tripura especially the members of the Tripura Bar. We are privileged to have with us on this auspicious occasion, the head of the Indian Judiciary, Hon'ble Mr. Justice Altamas Kabir. His lordship is one of the most compassionate and humane judges this country has known. Thank you sir for sparing your valuable time to be with us.

I am also very grateful to Hon'ble Mr. Justice Aftab Alam for joining us on this joyous occasion. Sir, it is our good fortune that you are here with us today.

Justice Adarsh Kr. Goel is like an elder brother to me and I am sure that he will continue to bless and advise me. I hope that with your encouragement I shall carry on the legacy which you have carved out for this High Court.

On a personal note, I may add that I have come from Himachal Pradesh which is at the northern extremity of the country to Tripura which is at the extreme east. Though we may be separated by distance, I find that there are many things in common. Nature has showered its bounty on both Himachal and Tripura and as in Himachal, in Tripura also it shall be my endeavour to protect and enhance the environment and ecology of the area. The literacy rate in both the states is amongst the highest in the country.

What do the people expect from the judiciary? Each of us has taken an oath of allegiance to the Constitution of India, which enshrines the spirit of democracy. The rule of law is the basis of a democratic system and our entire Constitution breathes the spirit of the rule of law. It is the duty of all democratic institutions to ensure that the rule of law is enforced. A greater burden lies on the High Court which is the highest Court of the State to uphold the rule of law and this is the most important duty which is cast upon the High Court.

Today we have gathered here to celebrate the commencement of the new High Court of Tripura. I assure you that my brother Judges and I shall make an earnest endeavour to meet the aspirations of the people of Tripura and protect the rights of the citizens. The High Court not only decides disputes between citizens and citizens; the High Court also has to decide disputes between citizens and the State. It is the duty of the High Court to ensure that the rights of the citizens guaranteed, to them under our Constitution are actually enforced. It is the duty of the Judges to hold the scales of Justice even and administer the law without fear or favour, affection or illwill to the best of their knowledge, ability and judgment. That is the oath that my brother Judges and I took on 23rd March, 2013 and to abide by the oath is our sacred duty.

A democratic way of life is incomplete without a High Court. Rights will have no meaning if there are no remedies. The only remedy available to the citizen in case of infringement of his rights is to approach the High Court. No halfway house can take the place of the High Court.

Our founding fathers realizing the importance of the High Courts conferred very wide powers on them under Articles 226 and 227 of the Constitution of India. As far as I am aware no other Court in the world has such wide powers. Wide as they are, they must be exercised judiciously. The Judges

while discharging their functions should act fearlessly, without any fear of criticism. At the same time, the Judges should also not seek popularity in the discharge of their duties.

On this day to mark the celebration of the commencement of the High Court of Tripura, all of us, Judges, Lawyers, members of the ministerial staff and everyone else involved in the task of administering justice should remember the duties and responsibilities which rest on our shoulders.

Our Constitution is federal in nature and there is separation of powers between the legislature, executive and judiciary. This is a system of checks and balances. I hope and expect that all three wings in this State work in a spirit of comity. Each wing must respect the powers of others. Sometimes conflicts may arise and are bound to arise, but these conflicts must be settled in a dignified manner. While we respect the other wings, we also expect that they should give to the judiciary what is due to it. The judiciary is the only wing which does not control the purse strings and has to approach the other wings for funds. While considering our requests, the legislature and the executive must remember that the judiciary is the beating heart of democracy. It is the judiciary which sends blood and oxygen in the form of "rule of law" to every extremity of the body politic, constantly balancing individual rights with social interest and establishing at every point the relation between law and life. If Indian judiciary survives, Indian democracy survives. If the judiciary fails, it will be difficult for other democratic institutions to survive.

The teeming masses of this country repose great confidence in the judicial system. This is a great honour to the judiciary of this country. However, we cannot shut our eyes to some aberrations in the judicial system. There has to be zero tolerance towards corruption, and those who blacken the fair name of the judiciary must be dealt with mercilessly.

My endeavour along with my brother Judges will be to ensure that justice to the people of Tripura is made easily accessible. Not only should it be easy for the citizens to approach the Court, but justice should be delivered speedily and the litigant should not be burdened with huge costs of litigation.

Tripura is a beautiful State conducive to lofty thinking. It was in Agartala that the greatest poet of our country Kabi Guru Rabindranath Tagore wrote some of his best poems. I am sure that in this conducive atmosphere we will also rise above the ordinary and the mundane and deliver judgments which have far reaching impact.

I assure My Lord the Chief Justice as the head of the judicial fraternity and Shri Manik Sarkar, Hon'ble Chief Minister and through him the people of Tripura that my brother Judges and I will ensure that the people of Tripura are given what is due to them and is their right under the Constitution of India. I hope and pray that by the time I leave Tripura you will not only accept me as a son of Tripura, but the confidence of the people of Tripura in the State judiciary increases manifold.

Thank you.

'JAI HIND'.

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ADDRESS OF THE HON'BLE CHIEF JUSTICE ON THE 1ST FULL COURT REFERENCE OF THE HIGH COURT.

My esteemed brother judges Hon'ble Mr. Justice U.B. Saha, Hon'ble Mr. Justice S.C. Das, Hon'ble Mr. Justice S. Talapatra, Shri D.P. Kundu Advocate General, State of Tripura, Sri Pijush Kanti Biswas, President High Court Bar Association as well as Assistant Solicitor General of India and learned members of the High Court Bar, Ld. Registrar, Officials and staff of the Registry.

Every High Court, says Article 215 of our Constitution, 'shall be a Court of record'. This means that the proceedings of the Court are recorded and preserved for future generations to see and to gather such light as they can from the record. The proceeding of the Court, which are to be so recorded and preserved, are all judicial proceedings with one exception. That exception is made when the Court, interrupting its ordinary business, takes notice of something which has occurred and which deserves to be recorded and which is recorded after a reference is made to it. The speeches made at the Reference from a part of the Court's official record. This is the only non-judicial proceeding of the Court, which sits for it formally as a Court, is known as a Reference.

Tripura is an ancient kingdom which finds in the Mahabharata. It was ruled by the Manikya Dynasty since the 14th Century. The princely State of Tripura acceded to the Indian Union on October 15, 1949 and became a part 'C' State. Tripura became an union territory in November 1956 and a full fledged State on 21st January, 1972.

As far as the judicial history of the State is concerned. According to W.W. Hunter:

> 'Until the year 1873-74 the Courts of Hill Tipperah dispensed justice according to a primitive system of equity and good conscience and there was no regular judicial procedure'.

In my view the system could not said to be primitive because if law is dispensed in accordance with equity and good conscience, it is probably highest form of law. The king was the fountain head of justice till 1873-74 when certain procedural acts were passed and Courts set up in the year 1874 in Agartala. Provision of filing appeals was also made before the appellate Courts and there was a Privy Council of the State. However, this Privy Council was not totally independent and was subject to the consent of the Maharaja. After the merger of Tripura with Union of India a regular hierarchy of Courts was established with the Judicial Commissioner at the helm of affairs below him were the District and Sessions Judges and below them the Sub-ordinate Judges and the Munsiffs.

On reorganization of the North-Eastern Areas (Reorganisation) Act, 1971 (Act 81 of 1971) Tripura became a full-fledged State and the High Court of Assam and Nagaland was abolished in terms of Section 28 of the said Reorganisation Act, 1971 and a common High Court came to be established for the five states of Assam, Nagaland, Meghalaya, Manipur and Tripura and two Union Territories (Union Territories of Mizoram and the Union Territories of Arunachal Pradesh). The High Court of Assam and Nagaland was renamed as the Gauhati High Court and now we have finally achieved complete judicial autonomy by having our own High Courts establishment.

This is a momentous occasion for the State. The High Court was constituted on 23rd March, 2013 but the formal inauguration took place on 26th March by the Hon'ble Justice Altamas Kabir, Chief Justice of India and today on the 2nd April, 2013 we are holding first Full Court Reference in the Court.

We must build up strong and healthy traditions and I hope and pray that personal egos will give away to the interest of the institution and both the Bench and the Bar will be generous and work together to set up healthy and better precedents. Both the Bench and the Bar must rise above narrow professional prejudices and vanities and must pay a tribute to worth and merit wherever it may be found. The Bench and the Bar are two wheels of the chariot of justice. This chariot cannot move if any one of the wheels ceases to function. If we are to serve the cause of Justice we must work in unison. When we are not together we cannot work fearlessly and one of the most important attributes of a good Court is/where both the Judges and the Lawyers work without any fear, except the fear of doing something which is wrong. The entire judicial fraternity should work in a fashion which is not deflected by any affection or ill-will. We must set up standards which serve as a benchmark of the moral stature of the society in the State. I am confident that the members of the Bench and the Bar of this Court will spare no effort in doing all that has to be done to maintain the highest standards of administration of justice of this newly born High Court of Tripura.

Speaking on behalf of the Bench I feel it is my duty to point out, what in my opinion, are the most important attributes of a competent Judge.

(i) The first and foremost qualification of a Judge is that he should be a person of unimpeachable integrity and should possess a sharp and exacting conscience.

(ii) The second essential requirement for a Judge is that he should be an open to conviction and should be ready to change his mind. He should constantly endeavour to study and understand with a detached objectivity, what is right and what is wrong in every department of human life whether legal, economic, political, moral or social. A Judge should have no bias including the bias of thought.

(iii) Thirdly the judge should possess an ability to firmly grasp and fully understand the basic principles of law which regulate the system and administration of Justice.

(iv) Fourthly, in today's day and age where arrears are mounting, though this problem does not really affect the High Court of Tripura, Judges have to be innovative and they must try to develop, practice and master the science of alternate dispute resolutions so that Justice is administered speedily and smoothly.

(v) Lastly, a Judges temperament should be such which enables him to view with clarity of mind and unruffled disposition, the essential features of the case being argued before him. The Judge should not be distracted by irrelevant, inessential and other disturbing factors, such as loss of temper, which he may encounter during the discharge of his duties.

I have set out the qualities of a Judge and it is for the Bar to decide what are qualities of a good Advocate. For me, there is no distinction between Judges and Advocates except that they perform different functions. As far as the manner of approach, method and integrity is concerned, the Bar must also rise to the same standards. It is the duty of the Advocate to state his client's case as strongly and firmly as possible. In my view a Lawyer is capable when he puts forth his client's case objectively, that is to say, after fully understanding the strengths and weakness of his client's case. A good lawyer can win more cases by making fair and speedy concessions where these are obviously unavoidable rather than hammering and spending his time pressing a point which he knows has no legal basis. If the Lawyer is fair to the Court it casts a favourable impression on the Judge and wins the Lawyer the respect and esteem of the Court.

In the few days I have spent here, I have seen that the members of the Bar are as good if not better then the members of the Bar in other larger Courts in the Country. That has given me greater confidence and I am sure that I will be able to do the task which I am enjoined to do and I am sure that I will receive your fullest cooperation.

On this august and solemn occasion I request all of you to ensure that we all work together for the welfare of the people of Tripura. The foremost interest in our mind should be to ensure that the poor people of Tripura get what is due to them under the Constitution. On my behalf and on behalf of my brother Judges I assure you that we will try to ensure that very high standards are set up and high traditions are maintained in this Court.

Thank You.

Jai Hind.

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TRIPURA JUDICIARY – A ROAD MAP FOR THE FUTURE
A VISION DOCUMENT TO ASSESS THE NEED OF THE TRIPURA JUDICIARY IN THE NEXT TWENTYFIVE YEARS

* by ***Justice Deepak Gupta***

Every citizen of the country has a fundamental right to have access to cheap and speedy justice. It is our duty to ensure that this fundamental right is effectively available to every citizen. At the same time, we must ensure that the quality of justice is of the highest level and necessary infrastructure in the nature of buildings, court staff, facilities for the Bar, the litigants and witnesses are available in each and every court.

Tripura is a small State and the number of cases pending is not very high. The ratio of the number of Judges compared to the number of cases is much better than the rest of the country and in my opinion, there is no need to expand the Judiciary at this stage. In fact, our problem is that out of sanctioned posts of 102 Judges, only 67 posts are filled in. Even out of these 67 posts, 2 of the senior Judicial officers have been re-employed after retirement. Therefore, the most imperative need is to ensure that the vacant posts are filled in as early as possible. After the constitution of the High Court some posts need to be created at the High Court level but even with the addition of these posts, in my view, there is no need to increase the strength of the Judiciary in the near future.

If we properly rationalize the strength of the Judges in each station after taking into consideration the number of cases pending, I am clearly of the opinion that without increasing the strength of the Judges, we can ensure that a judicial delivery system is optimized and works in an efficient manner. I have in the last five months visited each and every sub division in the State of Tripura, seen the facilities available in each and every court in the State. I have visited those places where courts have been constructed but are not functioning. I have also visited some stations where at present there are no courts in existence but they may require the setting up of the courts in the next twenty five years.

In case, we fine tune the system and make optimum use of the funds granted under the 13th Finance Commission as well as the Centrally sponsored schemes, I see no reason why we should not be able to improve the justice delivery system in Tripura system and ensure that cases are disposed of in the minimum possible time. There will be very little financial burden on the State of Tripura. The only burden may be with regard to construction of staff quarters.

As on 30th June, 2013, there were total number 56,909 cases pending in the State of Tripura. Out of these, 8678 were civil cases and 48,231 are criminal cases. Out of the criminal cases more than 25,000 cases are challans under the Motor Vehicles Act or the Tripura Police Act and the disposal thereof will have to be dealt with by invoking some new and innovative methodology. These petty cases are clogging the work of the courts and the court staff remains busy dealing with these petty cases. In my view, we must tackle the situation head on. In Agartala, Holiday courts have been very successful in dealing with motor vehicle challans. Similar Holiday courts should be held at other stations also and will require change in the norms that a Holiday court should be held only if at least 2,000 cases are fixed. Where there is a single officer, I see no reason why a Holiday court cannot be held even only three to four hundred cases can be fixed before the Holiday court. They can be taken up

by a Holiday court to be held once a month. Fixing 2,000 cases in a Holiday court may be justified only in Agartala and nowhere else in the State.

An important aspect is that the staff of the court has to spend the same amount of time to issue notices in such cases. This leads to piling of other more important cases. I therefore, propose that the Police department should ensure that the Constables posted in the Police courts attached to each court should fill up the registers and issue the Motor Vehicle challans of and if this work is handled by the Police staff which is available in the Police court the Judicial staff can easily handle the remaining work. I have already taken up this matter with the Home Secretary and the Director General of Police who have assured that sufficient staff shall be made available to issue challans in such petty matters. If this is done, the burden on the courts will be greatly reduced.

Another important administrative change, which in my opinion, is urgently required in the State is that all Judicial officers in the State should be vested both with the civil as well as criminal jurisdiction. There will be two advantages if we do this. I have found in certain stations that there is only requirement of one Judicial officer, but two posts have been created, one of a Sub Divisional Judicial Magistrate and one of a Civil Judge and Judicial Magistrate, First Class. If one Judicial officer is vested both with civil and criminal powers one court will suffice. In most of the smaller States of the country, the Judicial officers exercise both criminal and civil powers and dispose of both types of cases. This should be done in Tripura also. We will then be able to spread out the work equally amongst all Judicial officers. Another benefit if we follow this system will be that the Judicial officers will gain experience of conducting both civil and criminal cases. There are very few civil cases at many stations and some of the Judicial officers have not even conducted one civil case in the last four to five years. They will completely lose touch with civil law and, therefore, in my opinion, they must deal with both types of cases.

The number of crimes is increasing day by day. The general public has a genuine grievance that the performance of the judicial delivery system is below par. The percentage of acquittals is very high. Crimes against women are agitating the public. Even in a State like Tripura which has a high rate of literacy and where women are otherwise well respected I find that there are increasing number of crimes against women. This need to be dealt with firmly. I have already issued a letter requesting all the Judicial officers of the State to dispose of all cases in crimes against women within six months from the date of institution of the case. However the courts can only decide the cases if the police and the Public Prosecutors are efficient and discharge their duties in a proper manner. Most of the cases are being delayed only on account of requests and adjournments asked for on behalf of the prosecution. Some of the Public Prosecutors are not even aware of the basic principles of criminal law. The faith of the public in the judicial system will crumble in case immediate steps are not taken to bring about affirmative changes in the entire judicial delivery system. It is also necessary to ensure that all persons engaged in the justice delivery system are properly trained and equipped to deal with such type of cases.

JUDICIAL ACADEMY

Now that Tripura has an independent High Court, it is time for us to immediately set up a Judicial Academy in Tripura. For this Judicial Academy, we need 5 to 10 acres of land to house the academic complex, auditorium, hostels, quarters of the Director and other staff of the academy etc. The Judicial academy shall not only train Judicial officers but also the ministerial staff of the judiciary. In addition thereto, I propose that the Judicial academy should be actively involved in training of Public Prosecutors also. Some programmes can also be held to train the police officers in regard to the investigative functions and how they should prepare their files for the court. The Judicial Academy can

also impart training to other administrative officers who exercise judicial or quasi-judicial powers, such as Land Acquisition Collectors, Revenue officers exercising powers under Tripura land Revenue & Land Reforms Act etc. The 13th Finance Commission had made provisions of Rs.15 crores for each Judicial Academy. Inflation has been high and, therefore, the budget for the new Judicial Academy may have to be about 40 crores. But, I am sure most of the funds would be available by way of Central Government grants.

The entire infrastructure of the academy cannot be ready, immediately. Hopefully, we shall have about 24 new Judicial officers next year who will have to be trained. This training must be imparted to them in the Judicial Academy in Tripura and not at Guwahati. As per my assessment, the most suitable accommodation available at present is a part of the heritage building which earlier housed the Agartala Bench of the Gauhati High Court and which is presently being renovated to house the Law Training Institute. There is one big room (old court room) and 5 smaller rooms and this accommodation would be sufficient to run the academy in the beginning. At present for the academy we shall need to appoint one Director, one Joint/Deputy Director and some ministerial and Group-D staff. The faculty can initially be sourced from amongst Judges, both serving and retired, Law teachers and Advocates.

(B) PROSECUTION

In the State of Tripura, Public Prosecutors are being appointed as per the provisions of Section 24(1) to 24(5) of Code of Criminal Procedure, 1973. There is no provision of any test or interview and the District Magistrate in consultation with the Sessions Judges prepares a panel of names of persons who in his opinion are fit to be appointed Public Prosecutors or Addl. Public Prosecutors. After my experience of dealing with a large number of criminal appeals in the 5 months that I have been in Tripura, I am of the confirmed opinion that this system is not working satisfactorily. In a small State like Tripura, it is necessary to have a regular cadre of Public Prosecutors in terms of Section 24(6) of the Code of Criminal Procedure. It is true that immediately this system cannot be changed, but the process must be started and Public Prosecutors shall be appointed in a regular cadre so that they can be trained to discharge their duties in an efficient manner. Some of the Public Prosecutor/Addl. Public Prosecutor who have been appointed are not even aware of the basic provisions of criminal law. I am unable to understand how the District Magistrate or even the Sessions Judges have found them fit to be appointed as Public Prosecutors. Be that as it may, the time has come when the State must seriously consider the creation of regular cadre so that in the next 10/15 years, the entire work of this nature is done by regularly appointed Public Prosecutors.

No doubt, the Code of Criminal Procedure allows Public Prosecutors to be appointed in the manner in which it has been done. The action is, therefore, not illegal, but after dealing with more than hundred criminal cases barring one or two cases, I have found that in most cases the accused were acquitted because the Public Prosecutor has not done his job properly. The role of a Public Prosecutor is very important and it is imperative that persons are appointed after due selection where their legal and forensic skills can be properly assessed. Therefore, I would suggest that a regular cadre of Public Prosecutor/Addl. Public Prosecutor be set up immediately.

TRAINING OF POLICE OFFICIALS

In the last 5 months I have dealt with more than hundred criminal cases. I have found that in almost all cases the level of investigation by the police is much below par. Sometimes, the statements of important witnesses have not been recorded. In a case relating to Section 364 A IPC wherein punishment is for life, the ransom note was not exhibited. In many cases the High Court has had to

remand the cases because the Public Prosecutors and the Police functionaries did not do their job properly. The Police department has not been bifurcated into the investigation and law & order. Both law & order and investigation are being handled by the same officers. The quality of investigation in my opinion is much below par and the investigating officers need to be trained adequately. The Judicial Academy shall be helpful in training such investigating officers also.

FACILITIES FOR JUDICIAL OFFICERS AND STAFF OF THE JUDICIARY

There can be no manner of doubt that all facilities as proposed by the Shetty Commission and approved by the Hon'ble Supreme Court would be provided to all Judicial officers. Therefore, it is the responsibility of the State to ensure that adequate number of staff quarters are built to each and every station to house the Judicial officers in accordance with their status.

I have found that there is acute shortage of accommodation for the ministerial staff. At most stations, there is either no or very little accommodation for Group-C and Group-D staff. A large number of employees belong to Agartala and they are reluctant to work at station outside Agartala mainly because no accommodation is provided. It is the responsibility of the State to ensure that necessary funds are made available for construction of staff quarters.

Another practice which requires to be changed is engagement of employees/persons on contingent basis or on fixed pay basis. When these employees/persons are paid very little remuneration obviously the court works suffer. In my view, all the court staff should be in a regular cadre and all the contingent posts and fixed pay posts should be brought into regular cadre. In case, the State has some financial constraints, then the employees who are initially recruited may be on contract for a period of 5 years at the minimum of the pay scale and may not get increments and other allowances but after 5 years they should be regularized.

TRIPURA JUDICIARY – AN OVERVIEW

At present, there are three Judicial districts in Tripura and the pendency of cases as on 30-6-13 is 56,909 out of which, 25,813 are pending in West Tripura district, 16,445 in South Tripura district and 14651 in North Tripura district. This shows that there are very high number of cases in West Tripura district. Even in West Tripura district, the maximum number of cases are in Agartala where there are 13,705 cases. A proposal has already been sent to the State Government that now at least seven Judicial districts be created. The High Court has not found justification for creating a new Judicial district at Khowai keeping in view the very small number of cases pending there.

I feel that there is an immediate requirement to start some new courts. One of the foremost objectives of the Judicial system should be to ensure that justice delivery system reaches the doorstep of the litigants who should not be forced to travel long distances, spending huge amount of time and money for this. The aim of this report is to ensure that as far as possible, the Judges are provided even at the most remote areas of the State.

I shall now deal with each station separately:

WEST TRIPURA JUDICIAL DISTRICT

(1) **AGARTALA** : There are total number of 13705 cases pending in Agartala. At the present moment, there are 18 courts functioning at Agartala. Out of the total number of 67 Judicial officers, 11

are handling non Judicial works such as in the Civil Secretariat, State Legal Services' Authority, Marriage Counsellors etc. That means there are a total number of 56 officers presently available to do the judicial work. The number of cases in Agartala is 13705 which is approximately 24.08% of the 56,909 cases pending in the State. 18 Judicial officers, out of 56, are posted at Agartala which works out to 32.14%. This means that Agartala has got more than it's share of Judicial officers and we may be able to spare one or two Judicial officers from Agartala once we rationalize the number of officers in proportion to the number of cases.

The court buildings at Agartala are extremely old and there is a need to take immediate steps for construction of at least one new building. I have already discussed the matter with the Addl. Chief Engineer and the Chief Architect and the new plan has been prepared for construction of a six-storey building in the southern side of the existing complex. This will house 8 new courts and one entire floor will be provided for the Bar. It will also have facilities for record room, Computer centre and Litigant Service centre etc. in the ground floor. 2 courts along with the officers will be housed in each of the remaining four floors In my view, the construction of this building brooks no delay and should be started as early as possible. As soon as the building is completed we should start construction of another building of the same height and the similar design on the site where the existing court of Chief Judicial Magistrate and criminal courts are situate. That building can house all other Magisterial courts. The second building can also have provision for many other facilities. Assuming that the construction of the new building will take two to three years, during this period the plan of the second building can be prepared and as soon as the first building is completed and 8 courts are shifted there the construction of second building can start. After both the buildings are ready we will require to demolish the buildings housing the district courts and new building have to be constructed. But that process can wait for another ten years. Provision will have to be made to house at least two Family courts at Agartala. The land at the judicial complex at Agartala is adequate if we go for high rise construction of five to six storey buildings. After the court buildings are complete, the State may consider constructing a fresh Police court and lock-ups. The building of the Bar Association and the Deed Writers also needs to be totally re-built. In my view, the Bar can be accommodated by giving it one floor in each of the buildings and then the need for constructing a separate building for the Bar may not arise. However, the Deed Writers can be housed in a separate building and the possibility of housing the Deed Writers in the same building where Police court and lock-ups are to be constructed can be examined.

The old High Court building should remain as a heritage building and the main court rooms can be used as auditorium and conference hall for the District court complex. In the remaining portion of the heritage building we can have a small museum to depict the history of the Tripura Judiciary.

Though the number of Magistrates posted in Tripura may be higher, in my opinion there is immediate requirement of creating one more Family court at Agartala.

At the same time, we must take steps to take the courts to the litigants and I propose that one court each may be opened in Mohanpur revenue sub division and Jirania revenue sub division. This will reduce the number of cases in Agartala. Over a period of time, many more cases are likely to be filed in Mohanpur and Jirania and therefore I propose that while identifying the land and raising construction, the infrastructure should be created in such a manner that initially there may be one court but another floor can be added later on for creation of a second court. The courts at Jirania and Mohanpur should be made functional within 5 years.

(2) **KHOWAI :** The Full Court has not recommended the creation of a new Judicial district in Khowai. As on 30-6-13, there are 2876 cases pending in the courts of Magistrates and Civil Judge

(Junior Division) in Khowai. Out of these, 257 cases relate to Teliamura revenue division and therefore, I propose that land be identified at Teliamura and building be constructed for establishment of a court there within the next 2/3 years. As far as Khowai is concerned, at present only two Magistrates are posted in Khowai and one court of Addl. District & Sessions Judge is filled up. In my opinion, the present staff strength in Khowai is sufficient and one post can be kept vacant for the time being. The buildings at Khowai are absolutely dilapidated and not worthy of being called courts. The accommodation for the Bar is an apology in the name of accommodation. Therefore, a double-storey court building having provision for four courts along with all other necessary facilities and provision for Bar room and Bar library requires to be constructed immediately at Khowai. The building can be designed on the lines of the new Judicial complex at Sonamura. This building can be constructed at the available site along with some other land in which the Police court etc is housed. This work cannot be delayed and we need to start this work of construction of building in Khowai latest by 1st January, 2014 and the funds which have been made available by the Central Government can be utilized for this purpose.

(3) **BISHALGARH :** Bishalgarh has only two courts, but the number of cases there is very high. As on 30-6-13, there are 5232 cases are pending. However, most of these are traffic challan cases.

(4) **SONAMURA:** At present, the High Court has recommended that Sonamura should be the headquarters of the Sipahijala district. There are 3 courts at Sonamura. One Addl. District Judge's court, one SDJM,s court, and one court for Judicial Magistrate, Second Class. As on 30-6-13, there are 4000 cases are pending. Therefore, in my view, the present staff strength is sufficient to meet the requirements. The new building at Sonamura is sufficient to meet the requirements. This is by and large a very well designed building and the same plan can be replicated with some modifications at all other places.

NORTH TRIPURA JUDICIAL DISTRICT

The re-organisation of the districts will affect North Tripura district the most since three districts, namely, North Tripura, Unakoti and Dhalai will be curved out of North Tripura Judiciary. At present, the headquarters of the North Tripura district are at Kailashahar. However, after re-organisation the headquarters of Unakoti distrtict will be at Kailashahar.

(5) **KAILASHAHAR :** There are 8 courts at Kailashahar. One District Judge's court, one Family Court, one Addl. District Judge's court, one CJM's court, one court of Civil Judge (Sr. Division) & Asstt. Sessions Judge, one court of Civil Judge (Jr. Division) and two courts of Judicial Magistrate, First Class. As on 30-6-13, there are 2808 cases are pending. Therefore, in my view, the present staff strength is sufficient to meet the requirements. The number of cases in Kailashahar is likely to fall down substantially after re-organisation of the districts since a lot of areas which now form part of Kailashahar will later form part of other districts. As far as Kailashahar is concerned, the infrastructure of the court and the Bar room is reasonable and calls for no additions.

(6) **DHARMANAGAR :** Even in Dharmanagar the number of courts is sufficient to meet the requirement of the new North Tripura Judicial district to be headquartered at Dharmanagar. There are 5 courts at Dharmanagar. One Addl. District Judge's court, one court of Civil Judge (Sr. Division) & Asstt. Sessions Judge, one SDJM's court, one court of Civil Judge (Jr. Division) and one court of Judicial Magistrate, First Class. As on 30-6-13, there were 4200 cases pending at Dharmanagar. Therefore, in my view, the present staff strength is sufficient to meet the requirements.

(7) **KANCHANPUR :** There are already two courts functioning in Kanchanpur. However, the building needs certain immediate repairs. The entire floor requires to be re-done and tiles affixed on the floors. The ceiling also requires to be repaired immediately. As on 30-6-13, there are 131389 cases pending at Kanchanpur. In my view, if both the civil and criminal powers are vested to one officer, then only one court may function at Kanchanpur.

Though there is no sub division in Jampui Hills, this place is very remote and the people of the area feel discriminated because the closest court is at Kanchanpur. I propose that within the next five years we should set up one court complex to house one court at Vangmun or nearby so that we can post one Judicial officer. Even if a full time court is not justified, a circuit court can definitely be held in Vangmun.

(8) **KAMALPUR :** There are 3 courts at Kamalpur. One Addl. District Judge's court, one SDJM's court and one court of Civil Judge (Jr. Division). As on 30-6-13, there are 5927 cases pending at Kailashahar. Therefore, in my view, the present staff strength is sufficient to meet the requirements. The building at Kamalpur is in a very poor condition. The land at Kamalpur is not sufficient. There is no chance of adding any land at the present site since it is in the heart of the bazar. I propose that the present building can be handed over to the Nagar Panchayat which can construct a commercial complex at the site if they so desire. Some land has been identified near Dak Bungalow at Kamalpur for setting up of a new court. In my view, the work at Kamalpur will be reduced after re-organisation of the districts and, therefore, we need a composite building having provision for one court of District & Sessions Judge and three other courts and we can virtually copy the building at Sonamura for this purpose. This work also needs to be taken up immediately and construction must start by 1st January,2014.

AMBASSA

Ambassa is the revenue headquarters of Dhalai district. However, it has no Bar or lawyers and, therefore, the High Court has proposed that the District & Sessions division of the Dhalai district be kept at Kamalpur. In my view, we can set up a court of SDJM-cum-Civil Judge (Jr. Division) at Ambassa having provision for one court of District & Sessions Judge/Addl. District & Sessions Judge and two to three Magistrates and, therefore, A building like the one at Sonamura would be sufficient. Suitable land may be identified in Ambassa and the construction of the project should start latest by 30th June,2014. Identification of the land must be done by 31st October,2013. I may make it clear that though the Judicial complex may be adjacent or near the District Magistrate's complex, it cannot be a part and parcel of the District Magistrate's complex.

GANDACHERRA

In Dhalai district, I propose that a court at Gandacherra revenue sub division should start functioning immediately. It is one of the remotest parts of the State and presently the litigants have to go from Gandacherra to Kamalpur which is a long distance. There are already two courts constructed in Gandacherra and there are also two residences for officers. In my view one big hall out of the second court building can be provided to the Bar. However, the building needs certain immediate repairs. The entire floor to be re-done and tiles affixed on the floors. The ceiling also requires to be repaired immediately. I have been told that the work can be completed within one month. We may utilize the funds from the Centrally sponsored scheme for this purpose and in my view we can establish a court and start work at Gandacherra immediately after the Puja vacation. This will reduce the burden at Kamalpur.

LONGTHARAI VALLEY

I am of the view that we need to immediately establish a court at Longtharai Valley revenue sub division. There are already two courts constructed in Longtharai Valley and there are also two residences for the officers. In my view one big hall out of the second court building can be provided to the Bar. However, the building needs certain immediate repairs. The entire floor to be re-done and tiles affixed on the floors. The ceiling also requires to be repaired immediately. I have been told that the work can be completed within one month. We may utilize the funds from the Centrally sponsored scheme for this purpose and in my view we can establish a court and start work at Longtharai Valley immediately after the Puja vacation.

KUMARGHAT AND PANISAGAR

I am of the view that within the next ten years or even earlier, we must establish one court each in Kumarghat revenue sub division which presently falls in Kailashahar and Kanchanpur judicial sub division and Panisagar revenue sub division which presently falls in Dharmanagar and Kanchanpur judicial sub division. We must ensure that land in both Kumarghat and Panisagar is identified at the earliest for construction of our court complex and we must establish buildings having potential to house two courts.

SOUTH TRIPURA DISTRICT

(9) **UDAIPUR :** There Udaipur is the headquarters of the South Tripura judicial district. The present facilities at South Tripura are sufficient to meet the needs of South Tripura district. However, one of the buildings requires some immediate repairs and the State should ensure that repairs are done at the earliest. At Udaipur, there are 7 courts. One District Judge's court, one Family court, one Addl. District Judge's court, one CJM's court, one court of Civil Judge (Jr. Division), one court of Judicial Magistrate, First Class and one court of Judicial Magistrate, Second Class. As on 30-6-13, there are 6472 cases pending at Udaipur. In my view, the present staff strength is sufficient to meet the requirements.

(10) **BELONIA :** Belonia is presently a part of the South Tripura judicial district, but after Udaipur becomes the headquarters of the Gomati district, South Tripura judicial district will be headquartered at Belonia. There are 4 courts at Belonia. One Addl.District Judge's court, one SDJM's court, one court of Civil Judge (Jr. Division) and one court of Judicial Magistrate, First Class. As on 30-6-13, there are 3235 cases are pending. Therefore, in my view, the present staff strength is sufficient to meet the requirements. The infrastructure in Belonia is sufficient to meet the requirements and no change is required.

(11) **SABROOM :** There are two officers posted at Sabroom. As on 30-6-13, 3928 cases are pending there. Therefore, in my opinion, the present staff strength is sufficient to meet the requirements. The condition of the present court building is Sabroom is the worst in entire Tripura. The building in Sabroom is falling apart and I am afraid that there may be danger to life and property if we do not take immediate steps to construct new buildings. The land where the present court complex is housed is sufficient not only to house the court complex but even the quarters of the Judicial officers and quarters of Group-D staff can be made within the complex. Some land of the Judiciary was taken over

for construction of Sabroom town hall and the State must ensure that the Judiciary is adequately compensated by constructing staff quarters. It is the southern most part of the State and in my view at least two courts are required at Sabroom. At the same time, the court building on the lines of Sonamura court building but slightly smaller or single storied may be constructed at Sabroom to house two courts. There should also be provision for third circuit court.

(12) **AMARPUR :** The court building in Amarpur is in extremely dilapidated condition. The land is also not sufficient. I and Brother Justice Talapatra were shown some land by the SDM, Amarpur which is known as kathal bagan. A new judicial complex can be constructed there. At Amarpur, there are two officers posted. At present there are 2669 cases pending. Therefore, the building should be constructed in such a manner that it can house at least two courts and other facilities. This work be started at the earliest. I propose that one Judicial officer from Udaipur should visit Amarpur once a month for at least one week to lessen the burden of the Judicial officer presently posted at Amarpur.

SHANTIR BAZAR

At present there is no court at Shantir Bazar. It is a newly created revenue sub division. The number of cases from Shantir Bazar is 1180 and, therefore, we need to establish at least one court there immediately. Some land may be identified there. On my visit there, I was told by the SDM that a new hospital building has been constructed and the land where the present hospital is existing can be used for the construction of a new court complex at Shantir Bazar. This court complex should consist of at least two courts and allied facilities. We must set up a court at Shantir Bazar within the next five years.

KARBOOK

At present there is no court at Karbook. But we must identify the land for construction of court building so that we can establish at least one court there in about ten years.

One of the most important requirements is to rationalize the number of court cases pending in each court. As on 30-6-13, in Agartala, in the court of one Magistrate, there are only 275 cases pending whereas in the case of some Magistrates, there are as many as 1127 cases pending. The situation is much worse when we go outside Agartala and in places like Bishalgarh, Khowai, Sabroom, Belonia, Amarpur, Dharmanagar some Magistrates are handling as many as 2000 to 3000 cases. To give an example, in the court of SDJM, Kamalpur, there were 2967 cases pending whereas there are other courts where the number of cases is 230. This is a great disparity which has to be dealt with by the High Court and not by the State. The problem has arisen because the cases were being filed and kept with the Elaka Magistrate. The CJMs were not performing their duties properly and resultantly, in the same station one court would be overburdened whereas in the other courts there would be very few cases. In the last one month some remedial steps have been taken and the situation has improved. But we still need to move much further to achieve better result.

This report has been prepared with a view to ensure that each and every citizen of Tripura has access to the courts and does not have to travel very far for redressal of his grievances.

I am very grateful to my brothers Hon'ble Mr. Justice U. B. Saha, Hon'ble Mr. Justice S. C. Das and Hon'ble Mr. Justice S. Talapatra who have helped me carrying out my duties as Chief Justice. I also express my thanks to Mr. Manik Chakraborty, Registrar General and Sri S. Dassgupta, Registrar (Judicial) whose inputs have been very useful in preparation of this report.

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INTEGRITY AMONGST JUDGES

* by ***Justice Deepak Gupta***

Integrity is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, cleanliness, decency, honour, reputation, nobility, purity, respectability, genuineness, moral excellence etc. In short it depicts sterling character with firm adherence to a code of moral values.

The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that Judicial Officers should possess the sterling quality of integrity. The Apex Court in **Tarak Singh Vrs. Jyoti Basu** [1] held that integrity is the hallmark of judicial discipline. To quote:

"Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that *woodpeckers inside pose a larger threat than the storm outside."*

A Judge is a privileged member of society. He is addressed as "Your Honour". It is expected that a Judge should behave in a manner befitting his status as the Presiding Officer of a Court, a privileged member of society and a gentleman. A Judge must always bear in mind that what may be lawful and moral for a person who does not belong to the judiciary will be totally improper, immoral and unbefitting the status of a Judge.

A Judge, both in Court and outside, must conduct himself in a manner befitting his high status. He must be courteous. A Judge may be firm, but is not required to be rude. His behaviour with the litigants, the members of the Bar, the members of the staff should be such that they draw inspiration from him. A Judge who conducts himself in a domineering manner criticizing all and sundry does no credit to the institution of judiciary. Humility is one of the foremost attributes of a good Judge.

The behaviour of a Judge has to be of an exacting standard, both inside and outside the Court. The Supreme Court in ***Daya Shankar vrs. High Court of Allahabad and others*** [2] held thus:

"Judicial Officers cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy."

In ***High Court of Judicature at Bombay vrs. Shashikant S. Patil,*** [3], the Apex Court held that dishonesty is the stark antithesis of judicial probity, and " *A dishonest judicial personage is an oxymoron".....*

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* Chief Justice, High Court of Tripura.

1 (2005) 1 SCC 201.
2 (1987) 3 SCC 1.
3 (2000) 1 SCC 416.

In ***R.C. Chandel vs. High Court of M.P.***[4], the Apex Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of the Apex Court are relevant:

"37. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secure that Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

The Apex Court in ***High Court of Judicature for Rajasthan vrs. Ramesh Chand Paliwal and another*** [5] described Judges as "hermits" and further reminded the judicial officers that, "they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat".

Times have changed and even a Judge may have ambition. There is nothing wrong if a Judge strives to achieve something, but such ambition should not lead him to compromise his judicial duty. In case, in the pursuit of such ambition he has to compromise or deviate from his avowed judicial duties, then it is better not to pursue such ambition. A Judge who is too ambitious or a Judge who is too keen to attain material success will become weak and timid and then there will be a tendency to compromise his constitutional duty with his personal interest. This gives rise to conflict between personal interest and duty.

I have discussed what is integrity and now I shall discuss what is corruption or dishonesty. Corruption is not merely taking money. If a Judge is scared to do a certain case because of the personalities or issues involved and recuses for that reason, he is corrupt. If a Judge decides a matter to favour any person, even if no financial gain is occasioned to the Judge, it is corruption. If a Judge decides a matter only because of the personality of the lawyer involved, that too is corruption. In my view, whenever a Judge decides a matter not on the basis of the material on record, but for any other extraneous reason, it is corruption. If the Judge is influenced by family pressure, political pressure, media pressure, peer pressure or any other extraneous cause to decide a case in a manner not in accordance with law, then he is acting in a corrupt fashion.

Though the people of this country repose high confidence in the judiciary at all levels, one cannot shut our eyes to the hard reality that there are instances of corruption in the judicial institutions also. It is, therefore, necessary for me as the Head of the State Judiciary to point out that all the Judges in the State must work in accordance with the high standards set out hereinabove.

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4 (2012) 8 SCC 58.
5 (1998) 2 SCC 72.

They must follow a value system which is applicable to all members of the judiciary. These values may be more self-imposed than imposed. Judges have to live a disciplined life imposing a number of restrictions on themselves.

One important aspect which some honest Judges forget is that they also must behave like gentleman. A Judge is a public servant. A Judge must always remember this. He is there to serve the public. Therefore, he must in his dealings, both in Court and outside, behave in a courteous manner and should not adopt dilatory tactics or willfully cause delays in disposal of the work assigned to him.

Sometimes, the messenger is as important as the message itself. Therefore, when you deliver the message by passing a judgment or an order, you must behave in a manner which befits the role of a Judge as a messenger. Justice should not only be done but seen to be done. A Judge is judged not only by the quality of his judgment, but also by the quality and purity of his character. Impeccable integrity should be reflected both in the public and personal life of a Judge. One who stands in judgment over others should be incorruptible. That is the high standard which is expected of Judges. In case, this integrity which is the backbone of the judiciary weakens, that would spell the death knell of democracy.

Please remember : **Your discipline decides your Destiny.**

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HUMAN RIGHTS: DEVELOPMENT AND PEACE IN SOCIETY

-Justice U.B. Saha

Human rights are nothing but fundamental values. According to Justice H.R. Khanna, a former Judge of Supreme Court, Human right and Civil liberty are two faces of the same coin. The cause for which man would fight and die willingly, it is that of liberty and right to personal liberty is one of the most, if not the most, important human right. The struggle for these rights has had a chequered history. The doctrine of natural law was a direct progenitor of the concept of human rights. Natural law created an awareness of natural rights. Various thinkers discerned the inherent and sacred rights of men in the divine law applying to human beings. Natural rights thus led to the formation of human rights.

In the universal declaration of human rights and other international documents and treaties, the need for human rights has been emphasized. Human rights education can help to reduce human rights violations and would contribute to building free, just and peaceful societies. People should know about the strengthening respect for human rights and fundamental freedoms, fully developing the human personalities and its sense of dignity and promoting understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups.

The United Nations Organization declared the human rights which are basically fundamental rights to the fulfillment of fundamental needs of human. The United Nations have proposed to build a universal culture of human rights "as all human beings are free equal in dignity and rights" as evident from the universal declaration of human rights in 1948. According to the UN, there are three dimensions to the promotion of human rights:

(i) Knowledge- providing information about human rights and the mechanism that exist to protect rights;

(ii) Values, beliefs and attitudes- promoting a human rights culture through the development of these processes; and

(iii) Action- encouraging people to defend human rights and prevent human rights abuse.

It is the duty of a society to promote and include respect for human rights and fundamental freedom irrespective of race, sex, language or religion.

In our Constitution, the human rights, as declared by the United Nations, are provided to the citizen as fundamental rights though at a very belated stage, education has been incorporated as a fundamental right in Chapter III of the Constitution enacting a new provision, namely, Article 21A of the Constitution. The rights which have been provided to the citizen through our Constitution either in Chapter-III or IV, those are for our natural interest and for welfare of the citizens but the values like freedom, human rights, the rule of law cannot be considered for a particular area, rather those are all universal values. The people all over the world require these values to protect themselves.

Though once our nation was champion for keeping intact the aforesaid universal values, but now-a-days, it would not be improper to say that the human rights abuse is a sad reality in Indian society. In the morning when we read the newspapers, we confront with the sad news relating to violence, crime, war and disasters. We cannot recall even a single day without a report of something terrible happening somewhere. If we look at the history of police atrocities in the police lock up and now-a-days, even in the medical field which was earlier a profession, but now turned into a business, we see that the basic human rights are abused. Though at the same time, it has to be said that all police officials and the medical personalities are in no way responsible for abusing these rights, only a part of them are doing that, which has to be stopped by the peoples' representatives with their good governance so that the people for whom the nation is, they can keep their share and rights which they are entitled to under the Constitution. Therefore, the main aim of our Constitution is that people should be ruled by themselves through their representatives.

Change in life and nature is a normal process of life, but a human can change and acquire more rights which can be included as a human rights. Awareness of human rights and protection of the same is the basic essence of religion, love and compassion. To uphold the moral values of human rights, we have to give up our selfishness; rather we have to help one another. Our legislature for protection of human rights enacted a law, namely, Human Rights Act, 1993 and with the strength of provisions of the said Act, a National Human Rights Commission has been established. Some of the States have also established the State Human Rights Commission though in Tripura, the said Commission is not yet established. Section 12(h) of the Protective of Human Rights Act, 1993 requires the Commission to promote awareness about human rights among the various sections of the society. The National Human Rights Commission of India and many of the NGOs have launched countrywide public information campaign for human rights. Right to health, right to education which, by this time, have become fundamental rights, in other words, the human rights.

Every human being takes birth with certain essential rights, defined or undefined either to develop him or to develop the nation to which he belongs. The concept of human rights in modern times can only be understood as inalienable fundamental rights to which a person is inherently entitled to simply because he or she is a human being. Human rights are thus conferred as universal for everyone.

Day by day human rights have been expanded due to development of society vis-a-vis science and technology. It includes all those rights that are necessary for protection of human life, for the development of human personality and for the protection of human dignity like right to life, right to liberty and security, right to freedom of association and expression, right to equality before law, right to social security, right to education, right to take part in cultural life, right to freedom from torture, cruel, inhuman and degrading punishment, etc.

The concept of human rights in a multiethnic, multi-religious and diversified society like India which according to Pandit Nehru is the Musuem or world religions; has a special significance, because the instances and occasions for violation and suppression of Human Rights are numerous due to needs of security, unity and integrity and of law and order. The freedom fighters of the country, including Pandit Nehru have expressed their willingness to join attempts towards establishing peace and harmony all over the world ensuring basic human rights to all members of society even prior to the independence of the country.

In Article 19 of the Constitution, the framers of the Constitution also took care of the right to freedom of speech and expression, and peaceful assembly. Not only that, Article 21 also prescribes freedom from arbitrary arrest, protection of life and liberty. In Article 25 it has also been taken note of right against exploitation, freedom of conscience and free profession practice and propagation of religion. Article 29 and 30 made prescription for education and cultural rights. Therefore, it can be easily said that the Indian Constitution embodies all these rights to its citizen which are enshrined in the universal declaration of human rights.

To protect human rights and to uphold the declaration of human rights the Apex Court in **Jolly George Varghese** V. **The Bank of Cochin, AIR 1980 SC 470** stated, inter alia, that the individual cannot come to the Court but may complain to the Human Rights Committee, which, in turn, will set in other procedures. In **Prem Shankar V. Delhi Admin., AIR 1980 SC 1533,** the Apex Court while dealing with the handcuffs and other humiliations inflicted on persons in custody observed inter alia, "After all, even while discussing the relevant statutory provisions and constitutional requirements, Court and counsel must never forget the core principle found in Article 5 of the Universal Declaration of Human rights, 1948: 'No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment".

In **Sunil Batra V. Delhi Admn., AIR 1980 SC 1579**, the Apex Court observed about the prisoner's rights stating, inter alia, "A prisoner wears the armour of basic freedom even behind bars and that on breach thereof by lawless officials the law will respond to his distress signals through writ aid. The Indian human has a constant companion-the Court armed with the Constitution. The weapon is Habeas, the power is Part III and the projectile is Batra. AIR 1978 SC 1675. It is therefore, the Court's concern implicit in the power to deprive the sentence of his personal liberty, to ensure that no more and no less than is warranted by the sentence happens."

The Apex Court in its various decisions held that the accused in pre-trial detention are entitled to fair and decent treatment by way of comforts, medical attention etc. so that their humanity is not degraded and dignity offended. The Court has also frowned upon violations of Human Rights during pre-trial detention and has ordered compensation for unlawful detention which would be evident from the decision of the Apex Court in **Khatri II** v**. State of Bihar, AIR 1981 SC 928** and in **Rudalshah** v**. State of Bihar, AIR 1983 SC 108**6 and **State of Maharashtra** v**. Ravikanth Patil, 1991 AIR SCW 871**. The Supreme Court also awarded compensation in the case of **Nilabati Behra** v**. State of Orissa, AIR 1993 SC 1960** while dealing with custodial death of a person aged about 22 years.

But there is something wrong on our part and we are not in a position to fulfill the basic needs of the common man though the fulfillment of basic needs is a precondition for achieving peace. A man with hunger cannot dream of peace and as a result they lose their compassion which is the basic pillar of peace.

In **Paschim Banga Khet Mazdoor Samity and Ors V. State of West Bengal** and **anr., AIR 1996 SC 2426** taking note of the case of **Pt. Parmanand katara V. Union of India, (1989) 4 SCC 286** it is stated that the government hospitals run by the state and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a

Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21. It is also stated that in respect of deprivation of constitutional rights guaranteed in part-III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. The Apex Court also stated that it is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done.

Development is required for change in quality of live and for which the right to development has been clearly recognized by the ILO. ILO in its declaration at Philadelphia (1944) affirmed that " All human beings have the right to pursue both their material well- being and their spiritual development in conditions of freedom and dignity, of Economic Security and equal opportunity- and , that poverty anywhere constitutes a danger to prosperity everywhere."

Once the UN Secretary General said that “the right to development is the measure of the respect of all other Human Rights. That should be our aim; a situation in which all individuals are enable to maximize their potential and to contribute to the evaluation of Society as a whole.”

Our common wish for peaceful future is compelling us to take initiatives for eliminating hurdles in the road of peace that is for eliminating terrorism. Peace will come if the sovereign power act for all its citizens equally for achieving the goal as prescribed in the Constitution. In our country either for action or for non-action of the sovereign power, the people are fighting each other in various parts of the country forgetting the will of the framers of the constitution either in the name of race, or in the name of caste or in the name of political groups. Peace building can be started only when there is harmonious relationship between the citizens. And for harmonious relationship, Media has a great role to play as media is considered the fourth pillar of democracy. We have to search the reason behind the involvement of the people with terrorism and extremism. If we can find out the reason, then it would be possible on our part to eliminate the disputes or convert their thoughts and it would be possible also to make a plan to resolve the disputes in a peaceful manner and I am sure that a day will come when we will be able to eliminate the disputes and conflicts of those people who are involved with the terrorist activities and creating hurdles in the way of development of our society. If we can eliminate terrorism by way of bringing those youth in the main stream, then obviously peace will come in the society and if peace will come, then the development will be there.

We have worked wonders in many fields, but the basic human problems still remain to be addressed in a befitting manner. No doubt number of literate persons has increased, but the basic education by which one can help the nation to develop is absent. Science and technology have contributed immensely to the overall experience of mankind for our material comfort and well being, but ignoring the basic needs of the people, we are inviting terrorisms and violent extremist activities and the world is now afraid of terrorist activities for which, the development of the world as a whole is being affected. Unless there is peace in the society, development cannot be there as development and peace are interlinked and one cannot be achieved without the other.

For peace and development in the society, the first requirement is protection of human rights. If the human rights of the citizen are protected, then obviously they will not involve themselves either in terrorist activities or in the separatist movement. Thus, we have to work for protecting the human rights for each and every individual all over the world.

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THE BURDEN OF PROOF

Justice S.C.Das,
Judge,
High Court of Tripura.

"Burden of proof" is a very interesting topic of the Law of Evidence. It is a very wide subject. The burden of proof is often associated with the maxim *"semper necessitas probandi incumbit ei qui agit,"* the best translation of which seems to be: "the necessity of proof always lies with the person who lays charges. Some salient features of the topic are discussed in this article.

2. *Chapter-VII(Part-III), Section 101 to 114-A of the Evidence Act, 1972*, deals with the law relating to '*burden of proof*'. Substantially, it deals with the question by whom and in what manner evidence must be produced and a fact is to be proved. It determines the right and liberty to lead evidence and of the right to rebuttal. The main principles of the Law of Evidence in this regard may be summarized as—

(a) Evidence must be confined to facts in issue or relevant facts.
(b) Hear-say evidence cannot be received in evidence subject to exceptions.
(c) Best evidence must be given in all cases.
(d) Certain facts are subject matter of presumptions.

3. In brief, the question of Law of Evidence attempts to answer—

(a) What sort of facts may be proved in order to establish the existence or non-existence of a fact in issue.
(b) What sort of proof is to be given of those facts.
(c) *Who is to give it and how is it to be given*.

4. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. There are certain facts which need not be proved because the Court takes notice of it. There are certain facts which must be proved by one of the parties to the dispute. The party who has responsibility of proving a certain fact is said to be having the burden of proof on him. The Law of Evidence generally states that he who wants the Court to believe in certain things must prove it.

5. *Section 101 and 102 of the Evidence Act* is the crux of the subject and, hence, I like to reproduce here those provisions with the *illustrations*—

> *"**101. Burden of proof**.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

***102. On whom burden of proof lies**.--The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B' s father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B."

5.1. A reading of the above provisions speaks that the phrase "*Burden of Proof*" has two distinct and frequently confused meanings:

***(i) The burden of proof as a matter of law and pleading**—The burden, as it has been called of establishing a case. This burden raises upon the party whether plaintiff or defendant, who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the statements of pleadings or other equivalent and it is settled as question of law to the remaining unchanged under any circumstances whatsoever.*

***(ii) The burden of proof as a matter of adducing evidence—**The burden of proof in this sense is always unstable and may shift constantly throughout the trial. It lies at first on the party who would be unsuccessful if no evidence at all were given on either side. This being the test this burden of proof cannot remain constant but must shift as soon as he produces evidence which prima-facie gives rise to a presumption in his favour. It may again shift back on him if the rebutting evidence produced by his opponent preponderates. This being the position, the question as to the onus of the proof is only a role for deciding on whom the obligation raises of going further if he wishes to win*.

5.2. Here let us give an illustration—

A files a suit against B for the possession of certain lands. A's case is that he purchased the land from Y. B's defence is that he has been in possession of the land for over 20 years and his title to the land is perfected by adverse possession.

- **What is the nature of burden of proof in this suit? What must be proved by A and B and in what manner**?

Answer:- As B would retain the possession of land if neither of the parties did adduce any evidence, the burden of proof is on A to prove that he purchased the land from Y, and that Y was authorized to sell the land.

Then, the burden shifts on B who has to prove that he had been in possession of the land continuously for 20 years adverse to the rightful owner of the property.

> Illustration—A prosecutes B for theft, and wishes to believe the Court that B admitted the fact to C. A must prove the admission.
> B wishes the Court to believe that at the time in question he was elsewhere. He must prove it (Section 103 of the Evidence Act).

6. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

> Illustration—A wishes to prove a dying declaration by B. A must prove B's death.
> A wishes to prove by secondary evidence, the contents of a lost documents. A must prove that the document has been lost(Section 104 of Evidence Act).

The primary burden to prove a charge always remains on the prosecution.

But where the accused retracting confession on the ground that the confession was an outcome of torture has to establish his plea.

A public servant has to show that he cannot be prosecuted for want of sanction under Section 197 of CrPC.

7. The prosecution has to prove its case by legal evidence. Onus on prosecution never shifts.

The burden on the accused is not as onerous as that which lies on the prosecution. Prosecution is required to prove its case beyond a reasonable shadow of doubt. Accused can discharge the onus by proving preponderance of probability. In other words, onus on accused is not as heavy as on prosecution in a criminal case.

8. The existence of circumstances bringing the case of an accused person within the general or special exceptions in the Indian Penal Code lies upon such accused and the Court shall presume the absence of such circumstances(Section 105).

Illustrations.—

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self control. The burden of proof is on A.

(c) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

9. The fundamental principle of criminal jurisprudence is that an accused is presumed to be innocent and the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. This general burden never shifts and it always rests on the prosecution. Under Section 105, the burden of proving the existence of circumstances bringing the case within any exception lies on the accused and the Court, shall presume the absence of such circumstances. The accused shall have to rebut the presumption that the circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a prudent man. If the material before the Court satisfies the test of prudent man the accused will have discharged his burden. The evidence placed may not be sufficient to discharge the burden under this section, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. If the judge has such reasonable doubt, he has to acquit the accused, for in that event the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make his defence of insanity (***Dahyabhai v. State of Gujarat : AIR 1964 SC 1563).***

If an insane person enjoys lucid interval there is a presumption that the offence was committed during lucid interval unless otherwise proved. Similarly if the evidence as to insanity is conflicted the accused should not get benefit of it.

Similarly, the onus is upon the accused to prove his right of private defence. It is not as onerous as the un-shifting burden lying on prosecution. Accused need not prove it beyond doubt. The onus is discharges on proof of preponderance of probabilities (***AIR 1979 SC 577, AIR 1980 SC 1341, AIR 1981 SC 1379***).

10. A plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. The accused has to establish the plea of alibi to the satisfaction of the Court (***AIR 1978 SC 191, AIR 1981 SC 911, AIR 1981 SC 1021***).

Similarly, the plea of provocation and justification of an act is to be proved by the accused.

11. The fact which is specially within the knowledge of any person is upon him (Section 106).

Illustrations—

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket, is on him.

Section 106 is an exception to Section 101 which placed the burden of proving a criminal charge fairly and squarely on the prosecution.

When an act is prima-facie an offence the accused is to prove his bona fides that he had no criminal intention.

12. Generally the burden of proving upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus if the prosecution has offered evidence, which is believed and would convince them to the guilt beyond reasonable doubt the accused is in a position where he would go forward with countervailing evidence if he has such evidence. When the facts are peculiarly within the knowledge of the accused the burden is on him to present evidence of such facts, whether the proposition an affirmative or negative.

12.1. In the case of ***K.M. Nanavati. v. State of Maharastra*** reported in ***AIR 1962 SC 605***, the Apex Court has summarized the position of law. A statute may throw burden of proof of all or some of the ingredients of an offence on the accused. The special burden may not touch the ingredients of offence but only the protection given on the assumption of the proof of such ingredients. It may relate to an exception, some of the many circumstances required to attract the exception, if proved, affecting the proof of all or some of the ingredients of the offence. In the third case, though the burden lies on the accused to bring his case within the exception the facts proved may not discharge the said burden but may effect the proof of the ingredients of the offence. The defence evidence may not be sufficient to prove all the ingredients of the exception, but may throw reasonable doubt on the essential ingredients of the offence.

12.2. The Apex Court in ***Nanavati's case(supra)*** has further held that, the test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to loss his self-control. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to S 300. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. the fatal blow should be clearly traced to the influence to passion arising from that provocation and not after the passion had cool down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

12.3. While deciding that case Hon'ble Court observed that when the wife of the accused confessed to him that she had illicit intimacy with the deceased who was not present there it can be assumed that he had momentarily lost his self-control. But then after this when he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of the deceased and then to his flat, went straight to the bed room of the deceased and shot him dead and between the time when

he left his house, and the time when the murder took place, 3 hours had elapsed, there was sufficient time for the accused to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly showed that the murder was a deliberate and calculated one. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. Therefore, the facts did not attract the provisions of Exception 1 to Section 300.

13. Burden on accused of proving exception is undertaken only if the prosecution case established that in the absence of such a plea, he would be guilty of the offence charged. If the prosecution does not establish affirmatively that the accused has done any act which rendered liable for the offence but the accused raises a plea amounting to confession of guilt the court can convict him relying upon the plea but if the plea amounts to admission of facts and raises a plea in justification, Court cannot proceed to deal with the case if the admission of facts therein were part of the prosecution case, were true and evidence did not warrant plea of justification. When prosecution has not adduced satisfactory evidence burden cannot rest on the accused merely because he has offered an explanation under Section 313 of CrPC or adduce evidence. Making a comparative assessment of the evidence adduced on both sides and choosing prosecuting version in preponderance of probabilities goes counter to fundamental of criminal jurisprudence. The principle applies to all cases of exception general or under statutory provisions.

The provisions in Section 106 to 110 of the Evidence Act in respect to burden of proof are applicable in particular cases and are very clear in itself and so I think it unnecessary to discuss here.

The Courts, over the years, have adopted various approaches based on common sense, towards oral evidence. Inherent, inconsistency of the story must be considered. If evidence has inherent contradictions, the entire evidence cannot be acted upon. However, process of sifting may be opted in a given case. Consistency or otherwise of evidence of one witness with all of others must be examined keeping in mind that several witnesses might have arrived at the same time or at different times, or might possess different power of observation and power of memory. Consistency of evidence or the story with undisputed facts or matters of common knowledge and experience must be examined. Inherent probabilities or otherwise of the story must be scrutinized.

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SOME MAJOR EVENTS AND INITIATIVES OF THE HIGH COURT OF TRIPURA SINCE ITS ESTABLISHMENT FROM 23rd MARCH, 2013 TO 28th FEBRUARY, 2014.

By M. Chakrabarti,
Registrar General

Infancy leads to childhood and then childhood to youth. This is the very rule of nature and our High Court may not be any exception to this perennial rule so far as its developments are concerned. In alluding the up-bringing of the High Court within a very short span of one year of such infancy under the care, guardianship and guidance of the **first Chief Justice** of the High Court, Hon'ble Mr. Justice Deepak Gupta with aiding hands of other Hon'ble three Judges, namely Hon'ble Mr. Justice U. B. Saha, Hon'ble Mr. Justice S. C. Das and Hon'ble Mr. Justice S. Talapatra, as first Registrar General of the High Court, I feel it to be my pride to portray some **major events and initiatives** of the High Court as follows:

EVENTS

1. Since establishment of the Hon'ble High Court, it has been consistently organizing Workshop/Training programme towards sensitizing the Judicial Officers of the State about various issues involving the common man who approaches the Courts for remedy and till 28.02.2014, following Workshops/Training Programmes were organized by the High Court :

Sl.No.	*Date*	*Name of the Workshop/training programme*
01.	28.04.2013	Workshop-cum-training programme of the Judicial Officers on "Aspects of Criminal Trial"
02.	11.05.2013 & 12.05.2013	02 days training programme on "Ubuntu Linux Operating System" for the Judicial Officers
03.	06.07.2013 & 07.07.2013	Workshop for Judicial Officers on "Cyber Crime Capacity Development" with the assistance of C-DAC, Kolkata.
04.	08.09.2013	Training programme of the Judicial Officers on "Art of Writing Judgment and Court Management"
05.	21.12.2013 & 22.12.2013	02 days' training programme of the Judicial Officers on "Ubuntu Linux Operating System"

2. The **Website of the High Court** and **Cyber Forensic Lab** which was established in the High Court with the assistance of C-DAC, Kolkata, were inaugurated by **Hon'ble Mr. Justice Madan B. Lokur**, Judge, Supreme Court of India on **10.08.2013**.

3. Push based **SMS service** from the CIS of the High Court to generate information about dates of the cases to the respective litigants and Advocates was inaugurated by Hon'ble Mr. Justice

Madan B. Lokur, Judge, Supreme Court of India on 10.08.2013 and **our High Court is the pioneer in providing such service**.

4. **Tree plantation programme** was organized by the High Court with the assistance of the Forest Department of the State Government on **26.08.2013** at 4'30 P.M. in the High Court premises and the Hon'ble the Chief Justice, Hon'ble Judges of the High Court, Ld. Members of the High Court Bar and Officers & staff of the Registry of the High Court planted so many different kind of valuable plants in the High Court premises.

5. Swearing-in-Ceremony of Hon'ble Mr. Justice S. C. Das and Hon'ble Mr. Justice S. Talapatra, **Additional Judges of the High Court of Tripura as Judges of the High Court of Tripura** was organized by the High Court on 13.09.2013 at 10:00 Hours in Court No.1 of the High Court.

INITIATIVES

1. Within five months of the establishment of the High Court, Hon'ble the Chief Justice visited all the Judicial stations/Sub-divisions along with other newly created revenue Districts/Sub-divisions of the State and had meetings with the Judicial Officers, Administrative Officers, Members of the Bar and also with the staff of the district judiciary and prepared a Vision Document to assess need of Tripura Judiciary in next 25 years which was communicated to the State Government and Union Ministry of Law & Justice, New Delhi for development of justice delivery system in the State.

2. As per Resolution dated **10.05.2013** of the Full Court Meeting of the Hon'ble High Court, process was initiative from the side of the High Court for filling up 12 vacant posts in Grade-III of Tripura Judicial Service by direct recruitment and on completion of the said process, names of the 12 selected candidates were recommended to the State Government on **01.02.2014** for issuing '***Offer of Appointment'*** in favour of them and accordingly, Offer of Appointments were issued.

3. As per Resolution dated **11.07.2013** of the Full Court Meeting of the Hon'ble High Court, the **Bar Counsel of Tripura Rules, 2013** was notified on **17.07.2013** and thereafter as per resolution dated **26.09.2013** of the Full Court Meeting of the Hon'ble High Court, the **first Bar Counsel of Tripura** was constituted by the Hon'ble High Court vide Notification dated **27.09.2013**.

4. New Laptops were provided to all the Judicial officers of Tripura on and from **08.09.2013**.

5. As per Resolution of the Full Court Meeting of the Hon'ble High Court, the **guidelines for the purpose of designating Advocates as Sr. Advocates of the High Court of Tripura** was notified on **17.07.2013** and 02 Learned Advocates, namely, **Shri Pijush Kanti Biswas and Shri Debabrata Chakraborty** were designated as Senior Advocates vide Notification dated **05.10.2013**.

6. As per Resolution dated **28.11.2013** of the Full Court Meeting of the Hon'ble High Court, *the **'Gender Sensitisation & Sexual Harassment of Women at the High Court & the District Courts of Tripura (Prevention, Prohibition & Redressal) Regulations, 2013'*** was notified on **02.12.2013**.

7. Hon'ble the Chief Justice in exercise of the powers conferred by Article 229 of the Constitution of India had been pleased to make *the* **'High Court of Tripura e-Courts Services (Appointment, Condition of Service &Conduct) Rules, 2013'** to regulate the services of the persons brone on the establishment of the High Court under e-Courts services vide Notification dated **29.07.2013**.

8. Hon'ble the Chief Justice in exercise of the powers conferred by Article 229 of the Constitution of India had been pleased to make the ***'High Court of Tripura Services (Appointment, Conditions of Service and Conduct) Rules, 2014'*** which was sent to the State Government for approval of His Excellency the Governor of Tripura.

9. Hon'ble the Chief Justice in exercise of the powers conferred by sub-section (1) of section 28 read with section 2(e)(iii) of the Right to Information Act, 2005 had been pleased to make the ***'High Court of Tripura (Right to Information) Rules, 2013' which is notified on 09.09.2013.***

10. Successful migration of the data of cases in District Courts from **Delhi version of CIS to National Core Version 1.0 (Pune Version) of CIS** in all District Courts of Tripura had been completed and received appreciation letter from Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India and Judge-in-Charge of e-Committee, Supreme Court of India.

11. With the prime object to impart training to the Judicial Officers and the Officers of the other department of the State Government who are discharging judicial, quasi-judicial and administrative functions relating to law and also to provide the training to the ministerial officers of the High Court and District Judiciary of Tripura, a society, namely, ***"Tripura Judicial Academy"*** was formed under the Society Registration Act, 1860 and taken up with the Registrar of the Societies of Tripura for Registration of the said society as per provisions of the said Act.

12. Statement showing pendency Institution and disposal of cases of the **High Court for the period from 01.04.2013 to 28.02.2014** is as follows:

Opening balance of cases as on 01.04.13		**Total**	**Institution of cases from 01.04.13 to 28.02.14**		**Total**	**Disposal of Cases from 01.04.13 to 28.02.14**		**Total**	**Pendency of cases as on 28.02.14**		**Total**
Civil	Crl.	Civ. + Crl.	Civil	Crl.	Civ. + Crl.	Civil	Crl.	Civ. + Crl	Civil	Crl.	Civ. + Crl
5430	1189	**6619**	2590	805	**3395**	3370	992	**4362**	4650	1002	**5652**

By the force of fore-running factual details, the irresistible conclusion comes that this newly born High Court per excellence of their Lordships and under able guardianship of the Hon'ble Chief Justice is making speedy head way with the co-operation of all including the State Government.

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SAFEGUARDING THE RIGHTS OF VICTIMS OF CRIME

– S.G.Chattopadhyay

Andre Gide, a French thinker & writer, said, ***"Everything has been said already, but as no one listens, we must always begin again".*** We have already said and discussed much about the rights of the victims but they are still to fight a long battle for getting those rights. Therefore, a fresh look into those rights for their enforcement is necessary. One of the rights of the victims of crime is their right to compensation and rehabilitation in terms of money, medical assistance, counseling and shelter. In this article, Let us have a brief discussion of the rights of victims to compensation under sections *357 and 357A of the Code of Criminal procedure.*

***T**he **M**alimath Committee* chaired by (Dr.) V. S. Malimath , former Chief Justice of the Karnataka High Court made, amongst others, the following recommendations about the *compensation rights of victims.*

- *Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be recognized in separate legislation by parliament. .....*
- *The Victim compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authorities. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may Specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.*

No separate legislation, as recommended by the *Malimath committee,* has yet been enacted recognizing the rights of victims to such compensation. But Section 357A has been incorporated in Cr.P.C by the amendment of 2008 with effect from 31.12.2009 which attempts to alleviate the grievances of the victims of crime to some extent. Unlike Section 357Cr.P.C, the victims can be compensated under section 357A even if the offender is not traced or identified or the case ends in acquittal of the accused. *Thus, section 357A Cr.P.C is made independent of punishment or acquittal of the accused*. Moreover, the State having been given the liability to pay such compensation from the victim compensation fund, the victims are almost sure to get compensation provided the courts and legal services authorities make effective use of this provision in favour of the victims.

Section 357A mandates for constituting a victim compensation scheme in every State in-coordination with the Central Govt. for the purpose of paying compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation. In Tripura, the State Government. has framed *Tripura victim compensation scheme* with effect from 15th August, 2012. But the Scheme suffers from various limitations which require immediate reconsideration mainly on the following grounds.

- *The scheme provides for compensation for permanent disability in acid attack which shall not be more than Rs. 75,000/- .This may be grossly inadequate in terms of the loss, sufferings, and medical requirements of such victims.*

- *As provided in the scheme the maximum limit of compensation for rape victims, even in the cases of gang rape, is Rs. 50,000/- and that too shall not be paid in a case in which a charge sheet is not filed. There cannot be any doubt that the amount is too small to compensate such rape victims. Moreover , such a provision in the scheme regarding the necessity of charge sheet for awarding compensation is contrary to section 357A Cr.PC because section 357A in sub-section(4) categorically provides that victim can be compensated under such scheme even if the offender is not traced or identified but the victim is identified and where no trial takes place. Therefore, legally, no charge sheet is required in the cases covered by sub-section (4) of section 357A for compensating such victims under section 357A Cr.P.C. The scheme , therefore, requires immediate amendment to make it consistent with the law..*
- *Tripura Victim Compensation scheme has further narrowed down the scope of section 357A Cr.P.C by laying down that to be eligible for compensation the victim will have to cooperate with police and prosecution during investigation and trial of the case. Turning hostile or refusal to depose or turn up during trial shall be considered to be non-cooperation. This is in contrary to the object of section 357 A. Once the claimant is proved to be a victim of crime to the satisfaction of the court recommending such compensation or to the District Legal Services Authority acting on the application of the victim, the victim need not have any other eligibility as laid down in section 357A Cr.PC.*

The following table shows the amount of compensation awarded and paid so far under section 357A Cr. PC in Tripura.

Name of the Legal Services	Number of Petitions received directly from the victims for compensation since the date of coming into effect of the Tripura Victim Compensation scheme	Recommendations / orders received from trial courts and appellate courts for paying compensation to victims since the date of coming into effect of the Tripura Victim Compensation scheme	Total number of petitions / recommendations/ orders received as on 20.02.2014.	Total number of petitions disposed of As on 20.02.2014	Total amount of Compensation awarded by District Legal Services Authorities and forwarded to IG Prisons for payment.	Payment made by IG Prisons to the victims as on 20.02.2014.
West Tripura District Legal Services Authority	**11**	**04**	**15**	**08**	**₹ 1,20,000/-**	**₹ 1,00,000/-**
North Tripura District Legal Services Authority	**22**	**02**	**24**	**09**	**₹ 5,50,000/-**	**₹ 5,50,000/-**
South Tripura District Legal Services Authority	**33**	**12**	**45**	**21**	**₹ 4,12,000/-**	**₹ 1,25,000/-**

It is evident from the table above that in a very few cases, the trial courts have recommended for payment of compensation. As discussed above, the trial courts may make recommendation to the District Legal Services Authority for compensation to victims under section 357A under the following two circumstances.

- *If at the conclusion of the trial, the court is satisfied that the compensation awarded under section 357,Cr. PC is not adequate for rehabilitation of the victim.*

  Therefore, the trial court for exercising such power in the cases where the accused is convicted and sentenced, has to form an opinion on record that compensation awarded to

the victim either under sub-Section (1)(b) or Sub-section(3) of section 357 Cr. P.C is not adequate for rehabilitation of the victim.

- *Where the accused is acquitted at the end of the trial or discharged other-wise and the trial court is of the opinion that victim needs to be compensated for rehabilitation, it may recommend to the District Legal Services Authority for paying adequate compensation to the victim.*

Instance of awarding compensation by courts in the cases which end in acquittal or discharge of the accused is almost nil. The very purpose of making section 357A Cr.P.C ***independent of punishment or acquittal*** is to heal the sore of the victim to some extent and rehabilitate him by providing adequate compensation in terms of money even though the accused is discharged or acquitted in the proceedings .We can not be oblivious of the ground reality that in most of the cases the accused gets discharged or acquitted for reasons beyond the control of the victim. Victim will get completely frustrated and loose faith in the system unless adequately compensated in the appropriate cases, be it a case of conviction or acquittal of the accused. Therefore, section 357A Cr.P.C should be resorted to by the trial courts in, as many cases, as possible. One of the reason for rare use of this provision may be due to the fact that the trial courts need not record any reason in the judgment as to why the power given to the trial court under this provision is not exercised. Incorporation of a provision in the line of section 6 of the Probation of the Offenders Act where the court has to record reason for not giving the benefit of the Act to the offenders below 21 years of age would have improved the situation by making it a compulsion on the part of the trial court to take section 357A Cr.PC into consideration in every case and record reasons in cases where compensation is not awarded to victim under 357A Cr.P.C. This can be done by suitable state amendment also.

The trial courts in criminal cases usually excise the power to compensate the victims in terms of money under the token provision of section 357 Cr.P.C which in sub-sections (1) (b) and (3) enables the courts to order the accused to pay compensation to the persons who has suffered any loss or injury by reason of the Act of the accused. Such power vested in courts also being discretionary like section 357A Cr.P.C., in many of the cases either there is no order of compensation or even if such compensation is awarded, it is quite inadequate. Some states have therefore, by state amendment of section 357 Cr.P.C, empowered the courts to mandatorily compensate the victims if the victims belong to scheduled caste or scheduled tribe. *In view of the alarming increase in the crimes against women and children such a state amendment in section 357Cr. PC may also be brought in Tripura to make it mandatory for the courts to pay compensation in all cases of offence against women and children, which is, obviously, within the legislative competence of the State Legislature.*

One more thing is required to be pointed out in this concluding paragraph. The District Legal Services Authorities, hardly in any case, have given interim compensation in terms of money to the victims in exercise of power under sub-section (6) of section 357A Cr. PC. *Such interim relief,* in appropriate cases, particularly in rape and other cases of sexual assault, may alleviate the sufferings of the victims to great extent. We may be a little bit pro-active to provide such benefits of law to the victims. Besides creating awareness in large scale about such right of the victims of crime, the Para Legal Volunteers may be engaged to help us in seeking the victims and taking the relief to their door step without awaiting their petitions in appropriate cases. Let us be inspired by the words of Justice Krishna Iyer who said in his book titled "Constitutional Miscellany", ***"Access to Justice is the foremost human right and where men are too illiterate to know their rights or too weak to reach court or legal aid bureau, justice must seek the victim"***

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MARITAL CUSTOM OF SCHEDULED TRIBES IN TRIPURA AND THE STATUTES

– By Sabyasachi Datta Purkayastha,
Registrar (Judicial)

Marriage is a social institution mandatorily celebrated by all societies at all ages in any area of the country. Tribal people of Tripura are no exception to it. In a generic way, there are no fewer than 19 classes of Schedule Tribes in Tripura as declared under the Constitution (Schedule Tribes) Order, 1950 and most of them are professing Hinduism. Of them some are widely denoted major classes and some are of minor classes, with reference to population. Reang, Jamatia, Tripuri, and Chakma etc. are within such major classes. However, all of them have their respective items of observances to be followed at celebrating marriages socially. But such social observances within institution of marriage for compliance by people of particular class of tribes do differ and some research authors have endeavoured to discover and give record of such varied observances in their respective dissertations. Those among the observances being considered certain and mandatory upon members of respective tribe people, are what the law considers to be custom. The totality of all these custom of all these classes of tribes in Tripura may be designated as customary marital law of Tripura.

It is too difficult to trace to their sources because in all possibilities such sources are mostly obscure and deny easy tracing or discovery. It should be a candid admission here that for describing those customary laws or their sources, aforesaid dissertations have to be depended upon.

However, as against such customary laws, the statutory marital laws how far have workability is a necessary inquisition in this small work. So also, in respect of dissolution of marriages, how far aforesaid customary marital laws have role to play, particularly when either of the parties to the marriage is a Government employee, or one is non-tribal, deserve to be delved into.

The general provision for legislation of marital laws has been kept in the union list of the 7th Schedule of the Constitution. Beside the same, the 6th Schedule of the Constitution confers powers on the Regional Counsel for the autonomous region and, District Council for the autonomous district except those which are under the authority of Regional council, to make law, inter alia, on marriage and divorce etc. In Tripura, as it is found, schedule tribes of different classes are residing both within and outside the area of such autonomous districts. Thus, even if any law is legislated by the Councils for their own territorial area in relation to marriage and divorce, the same cannot be or may not be applied upon the schedule tribes residing outside said area. Thus, either Central or the State Legislature in view of Art. 246 of the Constitution are still required to step into that domain. Section 2(2) of the Hindu Marriage Act, 1955 excludes the operation of the Act in respect of the schedule tribes unless the Central Government by notification in the Official Gazette otherwise directs. So far as it is attempted to decipher, there is no such notification for the State of Tripura issued by Central Government making said Act applicable for the schedule tribes of Tripura. In such a situation, the other way out is to study the customary law as prevailing amongst them for the reasons discussed hereunder.

The matrimonial rites of those 4 classes of schedule tribes have for a long been the subject for research work for many of the researchers. The law as it stands does not encourage any strict proof of any marriage in view of the munificent provisions embodied in Art. 15(3) and Art.51-A (e) of the constitution. Art.15(3) permits gander discrimination in case of any special legislation made for the welfare of women and children, similarly Art.51-A(e) mandates that it would be the duty of every citizen to renounce practices derogatory to the dignity of women. The noble intention of the Constitution makers was to ensure welfare of the women and their right to live with complete dignity and honour. Thus, if the marriage of any girl, either tribal or non-tribal, is simply declared invalid merely on the technical ground that her marriage was not strictly solemnized with the requirement of customs prevailing in her society, and this way if she is denied with the basic rights and reliefs necessary for her survival with dignity as attached with such matrimonial bond, not only the noble intention constitution makers, but the legislative intent behind many other welfare legislations enacted to protect the women from vagrancy will be seen to be frustrated. Thus, when the proof of marriage in Court of law is asked for with leniency, the eligibility of a person to get divorce is viewed with a bit sternness, wherefor the matrimonial legislations like the Special Marriage Act, 1954, Hindu Marriage Act, 1955, etc. discourage the grant of divorce on easy approach, rather cast duty on the Courts to make all endeavours for reconciliation of the parties. Considering thus, the study on customary of law of schedule tribes of Tripura relating to divorce and its aftermath is more important than the customary law on solemnization of their marriage. The studies of these 4 major tribes as detailed below on their respective customary laws mainly on divorce as made by the researchers are discussed below in a precise way with a small touch on their marriage also:

Tripuri- Both bigamy and marriage within the 3rd generation in the lineage of the parties to marriage (*Kailaima*) are prohibited in that community. No Tripuri can negotiate any marriage during life time of the spouse. A widow can remarry a bachelor and a widower also can remarry a damsel. Certificate of marriage is issued by *Ochai* (priest). The divorce in Tripuri community is called '*kaklaima*' and the village council by a decision can dissolve the marriage tie on any of the following grounds namely adultery, cruelty, desertion for a period of 2 years, failure to comply with the decree of restitution of conjugal right within 2 years after passing of decree by village dorbar, non-consummation of marriage, unsoundness of mind, pregnancy of wife at the time of marriage, barrenness and living separately for 3years from the time of marriage, impotency, imprisonment of husband for a period of 5 years or more and the couple has no child. The practice of divorce on mutual consent after living separately for a period of 12 months can also be presented to the village head called '*Chaukdiri*' of village dorbar. Though women in their society are highly respected, but a woman can never be a village headman or a priest. A person is duty bound to maintain his wife, minor children and old parents and in case of any willful neglects are reprimanded first and then if he doesnot mend himself, he is penalized.(Courtesy to: '*Customary laws of the Tripuris of Tripura*' published by Law Reserch Institute, Eastern Region, Gauhati High Court, Guwahati-1).

Chakmas- Two system of marriages are in vogue in Chakma Society. One system is based on religious system of marriage as usually followed by the advanced section of their Society which is performed by the Buddhist Bhiksus. Another system is traditional which is performed by village *ojhas*. The age of marriage for the female is 15 to 16 and for the male 22 to 24. Widow marriage is permissible. When a Chakma man is under prolonged suffering from a fatal decease or impotency, he can easily be deserted by his wife. Woman has no right to property over father so long as there is male

heir in the family of the father, but if a man dies without any son, the daughters will get the property. In modern time, the daughters are also being considered as legal heirs. The widow cannot get the share of the property of her deceased husband, but if she does not remarry, she is eligible to get her fooding and clothing from the property of her deceased husband. However, if the deceased man is issueless, in such case his widow is entitled to inherit his property. One notable characteristic in respect of marriage system amongst Chakmas is that the polygamy is allowed in their society. The system of divorce on mental maladjustment of the parties is approved by Chakma society. In that case, the husband sends the divorce paper (*surkagaj*) alongwith several signatures of witnesses to the wife and divorce is executed. The incapability of sexual intercourse, or the husband being attacked by leprosy or any serious disease, cruelty upon the wife, long term imprisonment of husband, adoption of sainthood, husband being traceless for more than three years, are the grounds for divorce (Courtsey to : '*The Chakmas of Tripura*' by Pannalal Majumder). The matter of encouraging polygamy by a chakma who is a Government employee, will no doubt put his/her job into the risky zone irrespective of any action under Penal Code.

Reang- Reang-society generally practices in monogamy. There is no fixed age for marriage in their society; however, child-marriage is generally preferred. Before solemnization of the marriage, betrothal (*chhoikhemo*) takes place within two/three months prior to the marriage ceremony. Even, it is permitted in their customary law that a child may be promised for marriage even before its birth by way of a promise made between the parents of the two parties and the child is informed about the betrothal when he/she is grown up to understand implications of the marriage; however, such betrothal is not binding if the child is found to be unsuitable. Initially when a marriage proposal (*singlaimo*) is initiated from the side of bridegroom to the parents or guardian of the bride, some bargaining takes place to decide the bride-price which includes period of service to be rendered by the groom to the family of bride. There are normally 7 forms of marriage as prevalent in Reang Community viz. *Chamaroitoumi* (by service), *Sanglaimi* (by mutual consent), *Dafabai kaimi* (by bride price), *Kachuk Khalai* (by love), *Bruitoikhailya Lami* (by elopement), *Slailimi* (by exchange) & *Toikhait Lamo* (by capture). The most common form of marriage as observed by the Reang is marriage by service wherein after performance of marriage ceremony, the bridegroom is required to stay in and serve the house of bride for a period of three to four years as may be agreed between the parents of the parties for the benefit of bride's paternal household.

Divorce can be initiated by either of the parties to the marriage on the following grounds– cruelty, desertion, adultery, unsoundness of mind, incurable disease, unfaithfulness, rape, habitual neglect of duties or barrenness etc. A Divorce thus may take place during the period of service by the groom in the house of his father-in-law, if he is found unsuitable for laziness and inefficiency. Said decision is taken by the father-in-law in consultation with his wife and the daughter; if such divorce is sought for by the wife, the bride has to compensate the divorced husband to the extent of returning the expenditure incurred by the husband's party for the marriage; and on the other hand if the divorce is sought by the husband, he is required to compensate the wife to the extent of the expenses incurred by the wife's party in celebrating the marriage ceremony. If the divorce is sought by the husband beyond his service period, the husband is liable to pay fine (*yoksom*) of Rs.60/- only to the wife. On the other hand when divorce is claimed by the wife in similar situation she is liable to pay Rs.120/- to the husband. Over and above, at times, some additional amount is also required to be paid by the divorce seeker for the entertainment of the Village Council Members. Divorce can be obtained by mutual

consent also which is called *sambak kahliamo*; if a man effects a divorce the custody of children goes to the wife and he has to part with some property of him for maintenance of the children. On the other hand if a woman effects divorce, the children go to the husband. In case of mutual divorce, the fate of the children is also decided mutually. Where there is only one child, the woman is given the preference of keeping the child. Generally, infants are taken by the mother and after they grow up they are to choose as to with whom they will live. There is also instance where the Village Council granted divorce in the year 1987, directing the husband to pay Rs.1250/- only, out of which Rs.1000/- was given to the wife and Rs.250/- was distributed amongst the members of the Council. All the divorce cases are settled by the Council of village elders, generally, in public, where both parties are given opportunity of being heard. If divorce is effected mutually, the Council imposes a nominal fine of Rs.30/- on each, which the parties are to pay to the Council of elders as token of respect shown to them. But the procedures for imposition of fine is different when it is effected by importunity or intolerance of either of the spouse. If a man divorce his wife he has to pay a compensation (*chamini*) to his wife for 3 months @ Rs.10/- per month and the value of the presents (*sampattimaibiha*) that the father of the girl gives to his daughter when the son-in-law takes her home after the expiry of 3 years of stay at bride's house. But, if the wife divorce her husband, she has to pay the *yoksom* as stated above and further Rs.10/- as indemnity (*dainsing*). *Chamini* will be paid by a man and *dainsing* to be paid by a woman have now been raised to Rs.100/- and RS.20/- respectively. If a divorced woman is taken back by her husband then Rs.5/- is to be paid by him to the council and the performance of *balarimi* ritual (for expiation) have to be repeated again.

In case divorce is allowed on grounds of delinquency of both the husband and the wife, each has to pay fine (*Yoksom*). The fine amount varies with the discretion of village council. In case the divorce takes palace after the period of service, the same amount of fine and compensation shall have to be paid to the council of elders and to the divorcee whatsoever. Over and above, paddy and other commodities produced by the joint efforts of the husband and wife, are divided equally between the divorced husband and wife. Thereafter, the divorced woman leaves the house of her husband. As per customary practice there is no provision for maintenance allowance. (Courtesy to: *Customary Laws and Practices: Reangs of Tripura*: By Dr. Bibhas Kanti Kilikdar).

Jamatia- Monogamy is the preferred type of marriage within Jamatia Community. They can remarry only after divorce or death of the spouse. Accordingly to customary rules, if a man is involved in illicit relations with another woman, at first, the community tries for restitution of conjugal life of the husband with his first wife. The man is given two options. The first option is that the man has to live with his wife and give up his relations with the other woman. If he chooses to live with the other woman, he has to divorce his wife first. In both the cases, the supreme council (*hoda)* punishes the man and the woman. The amount of fine in such cases is always high, depending on the decision of *hoda okras* (head of the hoda). The amount varies according to the gravity of the offence. There are no hard and fast rules amongst the Jamatias regarding age of marriage. However, the average of first marriage varies from 12 to 16 years in case of males and 15 to 18 years in case of females. The interesting feature is that a bride is always senior to the bridegroom in age. To them, the aged female is more suitable for domestic work and to slash and burn cultivation than a younger one. There are two forms of traditional marriage among the Jamatias: (a) marriage by service, which is gradually diminishing and, (b) marriage by negotiation, which is now common in the society. Divorce (*Kaglaymwnag*) in Jamatia Community can be obtained for maladjustment, unfaithfulness, adultery,

physical and mental cruelty and venereal decease. Jamatias condemn adultery. Irrespective of gender, fine for adultery is high which may exceed upto Rs.10000/-. In each divorce case, the Village Council conducts the trial and hears the parties in public and thereafter, respecting the public opinion, the *okras* (head of society) give their verdicts. Matter of custody of children is decided by the *hoda (society).* Generally for the minor children custody is given to the mother. Divorce by mutual consent is also permissible. According to the Jamatia Customary law, divorce is allowed in case of pregnant woman and in such case the husband has to bear the expenses incurred in the delivery of the child. There is no provision in Jamatia Customary Law for maintenance allowance to the divorced woman, but a lump sum maintenance in the form of property or cash is given according to the decision of *hoda okra.* (Courtesy to: *Customary Laws of the Jamatias of Tripura*: Published by Law Research Institute, Gauhati HighCourt). According to custom, the party seeking divorce has to pay of Rs.125'68 paisa to the *Mayal Panchay* (head of regional level organization of social administration of the Jamatais) as fees of divorce. (courtesy to: '*Jamatia Folklore-A sociological Study'* by Dr. Pradip Nath Bhattacharjee).

Section 29 (2) of the Hindu Marriage Act, 1955 prescribes that nothing contained in the Act shall be deemed to affect any right recognized by custom to obtain the dissolution of marriage, whether solemnized before or after the commencement of this Act. When both the parties to a marriage are scheduled tribes, who otherwise profess Hinduism, they are to be governed by their customary laws in view of barring provision of Section 2(2) of Hindu Marriage Act, 1955. One question may be posed that if any of the spouse is schedule tribes and another is non-tribal, whether the non-tribal spouse or their off-spring will be guided by his/her personal law or by customary law of schedule tribe to solve the matrimonial dispute, more particularly the divorce matter. Hon'ble Supreme Court in *V.V. Giri v. D. Suri Dora & ors., AIR 1959 SC 1318*, held that the status or caste of a person would have to be determined upon the recognition received from the members of the caste into which he seeks an entry. In *N.E. Hero v. Jahan Ara Jaipal Singh*, AIR 1972 SC 1840, Hon'ble Apex Court again held that even if a female is not a member of a tribe by virtue of birth, she having been married to a tribal person after due observance of all formalities and after obtaining the approval of the elders of the tribe would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile. But both the citations are in different perspective and not related to any matrimonial matter or dispute. Further question may also arise, when one of the spouses belonging to any such schedule tribes community is a Government employee and his/her divorce is effected by his/her customary law by the decision of any such village council, whether such dissolution of marriage will be accepted by his employer Department for any matter related to his service.

6th Schedule of the Constitution makes provisions for the District Council and the Regional Council to make laws on marriage, divorce and social customs, and also to constitute Courts or village Councils for administration of justice within its' local limits. But, so far as information goes, no such laws or Courts have yet been constituted in Tripura according to prescribed procedure of law. Thus, for the purpose of divorce and other matrimonial disputes, the regular Courts of the State are to administer justice to schedule tribes community. So, when the operation of provisions of Hindu Marriage Act, 1955 has been made inapplicable for above said tribal communities, the regular Court cannot entertain any proceeding under said Act. Another point comes up then for consideration, asto whether in such situation any member of schedule tirbe can resort to the provision of Special Marriage Act, 1954 for getting any decree of divorce. In *Chistopher Andrew Neelakantan v. Mrs. Anne*

Neelakantan, AIR 1959 Rajasthan 133 (SB), where the husband was an Indian and the wife was domiciled in London and their marriage was solemnized at London, it was held that so far as divorce is concerned, the Act is all embracing and would govern the dissolution of all marriages irrespective of the consideration whether the marriage was of the special form envisaged in the Act and whether it has been registered under the Act or not. In *Sri Aulvin V. Singh vs. Smti Chandrawati,* AIR 1974 Allhabad 278 (SB), Hon'ble Allahabad High Court dissented from the ration of *Andrew Neelakantan* (supra) and held that unless the marriage has been registered in accordance with Section 15 of the Special Marriage Act, 1954, the parties to such marriage will not be governed by the provision of that Act. Similar view was also taken by the Division Bench of Hon'ble Karnataka High Court in *M. Mohanraj v. Violet Chandra, Major*, AIR 1994 NOC 55 holding that marriage was solemnized under Christian Marriage Act and not under Special Marriage Act and as such petition for divorce under Special Marriage Act was not maintainable. Thus, the issue as to whether a schedule tribes community can seek divorce under Special Marriage Act is also a debatable one. To resort to Indian Divorce Act, 1869, either of the parties shall have to profess Christianity. Thus, there is no statute empowering the regular Court to grant any decree of divorce in case of Schedule Tribe coming within the meaning of clause (25) of Art. 366 of the Constitution, and as all the Court in Subordinate Judiciary are the creature of statute, it cannot invoke jurisdiction to decide a case of divorce on the basis of customary law of said Schedule Tribe unless the statute empowers it to do so. Simultaneously, it is also required to be borne in mind that in view of Art. 14 of the Constitution, every person, be he a scheduled tribe coming within the meaning of Art.366, is having his fundamental right of equal protection of law and he cannot be pushed to a law-less region; and he/she cannot be suffered by discrimination as 'equality before law' has been one of the very important ingrained doctrines in the 'Constitution of India'.

It may be legitimate, in view of the discussions made above touching the marriages and marital consequences of the Scheduled Tribe community in Tripura, to respectfully suggest that Central authority may kindly legislate broad guidelines for reducing such conflicts or contra indications so far as marriages and consequences of marriages are concerned, and all State Governments inclusive autonomous authorities, empowered to make rules/ laws be brought under governance of such general guide lines for overcoming the situation of inequalities and inequities. It is respectfully indicated here that so far as provisions of Section 2(2) and Section 29(2) of the Hindu Marriage Act, 1955 are related to the members of Hindu Schedule Tribes of Tripura and in absence of any notification from the Central Government, whether ordinary Civil Court can entertain suit to adjudge dissolution of marriage effected by Tribal custom, is a legitimate legal inquisition. Such entertainment of suit will be akin to entertaining a suit by ordinary Civil Court to adjudge 'Talaks' in respect of Mohammedan marriages.

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Precedents – that we see everyday !!

By : V.P. DebBarma
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The laws made by the judiciary owes its importance to the "*Doctrine of Precedent*". It is a Fundamental Principle of Judicial practice in the British Empire, that hierarchy of Courts are under the force of bindingness in regard to the decisions of their respective higher courts, which in a sense states the English rule of '*Stare Decisis*'. So, it is an accepted principle that to have an even-handed administration of Justice by securing certainty, equality, continuity, etc, adherence to the doctrine of precedent is necessary. Thus, in the era of legal philoshopy, it can be considered as a *Source of Law*, which endows the Judicial caricature with a frictionsless character, because when a Judicial precedent speaks with authority, the principle which its embodies would be binding in future cases.

In regard to the issue of bindingness, question arises as to what is meant when we say that a Court is bound by an earlier decision and how is that bindingness to be ascertained.

To refer, Prof. Julius Stone, as he stated, **- "***the questions whether a Court is bound by a single precedent must remain largely meaningless, with respect, however earnestly it continues discussed by Courts and text book writers***"**(i).

In this context, Sir. Carleton Allen had also commented that, - **"***We say that Judges are bound by the decisions of Higher Courts, & so undoubtedly he is. But the Superior Court does not impose fetters upon him; he places fetters on his own hands. He has to decide whether the case cited to him is truly apposite to the circumstances in question & whether it accurately embodies the principle, which he is seeking. The humblest Judicial Officer has to decide for himself whether he is or is not bound.....***"**(ii).

It was Dr. GoodHart, who propounded the division between the "*ratio*" & "*dicta*", which infact is the main device employed by the subsequent Courts to determine the bindingness of a previous decision. It is the ratio to be extracted from the decisions, which includes in it, the "*material facts*" of a case & "*a proper reason in support of doing so*", is binding or authoritative & not the *obiter dicta* which concludes with the questions not necessary for resolving the actual issue arising in that case. This concept is accepted almost by all the legal Systems. It is thus, the distinction between such dicta and the elusive ratio decidendi, in essence, a distinction between relevance and irrelevance. Notwithstanding the above, there are occasions where it becomes difficult in explaining the concept of the ratio decidendi when we attempt to make out the meaning of relevance in a given Judgment. The problem of determining the ratio of a partticular case is quite different from the problem of defining the ratio. Every case does not follow a set pattern; some Judgments are rambling and obscure, others are short and precise. Sometimes no Judgment

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(i) The Province and Functions of Law, Page-188.
(ii) Law in the Making, Julius Stone, Page-276 (6th Edition)

is given at all, whereas some are badly and inadequately reported. Thus, to overcome the difficulties of the above, we should try to ascertain a principle of a case by taking into account the facts of the case treated as material by the Court and then the reason of the decision based upon those material facts, which together constitutes a combined bindingness or authoritativeness. We can also say that the bindingness in the form of Precedent upon the Courts is nothing but the ratio decidendi.

As, in England, we have seen that the strict rule of "*Stare Decisis*" was in existence, but it seems to be different in the Continental Europe, as it was not firmly established there.

In the English legal System, the evolution of doctrine of Stare Decisis was found and became the basis of the Common Law. The strict rule of Stare Decisis was explained in both *Halsburry's Laws of England* and in *Corpus Juris Secundum* which ellaborated the necessity of strict adherence to the previous Judgments that has been followed in similar types of cases for a long period of time. However, the Judges of the Supreme Appellate Courts did not find it unconventional to overrule a decision or series of decisions which had actually seized to be part of Common Law through the gradual period of time. This has actually became a rider that previous decisions should not be followed to the extent that grievous wrong may result and accordingly the Courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced are erroneous. The rule of Stare Decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion of the Court and previous decisions should not be followed to the extent that error may continue. The proposition simply held that Stare Decisis does not require the Judges to limit themselves in interpreting rules whose verbal expression is fixed, nor does it require them to feel as if their rule-making power had suddenly been taken away. What it does state is that, at any point of time the Court's power of Law-making is limited by this rule that it should follow or distinguish earlier binding decisions and by the rule that the Court's own decision may either in future be followed or distinguished.

Thus, at this juncture the notion of *Prospective Overrulling* has evolved some how diluting the strict rule of Stare Decisis in England. Referring a Case, *Young Vs Bristol Aeroplane Company* (i) – where it was held that "*in a given case an adhering precedent can be overruled if the present Court finds the past decision inconvenient*". The power of overruling is nothing but a correctional power of the Court where it finds the previous decision with shortcomings and unfit to the present matter in issue. This concept of overruling became a necessary evil which is an exception to the strict rule of Stare Decisis, in order to eradicate the shortcomings of the previous decisions, which are not to be perpetuated in future, but the new Law established becomes a precedent from the date of the decision, inspite of the date of the cause of action.

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(i) (1944) 1K:B718 at Pg.7

So far, in the Indian context, the Common Law doctrine of Precedent is ordained by *Article 141 of the Indian Constitution*, though it was in practice during & even prior to the present Constitution, in section *212 of Government of India Act. 1935*.

The strict rule of stare decisis was not accepted here from the very outset, & a considerable extent of Judicial discretion was allowed in order to deny any previous decision, if it is erroneous. The concept of "ratio decidendi" was accepted & applied herein, & the "obiter dicta" is usually denied as a basis of authoritativeness of a binding decision, though in few instances it was given some weight as being an obiter of a higher Court, but not followed as a ratio of case.

Here, we can find some similarity between the rule of stare decisis in England & in India, as several English decisions have been applied in the Indian context, even though we can say that the application of doctrine of precedent in the Indian context has some uniqueness as the strict rule of Stare decisis is much diluted here from the very beginning. As in *Dwarkadas Shrinivas Vs Sholahpur Spinning & Weaving Company* (i), Hon'ble Das, J. stated – "*Accepting that the Supereme Court is not bound by its pwn decision and may reverse a previous decision, especially on Constitutional questions, the Court will surely be slow to do so, unless such previous decision appears to be obviously erroneous*." Again in *Bengal Immunity Co. Vs State of Bihar* (ii), Hon'ble Das, J. clearly held that – "*Article 141 of the Constitution of India does not require the Supreme Court to rigidly apply the doctrine of Precedent to its own decisions and thereby this Supreme Court has a power and authority to overrule its earlier decisions if it is convinced that any error has been committed in the past that is not to be carried out in the future*". This in a sence assures that overruling can be done as being an exception to the doctrine of Precedent but only if the case is proper and fit for that.

The concept of ratio decidendi in the Indian scenario was much similar to as what we have seen in England. The Material Fact Theory of Dr. GooHart was much accepted in the Indian context of Precedent, that, it is not everything said by a Judge that constitutes a Precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided, based upon the material facts of the cases and stating its proper reason for doing so. Hence, it is important to analyze a decision and isolate from it the ratio decidendi. In the famous case of *Krishna Kumar Vs Union of India* (iii), the theory of Precedent was well settled stating that every decision contains three basic ingredients, i.e.

(a) *Finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts*.

(b) *Statements of the principle of Law applicable to the legal problem disclosed by the facts*, and

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(i) AIR 1954 SC 119
(ii) AIR 1955 SC 661
(iii) AIR 1975 SC 1389

(c) *The Judgement based on the combined effect of both (a) and (b) above*.

Thus, for the purpose of the parties themselves and their requirements, ingredient (c) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject matter of the action. It is the Judgment that estoppes the parties from getting into the disputes again. However, for the purpose of the doctrine of Precedents, ingredient (b) is the vital element in a decision. This indeed is the ratio decidendi which may be defined as the statement of Law applied to the legal problems raised by the facts as found upon which the decision is based. The other two elements in the decision are not Precedent. Similar view of the matter was also reiterated in *Dalbir Singh Vs State of Punjab* (i).

In India also the doctrine of Prospective Overruling was applied in the landmark case of *Golakhnath Vs State of Punjab* (ii), wherein it had overruled the earlier Precedents laid down in the cases of *Shankari Prasad Vs Union of India* (iii) and *Sajjan Singh Vs State of Rajesthan* (iv), respectively and held that the decision would have prospective operation and therefore the 1st, 4th and 17th Amendment to the Constitution of India was continued to be valid. In this case the Supreme Court also laid down certain exceptions to this doctrine of Prospective Overruling and it is only with the *24th Amendment to the Constitution of India*, the legislators could clear out the effect of this Judgment.

Thus, to conclude we can say that the values of Judicial decisions are incomparable in shaping Laws. Therefore, they must be endowed with certain weight-age & gravity so that subsequent lower Courts, to assure certainty, continuity, etc, in the legal System, can follow it. So, there lies amnimmense value of the "Doctrine of Precedent", in lubricating the administration of Justice. But simultaneously, it should be put under a considerable degree of awareness that the past decisions consisting of ambiguities are not being followed, merely to fulfill the strict criteria of "Stare Decisis". The Judges in particular must be capable of interpreting the twist & turns of a specific case & in that regard follow the doctrine of precedent by applying the "ratio" of a previous case to the present one, provided both are in state of similarity. Otherwise, object secured by following strictly the rule of stare decisis would definitely cost a greater price.

Hence, the Judiciary must use this power to rectify their own errors committed in the past. Especially, in the modern state of complex, time-swallowing Parliamentary affairs of keeping a check on policy making in the administrative field, it would be an overwhelming job for them to prompt on each & every Judicial Laws. In this regard, the Judiciary are in a better competent position which can proceed efficiently in filling up of either any gaps of the legal system, or act in absence of any Statutory Law or even in reversing the erroneous decisions made earlier by them & ultimately fabricating the present legal process to bloom multi-dimensionally.

(i) (1979) 3 SCC 745
(ii) AIR 1967 SC 1643
(iii) AIR 1951 SC 458
(iv) AIR 1965 SC 845

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HIGH COURT OF TRIPURA
AGARTALA

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

Name of the Court	Opening Balance of cases as on 01.04.2013		Institution of cases from 01.04.2013 to 28.02.2014		Disposal of cases from 01.04.2013 to 28.02.2014		Pendency of cases as on 28.02.2014	
	CIVIL	CRIMINAL	CIVIL	CRIMINAL	CIVIL	CRIMINAL	CIVIL	CRIMINAL
High Court of Tripura	5430	1189	2590	805	3370	992	4650	1002

INSTITUTION, DISPOSAL AND PENDENCY OF CASES IN DISTRICT COURTS OF TRIPURA

Name of the Court	Opening Balance of cases as on 01.04.2013		Institution of cases from 01.04.2013 to 28.02.2014		Disposal of cases from 01.04.2013 to 28.02.2014		Pending cases as on 28.02.2014	
	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
District Courts of Tripura	**8347**	**45815**	**7780**	**168929**	**6935**	**146984**	**9192**	**67760**

OATH TAKING CEREMONY AT THE RAJ BHAWAN, AGARTALA

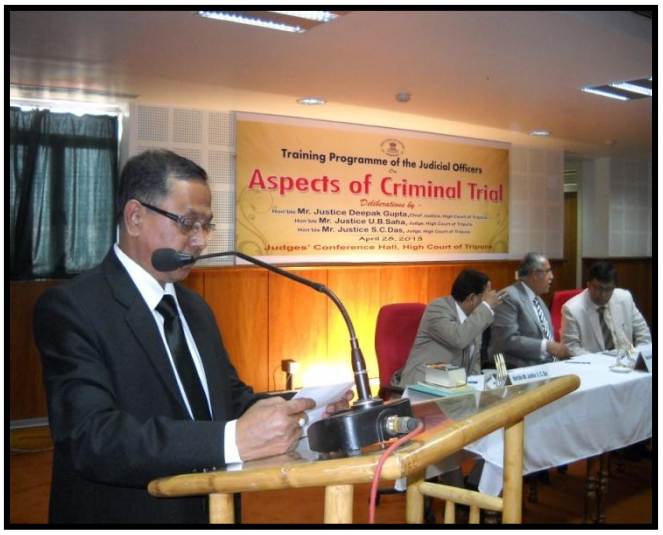
His Excellency the Governor of Tripura Mr. D.Y. Patil, administering oath to His Lordship Hon'ble Mr. Justice Deepak Gupta, the Hon'ble Chief Justice of the newly formed High Court of Tripura along with three other Judges – Hon'ble Mr. Justice U.B. Saha, Hon'ble Mr. Justice S.C Das and Hon'ble Mr. Justice S. Talapatra.

WELCOME, YOUR LORDSHIPS

Felicitation of the First Chief Justice and three other Judges on 25.03.2013 by the High Court Employees' Association

A DREAM FULFILLED; A NEW JOURNEY BEGINS

A rare assembly of the Judicial Officers of the State on the occasion of 'Training Programme of of the Judicial Officers on ASPECTS OF CRIMINAL TRIAL' in the Auditorium.



PHOTOGRAPHS OF THE INAUGURATION OF WEBSITE OF THE HIGH COURT OF TRIPURA, LAUNCHING OF SMS SERVICE AND INAUGURATION OF CYBER FORENSIC LAB BY HON'BLE JUSTICE MADAN B. LOKUR, JUDGE SUPREME COURT OF INDIA

Observance of Independence Day, 2013 and felicitation of retired High Court Judge, veteran Advocates and retired member of the staff of High Court on that occasion .

OATH TAKING CEREMONY

Hon'ble Mr. Justice S.C.Das & Hon'ble Mr. Justice S. Talapatra were sworn in as Judges of High Court of Tripura on 13th September, 2013

Vande mataram …… …
Observance of the Republic Day 2014

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