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**LAW AND SOCIAL CHANGE***Vandana Mahalwar\**

## I INTRODUCTION

AS LAW OF a society is intensely implicated in its economic, political, and social dimensions, the pursuit of social change invariably involves an engagement with law. Society and social conditions never remain stagnant. The reasons for such changes in the patterns of society can be economical, political, cultural or legal. But, law has been considered as most effective instrument of affecting social transformation. Law immensely attributes to significant alterations in social structures and patterns. Social transformation takes place when there is change in any social pattern, established social norms and social roles. There exists a reciprocity between law and social change. There are two opposite views on the relationship between law and social change, one that law is determined by the sense of justice and the moral sentiments of the population and law can only achieve desirable outcomes by staying relatively close to the prevailing social norms, the other view provides that law is a vehicle through which desirable social change can be brought about. A constitution is described as “Autobiography of a nation”.<sup>1</sup> Constitution is a document that is drafted by a generation in the light of its experience and the prevailing flows of thought and a document which provides a framework for orderly changes in future. The fundamental rights and directive principles of state policy promise change in the society. Judiciary, being the sentinel of constitutional rights of citizens, has a significant role to play in the constitutional outline. The constitution has allowed the judiciary to play a catalyst role, by conferring the power of judicial reviewing on it. The judiciary brings the social transformation by expansive interpretations of the Constitution. The increasing number of Public Interest Litigation have also enabled the judiciary to play a social role to bring social change. There have been controversies and debates on the dynamic role being played by courts as it is termed as judicial overreach and contravention of the doctrine of separation of powers and an imbalance among three wings of the government because such pronouncements and directions

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1 A. Sachs, *Protecting Human Rights in a New South Africa* 6 (Oxford: Cape Town, 1990).

mean to intrude in the domains of the legislature and the executive. But, judiciary has cultivated public trust and faith by standing against the violation of human rights of individuals and against the discrimination by any organ of the state. Judiciary has given the true meaning to rule of law by being an ardent defender, preserver and protector of the constitution of India. Courts through their human rights friendly approach, have contributed significantly in the areas where they are required to intrude and protect the interest of society. This chapter focuses on how role of judiciary acts as an agent in social transformation. The main areas chosen are the issues relating to prison reforms, environment protection, rights of differently abled persons.

## II RIGHTS OF VISUALLY DISABLED PERSONS

In *Rajive Rature v. Union of India*,<sup>2</sup> the apex court in this case issued some important guidelines and deadlines to make public places accessible to visually disabled persons. The petitioner, Rajive Rature, a differently abled person, works with a human rights organization submitted that India has 60-70 million population of differently abled persons and 50 percent thereof suffer from visual disability. Safe accessibility to movements on footpaths and accessibility to roads and transport is the major concern of visually impaired persons. The court discussed the rights of differently abled persons at national and international level. Court maintained that:

“Right to dignity, which is ensured in our Constitutional set up for every citizen applies with much more vigour in case of persons suffering from disability and, therefore, it becomes imperative to provide such facilities so that these persons also are ensured level playing field and not only they are able to enjoy life meaningfully, they contribute to the progress of the nation as well”.

For the proper implementation of The Rights of Persons with Disabilities Act, 2016, court passed a slew of directions and gave deadlines for the same:<sup>3</sup>

1. Making 20-50 important government buildings in 50 cities fully accessible by December 2017
2. Making 50% of all the govt. buildings of the national capital and all the state capitals fully accessible by December 2018.
3. Completing accessibility audit of 50% of govt. buildings and making them fully accessible in 10 most important cities/towns of states/UTs not covered in targets (i) and (ii) by December 2019.
4. Accessibility in airports. Completing accessibility audit of all the international airports.
5. 50% of all railway stations to made fully accessible by March 2018.

2 2017 SCC OnLine SC 1491.

3 *Id.* at para 34.

6. 10% of government owned public transport carriers are to be made fully accessible by March 2018.
7. At least 50% of central and state govt. websites are to meet accessibility standards by March 2017. At least 50% of the public documents are to meet accessibility standards by March 2018.
8. Bureau of Indian Standards to embed disability aspect in all relevant parts of revised National Building Code.
9. Train additional 200 sign language interpreters by March 2018.
10. Advisory Boards to be constituted by all States and Union Territories within a period of three months from today.

For effective implementation of these provisions, the following measures need to be undertaken by the State authorities for removing obstacles that prevent the disabled from accessing public places:<sup>4</sup>

- i) Making the gates to public places accessible by incorporating necessary accessible standards. More specifically, they must be made wide enough to allow wheelchairs to pass easily and must provide enough space for the wheelchair to turn around after entering inside.
- ii) Stairs must be marked with a broad yellow line to allow the visually impaired to understand the difference in gradient.
- iii) At places like airports, railway stations, etc passengers must be clearly informed about the details of their flight/train such as the gate number for boarding, etc via public announcement systems (this practice is, surprisingly, gradually declining).
- iv) A minimum of 3-5 parking spaces near the entrance must be reserved for persons with disabilities. This must be clearly indicated by showing the international symbol for disability i.e. the wheelchair symbol.
- v) All unnecessary obstructions must be removed, and all access ways must be well lit. Moreover, clear signposts, along with their Braille equivalents should be put up.
- vi) Elevators must have clear Braille signs and auditory feedback. The buttons of elevators must be accessible from a wheelchair. Pictograms must be put up near elevators and other important places such as toilets.
- vii) Employees working at public places must be provided necessary training to enable them to understand the unique set of challenges that persons with disabilities face. They should be informed about the best practices for dealing with these challenges.
- viii) Wheelchairs and mobility scooters should be available at every public place.<sup>5</sup>

4 *Id.* at para 22.

5 *Ibid.*

It is pertinent to mention here that in *Jeeja Ghosh case*,<sup>6</sup> court observed that:

The gap between the laws and reality still remains. Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfilment but also to make them contribute in the growth of the society, yet mindset of large section of the people who claim themselves to be 'able' persons still needs to be changed towards differently abled persons.<sup>7</sup>

The present pronouncement is another judgment on disability rights in which the apex court has aimed to bridge the gap between law and reality. In the present case, the court addressed the issues pertaining to reservation for persons with disabilities in educational institutions and accessibility of educational institutions. By passing these directions, the court has acted as an ardent champions of equal rights for persons with disabilities. This judgment will serve as a much needed judicial precedent for many students with disabilities who are denied the opportunity of education because of inaccessibility of it.

### III RE-INHUMAN CONDITIONS IN 1382 PRISONS<sup>8</sup>

Custodial violence and deaths infringe upon human rights and are blatant violation of human dignity. It hits at very spirit of rule of law of a nation. Custodial violence or death is one that occurs during the period the person is in custody of police, prison or any other institution set up by the State for detention as mentioned in entry- 4, State List. Much importance has already been given to custodial justice. Parliament enacted the Protection of Human Rights Act, 1993 and the National Human Rights Commission was set up in 1993. The apex court has also laid down significant guidelines from time to time which have also been implemented.

Supreme Court again formulated over the inflation in the number of custodial or unnatural deaths taking place in the prisons and issued some important directions to curb them. Justice M.B. Lokur and Justice Deepak Gupta highlighted that:<sup>9</sup>

...we do hope that the highlighting of this issue will bring about awareness in the mind and heart of the powers that be and consequential reforms in prisons which may ultimately reduce, if not eliminate, the number of unnatural deaths in prisons and also improve the conditions of prisoners all over the country

6 *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

7 *Id.* at para 2.

8 W.P. C. No. 406 Of 2013 (I.A. No. 68248 of 2017).

9 *Id.* at para 52.

The court also referred to its earlier judgment and order of 5<sup>th</sup> February, 2016 in which four major issues regarding prisons were addressed, namely:<sup>10</sup>

- (i) Overcrowding of Prison
- (ii) Unnatural death of prisoners
- (iii) Gross inadequacy of staff, and
- (iv) Available staff being untrained and inadequately trained.

Court also dealt with the issue of over crowdedness in prisons and issued directions in this respect. In the present case, the court took into consideration the information provided by the National Crime Records Bureau (NCRB *hereinafter*) and the data provided by National Human Rights Commission on suicide in prisons. NCRB has made a distinction between natural deaths and unnatural deaths but the distinction as to what would be classified as natural and unnatural has not been clarified anywhere.

The National Human Rights Commission made a study on suicide in prisons and released its report in 2014 titled as “Suicide in Prison- prevention strategy implication from human rights and legal points of view”. The report reveals that total number of suicides formed 71% of the total unnatural deaths during 2007-2011. The suicide rate in prisons is 50% more than the suicides in normal conditions.<sup>11</sup>

Directions given by the court are as follows:

1. The Chief Justice of High Court is requested to *suo moto* register a public interest litigation in order to identify the next of kin of prisoners who have died an unnatural death between 2012-2015 and to award suitable compensation unless adequate compensation is granted.<sup>12</sup>

2. Union of India through Ministry of home Affairs circulation within one month of

- (i) The Model Prison Manual
- (ii) The monograph prepared by NHRC titled as “Suicide in Prison- prevention strategy implication from human rights and legal points of view”
- (iii) The communications sent by the NHRC referred to above
- (iv) The compendium of advisories issued by Ministry of Home Affairs to the State Affairs
- (v) The Nelson Mandela Rules and
- (vi) The Guidelines on Investigating Deaths in Custody issued by the International Committee of the Red Cross to the Director General or

10 *Id.* at para 4.

11 *Id.* at para 5. During 2007-2011, the average suicide rate in general public was 11 per 100,000 while the suicide rate in prison was 16.9 per 100,000.

12 *Id.* at para 57.

Inspector General of Police in charge of prisons in every state and union territory. Efforts must be made to reduce and possibly eliminate unnatural deaths in prisons and to document each and every death in prisons both natural and unnatural.<sup>13</sup>

3. The Union of India through the Ministry of Home Affairs is required to direct the NCRB to explain and clarify the distinction between natural and unnatural deaths in prisons. The NCRB should also be required to sub-categorise natural deaths.<sup>14</sup>

4. The State Government should along with State Legal Services Authority, the National and State Police Academy and the Bureau of Police Research and Development conduct the training and sensitization programmes for senior police officials of all prisons on their functions, duties and responsibilities as also the rights and duties of prisoners.<sup>15</sup>

5. Counselors and support persons in prisons are required so that their services can be used to counsel and advice prisoners who might be facing some crisis situation or might have some violent or suicidal tendencies. The State Governments are required to appoint counselors and support persons for counselling prisoners, particularly first-time offenders. For this, services can be taken by NGOs.<sup>16</sup>

6. As there is a need to encourage the visit of prisoner's family to prison, it is equally worthwhile to extend the duration and frequency of meetings and to see the possibility of using phones and video conferencing for communications between prisoner and lawyer.<sup>17</sup>

7. A study should be conducted by State Legal Services Authorities on the same lines as is conducted by Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan on the condition of prisoners and facilities available to them. This study also needs to include a performance audit of the prisons. The SLSAs should also analyze the impact of various schemes framed by NALSA relating to prisoners. All Chief Justices of every High Court are requested, in capacity of Patron-in-chief of State Legal Services Authority to constitute a committee headed preferably by Executive Chairperson of SLSA to implement these directions.<sup>18</sup>

8. Right to health is a basic human right and all the states should strive to translate this right into reality. Medical assistance and facilities should be given to

13 *Ibid.*

14 *Ibid.*

15 *Id.* at 39.

16 *Id.* at 39-40.

17 *Id.* at 40.

18 *Ibid.*

all inmates in prisons. The states government have to study the availability of medical assistance to prisoners and take remedial steps accordingly.<sup>19</sup>

9. Court expressed that the concept of 'open jail' in Shimla and the semi-open prison in Delhi are successful and the establishment of such open prisons in other states is worth considering. Court also stated that there might be other successful experiments carried out in other states as well and if there are any, they need to be documented, studied and implemented in other states also.<sup>20</sup>

10. The Ministry of Women and Child Development of Government of India is directed to create method for tabulating the number of children who have died unnaturally in custody of child care homes when they have violated any law or because they need care and protection.

Reflecting upon the mismatch of criminal justice system and prison administration, the court said that:<sup>21</sup>

What is practiced in our prisons is the theory of retribution and deterrence and the ground situation emphasizes this, while our criminal justice system believes in reformation and rehabilitation and that is why handcuffing and solitary confinement are prohibited. It is this 'rejection' of the philosophy of our criminal justice system that leads to violence in prisons and eventually unnatural deaths.

The pronouncement carries social significance as it aims to protect legal and constitutional rights of prisoners. The court has spelled out the need to improve prison conditions and lead to the setting up of mechanisms to lower the number of unnatural deaths in prisons and compensate families of the deceased. Efforts are made to reduce and eliminate the unnatural deaths in prisons and to document each and every natural or unnatural death in prisons.

#### IV RIGHT TO EDUCATION

In *Setu Niket v. Union of India*<sup>22</sup> case, a writ petition under article 226 of the Constitution of India was filed in Delhi High Court seeking its intervention to ensure no girl child misses her education and health due to inadequate basic facilities. This case involves the issue of lack of awareness about menstruation and menstrual hygiene among school girls. The court issued a notice to the Centre and has sought its response to establish a proper mechanism to provide education, to sensitize and ensure the availability of menstrual hygiene including sanitary napkins to school girls.

19 *Id.* at 41.

20 *Id.* at 42.

21 *Id.* at para 49 at 33.

22 W.P.(C) NO. 5909/2017.

Petitioner contended that relief is sought to provide access and education about menstrual hygiene to school girls above ten years age because the girls who come from poor families are neither equipped nor educated by their parents about menstruation and mental hygiene and all this leads to abstinence and dropping out of students from school.

It is pertinent to mention that PIL says:<sup>23</sup>

For the effective implementation of the Act it is imperative that every child be it a girl or boy shall not be deterred from basic elementary education for any reason whatsoever. However, the State fails in its responsibility to provide education to the girl child when she has to drop out of school after entering the age of puberty due to certain biological changes in the body and due to lack of sanitary products and the inability (due to lack of education or financial constraints) of her guardians. It is imperative that children of the age group of 10-14 years are sensitized about menstrual hygiene and every possible effort to help the girl child in continuing her education be made by the State.

The Right to Education Act, 2009 aims to provide free and compulsory education to all children of the age of six to fourteen years. Section 8(c) of the Act provides that a child belonging to weaker section or disadvantaged group is not discriminated or prevented from pursuing and completing elementary education on any grounds. But, the proper implementation of the Act is prevented because of lack of information, knowledge and education on menstruation and menstrual hygiene. It becomes relevant to state and appreciate the steps taken by other states in this regard. Government of Kerala took the initiative and allocated Rs. 30 crore for the project to provide sanitary napkins in all Government schools.<sup>24</sup>

Kenya has also amended its Education Act and has incorporated right to access free sanitary products in order to ensure that girls are not deprived of their right to education because of issues arising out of lack of access to products and hygiene relating to menstruation.<sup>25</sup>

Stressing upon the significance of right to education, the Court issued directions to the Centre to ensure the proper implementation of Right to Education Act, in letter and spirit by providing education about menstrual health.<sup>26</sup> The court reasoned its order by emphasizing that because article 21 guarantees right of a decent and civilized life and right to live with dignity, whereas failure to provide conducive environment for education and access to basic necessities such as

23 *Id.* at para 13 at 5.

24 *Id.* at para 25.

25 *Id.* at para 26.

26 *Id.* at para 27.



sanitary products and clean environment is an impediment to protection guaranteed under article 21.<sup>27</sup>

Court contended that no child should be deprived of right to education due to natural biological reason. The judiciary through this case has clarified the positive obligations within the right to education and the role of Judiciary within the same. It is established through the decision that right to menstrual hygiene management is must to give true meaning to the right to education, which is 'core obligation' of the state.

#### V ENVIRONMENTAL PROTECTION

In *Arjun Gopal v. Union of India*,<sup>28</sup> a petition was filed by the petitioner under article 32 of the Constitution of India to issue a writ of mandamus or any other appropriate writ or direction to ban the use of fireworks and minor explosives during the festivals or otherwise. The level of particulate matter shot up by three times because of the fire cracking during deepavali in 2016 and air quality was deteriorated to such level that many fell sick and had to wear face masks and install air purifiers in buildings. Because of such alarming situation, court passed an order on November 11, 2016 directing the Union of India to suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR. Central Pollution Control Board (CPCB *hereinafter*) was also directed to study and prepare a report on the harmful effects of the materials currently used in the manufacture of fireworks.

After being aggrieved by this order, the affected manufacturers and the suppliers of the crackers moved for the modification of said order.

After analyzing the provisions of the Explosives Act and Rules framed thereunder, the court well established the relation of air pollution with the sale and bursting of fireworks in Delhi and the NCR. Court contended that all directions which have been given so far by the Government of NCT of Delhi seems to be a mere paperwork which was just to sensitize the students and the staff as to the ill-effects and health hazards of bursting fireworks. Emphasizing upon the health, court stated that cost of ill health, specially among children is far greater in psychosocial terms than in financial and economic terms. The Delhi police also issued directions restricting the time during which fireworks can be burst but there is difficulty in getting the directions implemented.

On 31<sup>st</sup> July, this court prohibited the use of fire chemicals namely, antimony, lithium, mercury, arsenic and lead and left open the question of use of strontium. Now, as the CPCB has come to the conclusion that only strontium chromate is detrimental to human health, court sees no other way than prohibiting the use of strontium chromate in the manufacturing of fireworks.

27 *Id.* at para 27.

28 (2017) 16 SCC 267.

In *Occupational Health & Safety Assn. v. Union of India*<sup>29</sup> it was held that:

Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking out a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in article 21 derives its life breath from the directive principles of State policy, particularly clauses (e) and (f) of articles 39, 41 and 42. Those articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity.

Similar view was expressed in *Vellore Citizens' Welfare Forum v. Union of India*<sup>30</sup> in which the court believed that in order to eliminate air pollution from air, it is must to continue the suspension of licences for the sale of fireworks. Court attempted to maintain the balance between two different interest, first and primary one, health of everybody and the right to breath good quality air and the other interest is of the applicant's or trader's commercial interest and those who have obtained permanent licence to possess and sell fireworks.

It was considered that the commercial interest of applicants should not prevail over the interest of general public. Keeping all these factors in mind, the court has made following observations:<sup>31</sup>

- Rule 15<sup>32</sup> and Rule 84<sup>33</sup> should be strictly enforced. If fireworks are not in conformity with Rule 15 and 84, they can't be sold in NCR including Delhi.

29 (2014) 3 SCC 547.

30 (1996) 5 SCC 647.

31 *Supra* note 28 at para 71.

32 Rule 15 of the Explosives Rules, 2008: Marking on explosives and packages.—(1) Marking on packages –

- (i) The outer package shall be marked in conspicuous indelible character, by means of a stamping, embossing or painting with—
  - (a) the word “EXPLOSIVES”;
  - (b) the name of authorised explosive;
  - (c) the number if any of the Class and the Division including sub-division to which it belongs;
  - (d) the safety distance category of explosive;
  - (e) the name of the manufacturer;
  - (f) identification number of the package;
  - (g) the net weight of explosives;
  - (h) gross weight of the package;

- The directions issued and restrictions imposed in the order passed by this Court on 18th July, 2005 in Noise Pollution (V) shall continue to be in force.
- The Police authorities & District Magistrate have to ensure that fireworks are not burst in silence zones, which an area atleast 100 meters away from hospitals, nursing homes, primary and district health-care centers, educational institutions, courts, religious places or any other area that may be declared as a silence zone by the concerned authorities.
- Further, the Delhi police has to reduce the grant of temporary licences by about 50% of the number of licenses granted in 2016. 500 must be the cap of temporary licenses. Likewise, other states in NCR are restrained from granting more than 50% of the number of temporary licenses granted in 2016. Authorities have the discretion to decide the area of distribution of temporary licenses.
- Union of India has to strictly comply with the Notification GSR No. 64(E) dated 27<sup>th</sup> January, 1992 regarding the prohibition on ban of fireworks. Union of India can revise and upgrade this notification and can issue a new notification, if required.
- The Department of Education of the Government of NCT of Delhi shall immediately formulate a plan of action, in not more than 15

- (i) date of manufacture and batch number;
- (j) UN Classification and UN Identification number (for export packages);
- (k) in case of plastic explosives, the words “marking agent added as per International Civil Aviation Organization Resolution A 27-8” referred in sub-clause (iv) of clause (c) under sub-rule (2) of rule 10; and

(l) a paper slip containing the above details shall be kept inside the package:

Provided that in the case of safety fuse or fireworks, clauses (a) and (l) may be omitted and the words “safety fuse” or “Fireworks” shall be marked.

33 Rule 84 of the Explosives Rules, 2008: Temporary shops for possession and sale of fireworks during festivals —During festivals, the District Magistrate may issue temporary licences for possession and sale of fireworks in a temporary shop subject to the following conditions namely:

- (1) The fireworks shall be kept in a shed made of non-flammable material, which is closed and secured so as to prevent unauthorised persons having access thereto.
- (2) The sheds for possession and sale of fireworks shall be at a distance of at least three metres from each other and fifty meters from any protected work.
- (3) The sheds shall not face each other.
- (4) No oil burning lamps, gas lamps or naked lights shall be used in the shed or within the safety distance of the sheds. Electrical lights, if used, shall be fixed to the wall or ceiling and shall not be suspended by flexible wire. Switches for each shop shall be fixed rigidly to the wall and a master switch shall be provided for each row of sheds.
- (5) Display of fireworks shall not be allowed within fifty meters of any shed.
- (6) In one cluster not more than fifty shops shall be permitted.

days, to reach out to children in all the schools through the school staff, volunteers and NGOs to sensitize and educate school children on the health hazards and ill-effects of breathing polluted air, including air that is polluted due to fireworks. School children should be encouraged to reduce, if not eliminate, the bursting of fireworks as a part of any festivities.

- The interim direction issued by this Court on 31st July, 2017 prohibiting the use of compounds of antimony, lithium, mercury, arsenic and lead in the manufacture of fireworks is made absolute. In addition, the use of strontium chromate in the manufacture of fireworks is prohibited.
- Considering the hostile effects of air pollution, the human right to breathe clean air and the human right to health, the Central Government and other authorities should contemplate encouraging display fireworks through community participation rather than individual bursting of fireworks.

By pronouncing this judgment, the court has attributed the duty of the State to ensure a healthy environment given in article 48A of the Constitution of India as well as the duty of the citizens to ensure the same under article 51A(g) of the Constitution. The 'Precautionary Principle' has appropriately been applied by the court, which says that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The court has considered the dire need of improving the quality of air and has adopted a graded and balanced approach to eliminate the air pollution caused due to fireworks.

#### VI THE NATIONAL ANTHEM CASE<sup>34</sup>

Through the February 14 order, 2017 the apex court modified its previous order of November 30, 2016 where it directed everybody to mandatorily rise to show respect while the national anthem is played in theatres, by clarifying that when the National Anthem is sung or played in the storyline of a feature film or part of the newsreel or documentary, the audience need not stand.

In its November 30, 2016 order, the court while relying on article 51A, directed that when the National Anthem is sung or played, it is imperative on part of everyone present to 'show' due respect and honour to National Anthem. Furthermore, the court categorically stated that "all the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem". While issuing such directions, court referred to clause(a) of article 51A in Part IV A of the Constitution, which reads as:

34 *Shyam Narayan Chouksey v. Union of India*, W.P.C. No. 855 of 2016.

It shall be the duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem.

In addition, the apex court stated that the citizens of the country must realize that they live in a nation and are duty bound to show respect to National Anthem which is the symbol of the Constitutional Patriotism and inherent national quality.

As the court has consistently used the term 'to show respect' throughout the order, it becomes imperative to find reasons why the apex court took a leap ahead to 'show respect' from 'to respect' (as provided under article 51A). Patriotism by way of showing respect appears to be a forced expression and not a free expression. Such directions may seem to guarantee only the 'display of patriotism' which few might find to stand in contrast with freedom of expression. It becomes imperative to mention here that article 19, along with freedom of expression, also takes into its fold the right not to express.

The order in toto nourishes the constitutional values, but there is a need to adopt another route to reach to the goals of cultivating the feeling of patriotism and nationalism. It is most crucial to develop the sense of patriotism in individuals and it is something that can be best inculcated at the age of early childhood.

On December 9, 2016, the court modified its order by giving exemption to the differently-abled persons from standing when the National Anthem is played. The apex court's February 14, 2017 order needs to be appreciated for the reason that it provided clarification that individuals are not obliged to rise if National Anthem is part of the movie. This clarification was much needed for some people were assaulted for not rising on the display of National Anthem during the display of movie.

#### VII FUNDAMENTAL RIGHT TO TRADE AND PROFESS

In *Soma Saha Sen v. State of West Bengal*,<sup>35</sup> the petitioner's husband, who is an under trial prisoner, wanted to execute sale deeds in favour of the willing buyers. Section 31 of the Registration Act provides that under special conditions the Registrar can go to attend the residence of any person for the purpose of presentation of document for registration. Section 79(2)(j) of the West Bengal Correctional Services Act, 1992, provides that a prisoner is entitled to enjoy his fundamental rights enshrined in chapter III of the Constitution of India until and unless the said rights cannot be enjoyed due to such incarceration. Right to carry on trade and profession including right to convey property in course of such business is an essential fundamental right enshrined under article 19(i)(g) of the Constitution of India and the same do not stand eclipsed by the continuing incarceration of a prisoner.

Earlier, the prisoner was obligated to be released under special bail provision in case of under trial prisoner or be released temporarily under parole in case of a convicted prisoner, to facilitate travel to the Registrar's Office to get the required

35 (2017) 3 ICC 392.

documents registered. Though both bail and parole are granted upon the discretion of the concerned judge or the prison authority respectively.

After making an expansive interpretation of the provisions, the court maintained that:<sup>36</sup>

Right to carry on trade and profession including right to convey property in course of such business is an essential fundamental right enshrined under article 19(i)(g) of the Constitution of India and the same do not stand eclipsed by the continuing incarceration of a prisoner. Hence, I am of the opinion that incarceration of the husband of the petitioner shall not disentitle him from executing sale deeds to convey flats in favour of intending purchasers in accordance with law.

While giving a broader meaning to prison, court interpreted prison as temporary home of the inmate:

By simplifying the process of registration of documents for a prisoner, the court upheld prisoners right to trade and profession as enshrined under article 19(i) (g) of the Constitution of India.

#### VIII CONCLUSION

The year 2017 has witnessed how court has strived to bring change in the attitude and mindset of society by articulating, clarifying and restating different provisions of law. The courts in any nation have the responsibility of upholding the rule of law in that particular nation by protecting the interest of its people. The judicial engagements during the period under review demonstrates its earnest efforts in trying to protect the interest of prisoners and children. The approach of the court has been to interpret laws in rights-friendly manner. The view taken by the Supreme Court in *Re-inhuman conditions in 1382 Prisons* needs a special mention. The court has confirmed that state cannot disown its liability towards prisoners and has to ensure the safety and life of prisoners. It may be noticed that in most of the cases surveyed, court is passing a slew of directions to Centre and State government to ensure proper implementation of the law. The approach of court in *Arjun Gopal v. Union of India* is commendable as it delivered an extensive ruling by rejecting the plea to modify the cracker ban order in Delhi. The court stood firm by its order to protect their right to clean, healthy and breathable air under article 21.

36 *Id.* at para 9.