Yogendra Yadav v. State of Uttar Pradesh

- **BENCH** : Justices AS Oka and Augustine George Masih

- **FORUM:** Supreme Court
- **OBSERVATIONS**
  - The Supreme Court recently chastised an advocate for refusing to argue an appeal before the High Court. The bench comprising Justices AS Oka and Augustine George Masih was hearing a petition filed by a convict, who is serving life sentence in a murder case, challenging the Allahabad High Court's refusal to grant him bail.
  - When the bail application was taken, the High Court bench told the counsel that it was ready to finally hear the appeal itself.
  - However, the counsel refused to argue the appeal and insisted that the High Court should hear the bail application instead. While dismissing the application, the High Court recorded as follows : "Paper book is ready and the Court has invited learned counsel for the applicant to argue the case on merit in near future (on any Monday or Friday) but learned counsel for the applicant has declined to do so and has insisted the Court to decide the third bail application of the applicant Yogendra Yadav."
  - When the special leave petition challenging the High Court's order, Justice Oka said : ‘‘The lawyer can say that alright, I will not be ready within one week, two weeks...but no lawyer can brazenly say that I will not argue the matter finally...There is a way of telling the court." Though the bench agreed to issue notice on the petition, it said that the lawyer and the petitioner had to tender an apology to the High Court.
  - The court added that unless an apology along with an application is tendered before the high court, they will not pass any further orders on the special leave petition pending before the Supreme Court. The order stated : ‘‘We don't appreciate such brazen conduct on the part of the appellant and his advocate.
  - Though we are issuing notice, we make it clear that no further order will be passed on the SLP unless the petitioner puts on record an affidavit of apology of his as well as the affidavit of apology of his advocate. We make it clear that the affidavits of apology shall be tendered before the High Court along with an application."

Ratnesh Kumar Jigyasu And Ors. v. Union Of India

- **BENCH** : CJI DY Chandrachud,Justices JB Pardiwala and Manoj Misra

- **FORUM:** Supreme Court
- **OBSERVATIONS**
  - The Supreme Court heard a batch of petitions filed by parents of children suffering from Muscular Dystrophy who seek a policy for free treatment of the disease.
  - The bench of CJI DY Chandrachud,Justices JB Pardiwala and Manoj Misra was hearing a petition seeking to commence a national programme for the treatment of children with muscular dystrophy.
  - The petition further sought the formulation of a standard policy for issuing unique ID cards to patients of muscular dystrophy to enable them to get free treatment at any government or private hospital.
  - The counsel for the petitioners informed the bench that out of 250 petitioners who had filed the present case, 5 children have died since the filing of the case and 10 children were severely critical.
  - "Ever since the notice was issued in the matter, almost 250 children have come with their parents to the Supreme Court. Now what has unfortunately happened is, it's been 10 months since the notice was issued, 5 of the petitioners are dead. 10 are

critical as of I speak and they are under the protection of the Court." The Court issued notice in the petition in October 2023 and had sought the assistance of Additional Solicitor General Aishwarya Bhati.

- Yesterday, ASG Bhati requested the bench to grant the Union time to file a response with respect to the changes in the policy of the Centre and the funds that have been disbursed so far.
- The Court while allowing the same also asked the ASG to get more clarity on the status of a similar petition pending before the Delhi High Court.
- It may be noted that in March 2021, the Delhi High Court had directed the Centre to state on affidavit its budget for health in the last 5 years and if any unused budget can be used for the treatment of the children suffering from rare diseases like Duchenne Muscular Dystrophy (DMD), Hunter's syndrome, etc.
- The Public Interest Litigation (PIL) in question was filed by a few parents whose children were suffering from muscular dystrophy, a genetic disease which causes progressive weakness and loss of muscle function in the legs, pelvis, and arms and that makes the children wheelchair-bound and shortens their life. Some types of muscular dystrophy also affect the heart, lungs, spine, brain etc.
- As per the plea, though there are various techniques for its diagnosis, due to lack of awareness and non-availability of diagnostic facilities, this disease is not diagnosed at an early stage and therefore timely treatment is not given.
- Further, treatment of the disease is also very expensive and available at selected centers only, which makes it out of reach for most parents. In fact, the treatment of this disease is not available in most of the states and is highly expensive in states it is available at.
- The PIL seeks for muscular dystrophy to be classified under "Special Categories Rare Disease" instead of "Rare Disease" and for the government to enhance financial support under National Policy for Rare Diseases, 2021.
- It also seeks for private and government insurance companies to include muscular dystrophy in their insurance policy schemes.

Association Of Indian Schools v. State Of Maharashtra And Ors

- **BENCH :** CJI DY Chandrachud and Justices JB Pardiwala and Manoj Misra
- **FORUM:** Supreme Court

- **OBSERVATIONS**
  - The Supreme Court refused to interfere with the Bombay High Court's judgment which struck down the Maharashtra amendment to the Right to Education Act 2009 exempting private schools from providing the 25% quota in Class I or Pre-school for children of disadvantaged sections, if there is a government-run or aided school within 1 km radius of that private school.

  - A bench of CJI DY Chandrachud and Justices JB Pardiwala and Manoj Misra dismissed a Special Leave Petition filed by the Association of Indian Schools against the High Court's judgment.
  - During the hearing, CJI observed : "Children belonging to the Economically Weaker Sections (EWS), they must get an opportunity to go to good schools. Merely because the government schools in Mumbai are within 1 Km radius, to say that private schools should be exempted from the Right to Education Act. Ultimately if we want to give children from EWS a real chance in life, they must be given education in good schools. Why would a parent want to send their child to a municipal school, when they have access to a good school?"
  - Senior Advocate Mukul Rohatgi appearing for the Association of Indian Schools mainly contended that as per the Right of Children to Free and Compulsory Education Act, 2009 the primary duty is on the state agencies to ensure that children from the marginalized sections get adequate schooling and that it would be incorrect to impose this obligation on private agencies/schools. In contending so, he relied on Section 6 of the RTE Act which states that it is the duty of appropriate Government and local authority to establish schools.
  - He submitted that the High Courts of Karnataka and Allahabad have taken contrary views and the petitions arising from those decisions are pending in the Supreme Court.
  - Giving A Fair Chance Of Private Schooling To Underprivileged Students Would Also Break The 'Cocoon' Of Privileged Ones: CJI Explains The CJI emphasized that integrating students from

diverse socio-economic backgrounds in private schools can lead to a more well-rounded education for all.

- He pointed out that a mixed social interaction also allows privileged students to gain a true understanding of India's diverse society and the struggles of people from different economic strata.
- "It also fosters good education for students belonging to resourceful backgrounds. Because they (privileged children) interact with children from marginalized backgrounds, their quality of education improves, they truly understand what India is." The CJI expressed that children from affluent families often live in a "cocoon" surrounded by luxuries such as expensive gadgets and frequent travel. He argued that this lifestyle can isolate them from the realities faced by many of their fellow citizens.
- By studying alongside students from marginalized backgrounds, the privileged children can develop a more accurate perception of their country. "Otherwise children belonging to very good families, they live in a cocoon of fancy gadgets, travel etc., they must understand what the real country is like. That's the way we make good citizens for the future."
- In expressing this opinion, the CJI took the example of the Sanskriti School where children from near slums and EWS backgrounds get schooling at par with privileged children. He also addressed that even in such a case, the children from EWS face difficulties in adjusting to an affluent environment, but that in turn makes one realize the actual realities of the Country. "That is what life in India is all about. How can we say that you are only going to interact with children belonging to economic strata."
- The State of Maharashtra had made amendments to exempt private schools from providing 25% quota in Class I or Pre-school for children of disadvantaged sections, if there is a government-run or aided school within 1 km radius of that private school.
- The decision was taken by the State this year by amending the Maharashtra Right of Children to Free and Compulsory Education Rules, 2011. A division bench of Chief Justice Devendra Upadhyaya and Justice Amit Borkar set-aside the Rules as unconstitutional and ultra-vires to the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act).
- The bench ultimately dismissed the challenge.

Dattatray Shrikrushna Shejole v. State of Maharashtra

- **BENCH :** Justice Urmila Joshi Phalke

- **FORUM:** Bombay High Court
- **OBSERVATIONS**
  - The Nagpur bench of the Bombay High Court recently granted bail to a man booked in a rape case observing that Article 21 of the Constitution of India will apply irrespective of the nature of the crime. Single-judge Justice Urmila Joshi-Phalke in her order passed on August 6 noted that the accused was arrested on December 15, 2021, and was in custody since then.
  - The judge further noted that an earlier bail application was withdrawn by the applicant with liberty to file a fresh plea if the trial did not commence within six months. "Now, one year has passed and there is no progress in the trial. The present application is filed by the present applicant on the ground of delay in trial," the judge noted in the order. The bench further took into account the 'certified' copy of the trial court's roznama, which showed that on several occasions the accused was not produced before the Court by the jail authority and therefore the charge was not framed.
  - "From the roznama, it appears that the Special Court has not taken the efforts to secure the presence of the accused before the Court to proceed with the trial," the bench observed.
  - The single-judge referred to the observations of the Supreme Court in Javed Gulam Nahi Shaikh vs State of Maharashtra held that if the State or the prosecuting agency including the court has no wherewithal to protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution of India, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious.
  - "Article 21 of the Constitution applies irrespective of the nature of the crime. Long incarceration with the unlikelihood of the trial being completed in the

near future is a good ground to grant bail, "Justice Joshi-Phalke observed In the present case, the judge observed that the applicant has been behind bars since December 15, 2021, and from the certified copy of the roznama it revealed the trial has not commenced merely because the accused was not produced before the Court and the charge was not framed.

- "The Special Court has not taken any efforts to secure the presence of the accused before the Court as well as the prosecution has not taken any efforts to secure the presence of the accused before the Court. Thus, in view of the observations made by the Supreme Court, if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious," the judge observed.
- The judge stated that though the crime committed was serious, in view of the observations of the Supreme Court and Article 21 of the Constitution, the applicant cannot be kept behind bars for an indefinite period. The court, therefore, granted bail to the applicant on a surety of Rs 50,000.

Shakuntala Devi & Ors v. Kewal Singh & Ors.

❖ **BENCH :** Justice Jyotsna Rewal Dua

❖ **FORUM:** Himachal Pradesh High Court

❖ **OBSERVATIONS**

- The Himachal Pradesh High Court has ruled that a plaint cannot be dismissed solely on the grounds of insufficient stamping or the failure to affix the proper court fee, even when supported by evidence such as a spot map or witness statements.
- The court ruled that such procedural deficiencies should not result in the outright rejection of the plaint and that the plaintiff must be allowed to rectify these issues within a timeline set by the court.
- Justice Jyotsna Rewal Dua, presiding over the matter, made it clear that the provision under Order 7 Rule 11 of the Civil Procedure Code (CPC) allows the court to require the plaintiff to supply the necessary stamp papers within a fixed period.
- While adjudicating the matter, the court observed, ‘‘even if the plaint is not sufficiently stamped, then also the plaintiff can be required by the Court to supply the requisite stamp papers within a timeline.
- There would be no occasion for rejection of the plaint straightway on the ground that the same is insufficiently stamped.’’ The case involved an application filed by the defendants under Order 7 Rule 11 CPC, seeking the rejection of the plaint on the grounds that it was insufficiently stamped and lacked the proper court fee, as required by the Himachal Pradesh Court Fees Act.
- This application was grounded in the testimony of the plaintiff's witness and a spot map that estimated the reproduction cost at over Rs. 41 lakhs. The defendants contended that the plaintiff's failure to sufficiently stamp the plaint and affix the appropriate court fee warranted its rejection.
- However, the trial court dismissed the defendants' application on June 3, 2024. In reviewing this decision, the High Court upheld the trial court's ruling, emphasizing that the application for rejection of the plaint was unjustified.
- Justice Dua noted that the spot map and the statement of PW-10 were relevant pieces of evidence, but their evidentiary value needed to be assessed during the arguments and final hearing of the case.
- The court concluded that these factors alone could not serve as a basis for rejecting the plaint at this stage. In her judgment, Justice Dua reiterated the legal principles under Order 7 Rule 11 CPC, which stipulate that a plaint can only be rejected if it fails to disclose a cause of action, is undervalued, or if the relief claimed is barred by law, among other grounds.
- The court further noted that, even in cases where the plaint is insufficiently stamped, the provision mandates that the plaintiff be given an opportunity to correct the deficiency within a time specified by the court.
- The High Court, after considering all aspects of the case, dismissed the petition filed by the defendants, thereby upholding the trial court's order.
- Justice Dua ruled that no interference was warranted with the trial court's decision, and as a result, the defendants' application for the rejection of the plaint was denied.

Sundari Gautam V. State Of Nct Of Delhi

- **BENCH :** Justice Anup Jairam Bhambhani

- **FORUM:** Delhi High Court
- **OBSERVATIONS**
  - The Delhi High Court held that the offences of penetrative sexual assault and aggravated penetrative sexual assault under the POCSO Act are offences regardless of the gender of the offender and can be invoked against a woman also.
  - Justice Anup Jairam Bhambhani held that the word ''he'' in Section 3 of the POCSCO Act (penetrative sexual assault) cannot be given a restrictive meaning to say that it refers only to a male but, must include within its ambit any offender irrespective of gender of the offender.
  - The court noted that the definition of aggravated penetrative sexual assault under Section 5 of the POCSO Act is a consequential definition arising from the offence of penetrative sexual assault defined under Section 3.
  - Noting that the pronoun ''he'' is not defined anywhere in the POCSO Act, the court held
  - ''When viewed from this lens, the only rational inference is that the pronoun "he" appearing in Section 3(a), 3(b), 3(c) and 3(d) must not be so interpreted as to restrict the offence engrafted in those sections only to a "man".'' It said: ''It is extremely important to note that the said provisions include within the ambit of penetrative sexual assault, the insertion of any object or body-part; or the manipulation of any body part of a child to cause penetration; or the application of the mouth.
  - It would therefore be completely illogical to say that the offence contemplated in those provisions refers only to penetration by a penis.'' Justice Bhambhani further deliberated on the issue of the definition of rape under the Indian Penal Code being pari materia with the definition of penetrative sexual assault in the POCSO Act.
  - ''In the opinion of this court, a comparison of the offence defined in Section 375 of the IPC (on the one hand) and in Sections 3 and 5 of the POCSO Act (on the other) shows that the offences so defined are different.
  - Though the acts that form the gravamen of the offence in section 375 of the IPC are the same as those in Sections 3 and 5 of the POCSO Act, the opening line of Section 375 specifically refers to a ''man'' whereas the opening line of section 3 refers to a ''person'','' the court said.
  - It added: ''The scope and meaning of the word ''man'' appearing in Section 375 of the IPC is not under consideration of this court in the present proceedings. But there is no reason why the word ''person'' appearing in Section 3 of the POCSO Act should be read as referring only to a male.
  - ''It is accordingly held that the acts mentioned Sections 3 and 5 of the POCSO Act are an offence regardless of the gender of the offender provided the acts are committed upon a child.''
  - The court made the observations while dismissing plea moved by a woman challenging the trial court order framing charges against her under Section 6 of the POCSO Act (punishment of aggravated penetrative sexual assault). The court observed that considering the harsh punishment prescribed for the offence in question, the delay, if any, in the registration of the FIR would not warrant quashing of the charge framed against the petitioner woman.
  - It said that even if in the opinion of the doctor and as per the statement of the child, there was no sexual intent on the part of the petitioner woman, that opinion and statement is required to be tested in the course of trial and was not sufficient to discharge her at this stage.
  - ''As a sequitur to the above, on a prima-facie consideration of the material placed on record along with the chargesheet, in the opinion of this court, the offence of aggravated penetrative sexual assault is made-out against the petitioner, even though she is a woman; and the petitioner is therefore required to be put to trial for the offences as charged,'' the court said.

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