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Justice and Shrinking Jurisdictions

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A dip in the holy Ganga during the magh mela at Allahabad was to have earned salvation for Gunna Devi, but instead she is an undertrial in the city's most famous jail Naini. (But for her incarceration she would have preferred Kalpvast on banks of river Ganga, just a stone's throw away from the jail.)

Gunna Devi's crime—when she emerged from the water half-naked and found her clothes missing she had the temerity to wear the new sari lying close by before she went in search of her own clothes. She was caught, accused of theft and thrown in jail where she has been languishing for several months now.

In Bombay, a young housemaid, Ameeta, was accused of stealing a gold necklace worth Rs. 1,000 and put in the lockup. The necklace has been recovered but Ameeta continues to be in jail for four years now as an undertrial.

Shaheeda stole Rs. 3,000 for her father's operation. Her mother had died, she had a mentally retarded brother and it was a desperate act to save her father. But like Ameeta, she has been an undertrial for over three years.

- (Indian Express, 4th March 1996)

Yes, these instances represent the muffled cries for justice. To make them heard the National Commission for Women (NCW) had to enter the prison. And the issue that seems emerging is that of a speedy trial—an anti-dote to the dilatory process of justice which we have so painfully evolved. This inspite of the interpretation of Article 21 of the constitution in Hussainara Khatoon et al. True, quite a number of such accused will get justice only if a speedy trial can be achieved. But isn't this idealism. But then, did I hear someone say that it is high time we achieved this deal? “Don't be blind to ground realities” retorts another. The dilemma is unresolved. We desperately look for a solution knowing there are no quickies. Among alternatives to the regular trial—which became patently unjust in these cases—two procedures under Cr.P.C. attract attention. One, compounding and two, summary trials. As of now both have similar limitations. To the former I would advert to later. For in all cases we might not have strong moral justification (Sic) for compounding as can be marshalled in favour of Gunna Devi or Shaheeda. Though technically Ameeta could also benefit from the compounding provision but it is doubtful if the owner of the necklace Ameeta stole would be ready to compound. Or may be, nobody would be available to Ameeta to persuade the complainant to compound even on the plea that she had been incarcerated long enough.

But may be the legislation cannot provide for absolute discretion to the judge as to the procedure he/she should adopt (summary or full trial). There is a strong case for giving discretion. Yet even in application of the present provisions, the legislative intent of the provision of law—an essential manifestation of the fair procedure doctrine—must be preserved. The much acclaimed growth of our economy should not be allowed to whittle down whatever small discretion the judges have been given to administer “justice”. Would not Rs. 200/- of 1973 when the new Cr.P.C. was enacted be equivalent to anything more than Rs. 1,000/- of 1992 (i.e. When Ameeta was arrested). Or should it be left to be an atheist's delight, to quote and say—"look soul is not im-
mutable. What is true is the appearance; the letter of the law not the spirit."

What is sought to be underlined is that the fixing of limits in such kind of provisions is inadmissible. In the long run they become contrary to the legislative policy and often unreasonable. Moreover, is the value of the property involved in an offence, of such vital importance in measuring the magnitude of criminality? Perhaps not so much so as to be regarded as the sole basis—the irongate.

But even if we need to have this as the scale of criminality only in absence of any other should we be a party to such a stagnant law?

When the victim and the accused present themselves for a conciliation would the Magistrates be so irresponsible as to gloss over the vital interest of the society? We need to repose more confidence in him than thinking that he would thoughtlessly allow the parties to compromise the security of the society. Could Shaheeda by virtue of her desperate act to save her father which incidentally was theft of Rs. 3000/- be a threat to the safety of the society, and if so, whether any deal more than if she had landed up with only Rs. 200 in her attempt? For God’s sake a human being, also called a judge, may have decided it much better than the letters of Section 320 Cr.P.C. Those uninching and inanimate ones.

I think we need to repose more confidence in the person taking care of the judiciary. Had we done this Mr. Kishen would not have taken along with him the burden of the sin of having got an old lady (Gunna Devi) incarcerated over a matter which would not be termed criminal by any flight of imagination. With the holy dip in the Ganga he got all his sins washed away. He would have gone home clean of even this one spot by compounding—what he in a fit of rage and hysteria thought was an offence. The hysteria must be justified. Can you imagine his dear wife’s sari being lifted by a pair of wrinkled hands. How outraging! Who then has a temper to think of the desperation. Who then cares for the intent. But the rage dies sooner than late. The legacy left behind is a burdened conscience and a backbroken accused. Or was Mr. Kishen being told that though a dip in the Holy Ganga could purge him of all his past sins yet, his karma would not leave him with an unburdened soul. A divine message. Perhaps! A classical instance of a stagnant law serving a divine purpose. But at what cost? An old lady’s life?

**Functioning of NGOs to be probed**

The Union Welfare Ministry will appoint a 15-member committee to study the functioning of non-governmental organisations in the country and make recommendations to ensure that they properly utilised the funds, the Union Welfare Minister, Mr. B.S. Ramoowalia, said.

The Minister was speaking after launching the cancer care scheme for journalists being implemented by the Kesari memorial journalists trust in collaboration with the Regional Cancer Centre. Mr. Ramoowalia said his Ministry would distribute working aids worth Rs 6 lakhs in each district exclusively for handicapped persons.

Mr. Ramoowalia said the Welfare Ministry provided about Rs 95 crores to the NGOs in the country. Though there were many NGOs which properly utilised the funds given to them, there were many others who misused the funds.

Surprise checks by officials in different parts of the country had come across gross irregularities in the functioning of the NGOs. One such organisation in Orissa which was to arrange for adoption of children by childless parents was found to be selling children.