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A DISCUSSION ON OPEN COURT PROCEEDINGS AND IN-CAMERA PROCEEDINGS

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ABSTRACT

The aim and object of this discussion on Open Court Proceedings and In-Camera Proceedings is to know the cardinal principle of law behind such proceedings. The paper aims at understanding the various cases in which the above said principles are adopted. The researcher will divide the research paper into three sections. The first section would be the Cardinal Principle of Open Court and the Evolution of In-camera proceedings. The second section would highlight the nature of the proceedings and its applicability in various provisions of civil and criminal laws. The third section would focus on the latest Judgments of the Hon'ble Higher Courts with respect to the Open and In-Camera Proceedings. This research paper is an attempt to understand the differentiation between the two proceedings.

Keywords: Judicial Sensitivity, Perpetual silence, Golden Scale, Reputation.

Having an Open Door in front of you means having an Opportunity before you. Closed doors creates suspicion sometimes.

I. CARDINAL PRINCIPLE BEHIND OPEN DOOR PROCEEDINGS

The principle of Open Court proceeding requires that Court proceedings presumptively be open and accessible to the public. Open Courts are normal court where proceedings of the court are conducted where every person is allowed to watch the proceedings of the Court. There are several instances where it is not practical to allow persons other than parties to the proceedings. Therefore, such proceedings are held in camera. This means that the proceedings are held in a closed room or Chamber or Court Hall where the third

person or the public will not have access to observe the proceedings. In criminal cases like rape, it is necessary to protect the identity and modesty of the victim.

Whether Justice can be rendered with the closed doors?

It depends upon the nature and circumstance of the case in which the Court is trying and the Judicial sensitivity with which the case is handled.

The Constitutional Bench of Hon'ble Supreme Court in *Naresh Shridhar Mirajkar & Ors Vs State of Maharashtra & Anr (1966 3 SCR 744)*², wherein Their Lordships, Hon'ble Justices Gajendragadkar, P.B. (CJ), Sarkar, A.K. & Wanchoo, K.N., Hidayatullah, M. & Shah, J.C., Mudholkar, J.R. & Sikri, S.M., Bachawat, R.S. & Ramaswami, V. had laid down what is the importance of Open Court Proceedings.

The Hon'ble Constitutional Bench had held that *"It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in Open Court. Public trial in Open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, Courts must generally hear causes in open and must permit the public admission to the Court-room."*

a. Whether Open Court Proceedings and there time immemorial?

Hon'ble Mr. Justice Bachawat has elaborated it as follows:-

"Long ago Plato, the Greek Philosopher had observed in his laws that the citizen should attend and listen attentively to the trials. Hegel, a German Philosopher in his Philosophy stated that judicial proceedings must be public since the aim of the Court is to render justice, which is a universal belonging to all. Save in exceptional cases, the proceedings of a Court of justice should be opened to the public",

Plato states that "Everybody is expected to go the Court of Law, where deliverance of Justice happens. There was a reference about Hegel, a social philosopher, who says, Justice is a Universal Belonging, every man have got a right to go and see what is happening in the Court because Justice is not a private affair. Hegel in his philosophy of right maintained that judicial proceeding must be public, since the aim of the Court is Justice, which is a Universal belonging to all.

² (1966 3 SCR 744)

In the year 1762, a book called Social Contract was written by Rousseau, a Genevan Philosopher in which he states "Every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country i.e. any man who ventures to become a criminal violating the social contract rights, is a traitor to his Father land.

It is a cardinal principle of law that the trial shall be held in Open Court, the Order XXVIII Rule 4 of Civil Procedure Code, 1908 provides as thus - "The evidence of the witnesses in attendance shall be taken orally in open court in the presence and under the personal direction and superintendence of the judge."

Sec 327 of Cr. P. C. - Court to be open. (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open.

b. Reputation is that which a man earns in the public opinion

In matrimonial cases such a divorce, restitution of conjugal rights, judicial separation, the common grounds pleaded by the parties were cruelty, adultery, impotency, virulent diseases etc. Cruelty may include both physical or mental cruelties, it may also include physical assault, sexual assault etc.

The various Sections 10, 11 and 13 of the Hindu Marriage Act 1955, Sections 10 and 18 of the Indian Divorce Act 1869, Sec 25 and Sec 27 of the Special Marriages Act 1954, Section 2 of Dissolution of Muslim Marriages Act 1939 recognizes the above said grounds in matrimonial disputes. These are directly linked with the reputation of the party to a proceeding. In such cases evidence is likely to be blaming each other and it may sometimes injure the finer instinct of the party and may normally affect their reputation directly in the eye of the public and society in general.

II. NATURE OF IN-CAMERA PROCEEDINGS AND ITS HIDDEN PROVISIONS IN VARIOUS LAWS

Section 53 of Indian Divorce Act 1869 states about "Power to close doors" - The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Rule 2 of Order XXXII A of The Code of Civil Procedure, 1908 - "Proceedings to be held in camera" - In every suit or proceeding to which this Order applies, the proceedings may be held in camera if the Court so desires and shall be so held if either party so desires.

Section 153-B Proviso of The Civil Procedure Code which was inserted by the Amended Act 104 of 1976 states - "Provided that the presiding judge may if he thinks fit, order at any stage of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room of building used by the Court."

Section 11 of the Family Courts Act 1984 - Proceedings to be held in camera - In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

When it comes to the offence under The Protection of Children from Sexual Offences Act, 2012, it would cause a great impact not only on the body of the child, but also to its soul.

Section 37 of POCSO Act - Trials to be conducted in camera.

The Special Courts shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the Court, it shall proceed to issue a commission in accordance with the provisions of Section 284³ of the Code of Criminal Procedure, 1973.

Prudence, good conscience and equity states that these proceedings cannot be open.

III. IMPORTANT JUDGMENTS SUPPORTING OPEN AND IN CAMERA PROCEEDINGS

The oldest case which I could find in Jurisprudence is *Mrs. Scott Vs Scott (1913 AC 417)*⁴ of House of Lords:

In this case, a Family Court sensitivity shows that when a woman comes to the Family Court for a relief of dissolution on the ground of Adultery, the Hon'ble Court thought it fit that this woman's right to privacy have to be respected and it was numbered with In-Camera permission. The entire proceedings was conducted in Camera.

a. Facts of the Case

The Scott case concerned Mrs. Scott's nullity petition and the solicitor who had acted for her. She had filed a petition seeking a decree declaring that her marriage to Mr. Scott was void because of his impotency. The petition was listed for hearing in camera (i.e. in private). It was not defended and the appellant obtained a decree of nullity which was made absolute in the year January 1912.

In August 1911, Mrs. Scott and Mr. Braby sent copies of the shorthand notes of the proceedings at the hearing to the husband's father and sister (that was the limit of its "subsequent publication"). Mrs. Scott felt an inaccurate account of the case had been given by her ex-husband to them. In December 1911, Mr. Scott

³ Section 284 of Cr P C - When attendance of witness may be dispensed with and commission issued

⁴ 1913 AC 417

applied to commit her and her solicitor for contempt for sending the notes. She was said to be in breach of the order for the private hearing. The High Court found contempt, and ordered Mrs. Scott and the solicitor to pay costs. The Court of Appeal refused to hear an appeal since at the time there was no appeal against a criminal case, and they held that this was in effect a criminal hearing.

On the hearing of an appeal to the House of Lords Mr. Scott was represented there, at the request of the Court (to ensure the case would be fully argued), by counsel provided by the Treasury, acting on the advice of the Attorney-General. After he had recited the facts, Viscount Haldane, The Lord Chancellor summarised the issues before the House ([1913] AC 417 at 432)⁵:

“My Lords, the question which we have now to decide necessitates consideration of the jurisdiction to hear in camera in nullity proceedings, and of the power of the judge to make an order which not only excludes the public from the hearing, but restrains the parties from afterwards making public the details of what took place....”

That is to say:

- (1) *Can the court hear nullity proceedings in secret?*
- (2) *If so, can it prevent the parties making the public the details of what happened?*

The Scott went to the Hon’ble Court which granted the divorce and filed the application on Contempt of Court stating that even though the proceedings took place in camera, the woman has violated the in-camera proceeding and she is liable for Contempt of Court. When the matter was placed before the Hon’ble Court of Lords in 1913, there were two questions before their Lordships. If at all under what law the Family Court granted permission for In-Camera Proceedings in the absence of any specific provision. The other question is that after permitting the In-Camera, can the Court ask the parties to maintain “perpetual silence.” The Hon’ble House of Lords in *Mrs. Scott Vs Scott* held that *“No Court can instruct the parties to maintain perpetual silence with regard to the proceedings that has happened.”*

In the case of R Vs Secretary, Home Department, 1999, Court of Appeal

Simms and another prisoner, both serving life sentences for murder, brought judicial review proceedings against the Home Secretary’s contention that they could not have oral interviews with journalists unless no part would be published. Under the Prison Act 1952 section 47(1) the Home Secretary had passed Prison Service Standing Order 5, paragraph 37-A which restricted oral interviews with journalists. The prisoners contended this impinged upon the right of journalists to free speech under the European Convention on Human Rights Article 10, because practically the opportunity for any investigation into their convictions would be inhibited by not allowing them to speak. The prisoners could, however, engage in written correspondence.

⁵ [1913] AC 417 at 432

Hon'ble Lordship Latham J held that the prisoners should be able to do oral interviews. The Court of Appeal held the prisoners could not do oral interviews.

Simms is an accused and after trial he was convicted for capital punishment. The Court cannot permit Simms infinitely without any reasonable restriction to attend a press conference and to narrate what has happened after the trial. The right to which a person claims to something after the conclusion of the trial is curtailed. That means Open Court proceedings should not be mistaken. The legislature has ultimately given the right to the Judiciary to protect it with regard to the sensitivity of the case, with regard to public policy, with regard to the sovereignty of the country, and with regard to the morality of the country and so on.

In Re Blue Vs Ashley 2017 EWHC 1553, UK⁶

Jeffrey Ross Blue v Michael James Wallace Ashley [2017] EWHC 1553 (Comm)

b. Facts of the Case

The parties disputed the existence of an oral agreement by a businessman to pay a sum of millions of pounds in certain circumstances to a business acquaintance with whom he was then drinking in a public house. Hon'ble Justice Legatt held that "The claim failed: 'no reasonable person present in the Horse and Groom on 24 January 2013 would have thought that the offer to pay Mr. Blue pounds 15 million was serious and was intended to create a contract, and no one who was actually present in the Horse and Groom that evening - including Mr. Blue did in fact think so at the time. They all thought it was a joke. The fact that Mr. Blue has since convinced himself that the offer was a serious one, and that a legally binding agreement was made, shows only that the human capacity for wishful thinking knows few bounds.'

Mr. Blues is an insurance banker. Mr. Ashley was the owner of a sports club. His Lordship Legatt gives a finding that no prudent man can imagine or conceive to imagine that at midnight in a bar under the influence of alcohol two men are talking in a jovial manner, an agreement will come to force and it is an enforceable agreement.

Justice Legatt concluded that the conversation in the bar was under the influence of alcohol and was jovial in nature. No reasonable person under the influence of alcohol would have thought that this was a serious offer. The fact is that Blue has convinced himself that the offer was a serious one and legally binding shows the human capacity of wishful thinking knows no bounds.

When the case was pending before the Hon'ble Court, the press files a case for an interim relief to publish the statements made by them. The Hon'ble Court states when materials are pending before the Court for adjudication, the Open Court Justice concept cannot be invoked by the media persons for availing the materials which is available in the Court.

⁶ 2017 EWHC 1553

The child related materials in the Court or materials of the person who are mentally unsound, who cannot defend themselves, cannot be published without the permission of the Court.

There is a wrong notion in India that after the existence of the POCSO Act, the In-Camera proceedings were came into force.

In Re The State of Punjab Vs Gurmit Singh and Others on 16th January, 1996, 1996 AIR 1393, 1996 SCC (2) 384⁷

Bench: Hon'ble Justices A. S. Anand, Saghir Ahamed.

c. **Facts of the Case**

A young girl below 16 years of age, was studying in the 10th class at the time in Government High School, Pakhowal. The matriculation examinations were going on. The examination centre of the girl was located in the Boys High School, Pakhowal. On 30th March, 1984 at about 12.30 p.m. after taking her test in Geography, the girl was going to the house of her maternal uncle, Darshan Singh. When she had covered a distance of about 100 karmas (550 feet) from the school, a blue ambassador car being driven by a Sikh youth aged 20/25 years came from behind. In that car Gurmit Singh, Jagjit Singh Bawa and Ranjit Singh were sitting. The car stopped near her. Ranjit Singh came out of the car and caught hold of the girl from her arm and pushed her inside the car. Jagjit Singh Bawa put his hand on the mouth of the girl while Gurmit Singh threatened the girl, that in case she raised an alarm she would die. She was taken to the 'kotha' of the Tube well. The driver of the car after leaving the girl and the three accused persons there went away with the car. In the said kotha, Gurmit Singh compelled the girl to take liquor, falsifying to her that it was juice. Her refusal did not have any effect and she unwillingly consumed liquor. Gurmit Singh then got removed her salwar and also opened her shirt. She was made to lie on a cot in the kotha while his companions guarded the kotha from outside. Gurmit Singh committed rape upon her. She raised rule as she was suffering pain but Gurmit Singh threatened to kill her if she continued in raising alarm. Due to that threat, she kept quiet. After Gurmit Singh had committed rape upon her, the other two accused, who were earlier guarding the kotha from outside, came in one by one, and committed rape upon her. Each one of the accused committed sexual intercourse with the girl forcibly and against her will.

The accused was acquitted and the findings of the trial Court is that the child cannot identify the model of the car, she was innocent, and on other flimsy grounds.

The Hon'ble Supreme Court in this case thought about the sensitivity of a small child which is facing a rape trial. The Apex Court for the first time laid down that any trial which involves an offence of rape should definitely be held In-Camera proceedings. The Hon'ble Supreme Court in the year 1996, when there was no

7 1996 SCC (2) 384

specific law with regard to the In-Camera proceedings, had laid down it as a law. As we all know that Article 141 states that any law declared by the Hon'ble Supreme Court is the law of the land.

Sec 327 of Criminal Procedure Code, 1973 have to be read with Sec 273 of Criminal Procedure Code, 1973 and 228A of Indian Penal Code. Section 273 states that "Evidence to be taken in presence of accused."

*In Re State of Maharashtra Vs Dr. Praful B Desai on April 1, 2003 (2003 AIR SC 2053)*⁸

Bench: Hon'ble Justices Mr. S. N. Variava, Justice Mr. B.N. Agarwal

This a case with farsightedness. Their Lordships may perhaps not imagined that we will so rapidly enter into an era of videoconferencing.

The accused had objected to examine a witness from a Foreign Country. The accused invoked Section 273 of Cr P C and states that the witness should be examined in his presence. The Hon'ble Supreme Court in this case laid down that a witness who is in a foreign place can definitely be examined by a videoconferencing and the accused can also be given a chance of cross examination. The presence of witness in the presence of the accused is not mere physical presence it is also a virtual presence in the videoconferencing. "In a criminal trial, evidence of a foreign witness can be recorded by videoconferencing through a commission. It is covered by Section 273 r/w 284, 285⁹ of Cr. P. C, 1973 and Section 3 of the Indian Evidence Act, 1872.

The Hon'ble Apex Court has balanced it with a radical judgment that advancement of scientific technologies can also be taken away and interpretations has to be given in a purposive way.

Sec 228 A - Disclosure of identity of the victim of certain offences etc.

Any person who publish the identity of the victim of certain offences, he or she shall be punished up to 2 years.

Sec 265 B (4) - When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under Sub-Section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily.

If at all the accused repents for his crime and he appears before a Court of law with an Affidavit, the Hon'ble Court will call for the other party, the Complainant. The Complainant along with the prosecutor and others appear before the Court. The Court will then examine the accused alone in an In-Camera proceeding. The Section 265 A to 265 L states this Plea Bargaining is available only for the offences where the maximum punishment is imprisonment for 7 years; Where the offences don't affect the socio-economic

⁸ 2003 AIR SC 2053

⁹ Section 285 of CRPC "Commission to whom to be issued"

condition of the country; When the offences are not committed against a woman or a child below 14 years of age. It cannot be invoked by the accused with regard to the offences against the child and woman. In all these offences, he necessarily have to undergo the ordeal of trial.

The Judge quizzes the accused in an In-camera proceedings and explains his right to conduct the trial. To ascertain the voluntary nature of the accused who is pleading guilty before the Court by way of plea bargaining, the Hon'ble Court has to satisfy Judicially whether the person is voluntarily coming for plea bargaining. This will happen only in an In-Camera Proceedings. The parliament in its wisdom and the Hon'ble Courts are benevolent enough that both the accused on one side and Victim on the other side, to see to that their rights are not violated. So it is basically the rights of the accused along with protecting the dignity and rights of the victim. So it is the *State Vs Victim Vs the Accused*.

Section 36 of POCSO Act states "Child not to see accused at the time of testifying."

In Re Sakshi Vs Union of India on 26 May, 2004, (2004 AIR (SCW) 3449)¹⁰

Bench: Hon'ble Justices Rajendra Babu CJ, Justice G. P. Mathur

This was a very foresighted case, where a petition was filed by the NGO under Article 32 by the petitioners asking for the relief to amend or insert or to give a wider interpretation under Section 375 of IPC. The prayer in this case is that all sorts of insertions or penetrations to any part of the woman or girl child should be construed as Rape as per Sec 375 of IPC. However, the Hon'ble Supreme Court stated that the Court has got limitations and cannot expand the provision of Sec 375 and this was declined by the Hon'ble Court. However, the Hon'ble Supreme Court has granted some of the relief which was already granted in Bupinder Sarma stating that all the proceedings for the offences of Rape should be In-Camera. Along with that the Hon'ble Supreme Court has passed an Order that whenever any offence with regard to woman particularly offences like rape, the victim should be prevented by a screen from the sight of the accused, but the accused should be in an audible position. All these reliefs which were sought by the petitioners were subsequently became laws.

In Re Bupinder Sarma Vs State of Himachal Pradesh on October 16 2003, (2003 0 AIR (SC) 4684)¹¹

Hon'ble Justices Doraisamy Raju, and Arijit Pasayat:

The Sec 228A of Indian Penal Code prohibits any publication with regard to offences involving a woman especially with sexual offences. It says no person without the permission of the Court should disclose any proceedings with regard to a woman especially with regard to offences of rape. But this will not bar the investigating officers using or recording the name of the Victims. The restriction in Section 228A is not

¹⁰ 2004 AIR (SCW) 3449

¹¹ 2003 0 AIR (SC) 4684

applicable for High Courts and Supreme Courts till they deliver the Judgments. However, their Lordships in their magnanimity and sensitivity in this case expressed their anguish when the Judgment was passed. His Lordship Justice Arijit Pasayat was very vociferous in delivering the Judgment i.e. in Paragraph 2 itself, the Court says that even though the High Courts were not restricted by 228A of IPC, the Court should take it as a responsibility in not disclosing the name of the victim in the Judgment.

Section 36 says a victim child should never be put into the eyesight of the accused. However, Section 37 says, proceedings should be In-Camera. A common question will arise that if at all an accused never sees a victim then how he will understand what she is telling before the Court. Section 37 provides three contingencies, i.e. the accused has got a right to understand through the videoconferencing or to mere audibility. Even in the cross examination part, the victim or the victim's counsel cannot directly question. The law was laid down by the Hon'ble Supreme Court decades back that just because the Open Court System is provided under Section 327 that has to be finally balanced with an In Camera proceedings, because a victim of the offence of sexuality or rape have developed a scar on her soul and the mere sight of the accused or relatives will cast a fear on the child, she will not be in a position to depose with confidence and courage.

d. Whether an investigating officer can be permitted inside or not during an In-Camera Proceeding?

As we all know that every case is filed by the victim/complainant. The Defacto-complainant is only the investigating officer.

His Lordship Hon'ble Justice Krishna Iyer when he was then a practicing lawyer before the Kerala High Court, while defending an accused enraged on the presence of the investigating officer. He agitated before the Hon'ble Court that the presence of the investigating officer from the very inception of the trial will cause a fear on the minds of the witnesses. Any statement recorded by the Police either under Section 161 or 162 of Cr P C, it has got less evidentiary value, unless it is deposed by that witness in the Court of Law, then it will become a substantial piece of evidence or else it will not be admissible. Victim was given adequate opportunity or liberty to depose the truth before the Court of Law irrespective of what she has stated in the Section 161 Statement. If at all the witness want to retract from what he/she has stated before the Police and the presence of the Investigating officer may at times becomes a hindrance to this witness to reveal the truth or psychologically the witness may not want to retract from what she has deposed already before the Police Officer. Considering all these factors, the Hon'ble Justice Krishna Iyer, Advocate then he was in 1966 has agitated before the Hon'ble Court that until his turn come to depose the evidence he may not be permitted to present in the Court.

In Re Dr. Kasi Iyer Vs State of Kerala on March 18, 1966, (AIR 1966 KER 316), (1966 CriLJ 1445)
Lordship Hon'ble Justice P. G. Menon

The Hon'ble Kerala High Court has accepted that the investigating officer unless his turn comes if all the the accused alleges certain prejudice in the absence of any specific provision either to permit or to bar, the discretion is with the Court and the Court can ask the investigating officer to remain out.

*Shailendra Kumar Vs State of Bihar and Others on November 28, 2001, (2001 (10) SC 111)*¹²

The Hon'ble Justices, M. B. Shah, B.N. Agarwal, Arijit Pasayat

The presence of investigating officer at the time of trial is must. It is his duty to keep the witness present.

However *In Re Shailendra Kumar Vs State of Bihar 2001 SC*, the Hon'ble Supreme Court has laid down that since investigating officer is an essential party to the trial, he need not be unnecessarily thrown out of the Court. His presence can be there right from the inception till the disposal of the case and he can be permitted inside the trial Court, even in cases where law says In-Camera Proceedings has to be conducted.

e. **Necessary Parties to the In-Camera Proceedings**

- No doubt the presiding officer of the Court is the necessary party who is going to adjudicate judicially.
- The required Court staffs
- The Defense Lawyer
- The Accused

Perhaps by way of a screen he will be prohibited or by way of a opaque glass or permitted by way of videoconferencing.

If at all the victim says after my examination, I am not interested in watching the proceedings, then the Court has got the discretion to permit the Victim not to take part in thereafter.

In Re Rajiv B Agarwal Vs CBI on February 14 2012, Delhi High Court, Justice M. L. Mehta, the only adjudication of the High Court as against the orders of the CBI Court is whether an investigating officer can be present right from the inception. The Lordships of the Hon'ble High Court has categorically held that in a Criminal Trial Investigating Officer is a necessary party and keeping away IO is not a fair process. The concept of Open Court or In-Camera is finely balanced by the Hon'ble Courts in all these cases.

Whether any witness as a matter of right can demand to the Court to remain inside. The answer will be "No", because it is the pure discretion of the Court.

¹² 2001 (10) SC 111

f. Family Court Cases

As we all know that the family Court has a specific Act called Family Courts Act, 1984.

Section 11 of the Family Courts Act speaks about In-Camera.

Section 22 of the Hindu Marriage Act, 1955 speaks about In-Camera Proceedings.

Section 53 of the Indian Divorce Act, speaks about In-Camera Proceedings.

g. What is the necessity for having provisions in Family Court Act with regard to In- Camera Proceedings.

Section 11 - Proceedings to be held in camera - In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

The proceedings are invariably Section 9 of the Hindu Marriage Act, 1955 i.e. restitution. If one party makes a desertion either it is willful or a constructive desertion, the other is eager in resuming the conjugal rights. Definitely a party will go to the Court to say all the aspects which had affected him or her and on these grounds restitution of conjugal rights is the relief which is required. A third person who is present in the Court listens and underestimate either of the parties and the reputation of them in the Society will go down. The third party is in no way connected to this case. There is no need for the third person to see what is happening in their case. The Hon'ble Court has stricken a balance that it is a personal affair of a man and a woman and you are not permitted inside.

Section 13 of the Hindu Marriage Act - Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.

Most of the grounds for divorce were cruelty and adultery or either of the parties may go and say before the Court that the spouse is suffering from Virulent diseases or sexually transmitted diseases. We do not know that these allegations may be true or not. Only the Hon'ble Court after considering all the materials before the Court comes to a conclusion that the allegations are neither proved or not proved. Suppose if the Hon'ble Court allows the third person to come and see like an exhibition article and the wife alleges that the man is suffering from STD and all the medical reports falsify the claim of the wife, one has to imagine how the reputation of the other spouse will come down in the eyes of the society.

The Parliament in his legislation has given its wisdom in the Court to come to a conclusion whether in camera proceedings are necessitated or not.

When it comes to Domestic Violence Cases, as per the Section 16 of the Domestic Violence Act, 2005, there are five types of violences which an aggrieved person may undergo or she may have apprehension that she may undergo in the future in the hands of the Respondent husband or any male member or female member of the family. Violences like Verbal violence, economic violence, emotional violence, sexual violence, and physical violences. All these violences were exhibited before a Hon'ble Magistrate Court or any other Court. Sec 12 r/w Sec 23 of the Domestic Violence Act and sec 26 also empowers an aggrieved person to approach the Hon'ble Court apart from the Magistrate Court if at all there is a case pending before the Court amongst the parties.

The agitated question before the Hon'ble Court is whether the respondent has put the aggrieved person of the alleged violences. Suppose the violence are proved before the Court of law any man who is watching these proceedings will come to a conclusion that the respondent is a man who is not fit to live in a society because he was a man of a lesser culture. Considering the various provisions ranging from Civil Procedure Code to the Domestic Violence Act, 2005 there is a proper balance that on one side, the Court should see that Justice is not delivered in secrecy. It should be delivered in the form of Open Court. On the other hand, the Court intends to save either the rights of the accused as it was saved in Section 265 B (4) as stated earlier, in the case of plea bargaining, the veracity will be checked by the Court in Camera. On the contrary, mostly it is designed to protect the victim such that rights and interest of it is sustained or protected in order to deliver a proper justice by the Court of law without any fear or favor for the Victims or the Witnesses.

*In Re Mahender Chowla and Ors Vs Union of India (2019 (14) SCC 61)*¹³

This Judgment was passed under Article 144 to envisage a scheme called as Witnesses Protection Scheme. The whole aim of either invoking the principle of in camera or invoking the principle of open court is to see to the whole world that Justice is delivered to the Public at large. The Apex Court's benevolency has traveled to the extent of Protecting a witness who was not even a witness before the Court or the trial has not even commenced. The Hon'ble Supreme Court has taken into consideration that the Victim and the Witnesses are the eyes and the ears of the Judicial process. So, they have to be protected, keeping apart in what process Judgment is going to be delivered. Witnesses has to be protected first and the witnesses includes Victims also, they have to be protected. The Hon'ble Supreme Court has framed a scheme called Witnesses Protection Scheme by invoking Article 142, its rule making power and it has delivered this Judgment.

In Re Mohd Arif @ Ashfaq Vs The Registrar of Supreme Court and others on 2nd September 2014. The Hon'ble Justices, Chief Justice Jagdish Singh Khehar, Justice Chelameswar, Justice A. K. Sikri, and Justice Rohinton Fali Nariman, (2014 AIR SCW 5337)¹⁴, (2014 9 SCC 737), a Constitutional Bench.

13 2019 (14) SCC 61

14 2014 AIR SCW 5337

As we all know any capital punishment case will not see the light. We all know the Judgment in a murder case or any case warranting a capital punishment will definitely be tried by a Sessions Court. The Sessions Court can pass an order of Capital Sentence. This Capital Punishment cannot be executed by the Sessions Court and after passing the Judgment of capital sentence, it has to refer the proceedings before the Hon'ble High Court under Section 366 of Cr P C read with Section 368 and Section 369 of Cr P C. Whenever Sessions Court passes an order of Death Penalty, the Sessions Court is duty bound to become a referral judge and to send all the records for confirmation before the High Court asking the High Court for confirming the Judgment of the Sessions Court. The Hon'ble High Court should deal with the division bench and it has to be confirmed appreciating all the evidences afresh whether the logical inference derived by the Hon'ble Sessions Judge is perfect or perverse. After it was confirmed by the High Court then the Capital Sentence can be invoked by way of a death warrant. Now comes the role of the accused as an Appellant before the Hon'ble Supreme Court. Usually, the Criminal Appeals will be mostly under Article 136 to the Hon'ble Supreme Court and also under Article 134. After the criminal appeal is disposed of what the appellant accused will do is that he will knock the doors of the Hon'ble Supreme Court under Article 137 and Article 145 for a death review petition. The Hon'ble Supreme Court has disposed of the appeals in threadbare. The Hon'ble Supreme Court thought it need not give the appellant once again an opportunity of a open court argument on the same issues. However in 2014, *In Re Mohd Arif @ Ashfaq Vs The Registrar of Supreme Court of Indian & others*, the Court held that the Justice should not be made in darkness. The Hon'ble Justice Rohinton Nariman, while speaking for the Bench, expressed his views that, it is after all an appellant who states that something has to be reviewed in a death review petition. The accused perhaps be knowing if at all we decide it in a way of circulation. The Hon'ble Supreme Court Judges who have disposed of the criminal appeal in the chamber without hearing the appellant in the open Court. Hon'ble Lordship Justice Rohinton Nariman expressed that the appellant should understand that Justice was rendered to him, he was heard in the review petition, provided he should have been given a larger amount of time. The Hon'ble Lordship has prescribed that Justice should not be done in darkness. An appellant who feels that death review petition has to be heard in Open Court and should not be deprived of an opportunity to dispose it in a darkness. So In Chamber proceedings of the Hon'ble Supreme Court Judges were deprecated and the Hon'ble Supreme Court has laid down certain formalities for disposing it by giving an opportunity in the Open Court. However in this Case, His Lordship Chaleswar have dissented and said that it is the content of the disposal i.e. the ends that matters and it is not the means that matters.

The intention of all these laws, the civil law, domestic violence law or a criminal procedure code or a family court law, the intention is for deliverance of Justice.

Let us recollect Plato's remark that Every person should witness a trial. Even today anybody can visit the Court and observe the proceedings. However, what is prohibited is that the Court feels that a child is too sensitive to see a stranger or accused, sensitivity of the rape victim, chastity or morality of a victim, will be further lowered because she is already a victim. If the Court in a matrimonial case feels if the parties reputation could be lowered in the eyes of the general public or even in a civil litigation, the cross

examination of the parties is not upto the mark or the court feels that the cross examination need not be heard by the parties at large. Under all these circumstances, the Golden scale is given only to the Judiciary to see to that either the Open Court procedure or an in camera proceedings has to be followed or not.

In Nipun Saxena Vs Union of India dated December 12 2018, (2019 2 SCC 703); (2019 1 SCC Cri 772)¹⁵. The judgment I would harp upon now is the Judgment which was pronounced by the Lordship Justice Deepak Gupta invoking Article 142 of the Constitution of India along with His Lordship Justice Madan B Lokur. This revolve mainly on Section 228 A of IPC with regard to disclosure of identity. This 228A of IPC is the extension of the rights available under 327, 273, 284, 285 of Cr P C. The publication of the details of the victim is restricted under 228A. There are sleuths of annexure as to what all should be done by investigating agency also. The Court has made certain guidelines as to how an investigating officer or a medico to whom the name of the victim has to go into the process of investigation or in the process of medical investigation, how they have to handle the name of the victim of a sexual harassment case. But for the finding of the name of the victim in the FIR in all other proceedings it has to be the investigating agency who can conceal the name and can give a name like X or Y etc. How a chargesheet has to be filed in certain cases? The Hon'ble Supreme Court has went to the extent of thinking that chargesheet can be filed in a sealed cover. Right from registration of FIR with regard to the law laid down in Nipun Saxena, their Lordships benevolency went to the extent of explaining that she is a victim of crime and she doesn't want to disclose her identity, it is rather not an exhibition to disclose her details to the world at large. Even in the Judgment of Bupinder Sarma, their Lordships in the year 2003 itself have mentioned even the High Court and Supreme Court will take the assignment of not mentioning the name of the victim.

Victim of a sexual offence or an acid attack have to be treated as a child of the State and she has to be protected right from the date of attack till her resurrection of new lease of life. The logical inference is if the victim wants to say to the whole world that I am a victim and I am fighting with my assailant and if she has crossed her age of 18 and if she is of sound mind and the decision she takes voluntarily to project herself as a role model to other victims, she can publicize her name. In spite of the fact that I am victimized by an attempt of rape or attempt of acid throwing, I am standing apart as an example or as a model to the society at large and if the victim intends that her name can be publicized then it can be done. So the Open Court proceedings and the in camera proceedings read with 228A disclosing and not disclosing the names has to be seen in this light of social Justice.

¹⁵ 2019 1 SCC Cri 772

h. Why did the Supreme Court deter Open Court's norm?

A Bench led by Hon'ble Chief Justice of India said these restrictions were in tune with the social distancing norms and best public health practices advocated to contain the contagion. The Court made it clear that public health takes precedence over conventions. Every individual and institution is expected to cooperate in the implementation of measures designed to reduce the transmission of the virus. Open court hearings would mean a congregation of large number of people. This would aggravate the condition and prove detrimental to the fight against the Corona virus.

CONCLUSION

Access to justice is fundamental to preserve the rule of law in the democracy envisaged by the Constitution of India.

The challenges occasioned by the outbreak of COVID-19 pandemic have to be addressed while preserving the constitutional commitment to ensuring the delivery of and access to justice to those who seek it. The Apex Court has invoked its extraordinary Constitutional powers under Article 142 to step away from the convention of open court hearings. It deemed all restrictions imposed on people from entering, attending or taking part in court hearings as lawful in the wake of the COVID-19 pandemic.

Recently, in 2018, the Supreme Court while hearing the case of *Swapnil Tripathi Vs Supreme Court of India*, [(2018) 10 SCC 628]¹⁶ on the issue of live streaming of its proceeding held that that access to justice can never be complete without the litigant being able to see, hear and understand the course of proceedings first hand. The Court also acknowledged that the principle of open court hearings would have to be adhered when Rules for live streaming of Court proceedings are made.

The Hon'ble Supreme Court also agreed that our legal system subscribes to the concept of universally accepted principle of open court hearings and that live streaming is an important facet of a responsive judiciary which accepts and acknowledges that it is accountable to the concerns of those who seek justice. A court of justice is a public forum. Open courts foster public confidence and ensure that the Judges apply the law in a fair and impartial manner. It is through publicity that the citizens are convinced that the court renders even-handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the court proceedings.

Even though the country is under lock down, the Supreme Court and other courts in the country are still open to the citizens, the Courts are trying to provide justice to the citizens even under the present trying times in extremely urgent matters.

¹⁶ [(2018) 10 SCC 628]

The court is providing access to Journalists in important cases to enable them report the proceedings. Thus the court is trying to implement the principle of open court hearings even under extreme limitations when there is a lock down and the proceedings are being conducted via video conferencing.

Live-streaming of court proceedings on the brink of becoming a reality. The Hon’ble Justice Chandrachud cleared the air on whether or not virtual courts had actually replaced physical Courts. The Justice said that the idea behind virtual court system was not to replace physical Courts, but, instead, to show the “flexibility” of the Indian judicial system to ensure that access to justice was not denied even during the

