

SPECIAL ADDRESS DELIVERED BY
HON'BLE THE ACTING CHIEF JUSTICE
ON THE INAUGURATION OF
"SPECIAL PROGRAMME ON WOMEN & CHILDREN"
HELD AT THE T.N. STATE JUDICIAL ACADEMY.

- 23.03.2013 - 9.30 AM -

Respected Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice B.S. Chauhan, Judges, Supreme Court of India, Brother and Sister Judges, Chairman & Members of Board of Governors of the Tamil Nadu State Judicial Academy, Judicial Officers, Officers and Staff of the High Court, Ladies and Gentlemen,

Good Morning,

Friends, shortly, two eminent jurists of the Supreme Court of India will be enlightening us on the two important subjects viz., **Women and Children – Role of Courts** and **Surrogacy – Legal and Moral Implications**. As Judges holding highest positions in the district hierarchy, you are all expected to be in tune with the changing scenarios and here, for the benefit of all of us, the two Honourable Judges, in spite of their busy

schedule, have kindly consented to be with us to share their thoughts on the aforementioned two important topics.

WOMEN AND CHILDREN – ROLE OF COURTS

The role of Courts in cases dealing with women and children assume great importance in view of changing mindset. The women and children are heading the victims' tally in recent crime related incidents. Though there are many reasons for the declining values, we can identify some of them viz., lack of awareness, patriarchy, male chauvinism, subjugation, certain deep rooted traditions and custom, lack of effective enforcement etc.

Sensing the alarming trend, the Supreme Court had said that 'we are failing to treat women with dignity, equality and respect'. Last week, the Special Bench of the Supreme Court of which Hon'ble Mr. Justice P. Sathasivam was also one of the Members, allowed a curative petition filed against a judgment in BHASKAR LAL SHARMA AND OTHERS v. MONICA (2009) 10 SCC 605) which held that kicking daughter-in-law is not cruelty under Section 498A and had set aside that judgement ordering for a *de novo* hearing.

There are various laws on the protection of women like Protection of Women from Domestic Violence Act 2005, Dowry Prohibition Act 1961, Indecent Representation of Women (Prohibition) Act 1986, Immoral Traffic (Prevention) Act 1986, and the Pre-Natal Diagnostic Techniques (Regulation and Prevention) Act 1994.

Our Constitution is replete with Articles on the welfare of women. Article 15 (3) deals with special protection for women, Article 16 ensures equal opportunity of public employment irrespective of the sex of the person, Article 39 deals with securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women; Article 42 deals with securing humane conditions of work and maternity relief and Article 51 A (3), a Fundamental Duty, insists on renouncing practices derogatory of women.

Section 294 of the IPC deals with Obscenity, 304 B dealing with Dowry Death and Section 498-A deals with cruelty

The Supreme Court in MEDHA KOTWAL LELE & ORS v. UNION OF INDIA (2013) 1 SCC 297) held that the guidelines of

Vishaka case should not remain symbolic and issued directions to be followed till legislative enactment is in place.

When it comes to Children, trafficking in children has become an increasingly lucrative business for the reason that punishment is very rare. The promise of marriage or employment is often used to lure the young children into sexual trade. Most of the children, who are victims of deception, are frequently physically, emotionally and sexually abused in the places of their employment. As per the report "Abolition of Child Labour in India", submitted by the NCPCR, India is home 19% of world's children and more than 440 million is below 18 years. The Ministry of Women and Child Development states that 40% of India's children have been declared to be vulnerable.

There are many legislations like Children (Pledging of Labour) Act 1933, Employment of Children Act 1938, Young Persons (Harmful Publications) Act 1956, Child Welfare Act 1978, Juvenile Justice (Care & Protection of Children) Act 2000,

Right of Children to Free and Compulsory Education Act 2009, etc.

In *BACHPAN BACHAO ANDOLAN v. UNION OF INDIA* (2011) 5 SCC 1), after discussing various Acts on Juvenile Justice and Children, held that no child shall be deprived of his fundamental rights guaranteed under Constitution of India and bring to child traffic and abuse.

All of you have to ensure that the provisions of these legislations are complied in their letter and spirit fulfilling the Objects of the Act.

SURROGACY

Even in ancient times, surrogacy was prevalent in India. Surrogacy, as you know, is an arrangement in which a woman carries and delivers a child for another couple or person. In a traditional surrogacy, the child may be conceived via home artificial insemination using fresh or frozen sperm or impregnated via intrauterine insemination. Babylonian law and custom allowed this practice.

Developments, in science and in law, enabled evolution of modern surrogacy.

On the medicine front, in 1930, the US pharmaceutical companies started the mass production of estrogen, in 1944, a Harvard Medical School Professor became the first person to fertilize human ova outside the uterus, and in 1985 a woman carried the first successful gestational surrogate pregnancy.

On the legal side, China had the practice of levying a fee for an adopted son, Noel Keane, a Michigan Lawyer, in the year 1980, wrote the first surrogacy contract and the Courts of New Jersey though found that the contract for surrogate motherhood was illegal and invalid, yet found it that it was in the best interest of the surrogate child to be with her biological father and mother. In 1990, a Californian Court upheld the parental rights of the true mother as the woman who intends to create and raise a child. In *BABY MANJI YAMADA v. UNION OF INDIA* (2008) 13 SCC 518), in which various forms of surrogacy was discussed, a dispute between the biological parents and the host arose, the Supreme Court directed the matter to the Commission of Protection of Child Rights.

Recently our Court had occasion to deal with the surrogacy issue. In K. KALAISELVI v. CHENNAI PORT TRUST (W.P. No.8188 of 2012 decided on 4.3.2013), a question arose whether a woman, who got the child through surrogacy, was entitled to avail maternity leave. The petitioner had a son who had died at the age of 20 years due to road accident. Before his death, she had removed her uterus due to some problem in 2008. With the consent of her husband, she entered into an arrangement with a hospital and a female baby was born on 8.2.2011 through host mother. In order to look after the new baby, she sought maternity leave but her employer, the Chennai Port Trust rejected her request on the ground there was no provision in the Rules to grant maternity leave. The Court referred to the Rule 3A of the Madras Port Trust (Leave) Regulations, dealing with maternity leave, Maternity Benefits Act 1961, and the judgment of the Supreme court in BABY MANJI YAMADA (referred supra). The Court also referred to Article 25 (2) of the Universal Declaration of Human Rights, the Beijing Declaration and Platform for Action Fourth World Conference on Women, Convention on the Rights of the Child by United Nations General Assembly and the judgment of the

Supreme Court in LAXMI VIDEO THEATRES v. STATE OF HARYANA (1993) 3 SCC 715) – to support the view that subsequent scientific development can be taken note of. After elaborate discussion on the above, this Court held that the maternity leave should also include to a person who obtains child through surrogacy. A Bill 'Assisted Reproductive Technologies (ART) Regulation Bill, 2010, is pending before Parliament and once passed, this legislation may take care of problems that arise like rights of maintenance and succession to the parties and also may safeguard the interest of all parties.

You may, as District Judges and Chief Judicial Magistrates, come across cases relating to surrogacy and the lecture here certainly help in dealing with those issues in a better way.

Let me not encroach upon the valuable time to be spent by you hearing the lectures of the Honourable Judges.

Thank you,
