

***Law of Evidence, Theories of
punishment, Probation of
offenders act***

UMAPATHI SATTARU, IPS rtd

Inspector general of police,

9440700900,

Mail: umapathi_sattaru@yahoo.com

Criminal justice system



Essence of Law (IEA 1872)

- Evidence : evidentiā: being clear; *evidence evidare*: to show clearly. Supreme courts orders...
- Evidence means the testimony, whether Oral, Documentary, or real, which may be legally received , in order to prove or disprove some fact in dispute
- *Lex fori* : the law of the place of action
- *Salus populi est supreme lex*: the welfare of people is the supreme law
- *Indian law is accusatorial / adversarial system (prosecution .. State has to prove the guilt of Accused except in some presumptions) .*
- *Beyond reasonable doubt in Criminal Law, preponderance of probability in Civil Law .*

Types of evidence

- Real evidence (ex. recovery of weapon of offence, blood stained clothes, stolen property, etc)
- Demonstrative (what likely happened at a given time & place)
- Documentary (letter, record, digital messages , mails, blog spots, whats apps, etc)
- Expert Evidence (FSL , Forensic audit, aerial survey, Remote sensing pictures, forensic medicine reports, age determination.. Ossification tests ,MVI reports etc)
- Testimonial evidence (witness testimony.. Oral evidence)
- Judicial evidence (magistrates recordings of confession u/s 164 Cr PC, Dying declaration, inspection of scene etc)
- Circumstantial evidence
- Hearsay evidence

Theories of punishment..

- **Retributive Theory**
- Retribution is the most ancient justification for punishment. A person deserves punishment as he has done a wrongful deed. Also signifies that no person shall be arrested unless that person has broken the law.
- **Deterrent Theory**
- This theory assumes that the punishment is given only for the sake of it. It suggests that evil should be returned for evil without taking into consideration any consequences.
- In specific deterrence, punishment is designed such that it can educate the criminals. This can reform the criminals. Also, it is maintained that the punishment reforms the criminals. This is done by creating a fear that the punishment will be repeated. (CORRECTIONAL SERVICES, COUNSELLING ORIGINATED)

- **Preventive Theory**
- This theory has used as a restraint that an offender if repeats the criminal act , is culpable for death, exile or imprisonment. The theory gets its importance from the notion that society must be protected from criminals.
- **Reformative Theory**
- Deterrence and retributive are examples of classical and non-classical philosophies. The reformative theory was born out of the positive theory that the focal point of crime is positive thinking. Thus, according to this theory, the objective of punishment needs to be reformation by the offender.. So that he joins the society as a reformed person..(open air jails , paroles etc)

Definition of Evidence IEA 1872

- **Evidence**” .— “ Evidence” means and includes—(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
- (2) all documents including electronic records produced for the inspection of the Court , such documents are called documentary evidence.
- **Fact**” means and includes—(1) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious. Illustrations(a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

Relevant.. Facts in issue.. Presumption .. proof

- **“Relevant”**. —One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.
- **“Facts in issue”**. —The expression “facts in issue” means and includes— any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.
- **“May presume”**.—Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.
- **“Shall presume”**.—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
- **“Conclusive proof”**.—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Case Study – 01

Case study of a convicted case of a Juvenile to life imprisonment for committing APSA & Killing the victim boy child (under POCSO Act.) decided on dt. 27-06-2019

- Cr No. 152/2017 dt. 29.06.2017 of PS Chandrayangutta u/s 363 IPC Hyderabad city.
- Father given a missing case complaint of his 10 year old son (4th standard) from 11 am on 28th June 2017.
- PSI registered a case u/s 363 IPC (Punishment for kidnapping up to 7 years and fine)
- Investigation disclosed that Juvenile Boy aged 17 years committed an offence of aggravated penetrative sexual assault (APSA) against the boy on the terrace of Govt High School on 28.06.2017 and killed him.
- 5 days all CCTV's scanned.

- On 5th July 2017 CCTV footage showing the missing boy in the company of the juvenile on 28-06-2017 at 13.58 hrs.
- On 06-07-2017 at 08.30am the suspect juvenile was picked up by police along with his father and questioned by the inspector. JICL disclosed that he killed the (missing boy) and after performing an unnatural sexual intercourse, as the boy wanted to inform his parents, he killed him and led the police to the school terrace.
- Along with punch witness the police inspected S.O.C & the deceased boy (in a purified state) was identified by the complainant (LW 1) & his wife (LW 2) as their son.
- Police after panchanama & inquest & sent the deceased body for PME.
- Section of Law attend to 364, 377, 302, 201 IPC and Sec 5(m) r/w 6 of POCSO Act 2012 and memo sent to court.

- Inspector (LW 18) issued “apprehension memo” against JICL informing grounds of apprehension & legal rights and intimidated his parents.
- Potency test of juvenile was conducted (53A CrPC) – positive & Medical officer opined age between 17 to 18 years.
- Since the offence was a ‘heinous offence’ as Sec. 6 of POCSO Act. (APSA) is punishable with imprisonment of not less than 10 years, the charge that was laid by ACP, before POCSO court which was designated as children court under JJ (CPC) Act 2015.
- PME report says cause of death was due to head injury.
- JICL was produced before V Add. CMM, Nampally. After potency test & age determination, he was sent “Observation Home” by the court.
- DNA finger printing of the mother of the deceased was compared with the deceased and found to be matching (done to preclude doubts of defence counsel)

- Judgment of 1st Addl. MSJ (designated court)
- (Session case PCS No. 70 of 2018 of 27/06/2019)
- Convicted u/s 6 of POCSO Act u/s 302 IPC for life imprisonment, also convicted u/s 364 IPC (10 years), 377 IPC (10 years) 201 IPC (7 years)
- Issued a warrant of commitment to the support Govt. observation Home for Boys.
- Issued direction to the Dist. Probation officer to submit periodical follow up reports if CACL has undergone any informative changes.

Case Study – II

Case of kidnapping / abduction of a minor (16 years old girl) in the name of marriage by a known accd. of 21 yrs.

- Girl missing case registered u/s 492/2016 dt. 11-07-2016 of Meerpet PS of Rachakonda Commissionrate on the complaint of mother of the minor.
- On coming to know on 12-07-2016 that she was forcibly taken away by the 21 year old accused srinu @ shiva, section of law was alterd to 366A IPC, Sec 11 r/w 12 of POCSO Act 2012.
- Accused was apprehended on 13-07-2016 & sent to judicial custody.
- Victims statement was recorded u/s 164 CrPC (Audio Visual - AV)
- Charge sheet was filed in Spl. Court (MSJ RR) vide SC No. 617/2017.

- The victims statement was consistent. That the accused was following & harassing (sec. 11 (iv) of POCSO Act) her in the name of marriage.
- Sec. 363 IPC & Sec 11 (iv) r/w 12 POCSO Act proved & accused convicted & sentenced to suffer imprisonment for 3 years. (19th Feb. 2019). Case disposed of after 1 year 6 months of registration.
- Evidence : Accused in order to maintain contact with victim purchased a cell phone & gave it to her. Messages amounting to sexual harassment is in evidence.
- Intent to marry not tenable as victim was 16 years.

Probation of offenders Act 1958

- Trial Courts power to release offenders charged with offences punishable with imprisonment of not more than 2 yrs, or fine(sec 3) after admonition.
- To release in cases punishable not exceeding 3 yrs or fine (sec 4) on good conduct on receipt of report from Dist Probation officer (P.O), under supervision of P.O.
- Pre conditions. Below 21 yrs of age, no previous conviction, not repeat offender, good conduct / behaviour, requests for giving him/her a chance to reform
- Offenders involved in crime against women and children are not entitled for release on probation
- Children in conflict with law (below 18 ys age) involved in non-heinous offences (punishable with less than 7 yrs) are entitled for release under probation after a report from P.O, or a Social worker, DCPU (dist child protection unit)

Case Study – III

A case of sexual assault (as defined u/s 7 of POCSO) by a drunken father on his 15 years daughter in the absence of his wife, on 20-10-2016 at 2am, duly resisted by her by shouting for help, later at 8 pm that day consumed sleeping pills, admitted in O.U Hospital, police of Meerpet PS were informed.

- Meerpet PS registered a case in Crime No. 67 of 2016 u/s 354 IPC, Sec 12 POCSO Act based on written statement of victim.
- Investigation Process : Date of birth certificate obtained from school showing 15 years.
- Victim statement (AV) recorded u/s 164 CrPC.
- Younger brother of victim (a child) (PW 3) corroborator victims statement.
- Mother of victim (PW 2) states of drunken behaviour of accused husband & her being sent out of home 3 months ago.

- A woman neighbour (PW 5) who reached the S.O.C corroborates victims version.
- Medical doctor submits report that victim was discharged after treatment - hence D.D. was not recorded.
- Accused was arrested on 22-10-2016 morning.
- I.O (PSI) files charge sheet u/s 354D & Sec. 12 POCSO Act. Forgot to obtain signature of victim, Court did not find fault with.
- **Judgment** : MSJ Cyberabad vide SC No. 993/2017 convicted the accused father of victim on 10th April 2019 u/s 7 r/w 8 of POCSO Act as offence was “sexual assault” u/s. 7 and not “sexual harassment” u/s 11 of POCSO Act.
- Accused was convicted u/s Sec 8 of POCSO Act for 3 years. Court said Sec 354D is not applicable.

Case Study – IV

A case of HB by night (Esc. 457/380 IPC) by 3 CICL, (Aged 15, 16, 17 yrs.) convicted and on conviction ordered to perform community service in a medical college on every Saturday for 6 months & assist the medical officer, staff. Dist. Probation Officer & SJPU to monitor reformation.

- Cr no. 639 of 2016 u/s 457, 380 IPC of PS Narsingi of Cyberabad registered on 06-11-2016, Cash of Rs. 3,82,000/- & 10gm gold stolen.
- PSI who took up investigation noticed the trio on 09-12-2016, apprehended them, questioned them. Recovered the identifiable property i.e gold chain & cash Rs. 3,00,000/-, one stolen motor cycle. Issued apprehension memo and produced before JJB.
- JJB court sends the trio to “observation home” as 457, 380 comes under “serious offence” category.

- PSI informed their parents immediately, recorded the same in CD, obtained date of birth particulars of the three CICLs from school and established ages as 15, 16 and 17 years.
- The JJB court on hearing the case vide CC No. 431/2017 decided the case on 11-01-2018.
- As all three JCLs (15, 16 & 17 yrs age) (as verified from the school records) are students, JJB u/s 18(3) of JJ Act ordered them to perform **community service** for six months under the supervision of Dist. Probation Officer & SJPU. Hospital to maintain record of attendance & service rendered.

Learning points

- Evidence to be truthful, admissible, relevant, scientific
- Presumptions like sec 113 A IEA abetment of suicide of a married woman by her husband or relatives (498A /306 IPC) within a period of seven years of marriage., sec 113 B IEA (in 304 B IPC) in dowry deaths, sec 114 A IEA in rape cases etc , POCSO act , where burden of proof is on the Accused
- State is the custodian of its Citizens and duty bound to protect citizens, punish offenders and maintain peace and tranquility
- Investigating officer sets law into motion by registering F.I.R in cognizable cases and places admissible, relevant , scientific evidence before jurisdictional court for adjudication.
- Reformation and social integration of convicts is good for society

DOUBTS IF ANY

- ANY QUESTIONS???