INTERVIEW OF MR MADAN LOKUR, RETIRED INDIAN SUPREME COURT JUDGE

Mr Justice Madan Bhimarao Lokur who retired as SC Judge of India on 30 Dec 2018, has been at the forefront of judicial activism in view of promoting and protecting the rights of vulnerable people in India. He has presided over the Social Justice Bench related to social and environmental issues.

1. **Mr Justice Madan Lokur, please tell us a little bit about your path to Supreme Court Judge? What motivated you? When you look back today at your enriching career, what are your feelings?**

Ans 1:

While pursuing my graduate studies, I was keen on joining the civil services. My seniors advised that a study of international law would be beneficial in addition to my major subject, that is, History. Accepting the advice, I decided to pursue further studies in law and particularly study international law. I found the study of law to be rather fascinating and it quite interested me. My preparations for the civil services examinations continued side by side. I remember having finished my studies on 1st October. I decided to take a break on 2nd October and start my revision from 3rd October. During the course of the day, I introspected about my future and concluded that I was really not fit for the civil services and that my future lay in pursuing a study in law.

My parents were quite disappointed with my decision since they were keen that I joined the civil services but when we discussed my decision, they agreed with me and fully supported me. My paternal grandmother also lent her weight to my decision. Her reasoning had nothing to do with the civil services or the law. Her argument was that her husband (my grandfather) had been a judge of the Bombay High Court, her son (my father) had been a judge of the Allahabad High Court and she was keen to see me (her grandson) as a judge of the Delhi High Court. So that was that!

With the support that I received from my parents, I took up the study of law quite seriously and began my practice in the Delhi High Court under a very eminent lawyer (Mr. B.N. Kirpal who later became the Chief Justice of India). After my senior became a judge of the Delhi High Court, I joined the chambers of Mr. D.P. Wadhwa who later became a judge of the Delhi High Court and then the Supreme Court. So, I had very good seniors who helped me along and fostered my interest in the law.

My practice as a lawyer was quite comfortable and enough to keep me going but the break came in 1990 when the Secretary in the Ministry of Law of the Government of India Dr. P.Chandrasekhara Rao (later President of ITLOS) offered me the assignment of Central Government Standing Counsel in the Delhi High Court. I accepted the offer and for the next six years I dealt with a variety of cases on behalf of the Central Government including criminal trials.

In 1997, the Chief Justice of the Delhi High Court invited me to join the Bench which was a great honour and I accepted the invitation. Unfortunately, the President of India thought that I was 'underage' for appointment as a judge of the Delhi High Court. Upon learning this, the Attorney General for India Mr. Soli J. Sorabjee recommended my name for appointment as an Additional Solicitor General of India which, of course, I accepted. Somewhat later, my papers for appointment as a judge of the Delhi High Court were processed and in February 1999, I took oath of office. I was a judge of the Delhi High Court for about 10 years, after which I was appointed as the Chief Justice of the Gauhati High Court and then the Andhra Pradesh High Court, eventually being appointed as a judge of the Supreme Court of India in June 2012.

My motivation was to do justice to a litigant, as a lawyer as well as the Central Government Standing Counsel and later of course as a judge. A litigant comes to court only as a last resort and if he or she does not get justice, there will be a strong feeling of dissatisfaction which is certainly not healthy for society. Therefore, I believe that lawyers and judges must always endeavour to do justice to a litigant. Of course, only one litigating party is right. But, the unsuccessful litigant must know the reasons for rejection of his or her case and those reasons must be sound on facts and at law. It is only then that the unsuccessful litigant will also agree that justice has been done.

When I look back at my career, I feel a great sense of satisfaction at having done my duty without fear or favour, affection or ill will. This is not to say that every decision that I took as a lawyer or as a judge was correct but every decision was certainly for the cause of delivering justice. So, I have retired as a satisfied lawyer and judge but continue to remain a student of the law.

2. You presided over the Social Justice Bench. Can you tell us more about it?

Ans 2:

The idea of a Social Justice Bench came to my mind when I dealt with a few Public Interest cases having a social justice component in the Supreme Court and felt that they were not reaching any satisfactory conclusion. I discussed this with the then Chief Justice of India H. L. Dattu and gave him some suggestions. He asked me if I would take on the burden of dealing with Public Interest Litigation (PIL) that have social justice a central theme. I replied in the affirmative and he then cautioned me that the burden of dealing with PILs is rather heavy and if I was willing to take on the burden, he would be more than happy to place such cases on my Board. I immediately agreed, even though I knew that the burden would be very heavy. I then suggested to him that if a large number of such cases were to be placed on my Board then it might be appropriate to give a meaningful 'title' to the Bench that I was presiding over and suggested that we call it the Social Justice Bench. This would also give a signal to the lawyers and litigants that the focus of the Bench would be on Social Justice and not mere adjudication.

The Social Justice Bench had a slow start because a very large number of cases had to be looked into and many of them had not been taken up for consideration for several months, if not years. Moreover, the Bench was required to sit only twice a week and that too in the post-lunch session. Therefore, most of the first year was really spent in managing the caseload and putting case papers in order. Some progress was made but the successor Chief Justice of India thought that not enough progress was being and therefore he disbanded the Social Justice Bench. I think this was a terrible mistake and virtually resulted in undoing whatever efforts had been put in earlier.

The next Chief Justice of India realised and appreciated the purpose and value of a Social Justice Bench. He reinstated the Bench with the existing caseload and some more. Thereafter, even though the workload was rather heavy, since I enjoyed doing the work it was possible to manage the cases along with my colleague judges.

The Social Justice Bench dealt with a variety of issues including child rights, management of homes for children and orphans, rights of victims, particularly women, prison reforms, environmental issues, air pollution, preservation of water bodies, aquaculture, forests, road safety, child marriages, rehabilitation of widows, old age homes, disaster management, food security, relief for building and other construction workers, employment guarantee, prohibition of pornography on the Internet, encounter and extra-judicial killings, a variety of human rights including prohibition of child marriages and the rape of minor

girls and so on and so forth. In many of these issues, we were able to pass orders that were accepted and implemented by the Government of India and the State Governments. Occasionally, there was some resistance but eventually public interest outweighed everything and all Governments supported the Social Justice Bench, though sometimes with diffidence.

In my view, for a diverse country like India which still has a large population of disadvantaged and underprivileged persons, PIL is a necessity and provides access to justice to marginalised sections of society, who need it the most. The idea of a Social Justice Bench serves this purpose extremely well and must be encouraged for the benefit of disadvantaged, underprivileged and marginalised sections of society.

3. **The Public Interest Litigation is an important tool for social and environmental causes? What are your thoughts?**

4. **Do you think that Public Interest Litigation overlaps with the Executive and Legislature thus breaching the concept of separation of powers and can be misused by unethical parties?**

Ans 3 & 4

There is no doubt that PIL is an important tool for social and environmental causes. I am a great supporter of PIL and believe that it can be used as the vehicle for bringing about changes in society that are most needed but neglected by the Executive or the Legislature. There are occasions when perhaps it is necessary to overstep.

For example, even though India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, no legislation was passed by our Parliament to protect women from sexual harassment at the workplace. This compelled the Supreme Court to issue directions for protection of women from sexual harassment at the workplace - called the Vishaka guidelines. Perhaps the Supreme Court did overstep its jurisdiction but can anybody say that the Vishaka guidelines were not necessary? The Supreme Court was accused of legislating, but then what was the other option before the Supreme Court? Should the Supreme Court have permitted sexual harassment of women at the workplace to continue only because our Parliament and the Executive had failed to implement CEDAW? Look at it this way, notwithstanding orders of the Supreme Court, it took our Parliament much more than a decade to enact a law on the subject. In this background, can anybody alleging overstepping or a violation of the separation of powers, suggest with

any degree of seriousness that the Supreme Court should have folded its hands and said, "This is none of our concern. If Parliament and the Executive want women to be sexually harassed, so be it?" This is ridiculous.

So, when our Parliament does not act and the bureaucracy does not implement the law enacted by Parliament in letter and spirit, the court has no option but to step in in public interest so that the people of the country can live a life of dignity and respect and in accordance with the Rule of Law.

5. How valuable is it to contemplate adopting Public Interest Litigation into the Mauritian Judicial System?

Ans 5:

It is not for me to say whether the Mauritian legal system should adopt PIL. All that I can say is that it has worked wonders in some areas and in other areas it is still work in progress. Public Interest Litigation has made considerable difference in the recognition and implementation of the rights of children, in prison reforms, protection of the environment, recognition and acceptance of human rights and several other governance issues including issues involving corruption. As I said earlier, I am a great supporter of PIL and my experience on the Social Justice Bench has reinforced my belief that in certain situations and for certain people PIL is the only real answer and the only appropriate method of accessing justice.

Public interest litigation exists in other parts of the world as well, though with a different nomenclature. In some jurisdictions, it is referred to as class-action and in some other jurisdictions it is referred to as proceedings initiated in a representative capacity. There is not much difference between such proceedings and PIL except that public interest litigation is non-adversarial and not hide-bound by procedure. In India, we have entertained PILs received by the court through a letter and I have had occasion to deal with a few such cases including one in Gauhati High Court which I had entertained on receiving an SMS on my smart phone.

6. What is your outlook on the Mauritian Legal System?

Ans 6:

My experience with the Mauritian legal system has been very brief and cursory. However, whatever exposure I have had during my stay in Mauritius, meeting

lawyers and judges and reading some books and journals, I am greatly impressed by the dedication and commitment shown by the legal fraternity in ensuring that justice is done in a fair and dispassionate manner. My visits to the courts in Mauritius have left me with a clear impression that justice delivery is in very safe hands and the independence of the judiciary is preserved and protected. What more can any Mauritian ask for?

I believe that interactions such as the one that I have had the privilege and honour of with the Bar and the Bench of Mauritius, must be encouraged and it is only then that all of us, as students of the law, will learn from our experiences and our jurisprudence. For this, I must congratulate the Institute for Judicial and Legal Studies of Mauritius for giving me this wonderful opportunity of understanding the Mauritian legal system and interacting with lawyers and judges of the country.

7. You have been Judge in Charge and currently the Chairperson of the E-Committee of the Supreme Court of India. Can you tell us how digitalisation of Courts has actually improved the delivery of Justice?

Ans 7:

The computerisation and digitalisation of courts in India has not yet had a significant impact on justice delivery. Initially, the focus was on providing hardware and software to the judges so that their judicial and administrative efficiency could improve. This required intensive training and now the efforts are beginning to pay off. Of late, therefore, there has been some significant improvement in justice delivery.

Presently the focus is on providing information to the litigants. Consequently, there has been a huge amount of awareness generated amongst litigants and indeed in society about the functioning of the justice delivery system in India. For example, through the National Judicial Data Grid information is available to every litigant about his or her case and the progress that has been made. Since this is open to the public as a part of transparency and accountability in the justice delivery system, judges are somewhat reluctant to adjourn cases for the asking. The availability of information has also placed the justice delivery system under scrutiny and some issues of delay in disposal of cases have also been addressed.

Case management is a very important aspect of efficient justice delivery. Through the computerisation of the courts, it is possible to introduce good practices for the purposes of case management. While this needs to be taken up

by the judges far more seriously than it has so far been, I'm sure that radical changes will be brought about if the available technology is utilised to its potential. The number of lawyers and litigants accessing the Internet to find out the progress in their cases has increased dramatically. Access is possible now not only through desktop and laptop computers but also through smart phones. In due course of time, paperless filing and paperless courts will be possible, provided there is a change of mindset in the legal profession.

Smartphone technology is already being utilised for disseminating information to lawyers and litigants and will soon be utilised for making judicial deposits and for service of summons.

The eCommittee is presently working on the idea of Virtual Courts which will deal with petty offences such as traffic violations and other petty matters. Through the use of computers, one judge can handle the work of several judges thereby making scarce judicial resources available for other cases. A pilot project will be launched in this regard fairly soon and if successful, it will be implemented all over the country. The eCommittee is also looking at introducing artificial intelligence for judicial decision-making. This does not mean that judges will be replaced by computers. It only means that computers will assist judges with necessary data and information so that the judges can better use their discretion based on relevant materials.

8. How can the Institute for Judicial and Legal Studies (IJLS) improve its role & function as service provider for legal and judicial training?

Ans 8:

Any judicial academy, including the Institute for Judicial and Legal Studies (IJLS) can play a very vital role in training and educating lawyers and judges. Need-based programs can be prepared and along with judgements and articles in reputed journals, the faculty can make a huge difference in the quality of assistance rendered by lawyers to the judges and a huge difference in the quality of judgements delivered by the judges.

Case management techniques and issues relating to court administration are also part of legal and judicial education. We tend to continue with existing practices, but times have changed and social context judging has gained considerable importance over the years. For this, lawyers and judges must be socially aware so that they can instill confidence in the people that the justice delivery system will take care of their interests and protect their rights. Occasional brainstorming sessions with experts in the field of case management and social

context judging is necessary. This gives time for introspection and is a learning process that can only pave the way for reforms which will benefit the people of the country. It must not be forgotten that the judiciary is one of the pillars of democracy and it must always be strong, vibrant and relevant for the times. This is possible only with appropriate inputs being provided by a judicial academy such as the IJLS.

I do not underestimate the importance of the work done by any judicial academy but believe that if the resources available with a judicial academy are properly utilised, meaningful and effective justice delivery can be a reality.