



Judge, High Court of
Bombay

Justice Michael F. Saldanha (Retd)



Judge, High Court of
Karnataka

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OPEN LETTER TO THE HON'BLE CHIEF JUSTICE OF KERALA HIGH COURT

4th July 2020

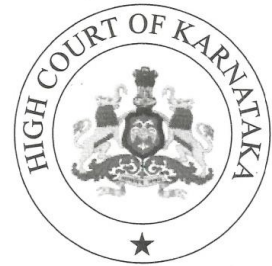
Most Respected Brother Chief Justice,

1. I am writing to you on an issue of crucial importance to the Indian Judiciary but I am addressing it as an open letter because there is nothing confidential and the subject matter concerns the whole of the Kerala Judiciary, the whole of the Kerala Bar with which I have had happy contacts over half a century and which I admire for its high standards. From my young days I have admired the late E. M. S. Namboodripad with whose views many people did not agree and who had the distinction of being convicted for Contempt of Court for the strong anti-establishment statements made by him for which he did not apologise and in which case the then CJI in a Landmark Judgment even observed that it is difficult to disagree with his views. In more recent times my mentor and Legal Guru Justice Krishna Iyer who propounded some earth shaking socio-legal concepts like the now universally accepted rights of the victim all the way upto Dr. Madhava Menon the internationally renowned law professor for whom also I have tremendous esteem, who founded the world famous National Law School of India University in Bangalore where I used to lecture and the National Judicial Academy in Bhopal for the higher judiciary and where I also used to lecture, all the way down to the State that is known as '*God's Own Country*' and for which I have a special place in my heart, which I visited only a few months ago, I humbly bow my head in tribute.
2. Over the years, the Indian Judiciary has been finding it exceedingly difficult to deal with cases relating to rape and molestation of women and related sexual offences. Very few of these cases reach the Courts because of corrupt investigations and even the small category which land up before the Courts yield a conviction rate of 1%. Many of these are treated by the police as dowry death cases where again the conviction rate is 1.2%. The tendency to close this class of cases on the ground of suicide which are infact murders is an area that requires judicial supervision but that again is a larger issue. An analysis indicates that because the verdict comes from the Courts that a wrong impression is created that the fault lies with the Courts which is infact totally unjustified.
3. The State of Kerala in recent times has been horrified by the sexual offences relating to the Christian community which have resulted in murders, but more importantly, suicides and I do not have to give you numbers. That is a larger issue which only the Judiciary cannot deal with, but needs to address itself too. I desire to narrow down this appeal to you, to just one case that is making the headlines for a long time all over the country. It is the Bishop Mulakkal case. He is an accused facing serious charges for sexual assaults on a Nun. The man is very powerful because the Christian Bishops control unlimited amounts of money for which there is no accountability. The Government has wrongly granted 80G concessions and while the country badly needs money, these people pay no taxes and live in palaces and go about tecked in gold and expensive Italian Designer Wear. I was shocked when the whole congregation including me were barefoot in the Mysuru Cathedral and the Bishop walked in with Purple Kid Leather Italian Custom-Made Designer Shoes and a Gold Scepter weighing about 10 kgs, a heavy Gold Cross and an abnormally large Gold Ring (12). That



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Diocese has 47% BPL cases and nobody is rich there. Is this sort of vulgar display tolerable in this country. They do not subscribe to any laws, the amounts of money they rake in from the Churches and Educational Institutions and Hospitals, that too in cash has given them the power to influence (corrupt) police, public authorities and politicians, as a result of which no action survives against them. Many of them function like despots with so much power that nobody dares to so much as question, leave alone oppose them.

4. When a Cardinal in Kerala told the Kerala High Court that he is accountable only to the Pope and to no Indian Institution or Authority nor is he concerned with or subordinate to Indian laws, he was summarizing the attitude. I have in the recent past got similar answers from the Bishop of Mysuru, the Archbishop of Bangalore and the higher Church authorities all the way upto Delhi. The rule of law in this country is only applicable, according to them to citizens other than the Catholic Hierarchy. I refer to this aspect only because this is exactly the line projected by this Bishop Mulakkal who is an accused before the Sessions Court in Kerala.
5. I confine this Appeal to only one aspect. Short of killing her, the victim in this case has been subjected to every conceivable harassment and torture at the instance of the Accused and it is a miracle that she is still alive and in a position to give evidence. When Justice Krishna Iyer referred to the rights of the victim, he propounded and emphasized a much neglected principle, which I am happy to say, the Courts in this country very strongly enforced in the Nirbhaya Case. This is a very gross case and it is essential that the Courts grant full protection and assistance to the victim and witnesses. It is well settled law that when such pressures are used, the first thing to do is to cancel the bail of the Accused which the Courts have been consistently doing in the last atleast 3 years. He may be a Bishop but he is an accused facing serious charges, that too for sexual offences which disgusting and deplorable and any other criminal in his position would not have been released on bail. This aspect of the matter will have to be reconsidered and this would probably be a fit case in which the High Court must exercise its inherent powers under Section 482 of the Criminal Procedure Code on a suo moto basis.
6. This Accused was due to appear on 01.07.2020 and I would like to say to the credit of the Sessions Judge that he has issued a Final Warning to him that if he does not appear on the 13th, his bail will be cancelled. My considered view and that of every right thinking Indian is that too much indulgence has been shown to him which explains why he has remained absent 13 times and the trauma which the victim and the witnesses are undergoing is out of control.
7. We are informed that his latest excuse is that because of the lockdown situation he finds it difficult to travel. This ground is absolutely sham and false because the State Governments and the Government of India have made provision for travel in cases of all emergencies and this case comes under that category. My view is that this man is opulent enough to travel in a Chartered Flight. All that the Trial Court has to do is to issue a Non Bailable Warrant and the Governments concerned will make necessary arrangements to escort him in safe custody from Jalandhar to the Trial Court after which there is enough justification to retain him in custody, as otherwise, new excuses will come up. More importantly, even if for any reason, which I personally cannot think of or justify, his bail is not cancelled



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necessary steps should be taken to ensure that he does not leave the city in which the trial is being held, which to my mind can be conducted on a day to day basis. Speaking for myself whenever this class of litigants misbehave in this manner and a Non Bailable Warrant was issued, they appeared immediately and steps were taken to prevent any further defaults. The public interest requires that this be done because otherwise, he is creating the impression that he can mock the judicial process.

8. The reason why I am addressing this Appeal to you is because I have total faith in the Kerala Judiciary and because I am confident that corrective action will emerge immediately.

With esteem and regards,

Justice Michael F. Saldanha

**The Hon'ble the Chief Justice,
High Court of Kerala, Kochi**