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Editorial

On the occasion of the World Environment Day, 5th June 2021, the UN Decade on Ecosystem Restoration (2021-2030) was launched with the hope to revive billions of hectares of forests, mountains and the sea. It urges groups, individuals, governments, organizations, and businesses to join together to mitigate the ecosystem degradation in order to secure a sustainable future. On the initiative of El Salvador and together with more than 70 countries, the United Nations General Assembly on 1st March 2019 adopted a Resolution 73/284 and proclaimed the United Nations Decade on Ecosystem Restoration (2021-2030). It aims to scale up efforts to prevent, halt and reverse the degradation of ecosystems worldwide and raise awareness of the importance of successful ecosystem restoration. The States are encouraged to develop and implement policies and plans to prevent ecosystem degradation, in line with national laws and priorities. The UN Decade shall run from 2021 to 2030, which is also the deadline for the implementation of the Sustainable Development Goals and the timeline which has been identified by the scientists as the last chance available to prevent catastrophic climate change. Restoration of ecosystem is fundamental to achieving the Sustainable Development Goals, mainly those on climate change, poverty eradication, food security, water and biodiversity conservation. This movement is being led by the United Nations Environment Programme (UNEP) and the Food and Agriculture Organization((FAO) and the main idea is to build a strong, broad based global movement to give the much needed push for restoration of ecosystem. Only with healthy ecosystems would the conditions of people's livelihoods improve, and environmental degradation would halt. There is an urgent need for active participation of all relevant stakeholders, including women, children according to their evolving capacities, young people, older persons, persons with disabilities, indigenous peoples, and local communities in ensuring the effective implementation of the goals identified for the UN Decade. The Decade unites the world behind a common goal: preventing, halting, and reversing the degradation of ecosystems worldwide. Forests, grasslands, croplands, wetlands, savannahs, and from terrestrial to inland water ecosystems, marine and coastal ecosystems, and urban environments-all of them are in dire need of some level of protection and restoration. A series of steps were already taken by the Government of India for restoration of ecosystem, however, it is important that the government focuses on formulating better policies and laws concerning environment protection and restoration.

Manoj Kumar Sinha

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NEW PRESIDENT OF ILI

Hon'ble Mr. Justice N.V. Ramana was born on August 27, 1957, in the state of Andhra Pradesh. His Lordship assumed the office as the 48th Chief Justice of India on April 24, 2021. Previously, His Lordship was the Judge of Supreme Court of India, Chief Justice of Delhi High Court and the acting Chief Justice of Andhra Pradesh High Court. He has also served as the President of the Andhra Pradesh Judicial Academy. His Lordship enrolled as an advocate on February 10, 1983 and has practiced in the High Court of Andhra Pradesh, Central and Andhra Pradesh Administrative Tribunals and the Supreme Court of India in Civil, Criminal, Constitutional, Labour, Service, Election law, and Inter-State River laws. His Lordship has also functioned as Panel Counsel for various Government Organizations and has functioned as Additional Standing Counsel for Central Government and Standing Counsel for Railways in the Central Administrative Tribunal at Hyderabad. His Lordship became the permanent Judge of Andhra Pradesh High Court on June 27, 2000 and became the Chief Justice of the Delhi High Court on September 2, 2013 and became the Judge in the Supreme Court of India on February 17, 2014. Some of the significant judgements of His Lordship include "the order for the compensation for victims of a fire during a function wherein he had ruled that it should be granted to housewives on the basis of services rendered by them in the house, the order of the Jammu & Kashmir administration to review all orders imposing curbs on telecom and internet services in the state in a week and to put them in public domain, decision which held that the office of the Chief Justice of India comes under the purview of right to information and the decision which upheld the validity of the entry tax imposed by the states on goods imported from other states."

ACTIVITIES AT THE INSTITUTE

***Azadi ka Amrut Mahotsav* : Celebration of 75th Anniversary of India's Independence, Conference on Communal Harmony and Mahatma Gandhi on April 16, 2021**

Continuing the series of events under the initiative of '*Azadi ka Amrut Mahotsav*' the Indian Law Institute organised a conference commemorating the Indian independence movement on April 16, 2021 on the theme of 'Communal Harmony and Mahatma Gandhi'.

The event was organised on a virtual platform via Zoom videoconferencing application, and it began with the welcome address of the participants and the guests by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute. Professor (Dr.) Manoj Kumar Sinha introduced the theme of the conference and expressed his gratitude to Professor (Dr.) Sucheta Mahajan for agreeing to address the participants.

Professor Sucheta Mahajan, prominent academician and historian, graced the occasion as the keynote speaker for the event and delivered lecture on the chosen theme. Dr. Mahajan is a Professor at the Centre for Historical Studies, School of Social Sciences, Jawaharlal Nehru University, Delhi and an eminent author who has penned numerous works detailing out the history of India's struggle for independence, the erosion of colonial rule from the country and on the themes of politics of religion and communal harmony.

Her enriching talk was full of small anecdotes from her vast experience as a researcher in the field of the modern history of India. Professor Mahajan also spoke eloquently about the Gandhian values of *ahimsa*, his ideology of *satyagraha* and his unrelenting pursuit of the goal of communal harmony.

Elaborating upon the very concept of '*ahimsa'*, and '*satyagraha'* as propounded by Gandhi, she clarified that these must not be confused with any abstract, philosophical ideas. She explained how they were, rather, the instruments or weapons that were chiselled by their use in the fight against the unjust regimes. Non-violence was never to be the resort of the weak or the cowardly, but in fact required great commitment and courage. On the towering persona of Gandhi and his significance in the Indian independence movement, she quoted Jawaharlal Nehru, from his book, Discovery of India, wherein he wrote: "And then Gandhi came. He was like a powerful current of fresh air that made us stretch ourselves and take deep breaths; like a beam of light that pierced the darkness and removed the scales from our eyes; like a whirlwind that upset many things, but most of all the working of people's mind."

Professor (Dr.) Manoj Kumar Sinha, Director, ILI thanked Professor Mahajan for sharing with all the participants her profound knowledge of the subject, post which certain questions were also answered by the speaker. Professor Mahajan also expressed how she had shared an association with the Indian Law Institute since her childhood as her father, author of several prominent legal history books, Dr. V. D. Mahajan, would visit the institute frequently for his research. Professor Sinha expressed his gratitude on the behalf of all the participants and the institute and the session ended with Professor Sinha expressing his hope for continuance of further association with Professor Mahajan for more such academic collaborations in future.

AILIA ACTIVITIES

The global outbreak of COVID-19 pandemic has brought forth many miseries where a considerable number of people, all across the world, have lost their lives, employments, and sense of security. Even today, the monstrous and disastrous pandemic continues to engulf humanity as a whole and the sufferings of the people are multiplying day by day. Though the Governments across the world have been attempting to mitigate the effects of the pandemic, the task seems herculean and requires much more coordinated and concentrated efforts.

The Association of the Indian Law Institute Alumni (AILIA) is an autonomous association of the alumni of the Indian Law Institute, New Delhi, operational since November 09, 2019. It is a non-political, non-profiteering, techno/socio/legal research & charitable organization having the statutory registration under the provisions of the Society Registration Act, 1860. In the wake of the pandemic, it has undertaken its solemn responsibility towards the humanity and has actively been engaged in work for amelioration of the conditions of needy and underprivileged sections of the society who have become the victims of undeserved want, occasioned by this global COVID-19 pandemic.

AILIA so far through the means of voluntary contributions by its alumni, senior advocates and general public has been able to assist a good number of people by providing them food (dry rations and cooked), masks etc. Throughout this period, several such activities were undertaken by the members of AILIA and the resolve to contribute for more such work has continued unabated.

Distribution of dry ration and other necessities by AILIA members and volunteers

LIBRARY

- Library added 76 books on Human Rights, International Law, Intellectual Property Rights, Cyber Law, Corporate Law, Criminal Law, Administrative Law, Constitutional Law and Research Methodology to enrich the library collections.
- Library resources training was provided by Ms. Gunjan Jain, Assistant Librarian, ILI to ILI- PG Diploma students admitted in course on Alternative Dispute Resolution and Cyber Law on June 10, 2021 and June 11, 2021.

RESEARCH PUBLICATIONS

Released Publications

- *Journal of the Indian Law Institute* Vol 63(1) (January-March, 2021).
- *ILI Newsletter* Vol XXIII, Issue I (January - March, 2021).

Forthcoming Publications

- *Journal of the Indian Law Institute* Vol 63(2) (April-June, 2021).
- *ILI Newsletter* Vol XXIII, Issue III (July - September, 2021).

E-LEARING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E-Learning courses of three months duration on **"Cyber Law"** (38th batch) and "**Intellectual Property Rights and IT in the Internet Age" (**49th batch) were completed on May 12, 2021.

EXAMINATION

Semester End Examination – 2021

The semester-end-examinations for the batch of LL.M. One Year (1st Semester) for the academic session 2020-21 were held from April 5, 2021 to April 15, 2021.

Post Graduate Diploma Supplementary Examination – 2020

The Supplementary Examinations for Post Graduate Diploma Courses were held from April 6 to April 22, 2021.

Ph.D.

Ph.D. Degree was awarded to Ms. Vaishali Arora on June 16, 2021 and Ms. Sakshi Parashar on December 17, 2020.

LEGISLATIVE TRENDS

THE CONSTITUTION (SCHEDULED CASTES) ORDER (AMENDMENT) ACT, 2021

Act No. 18 of 2021
Enacted on April 13, 2021

The Act was enacted to amend the Constitution (Scheduled Castes) Order, 1950 and to modify the list of Scheduled Castes in the State of Tamil Nadu. The Constitution empowers the President to specify the Scheduled Castes (SCs) in various states and union territories and permits Parliament to modify the list of notified SCs. In furtherance to this, the Act replaced the entry for the Devendrakulathan community with Devendrakula Velalar, which includes the communities that are currently listed separately within the Act.

LEGAL JOTTINGS

Can't treat unequals equally

The Supreme Court while dealing with an important question as to the constitutional validity of the third proviso to Section 254(2A) of the Income Tax Act, 1961 held that any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section only if the delay in disposing of the appeal is attributable to the assessee. By a judgment dated 19.05.2015, the Delhi High Court struck down that part of the third proviso to Section 254(2A) of the Income Tax Act which did not permit the extension of a stay order beyond 365 days even if the assessee was not responsible for delay in hearing the appeal. The Revenue, hence, challenged the said judgment and several other judgments from various High Courts held the same. The Delhi High Court, in its judgment, held that "Unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India." Agreeing to the said reasoning, the Supreme Court added, "This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2A) of the Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee".

It was further explained that ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of

the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned. "The object sought to be achieved by the third proviso to Section 254(2A) of the Income Tax Act is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary…" The Court, hence, concluded that since the object of the third proviso to Section 254(2A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, whether the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, was held liable to be struck down as violating Article 14 of the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the revenue would ensue even if the revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational, and disproportionate so far as the assessee is concerned. Hence, partially upholding the validity of the third proviso to Section 254(2A) of the Income Tax Act, the Court held that the same will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Therefore, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section only if the delay in disposing of the appeal is attributable to the assessee.

[*Deputy Commissioner of Income Tax* v. *Pepsi Foods Ltd.*, 2021 SCC Online SC 283, decided on April 06, 2021]

Whether the compassionate appointment can be given years after the death of the employee

In a case where a woman had sought compassionate appointment for her son 10 years after her husband had gone missing, the bench of L. Nageswara Rao and S. Ravindra Bhat, JJ refused to grant the said relief and held that "As the object of compassionate appointment is for providing immediate succor to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing."The respondent's husband was an Operator, Helper Category (Category II) at Gidi Washery. He had gone missing in the year 2002. A charge-sheet was issued by Central Coalfields Limited to the Respondent's husband for desertion of duty since 01.10.2002 and an inquiry was conducted in which the Respondent participated on behalf of her husband. Based on Inquiry Officer's report, the Respondent's husband's services were terminated with effect from 21.09.2004.The Respondent filed a suit in the Court of the Additional Munsif, Hazaribagh seeking a declaration of civil death of her missing husband. The said suit was decreed with effect from the date of filing of the suit i.e. 23.12.2009 by a judgment dated 13.07.2012.The Respondent then made a representation on 17.01.2013 seeking compassionate appointment for her son which was rejected on 03.05.2013 on the ground that the Respondent's husband was already dismissed from service and therefore, the request for compassionate appointment could not be entertained.

The High Court believed the reasons given by the employer for denying compassionate appointment to the Respondent's son were not justified. There was no bar in the National Coal Wage Agreement for appointment of the son of an employee who has suffered civil death. In addition, merely because the respondent is working, her son cannot be denied compassionate appointment as per the relevant clauses of the National Coal Wage Agreement.

Explaining the object behind grant of compassionate appointment, the apex Court explained,

> "The whole object of granting compassionate appointment is to enable the family to tide over the crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family[1]."

However, compassionate employment cannot be granted after a lapse of reasonable period as the consideration of *such employment is not a vested right which can be exercised at any time in the future.*The object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.In the present case, it cannot be said that there was any financial crisis created immediately after Respondent's husband went missing in view of the employment of the Respondent. Though the Court agreed with the High Court's views that the reasons given by the employer to deny the relief sought by the Respondent are not sustainable, it believed the Respondent's son cannot be given compassionate appointment at this point of time.

"The application for compassionate appointment of the son was filed by the Respondent in the year 2013 which is more than 10 years after the Respondent's husband had gone missing. As the object of compassionate appointment is for providing immediate succor to the family of a deceased employee, the Respondent's son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing."

[***Central Coalfields Limited* v. *Parden Orion***, 2021 SCC Online SC 299, decided on April 09, 2021]

At the stage of framing of the charge and/or considering the discharge application, mini trial is not permissible

In this case, the respondent-accused was serving as a Patwari, when it was alleged by the complainant that for the purpose of issuing Domicile Certificate and OBC Certificate of his son, the Patwari in lieu of endorsing his report demanded a bribe of Rs. 2,800. Pursuant to the said complaint, an investigation was conducted, and the accused was charge sheeted on reaching the findings that there was a *prima facie* case made out under Section 7 of the PC Act. Feeling aggrieved and dissatisfied, the accused preferred revision application before the High Court whereby the High Court had discharged the accused. It was submitted by the state that the High Court had committed a grave error in evaluating the transcript/evidence on merits which at the stage of considering the application for discharge is not permissible and is beyond the scope of the exercise of the revisional jurisdiction. It was further submitted that the accused had been charged for the offence under Section 7 of the PC Act and even an attempt is sufficient to attract the offence under Section 7 of the PC Act.

The defence raised by the respondent-accused was that he had refused to issue residence certificate for Rajasthan and caste certificate in favour of complainant, having come to know about the complainant being the permanent resident of Agra and that the complainant wanted a false residence certificate and caste certificate illegally. It was submitted that in fact the respondent-accused gave a report rejecting the request of the complainant and there was nothing pending before the accused and the decision regarding his application was already taken. The respondent submitted that at the time of conversation two persons were present, (1) the complainant – Jai Kishore; and (2) Devi Singh. And so far as the complainant was concerned, the accused categorically refused to accept any bribe. However, it was alleged that the appellant had tried to confuse and

mislead the Court by mixing the conversation of Devi Singh regarding his dues of Rs.4,850-/ to the bank against which he had paid Rs.2,000/- and the remaining amount of Rs.2,850/- was due to the bank. Thus, neither there was any acceptance nor there was any demand of bribe, and the High Court has rightly discharged the accused.

At the stage of Section 227, the Judge has merely to sift the evidence to find out whether there is sufficient ground for proceeding against the accused. The Bench opined that the High Court had exceeded in its jurisdiction and had acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court had gone into the merits of the case and had considered whether based on the material on record, the accused was likely to be convicted or not. For the aforesaid, "The High Court has considered in detail the transcript of the conversation between the complainant and the accused, which exercise, at this stage, to consider the discharge application and/or framing of the charge is not permissible at all."At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application. Lastly, the Bench stated, defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application. In view of the above, the impugned judgment and order was held unsustainable in law and the same was quashed and set aside. The order passed by the Special Judge of framing charge against the accused under Section 7 of the PC Act was restored.

[*State of Rajasthan* v. *Ashok Kumar Kashyap*, 2021 SCC Online SC 314, decided on April 13, 2021]

The availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case

The apex court held that the existence of an arbitration clause does not debar the court from entertaining a writ petition. Stating that the availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case, the Court highlighted that the High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly-

(I) where the writ petition seeks enforcement of a fundamental right

(ii) where there is a failure of principles of natural justice or

(iii) where the impugned orders or proceedings are wholly without jurisdiction or

(iv) the *vires* of an Act is under challenge.

The Court was hearing a dispute between Uttar Pradesh Power Transmission Corporation Ltd. (UPPTCL) and CG Power and Industrial Solutions Limited arising out of a Framework Agreement with UPPTCL for construction of 765/400 KV Substations, at Unnao, Uttar Pradesh. UPPTCL had directed CG Power to remit Labour Cess amounting to Rs.2,60,68,814/-, computed at 1% of the contract value, under Sections 3 sub-section (1) and (2) of the Building and Other Construction Workers' Welfare Cess Act, 1996, hereinafter referred to as the "Cess Act", read with Rules 3 and Rule 4 (1), (2) (3) and (4) of the Building and Other Construction Workers Welfare Cess Rules, 1998, hereinafter referred to as the "Cess Rules" and also Section 2 (1)(d), (g) and (i) of the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996.This direction had come after, in the Audit Report, the Accountant General pointed out the lapse on the part of UPPTCL, in not deducting labour cess from the bills of the contractor, that is Respondent No.1, in respect *inter alia* of the first contract, observing that every employer was required to levy and collect cess at a rate not exceeding 2% and not less than 1% of the cost of construction incurred

by an employer and to deposit the same with the Building and Other Construction Workers Welfare Board. When CG Power filed a writ petition before the Allahabad High Court challenging the same, UPPTCL did not oppose the writ petition on the ground of existence of an arbitration clause. Nor was there any whisper of any arbitration agreement in the counter affidavit filed by UPPTCL to the writ petition in the High Court. In such circumstances, the Supreme Court held that the existence of an arbitration clause does not debar the court from entertaining a writ petition and that relief under Article 226 of the Constitution of India may be granted in a case arising out of contract. However, the writ jurisdiction under Article 226, being discretionary, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses.

[*Uttar Pradesh Power Transmission Corporation Ltd* v. *CG Power and Industrial Solutions Limited*, 2021 SCC Online SC 383, decided on May 12, 2021]

Can conviction under Section 304-B IPC sustain without any charges under Section 498-A IPC?

In a case relating to dowry death, where it was argued by the accused that without any charges under Section 498-A, IPC, a conviction under Section 304-B, IPC cannot be sustained, the 3-judge bench of N.V. Ramana, CJI and Surya Kant and Aniruddha Bose, JJ has rejected the contention and has explained "although cruelty is a common thread existing in both the offences, however the ingredients of each offence are distinct and must be proved separately by the prosecution. If a case is made out, there can be a conviction under both the sections."

The factual matrix of the case was that the deceased got married to the accused in November 2004 and gave birth to child in 2006. The death of the deceased occurred in 2008 after she consumed poison in her matrimonial home. Both the trial court and the Punjab and Haryana High Court, convicted the husband under Section 304-B for dowry death. The counsel appearing on behalf of the accused-appellant argued that "the Courts below have, as a matter of routine, applied the presumption u/s 113-B of Evidence Act in the instant case wherein even the basic and essential ingredient of Section 304-B, IPC are not satisfied." It was submitted that just because the death of the deceased occurred within seven years of marriage, by no stretch of imagination can it be said that the deceased soon before her death was subjected to cruelty in connection with the demand of dowry."The fact that the deceased was happy with the appellant is clear as she lived with him and bore his child, and never mentioned any harassment or cruelty being meted out by the appellant. Furthermore, the gifts received by the appellant-husband were voluntarily given by the complainant and his family." It was also argued that without any charges under Section 498-A, IPC a conviction under Section 304-B, IPC cannot be sustained.

Section 304-B (1), IPC defines 'dowry death' of a woman. It provides that 'dowry death' is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Considering the aforementioned said law, the Court noted that since the marriage between the deceased and the accused-appellant took place on 23.11.2004, and the death of the deceased occurred in 2008 after she consumed poison in her matrimonial home, therefore, the first two ingredients as to death under otherwise than 'normal circumstances' within seven years of marriage stand satisfied. Coming to the next ingredient necessary for establishing the existence of dowry demand "soon before her death", the Court noticed that the deceased had expressed her unhappiness due to the constant harassment and dowry demands, to her father. The father also stated as

to how the families attempted to mediate the dispute themselves and on multiple occasions the father of deceased gave certain gifts to the accused and his family to ameliorate the situation. Further, the mother of the deceased had informed the father 15-20 days prior to the incident about the continuing harassment of the deceased on account of dowry. Finally, on 08.08.2008, the father-in-law of the deceased informed this witness about the consumption of poison by the deceased. It is also important to note that both the Trial Court and the High Court found the above evidence of the father of the deceased to be reliable and consistent despite a thorough cross-examination. No evidence was produced by the appellant to disregard the aforesaid testimony.

On the defence of the accused is that his family and family of the deceased shared a cordial relationship, and in fact, the appellant had helped the mother of deceased in getting treatment of cancer. The Trial Court, after a thorough examination of the evidences-both oral and documentary, concluded that the accused-appellant, who was working as a technician in a hospital, has forged the hospital records to prove the existence of cordial relationship between the families of the deceased and the accused. It was hence concluded that necessary ingredients under Section 304-B, IPC stood satisfied. Explaining the difference between offences under Section 498-A and Section 304-B, IPC, the Court noted the judgment in *Kamesh Panjiyar* v. *State of Bihar*, (2005) 2 SCC 388, wherein it was held, "Sections 304- B and 498-A IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the sections and that must be proved. The Explanation to Section 498-A gives the meaning of "cruelty". In Section 304-B there is no such explanation about the meaning of "cruelty". But having regard to the common background to these offences it must be taken that the meaning of "cruelty" or "harassment" is the same as prescribed in the Explanation to Section 498-A under which "cruelty" by itself amounts to an offence. Under Section 304-B it is "dowry death" that is punishable and such death should have occurred within seven years of marriage. No such period is mentioned in Section 498-A. If the case is established, there can be a conviction under both the sections."

[*Gurmeet Singh* v. *State of Punjab*, 2021 SCC Online SC 403, decided on May 28, 2021]

Can writ under Art. 226 Constitution of India be filed for grant of compensation under public law for infringement of fundamental right

The facts of the case are such that the petitioner herein has filed the instant writ petition stating *inter alia* that he remained in jail for commission of offence under Sections 420/34 and 120B of Penal Code, 1860 i.e. IPC from 14.5.2012 till the date of delivery of judgment i.e. 08.11.2016 i.e. 4 years, 6 months and 7 days, whereas he has been awarded sentence only for three years for offence under Section 420/34 of the IPC and three years for offence under Section 120B of the IPC and sentences have been directed to run concurrently, as such, it is a clear case where his constitutional right of speedy trial enshrined in Article 21 of the Constitution of India has admittedly been violated and for which he is entitled to appropriate compensation jointly and severally from the respondents.

The court relied on *"Common Cause"* v. *Union of India*, (1996) 4 SCC 33 and observed that it has clearly been established that the right to speedy trial in criminal case is valuable and important right of the accused therein and its violation would result in denial of justice and that would result in grave miscarriage of justice.The Court relied on judgment *Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746 and wherein it was held " Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even

though it may be available as a defense in private law in an action based on tort. A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right."The Court thus observed that this Court in the exercise of jurisdiction under Article 226 of the Constitution of India under public law, can consider and grant compensation to the victim(s) who has suffered an infringement of fundamental right i.e. right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

Right to life is a fundamental right guaranteed under Article 21 of the Constitution of India and for its breach or violation, the petitioner is entitled to monetary compensation from the respondents who are responsible for its breach. The Court relied on judgment *Vijay Kumar Gupta* v. *State*, (2008 SCC Online Pat 568) has held that detention of a prisoner in custody in excess of the period that he has been sentenced infringes upon his fundamental right to life and liberty and as such, he is entitled for monetary compensation and further held that both the prosecuting authority and Court remained oblivious of his continuous detention for more than a period, the sentence for any of the offence would have carried.

The Court observed that following the principles of law and reverting to the facts of the present case, it is quite vivid that the petitioner remained in jail as undertrial for a period of 4 years, 6 months and 7 days, whereas he has been awarded punishment of 3 years for offences under Section 420/34 and Section 120B of the IPC (separately) and both sentences to run concurrently, as such, he remained in jail in excess (one year and six months) for more than the sentence awarded by concerned trial Magistrate, on account of delay in conducting the trial, despite twice this Court while hearing bail applications on 22.4.2013 and 24.6.2014 directed the trial Magistrate to conclude the trial expeditiously, which was not taken cognizance of by the learned trial Magistrate by which the petitioner continued in jail for a period more than the actual sentence awarded violating the petitioner's right to speedy trial guaranteed under Article 21 of the Constitution of India and for which he is entitled for monetary compensation.

[***Nitin Aryan* v. *State of Chhattisgarh***, 2021 SCC Online 1636, decided on June 07, 2021]

When personal business interests of importers clash with public interest the former has to obviously give way to the latter

In the case relating to confiscation of a large quantity of yellow peas imported from China, the 3-judge bench of AM Khanwilkar, Dinesh Maheshwari and Krishna Murai, JJ has held that the goods in question are to be held liable to absolute confiscation but with a relaxation of allowing re-export, on payment of the necessary redemption fine and subject to the importer discharging other statutory obligations. Noticing that the personal interests of the importers who made improper imports are pitted against the interests of national economy and more particularly, the interests of farmers, the Court said, "When personal business interests of importers clash with public interest, the former has to, obviously, give way to the latter."

The notifications were earlier challenged for being in the nature of 'quantitative restrictions' under Section 9A of the FTDR Act, which could be only imposed by the Central Government after conducting such enquiry, as is deemed fit, and on being satisfied that the "goods are imported into India in such quantities and under such conditions as to cause or threatens to cause serious injury to domestic industry." However, the Supreme Court, in *Union of India* v. *Agric LLP*,

2020 SCC Online SC 67, held them valid as they were issued in accordance with the power conferred in the Central Government in terms of sub-section (2) to Section 3 of the FTDR Act. It was also held that the powers of the Central Government by an order imposing restriction on imports under sub-section (2) to Section 3 is not entirely curtailed by Section 9A of the FTDR Act. Sub-section (3) of Section 3 of the FTDR Act applies to the goods in question and, for having been imported under the cover of the interim orders but, contrary to the notifications and the trade notice issued under the FTDR Act and without the requisite licence, these goods shall be deemed to be prohibited goods under Section 11 of the Customs Act; and all the provisions of the Customs Act shall have effect over these goods and their import accordingly.

Further, only the restricted quantity of the commodities covered by the said notifications could have been imported and that too, under a licence. Therefore, any import within the cap (like that of 1.5 lakh MTs) under a licence is the import of restricted goods but, every import of goods more than the cap so provided by the notifications, is not that of restricted goods but is clearly an import of prohibited goods. Hence, the goods in question, having been imported in contravention of the notifications dated 29.03.2019 and trade notice dated 16.04.2019; and being of import beyond the permissible quantity and without licence, are 'prohibited goods' for the purpose of the Customs Act. The true scope of Section 125 of the Customs Act, 1962 comes into picture to decide this question. The latter part of Section 125 of the Customs Act obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. In the case at hand, the Adjudicating Authority had given such an option of payment of fine in lieu of confiscation with imposition of penalty whereas the Appellate Authority has found faults in such exercise of discretion and has ordered absolute confiscation with enhancement of the amount of penalty.

However, an authority acting under the Customs Act, when exercising discretion conferred by Section 125 thereof, must ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The purpose behind leaving such discretion with the Adjudicating Authority in relation to prohibited goods is, obviously, to ensure that all the pros and cons shall be weighed before taking a final decision for release or absolute confiscation of goods.“It is true that, ordinarily, when a statutory authority is invested with discretion, the same deserves to be left for exercise by that authority but the significant factors in the present case are that the Adjudicating Authority had exercised the discretion in a particular manner without regard to the other alternative available; and the Appellate Authority has found such exercise of discretion by the Adjudicating Authority wholly unjustified.” In the present case, it was evident that the Adjudicating Authority's orders were not passed in a proper exercise of discretion. The Adjudicating Authority did not even pause to consider if the other alternative of absolute confiscation was available to it in its discretion as per the first part of Section 125(1) of the Customs Act and proceeded as if it must give the option of payment of fine in lieu of confiscation.

“Such exercise of discretion by the Adjudicating Authority was more of assumptive and ritualistic nature rather than of a conscious as also cautious adherence to the applicable principles. The Appellate Authority, on the other hand, has stated various reasons as to why the option of absolute confiscation was the only proper exercise of discretion in the present matter.” The Court issued directions-

- The subject goods are held liable to absolute confiscation but, in continuity with the order dated 18.03.2021 in these appeals, it is provided that if the importer concerned opts for re-export, within another period of two weeks from today, such a prayer for re-export may be granted by the authorities after recovery of the necessary redemption fine and subject to the importer discharging other statutory obligations. If no such option is exercised within two weeks from the date of the order, the goods shall stand confiscated absolutely.

- The respondent-importers shall pay costs of this litigation to the appellants, quantified at Rs. 2,00,000/- (Rupees two lakhs) each.

"The respondent-importers being responsible for the improper imports as also for the present litigation, apart from other consequences, also deserve to be saddled with heavier costs."

[*Union of India* v. *Raj Grow Impex LLP*, 2021 SCC Online SC 429, decided on June 17, 2021]

FACULTY NEWS

Invited /Delivered/Lectures

Professor (Dr.) Manoj Kumar Sinha, Director, ILI

❖ Invited to deliver keynote address in the Inaugural function on One-Day Seminar on "Human Trafficking, Slavery and Exploitation", organised by Law Mantra and Maharashtra National Law University, Nagpur on June 26, 2021.

❖ Invited to deliver a talk to participants of Faculty Development Programme (FDP) on, "Right to Health: National and International Perspectives" organised by Barkatullah University and Droit Penale Group on June 25, 2021.

❖ Invited to deliver a talk to the participants of the Summer Course on "International Human Rights Law" organised by Indian Society of International Law, New Delhi, on June 21, 2021.

❖ Invited to deliver a talk on "Protection of Human Rights in times of Emergency-National and International Perspectives", on celebration of 'Spirit of Freedom', organised by Chotanagpur Law College on June 15, 2021.

❖ Invited to deliver a talk to participants of Faculty Development Programme on "Fundamental Rights and Fundamental Duties" organised by the Amity Law School, Noida on June 9, 2021.

❖ Invited to deliver keynote address in the valedictory function on 'One-Day Seminar on Emerging Trends of Intellectual Property Rights, organised by Law Mantra and Maharashtra National Law University, Nagpur on April 17, 2021.

❖ Invited to deliver a talk on "Human Rights and International Law" to the participants of the Faculty Development Programme, organised by Himachal Pradesh National Law University on April 6, 2021.

Professor (Dr.) Anurag Deep, Professor, ILI

❖ Invited to deliver a lecture on the topic "National Education Policy 2020 and the Language Challenges" at 3rd National Amity Faculty Development Programme (Online), Amity University, Lucknow, [New Paradigm in Legal Education and Teaching Methodology] on June 23, 2021.

❖ Delivered a lecture on "Social Media: Use, Misuse and Law" under banner of Debaters Republic through online mode on June13, 2021.

❖ Delivered a lecture on the topic "Freedom of Speech and Sedition" at Amity Law School, Amity University, Noida, Uttar Pradesh in One Week Inter-Disciplinary FDP on 'Constitutional Values and Fundamental Rights' on June 08, 2021.

- Invited for Interaction with LLM students on synopsis presentation for dissertation, at Ajeenkya DY Patil University, Pune on April 29, 2021.

- Invited to deliver a series of six lectures on "Fundamental Rights and Human Rights" at Indian Society of International Law, New Delhi on April 18-30, 2021.

- Delivered a lecture on the topic "Anti Terror Laws and Human Rights" at CRPF Academy, Gurugram on April 28, 2021.

- Chaired a Technical Session on Virtual National Seminar on "Approach of Judiciary in Implementation of Alternate Dispute Resolution" at School of Law, Sharda University on April 10, 2021.

- Delivered a lecture at Refresher course for Law Teachers, Faculty of Law, DDU Gorakhpur University, Gorakhpur, UP on the topic "New Frontiers of Freedom of Speech and Expression and the Law of Sedition in India" on April 2, 2021.

CASE COMMENTS

In Re: Distribution of Essential Supplies and Services During Pandemic

2021 SCC Online SC 339
Decided on April 22, 2021

In the wake of the unprecedented humanitarian crisis which beset the country during the second wave of Covid 19 pandemic, the Supreme Court of India in a *suo motu* writ petition on 22nd April, 2021 took cognizance of the management of Covid 19. The court conducted hearings for three days on the prevailing conditions and handling of the Covid 19 situation and heard the representatives of the Government and others. On 30th April, 2021, the Court passed a detailed order related to vaccination policy, supply of essential drugs, supply of oxygen and other issues related to medical care and health facilities. By the mid of May, the graph pertaining to Covid 19 infections started declining and the situation turned manageable. In the hearing on 31st May, the Court focused on the vaccination policy of the Government of India. The Government of India introduced a national vaccination policy which was to be implemented in three phases; the first phase was launched on 16 January, 2021 and 1 February, 2021 and was exclusively restricted to the health workers and front-line warriors. The second phase which commenced from 1 March, 2021 and 1 April, 2021, was directed towards protecting the most vulnerable population in the age group of persons above 45 years of age. In the 3rd phase which came into effect on 1 May, 2021, the government adopted a Liberalized Vaccination Policy. The Court also deliberated in detail the nature of the Court's jurisdiction in the exercise of the power of judicial review over the management of the Covid 19 pandemic in India. The Court observed that the Constitution does not envisage that the Courts remain silent spectators when constitutional rights of citizens are encroached due to executive policies. It held that judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform.

The Government of India in its affidavit before the Court stated that the vaccination policy conforms to Articles 14 and 21 of the Constitution and that the Court should not interfere in this matter. Judicial review over executive policies is permissible only on account of manifest arbitrariness and since the Government is continuously seeking advice from scientists and medical experts to effectively deal with the pandemic, the Court need not interfere in this matter. The Court after examining the response of the Government and the submissions of *Amici*, identified three broad issues of concern (i) vaccine distribution between different age groups; (ii) vaccine procurement process; and (iii) the augmentation of the vaccine availability in India.

With regards to the first concern, the Court observed that due to an existing digital divide in India,

particularly between the rural and urban areas, imposition of online registration requirement for paid vaccination for population between the ages of 18-44 years was *prima facie* arbitrary and irrational. The court further observed that it would affect largely weaker, vulnerable, and marginalized sections of the society because of the accessibility barrier and issued a series of directions to the Government of India to ensure that free vaccination be made available to people.

The second concern pertained to vaccine procurement process and the court expressed concern over the unsuccessful attempts made by states and UTs in procuring vaccines on their own. Agreeing with the submissions made by the *Amici* that the vaccine manufacturers are generally more inclined and responsive towards federal governments, the court observed that the central government was in a better position to procure large quantity of vaccines. The court also observed the lack of clarity over Centre's policy of mitigating the differential bargaining power between states by pre-fixing a quota on *pro rata* basis among states based on their population of individuals between 18-44 years of age. As regards the third concern, the court issued directions to the central government to submit a roadmap regarding the availability of vaccines till December 31, 2021.

Due to the timely intervention of the Court in management of Covid 19 pandemic by way of directing the government to take necessary steps to deal with the present crisis in a right and timely manner to overcome massive health challenges posed by the Covid, the Government of India revised its vaccination policy which became effective from June 21, 2021. According to the revised policy, the Government of India would procure 75% of the vaccines from the Indian manufacturers and these vaccines would be distributed free of cost to States/UTs under the National vaccination programme. To incentivize domestic vaccine manufacturers the government gave them option to provide 25% of their month production directly to private hospitals. The involvement of the Court in dealing with the Covid 19 pandemic and posing tough questions to the government ultimately led to adoption of a revised vaccination policy by the Government. Through its timely intervention by way of this significant judgment, the Court once again reiterated its deep commitment in safeguarding and protecting human rights of the people.

Manoj Kumar Sinha

Patan Jamal Vali v. ***State of Andhra Pradesh***

2021 SCC Online SC 343
Decided on April 27, 2021

The case was about the rape of a visually challenged girl belonging to the Scheduled Caste. The High Court had confirmed the conviction of the appellant under section 3(2)(v) of the SC/ST Atrocities Act, 1989 as well as Section 376(1) of the Indian Penal Code, 1860. The Supreme Court also affirmed the conviction of the appellant for rape of the visually challenged girl belonging to the Scheduled Caste under Section 376(1), IPC. In this significant judgement, the apex court did an in-depth analysis of the issue of intersectional oppression and the punishment to be awarded in such cases and what all factors need to be considered by the courts while dealing with such cases. In the similar vein, the court observed: “When the identity of a woman intersects with, *inter alia*, her caste, class, religion, disability, and sexual orientation, she may face violence and discrimination due to two or more grounds. Trans-women may face violence on account of their heterodox gender identity. In such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind Scheduled Caste woman.”

In the present case, a blind girl belonging to a Scheduled Caste community was raped inside her own home by her brothers' acquaintance. The court explored the disturbing trend of sexual violence against women and girls with disabilities and to set in

motion a thought process for how the structural realities resulting in this situation can be effectively addressed. Intersectionality can be defined as a form of "oppression [that] arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone…"An intersectional lens is useful for addressing the specific set of lived experiences of those individuals who have faced violence and discrimination on multiple grounds. A single axis approach to violence and discrimination renders invisible such minority experiences within a broader group since it formulates identity as "totemic" and "homogenous". The court observed:

"A legal analysis focused on delineating specific dimensions of oppression running along a single axis whether it be caste, disability or gender fails to take into account the overarching matrix of domination that operates to marginalise an individual." An intersectional analysis requires one to consider the distinct experience of a sub-set of women who exist at an intersection of varied identities. This is not to say that these women do not share any commonalities with other women who may be more privileged, but to equate the two experiences would be to play down the effects of specific socio-economic vulnerabilities certain women suffer. At its worse, it would be to appropriate their pain to claim a universal subjectivity. "…an analysis of intersectionality does not mean that we see caste, religion, class, disability and sexual orientation as merely "add ons" to the oppression that women may face. This assumes that gender oppression is oppressive in the same way for all women, only more so for women suffering marginalization on other grounds."

At the outset, the observations of Hon'ble Justice (Dr.) D.Y. Chandrachud, on intersectional gender violence is significant on how the approach to legal protection for marginalized groups has almost always been dominated by a focus on a single axis of oppression either of gender or caste or disability. This finding is important because the outcome is that these single-axis statutes only benefit those who are relatively more privileged within such marginalized groups. Intersectionality requires courts to analyse law in its social and economic context allowing us to formulate questions of equality as that of "power and powerlessness" instead of difference and sameness. The latter being a conceptual limitation of single axis analysis, it may allow certain intersectional claims to fall through the cracks since such claims are not unidirectional in nature. Hence, there is a need for the Court to address and unpack the qualitative impact of the various identities an individual might have on the violence, discrimination or disadvantage being faced by them in the society. Hence, the nature and circumstances in which the offence has been committed would leave no manner of doubt that the appellant had taken advantage of the position of the woman who was blind since birth.

It is to be noted that in the present case, a heinous offence has been committed on a woman who has been subjected to double subjugation in the forms of disability and casteism for which the imposition of a sentence of imprisonment for life cannot be faulted. In this laudable, learned, and landmark judgement, the apex court ruled criminal justice system more gender and disabled-friendly by issuing proper guidelines which must be implemented at the earliest in all states uniformly across India.

Arya A. Kumar

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