ILI Newsletter

Quarterly Newsletter published by the Indian Law Institute
(Deemed University)

Volume XVII, Issue-I

January - March, 2015

Editorial

Gross violations of human rights and total disregard of humanitarian law in time of conflict will continue to cause large scale displacement of people from the affected states. Throughout history, situations have arisen wherein persons have been forced to leave their own country to seek asylum elsewhere. Those denied essential liberties of life at home will certainly be compelled to look elsewhere for freedom. People leave their own community and seek admittance to another country to live and work in peace. The last decades have witnessed some significant changes in the scale, scope and complexity of the global refugee question. During this period, millions of people have been forced to abandon their homes as a result of political terror, armed conflicts and social violence. A growing number of regions have been affected by the problem of human displacement. Recent experiences in the Balkans, Central Africa and parts of the former Soviet Union have demonstrated that governments and humanitarian organisations alike are finding it increasingly difficult to cope with multiple demands generated by these emergencies.

According to the UNHCR, currently an estimated 866,000 asylum seekers lodged claims in 2014, a 45% rise on the year before and the highest figure since the start of the war in Bosnia. The report stated that the sudden increase had been driven by the conflicts in Syria and Iraq. Recognizing the needs of humanitarian refugees, the international community has provided help, albeit, on a limited and adhoc basis. Asylum in another country for shorter or longer periods is still the only viable protection possibility for many of the world's forcibly displaced. The Asylum space is becoming ever narrower in response to security fears, backdoor migration and local xenophobia. The recent mass movements due to civil war, military occupation, natural disasters, gross violations of human rights, or simply bad economic conditions, have emphasized the urgent need to reformulate international legal regime which governs the problems of refugees and internally displaced persons.

Manoj Kumar Sinha

Inside

SUBSCRIPTION RATES

Single Copy : Rs. 20.00

Annual : Rs. 70.00

The payment may be made by D.D./Cheque in favour of the "Indian Law Institute, New Delhi" (For outstation cheques add Rs. 20.00 extra) and send to:

The Editor
ILI Newsletter
The Indian Law Institute
Bhagwan Dass Road
New Delhi-110 001
Ph: 23073295,23387526,
23386321
E-mail: ili@ili.ac.in
Website: www.ili.ac.in

ACTIVITIES AT THE INSTITUTE

International Conference

The Indian Law Institute in association with the National Green Tribunal and Ministry of Environment, Forest and Climate Change, Government of India organised an International Conference on "Global Environment Issues" on March 14-15, 2015. The aim of the conference was to bring judges, lawyers and environmentalists to dialogue on key environmental issues. There were 6 Technical Sessions in which various environmental issues were deliberated upon by eminent speakers from all over the world. Hon'ble Mr. Justice H.L Dattu, Chief Justice of India presided over the function and Mr. Mukul Rohatgi, Attorney General for India was the Guest of Honour.

The six technical sessions were as follows:

Technical Session- I on Facets of Global Warming and Disaster Management. The session was chaired by Hon'ble Mr. Justice J.S. Khehar. The session focused on issues related to global warming and ozone depletion, preventive and precautionary steps, unplanned development and impact of climate change on Himaliyan glaciers.

Technical Session II on Oceans: AGlobal Environmental Concerns was chaired by Hon'ble Mr. Justice Anil R. Dave. The session focused on the impact of changing environment on people and states, waste disposal in marine ecosystems and oil spills on and offshore.

Technical Session III on Improving Public Health by Preventing Imminent Causes of Pollution. The session was chaired by Hon'ble Mr. Justice Dipak Misra.

The session focused on issues related to noise pollution, air pollution, the efficacy of law in this regard, and a critical study on vehicular pollution and its impact on environment.

Technical Session IV on Forest, Wildlife, Development and Environment. The session was chaired by Hon'ble Mr. Justice K. Sripavan Chief Justice, Supreme Court of Sri Lanka. The session focused on issues related to development and rehabilitation of displaced wildlife, loss of bio- diversity due to urbanization and changing principles of sustainable development.

Technical Session V on Municipal Solid Waste Management. The session was chaired by Hon'ble Mr. Justice Ranjan Gogoi.

The session foucssed on the role of the corporate sector in solid waste management, the efficacy of the legal framework for collection, segregation and disposal of Municipal Waste.

Technical Session VI on Substantial Environmental Issues-Law-Remedy. The session was chaired by Hon'ble Mr. Justice N.VRamana. The session focused on topics related to the international dispute resolution mechanisms, and the feasibility of nuclear power projects.

Committee Meetings

The following meetings of the various committees were held in this quarter:

Board of Studies

The meeting of the Board of Studies of the Indian Law Institute was held at the Institute on January 22, 2015 under the Chairmanship of Prof. (Dr.) Manoj Kumar Sinha, Director ILI. The Members included Prof (Dr.) V.K Dixit, Professor of Law (Retd.) University of Delhi, Prof. (Dr.) Afzal Wani, Dean and Professor, Guru Gobind Singh Indraprastha University, Prof. (Dr.), S.Sivakumar Professor, ILI, Prof. (Dr.) Furqan Ahmad Professor, ILI, Dr. Anurag Deep Associate Professor, ILI, Ms. Arya A. Kumar Assistant Professor, ILI, Ms. Jupi Gogoi, Assistant Professor, ILI and Mr. Shreenibas Chandra Prusty, Registrar, ILI.

The members discussed the implementation of Choice Based Credit System (CBCS) from Academic Session 2015-2016 and adoption of Credit Framework for Skill Development (CFDS) as per the recommendations of University Grants Commission. The members also discussed the requirement for the maximum of five outside experts in each subject apart from the internal faculty members.

Academic Council

The meeting of the Academic Council was held at the Insititue on January 31, 2015 under the Chairmanship of Hon'ble Dr. Justice Arijit Pasayat, Former judge, Supreme Court of India. The Members included Mr. Rakesh Munjal Senior Advocate/ Vice President, ILI, Prof.(Dr.) Ved Kumari Professor of Law, Delhi University, Prof. (Dr.) Manoj Kumar Sinha Director, ILI, Prof. (Dr.) Furqan Ahmad Professor, ILI, Dr. Anurag Deep Associate Professor, ILI, Dr. P. Puneeth Assistant Professor, ILI and Mr. Shreenibas Chandra Prusty, Registrar, ILI.

The members discussed the implementation of Choice Based Credit System (CBCS) from the academic session 2015-2016. The institute has partially implemented the (CBCS) for LL.M (1 Yr.). Henceforth, it shall be adopted for LL.M (2 Yr.) from the academic session 2015-2016. It was also decided that from the academic session 2015-2016, Diploma in Human Rights shall be re-introduced with special emphasis on papers on Rights of Women, Rights of Children and Rights of Differently Abled Persons.

Library Committee

The meeting of the Library Committee was held at the Institute on March11, 2015 under the Chairmanship of Hon'ble Dr. Justice Kurian Joseph, Judge, Supreme Court

of India. The Members included Hon'ble Mr. Justice Badar Durrez Ahmed, Judge, High Court of Delhi, Hon'ble Dr. Justice Vineet Kothari, Judge, Rajasthan High Court, Hon'ble Mr. Justice B.Rajendran, Judge, Madras High Court, Mr. Chava Badri Nath Babu, Advocate, Prof Satish Shastri, Dean Mody Institute of Science and Technology Sikar, Rajasthan. Prof(Dr.) Ashwini Kumar Bansal Dean/Professor of Law, University of Delhi, Prof. (Dr.) Manoj Kumar Sinha, Director, ILI and Mr. Shreenibas Chandra Prusty Registrar, ILI.

The meeting approved the procurement of new book/ e-books and renewal of periodicals, software's, e-resources and newspapers for the year 2015-2016.

Finance Committee

The meeting of the Finance Committee was held at the Institute on March 10, 2015 under the Chairmanship of Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court. The members included Hon'ble Dr. Justice Vineet Kothari, Judge, Rajasthan High Court, Hon'ble Mr. Justice Badar Durrez Ahmed, Judge, High Court of Delhi, Mr. Rakesh Munjal Senior Advocate/ Vice President, ILI, Ms. Priya Hingorani, Advocate, Supreme Court , Mr. Ratan P.Watal, Secretarty, Department of Expenditure, Ministry of Finance, Mr. P K. Malhotra, Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India, Dr. Jiterndra Kumar Tripathi, Joint Secretary (Finance), UGC, Prof. (Dr.) Manoj Kumar Sinha Director, ILI.

The members approved the audit statement for the financial year 2013-14. The members considered the revised estimate for the financial year 2014-2015

SPECIAL LECTURES

Prof. Satvinder Jass, Professor, Kings College, London delivered a lecture to the LLM students on the topic "International Refugee Laws" on February 4, 2015.

Dr. Rajesh Sharma, Assistant Professor, City University of Honk Kong delivered a lecture on the topic "Combining Arbitration with Mediation: The Chinese Experience" on February 17, 2015.

Prof. (Dr.) Armin Rosencranz, an expert on environmental law in Stanford University, USA delivered a lecture to the LLM students on the topic "Global Environmental Law and Its Impediments" on February 12, 2015.

Prof. (Dr.) Stephen P. Marks, Professor, Harvard T.H Chan School of Public Health, Harvard University, Boston delivered a lecture to the LLM students on the topic "Proliferation of International Human Rights Instruments" on February 26, 2015.

Prof. (Dr.) Manoj Kumar Sinha and
Prof. (Dr.) Stephen P. Marks

Prof. (Dr.) Virendra Kumar, Founding Director (Academics), Chandigrah Judicial Academy delivered a lecture to the LLM students on the topic "Doctrine of Basic Structure: Insights on the Constitution (Ninety-Ninght Amendment Act, 2014)" on March 11, 2015.

Prof. (Dr.) Tracy Hester, Professor of Practice University of Houston Law Center, Houston, Texas and Ms. Linda G.Hester Senior Counsel (Legal), Houston delivered a lecture to the LLM students on the topic "Application of Environment Laws to Emerging Technologies" on March 17, 2015.

Prof. Upendra Baxi, Professor of Law, University of Warwick, UK delivered a lecture to the LLM students on the topic "Development and Displacement: Contemporary Debates" on March 27, 2015.

Prof. (Dr.) Marelize Schoeman, Professor of law, University of South Africa (UNISA) Pretoria, South Africa delivered a lecture to the LLM students on the topic "Dealing with Children in Conflict with Law: Retributive vs. Restorative Justice" on March 30, 2015.

RESEARCH PROJECTS

Project from Department of Justice, Government of India

The Department of Justice, Ministry of Law and Justice has entrusted a project to the Indian Law Institute on "Meaning and Status of Pendency in Allahabad High Court and Calcutta High Court". The study is under progress.

Project from the National Investigation Agency

The National Investigation Agency (NIA), Ministry of Home Affairs, Government of India has entrusted a project to the Indian Law Institute to prepare a Compendium of Terrorism Related cases and to draft a model Investigation and procedural manual. The study is under progress.

ACADEMIC ACTIVITIES

Award of Ph.D

The Academic Council, ILI awarded the degree of Doctor of Philosophy in Law (Ph.D in Law) to Mr. T.K Vishwanathan on February 18, 2015. The title of the thesis was " *Impact of Technology on Intellectual Property with References to Copyrights*". Prof. (Dr.) S. Sivakumar was the supervising teacher under whose supervision the thesis was submitted.

Open defence viva-voce of Mr. T.K. Vishwanathan. Hon'ble Justice B.S Chauhan, former Judge Supreme Court of India along with other panelists

EXAMINATION

Odd Semester Examination of LL.M 2/3 year Programmes

The odd semester Examinations for LL.M Programmes were held in December, 2014 as per schedule. The result for the same was declared on February 1, 2015.

Examination for LL.M 1 year Programme

The Examinations for LL.M (1 Yr) First Trimester were conducted in October 2014. The result for the same was declared in February, 2015. The Examination for the LL.M (2nd) Second Trimester were successfully conducted form February 9-13, 2015.

Examination for Ph.D Course Work

The Examinations for Ph.D Course Work was successfully conducted from March 11-16, 2015.

E-LEARING COURSES

Online Certificate Course in Cyber Law

Admission for the 20th batch of three months duration started on December 23, 2014. Ninety students were enrolled for this batch. The result for the same was declared in March, 2015.

Online Certificate Course in Intellectual Property Rights Law

Admission for the 31st batch of three months duration started on December 23, 2014. Fifty eight students were enrolled for this batch.The result for same is awaited.

RESEARCH PUBLICATIONS

Released Publications

- Directory of Law Colleges in India 2015
- Index to legal Periodicals 2013
- *Journal of the Indian Law Institute* (JILI) Vol. 56 (4) (October – December 2014)

Publications on Anvil

- *Journal of the Indian Law Institute* (JILI) Vol. 57 (1) (January – March 2015)
- Book on *"Environment : Sustainable Development and climate Change"*

LIBRARY

- The Library Committee meeting was held on March 11, 2015. The meeting focused on items related to acquisition of books, periodicals, improvement of library infrastructure. Some new items such as digitization of thesis, procurement of e-books, off campus access to e- resources of ILI Library were also approved by the Library Committee.
- The library added 42 books and reports on Constitutional Law, Criminal Law, Intellectual Property Rights, Globalization and Environmental law to enrich the library collection.
- Professor Stephen Marks from Harvard University, USA visited the ILI Library.
- Ten students and researchers from Amity University, U.P, and Indore Institute of Law, Indore visited the Library for their internship, research and reference.

VISITS TO THE INSTITUTE

Student's visit at ILI

- Students from New Law College, Ahmednagar visited ILI on 06.02.2015.
- Students of Indian Institute of Legal Studies, Darjelling visited ILI on 23.02.2015.
- Students of Vivekanand Education Society's College of Law visited ILI on 25.02.2015.
- Students of Institute of Law, Jiwaji University, Gwalior visited ILI on 13.03.2015.

Dr. P Puneeth with students of Jiwaji University, Gwalior

- Students of Central India College of Law visited ILI on 18.03.2015.
- Students of Bimal Chandra College of Law, West Bengal visited ILI on 18.03.2015.
- Students of K.C Law College, Mumbai visited ILI on 19.03.2015.
- Students of New Law College, Mumbai visited ILI on 20.03.2015.
- Students of M.A.B, Institute of Juridical Science visited ILI on 25.03.2015.

Students of the M.B.A Institute of Murshidbad

STAFF ACTIVITIES

Dr. P. Puneeth Assistant Professor was relieved from his duties w.e.f. 31.03.15.

Pawan Kumar Bhatnagar Accounts Officer was repatriated to his parent department, Central Board of Direct Taxes (CBDT) , New Delhi and he was relieved from his duties w.e.f. 31.03.15.

Sonam Singh, Library Assistant presented a paper on "Electronic Resources in Public Domain" at the National Conference on Transforming Dimensions of IPR: Challenge for the New Age Libraries on January 23-24, 2015 at the National Law University (NLU) Dwarka, New Delhi.

FORTHCOMING ACTIVITIES

- The Annual Examination for the Post Graduate Diploma Courses will start from April 13, 2015.
- Batches for the Online Certificate Courses in Intellectual Property Rights Law and Cyber Law shall commence w.e.f April 15, 2015.
- The admission process for admission to LL.M 1/2 Year and Post Graduate Diploma Programmes for the academic year 2015-16 will start with the commencement of the sale of prospectus w.e.f. May 2015.

LEGISLATIVE TRENDS

Citizenship (Amendment) Act, 2015

March 10, 2015

The amendment was introduced with the objective of bringing equality in the provisions of card-holders of Persons of Indian Origin (PIO) and the Oversees Citizen of India (OCI) cards abroad, merging both the schemes. The amendment provides that the Central Government may notify that Persons of Indian Origin cardholders shall be considered to be Overseas Citizen of India cardholders from a specified date.

The highlights of the amendment are:

1. If the Central Government is satisfied that special circumstances exist, it may, after recording such circumstances in writing, relax the period of twelve months specified up to a maximum of thirty days which may be in different breaks.
2. The amendment provides certain additional grounds for registering for an Overseas Citizen of India card. These are: (i) a minor child whose parent(s) are Indian citizens; or (ii) spouse of foreign origin of an Indian citizen or spouse of foreign origin of an Overseas Citizen of India cardholder subject to a condition that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section; or (iii) grand child or

great-grandchild of a person who is a citizen of another country, but who meets one of several conditions (for example, the great-grandparent must be a citizen of India at the time of commencement of the Constitution or any time afterwards).

3. The amendment also allows the Central Government to cancel the Overseas Citizenship of India card where it is obtained by the spouse of an Indian citizen or Overseas Citizen of India cardholder, if: (i) the marriage is dissolved by a court, or (ii) the spouse enters into another marriage even while the first marriage has not been dissolved.

4. The amendment has introduced a new provision which allows the central government, if satisfied that special circumstances exist, to register a person as an Overseas Citizen of India cardholder even if she/he does not satisfy any of the listed qualifications.

The Motor Vehicles (Amendment) Act, 2015

March 19, 2015

The Act seeks to amend the Motor Vehicles Act, 1988 and replace the ordinance promulgated in January 2015 in this regard. It brings E-carts and E-rickshaws under ambit of the parent Act by inserting section 2A.

The highlights of the Act are:

1. It defines E-carts and E-rickshaws as special purpose battery powered vehicles with power up to 4000 watts and having 3 wheels. The Act mentions that these vehicles can be used for carrying goods or passengers, for hire or reward. It also provides that these vehicles should be manufactured, equipped and maintained in accordance with specifications as prescribed by Union government.

2. It exempts drivers of E-rickshaw and E-cart from the requirement of learner's licence to drive by amending section 7.

3. By amending section 27 it gives powers to the union government to make rules on the specifications for E-carts and E-rickshaws, and the conditions and manner for issuing driving licenses.

LEGAL JOTTINGS

Regulation of International Trade of Selected Species

Saving wildlife is a core responsibility of mankind. Animal populations are disappearing at an alarming rate. As a result of indiscriminate killing of the animals and birds by human beings, several species of animals/birds have virtually become extinct. To curb the ecological imbalance caused by the ruthless killings of the animals and birds various legislations have been enacted by several countries worldwide, to protect the lives of the endangered species of animals and birds and also curb the international trade in live animals/birds or their products. The Convention of International Trade on Endangered Species of Wild Fauna and Flora (CITES), an international treaty, was formulated with a view to regulate the international trade in specimen of selected species subject to certain control set out therein. The clear intention behind this international convention is that all the consenting countries come together and make joint efforts to save the animal species from going extinct, inasmuch as their survival is for the benefit of the mankind itself. The convention is an important consideration in relation to matters specified therein.

[*Regional Deputy Director* v. *Zavaray S. Poonawala* 2015 (5) SCALE 184]

Corroboration of Testimony of Prosecutrix

It is clear in law that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unreproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. If the evidence of the prosecutrix is not of such quality which can be placed reliance upon, and the circumstantial evidence remotely do not lend any support to the same, conviction based upon it would be erroneous.

[*Md. Ali* v. *State of Uttar Pradesh* 2015(3) SCALE 274]

FACULTY NEWS

Manoj Kumar Sinha delivered the inaugural address at the Workshop on Human Rights: National and International Perspectives, organised by the Department of Political Science, Aligarh Muslim University on March 23, 2015.

He delivered the key note address at the inaugural function of National Moot Court Competition, organised by Geeta Institute of Law, Panipat (Haryana) on March 13, 2015

He delivered a special address on "Refugee Stateless Persons and International Law" in the International Conference on Protection of Civilians During Armed Conflicts and Other Violent Situations organised by School of Law & Centre for Post Graduate Studies, ITM University, Gurgaon on February 27, 2015

He delivered special address during the inaugural session of the training programme for lawyers on International Humanitarian Law organised by School of Law, KIIT University, ICRC Regional Delegation, New Delhi and Odisha Bar Association, Bhubaneswar on February 21-22, 2015.

He presented a paper on "International Human Rights Law" in a seminar on recent developments in International Law, organised by Faculty of Legal Studies, South Asian University (New Delhi) on February 3, 2015.

He was invited as the Guest of Honour on the occasion of "Students International Conference on Environmental Problems in South Asia", at the School of Law and Legal Studies, GGSIP (New Delhi) on January 30 , 2015.

He delivered the presidential address at the International Interdisciplinary Seminar on Human Trafficking and Exploitation of Children: Human Rights Dimensions organised by Department of Law, University of Kerala, Trivandrum on January 16, 2015.

He delivered a talk on "Right to Education" at the World Congress on International Law organised by the Indian Society of International Law on January 11 , 2015

He delivered a talk on "Teaching and Research in International Law" at the World Congress on International Law organised by the Indian Society of International Law on January 10, 2015

He delivered a talk on "Direct Participation of Civilian in Hostilities" at the World Congress on International Law organised by the Indian Society of International Law on January 10, 2015

Anurag Deep on invitation delivered lecture at the National Seminar on Women Empowerment: Laws and Efficacy as resource person in VSSD College, Kanpuron February11, 2015.

He also delivered two lectures on invitation at the Faculty of Law, DDU Gorakhpur University, Gorakhpur, UP on the "Role of Indian Law Institute, New Delhi in promoting legal education and research in India" and "Fundamental Rights: Conceptual Contours" on March 15, 2015.

He was invited to co-chair and present a paper at the National seminar on Juvenile Justice, Child and Law: Socio Legal Perspective, at Saint Andrews college, Gorakhpur on March 16, 2015.

He was invited for a a panel discussion in recording and broadcast on All India Radio, New Delhi in आरक्षण और भारतीय जाति व्यवस्था in the background of *Ram Singh* v. *Union of India* (decided on 17 march, 2015) on Mach 18, 2015.

On invitation, he delivered a lecture in UGC sponsored National Seminar on Generating Awareness on Women Human Rights in India- Laws and Implication, organized by the Department of Political Science, Sahu Ram Swaroop Mahila Mahavidyalay, Bareilly on March 20, 2015.

Jupi Gogoi was invited as a resource person at the one day seminar on "Tribal Issues and Laws: Contemporary Scenario" at University School of Law and Legal Studies, GGSIPU on February 16, 2015. She presented a paper on "Protection of Traditional Knowledge under the current IPR regime in India".

She also presented a paper on "Interface between TK and Geographical Indications: A critical study" at the International Seminar on Intellectual Property Rights, Competition Law and Traditional Knowledge, on March 12-13, 2015 at University School of Law & Legal Studies, GGSIPU. Her paper was selected as the best paper in the seminar.

Deepa Kansra on invitation delivered a lecture at the National Seminar on Role of Lawyers in Nation Building, organized by Law Centre 1, Faculty of Law, University of Delhi, March 2015.

Deepa Kharb was invited to be a judge in the Preliminary Rounds of the Fifth National Moot Court Competition organized by the Faculty of Law, Jamia Millia Islamia, New Delhi on March 21,2015.

Vandana Mahalwar was invited to be a judge in the Preliminary Rounds of the 5th Jamia National Moot Court Competition, organised by Faculty of Law, Jamia Millia Islamia, New Delhi on March 21, 2015.

Susmita P. Mallaya presented a paper on "Compulsory Voting: New Approach to Participative Democracy" in a National Seminar on Electoral Reforms in India: Prospects and Challenges organized by Amity Law School, Delhi on January 23, 2015

She also presented a paper on " Interface of Abuse of Dominance under Competition Act, 2002 in India and the Essential Facilities Doctrine under Intellectual Property

Rights" in an International Seminar on Interface of Intellectual Property Rights, Competition law and Traditional Knowledge organized by the University School of Law and Legal Studies, GGSIPU, New Delhi on March 12, 2015.

She also participated in the International Conference on "The Global Environmental Issues" organized by the National Green Tribunal held on March 14-15, 2015 at Vigyan Bhawan, New Delhi.

She was invited as judge in Preliminary Rounds of 5th Jamia National Moot Court Competition organized by the Faculty of Law, Jamia Millia Islamia, New Delhi on March 21, 2015.

CASE COMMENTS

Ram Singh* v. *Union of India

2015(3) SCALE 570

Decided on March 17, 2015

In the present case, the apex court quashed the notification of March 4, 2014 adopted by the then-ruling Congress party-led United Progressive Alliance (UPA) granting the status of a backward class to the Jat community from various states. The said nsotification was issued pursuant to the decision taken by the Union Cabinet meeting held on March 2, 2014 to reject the advice tendered by the National Commission for Backward Classes (NCBC) which failed to take into account the ground realities. The court observed that the notification overlooked the fact that crucial test for determination of entitlements of the Jats to be included in the Central List is backwardness. In *Indra Sawhney* v. *Union of India*, (AIR 1993 SC 447) the Supreme Court held that that the terms "backward class" and "socially and educationally backward classes" are not equivalent and further that in article 16(4) the backwardness contemplated is mainly social. The court acknowledged that the caste may be a prominent and distinguishing factor for easy determination of backwardness of a social group. Though, the court has been routinely discouraging the identification of a group as backward solely on the basis of caste. Article 16(4) as also article 15(4) of the Constitution lays the foundation for affirmative action by the state to reach out to the most deserving. The court suggested that there is a need to evolve new practices, methods and yardsticks to move away from caste centric definition of backwardness. In the case in hand, the court rightly highlighted that an affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens. Any other parameter would be a serious abdication of the constitutional duty of the state. The inclusion of the politically organized classes such as Jats in the list of backward classes mainly, if not solely, on the basis that on same parameters other groups who have faired better have been so included cannot be affirmed. The court declined to accept the view taken by the Union Government that Jats in the 9 (nine) states in question is a backward community so as to be entitled to inclusion in the Central Lists of Other Backward Classes for the states concerned.

The court acknowledged that caste was a prominent reason for historic injustices in the country and therefore recognition of backwardness was associated with caste. Self-proclamation, however, was not a yardstick to decide backwardness, and vigilance was needed to discover emerging forms of backwardness in a continually evolving society. The court's decision in the Jats case is a timely reminder that we need to catch up with the world. The Supreme Court by enunciating a rational criteria to determine backwardness has taken the jurisprudence on caste and empowerment to a higher and profound level.

Manoj Kumar Sinha

Khursheed Ahmad Khan v. ***State of U.P.***

2015(2) SCALE 229

Decided on February 9, 2015

The long standing controversy of bigamous marriage among Muslims in India, once again appeared before the apex court in *Khursheed Ahmad Khan* v. *State of U.P*. An appeal was filed in the Supreme Court against the final judgment and order of the High Court of Judicature at Allahabad. The appellant had filed a writ petition in the high court challenging the order dated June 17, 2008 removing the appellant from service for proved misconduct of contracting another marriage during existence of the first marriage without permission of the government in violation of Rule 29(1) of the U.P. Government Servant's Conduct Rules, 1956. The high court upheld the finding of the disciplinary authority and dismissed the petition. Aggrieved petitioner filed the appeal before the Supreme Court of India. The case was decided by the two judge bench of the Supreme Court. In the present appeal, apart from challenging the finding of fact recorded by the disciplinary authority, upheld by the high court, the appellant has raised the question of validity of the impugned conduct rules as being violative of article 25 of the Constitution of India, since the Muslim personal law permits a man to have as many as four wives.

Keeping in view the facts and circumstances the apex court upheld the high court's decision that the removal from the service was justified. The issue deliberated was; whether bigamy under Muslim law is a rule as well as part of religion and therefore withholding its permission is contrary to the article 25 of the Constitution, *i.e*. freedom of religion.

The court in this regard observed that :

> It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people, the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.

Accordingly, the court decided that the conduct rules do not in any manner violate article 25 of the Constitution.

It is astonishing that, why the court debated on religion and faith which was neither needed nor within the jurisdiction of the judges. They should have decided the case according to the law of the land and in a socio-welfare spirit. This approach can be seen in the judgement by Justice Krishna Iyer [*S.I. Koya Thangal* v. *Ahammed Koya* (1971 KLT 68)] who used to adopt this practice at many places. In a judgment he says'

> Religion is not amenable to reason and theological disputes cannot be decided by secular courts. So my duty is as embarrassing as my jurisdiction is limited. Even so, the laws of the land lay down norms of conduct and bind divine and commoners alike. The Indian Penal Code which prohibits bigamy cannot be evaded by pleading Islam unless founded on some exemption recognized by the law.

However, as far as bigamy is concerned the Islamic law itself does not recognize it. It is not needed to add anymore but to reproduce the true law on bigamous marriage as Justice Krishna Iyer in another judgment pronounced himself [*Shahulameeda* v. *Subaida Beevi* (1970 KLT 4)]. It runs thus,

> The Koranic injunction has to be understood in the perspective of prevalent unrestricted polygamy and in the context of the battle in which most males perished, leaving many females or orphans and that the holy prophet himself recognized the difficulty of treating two or more wives with equal justice, and in such a situation, directed that an individual should have only one wife. In short the Koran enjoined monogamy upon Muslims and departure there from is an exception. This is why, in the true spirit of the Koran, a number of Muslim countries have codified the personal law wherein the practice of polygamy has been either totally prohibited or severely restricted.

The above explanation of Islamic law on bigamous marriage is explicit and righteous. Even then it may be respectfully submitted that many socio-legal problems can be resolved with the help of the farsightedness that Justice Krishna Iyer had. To decide one simple problem where there is established law on the subject found in the judicial precedents, it is not desirable to open many fronts in the same judgment.

Furqan Ahmad

Khursheed Ahmad Khan v. ***State of U.P***

2015 (2) SCALE 229

Decided on February 9, 2015

Bigamy law in India is not limited to constitutional, statutory or social issues but has serious religious overtones. The case under comment covers all these four areas of concern. In this case legality of executive findings, proportionality of punishment and constitutionality of a provision of a government rule, was in dispute.

Khursheed Ahmad Khan (KAK) was a government servant in Uttar Pradesh. He married Sabina Begum (W1) sometime in or (prior to) 1999. He informed his department that he has given divorce to W1. He married Anjum Begum (W2) in 2005. The third female involved in the case is Shagufta Parveen, sister of his first wife, who made complaint regarding second marriage. National Human Rights Commission had issued notice to the appellant dated 27th October, 2006 and conducted an inquiry through the Superintendent of Police, District Moradabad. On 3rd December, 2006 KAK admitted before the S.S.P., Moradabad that both the wives were living with him comfortably. District Police submitted a report that KAK had in fact performed a second marriage without the first marriage having been dissolved and wrote to the UP government department for taking action as per rules. As per Rule 29(1) of the U P Government Servant Conduct Rules, 1956 he was obliged not to contract second marriage during existence of first marriage without permission of the government. He was also obliged to provide correct information to government. He violated both rules. The department initiated disciplinary

proceedings and appointed an inquiry officer who concluded that the charge was fully proved. Observing rules of natural justice, a copy of inquiry report was furnished to KAK on 21st January, 2008 and he was given an opportunity to explain. In the service book the name of W1 was existing. He answered that he forgot to incorporate the name of W2 by requesting the removal of name of W1. He also insisted that W1 was divorced in 1999. His reply, however, was found inconsistent, unsound and therefore, unsatisfactory. The disciplinary authority imposed the punishment of removal on 17th June, 2008. KAK approached Allahabad High Court which upheld his removal from service observing that "finding of bigamy recorded by authorities concerned are based on petitioner's own admission and explanation and … not been shown perverse or contrary to record." KAK appealed to Supreme court on two basis. One, that the finding of fact recorded by the disciplinary authority is wrong. Two, Rule 29(1) of the U P Government Servant Conduct Rules, 1956 is violative of article 25 of the Constitution (the judgement refers the content of the rule but does not quote the rule and this conduct rule cannot be traced on internet).

To the first issue the Supreme Court found that "there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second marriage"(para 9) KAK not only admitted that his first marriage was existing when he performed second marriage, his first wife also stated that the first marriage was never dissolved. When both the parties to marriage admit continuation of marriage finding of disciplinary authority and the high court are consistent with the proof admitted in the proceedings. The proportionality of punishment cannot be said to be shocking. KAK committed three wrongs. He violated conduct rules. He gave contradictory statements in proceedings, because he knew what is fact. And as alleged by W1, the appellant KAK took her signatures on blank papers and manipulated the affidavit to forge divorce for which he could be prosecuted for commission of fraud and forgery and of course, bigamy.

To the second issue the court observed that the matter "is no longer *res integra.*" The case under comment *i.e., Khursheed Ahmad Khan* rightly relies on *Javed* v. *State of Haryana*, (2003) 8 SCC 369 which discusses the previous opinion of courts. Prevention of bigamy among Hindus have been challenged in *State of Bombay* v. *Narasu Appa Mali* [AIR (1952) Bom 84] *Ram Prasad Seth* v. *State of U.P.* [AIR (1957) All 411]. Similarly regulation of bigamy among Muslims have been challenged in *Badruddin* v. *Aisha Begum* [(1957) All LJ 300] and *Pathan* v. *Director of Technical Education* [(1981) 22 Guj LR 289]. In all four cases three different high courts have same legal opinion that laws leading to reforms in personal law in general and bigamy in particular do not violate fundamental rights to religion. The personal law jurisprudence developed through various high courts and Supreme Court decisions culminated into *Javed* v. *State of Haryana*,(*supra*) which is unanimous opinion of three judges bench(though not on bigamy but on the central issue of implications of an enactment on personal laws). The principles crystalised through the rule of *stare decisis* may be summarized as under:

There is fine and fundamental difference between religious faith (and belief) and religious practice. Religious faith is protected as basic right but not religious practices. Faith is an integral part of religion while practice is not. Faith is something that is obligatory while practice is something that is optional. Therefore, while governance of actions, cannot interfere with mere religious beliefs and opinions, they may interfere with practices. Bigamy or Polygamy is not part of religious faith. It was permissible among Hindus and still permissible among Muslims. Permissibility does not make bigamy or polygamy an essential element of any faith. It is why a law absolutely prohibiting and punishing bigamy among Hindus regulating bigamy or polygamy among Muslims do not violate fundamental rights to religion under article 25 which is always not only subject to public order, morality and health but also to the other provisions of Part III.

The court did not refer (probably to avoid a lengthy judgement) to *227th report* (2009) of the Law Commission of India, Chapter V entitled 'Bigamy under Muslim Personal Law' pg 28-32. This report is more convincing and decisively persuasive. It says "The Qur'an permitted polygamy subject to a strict condition that the man must be capable of ensuring equal treatment of two wives in every respect. Asserting that this may not be possible even with the best of intentions, the Holy Book at the same time advised men to keep to monogamy as "this would keep you away from injustice" (Qur'an, IV: 3 & 129). To this Qur'anic reform the Prophet added a highly deterrent warning: "A bigamist unable to treat his wives equally will be torn apart on the Day of Judgment". This shows beyond reasonable doubts that polygamy has never been an essential part of Muslim faith. It was, therefore, a part of religious practice, reluctantly allowed with condition precedents of protection of rights of first (or previous) wife. And a religious practice as judicial decisions in India and abroad propounded, can be regulated through law.

This triggers another question, why faith is immune? Just because faith(or belief) is an integral and mandatory part of a religion. Is religious belief beyond reform? *Javed*

v. *State of Haryana*, which was foundation of *Khursheed Ahmad Khan*, indicates that even religious belief (not just practice) is not beyond reform. It gives an illustration that Hindu religion has great faith in marriage being so permanent and the ceremony so sacrament that parties could never break it. It was thought that it cannot be dissolved by a temporal reason or factor. Therefore, there was religious belief that dissolution of Hindu marriage was abominable. This belief, however, has been interfered by law in incorporating provision for divorce in 1955. It provided great relief to Hindu wives (and husbands also). This indicates that even religious beliefs can be modified for social reforms or can be subject to limitations of part III of the Constitution of India.

Javed (2003) followed by Khurshid (2015) may be termed as igniting second generation of reforms in religious laws. First was identifying distinction between faith and practice of religion for the purpose of law. Second is reducing the difference between faith and practice so that law may interfere in religious faith which is against human rights to dignity and development. Development does not mean western commercial thinking shifting from "status to contract and contract to status". Development does mean development of body, mind, intellect and soul in aggregate which is known as the doctrine of Ekatam Maanavvad (integral humanism). If India has to play a lead role in global environment, we need to be hard enough for all necessary reforms in our religious thinking and laws. Personal Laws used to be regulated by religion but constitutionalism demands that they operate under the authority of the legislation. Moreover when blind religious beliefs must provide space for rational thinking, otherwise scientific temper could be casualty of legal provisions (*John Thomas Scopes* v. *The State of Tennessee*- January 17, 1927). Certain muslim countries have given space to rationality and human rights of equal treatment to female. The the Law Commission of India report (227th report, 2009) rightly acknowledges that these countries have regulated the laws on bigamy. It also observed that "the Muslim society of India in general in fact looks at polygamy with great disfavour and a bigamist is generally looked down upon in and outside his family. Despite this, unfortunately, the religious leaders are not prepared for any legislative reform in this respect and the religious sensitivities have never allowed the State to introduce any reform in this regard. In India bigamy is not very common among the Muslims and cases of men having more than one wife at a time are few and far between".

It is true that reformers should not plunge into legislation without paying some heed to the past as well as to the present. However the approach of parliament is "over cautious" towards Uniform Civil Code. The argument of go slow and wait for consensus of Muslim community had, as Allen in *Law in the Making* observed, the unfortunate tendency 'to hang traditions like fetters upon the hands of reformative enterprise'.

Anurag Deep

Sanskar Marathe* v. *State of Maharashtra

2015 (2) RCR (Criminal) 351
Decided on March 17, 2015

The instant case, a PIL, deals with the fundamental right of freedom of speech and expression. Aseem Trivedi, a political cartoonist, was arrested on the alleged criminal complaint that he, through his cartoons not only defamed Parliament, the Constitution of India and the Ashok Emblem but also tried to spread hatred and disrespect against the government. It is pertinent to note that the complaint was forwarded to the Directorate of Prosecution, Maharashtra State for its opinion and an assistant director, *inter alia,* opined to invoke section 124 A of the IPC. Aseem refused to apply for bail till sedition charge was dropped against him. Subsequently, the police obtained the opinion of the Advocate General also, and on the basis of which the sedition charge was dropped. But the petitioner filed public interest litigation as he wanted the court to law down clear cut guidelines as regards sedition laws so that in future such charges are not arbitrarily invoked.

The court examined the provision of law related to sedition and the nuances of the right of freedom of speech and expression guaranteed under the Constitution. The court referred to a catena of cases wherein the ambit of these provisions has been delineated. It may be submitted that of late there has been a tendency to invoke sedition charge at the drop of a hat. Historically, treason was considered as one of the gravest of offences and exemplary punishments were given to the offenders and they were branded as traitors. Sedition, as we know, is akin to treason. Therefore, it is only in cases of grave offence against the state that the charge should be invoked and any invocation of it on frivolous grounds should be sternly dealt with by law. But the judgement fails to address the issue head on.

The court after a perusal of case law made the oft repeated statement that provisions of section 124 A of IPC cannot be invoked to penalize criticism etc. It then added that there was no wit or humour in the cartoons and that they were full of anger and disgust but quickly clarified that "for that reason, the freedom of speech and expression available to express his indignation against corruption in

the political system in strong terms or visual representations could not have been encroached upon." The court then decides not to further engage with the issue since the Advocate General had submitted that some guidelines in the form of a circular will be issued to all the police personnel. The guidelines mention certain pre-conditions (which are not exhaustive) to the police to be followed by them while invoking section 124-A IPC and surprisingly one of the guidelines is to take "a legal opinion in writing". But in the instant case this was done by the police! It is submitted that it is not an ordinary routine matter, say that of arrest where 'Guidelines' (D.K. Basu) may be posted in all police stations. The court seems to be satisfied with the guidelines otherwise they would not have rested the matter there and mentioned the guidelines specifically. The guidelines have paraphrased what is mentioned in the main section, for example, the guidelines say that to invoke section 124 A it must be kept in mind that "the words, signs or representations must bring the Government into hatred or *contempt* or must cause or *attempt to cause disaffection*, enmity or disloyalty to the Government…" And then it adds "Comments expressing disapproval or criticism of the Government with a view to obtaining a change of government by lawful means *without any of the above* are not seditious" (emphasis added). These are open ended expressions and liable to be interpreted one way or the other. It is submitted that the circular mentioning these guidelines is banal and suffers from the same vagueness and ambiguity as the main section. It is a serious matter where the political parties need to engage with the civil society, the academia and the judiciary should have exhorted the political parties to engage with the issue. The offence of sedition was a potent weapon in the hands of the British Government to terrorise Indians when there was unrest due to the foreign rule. But things have changed since, and the offence is an antithesis to the democratic principles and perhaps it is time to revisit the constitutionality of the law. As a general rule, crimes are offences against the state but technically most of them are against persons or property. However, sedition and treason are specific offences against the state directly and need to be dealt with sternly by imposing severe punishments. Such an offence should not be slapped on a person casually as the offence has the element of overt action directed towards overthrowing the government through unlawful means or by the connivance of foreign power. But, of late, any criticism of the state by any person, if found uncomfortable by the powers that be, is slapped with the offence of sedition (*Arundhati Roy, Binayak Sen, et al*). The instant case is another example of the same trend of intolerance. The law as it stands is so vague and uncertain that, more often than not, there is miscarriage of justice as in the instant case (imagine being in jail as a traitor even for a day). Speech, no doubt is "mightier than the sword", but to invoke sedition laws, it must qualify as an offence and for that a particular situational context may perhaps be essential. The court has failed to categorically state that. The judgement has taken us nowhere and the issue remains as tricky as ever and so the court's engagement in this case was perhaps just a waste of precious judicial time.

Jyoti Dogra Sood

B&B Hardware, Inc.* v. *Hargis Industries, Inc.

No.13-352 (575 U.S 2015)WL 1291915

Decided on March 24, 2015

This case decided by the US Supreme Court concerns the application of doctrine of *issue preclusion* (collateral estoppel) in the context of US trademark law.

The case involved two manufacturers of metal fasteners. The respondent Hargis Industries Inc (Hargis) tried to register the mark "SEALTITE" in 1996 but the registration was opposed by the plaintiff, B&B Hardware, Inc. (B& B) on the ground of likelihood of confusion with its trademark SEALTIGHT registered for another type of fasteners in 1993.

The US Federal Trademark law, the Lanham Act allows a mark owner two adjacent mechanisms - one to oppose registration before Trademark Trial Appellate Board (TTAB) and the other to sue for infringement before the district court also while the proceedings are pending before the TTAB. Therefore, while the TTAB was deciding whether SEALTITE should be registered or not, B&B filed infringement suit against Hargis before the district court.

The question in the case is whether the TTAB's finding – that Hargis's mark is confusingly similar to B&B's mark, not appealed by Hargis – precludes a district court, in a later infringement case under the Lanham Act, from making a contrary finding – that use of Hargis's mark is not likely to be confused with B&B's mark.

The district court denied the motion, finding that the TTAB decision did not have preclusive effect. Instead, it submitted the case to a jury, which ruled out likelihood of confusion and decided in the favour of Hargis. B&B appealed, but the Eighth Circuit affirmed the district court finding, holding that there was no preclusion because the TTAB had used factors to analyze likelihood of confusion that were different from the factors required by Eighth Circuit law, and because the TTAB had failed to fully evaluate how the SEALTIGHT mark was used in the marketplace.

The Supreme Court reversed the decision of Eighth Circuit court and held that when the Trademark Trial and Appeal Board (TTAB) refuses federal registration of a trademark because it is likely to be confused with an already-registered mark, this determination will preclude the same parties, in a later district court infringement suit involving the same marks, from relitigating the likelihood-of-confusion question, provided that:

(1) the ordinary elements of issue preclusion (prior litigation on identical claims, parties identical in the second litigation and final judgment on the merits in the original litigation) are satisfied; and

(2) the plaintiff in the infringement action does not claim use of the registered mark on goods other than those listed in its registration.

even though agencies are not court created under article III of the Constitution, this decision marks a change in existing circuit law, and has the potential to change trademark enforcement strategies by making TTAB oppositions more important in the eyes of mark owners. The TTAB proceedings are likely to become more expensive also. The losing party in a TTAB proceeding may also feel compelled to seek a *de novo* review of that decision in federal court, so as to avoid the preclusive effect of the ruling.

Deepa Kharb

K.P.Manu v. *Chairman, Scrutiny Committee for Verification of Community Certificate*

2015 (3) SCALE 1

Decided on February 26, 2015

The apex court in the matter in hand discussed whether after re-conversion to Hindu religion one can claim the benefit of original caste. In the present case, the appellant's great-grand father belonged to Hindu Pulaya Community while his grandfather got converted himself to Christianity. At the age of twenty four, the appellant converted himself to Hindu religion and on the basis of the conversion, obtained a caste certificate under the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996. The said caste certificate was cancelled by the scrutiny committee on the ground that the appellant was not of Hindu origin as he was born to Christian parents and there was no evidence to show that after conversion, the appellant followed the traditions and customs of the community.

By relying on the observations made in some previous decisions, particularly in *C.M. Arumugan* v. *S. Rajgopal* [(1976)1 SCC 863], the apex court contented that it is a general rule that on conversion from Hinduism to Christianity a person would cease to be a member of the caste, but that is not an absolute rule and ultimately it would depend upon the structure of the caste and its rules and regulations whether a person would cease to belong to his caste on his abjuring Hinduism. In the case of conversion, the original caste merely gets eclipsed, which resurfaces when a person re-converts to the original religion.

While advancing the object and purpose of the Constitution (Scheduled Castes) Order ,1950 the court opined that when a person is re-converted to Hinduism, the social and economic disabilities again revive and become attached from which he suffered prior to his conversion. On conversion to Hinduism, a person born to Christian converts does not automatically become a member of caste but only if the other members of the caste accept him, he comes within the fold of the caste. The main test is that the person willing to reconvert must have a genuine intention to go back to his old fold without any protest from the members of the erstwhile community.

This pronouncement has its own relevance from the constitutional and social perspective as there exists no rationale principle why a person who has converted himself to another religion, should not be allowed to come back to his caste and not to suffer from the same social and economic disabilities. The judgment goes in consonance with the spirit of Indian Constitution and article 18 of UN Declaration of Human Rights which provides the freedom to convert.

Vandana Mahalwar

M/s Muneer Enterprises v. M/s Ramgad Minerals and Mining Ltd. & ors.

2015(3) SCALE 431

Decided on March 12, 2015

This appeal is directed against the common judgment dated 26.08.2009, passed in W.A.No.5377 of 2004 and W.P.No. 23782 of 2005.The writ appeal was preferred by the first respondent herein against the judgment in W.P.No.31690 of 2003 of the single judge Of Karnataka High Court dated 10.11.2004 in and by which the order of transfer of mining lease from the original licensee M/s Dalmia to and in favour of the first respondent herein was set aside. The appreciation of the factual events of the case will familiarize the reader with how the state of Karnataka has failed in its constitutional duty as a 'Trustee'of natural resources and how the Supreme Court implicitly brought into focus the 'Public Trust Doctrine' as an non-negotiable facet of environmental jurisprudence of our federal polity.

The said mining lease M.L.No.2010 of one M/s Dalmia expired on 24.11.1983 and by order dated 07.03.1986 the lease was renewed for another 20 years retrospectively from 25.11.1983, which was to expire by 24.11.2003. The relevant fact to be noted is that by the time the lease expired on 24.11.1983, the Forest Conservation Act 1980 (hereinafter 'Forest Act') had come into force and under section 2 (hereinafter 'the said section') of the Forest Act in order to carry on any further mining activity the prior approval of the Central Government was necessary and required. The same was not obtained by M/s Dalmia striking at the root of the case and rendering the renewal void (*ab initio)*.

Subsequently, pursuant to the general directions issued by the Supreme Court in *T.N.Godavarman Thirumulkpad* v. *Union of India* [(1997)2 SCC 267] (hereinafter 'Godavarman –I') all mining operations through out the country were directed to be stopped which were not in congruence with the said section of the Forest Act. M/s Dalmia followed the court's order and stopped its mining operations. Thereafter, by virtue of the order passed in *T.N.Godavarman Thirumulkpad* v. *Union of India* [(1997) 3SCC 312], (*Godavarman-II) ex post facto* approval under said section of the Forest Act was considered and the in-principle stage-I clearance was granted by imposing three conditions for M/S Dalmia to comply. It was also specifically mentioned that only after receipt of compliance report of the conditions stipulated in the in-principle stage-I approval consideration for grant of final approval under the said section of the Forest Act would be made and issued. Admittedly M/S Dalmia did not comply with those conditions.

M/s Dalmia on 31.01.2002 surrendered the lease. Subsequently the impugned order came to be passed by the State of Karnataka through concerned authorities on 16.03.2002 approving of the transfer applied by for M/s Dalmia in favour of the first respondent. When that is the legal consequence in respect of the lease, which was void and inoperative, it must be held that there was no scope for holding that there was a valid transfer made by M/s Dalmia in favour of the first respondent on 16.03.2002. After surrender of lease the state had become the owner of the land and any further grant of mining lease can only be in accordance with the relevant rules by way of public auction in order to get the maximum revenue by granting any lease hold rights.

The Supreme Court held that mines and minerals being national wealth, dealing with the same as the largesse of the state by way of grant of lease or in the form of any other right in favour of any party can only be resorted to strictly in accordance with the provisions governing disposal of such largesse and could not have been resorted to as has been done by the state government and the Director of Mines and Geology of the State of Karnataka by passing the order of transfer dated 16.03.2002. Such a conduct of the state and its authorities are highly condemnable and, therefore, calls for stringent action against them.

The Supreme Court held that the present judgment throws some light as to how certain excess role played on behalf of the state without any justifiable reasons were brought to the notice of the court. It held that it should not hesitate to set aside such orders in the interest of the rule of law. The above judgment as reported running into 36 pages is relevant more on the legality of the transfer of lease but when at the outset the court referred to Godavarman-I and II the commenter perused through the judgments and went through the definitions of 'Forest' and 'Ownership' in the Forest Act. The interesting outcome was that an analytical comparison of various forest legislations such as the Forest Act, The Panchayats (Extension to Scheduled Areas) Act 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights Act) 2006 as to the definition of 'Forest' and 'Ownership' (not exhaustive) would certainly enrich the students of environmental law though such an analysis is not within the scope of the present comment.

Stenzin Chostak

Shreya Singhal* v. *Union of India

Writ Petition (Criminal) No.167 of 2012

Decided on 24.03. 2015

One of the cardinal principles enshrined in our Constitution is the right to freedom of speech and expression under article 19 (1) (a), which is also regarded as a basic human right. The apex court of India once again upheld this precious fundamental right by holding section 66 A of the Information Technology Act, 2000 (the section introduced by amendment in 2009) as unconstitutional. The present case, decided by a two member bench of the apex court once again raised a pertinent question as to whether the fundamental right of a citizen to express his opinion through electronic medium can be curtailed under reasonable exceptions provided under article 19 (2).

The instant case consisted of the writ petitions filed under article 32 of the Constitution by the persons aggrieved by the application of section 66 A of the Information Technology Act of 2000. The said provision made dissemination of online content by any person cognizable leading to several individuals being arrested across many states. Two girls were also arrested under this provision by the Mumbai police for expressing their

displeasure at a bandh called in Mumbai in the wake of Shiv Sena chief Bal Thackeray's death. This arrest resulted in agony across the country and attracted the attention of public and media against this draconian law. Finally the matter was taken before the apex court. The provision also gives power to the police to arrest anybody for sending offensive messages electronically. It was contended before the court that this provision is widely misused by the authorities to arrest individuals who express their opinions freely through electronic media.

One of the important aspects highlighted in this case is the scope of article 19 (1) (a). The court examined the issue whether expression under freedom of speech and expression includes the online expressions also. The court tried to distinguish between three forms of speech like discussion, advocacy and incitement. It concluded that it is only at the third level *i.e.,* incitement that article 19 (2) needs to be invoked and freedom of speech and expression of an individual can be curtailed by law if it tends to cause public disorder. Apart from this the court went a step further and invoking the test of clear and present danger, held that there is an intelligible differentia between speech on the internet and other medium of communication for which separate offences can be created by the legislature. Hence, the present expression of opinion through the electronic media is not saved by any of the eight subjects covered under article 19 (2) which included sovereignty and integrity of India, the security of the state, friendly relations with foreign state, public order, decency & morality, in relation to contempt of court, defamation and incitement to an offence.

The court also relied upon the doctrine of "vagueness" and "over breadth" propounded by Amercian Courts. In relation to the above the court stated;

> "Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application…"

Based on this standard, the court examined the contention of the state that vagueness is not a ground to declare a statute as unconstitutional if the statute is otherwise legislatively competent and non-arbitrary. The court found that the expression used in section 66 A is completely open-ended and undefined and also in contrast to sectin 66 and therefore the court instead of declaring the whole statue unconstitutional held that the particular section in which the speech that is innocent in nature is liable to be used in such a way as to have a chilling effect on free speech needs to be struck down. It upheld the constitutionality of sections 69-A and 79 of the Information Technology Act, 2000 which was also challenged by the petitioners.

The court, rejected the argument that the section is violative of article 14 and 21 of the Constitution and did not apply the doctrine of severability on the ground that section 66 A does not fall within any of the subject matter contained in article 19(2) which provides for reasonable restrictions, including public order.

Though this decision is a well appreciated decision by the Supreme Court, one question remains unanswered. It is clear that article 19 (a) is applicable only to the "citizens" of India and not to an outsider. However, section 66 A was applicable to any 'person' including a foreign national. Now once section 66 A is struck down entirely by the apex court what will be the repercussion if a foreign national publishes any inciting news through electronic media?, It is true that this is a landmark judgment in various aspects, as it protected the fundamental right of the citizen of our country and also attracted the attention of public and media in recent times. However from the academic point of view, the court could have discussed the impact of this decision over non-citizens also who may very well abuse the electronic media for their vested interests.

Sushmita P. Mallaya

Ravindra* v. *State of Madhya Pradesh

Criminal Appeal No. 1410 of 2013

Decided on 26 February, 2015

The Supreme Court of India has evolved a unique jurisprudence of compromise in rape cases in the recent years. In the Supreme Court rape, despite being a non-compoundable offense under Cr PC, is negotiated and settled through 'compromise' if the parties to the case agree to that effect. The judgment under consideration, delivered by Justice Pinaki Chandra Ghose and Justice M.Y. Eqbal is the most recent illustration of this trend. The case pertains to a complaint filed in 1994 wherein the appellant was charged with the offence of rape. The trial court convicted the appellant under section 376(1) of IPC and sentenced him to 10 years rigorous imprisonment with fine. The High Court of Madhya Pradesh confirmed the same. The Supreme Court, however, reduced the sentence to 'the period already undergone by the appellant', while upholding the conviction (no part of the judgment

indicates the extent of this period undergone!). In reducing the sentence, the court relied on the proviso of section 376(2)(g) of IPC whereby the court can award a sentence lesser than the mandatory minimum in case 'adequate and special reasons' exist. It may be apt to quote from the judgment here: 'we are of the opinion that the case of the appellant is a fit case for invoking the proviso to section 376(2)(g) of IPC for awarding lesser sentence, as *the incident is 20 years old* and the fact that *the parties are married* and have *entered into a compromise*, are the adequate and special reasons' (para 18, emphasis mine).

On the one hand one cannot overlook the technical error of evoking section 376(2) in place of section 376(1) as the decision is coming from the highest court, on the other it is difficult to fathom the reasoning advanced by the court. In invoking the proviso so as to reduce the mandatory minimum punishment (this proviso has been repealed by 2013 criminal law amendments), the court leaves one wondering how judicial delay, matrimonial status of the parties and the compromise affected by them, which is impermissible in law, could amount to 'adequate and special reasons'. It is unclear by what judicial logic did the court subvert the framework of compoundable offences and accepted an illegal and impermissible compromise as 'adequate and special reason'. Further, the failure of the court to work as an institution and not as fragmented division benches gravely surfaces in this case when justice is made contingent on cherry-picked precedents and there are unexplained departures from the court's previous rulings. There is no other way to explain the sole reliance on the much critiqued *Baldev Singh* v. *State of Punjab* (2011) 13 SCC 705, while ignoring various other judgments where the court held that proviso ought to be strictly interpreted (see for instance, *Shimbhu* v. *State of Haryana* AIR 2014 SC 739; *State of Andhra Pradesh* v. *Bodem Sundra Rao* AIR 1996 SC 530).

The concerns raised by this decision are not limited to judicial-discretion-gone-awry. The present decision is symptomatic of the *dialogue of deaf* between the judiciary and peoples' movements, in this case the feminist movement in India. Feminist researchers have shown how 'compromise' is the not a free choice of the rape survivor but a hidden secret of law where justice is reduced to a bargain between the victims' kin, state authorities and the accused. Much has been written about how compromises in rape cases are achieved in and through the process of law: lawyers, police and community men all come together to effectuate compromise, as witnesses willingly turn hostile and prosecution story is left with gaps and holes. Is it surprising then that even in the present case the two maternal uncles of the prosecutrix had turned hostile? Unfortunately, there is no discussion whatsoever in the judgment as to the context of this compromise? Was the prosecutrix under any (individual or social) pressure when this compromise was entered into? Or was she forced into this settlement, now to protect the 'honour' of the matrimonial family!

It is also important to comment briefly on the falsity of form-content binary in judgment writing. This case illustrates how the form and style can have a bearing on the content and reason. Out of the 16 pages, only two pages are devoted to the above reasoning of the court. Rest of the judgment is a summary of the appellant's arguments with regard to challenging the conviction which the court describes as 'grounds for defence'. It is submitted that most of the appellant's contentions and various other observations in the judgment (*viz.* doctor's report stating that there were no injury marks on the body of the prosecutrix, that she was habituated to sexual intercourse, the testimony of the prosecutrix was uncorroborated, there were minor contradictions in her testimony) have been listed by the court without a single comment condemning or even highlighting the irrelevance/ illegality of these submissions.

These issues need to be taken up by the court urgently, and perhaps a critical engagement between judiciary and academia can yield promising results in this regard.

Latika Vashisht

Edited, printed and published by Prof.(Dr.)Manoj Kumar Sinha, Director, ILI on behalf of the Indian Law Institute, Bhagwan Dass Road, New Delhi.
Printed at M/s Sudhir Printers, New Delhi. Phone No.9810334493
Reg.No. DELENG / 200/2234 dated 26th October 2000.