ISSN No. : 2455-7242

ILI Newsletter

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

Volume XVIII, Issue-I

January - March, 2016

Editorial

Laws are meant to serve the society and the community and must adapt in order to meet those needs both at the international and national levels. International law is one area that has expanded, especially in the area of international criminal justice. There are many old concepts, which are now in a way of crumbling. The question of individual responsibility for crimes was always present in domestic laws, but only a few decades back it became accepted that breaches of international laws, by individuals, are also punishable. International Criminal Law is defined as the body of law that assigns individual criminal responsibility for breaches of public international law for certain categories of conduct, namely, war crimes, crimes against humanity, genocide, crime of aggression (also known as crime against peace). In addition to these three crimes, there are other crimes, namely, piracy, slavery, torture, extreme forms of terrorism and drug trafficking that have been criminalised in various national laws. During and immediately after World War II the decision was made that the atrocities committed by individuals during that war would not go unpunished. In 1942 the allied powers signed an agreement at the Palace of St. James establishing the United Nations War Crimes Commission (UNWCC). The Declaration of St. James was the first step leading to establishment of two independent tribunals, namely, the International Military Tribunal at Nuremberg and the International Military Tribunal for Far East (Tokyo Tribunal). Both tribunals were established in response to the overwhelming horrors of the Nazi genocide in Europe and the Japanese crimes perpetrated during the wartime occupation of many South East Asian countries.

The significant contribution of the Nuremberg and Tokyo tribunals were that both firmly demonstrated that international resolve, can, on occasion, be so compelling to result in the prosecution and punishment of individuals responsible for serious crimes. The principles evolved by the tribunals established many core principles in the field of international criminal law, and modern tribunals continue to cite these proceedings as persuasive authority. The two tribunals established the primacy of international law over domestic law. The establishment of various international criminal tribunals in early nineties and finally by the establishment of a permanent international criminal court, the concept of criminal law tended to be used to refer to those parts of a state's domestic criminal law which deals with transnational crimes. Undoubtedly, these developments in the field of international criminal law in the 20th century constituted a turning point in international criminal law.

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 OF THE INSTITUTE

Convocation 2016

"The legal profession involves public responsibility and requires standing up for justice" said Chief Justice T.S. Thakur.

Speaking at the 4th convocation of Indian Law Institute (ILI), the CJI, who is also the President of ILI, said law degree of this institute "puts you (students) into the future market of probably the most valuable commodity in India today".

Referring to various ethics of legal profession, he said, "one of them is an ethic of public responsibility... This ethic requires to stand up for justice in whatever you do."

Chief Justice of India T S Thakur lighting the lamp at the function.

Giving a piece of advice to the young professionals, the CJI said "no matter what the work is, give it your best and do it with your heart and soul".

Union Law Minister, Shri D. V. Sadanand Gowda, delivering the convocation address, said "law is the critical instrumentality, both for preservation of society and its evolution to higher level of existence. Therefore, it is imperative that we dedicate ourselves to the rule of law in letter and spirit. It is the spirit not the form of law that keeps justice alive."

Praising the Institute, he said ILI is empowering the young minds with the socially relevant legal education, skill and ability and inculcates the values of professionalism in them.

The Institute awarded Ph. D. in Law, Master of Laws (LL.M.) and Post-Graduate Diplomas in fields like Alternative Dispute Resolution, Corporate Laws and Management, Cyber Law, Drafting of Legislation Treaties and Agreements, Environmental Law, Human Rights Law, Intellectual Property Rights Law, International Trade Law, Labour law, Securities and Banking Laws and Tax Law.

Dignitaries at the 4th Convocation Ceremony 2016.

Supreme Court judges Anil R. Dave, J S Khehar and Dipak Misra JJ, ILI Vice-President and Senior Advocate Mr. Rakesh Munjal and ILI Director, Prof. (Dr.) Manoj Kumar Sinha were also present on the occasion.

Training Programmes

The Indian Law Institute in collaboration National Human Rights Commission have organised the following training programmes in this quarter:

Session I - One-Day Training Programme for Officials of Juvenile Homes on "Human Rights: Issues and Challenges" on January 30, 2016.

Justice A.K. Sikiri, Judge, Supreme Court of India with Mr. Jaideep Singh Kochher, Joint Secretary (Training and Research) NHRC and Dr. Savita Bhakhry, Joint Secretary NHRC.

Session II - Two Days Training Programme for Police Personnel on "Police and Human Rights: Issues and Challenges" on February 12 and 13, 2016.

Session III - One day Training Programme for Media Persons on " Media and Human Rights: Issues and Challenges" on March 12 , 2016.

Book Release

The research compendium titled *"Compendium of Bilateral and Regional Instruments for South Asia"* jointly published by ILI and UNODC was released by Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India on February 25, 2016. The book has been published and the soft copy of the book is available on the ILI website.

Release of research compendium by Hon'ble Mr. Justice Madan B. Lokur and Prof. (Dr) Manoj Kumar Sinha.

Library Committee Meeting

The meeting of the Library Committee was held at the Institute on January 29, 2016 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, Mr. Chava Badri Nath Babu, Advocate, Prof. (Dr.) Manoj Kumar Sinha Director, ILI and Mr. Shreenibas Chandra Prusty, Registrar, ILI.

The committee approved the procurement of 200 new books in the library. The committee also approved the procurement and subscription of two new journals on corporate laws and taxation in the library.

Membership Committee Meeting

The meeting of the Membership Committee was held at the Institute on February 18, 2016 under the chairmanship of Hon'ble Mr. Justice J. Chelameshwar, Judge, Supreme Court of India, Hon'ble Mr. Justice Dilip B. Bhosale, Chief Justice (Acting), High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh, Hyderabad, Dr. Pawan Sharma, Secretary, Law Commission of India (Representative) New Delhi, Dr. Subhash Chandra Gupta, Professor and Head-School of Law H.N.B Gharwal University, Campus Pauri Garhwal (Uttrakhand), Ms. Nina P. Nayak, former member of National Commission for Protection of Child Rights (NCPCR), Prof. (Dr.) Manoj Kumar Sinha Director, ILI and Mr. Shreenibas Chandra Prusty Registrar, ILI.

The committee approved the admission of 40 new members which included 11 ordinary members, 29 life members. Proposals were also discussed on grant of more corporate memberships.

SPECIAL LECTURES

Prof. Ved P. Nanda, Professor of Law, (University of Denver) delivered a special lecture to LL.M. students on the topic "Current Crisis of Migration: Refugees from Middle East and North African Countries and the response of European Countries" January 1, 2016.

Mr. Garnett Genius, Hon'ble Member of Parliament, Canada delivered a special lecture to LL.M. students on the topic "Canadian Perspective on Religious Freedom" on January 13, 2016.

Dr. David Malone, Under Secretary General of United Nations and Rector of United Nations University of Tokyo, Japan delivered a special lecture to LL.M. students on the topic, "The United Nations Security Council in a Time of Renewed Great Power Tension" on January 18, 2016.

Professor David Malone with Prof. (Dr) Manoj Kumar Sinha.

Mr. Morten Bergsmo, Director, Centre for International Law Research and Policy Brussels delivered a special lecture to LL.M. students on the topic, "Asian Regional Leaderships in the field of International Criminal Law" on February 25, 2016.

Prof. Ved Kumari, Professor, University of Delhi delivered a special lecture to LL.M. students on the topic, "Critical Understanding of the Juvenile Justice Act, 2015" on February 2, 2016.

Prof. Alan Norrie, Professor, School of Law, University of Warwick delivered a special lecture to LL.M. students on the topic, "Between the Power of Love and the Love of Power" on March 17, 2016.

RESEARCH PROJECTS

Project from Ministry of Panchayati Raj, Government of India

The Ministry of Panchayati Raj (Mo PR), has entrusted a project to the Indian Law Institute on *"A Study on Case laws Relating to Panchayati Raj in Supreme Court and Different High Courts"*. 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.

Project from Ministry of Law and Justice

Ministry of Law and Justice and Indian law Institute has prepared a Report on the "Merger of Tribunal in India". The Report has been submitted.

EXAMINATION

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

The odd semester Examinations for LL.M. (2 and 3 Yr.) Programmes were held in December, 2015 as per schedule. The result for the same was declared on February, 2016.

Examination for LL.M 1 year Programme

The result for the LL.M (1Yr) First Trimester Examination held in October, 2015 was declared in February, 2016. The Examination for the Second Trimester were successfully conducted from February, 2016.

RESEARCH PUBLICATIONS

Released Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 57 (4) (October- December, 2015).
- Index to Legal Periodicals 2014.
- Compendium of Bilateral and Regional Instruments for South Asia Volume I & II.

Forthcoming Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 58 (1) (January- March, 2016).
- Index to Legal Periodicals 2015.
- Revised edition of the book "A Treatise on Consumer Protection Laws".

E-LEARING COURSES

Online Certificate Courses in Intellectual Property Rights Law" and "Cyber Law"

Cyber Law

The 24th batch of three months duration started on December 23, 2015 was completed on March 23rd, 2016. A total of 75 students were enrolled for this batch.

Admissions to 25th batch has started in March, 2016.

Intellectual Property Rights Law

The 34rd batch of three months duration started on August 20, 2015 was completed on November 20, 2015. Admission to 35th batch started in December, 2015. A total of 75 students were enrolled for this batch.

LIBRARY

- The Library Committee Meeting was held on January 29, 2016. The items related to acquisition of books, periodicals, infrastructure and weeding out of books were approved by the Library Committee.

- The digitized version of Indian Law Institute Publications and Indian Law Reports Calcutta from 1876 to 1940, were released on the website of the Indian Law Institute. A strong search engine has been provided to make the material searchable. The link to access the collection is : http://14.139.60.114:8080/jspui/.

- Two new eBooks collection namely Hart eBooks and Elgar Online eBooks were added in the ILI Library. 23 eBooks titles of Hart and 66 eBooks titles of Elgar Online were procured and added to ILI Library which may be accessed through following link http://www.ili.ac.in/ores.htm.

- Library added 200 Books on Cyber Law, Intellectual Property Rights, Family Law, Muslim Law, Company law, Consumer Protection Law, Administrative Law, Constitutional Law, Human Rights, Criminal Law and Environmental Law to enrich the library collection.

- One journal namely "SEBI and Corporate Laws" published by Taxmann was subscribed in the library to enrich its collection.

STAFF ACTIVITIES

Ms. Gunjan Gupta, Assistant Librarian and **Ms. Usha Chauhan,** Library Assistant attended the 6th National Conference of CGLA tilted *"Emerging Challenges and Opportunities of Central Government Libraries in the Digital Era"* organised by Indian Museum Kolkata and CGLA, Kolkata Branch from January 22-23, 2016 at Kolkata.

Ms. Sonam Singh Chauhan, Library Assistant attended a workshop on *"Copyright, Patent, Citation and their impact factor"*, jointly organised by Society for Social Development and Peoples' Action and Gandhi Peace Foundation Library on March, 19, 2016 at New Delhi.

Women's Day Celebrations

The Institute along with its staff members celebrated International Women's Day on March 8, 2016. Professor Manoj Kumar Sinha, Director, Indian Law Institute addressed the gathering and emphasised on empowering women with more rights considering their challenging role with changing times.

VISITS TO THE INSTITUTE

Student's visit at ILI

- Students from Faculty of Law, of Maharaja Sayajirao University of Baroda, Donor's Plaza Campus, Fatehganj, Vadodra visited ILI on January 4, 2016.

- A batch of students of Mulund Law College of Commerce, Mumbai visited ILI on January 20, 2016.

Dr. Anuragdeep and Mr. Stanzin Chostak
in an interactive session with the students of
the Mulund Law College of Commerce, Mumbai.

- Students from Manikchand Pahade Law College, Aurangabad, Maharashtra visited ILI on February 18, 2016.

- Students from Faculty of Law, The Maharaja Sayajirao University of Baroda, Donor's Plaza Campus, Fatehganj, Vadodra visited ILI on March 3, 2016.

- Students from Bengal Law College, Santiniketan, Doranda visited ILI on March 3, 2016.

- A student delegation from the University of Kashmir, Department of Law, Hazratbal, Srinagar, Kashmir visited ILI on March 30, 2016.

Prof. (Dr) Manoj Kumar Sinha and Mr. Stanzin Chostak
with students of University of Kashmir.

FORTHCOMING ACTIVITIES

Professor Upendra Baxi, Professor of Law, University of Warwick, UK shall deliver a special lecture to the LL.M. students on the topic, "Institutional Sancity versus Freedom of Speech and Expression" on April 6, 2016.

Examinations for Post- Graduate Diploma Courses shall begin from April, 12, 2016.

LEGISLATIVE TRENDS

The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

(March 26, 2016)

This Act was passed to provide for, as a good governance, efficient, transparent, and targeted delivery of subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India, to individuals residing in India through assigning of unique identity numbers to such individuals and for matters connected therewith or incidental thereto.

Key highlights of the Act:

- Every resident who has resided in India for 182 days, in the one year preceding the date of application for enrolment, shall be entitled to obtain an Aadhaar number.
- At the time of enrolment, the individual will be informed of, (i) the manner in which the information will be used, (ii) the nature of recipients with whom the information will be shared, and (iii) the right to access this information. After verification of information provided by a person, an Aadhaar number will be issued to him.
- To verify the identity of a person receiving a subsidy or a service, the government may require them to have an Aadhaar number. Aadhaar number can be accepted by any public or private entity as a proof of identity of the Aadhaar number holder, for any purpose. However, Aadhaar number cannot be a proof of citizenship or domicile.
- The key functions of the UID authority include, (i) specifying demographic and biometric information to be collected during enrolment, (ii) assigning Aadhaar numbers to individuals, (iii) authenticating Aadhaar numbers, and (iv) specifying the usage of Aadhaar numbers for delivery of subsidies and services.
- The UID authority will authenticate the Aadhaar number of an individual, if an entity makes such a request. Such requesting entity has to obtain the consent of an individual before collecting his information. The disclosed information can be used by the entity only for purposes for which the individual has given consent.
- Biometric information such as an individual's finger print, iris scan and other biological attributes (specified by regulations) will be used only for Aadhaar enrolment and authentication, and for no other purpose.
- Such information will not be shared with anyone, nor will it be displayed publicly, except under two circumstances-
  (a) In the interest of national security, a Joint Secretary in the Central Government may issue a direction for revealing, (i) Aadhaar number, (ii) biometric information (iris scan, finger print and other biological attributes specified by regulations), (iii) demographic information, and (iv) photograph. Such a decision will be reviewed by an oversight committee (comprising Cabinet Secretary, Secretaries of Legal Affairs and Electronics and Information Technology) and will be valid for six months.
  (b) On the order of a court, (i) an individual's Aadhaar number, (ii) photograph, and (iii) demographic information, may be revealed.
- For unauthorised access to the centralized data-base, including revealing any information stored in it, a person may be punished with imprisonment up to three years and minimum fine of Rupees 10 lakh. The requesting entity and an enrolling agency shall be punished with imprisonment up to one year or a fine up to Rs 10,000 or Rs one lakh (in case of a company), or with both if they fail to comply with rules.
- The cognizance of any offence shall be taken up by the court only on a complaint made by the UID

authority or a person authorised by it.

The Election Laws (Amendment) Act, 2016

(March 3, 2016)

Key highlights of the Act:

- The Election Laws (Amendment) Bill, 2016 was introduced to amend the Representation of the People Act, 1950 and the Delimitation Act, 2002 which regulate allocation of seats to the national and state legislatures, and delimitation (i.e., fixing boundaries) of parliamentary and assembly constituencies. It aims to empower the Election Commission to carry out delimitation in areas that were affected by the enactment of the Constitution (100th Amendment) Act, 2015 by which enclaves were exchanged between India and Bangladesh.

- The Act gives additional powers and responsibilities to the Election Commission with respect to delimitation i.e. to specify and up-date the boundaries of the territorial constituencies. It states that the Election Commission may amend the delimitation order to: (i) exclude from the relevant constituencies the Indian enclaves that were transferred to Bangladesh, and (ii) include in the relevant constituencies the Bangladeshi enclaves that were transferred to India.

The Real Estate (Regulation and Development) Act, 2016

(March 26, 2016)

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the appellate tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

Key highlights of the Act:

- The Act regulates transactions between buyers and promoters of residential real estate projects. It establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs)

- Residential real estate projects, with some exceptions, need to be registered with RERAs. Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs.

- On registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.

- 70% of the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount to less than 70%. Not more than 10% advance can be taken from buyers without written agreement. The developers or agents are required to refund full amount to buyers in case of delay of project.

- The Act establishes state level tribunals called Real Estate Appellate Tribunals. Decisions of RERAs can be appealed in these tribunals.

- Imprisonment up to three years or penalty up to 10/ten percent of the estimated cost of real estate project for projecting out misleading information through advertisement or prospectus is also provided in the Act.

LEGAL JOTTINGS

The provisions of Cr PC would apply only if they are not inconsistent with the provisions of PMLA. [Prevention of Money Laundering Act, 2002]

Conditions enumerated in section 45 of PMLA will have to be complied with and they are binding on court while considering an application of bail under section 439 of Cr PC. Section 45 starts with non obstante clause which indicates that provisions laid down in it will have an overriding effect on the general provisions of Cr PC. Section 45 imposes two conditions on the grant of bail-one that prosecution must be given an opportunity to oppose application of bail and second that the court must be satisfied that there are reasonable grounds of believing that the accused is not guilty of such offence and that he is not

likely to commit any offence while on bail. *Gautam Kundu* v. *Manoj Kumar, Assistant Director Eastern Region Directorate of Enforcement (Prevention of Money Laundering Act) Government of India* (AIR 2016 SC 106).

RBI cannot deny information under RTI Act, 2005 taking plea of fiduciary relationships with other banks.

RBI is not in any fiduciary relationship with any public sector or private sector bank. Information as to irregularities committed by these banks cannot be denied to public at large under section 8(1) (e) of the Right to Information Act, 2005 on grounds of endanger to the economic interest of the country.

Reserve Bank of India v. *Jayantilal N. Mistry* (AIR 2016 SC 1).

Dowry given during wedding does not raise presumption of entrustment to the parents-in-law of bride to attract the offence under Dowry Prohibition Act, 2005.

Giving of dowry and the traditional presents at or about the time of wedding does not in any way raise a presumption that such a property was thereby entrusted and put under the domain of the parents-in-law of the bride or other close relations so as to attract ingredients of Section 6 of the Dowry Prohibition Act, 1961. Interpreting section 6 of the Dowry Prohibition Act, the court said that the provision lays down that where the dowry is received by any person other than the bride, that person has to transfer the same to the woman in connection with whose marriage it is given and if he fails to do so within three months from the date of the marriage, he shall be punished for violation of section 6 of the Dowry Prohibition Act.

The court further held that if the dowry amount or articles of married woman was placed in the custody of his husband or in-laws, they would be deemed to be trustees of the same. The person receiving dowry articles or the person who is dominion over the same, as per section 6 of the Dowry Prohibition Act, 1961 is bound to return the same within three months after the date of marriage to the woman in connection with whose marriage it is given. If he does not do so, he will be guilty of a dowry offence under the said section. It was further held that even after his conviction he must return the dowry to the woman within the time stipulated in the order.

Bobbili Ramakrishna Raju Yadav v. *State of Andhra Pradesh,* 2016 SCC Online SC 42, decided on January 19, 2016]

FACULTY NEWS

Manoj Kumar Sinha invited as Chief Guest in UGC Sponsored National Seminar on *"Changing Dimensions of Morality and Ethics in Legal Profession: Challenges and prospects"*, organised by HNLU, Raipur, March 19 -20, 2016.

Invited as Chief Guest at the National Moot Court Competition under the title "Institute of Law, Jiwaji University, Gwalior, on March 18, 2016.

Invited to speak on *Business and Human Rights*, in an International One-Day Conference, organised by, at the India Habitat Centre Delhi on March 17, 2016.

Delivered a talk *on Global Legal Education: Convergence of National Laws: Best Practices in Teaching & Research,* International Conference organised by the Faculty of Law, Delhi University on March 11-14, 2016.

Delivered a talk on *Women and Higher Education*, in a Seminar organised by Citizens Rights Trust, March10, 2016, New Delhi.

Delivered Valedictory Address in two day National Conference organised by Jiwaji University, Gwalior, on March 6, 2016.

Invited as a Special Guest in *National Colloquium on Legal Education in India: Retrospect & Prospect*, organised by Mody University, Sikar, Rajasthan, February 27, 2016

Invited as Guest of Honour to deliver keynote address in *'International Conference on United Nations at 70,* February 4, 2016 at Amity Law School-II, Noida.

Delivered a talk on *International Human Rights*, organised by the National Human Rights Commission of India and Guahati University, Assam, January 21, 2016.

Invited as Resource person to 1st KIIT *National Conference on International Law*, School of Law, KIIT University, Bhubaneswar, on January 15 - 17, 2016.

Delivered vote of thanks in the distinguished public lecture on *The Role of Legal Education in Protecting*

the Rule of Law organised by O.P. Jindal Global University and the Indian Law Institute, January10, 2016, New Delhi.

Invited as Guest of Honour in three day *International Interdisciplinary Seminar on Access to Justice Trends and Issues* from January 7- 9, 2016, organised by University of Kerala, Department of Law at Trivandrum (Kerala).

Furqan Ahmad co-chaired a Technical Session of Seminar on "Legal Education and Social Justice" at *National Colloquium on Legal Education in India: Retrospect & Prospect*, organised by Mody University, Sikar, Rajasthan, February 28, 2016

Presented a paper on "Social Justice and Legal Education" at *National Colloquium on Legal Education in India: Retrospect & Prospect*, organised by Mody University, Sikar, Rajasthan, on February 27, 2016.

Invited as an external examiner for Ph D. thesis on "Biological Diversity" by International Islamic University Malaysia (IIUM).

Anurag Deep delivered a lecture in CBI Academy, Ghaziabad on Rule of Law on March 30, 2016.

Deliver keynote address and chair third Session on Efficacy Of Proposed Law-ART Bill 2013 of India in the National Seminar on *'Science of Surrogacy and Prospect of Proposed Law in India'* (Sponsored by Indian Council of Social Science Research (ICSSR), New Delhi) jointly organized by Indian Society Of International Law (ISIL) & Faculty Of Law, Meerut College, Meerut on March 20, 2016.

Nominated as member of Editorial board of Vidhi Sahitya Prakashan, Government of India on March 11, 2016.

Delivered a lecture in the National Seminar "Justice as a Goal of Constitution: Issues and Challenges" at the Law Department of VSSD College, Kanpur on February 25, 2016.

Invited to be a part of Jury in a moot court competition of Sharda University, Greater Noida. He also delivered a lecture on 'How to Improve quality of moot court presentations' February 25, 2016.

Vandana Mahalwar participated in International Conference on 'Rule of Law for Supporting the 2030 Development Agenda/Sustainable Development Goals' organised by UNEP and NGT from March 4-6, 2016.

Made a presentation at International Conference on "Conservation of Biodiversity and Sustainable Energy: Law and Practice" at Campus Law Centre, University of Delhi on February 13, 2016.

Made a presentation at IP Scholars Asia Conference, Singapore on January 29, 2016

Deepa Kharb participated in the International Conference organised by UNEP & NGT on 'Rule of Law for Supporting The 2030 Development Agenda/Sustainable Development Goals' from March 4 -6, 2016 at New Delhi.

Susmitha P. Mallaya presented paper on "Competition Law *viz-a-viz* Financial Sector in India: Issues and Concerns" on March 13, 2016 in Three day International Conference on Global Legal Education, Intellectual Property Laws and Development, Social Change and Economic Laws by MHRD IPR Chair DU in collaboration with Silk Road Law School Alliance from March 11-13, 2016.

Was invited to judge the preliminary rounds of 15th Amity National Moot Court Competition, 2016 on February 27, 2016.

Presented paper on "Financial Sector Regulations and Consumer Protection: Modern Trends" in a National Seminar on Consumer Protection: New Age Challenges organized by National Law University Delhi in collaboration with Centre for Consumer Studies, IIPA, New Delhi from February 19-20, 2016.

Was invited to judge the National Round of the First Prof. N.R. Madhava Menon SAARC Mooting Competition -2016 on January 9, 2016 at Lloyds Law College, Greater Noida.

CASE COMMENTS

Re- Inhuman Conditions in 1382 Prisons

2016(3) SCALE 389

Decided on March 14, 2016

On February 5, 2016, the Supreme Court of India *In Re-Inhuman Conditions in 1382 Prisons* issued further guidelines relating to prison reforms in the country. The Supreme Court in many landmark cases dealt with the matter related with prison reforms. The Supreme Court has dwelt at

length on various aspects of personal liberty. This development of the law in *Sunil Batra* v. *Delhi Administration*[1] reached a stage when it can be safely asserted that apart from the curtailment of his rights arising out of the fact of his detention, a prisoner has all other liberties available to him. The present case has its origin on a letter addressed to the Chief Justice of India by former Chief Justice of India R.C. Lahoti, based on a news report appeared in the Dainik Jagran (March 24, 2013), highlighting the pathetic conditions prevailing in the 1382 prisons in India. Lahoti J pointed out that story highlights issue of (i) overcrowding (ii) unnatural death of prisoners (iii) gross inadequacy of staff and (iv) available staff being untrained or inadequately trained. On July 5, 2013 the letter was registered as a public interest writ petition (PIL). The social justice bench, comprising Madan Lokur and R.K. Agarwal JJ, passed an order on March13, 2015 directing Union of India to furnish information to court related to over-crowding in prisons and also what steps were taken for improving the living conditions of prisoners. The court also directed government to provide the total number of prisoners as on March 31, 2013. After evaluating the responses received from the government, the court critically observed that responses of the government clearly indicate that by and large the steps taken by the government are facile and lack sincerity in implementation.

The court made its dissatisfaction clear that despite its several orders passed from time to time in various petitions, unfortunately, the issue overcrowding in jails continue to persist and has not been addressed adequately. The court also referred to article 10 of the International Covenant on Civil and Political Rights (ICCPR) which state that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Since India has acceded ICCPR on April 10, 1979, has legal obligation to ensure the provisions so the treaty are respected and implemented properly. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.

The court issued the following directions: (1) the under trial review committee in every district should meet every quarter and the first such meeting should take place on or before March 31, 2016. The under trial review committee should look into effective implementation of section 436 and section 436 A of the Cr PC, it should also look into issue of implementation of the Probation of Offenders Act, 1958, particularly with regard to first time offenders. The court also directed that the member secretary of the state legal services authority of every state will ensure, in coordination with the secretary of the district legal services committee in every district, that an adequate number of competent lawyers are empanelled to assist under trial prisoners and convicts. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This direction of the court also includes the issue of prisoner's health, hygiene, food, clothing and rehabilitation. The Ministry of Home Affairs is directed to ensure that the Management Information System is in place at the earliest in all the central and district jails as well as jails for women to ensure better and effective management of the prison and prisoners. The bench also directed Ministry of Women and Child Development, to prepare a Manual like 'Prison Manual' which will take into consideration the living conditions and other issues pertaining to juveniles who are in observation homes or special homes or places of safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.The court decided to take other issues those relating to unnatural deaths in jails, inadequacy of staff and training of staff in the next hearing. The directions issued by the court, in present case, if implemented in its true spirit will certainly help in reducing the overcrowding of the jails and will protect the human rights of the prisoners. This decision of the court is another important addition in the existing human rights jurisprudence developed by the Indian judiciary.

Manoj Kumar Sinha

[1] AIR 1978 SC 1675.

Khursida Begum* v. *Mohammad Farooq

2016 (2) SCALE 70

Decided on February 01, 2016

In this case the appellant appealed against the dismissal by High Court of Rajasthan pertaining to claim of rent from defendants for a gifted undivided property. The trial court dismissed the suit holding the gift of undivided property to be invalid and subsequently the high court dismissed the appeal against the decree. The sole question of consideration was whether the *Musha* (gift of undivided property) by appellant's father to his minor son is valid or not? The trial court and high court found the same to be gift of undivided share of property, capable of division, hence being *Hiba-Bil-Musha*, invalid. Appellants submitted that the once the gift was held to have been duly proved in favour of the appellant who was minor, transfer of possession was not required to be proved The other contentions of appellants which were observed in the judgement included the submission that as mentioned in the plaint as well as in the gift deed, property in question was located in the city of Jaipur, which is a large commercial town and thus clearly comes under the ambit of the exceptions to the rule of *Hiba-Bil-Musha*, exempting the freehold properties in a large commercial town.

While counsel for the respondents supported the impugned judgment, the division bench of Supreme Court of India found no infirmity in the gift under Muslim Law either on the ground of non delivery of possession or on the ground that the gift was hit by *Hiba- bil- Musha*. The fact that the gift through a registered and valid gift deed was by father to his minor son on February 24, 1976, the concerned property being under tenancy, is itself strong enough to transfer the right to collect rent to the donee. Further, the property being in possession of the tenant, execution of gift deed by itself amounted to transfer of constructive possession. The court persuaded the exceptions which clearly shows that while gift of immovable property is not complete unless the donor parts with the possession and donee enters into possession but if the property is in occupation of tenants, gift can be completed by delivery of title deed or by request to tenants to attorn to the donee or by mutation. It is further clear that gift of property which is capable of division is irregular but can be perfected and rendered valid by subsequent partition or delivery. Exceptions to the rule are: where the gift is made by one co-heir to the other; where the gift is of share in a *zamindari or taluka*; where gift is of a share in freehold property in a large commercial town, and where gift is of share in a land or company.

In the light of above mentioned observations the Supreme Court, while allowing the appeal, setting aside the impugned judgment of high court and decreeing the suit, observed that though it is clear that gift of property capable of being divided is irregular yet the principles of Mohammedan Law does not restricts the perfecting of the same by subsequent partition or delivery. Court also found force in the submissions made by the appellant and held courts below not justified in not giving effect to the gift which has been held to be genuine.

As far as delivery of possession is the integral part of validating a gift in this case, constructive possession has the same meaning and therefore the interpretation given by the court is not contrary to the Islamic Law of gift.

The delivery of possession is must and without it no gift is valid, the prophet says *"no Qabza no Hiba'*, i.e., without delivery of possession gift cannot be effective. However, this does not mean that in all the circumstances the handing over the property and usufruct should be in the hands of donee particularly in the case of minor, possession will always be taken over by his guardian therefor in the case of father's gift as mentioned above constructive possession is more than sufficient and no actual possession is required. Here the father was the natural guardian and thus the gift to the minor son by him effectively results in deemed delivery of possession. However in this case the gift in question is of undivided property which is known as musha. Quoting authority from Bailee, A.A. Fyzee, a leading scholar of Islamic Law, explains that the word *musha* means an undivided part or share, a common building or land. The gift of *musha* is valid and lawful on acceptance However, the gift of an undivided share in any property capable of division

is with certain exceptions incomplete and irregular *(fasid)*, although it can be rendered valid by subsequent separation and delivery of possession. The rule regarding *musha* is not only confined within the strictest limits, but is cut down by some exceptions. Here the exception applies pertains to freehold property in a commercial town. Fyzee hold that It must always be remembered that the doctrine of *musha* only renders the gift *fasid* (irregular) but not *batil* (void).[2] Whether the gift in this case was invalid or irregular but it can be regularised. However the court could not pointed out the Islamic Law of property as a whole which includes gift, will and inheritance. In this case after the demise of father if the gift was supposedly invalid then also the whole property according to Islamic Law of inheritance has already been devolved among the heirs as soon the father dies. If the deceased had sons and no daughters the minor son was already entitled for 1/3rd share of deceased property as an heir of deceased. This researcher feels that the reason of this gift was that the father was suspicious that his major sons might do injustice with the minor son after his demise. Therefore, he gifted the property according to approximate share of minor which he would have otherwise got from inheritance. And in case if the gift had been valid then the minor would have got the property under gift as well as 1/3rd share from the remaining property through inheritance. This aspect of Islamic property laws got unfortunately overlooked by the apex court. Therefore either by the way of gift or if the property was not yet transferred, the minor son as an heir was entitled to get 1/3rd share of his deceased father's property as soon the father dies and the same principle will also apply for the rent generating through the property of deceased entitling him for 1/3rd share in the same.

Furqan Ahmed

C. Muniappan* v. *State of Tamil Nadu

2016 (3) SCALE 406

Decided on March 11, 2016

February 02, 2000 was a sad day for J Jayalalitha (AIADMK supremo) because she was sentenced to one year of rigorous imprisonment on charges of criminal conspiracy and criminal misconduct by a public servant by a Madras trial court in Pleasant Stay hotel case. But 2nd February was unfortunately last day of life for three college going girl students who were murdered by three persons (sympathisers and party workers of AIADMK). They were disappointed by the news of conviction of J Jayalalitha and were a part of a mob which started violent agitation. Three of these offenders found a bus in Dharampuri district carrying girl students of Tamil Nadu Agricultural University. "Nedu @ Nedunchezhian and Madhu @ Ravindran sprinkled petrol inside the bus and lit a matchstick and threw it inside the bus. Thereafter the two went towards a motor bike which was kept ready for running by C. Muniappan and together the three of them fled from the scene. The aforesaid facts have been found to be conclusively proved by the evidence and materials on record by the learned trial court as well as the High Court." On August 30, 2010 the Supreme Court affirmed the conviction and also death sentence as awarded by both high court and trial court. The offenders filed a review petition in 2011. As per Supreme Court rules 'application for review shall be disposed of by circulation without any oral arguments'. The constitutional validity of this provision was challenged in *Mohd. Arif alias Ashfaq* v. *Registrar, Supreme Court of India*. Therefore Muniappan was clubbed with constitution bench proceedings of as both have similar issues. On September 02, 2014 the constitution bench (4:1)ordered limited oral hearing of all capital punishment review petitions in open court so that the procedure is just, reasonable and fair. Making special order for the case under comment *(C. Muniappan)* the court directed that this 'review petition is pending since the year 2010 and since the two judges who heard the appeal on merits have since retired, the entire matter should be heard afresh' as soon as possible by a bench of three judges after giving counsel a maximum of 30 minutes for oral argument. It was therefore an application and impact of *Md Arif Principle* of open review. In this review the offenders did not challenge the conviction but sentence only. The defence advanced three arguments. One, Killing during mob violence would not be sufficient to

[2] Asaf A. A. Fyzee, *Outlines of Muhammadan Law* 239-43 (Oxford University Press, Delhi, 1974)

attract the principle of `rarest of rare case" for which the defence relied on *Kishori* v. *State of Delhi* [(1999) 1 SCC 148], *Manohar Lal alias Mannu v. State (NCT) of Delhi* [(2000) 2 SCC 92], *Lokeman Shah* v. *State of W. B.* [(2001) 5 SCC 235]. It also argued that court did not address this aspect in the judgement. Two, 'possibility of the accused being reformed and rehabilitated' is established long back but has also not been addressed before concluding that the case is rarest of rare. The defence supported the principles by new decisions of *Birju* v. *State of Madhya Pradesh* [(2014) 3 SCC 421] and *Anil @ Anthony Arikswamy Joseph* v. *State of Maharashtra* [(2014) 4 SCC 69]. Three, there were certain discrepancies and contradictions in the evidences.

State counsel did not argue anything noticeable. 'State counsel has submitted that the matter is left for just consideration by the court' because 'the review petitioners are only with regard to the sentence imposed.' It did not respond to the arguments of defence which is a usual practice. The unanimous order of three judges bench in the review petitions commuted the death sentence to life imprisonment.

The full bench held that the case is not fit for extreme capital punishment and commuted it to life imprisonment. Physical aspects, mental aspects and victims, the three were considered. Neither the physical aspect nor the mental aspect satisfy the strict test of rarest of rare case. One, regarding physical aspect the court found that the *actus reus* was committed in the course of a mob frenzy. It was not individual culpability but group psychology which made them offenders. The beginning of *actus reus* was destruction of public property which culminated into murder of three girls. This again shows the killing was not a part of any special design. Regarding mental aspect the court explored that mens rea of the 'accused review petitioners, all along, was to cause damage to public property.' There was no pre meeting of mind, 'premeditation or planning'. Indeed there was no time for it because it all occurred 'in the flash of a moment'. Another mental aspect is motive of the criminals which was to express displeasure, dissatisfaction and disappointment of party workers against conviction of Jayalalitha. Third, the victims were unknown persons. This means they had no special reason to kill, animosity etc to kill the girls. The full bench reached to the conclusion that "keeping in mind the totality of the circumstances narrated above, which does not appear to have received due consideration in the judgment *under review*,' the punishment was reduced. Though the *ratio decidendi* sounds convincing it raises certain questions.

In this case the trial court, high court and Supreme Court had granted capital punishment to all three accused. In review petition the three judges have reversed all three judicial findings, that too in a very brief order which is not a good precedent. The court ignored the vulnerability of victims and reduced the culpability of offenders who were in a mob. Being In mob, motive of expressing displeasure on political ground seems to have acted as mitigating factor. If above reasoning is correct, then killing of any number of strangers during mob violence is a licence for diminished responsibility.

The state counsel did not discharge his responsibility satisfactorily as he did not argue in a professional manner. This is more important because State of Tamil Nadu led by AIADMK may be interested that the murderers do not get capital punishment because the accused were AIADMK workers. AIADMK will also make special effort to get the remission of the offenders because what they did was because of Jayalalitha. The full bench should have put a capping on remission like not before 20 years.

The judgement of division bench (BS Chauhan and GS Singhvi, JJ) of the Supreme Court in 2010 which awarded capital punishment to the killers at Dharampuri accepted the fact that there were some defects in investigation. They without referring to the maxim *"falsus in uno falsus in omnibus"* (false in one thing, false in everything) observed that "it is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded." In other words even residuary evidence is sufficient to convict the accused if it is beyond reasonable doubts. This principle is correct so far as conviction is concerned. Can mere residuary evidence be a basis for treating the case as 'rarest of rare case.' The

answer seems to be a clear NO. Rarest of rare case needs additional care and extra caution because it would necessarily led to death sentence which is not an ordinary punishment. It is irreversible. Conviction based on residuary evidence is social interest interpretation, victim oriented approach and an affirmation of crime control model because conviction need not be beyond all doubts but beyond reasonable doubts. On the other hand the Supreme Court is not putting such conviction based on residuary evidence in the pigeon hole of 'rarest of rare' as in this case under comment and also in previous case of *Vyas Ram @ Vyas Kahar* v. *State of Bihar* [Decided on 20.09.2013]. In Vyas ram at para 32 (judis.nic.in) the court while deliberating its reasons for commuting the death sentence to life imprisonment found unsatisfactory investigation as a mitigating factor for punishment because 'the absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the court..'. The Supreme Court seems to be interpreting in favour of individual criminal, showing regards for human rights jurisprudence led by abolitionist and an attachment for due process model. This 2016 judgement under comment could find better *ratio decendi* in *Vyas ram*.

Anurag Deep

Jagatjit Industries Limited v. *The Intellectual Property Appellate Board*

2016 (1) SCALE 450

Decided on January 20, 2016

In the present case, the apex court explores the dividing line between section 57(4) and section 125(1) of the Trademarks Act, 1999. Respondent no. 4, a company incorporated in United States of America, claims to have coined and extensively used the trademark 'BLENDERS PRIDE' for a variety of alcoholic beverages. In India, respondent no.4 sells 'BLENDERS PRIDE' whisky through its licensee Seagram India Private Limited since 1995. Appellants, Jagatjit Industries, applied for an identical mark i.e., 'BLENDERS PRIDE' and was advertised in trademark journal on October 7, 2003. On January 6, 2004 i.e., one day before the expiry of statutory period of three month to file opposition, respondent no.4, by virtue of section 21(1) and rule 47(6) of Trademarks Act, 1999 filed Form TM-44 for seeking extension of one month to file its opposition against applicant's application. But, the registrar did not give any explicit order of accepting the Form TM-44. Involving many strands of issues, one of such issues before this court was whether an explicit acceptance of form by registrar is required or not.

On January 19, 2004, respondent no. 4 filed its opposition and on February 16, 2004, Trade Mark Registry issued a notice to appellant inviting its counterstatement. Surprisingly, on January 20, 2005, respondent no. 4 came to know that appellant was issued Trademark Registration Certificate on January 20, 2004. Knowing that, respondent no. 4 filed a writ petition before the Delhi High Court to remove trademark from the register wherein, the court disposed of the matter with an observation that the registrar shall proceed with the matter of rectification of register as per the law. On January 14, 2005, the appellant too filed a suit of infringement and passing off against Seagram Distilleries Private Limited. The defendant, while questioning the validity of registration obtained by plaintiff, pleaded that rectification proceedings are sub-judice before registrar, hence, suit is liable to be stayed till final disposal of such rectification. Considering the reply of defendant (appellant here), on February 16, 2005, the registrar issued a show cause notice to the appellant suo moto under section 57(4), stating that the mark was registered inadvertently and proposed to rectify the register. The court directed the registrar to dispose of the proceedings as per the law. On May 26, 2005, the registrar directed the appellant to return the registration certificate as it was issued in error. Against this order of registrar, a writ petition was filed by appellants on May 31, 2005. Court directed the registrar to dispose of the proceedings before it.

The registrar on November 11, 2005 stated that he does not have the jurisdiction to proceed in the matter and the jurisdiction is limited to appellate board under section 125. One of the major contentions by the appellants was that the rectification proceedings before the registrar were

barred by section 125. Section 125(1) of the Trademarks Act, 1999 states that when a suit for infringement is pending and then, rectification proceedings are instituted, such application for rectification shall be made to the appellate board and not to the registrar. The appellants also contended that the show cause notice by registrar is not maintainable as it was issued by the Registrar of Bombay, not by the New Delhi, Registrar. Hence, Bombay Registrar is not the competent authority under Trademarks Act to pass order.

In appeal, IPAB passed a judgment, providing that the opposition order been taken on record and numbered clearly, signifies that Form TM-44 was accepted by the registrar. But, the acceptance by Registrar, being contrary to section 23(1), is invalid in law. The appellant filed a writ petition in Delhi High Court against the IPAB's decision. The single judge set aside the IPAB decision and upheld the order of Registrar contending that registration is invalid and section 125 debars rectification proceedings by the registrar. In appeal, before the division bench, matter was overturned and ended up at Supreme Court.

Apex court while taking up the issue of Bombay Registrar as competent authority stated that as per section 3, there is just one registrar of trademarks and his registered office is in Bombay. The assistant registrars in other parts are merely to act under the superintendence and directions of Registrar, Bombay.

Then, the court went on to interpret section 125 by holding that the section is applicable only to applications for rectification of register and not to *suo moto* actions of the registrar under section 57 (4). However, the registrar's power to maintain the purity of register remains intact under section 57(4). The power of the registrar to correct his own mistakes under section 57(4) is completely independent of the right of a party to make an application for rectification of register under section 125(1). Court also provided the justifications for holding this line of interpretation, it stated that at times, after raising the plea of invalidity in a suit for infringement, the matter is compromised and defendant does not file an application for rectification before the appellate board. The court noted that the registrar's *suo moto* action under section 57(4) is based on a letter sent by respondents to the registrar.

The standing appears rich because of being centrally concerned with the 'purity of register' objective. By making an in depth inquiry into the provisions, the court has blessed the trademark jurisprudence by characterizing the fundamental divide between section 57 and section 125 of the Trade Marks Act, 1999. The pronouncement is a valuable and intellectual exercise to solve the quandary relating the trade mark provisions, the failure to acknowledge which would represent a missed opportunity. To reach the conclusion, the court took count of multiple provisions of trademarks law and offered apposite clarity to them as to guide the future courts as well.

Vandana Mahalwar

Tekan alias Tekram* v. *State of Madhya Pradesh (Now Chhattisgarh)

2016 (2) SCALE 274

Decided on February 11, 2016

Our criminal justice system, based on the premise that the accused must be treated as innocent until proven guilty, has been more concerned about the rights of the accused. The rights of the victim have not been paid much attention, either by the legislature or by the judiciary since long and the victim is generally left to the mercy of the state.

A paradigm shift in the approach of the judiciary towards the rights of the victim, particularly towards victims of rape, sexual assault and acid attacks, was observed in a few landmark judgments in the past two decades. The Supreme Court in the case of *Delhi Domestic Working Women's Forum versus Union of India*,[3] involving the rape of domestic workers by army personnel in a running train, held that rape transgressed the right to live with dignity- a fundamental right enshrined under article 21. In case the state fails to protect this right, it should be liable to pay compensation to the victim. The court directed the National Commission for Women to evolve a mechanism for

[3] 1995 SCC (1) 14.

victim compensation in such cases. Compensation, the court said, must be awarded quickly, without waiting for the courts to convict the accused.

These judgments led to the insertion of section 357A in the Criminal Procedure Code (Cr PC) in 2009 which directs the state governments to set up a victim compensation scheme in co-ordination with the central government. Following this amendment and the subsequent directions of the Supreme Court in the Acid Attack PIL,[4] some states have come up with a victim compensation scheme. However, there are wide variations from one state to another in the amount of compensation. This scheme has not been implemented in letter and spirit forcing the apex court to intervene.

In the present case, in a bid to end the huge difference in the compensation offered by states and union territories to rape victims, a two judge bench issued direction to formulate a uniform compensation scheme for the victims of rape and sexual assault, especially physically handicapped victims. The compensation to rape victims varies from rupees twenty thousand to ten lakh in different states and no uniform practice is being followed in providing compensation and for rehabilitation.

The court said they should consider and formulate programmes for such victims in the light of the scheme framed by the state of Goa that provides compensation up to rupees ten lakh.

"Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime", held the two judges while examining the question as to whether the prosecutrix is entitled to compensation under section 357A Cr PC and, if so, to what extent? The apex court was hearing an appeal by a rape convict challenging a Chhattisgarh High Court decision which had upheld the order of a trial court awarding him seven year jail for raping an 18-year-old blind and illiterate girl on the pretext of marriage.

Dismissing the appeal the bench said the victim, being differently abled, was already in a socially disadvantaged and vulnerable position, not being taken care of by anyone and having no family to support her either emotionally or economically. The court felt that rather than awarding any lump sum amount as compensation for rehabilitation, she being not in a position to keep and manage the money, directed the state to pay Rs.8,000/- per month for life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/- .

This judgment clearly brings out the intention of the court which has tried to put more emphasis on the compensatory aspect in a criminal case. It is, therefore, high time that rights of the victim of crime are recognized in this country – it may in the longer run help in checking the rise in the crime rate and also bring more credibility to the criminal justice system. The Government of India in 2015 has also set up a central victim compensation fund for assisting and supporting victim compensation schemes of states/union territories with an initial corpus of rupees two hundred crore under the "Nirbhaya Fund". It is expected to encourage states, and also to harmonise differences in the quantum of compensation.

Deepa Kharb

Compassion Unlimited Plus Action v. *Union of India*

(2016) 3 SCC 85

Decided on January 13, 2016.

In the present case several writ petitions were preferred under article 32 of the Constitution of India, by the petitioners, compassion unlimited plus action, the Animal Welfare Board of India and others for an appropriate writ, order or direction for quashing notification No. G.S.R. 13(E) on January 7, 2016, (hereinafter "the notification 2") published by the respondent, the Union of India, and further to command the respondent to ensure compliance with the law laid down in *Animal Welfare Board of India* v. *A. Nagaraja* (2014) 7SCC 547 ("hereinafter A. Nagaraja case"). In that case a two judge bench of the Supreme Court (hereinafter "the court")

[4] *Parivartan Kendr*a v. *Union of India,* MANU/SC/1399/2015.

examined the rights of animals under the Constitution of India, laws, culture, tradition, religion and ethology, especially in the context of "Jalikattu", bullock cart races, etc. in the State of Tamil Nadu and Maharashtra, with particular reference to the provisions of the Prevention of Cruelty of Animals Act, 1960 (hereinafter "the PCA Act"), the Tamil Nadu Regulation of Jallikattu Act, 2009, and the notification July 11, 2011 (hereinafter "notification 1"). The said notification prohibited the use of bulls as performing animals, either for Jalikattu events or bullock cart races in the State of Tamil Nadu, Maharashtra or elsewhere in the country. On the notification 1 being challenged the court held that Jalikattu, bullock cart race and such events per se as violation of sections 3, 11(1) (a) and 11 (1) m (ii) of the PCA Act and upheld the notification 1. It stated that the rights guaranteed to the bulls under section 3 and 11 of the PCA Act read with articles 51-A(g) and (h) of the Constitution cannot be taken away or curtailed, except under sections 11(3) and 28 of the PCA Act. The court *inter alia* directed the Animal Welfare Board (hereinafter AWB) of India and the Union of India to take steps to impart education in relation to humane treatment of animals in accordance with section 9(k) inculcating the spirit if articles 51-A (g) and (h) of the constitution.

In A. Nagaraja's case the court while referring to article 51-A (g) which states that it shall be the duty of the citizens to have compassion for living creatures cited *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat* (2005) 8 SCC 534, wherein it was held that by enacting article 51-A (g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of articles 48 and 48-A are honoured as a fundamental duty of every citizen. Article 51-A(g), therefore, enjoins that it was the fundamental duty of every citizen 'to have compassion for living creatures', which means concern for suffering, sympathy, kindliness, etc., which has to be read along with sections 3, 11(1) (a) and (m) , 22, etc, of the PCA Act. It held that sections 21 and 22 of the PCA Act and the relevant provisions have to be understood in the light of the rights conferred on animals under section 3, read with sections 11(1) (a) and (o) and articles 51-A(g) and (h) of the Constitution, and if so read in the court's view, bulls cannot be used a performing animals for Jalikattu and bullock cart race, since they are basically draught and pack animals, not anatomically designed for such performances."

As the matter stood thus the Central Government through the Ministry of Environment, Forest and Climate Change issued a notification on January 7, 2016 (hereinafter "the notification 2") where in bulls may continue to be exhibited or trained as a performing animal, at events such as Jalikattu in Tamil Nadu and bullock cart races in Maharashtra, Karnataka, Punjab, Haryana, Kerala and Gujarat in the manner by customs of any community or practiced traditionally under the customs or as a part of culture, in any part of the country with certain riders. Learned senior counsel appearing for the petitioners submitted that the notification 2 does not really efface the verdict of the Supreme Court and in fact, it runs contrary to the provisions of the PCA Act. They urged that though the Central Government by recent notification has added conditions, but treating of bulls in such a manner would not be justifiable regard being had to the compassion which has been enshrined under the PCA Act and the fundamental duties engrafted under article 51-A of the Constitution of India. A stay order was thus sought for the notification 2 by the petitioners. The court held that Jalikattu and other form of bull race cause trouble, pains and stress to the bulls and it is contrary to the provisions of the Act and that it had adjudged the issue in the backdrop of articles 51-A (g) and (h) of the Constitution of India. It reiterated the constitutional sanctity stating that the Constitution of India is an organic and compassionate Constitution. It therefore stayed the notification 2 and also refused to vacate the stay.

As the present case shows it is worth recalling that public interest litigation (read representative suit/class action suit) in India has come a long way from the high standing jurisprudence of *locus standi* in Hussainara Khatoon and Bandhua Mukti Morcha, Shri Ram Gas Leak *et al*. wherein access to justice to the poor and oppressed was traditionally

reserved for humans and environment (read human environment). Indeed the strong Indian tradition of voluntary social action has evolved to a stage where the voiceless are being heard. This is in light of what, Mukul Rohatgi, Attorney General, submitted that the writ petitions are not maintainable under article 32 of the Constitution of India as the fundamental rights of the animal welfare board and other petitioners are in no way affected. The court while speaking on the maintainability of the writ petition held that the board and the others have really not approached the court for protection of their fundamental rights, but the rights of animals in the constitutional and statutory framework.

Stanzin Chostak

Nankaunoo* v. *State of Uttar Pradesh

(2016) 3 SCC 317

Decided on 19 January, 2016

This appeal arose out of the judgment passed by the High Court of Judicature at Allahabad, Lucknow Bench, affirming the conviction of the appellant under section 302 IPC. The deceased succumbed to the injury he received on his left thigh from the pistol shot fired by the appellant. The post-mortem report describes the injury as: "a gunshot wound of entry ½" x ½" on the back and inner part of left thigh and six gunshot wounds of exit each 1/3" x 1/3" in size in front and middle left thigh."The doctor opined that the death was due to shock and haemorrhage due to injuries of firearm.

One of the arguments advanced by the counsel for appellant was that the conviction is not sustainable under section 302 IPC since the gunshot injury was on a non-vital organ and thus it cannot be said that the appellant intended to cause the death. Referring to Vivian Bose's J classic decision in *Virsa Singh* v. *State of Punjab*, the court clarified that section 300 thirdly consists of two parts: *first* there has to be an intention to inflict that particular injury that is found to be present, and *second*, the said injury must be sufficient to cause death in the ordinary course of nature. The court reaffirmed that the second part of the enquiry is "an objective enquiry and it is a matter of inference or deduction from the particulars of the injury" (para 11). Further explaining the second clause, the court observed: "When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, *sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant.* Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place" (para 12).

However, when the court sought to apply these principles to the present case, it is humbly submitted, the court ended up blurring the jurisprudence of objective liability for murder. It is important to note the court's reasoning: "We find substance in the contention of the learned counsel for the appellant the injury was on the inner part of left thigh, which is the non-vital organ…the sufficiency of injury to cause death, must be proved and cannot be inferred from the fact that death has taken place. *But the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause the death. Keeping in view the situs and nature of injury and in the absence of evidence elicited from the doctor that the said injury was sufficient in the ordinary course of nature to cause death,* we are of the view that it is a fit case where the conviction of the appellant under Section 302 IPC should be under Section 304 Part 1 IPC" (para 13)

The court's assessment of the nature of the injury is overwhelmingly determined by the fact that the prosecution did not elicit the doctor's report on the sufficiency of injury. It appears from court's reasoning that, had the doctor reported that the gunshot injury ruptured *"any important blood vessel and that it was sufficient in the ordinary course of nature to cause the death"*, this would have been a case of murder and not culpable homicide. However, it is important to note that

objective liability in criminal law is based on the ordinary objective standard of the "reasonable person" and not the expert/medical opinion. The assessment of the injury is done based on various factors (doctor's testimony being one of them). In this context, B.B. Pande's "Limits of Objective Liability" (16(3) *JILI* 1974), in this author's view, is the founding text to understand the rationale, scope, limits and application of objective liability in criminal law in India. Explaining what the 'reasonable person test' in section 300 thirdly entails, he writes "a broad based appraisal of the total injury situation is certainly more in line with the scheme of the clause, which presumes foreseeability only under objectively observable exceptional situations. *An injury which would fall under such exceptional situation category should, generally, be one of potentially mischievous nature which could be said to speak for itself"* (see pg. 475).

Unfortunately, in the court's reasoning (para 13), the broad-based appraisal of the injury is being collapsed into the view held by the doctor! The question for the court was not whether the doctor would have opined that the injury had caused fatal internal damage or not; the correct question was: whether a reasonable person (looking at the location of the injury, weapon used, force employed, and doctor's testimony) would find the injury sufficient to cause death. While in the present case, perhaps even the reasonable person would have only found the injury "likely" and not "sufficient" to cause death in the ordinary course of nature, but the foregrounding of doctor's opinion in this case may lead to the dilution of the test of 'reasonable person' that guides the objective enquiry. Thus, the court may have reached the right answer in this particular case (that it is a case of culpable homicide and not murder), but since it did not raise the right question, the rationale of the court remains uninformed by the jurisprudential foundations of criminal liability (especially objective liability) in criminal law.

Latika Vashist

Central Bureau of Investigation, Bank Securities and Fraud Cell* v. *Ramesh Gelli

Decided on February 23, 2016

2016 (2) SCALE 579

At present, banking institutions are facing lot of challenges including the increase of non-performing assets. In this scenario the role of top bank officials of both the private and public sector banks cannot be ignored, since they play pivotal role in disbursement of loans to the corporate sector and individuals. Therefore once it is proved that the bank employees are involved in corruption, exclusion of invoking the provision under Prevention of Corruption Act, 1988 and section 46 A of Banking Regulation Act, 1949 stating that they are not 'public servants' is not judicious. The question that arose before the Supreme Court in this case is whether chairman, directors and officers of private bank can be said to be public servants for the purpose of their prosecution under the Prevention of Corruption Act, 1988.

In the contemporary scenario, there is hardly any office whose duties cannot, in the last resort, be traced to having a bearing on public interest or the interest of the community at large. In the present case, Supreme Court held that the managing director and executive director of a banking company operating under license issued by RBI, are public servants, and as such they cannot be excluded from the definition of 'public servant'. Further, the court held that the definition of 'public servant' given in the Prevention of Corruption Act, 1988 read with section 46 A of Banking Regulation Act holds the field for the purposes of offences under the said Act rather than the definition under section 21 of the Indian Penal Code. Earlier, the trial court and the High Court of Judicature at Bombay held that cognizance cannot be taken against the accused involved in corruption on the ground that they are not public servants.

The court interpreted the definition of "public servant" contained in section 2 (c) of the Prevention of Corruption Act, 1988 by looking into the object of Prevention of Corruption Act, 1988. Accordingly

the court highlighted the fact that the object of the legislation was to make the anti-corruption law more effective and widen its coverage. Moreover section 46 A of the Banking Regulation Act, 1949 states that a chairman appointed on a whole time basis, managing director, director, auditor, liquidator, manager and any other employee of a banking company is deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code. The court applied the exception to the rule of casus omissus to fill the gap which occurred after deletion of sections 161 to 165 A of the Indian Penal Code from chapter IX by section 31 of the Prevention of Corruption Act, 1947. In this process of repealing the provisions under Indian Penal Code, the legislature omitted to incorporate corresponding insertion of provision in section 46 A of the Banking Regulation Act, 1949 with regard to the deeming provision therein, being continued in respect of officials of a Banking Company insofar as the offences under sections 7 to 12 the Prevention of Corruption Act, 1988 are concerned. This unintended legislative omission was filled by the process of interpretation. For this the court relied on Seaford Court Estates Ltd v Asher (1949) 2 All ER 155, *Magor and St. Mellons Rural District Council* v. *Newport Corporation* (1950) 2 All ER 1226 etc.

The fact of the case states that the Chairman and Managing Director of Global Trust Bank (later amalgamated/merged with Oriental Bank of Commerce) and one executive director of the bank were also the promoters of the banking company. They obtained the license from the Reserve Bank of India for doing banking business as private limited banking company. Later, they fraudulently instructed the branch heads of their bank to sanction the credit facilities to various individuals and companies without following any norms of granting loans. This scam resulted in the creation of large quantum of non performing assets jeopardizing the interests of thousands of depositors; however, they succeeded in painting a rosy financial picture of the financial assets of the bank. On the amalgamation of Global Trust Bank with Oriental Bank of Commerce, audits were conducted and these frauds came to light. Accordingly, CBI started investigation and accordingly charge sheet was filed against the accused under Prevention of Corruption Act, 1988.

It was argued before the court by the counsel of accused that the transaction between the banker and customer are commercial in nature and as such no public duty is involved and they are not public servants, therefore the provisions of Prevention of Corruption Act, 1988 are not applicable to them. On the other hand, on behalf of the counsel appearing for the CBI i.e., appellants argued that a private body discharging public duty or positive obligation of public nature actually performs public function, hence the accused need to be treated as 'public servants' for the purpose of application of Prevention of Corruption Act, 1988. The court finally favored the argument advanced by the counsel of appellants

In this context, the apex court approach to bring the employees of private institutions under the purview of 'public servants' and giving a wide understanding of the definition of 'public servant' may have the effect of obliterating all distinctions between the holder of a private office and a public office. This view can be appreciated. Nonetheless, in the present situation where more private institutions are coming up which discharge the public functions, this distinction is diluted, so it is time for the legislature to cure the defects in the legislation which will have an impact on the growing economy of the country.

Susmitha P. Mallaya

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.