ISSN - 2455-7242

ILI Newsletter

Quarterly Newsletter published by the Indian Law Institute
(Deemed University)
Accredited with 'A' Grade by NAAC

Volume XIX Issue-III

July - September, 2017

Editorial

A landmark legally binding treaty on Prohibition of Nuclear Weapons was adopted by the General Assembly (GA Res. 71/258) on July 7, 2017. This is the first time in seven decades that the international community has adopted a global treaty in an effort to avert a nuclear war, which will certainly lead to the destruction of all nuclear weapons and forever prohibit their use. The treaty is intended to bar countries from developing, testing, manufacturing, acquiring or even possessing any kind of nuclear weapon. The treaty is open for signature from September 20, 2017 and will enter into force after being ratified by 50 state parties. It may not take a long time to reach the required 50 ratifications because 122 states voted in favour of the adoption of the treaty. Netherlands voted against the treaty and Singapore abstained. The treaty is a milestone in part because it ensures that the use of all weapons of mass destruction is banned. It complements the conventions prohibiting chemical and biological weapons. The treaty reinforces the principle that disarmament law should focus on ending the human suffering caused by such weapons. India and other nuclear armed nations- the United States, Russia, the United Kingdom, China, France, Pakistan, North Korea and Israel did not participate in the negotiations. After the adoption of the treaty, the Government of India reiterated its commitment to non-discriminatory and verifiable nuclear disarmament in an attempt to justify its position for not participating in the negotiations. The government has made it quite clear that India is not bound by any of the obligations that may arise from the treaty. It also believes that this treaty in no way constitutes or contributes to the development of customary international law. However, this stand of the government does not dilute its stand for a nuclear weapon-free world; indeed, it firmly believes that this goal can be achieved in a phased manner by adopting a non-discriminatory multilateral framework. It supports the commencement of negotiations on a comprehensive Nuclear Weapons Convention in the Conference on Disarmament which is the world's single multilateral disarmament negotiation forum working on the basis of consensus. It will be appropriate to sum up with the statement of Antonio Guterres, Secretary General of the United Nations, that the treaty represents an important step and contribution towards the common aspiration of a world without nuclear weapons.

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 Institue, 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

ISSN 2455-7242

ACTIVITIES AT THE INSTITUTE

Certificate Course on Business and Human Rights

The Indian Law Institute Delhi (ILI) in collaboration with the Human Rights and Business Academy (HURBA) organised an intensive certificate course on "Business and Human Rights" (BHR) from July 3-8, 2017.

The course intended to expose law/business/ management students, lawyers, civil society representatives, policy makers and corporate executives to international and comparative perspectives in the field of business and human rights with the objective of developing an informed understanding of the issues and challenges involved. The course provided an exhaustive introduction to the nature and extent of the human rights responsibilities of business enterprises, how companies could discharge their human rights responsibilities and resolve dilemmas in their day-to-day operations, and various remedial tools available to the victims to seek access to justice in cases involving human rights abuses by business.

The seminar-style interactive course was taught, on a *pro bono* basis, by a team of leading scholars and practitioners such as, Dr. Jernej Letnar Černič from Graduate School of Government and European Studies, Slovenia; Dr. Surya Deva from School of Law, City University of Hong Kong; Dr. Harpreet Kaur, Senior South Asia Researcher and Representative, Business and Human Rights Resource Centre; and Professor (Dr) Manoj Kumar Sinha, Director, Indian Law Institute.

International Conference on Sustainable Development Goals and Role of Business

The 17 Sustainable Development Goals of the 2030 Agenda for sustainable development were adopted by the world leaders at an historic UN Summit in January 2016.While the Sustainable Development Goals are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of these goals.

Hon'ble Mr. Justice Dipak Misra addressing the participants at the programme

Against this backdrop, the Indian Law Institute in collaboration with the Human Rights and Business Academy (HURBA) organised an International Conference on "Sustainable Development Goals and Role of Business" at the Institute on July 8, 2017 to review critically the role of business enterprises in achieving these sustainable development goals.

Dr. Surya Deva at the podium with Dr. Jernej Letnar Cernic, Prof. Manoj Kumar Sinha and Hon'ble Mr. Justice Dipak Misra (From left to right).

The seminar was inaugurated by Hon'ble (Mr.) Justice Dipak Misra. In his inaugural speech he emphasised that companies play a significant role in ensuring the implementation of sustainable development goals. The sustainable development goals, though not legally binding, still serve as an important road map regarding future policy direction at international, national and regional levels. Hon'ble (Mr.) Justice Dipak Misra expressed his pleasure that the Institute

ISSN 2455-7242

has taken this initiative to spread awareness about the scope and extent of the human rights responsibilities of business enterprises. He also complemented the Institute for taking keen interest in sensitizing and disseminating important information regarding the inter-relation between business and human rights.

The programme covered three detailed sessions on: ***Embedding Human Rights into Sustainable Development Goals***; ***Sustainable Development Goals- Indian Regulatory Framework and Challenges*** and ***Selected cross- cutting issues*** like, ***Gender Equality, Tribal Rights*** *and* ***Corporate Obligations*** affecting sustainable development goals (SDG).

The conference provided an opportunity to scholars, judges, practitioners, policy makers, civil society organisations and business executives to share their insights on issues such as the following:

- Compatibility of SDGs with the rights-based development approach
- The business case for SDGs
- Relevance of corporate respect for human rights, under the UN Guiding
- Principles on Business and Human Rights, to implement SDGs
- Indian constitutional framework and SDGs
- Role of NITI Aayog
- 2% CSR spending and SDGs
- Achieving specific SDGs
- Public-private partnerships.

Eminent speakers like Dr. Surya Deva, Associate Professor, School of Law, City University of Hong Kong; Chairperson, UN Working Group on Business and Human Rights, Professor Leila Choukroune, Director, Centre for Social Sciences and Humanities (CSH), New Delhi, Professor Manoj Kumar Sinha, Director, Indian Law Institute, Mr. Sharad Kumar Jhunjhunwala, Assistant Director, Institute of Company Secretaries of India (ICSI), Dr. Jernej Letnar Cernic, Associate Professor, Graduate School of Government and European Studies and Mr. Aayush Raj, Research Associate, Confederation of Indian Industry Centre of Excellence for Sustainable Development, spoke at the programme.

Training Programme for Legal Officers of Myanmar

The Indian Law Institute and Ministry of External Affairs, Government of India jointly organized a training programme for 23 Legal Officers of Myanmar from July 24-28, 2017 on various aspects of national and international laws.

Mr. Sreenibas Chandra Prusty, Mr. Suresh Chandra greeting Ambassador of Myanmar His Excellency U Maung Wai.

The training programme included five days of interactive sessions by the faculties of the Institute and other dignitaries on various topics like Comparative Constitutional law, Intellectual Property Rights, Cyber law, Refugee law and International Criminal law. Ambassador of Myanmar His Excellency U Maung Wai and Law Secretary to the Government of India, Suresh Chandra were among the dignitaries who delivered lectures on various legal areas at the programme.

The training programme concluded with a visit to the Supreme Court of India and the city of Agra as part of the programme schedule.

ISSN 2455-7242

Dr. Anurag Deep with the Mayanmar delegation during the five day programme.

International Conference on Philosophical Foundation of International Criminal Law: Its Intellectual Roots, Related Limits and Potential

The Indian Law Institute organised an International Conference on "Philosophical Foundation of International Criminal Law: Its Intellectual Roots, Related Limits and Potential" jointly with various national and international universities on August 25-26, 2017.

Justice Madan B. Lokur addressing the participants at the conference.

The conference aimed at analysing the foundational concepts in international criminal law, correlate the teachings of leading philosophers of law and scholars with international criminal law and explored against this background, the potential and limits of international criminal law.

The conference was spread over a period of two days and Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India was the chief guest on day one of the programme. In his inaugural speech he highlighted the role of International Court of Justice (ICJ) in punishing those who are responsible for committing heinous crimes. He also applauded the initiative undertook by the Institute in organizing such programmes on issues of contemporary relevance. The conference consisted of three technical sessions. Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute delivered the welcome address to all the participants. Opening remarks were delivered by distinguished speakers like, H.E. Sir William David Baragwanath, KNZM QC Appeals Judge of the United National (UN) Special Tribunal for Lebanon, H.E. Ambassador Dr. Martin Ney, the German Ambassador to India, Professor Ranbir Singh, Vice-Chancellor of National Law University, Delhi, H.E. Judge Hanne Sophie Greve, Vice President of the Gulating Court of Appeal, Norway, Mr. Narinder Singh, formerly the Legal Adviser of the Ministry of External Affairs of India and Chairman of the UN International Law Commission.

Prof. Morten Bergsmo, Mr. Narinder Singh, Prof. Surinder Kaur Verma, Prof. Ranbir Singh, H.E. Judge William David Baragwanath, Justice Madan B. Lokur, H.E. Ambassador Dr. Martin Ney, H.E. Judge Hanne Sophie Greve, Prof. Manoj Kumar Sinha and Mr.Shreenibas Chandra Prusty.(From left to right)

Hon'ble Mr. Justice Arjan Kumar Sikri, Judge, Supreme Court of India was the chief guest on day two of the programme which included four technical sessions and talks delivered by prominent speakers

ISSN 2455-7242

like Professor Vesselin Popovski, Jindal Global Law School and Vice Dean and Executive Director of Centre for the Study of United Nations, Professor Usha Tandon, Professor and Head, Campus Law Centre, University of Delhi and Professor Morten Bergsmo, Director, Centre for International Law Research and Policy. The vote of thanks was delivered by Mr. Shreenibas Chandra Prusty, Registrar, Indian Law Institute followed by distribution of certificates to the participants.

Chief Guest Justice A.K. Sikri at the valedictory session of the conference

Interaction Programme with Government Lawyers from Nepal

A team of Government Lawyers from Nepal visited the Indian Law Institute on July 13, 2017 for an interaction programme. Dr. Anurag Deep and Dr. Jyoti Dogra Sood, Associate Professors, ILI had detailed interactions with the team on victim witness protection and prosecution system. Other faculty members of ILI also participated in the discussion.

Dr. Anurag Deep and Dr. Jyoti Dogra Sood with the Nepal Delegation at the Institute.

IDIA Annual Awards and Conference

Indian Law Institute in collaboration with Increasing Diversity by Increasing Access to Legal Education (IDIA) organised the Annual Awards and Conference on September 15-16, 2017.

IDIA Annual Awards for the year 2017 honoured and celebrated individuals and institutions who have contributed in significant ways to the cause of IDIA and inclusive education for the underprivileged.

The day after the awards ceremony, the IDIA Annual Conference on ***"Creativity and Law"*** was conducted at the Institute on September 16, 2017. The conference, supported by Manupatra, focused on various topics relating to law and creativity. It aimed at creating technically skilled legal professionals and exceptional leaders, who can use the powerful tool of the law to advocate the cause of their communities.

The welcome address was delivered by Professor (Dr) Manoj Kumar Sinha, Director, Indian Law Institute and the foundational address on "***Law and Creativity: Some Thoughts"*** was delivered by Justice S. Ravindra Bhat, Judge, Delhi High Court touching upon various aspects of creativity in the law. He noted that balancing out various competing concerns in law, particularly in relation to intellectual property law, called for a fair degree of creativity. He explored how the law viewed creativity through the various standards it set for IP protection.

The daylong conference consisted two panel sessions the first panel session was on ***"Lateral Lawyering: Lessons from India's Privacy Battle"*** with eminent speakers like Dr Usha Ramanathan, Academic and Right to Privacy activist, Mr. Gopal Sankaranarayanan, Advocate, Supreme Court of India, Dr Arghya Sengupta, Research Director, Vidhi Centre for Legal Policy, Mr. Suhaan Mukherjee, Founder, PLR Chambers.

The second panel session was on ***"Cultivating Creative Lawyers"*** and the panelist included Justice C Hari Shankar, Judge, Delhi High Court, Professor (Dr.) MP Singh, Chancellor, Central University of Haryana and Chair, Centre for Comparative Law,

ISSN 2455-7242

NLUD, Professor (Dr.) Ranbir Singh, Vice Chancellor, National Law University Delhi, Professor (Dr.) JS Patil, Vice Chancellor, National Law University and Judicial Academy, Assam, Professor Purvi Pokhariyal, Director and Dean, Institute of Law, Nirma University, Mr Amarjit Singh Chandiok, Senior Advocate, Supreme Court of India, Mr Pravin Anand, Managing Partner, Anand and Anand, Mr Abhimanyu Bhandari, Managing Partner, Axon Partners LLP. The programme concluded with vote of thanks delivered by Mr. Shreenibas Chandra Prusty.

Special Lecture on Sustainable Development Goals

The Indian Law Institute along with Research and Information System for Developing Countries (RIS) organised a special lecture on "International Order and Rule of Law in Times of Sustainable Development Goals" on September 27, 2017. Professor Sachin Chaturvedi, Director General, RIS Mr. Shreenibas Chandra Prusty, Registrar ILI delivered the welcome remarks at the programme.

Irene Khan, Director-General of the International Development Law Organization (IDLO) and an international leader on human rights, gender and social justice issues shared her views on the Sustainable Development Goals which cover a broad range of social development issues. The lecture was followed by a question answer session with the participants and the vote of thanks was delivered by Mr. T.C. James, Visiting Fellow, RIS.

SPECIAL LECTURES

Professor V. Vijaykumar, Professor of Law, National Law School of India, University, Bangalore delivered a special lecture to LL.M. students on the topic "Removal of Judges: A Critical Analysis" on August 29, 2017.

Professor Ioannis Kokkoris, Professor of Law and Economics and Chair, Law and Economics at the Centre of Commercial Law Studies delivered a special lecture to LL.M. students on the topic "Google Case: Abuse of Dominant Position" on September 15, 2017.

ACADEMIC ACTIVITIES

Admission for LL.M. and PG Diploma Courses for the Academic Session 2017 – 18

The admission process for LL.M. (One Year) and Post Graduate Diploma courses started on May 1, 2017 as per the schedule approved by the Academic Council . The Common Admission Test (CAT) for admission to the LL.M. Programme was conducted on June10, 2017 at Indian Law Institute. The result for the same was notified on June 22, 2017. A total of 335 students were admitted for the current session out of which 28 were for LL.M. (1 Year) and 307 for PG Diploma Courses.

Classes commenced for LL.M. (1 Year) from August 1, 2017 and for the Post Graduate Diploma courses, from August 2, 2017.

Admission to Ph.D. Programme – 2017

For the 2017 batch of the Ph.D. Programme, a total of 7 candidates were admitted after the viva/voce presentation of the shortlisted candidates (19 from exempted and 12 from non-exempted category).Classes for Ph.D. Course Work will commence from October 4, 2017.

EXAMINATION

LL.M.

Viva-voce/ presentations for the LL.M.(One Year)3rd Trimester were conducted from July 17-18, 2017.The result for the same was declared on August 4, 2017.

Post Graduate Diploma Courses

The result for the Post Graduate Diploma Examination, 2017 was declared on July 3, 2017 and for the Post Graduate Diploma Supplementary Examination on September 28, 2017.

ISSN 2455-7242

Ph.D.

The result for the Coursework Examination for the Ph.D. Programme (2016 batch) was declared on September 20, 2017

RESEARCH PROJECTS

Project from Ministry of Panchayati Raj, Government of India

The Ministry of Panchayati Raj (MoPR) 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 includes a gist of various high court and Supreme Court cases on the Panchayati Raj System in India. A report on the "Compilation of Judicial Pronouncements on Panchayati Raj System in India" has been submitted and follow up action in many cases has been initiated by the Ministry.

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 in order to draft a Model Investigation and Procedural Manual.

The project was divided into two phases. The first phase included analysis of all the state high courts and Supreme Court decisions on terrorism. The second phase included the analysis of all the trial court decisions followed by scrutiny. A draft of the Compendium has been submitted to the NIA officials.

Project from Central Information Commission, Government of India

Central Information Commission has entrusted a project to the Indian Law Institute on "Evaluation of Transparency Audit of Public Authorities". The study is under progress.

RESEARCH PUBLICATIONS

Released Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 59 (1) (January- March, 2017).
- *ILI Law Review* 2017 (Summer Issue).
- Book*: Emerging Competition Law* (2017).

Forthcoming Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 59 (2) (April- June, 2017).
- Book on *Right to Bail.*

E-LEARING COURSES

Indian Law Institute offers e-learning courses of three months duration on "Cyber Law" and "Intellectual Property Rights Law"

Cyber Law

The 28th batch of course started from September 1, 2017. A total of 77 students enrolled for this batch.

Intellectual Property Rights Law

39th batch of the course started on September 1, 2017. A total of 82 students were enrolled for this batch.

LIBRARY

Library Orientation was provided to the newly admitted students of LL.M.(2017-2018 batch). A brief presentation was given to the students about the library and its resources by the library staff. Besides the orientation, training/interactive sessions were also organized for various subscribed e-Resources such as Manupatra, Lexis India *etc.* in the month of September.

Library added around 205 articles to its catalogue on various topics such as Company Law, Cyber Law, ADR, Employment, Human Rights, Intellectual Property Rights, Muslim Law, Triple Talaq *etc.*

Library subscribed to a new monthly journal namely, "Right to Information Reporter (RTI Reporter)" which is a monthly journal covering cases on Right to Information from various courts in India.

ISSN 2455-7242

23 Legal Officers from Republic of the Union of Myanmar visited the Library on July 26, 2017. A brief introduction was given to them about various resources and services available with the library. They were highly impressed with the rare collection of books and journals.

Around 33 students from Bengal Law College, University of Burdwan, 24 students from Law College Durgapur, West Bengal and 52 students from Sunder Deep College of Law, Ghaziabad visited the Library on August 21, September 11 and 27, 2017 respectively.

STAFF ACTIVITIES

Sonam Singh, Library Superintendent and Sanjeev Kumar, Library Assistant attended 'One Day National Seminar on Digital Licensing: Smart Decisions for Smart Libraries' organized by NLU Delhi on August 9, 2017 at NLU, New Delhi.

VISITS TO THE INSTITUTE

33 Students of Bengal Law College, Santiniketan visited the Institute on August 21, 2017.

Students of Hooghly Mohsin College, Hooghly, West Bengal visited the Institute on September 14, 2017.

24 Students of Law College Durgapur, West Bengal visited the Institute on September 11, 2017.

FORTHCOMING EVENTS

University Grants Commission (UGC) expert committee for review of deemed university status is scheduled to visit the Institute from October 8-10, 2017.

SAARC Law India Chapter and Indian Law Institute will jointly organize "Silenced Voices, Shattered Dreams Enslaved Lives - Review and Discussion on Existing Legal Framework for Protection of Victims of Child Marriages in India" on October 7, 2017 at the Institute.

Indian Law Institute and NHRC will jointly organize Two-days Training Programme for First Class Judicial Magistrates on ***"Human Rights: Issues and Challenges"*** on October 7 - 8, 2017 at the Institute.

LEGISLATIVE TRENDS

THE INDIAN INSTITUTES OF INFORMATION TECHNOLOGY (PUBLIC-PRIVATE PARTNERSHIP) ACT, 2017

(August 9, 2017)

An Act to declare certain Indian Institutes of Information Technology established under public-private partnership as institutions of national importance, with a view to develop new knowledge in information technology and to provide manpower of global standards for the information technology industry and to provide for certain other matters connected with such institutions or incidental thereto.

Key Highlights:

- The Act declares 15 existing Indian Institutes of Information Technology established through public-private partnership as institutions of national importance and specifies the nature of partnership between industrial partners, state and central governments.
- **Establishment of an institute**: In order to establish an institute, the state government will identify at least one industry partner for collaboration and submit a proposal to the centre. The centre will examine the proposal based on certain criteria, which include: (i) the capital investment for establishing the proposed institute, to be borne by the centre, the concerned state government and industry partners (ratio 50:35:15); (ii) expertise and standing of the

industry partners; (iii) the assessment of the capability, financial and other resources of the industry partners to support the institute; and (iv) the availability of adequate physical infrastructure (water, electricity, road connectivity, etc.) and land (50 to 100 acres), to be provided by the state government free of cost.

- **Role of the industry partner**: The industry partner will have powers which include: (i) co-creating programs as per the requirements of the industry; (ii) actively participating in the governance of the institutes; and (iii) funding. (Section 11(6)).

- **Funds of the institute**: Each institute shall maintain a fund which will consist of funds from the government and other sources including fees, grants and donations. Further, each institute will create a corpus fund for its long term sustainability. This fund will be credited with a certain percent (notified by the central government in accordance with the Income Tax Act, 1961) of the net income of the institute and donations made specifically towards such corpus fund. (Section 26-28).

- **Dispute resolution**: Any dispute arising out of a contract between an institute and any of its employees will be referred to a tribunal of arbitration. The tribunal consists of one member appointed by the institute, one member nominated by the employee, and an umpire appointed by the visitor (President).

THE PUNJAB MUNICIPAL CORPORATION LAW (EXTENSION TO CHANDIGARH) AMENDMENT ACT, 2017

(August 26, 2017)

The Act amends the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 and extends the provisions of the Punjab Municipal Corporation Act, 1976 to the Union Territory of Chandigarh.

Key Highlights:

Under the 1994 Act, the central government has the power to levy Entertainment Tax and Entertainment Duty for Chandigarh. The Ordinance transfers these powers from the central government to the Municipal Corporation of Chandigarh.

This is consequent to the Constitution (101st Amendment) Act, 2016 which subsumes Entertainment Tax with the Goods and Services Tax, except where it is levied by a panchayat or a municipality.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (AMENDMENT) ACT, 2017

(August 10, 2017)

An Act further to amend the Right of Children to Free and Compulsory Education Act, 2009. According to the amendment bill, every teacher appointed or in position as on March 2015 is now required to acquire the minimum qualifications by 2019.

Key Highlights:

The Right of Children to Free and Compulsory Education (Amendment) Bill, 2017 was passed on August 2017. According to the existing Act which came into effect from 1 April, 2010, every teacher appointed or in position were to acquire minimum qualifications within five years by March 31, 2015.

The amendment will help teachers save their jobs. When the RTE Act was implemented in 2010, new schools were set up but qualified teachers were not available and unqualified teachers, including those with graduation degrees, were recruited, according to the government.

There are around 11 lakh teachers in total who are without proper qualification the government has brought this Act in order to let these teachers complete Bachelor of Education (B.Ed.) and other professional

ISSN 2455-7242

degrees. This proves that education is not a political agenda, it is a national agenda and the learning outcome for school children will only improve if the quality of teachers at the government schools is enhanced.

THE BANKING REGULATION (AMENDMENT) ACT, 2017

(August 25, 2017)

The recently introduced Banking Regulation (Amendment) Act, 2017 seeks to amend the Banking Regulation Act, 1949 and replace the Banking Regulation (Amendment) Ordinance, 2017.

It empowers the RBI to resolve the problem of stressed assets and initiate insolvency resolution process on specific stressed assets. These proceedings will be under the recently enacted Insolvency and Bankruptcy Code, 2016 (IBC). The current level of the NPAs indicate a stressed banking system where the lending capacity of banks is limited, thereby affecting investment and economic growth.

The government has justified these provisions as, "urgent measures required for their speedy resolution to improve the financial health of banking companies for proper economic growth of the country". Hence powers under section 35A can be invoked to initiate recovery proceedings under the Insolvency and Bankruptcy Code, 2016.

LEGAL JOTTINGS

Mens rea not essential to establish fraud for PFUTP Regulations

The information of possible trades that the company is going to undertake is the confidential information of the company concerned, which it has absolute liberty to deal with. Therefore, a person conveying confidential information without authority to another person (tippee) breaches his duty prescribed by law. Further, if the recipient of such information knows of the breach and trades, and there is an inducement to bring about an inequitable result, then the recipient tippee is also liable for fraud.

Dealing with the legality of 'non-intermediary frontrunning' in security market under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations), the bench of NV Ramana and Ranjan Gogoi, JJ held that non-intermediary frontrunning may be brought under the prohibition prescribed under regulations 3 and 4 (1), for being fraudulent or unfair trade practice, provided that the ingredients under those heads are satisfied.

Further to attract the rigor of regulations 3 and 4 of the 2003 regulations, *mens rea* is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 regulation invite penal consequences on the defaulters, proof beyond reasonable doubt is not an indispensable requirement.

SEBI v. *Kanaiyalal Baldevbhai Patel*, 2017 SCC OnLine SC 1148, decided on September 20, 2017.

Health of the people shall precede commercial interest

Keeping in mind the adverse effects of air pollution and considering the necessity to give precedence to the health of the people in Delhi and in the NCR over any commercial or other interest the apex court issued elaborate directions and upheld the human right to breathe clean air and the human right to health.

The directions issued by the court included:

> The district magistrates will ensure that fireworks are not burst in silence zones, away from hospitals, nursing homes, primary and district health-care centres, educational institutions, courts, religious places.

The number of temporary licences for crakers should be capped at 500.

The Department of Education of the Government of NCT of Delhi and the corresponding Department in other States shall formulate a plan of action through the school staff, volunteers and NGOs to sensitize and educate school children on the health hazards and ill-effects of breathing polluted air, including air that is polluted due to fireworks.

Ensure strict compliance with the notification dated January 27, 1992 regarding the ban on import of fireworks. Also manufacture of fireworks containing hazardous chemicals like antimony, lithium, mercury, arsenic and lead are prohibited.

The suspension of permanent licences is lifted for the time being. However, the suspension might be reviewed after Diwali depending on the ambient air quality.

The Central Pollution Control Board (CPCB) and the Fireworks Development Research Centre should jointly conduct research on the impact of bursting fireworks and detoriation in air quality.

Arjun Gopal v. *Union of India*, 2017 SCC OnLine SC 1071 decided on September 12, 2017].

FACULTY NEWS

Manoj Kumar Sinha participated and presented a paper in ALIN General Meeting and International Conference on "*Land Expropriation in Asia- Current Status and related legal Issues in Asian Countries",* jointly organised by ALIN and Faculty of Law, Kathmandu, September 15, 2017.

Invited as a chief guest to inaugurate the one day conference on "GST in India in context of International Law" on August 6, 2017, organised by Nawada Vidhi Mahavidyalaya, Bihar, August 6, 2017.

Delivered a talk to participants of Faculty Development Programme on "Perspectives of Research in Human Rights" organised by University of School of Law and legal studies, IP University, New Delhi, July 20, 2017.

Furqan Ahmad chaired one session on September 26, 2017 in a Two-day National Seminar on "The Idea of Peace, Humanism and Tolerance in Islam", from September 25-26, 2017 organised by India-Arab Culture Centre, Jamia Millia Islamia, New Delhi.

Anurag Deep participated as a member of the jury in the 17th Henry Dunant Memorial Moot Court Competition (National Round), on 21-24 September 2017 jointly organised by Red Cross [ICRC] and Indian Society of International Law.

Delivered a lecture on *"The Constitution of India-An Over View (In Contrast of Myanmar Constitution)"* in the interaction programme for the Judicial Officers of Myanmar on July 23, 2017.

Delivered a lecture on *"Research Problems, Research Questions And Hypothesis In Legal Research"* on July 20, 2017 in One Week National Workshop/FDP on "Multi-disciplinary Approach in Law and Applicability of Research in Management " from July 17-22, 2017 at Ideal Institute of Management and Technology & School of Law, Karkarduma, New Delhi.

His article "Rome Statute of ICC *vis-a-vis* Indian Criminal Jurisprudence: A Comparative Perspective," was published in *ISIL Yearbook of International Humanitarian and Refugee Law*, Vol. XIV-XV 2014-15, The Indian Society of International Law, New Delhi.

Jyoti Dogra Sood delivered a special lecture on the topic *"Role of Victim in Criminal Justice Delivery System"* in a Sensitization Programme on Human Rights and Law on September 15, 2017 organised by the Delhi Judicial Academy.

Delivered a lecture on *"Internally Displaced Persons"* to the Legal Officers of Myanmar in a

training programme (July 24-28) conducted by the Indian Law Institute.

Interacted with the Government Lawyers from Nepal on Rights of Victims in the Indian Law Institute on July 13, 2017.

Arya. A. Kumar, participated in the two day workshop on "New Vistas on Sports Law: Challenges and Opportunities" jointly organised by Indian Society of International Law and Sports Economic and Marketing, SGTB Khalsa College, University of Delhi on September 9-10, 2017 at ISIL Delhi.

Successfully completed the 119th four week orientation programme from August1-29, 2017 and the 1st three week refresher course in Global Studies (Interdisciplinary) from September 6-26, 2017 from Human Resource Development Centre, Jamia Millia Islaima University, Delhi.

Contributed a paper titled *"International Terrorism: Issues and Challenges"* in the Vivekananda Journal of Research, Vol no. 6, Issue 1, 2017, Pp.36-51.

Jupi Gogoi delivered a lecture on *'Geographical Indications and its importance in developing countries'* on July 27, 2017 to the Judicial Officers of Myanmar in a training programme from July 24-28 conducted by the Indian Law Institute.

Attended a Refresher Course on Global Studies from September 6-26, 2017 (HRDC, Jamia Millia Islamia, Delhi).

Vandana Mahalwar was invited to deliver a lecture on *"Protection of Copyright and Trade Secrets"* at the National Institute of Food Technology Entrepreneurship and Management on September 23, 2017.

Delivered a special lecture on *"International Protection of Copyright and Related Right"* to Legal Officers of Myanmar on July 28, in a training programme conducted by the Indian Law Institute.

Deepa Kharb attended a Refresher Course on Global Studies from September 6-26, 2017 (HRDC, Jamia Millia Islamia, Delhi).

Delivered a talk on *'Recent Judicial Trends on Enforcement of IPR'* on July 25, 2017 to the Legal Officers of Myanmar in a training programme conducted by the Indian Law Institute and Ministry of External Affairs, Government of India from July, 24-28;

Susmitha P Mallaya participated in the First Three-Week Refresher Course on Global Studies conducted by UGC-HRDC Centre at Jamia Millia Islamia from September 6-26, 2017.

Contributed an article on "Competition Law and Copyright Law in India: An Interface" in Company Law Journal (ISSN 0010-4019 August, 2017), pp.61-68 (J).

Contributed a chapter on *"Competition Law and Consumer Welfare"* in Sairam Bhat (ed), Privatization and Globalization, Changing Legal Paradigm, Eastern Law House, Calcutta/New Delhi (ISBN 978-81- 7177-330- 5, 2017), pp.146-157.

Stanzin Chostak appeared for his Ph.D, viva-voce exam on the August 24, 2017 at the Faculty of Law Jamia Millia Islamia, Delhi. The result of the same was notified by the University on September 4, 2017 declaring him eligible for the award of the degree of Doctor of Philosophy (Law). His thesis is mainly an empirical study on the topic "Impact of Climate Change on Mountain and Downstream Communities: A Socio-Legal study with special reference to Ladakh".

Latika Vashist participated in the Orientation Programme at Centre for Professional Development in Higher Education, University of Delhi from August 24 to September 21, 2017.

Invited to deliver a lecture at National Conference on Post Colonialism in India at Amity Law School, Amity University on August 23, 2017.

Was a resource person on the theme of "Gender and the Constitution" at the Training Programme for Legal Officers for Myanmar, jointly organized by Ministry of External Affairs and ILI on July 24, 2017.

ISSN 2455-7242

CASE COMMENTS

Re - Inhuman Conditions in 1382 Prisons

2017 (11) SCALE 493

Decided on September 15, 2017

The Supreme Court *In Re-Inhuman Conditions in 1382 Prisons* issued Guidelines relating to Prison Reforms in the Country. The court took note of the letter written by former Chief Justice R.C. Lahoti, in which he highlighted four issues regarding prisons. The four issues are (1) overcrowding in prisons; (ii) unnatural death of prisoners; (iii) gross inadequacy of staff; and (iv) available staff being untrained or inadequately trained. The court issued certain directions regarding the overcrowding of prisons on February 5, 2016. In the present decision of 15 September 2017 the court considered the issues related with the unnatural deaths in prisons and issued important directions and measures to combat cases of custodial deaths, including suicides, in prisons. The court examined various reports and guidelines on custodial deaths and directed the government to circulate some of them to the state governments. In this regard one specific document, the Guidelines on Investigating Deaths in Custody adopted by *the International Committee of the Red Cross* (ICRC) in relation to natural and unnatural deaths was brought to the attention of the court. According to the ICRC's Guidelines 'death' is the irreversible cessation of all vital functions, including brain activity. Death is natural when it is caused by disease or ageing process. It is unnatural when the causes are external, such as intentional injury (homicide, suicide), negligence or unintentional injury (death by accident). In the court's view the ICRC Guidelines contain important standards that should be circulated by the Central Government to all the state governments. It was highlighted by the *Amicus* that a large number of unnatural deaths are attributed to suicides. On this issue, the National Human Rights Commission of India (NHRC) published a monograph in 2014 entitled *Suicide in Prison- Prevention Strategy and Implication from Human Rights and Legal Points of View* which highlighted that during the period 2007-2011, deaths in prisons on account of suicide formed 71% of the total number of natural deaths. According to the NHRC report there are two causes for such suicides: (1) the environment of the jail and (2) the crisis situation faced by the inmate. NHRC report suggested various protective measures to reduce the number of suicides in prisons. The court observed that the report is very useful in tackling such a problem and directed the government to freely distribute the monograph among the staff and prisons all over the country. It was also brought to the notice of the court that the NHRC has been frequently issuing directions to the state government regarding custodial deaths but that, unfortunately, states have not taken adequate measures for the effective implementation of instructions issued by the NHRC. Further, the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules) adopted by the United Nations General Assembly on December 17, 2015 were brought to the attention of the court. In the year 2016, a Model Prison Manual was issued by the Ministry of Home Affairs. However, it was submitted before the court that the subject of prisons was a state subject in entry 4 of list II of the Seventh Schedule to the Constitution. Therefore, the burden of improving prisons conditions lies on the state though it must be stressed that the Central Government will assist state governments within the constitutional framework. The issue of compensation for unnatural deaths to family members of victims was also discussed. The court observed that in many cases the high courts and the Supreme Court granted compensation to family members of the victim and despite such compensation awards, the number of cases of unnatural deaths continues to increase. The court emphasized that it is of utmost importance to safeguard the life and guarantee human dignity to the extent possible even in prisons as otherwise article 21 of the Constitution will remain dead letter. Noticing that there is no documentation of unnatural deaths of children in child care institution, the court emphasised that this

ISSN 2455-7242

matter should be put on the agenda of the Central Government and the state governments. The unnatural deaths of children in such institutions must be looked in seriously by all the state institutions. The court issued 11 important directions for the implementation by the Central Government and the state governments. No doubt the cases of unnatural deaths in prisons will definitely decline if the court directions are implemented effectively by the states. The sacred duty of the court is to protect these fundamental human rights of the citizens. custodial violence, including torture and death in the lock-ups, strikes a blow to the rule of law, which demands that the powers of the executive should not only be derived from law but that they should also be limited by law.

Manoj Kumar Sinha

Shayara Bano* v. *Union of India

2017 SCC On Line SC 963

Decided on August 22, 2017

Sharia perspective :

The recent judgment on Triple *Talaq* reflects some confused thinking and expresses its wishes for the law reform so that it should not be used as a weapon against the women. I appreciate that the apex court has rightly described *talaq-ul-biddat* and its position in various schools but they could only pose the problem without any proper solution. However, the solution is already prescribed in the Islamic Jurisprudence and even Hanafi law itself.

In 1993, Tilhari J. from the High Court of Allahabad in the case of *Khatoon Nisa* held the triple *talaq* illegal and unconstitutional. But Constitution Bench of Supreme Court did not take cognizance as the issue involved was not pertaining to triple *talaq*.

The remedy was prescribed by this humble student to begin with through the medium of *The Indian Express* editorial in August 1994 title "Understanding the Islamic divorce" and which later took a shape of the Book "*Triple Talaq: An Analytical Study with emphasis on socio-legal aspects*" (1994). The book contains a full chapter on Doctrine of *takhyer* (eclectic choice) based on which Dissolution of Muslim Marriages Act, 1939 was passed and thereafter it was adopted by a large number of West Asian countries. This piece of legislation became a watershed development for Muslim women and that's why during the debate, non-Muslim women members of the legislative assembly were crying as to why they were deprived of this big relief *i.e.,* getting rid of their undesired husbands.

Though the judgment has many facets, however, the discussion is confined to the validity of triple *talaq* in *sharia* only and Kurian J mentions in detail the position of all the schools as well as the sources of Islamic law which talks about the validity of the triple *talaq*. However, he could not recognise that everything which is bad in theology is not bad in law and he further could not appreciate that everything which is not clearly mentioned in Quran can still be held as part of Islamic law because Islamic law has four primary sources apart from secondary sources that is *Quran, Hadith, Ijma* and *Qiyas*. For example one third ceiling in law of will does not find mention in the Holy Quran and Prophet Sunna is not expressly referred in his regard. However all the Muslim jurists including Shia and Sunnis are in agreement about one third restriction of the will. It is admitted that here we find rationale in law unlike triple *talaq*.

The other reservation that I have with the learned judge is that whether triple *talaq* has been coming down from the times of Prophet or is it the innovation of the second Caliph is still debatable. Though it has always remained controversial but at the same time, it has been recognised by some jurists and therefore not only Hanafi school but all the Sunni schools (*Shafai, Hanbali* and *Maliki*) have unanimously approved this form of *talaq* and that's why apart from Quran other three sources of Islamic law are replete with the permissibility of this type of *talaq,* though with certain differences based on intention of the person who pronounces the *talaq*.

It is astonishing to note that our learned judges highlighted the problem trying to give relief to the women but could not provide any proper device for their emancipation and failed to refer the doctrine of *takhayer* based on which all the Muslim countries initiated their reforms.

The miserable situation was faced by Muslim women during early 19th century also because they had no recourse to get rid of their undesired husbands as the Hanafi law was followed rigidly in India which had an effect of considerably restricting women's right to seek dissolution of marriage by *Qadi* or a judge. After her marriage the woman facing situations like disappearance of her husband, his lunacy, his impotence and his refusal to provide maintenance in spite of his ability to do so was left with virtually no remedy for the dissolution of their marriage. It was at this juncture that Maulana Thanvi wrote his monumental book "*Al-Hilat al-Naizaah*" (lawful device for disabled women). A Bill was prepared based on the suggestions and recommendations of Maulana Thanvi which was introduced in the central legislature by Mohd. Ahmed Kazmi in 1936 and was eventually enacted in 1939. Maulana Thanvi opines "it is likely that Hanafi School may be questioned on the grounds of adequacy. The answer of this would be that this school does also allow with certain conditions subscription to the views of other *mujtahid* in the event of some dire need". This is known as *takhiyar.*

Apart from the above, the jurisprudence of *Istihsaan* is also provided in Hanafi law. The regard of custom, propriety and suitability of circumstances which have been observed in Hanafi legal system is scarcely to be found anywhere else. Hanafi jurists interpret the word *Istihsaan* as meaning the seeking of the best course for general welfare. The general spirit of Islamic law and its widespread purpose is to avoid hardship and considering the needs and circumstances of the people. Hence according to suitability, another practical method was adopted which was denoted by the word *Istihsaan.* That's why the renowned Hanafi scholars like Mufti Kifayat Uallah and Maulana Abdul Hai *etc,* were of the opinion that the three *talaqs* in the same sitting should be treated as only one *rajai* (revocable *talaq*) according to views of *Ahle Hadith*. And the same is reported by leading companions like Ibne Abbas, Taus, Akrama, Ibne Ash *etc.*

The rules of *Ahl-e-Hadith* and Shia schools are indeed path breaking step in law of *talaq* in India and its opposition by some Hanafi *ulema* is unfortunate. I do believe that if Quran, *Hadith* and other Islamic legal treaties will be interpreted by the legislature and the courts, they can never be without pitfalls as Krishna Iyer J says "when judicial committee of Downing Street interprets Manu and Mohammed of India and Arabia, marginal distortions are inevitable" and this saying of Krishna Iyer is also visible in the present day judgments.

The court directed the legislature to make the law in this regard. A woman activist few days back was lamenting that had the same thing been done by our *ulema*, we would have enjoyed better fruits. Still the doors are not closed by the learned judges for *ulema*. Before any legislation is initiated, our *ulema* themselves must come forward and formulate a draft following the doctrine of *takhayer* and *istihsaan* declaring triple talaq as one single revocable talaq like some Muslim countries. And the copy of the same should be gifted to the Supreme Court for their kind information then it would be right to say- better late than never.

Furqan Ahmad

Constitution Law Perspective :

Shayara Bano v. *Union of India* covers issues of *Shariyat* law and constitutional law. The comment of this author is focused only on the constitutional law (arbitrariness issue under article 14).

The judicial delineation of principle of equality under article 14 follows two tests. Classification test and arbitrariness test. 'Classification test' is traditional, undisputed and established test to ensure the discrimination is constitutionally permissible.

ISSN 2455-7242

'Arbitrariness test' is comparatively new, controversial and yet to be established test. It is argued that arbitrariness doctrine allows the court to substitute its own wisdom over other wings of states. Moreover arbitrariness as a norm to test the validity of executive decisions or subordinate legislation is permissible but *can arbitrariness under article 14 goes to the extent of declaring an enactment as unconstitutional?* The recent authority on the point is (or was) *Rajbala* case (2015) where a division bench expressly refuses arbitrariness (under article 14) as a ground to declare an enactment unconstitutional.

This issue again came for decision under *Shayara Bano* v. *Union of India* (popularly known as *Triple Talaq* judgment) where it was conclusively and affirmatively decided. In this case 'Triple Talaq at one go by a Muslim husband' has been declared illegal by majority of 3:2. According to Nariman J (with Lalit J) section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 Act seeks to recognise and enforce Triple Talaq, (Kurian J disagreed on this). It is within the meaning of the expression "laws in force" in article 13(1). The *ratio decidendi* in one line is the fact and practice that a Muslim man can break the marital tie capriciously and whimsically without any attempt at reconciliation so as to save it. This fact and practice is rampant. It was regulated and protected under section 2 of Muslim Personal Law (Shariat) Application Act, 1937 Act. Therefore, this provision (to that extent) and practice (of instant triple talaq) is against the principle of article 14 as it is manifestly arbitrary. However, for the main argument under article 14 that the provision is 'discriminatory' the court held that 'manifest arbitrariness' being narrower ground, there is no need to go in 'discrimination' or 'classification' argument.

Nariman J has elaborately discussed the strength and scope of arbitrariness principle. The breeding grounds for rule of arbitrariness under article 14 has been traced back in early sixties where Subba Rao J, delivering his dissenting opinion in *Lachhman Das* v. *State of Punjab*, (1963) 2 SCR 353 at 395 warned that limiting article 14 to 'classification' only will not serve the purpose of equality. However the initial case which should get credit for it is *State of West Bengal* v. *Anwar Ali Sarkar* (AIR 1952 SC 75). Nariman J quotes *Ajay Hasia* (1981) 1 SCC 722 to indicate that constitution bench case has already settled heat and dust beyond controversy and *Babita Prasad* v. *State of Bihar*, (1993) Suppl. 3 SCC 268 at 285, a division bench also follows the same view. Then Nariman J took support from *Ramana Dayaram Shetty* v. *The International Airport Authority of India* (1979) 3 SCC 489. However, in none of these cases (except *Maneka Gandhi*) the validity of an enactment (primary legislation) was questionable. It was an executive decision (secondary legislation) in all these cases. *Nariman J should be admired for analyzing threadbare K.R. Lakshmanan (Dr)* v. *State of T.N.* (1996) 2 SCC 226 *which is first important decision that has weight for the purpose (i.e., whether arbitrariness can be a ground of validity for a legislation?).* The court here declared that the provisions of an Act are "discriminatory *and arbitrary* and as such violate and infract the right to equality enshrined under Article 14 of the Constitution." The court then concentrated on a full bench decision of *McDowell & Co. [*(1996) 3 SCC 709*] which was the biggest hurdle because it clearly stated that arbitrariness is no ground to declare a provision of an enactment unconstitutional.* Nariman J declared that *McDowell* is *per incurium* and not a good law because of two reasons, *i.e.*, it overlooked the precedents of higher benches (*Mohd. Arif* v. *Supreme Court of India* [(2014) 9 SCC 737] and *Mithu* v. *State of Punjab* [(1983) 2 SCC 277] as well as coordinate benches and it has inherent contradictions. He concluded that manifest arbitrariness can be a test to declare an executive action, a delegated legislation as well as a primary legislation as unconstitutional.

One of the constitutional issue which seems to be conclusively settled in this case is *whether the doctrine of arbitrariness under art 14 can be used to declare an legislation unconstitutional*. The majority of Nariman J (with whom UU Lalit J agreed) has discussed this matter threadbare. It held that an

enactment can be declared unconstitutional under article 14 if it is arbitrary in nature. Kurian J also supported the 'illuminating exposition of law' by Nariman J and expressed his principle statement that he is of 'strong view that the constitutional democracy of India cannot conceive of a legislation which is arbitrary,' though he has not declared this provision of enactment as arbitrary. This restatement of the principle of manifest arbitrariness will ensure greater liberty and equality to people. It will also bring certainty in the decisions of the courts because the Supreme Court had inconsistent finding on this issue. However, it will create difficulties in policy making and political decisions of state. The decision of *Rajbala* [(2016) 1 SCC 463] comes in doubts because it has based its finding on *McDowell*. *Rajbala* has refused to go into the arbitrariness issue while examining the constitutionality of the amendment in Panchayat Raj Enactment in Haryana because of *McDowell* and other reasons. Now a fresh look to *Rajbala* [and *Binoy Viswam* (2017) 7 SCC 59] may be warranted.

Anurag Deep

Justice K S Puttaswamy (Retd)* v. *Union of India

2017 (10) SCALE 1

Decided on August 24, 2017

In this significant judgment, the question before the nine judge bench of the Supreme Court was whether right to privacy is a constitutionally protected value? This right to privacy issue was addressed in 2005, by a three bench judges while considering the constitutional challenge of the aadhar card scheme for the collection of demographic biometric data wherein the motive of the government was challenged on the ground that it violates right to privacy as enshrined in the fundamental rights of the Constitution. By referring to *M.P. Sharma* v. *Satish Chandra District Magistrate Delhi*, (1954) SCR 1077 and *Kharak Singh* v. *State of U.P* (1964) 1 SCR 332 it was argued by the government that Indian Constitution does not specifically protects 'right to privacy'. In both the cases the Supreme Court held that privacy is not a fundamental right.

On the other hand it was argued that both M.P. Sharma and *Kharak Singh*'s cases were founded on the principles expounded in *A.K. Gopalan* v. *Union of India*, 1950 SCR 88 which construed each provisions on Fundamental Rights embodying a distinct protection was held not a good law by an eleven judge bench in *R.C. Cooper* v. *Union of India* (1970) 1 SCC 248. Hence it was argued that basis of these two decisions is not valid. Moreover it was also urged that in *Maneka Gandhi* v. *Union of India*, 1978 SCR (2) 621 the minority judgment of Subha Rao J in Kharak Singh was specifically approved of and the decision of the majority was overruled.

Since the matter involved constitutional interpretations it was referred to a larger bench and the decision was rendered by a bench of nine judges comprising Chief Justice of India J.S Khehar and Jasti Chelameswar, S.A Bobde, R.K Agarwal, Rohinton Nariman, A.M Sapre, D.Y Chandrachud, S.K Kaul and S. Abdul Nazeer JJ. The court overruled *M.P. Sharma* and the majority opinion in *Kharak Singh* cases to the extent they indicate to the contrary. Judges made important observations regarding 'right to privacy'. Chandrachud J while delivering the main judgment on behalf of Chief Justice J.S. Kehar, R.K. Agarwal J himself and S. Abdul Nazeer J while examining the jurisprudential basis of the right to privacy of individuals held that "it is inherent in the natural law theory of rights" and further elaborated that "the idea that the individuals can have rights against the state that are prior to rights created by explicit legislation has been developed as part of the liberal theory propounded by Ronald Dworkin.

Chelameswar J elaborated different facets of right to privacy which includes 'a women's freedom of choice whether to bear a child or abort her pregnancy', 'individual's freedom to choose to work, to travel, to choose residence' etc and concluded that right to privacy is subject to reasonable restrictions [*Id* para.38]. He also observed that right to privacy is one of the core freedoms which are to defended to prevent state's interference. By stating that right to privacy emantes from article 19 of the Constitution, A.M.

ISSN 2455-7242

Sapre J held that privacy has multiple facets and therefore the same has to go through a process of case-to case development. Bobde J emphasized on the inalienable nature of right to privacy which was supported by R.F. Nariman J who held:

> This reference is answered by stating that the inalienable fundamental right to privacy resides in Article 21 and other fundamental freedoms contained in Part III of the Constitution of India. *M.P. Sharma* (supra) and the majority in *Kharak Singh* (supra), to the extent that they indicate to the contrary, stand overruled. The later judgments of this Court recognizing privacy as a fundamental right do not need to be revisited [*Id.*para.94].

Right to privacy has been a contentious issue addressed by the court in a plethora of cases. The unsettled position of right to privacy was settled with this historic ruling which clarified that 'right to privacy is a constitutionally guaranteed fundamental right. This progressive judicial interpretation has proved that the state has no right to arbitrarily interfere with the right to privacy of individuals. The beauty of the judgment is that it includes six separate judgments from different judges with a unanimous ruling that 'privacy is a fundamental right'. This important judicial dictum will be the *grundnorm* for the future privacy related case laws.

Arya. A. Kumar

Union of India* v. *Board of Control for Cricket for India

2017 SCC OnLine SC 991

Decided on August 22, 2017.

In the present judgment, Supreme Court of India resolved a long standing dispute between Prasar Bharati, Board of Control for Cricket in India (hereinafter referred as the "BCCI") and its licensees over re-transmission of live feeds of cricket matches. Telecasting/Broadcasting rights are leased out by the organizing body BCCI through competitive bidding. BCCI holds monopoly rights to organize cricketing events in the country. Grant of telecasting rights of these events is, therefore, a major source of revenue for the BCCI. These signals (live feeds) are transmitted via Doordarshan, cable and Direct-to-Home (DTH) operators.

The rights of these entities in respect of the live telecast of major cricketing events in the country and the consequential revenue implications were the core issues arising in these groups of appeals which were filed in the following circumstances. The Media Rights Agreement between Star India Pvt. Ltd.(hereinafter respondent 4) and BCCI assign exclusive rights in the favour of Star India Private Limited regarding telecast of cricketing events taking place in the country between April 2012 to March 2018. Prior to this period, these rights were lying with Nimbus Communications Ltd., Star India Private Limited, in turn, hired ESPN Software Pvt. Ltd (hereinafter respondent 3) for distribution of the telecast of all cricketing events covered by the Media Rights Agreement.

Section 3 of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007 (hereinafter 'the Sports Act, 2007'), requires respondent nos. 3 and 4 to share the live broadcasting signals of sporting events of national with the Prasar Bharati (entrusted with Doordarshan channels/ networks and Akashwani) for retransmission of the same through its terrestrial and Direct-to-Home. Section 3(2) distributes the revenue received from this retransmission in a 75:25 ratio in favour of the original broadcaster. Section 8 of the Cable Television Networks (Regulation) Act, 1995 (CTM Act hereinafter) requires all cable networks to run certain Doordarshan channels, notified by the state. Consequently all cable operators nationwide, by virtue of carrying DD1 (National) were granting access to cricket matches to their viewers. This arrangement was causing huge dent in the revenue collection of license holders in two ways- *one,* the cable operators were not required to subscribe to the specific sports channels of the respondents as they are getting the live feed of cricketing events free of cost

and *second,* losing a big chunk of the advertisement revenue since Prasar Bharati was broadcasting 'clean' live feed of the matches.

Aggrieved by the aforesaid perception of section 3 of the Sports Act, 2017, section 8 of the CTM Act and the consequential position, the BCCI and its original assignee one Nimbus Communications Limited filed writ petition, joined by Star India and ESPN as respondents later on, before the High Court of Delhi in 2007. The said writ petition was dismissed summarily by the learned single judge of the high court holding that the matter was beyond judicial scrutiny as it related to policy. However, in 2015, the decision of the single judge was reversed in the favour of BCCI and its licensees by the High Court of Delhi declaring section 3 as an '*expropriatory provision'* to be interpreted strictly leading to this SLP before the Supreme Court.

The appellants contended that the apex court should apply here a purposive approach towards the law. Sports Act, 2007 was enacted with an aim to maximise public access to sporting events of national importance notified under section 8. Therefore section 3 and section 8 should be read coextensively in the light of this objective and construed accordingly rather than be confined to re-transmission of the live signals compulsorily shared with Prasar Bharati by the content owners only on the terrestrial and DTH networks of Prasar Bharati, which goes against the mandate of section 3.The respondent on the other hand challenged section as being '*expropriatory'*.

The two judges bench consisting of Ranjan Gogoi and Navin Sinha JJ analysed expanse of the said right and the degree of curtailment thereof by virtue of the provisions of section 3 of the Sports Act, 2007 read with section 8 of the Cable Act, 1995 in the light of the contentions of both the parties. It came to the conclusion that the 'legislative intent' to allow section 8 of the Cable Act, 1995 to control section 3 of the Sports Act is not visible from the language of section 3 therefore, it would be most appropriate to construe that section 3 of the Sports Act, 2007 operates on its own. The court was not averse to respondent's contention that section 3 was *expropriatory* in nature in as much as it curtails the rights of right holders therefore held that it has to be interpreted very strictly.

This case is very interesting in one aspect that Prasar Bharati/state tried several arguments before the high court as well as the Supreme Court. The argument of public trust doctrine advanced on this issue of public access, claiming that broadcasting was an activity requiring the utilization of natural resources and that accordingly in a contest between private profits and public access, the latter would need to be given primacy, only to be dropped later on. Similarly the arguments on the right to free speech and cultural rights of citizens were retracted on appeal because of some recent Supreme Court judgments/trends on the interplay between private rights and public interest.

Rather than being a case giving precedence to private rights over public welfare the apex court supported the double judge bench decision on the matter reading a statutory limitation in the expression 'terrestrial networks' in section 3 of the Sports Act itself that the simultaneously shared live broadcasting signal can only be re-transmitted by Prasar Bharati without the intervention of a cable operator. The live broadcasting signal shared by respondent 3and 4 by virtue of section 3 of the Sports Act with Prasar Bharati, therefore, must not be carried in the designated Doordarshan channels under the 'must carry obligation' cast by section 8 of the CTN Act on cable operators.

However, an interesting argument forwarded by the respondent parties before the High Court of Delhi and the Supreme Court with regard to the nature of the rights conferred by section 37 of the Copyright Act, 1957 namely, whether the live telecast of a cricket match amounts to production of cinematograph film conferring on the author and its assignee the same inviolable rights that 33 the provisions of the Copyright Act confer on a copyright holder was unfortunately not addressed by the two judges bench. The bench instead restricted their analysis to the

question of the interaction between the Sports Act, 2007 and the Cable Act, 1995 only.

Deepa Kharb

Innoventive Industries Ltd* v. *ICICI Bank

2017 SCC OnLine SC 1025

Decided on August 31, 2017

The present case for comment is perhaps the first case decided by the apex court on the operation and functioning of the Insolvency and Bankruptcy Code, 2016 (IBC). The court gave extensive ruling on several crucial issues raised before it relating to the implementation of the Code with an object that all courts and tribunals may observe the paradigm shift in the law engendered by insolvency and bankruptcy proceedings.

In this case ICICI bank filed an application before the National Company Law Tribunal (NCLT), Mumbai to initiate corporate insolvency resolution process against the Innoventive Industries Ltd. This is the first application filed under section 7 of IBC on account of default made by the company in re-payment of amounts due under certain credit facilities availed from the bank. The company pleaded before the tribunal that the application filed by the bank stands suspended pursuant to a relief order passed by the Government of Maharashtra under the Maharashtra Relief Undertaking (Special Provisions) Act 1958 (MRUA) which provides to declare the industries overtaken by the state as 'relief undertaking' through government notification. The object of this state legislation is to protect the employment of the people who are working in such Undertakings. On the other hand, the IBC provides for overtaking of business of Undertaking by an 'Insolvency Professional' through a committee of creditors. Therefore, the company argued that since it is a 'relief undertaking' under the MRUA, provisions of IBC is not applicable. It also contended that no notice was issued to the corporate debtor to hear whether there is a default of payment by the company, moreover the ICICI bank had not taken the consent of the Joint Lenders Forum (JLF) before filing the Insolvency application. However, NCLT rejected these arguments by the company and admitted the insolvency application filed by the bank. It also declared moratorium and appointed an Interim Resolution Professional (IRP). National Company Law Appellate Tribunal (NCLAT) upheld the order of NCLT and dismissed the appeal filed by the company. It is clarified that adherence to principles of natural justice would not mean that in every situation the NCLT is required to afford reasonable opportunity of hearing to the corporate debtor before passing its order and held that while deciding applications under section 7 of IBC, NCLT need only to look at ingredients of the section provided. It also held that there was no repugnancy between the objects of the MRU Act and the IBC since the objects of the MRU Act and the IBC operate in different fields *viz.*, prevention of unemployment of the existing employees of a relief undertaking and protection of creditors of the said entity, respectively. The company approached the apex court against this order of the NCLAT. The apex court held that once an Interim Resolution Professional (IRP) is appointed to manage the company, the erstwhile directors, who are no longer in the management, cannot maintain the appeal on company's behalf – and since in the present case, *Innoventive* was the sole applicant – the appeal was not maintainable. However, it refused to dismiss the appeal on this aspect alone, observing that it is delivering a detailed judgment so that all courts and tribunals may take notice of the 'paradigm shift in law'.

This positive step from the part of apex court to speed up the insolvency process in the interest of economic growth of the country is commendable. It recognized that the insolvency code has brought about a paradigm shift in law and economic policy and undertook an in-depth examination of IBC provisions dealing with corporate insolvency resolution. It directed both the NCLT and NCLAT to keep in mind the principle objective of IBC and strictly adhere to the time frame within which the matter need to be decided. This elaborate judgment brings more clarity to the provisions of the IBC which will have dominance over other laws in force, however, a

negative perspective of this ruling is that once an IRP has been appointed, the powers of the board of director stand suspended which in turn curtail the right of directors to maintain an appeal on behalf of the company even if it pertains to challenge against the order of NCLT, in terms of the provisions of the Code. This may give rise to some practical concerns with respect to filing of appeals by the corporate debtor. This decision of apex court to recognize the significance that insolvency and bankruptcy law plays a vital role in debt financing deserves appreciation in the interest of financial stress faced by corporate sector especially banking sector in India.

Susmitha P Mallaya

Techi Tagi Tara* v. *Rajendra Singh Bhandari

2017(12) SCALE 39

Decided on September 22, 2017

The present case is related to the jurisdiction of National Green Tribunal (hereinafter NGT) Principal Bench, New Delhi. The fact of the case is that a public spirited environmentally conscious individual challenged the composition of the State Pollution Control Board (hereinafter SPCB) in the State of Uttarakhand and consequently the necessity of being extra careful in making appointments to the SPCB. The NGT was perturbed and anguished that some persons appointed to the SPCB did not have, the necessary expertise or qualifications to be members or chairpersons of such high powered and specialized statutory bodies and therefore did not deserve their appointment or nomination. The exercise of jurisdiction by the NGT in directing the state governments to reconsider the appointment of the Chairperson and members of the SPCBs and laying down guidelines for appointment of the chairperson and members of the SPCBs was challenged as not falling within the statutory jurisdiction of the NGT in the case under comment. Relevant sections are section 14 and 15 of the NGT Act concerning the settlement of disputes and relief respectively.

The Supreme Court (hereinafter the Court) while setting aside the judgment of the NGT held that on a combined reading of relevant provisions, it is clear that there must be a substantial question relating to the environment and that question must arise in a dispute rather than being an academic question. The court further held that the appointment of the chairperson and members of the SPCBs cannot be classified in any circumstance as a substantial question relating to the environment. At best it could be a substantial question relating to their appointment. Moreover, their opined that in the context of the Act, a dispute would be the assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form. As observed by the court the appointments that the court was concerned with are not 'disputes' as such or even disputes for the purposes of the Act. They could be disputes for a constitutional court to resolve through a writ of *quo warranto*, but certainly not for the NGT to venture into.

While dwelling on the importance of the appointment to the SPCBS the court emphasised as to how the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the state governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. It held that issues of sustainable development, public trust and intergenerational equity are not mere catch words, but are concepts of great importance in environmental jurisprudence. The judgment while adverting to various constitutional provisions also mentions that apart from the natural law obligation to protect and preserve the environment, there is also a constitutional obligation to do so.

Stanzin Chostak

Ms. Eera through Dr. Manjula Krippendorf* v. *State (Govt. Of Delhi)

2017 SCC OnLine SC 787

Decided on July 21, 2017

Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO) defines 'child' as

ISSN 2455-7242

any person who is below the age of 18 years. The issue before the court was whether this section can be interpreted broadly to include the concept of 'mental age' of a person or the age determined by psychiatry such that a mentally retarded person or an intellectually challenged person who has crossed the age of 18 years can also be included within the ambit of this section.

The appellant, represented by her mother, was suffering from cerebral palsy. Though biologically she was 38 years old, her mental age was approximated to six to eight years. It was argued on her behalf that the trial for her rape should be held by the special court set up under POCSO, keeping in mind her mental age. Under POCSO, she would be governed by a different procedure and would also be entitled to compensation. It was further contended that purposive construction requires that the word 'age' includes biological as well as mental age since the law which is meant "to protect the class, that is, child, leaves out a part of it though they are worse than the children of the age that is defined under the POCSO Act." Many statutes, including the IPC, depart from chronological age "by laying stress on capacity to understand the nature and consequence of the act." It was further submitted that a mentally retarded person is person "is incapable of understanding what is happening to her" and is therefore "equal to a child".

In, what I believe, is an important decision in the disability rights discourse, the court rightly rejected the above contentions. Dipak Misra J observed that the intention of the legislature must be respected in this regard. The Parliament, it was noted, has always maintained a difference between 'mental illness' and 'mental retardation'. Relying on *Suchitra Srivastava's* case, the court observed that there cannot be any dilution of the consent of persons with 'mental retardation': "[i]f a victim is mentally retarded, definitely the court trying the case shall take into account consideration whether there is a consent or not. In certain circumstances, it would depend upon the degree of retardation or degree of understanding. It should never be put in a straight jacket formula. It is difficult to say in absolute terms" (para 83).

In a separate and concurring judgment R.F. Nariman J relying on the doctrine of separation of powers, noted that "we would be doing violence both to the intent and the language of Parliament" if the word 'mental' was read into section 2(1) (d) of POCSO. He provided a close reading of various provisions of the POCSO (sections 5(f), 13(a), 27(3), 39) to categorically conclude that "the Act's reach is only towards the protection of children, as ordinarily understood" (para 30). He also referred to Medical Termination of Pregnancy Act, 1971, Maternity (section 2(b), 2(c), 3(4)(a)) as well as the Mental Healthcare Act, 2017 (sections 2(s), 2(t), 14, 15) to foreground the distinction between a woman who is a minor and an adult woman who is mentally ill. Similarly, the Rights of Persons with Disabilities Act, 2016 (sections 2(s), 4, 9, 18, 31) maintains that children with disabilities are treated differently from persons (above 18 years of age) with disabilities. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 also makes it clear that "whatever is the physical age of the person affected, such person would be a "person with disability" ...Conspicuous by its absence is the reference to any age when it comes to protecting persons with disabilities" (para 41).

Affirming the distinction between women suffering from cerebral palsy and children, this decision refuses to infantilize women with mental disabilities, under the pretext of state protection. It rather emphasises on legal agency and choice-making capacity of persons with disabilities. Treating them as children within the framework of POCSO would have resulted in an erasure of their capacity to consent as well as their right to sexual agency.

Latika Vashist

ISSN 2455-7242

STATES UNITS OF THE INDIAN LAW INSTITUTE

S.No.	Name of the State Unit	President
1.	Allahabad State Unit of the Indian Law Institute ,Allahabad High Court, Allahabad, Uttar Pradesh - 211 001	Hon'ble Mr. Justice Dilip Babasaheb Bhosale ,Chief Justice, Allahabad High Court.
2.	Andhra Pradesh State Unit of the Indian Law Institute, Hyderabad High Court , Hyderabad- 500 034	Hon'ble Mr. Justice Ramesh Ranganathan Acting Chief Justice, High Court of Judicature at Hyderabad
3.	Assam State Unit of the Indian Law Institute, Gauhati High Court, Gauhati, Assam -781 001	Hon'ble Mr. Justice Ajit Singh, Chief Justice, Gauhati High Court.
4.	Chhattisgarh Unit of the Indian Law Institute, High Court of Chattisgarh, Bilaspur, Chattisgarh - 495 220	Hon'ble Mr. Justice Thottathil Bhaskaran Nair Radhakrishnan ,Chief Justice, High Court of Chattisgarh
5.	Gujarat State Unit of the Indian LawInstitute, High Court of Gujarat, Ahmedabad, Gujarat - 380 060	Hon'ble Mr. Justice R. Subhash Reddy, Chief Justice, High Court of Gujarat.
6.	Himachal Pradesh State Unit of the Indian Law Institute, High Court of Himachal Pradesh, Shimla, Himachal Pradesh- 171 001	Hon'ble Mr. Justice Sanjay Karol,Acting Chief Justice, High Court of Himachal Pradesh.
7.	Jammu and Kashmir Unit of the Indian Law Institute, High Court of Jammu and Kashmir, Srinagar, Jammu and Kashmir - 190 001	Hon'ble Mr. Justice Badar Durrez Ahmed, Chief Justice, High Court of Jammu and Kashmir.
8.	Karnataka State Unit of the Indian Law Institute,High Court of Karnataka, Bengaluru, Karnataka - 560 001	Hon'ble Mr. Justice H.G.Ramesh, Chief Justice, High Court of Karnataka.
9.	Kerala State Unit of the Indian Law Institute, High Court of Kerala, Kochi, Kerala- 68 2031	Hon'ble Mr. Justice Antony Dominic, Chief Justice, High Court of Kerala.
10	Maharashtra State Unit of the Indian Law Institute, High Court of Bombay, Mumbai, Maharashtra - 400 032	Hon'ble Dr. Justice Manjula Chellur, Chief Justice, High Court of Bombay.

ISSN 2455-7242

11	Orissa State Unit of the Indian Law Institute, Orissa High Court, Cuttack, Odisha - 753 002	Hon'ble Mr. Justice Vineet Saran, Chief Justice, Orissa High Court.
12	Punjab and Haryana State Unit of the Indian Law Institute, High Court of Punjab and Haryana,Chandigarh -160001	Hon'ble Mr. Justice Shiavax Jal Vazifdar, Chief Justice, High Court of Punjab and Haryana.
13	Rajasthan State Unit of the Indian Law Institute, Rajasthan High Court, Jodhpur, Rajasthan- 342 005	Hon'ble Mr. Justice Pradeep Nandrajog, Chief Justice, Rajasthan High Court.
14	Sikkim State Unit of the Indian Law Institute, High Court of Sikkim, Gangtok, Sikkim - 737 101	Hon'ble Mr. Justice Satish Kumar Agnihotri, Chief Justice, High Court of Sikkim.
15.	Tamil Nadu Unit of the Indian Law Institute,Madras High Court, Chennai, Tamil Nadu - 600104	Hon'ble Ms. Justice Indira Banerjee, Chief Justice, Madras High Court.
16.	Uttarakhand State Unit of the Indian Law Institute, High Court of Uttarakhand, Nainital, Uttarakhand - 263 002	Hon'ble Mr. Justice K. M. Joseph, Chief Justice, High Court of Uttarakhand.
17.	West Bengal Unit of the Indian Law Institute,Calcutta High Court, Kolkata, West Bengal - 700 001	Hon'ble Mr. Justice Jyotirmay Bhattacharya, Acting Chief Justice, Calcutta High Court.

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.