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Editorial

The 26th United Nations Climate Change Conference, commonly referred to as the COP26 summit took place from October 31 to November 13, 2021, in the SEC centre, Glasgow, Scotland, United Kingdom. The COP 26 meeting was delayed by a year due to the Covid-19 pandemic. Every year, these meetings are held to build a robust global response to climate change. Each of these meetings yields, a series of decisions, which are given different names. In the current case, this has been called the 'Glasgow Climate Pact'. The representatives from around 197 countries have agreed to a new climate agreement this year, in the COP 26 summit. The COP 26 summit concluded on Saturday, November 13, with a deal, that recognises India's intervention for the world to "phase down" rather than "phase out" fossil fuels. However, several countries chastised India's position for suggesting that the coal power be phased down rather than phased out. There has been a failure to stay true to the pledge to limit temperatures at 1.5C at Glasgow. However, all countries have agreed to return to the negotiating table next year (2022), at a conference in Egypt, and to re-examine their national plans, with a view to increasing their ambition on emission cuts. Poor countries were also disturbed and felt dejected because the Summit failed to address their concerns about "loss and damage." The frequency of climate disasters has been rising rapidly, and many of these, cause large scale devastation. The impoverished and small countries, as well as the island states, are the hardest hit. There is no institutional framework in place to compensate these nations for their losses or to provide assistance and rehabilitation. The loss and damage provision in the Paris Agreement seeks to address that. The provisions did not receive much attention at the Summit, mainly because it was seen as an effort requiring huge sums of money.

The Glasgow Pact has offered some reprieve to the developing nations. It has allowed the carbon credits to be used in meeting countries' first Nationally Determined Contribution (NDC) targets. However, these cannot be used for meeting targets in subsequent NDCs. That means, if a developed country wants to buy these credits to meet its own emission reduction targets, it can do so till 2025. Most countries have presented climate targets for 2025 in their first NDCs. The COP26 summit, according to India, was a success because it brought forth the concerns and ideas of the developing world before the international community. The Union Minister for Environment, Forest and Climate Change, Bhupendra Yadav, head of the Indian delegation at the Glasgow conference, said that the world needs to wake up to the fact that the current climate crisis is being exacerbated by unsustainable lifestyles and wasteful consumption patterns in developed countries.

To sum up, one can say that we need to acknowledge the cautionary warning that was made by Antonio Guterres, the UN Secretary General. Guterres stressed that further urgent work was needed for achieving the intended goal, and underscored the urgency of the matter by using the words: "our fragile planet is hanging by a thread... we are still knocking on the door of climate catastrophe. It is time to go into emergency mode-or our chance of reaching net zero(emissions) will itself be zero."

Manoj Kumar Sinha

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Azadi Ka Amrit Mahotsav: Virtual Talk on “Access to Justice: Sensitizing Law Students to the Unmet Justice Needs of the Society” on October 11, 2021

The Indian Law Institute along with Ministry of Law & Justice, Government of India organised a webinar on the topic of “Access to Justice: Sensitizing Law Students to the Unmet Justice Needs of the Society” as part of the larger webinar series celebrating ‘Azadi ka Amrit Mahotsav’, on October 11, 2021. The speaker for this webinar was Professor (Dr.) Ranbir Singh, former and founding Vice Chancellor, National Law University, Hyderabad and Delhi.

Professor Singh began with addressing the need for the Law Schools to prepare its students to liberate the institutions of justice from their limitations; and to appreciate and understand the needs of the communities; to develop skills that will help the marginalised groups in the society. Professor Ranbir Singh acknowledged that this aim requires a radical change in the thinking of the upcoming lawyers i.e., in the manner in which they understand law and also in the manner in which they learn to implement law. The law students need to develop an understanding that law can be a tool for social change in the community where they practice law. Further, Professor Singh said that the role of law schools is central to building a legal system which serves the nation by serving millions of its own people. The law schools, while imparting legal education also have the duty to impart the understanding of complex social justice goals. In addition to this, the speaker further said that the law schools must acknowledge the needs of the society and the same shall be reflected in legal education. It is the duty of law schools to not merely prepare future litigators but to prepare development lawyers and empathetic policy makers. Access to justice is also a way to ensure sustainable peace in the society i.e., it prevents violent conflicts in the society by providing a peaceful alternative to resolve personal conflicts and achieve political goals. Lastly, the speaker resorted to the words of Vivekananda and said that the students of law must appreciate the debt they owe to the society they live in as citizens and they must use their education and skills to ensure access to justice and must aim to work towards the goal of social justice.

Azadi Ka Amrit Mahotsav: Virtual Talk on

“Environmental Rule of Law and Protection of Environment” on October 20, 2021

A virtual talk was organized by the Indian Law Institute on October 20, 2021 on the theme “Environmental Rule of Law and Protection of Environment”. Professor (Dr.) Satish C. Shastri, eminent academician and known expert in the field of environmental law graced the occasion as the keynote speaker for the session. Sounding a note of caution, Professor (Dr.) Shastri began his deliverance with the words, “प्रकृति रक्षितरक्षितः”, implying those who protect the environment shall be protected by it. Otherwise, if we failed to protect nature, it would imply the destruction of all. In his lecture, Professor (Dr.) Shastri explained how the concept of rule of law, has of late, been linked to the idea of preservation of environment through initiatives such as the first global report on environmental rule of law which has been released in 2019 by The United Nations. Discussing about the first global report on environmental rule of law, Professor (Dr.) Shastri listed out the following elements contained in the report: Fair, clear and implementable environmental law, public participation in environmental justice, accountability and integrity of institutions and accessible and responsive judiciary. He also discussed the three major components of environmental rule of law: Firstly, laws must be there to protect the environment. Secondly, there must be a machinery or institutional setup to frame the laws as well as for their implementation. Thirdly, there must be public participation. Explaining the concept of environmental rule of law further, he stated that in our country, we have environmental laws, and we are also trying to improve the legislations every day. He also mentioned the institutional mechanisms that are available in the country for the protection of environment. Placing emphasis on the need for accessibility to courts to enforce the right to clean and healthy environment, Professor (Dr.) Shastri mentioned about the constitutional provisions - article 32 and article 21, which have been widely used by citizens in India to complain against the violation of their fundamental rights. Professor (Dr.) Shastri also devoted some time to the discussion on the concept of EIA i.e., Environmental Impact Assessment. Post the deliverance of the talk, Professor (Dr.) Manoj Kumar Sinha thanked Professor (Dr.) Shastri for the comprehensive coverage of the theme.

Azadi Ka Amrit Mahotsav: Virtual Talk on Gender Equality and Labour Laws in India on October 26, 2021

A virtual talk was organised on October 26, 2021, on the topic “Gender Equality and Labour Laws in India.” The guest speaker for the session was renowned academician Professor (Dr.) Manjula Batra, Former Dean, Faculty of Law, Jamia Millia Islamia. With her vast expertise in the field of gender related laws, Professor (Dr.) Batra spoke eloquently about gender equality issues and labour rights in India. Professor (Dr.) Batra gave the examples of several constitutional provisions such as article 14, article 15(1), article 15(3), article 16, article 19 and the expansive interpretation of article 21 which promote the cause of gender justice. She also explained how provisions for equal pay for equal work, adequate livelihood for all including both men and women, as well as the development of labour laws with specific provisions for women took shape after the independence of the country. She also enumerated the list of legislations that have been specifically enacted for the issue of labour rights pertaining to women and listed out the following legislations: The Payment of Wages Act, Factories Act, Maternity Benefit Act, Employee State Insurance Act, and The Minimum Wages Act. She further discussed the 74th amendment to the Indian constitution in which there were specific provisions that were introduced for the reservation of women in the Panchayati Raj system. However, she was quick to point out that though women have been serving as sarpanch in several villages because of the provision of reservation, the representation was merely symbolic in a majority of cases. While discussing the provisions of Maternity Benefit Act, Professor (Dr.) Batra highlighted how despite there being a clear legislation, there was still a lot of difficulty that women had to face while applying for maternity leave in the private sector. Also, she expressed concern as to the issue of rampant discrimination that exists in the private sector and the pay disparity between the two sexes. She also discussed the Equal Remuneration Act, Article 39 of the constitution as well as the international obligations that have been incurred by India through the ratification of CEDAW, ICCPR, ICESCR, and UDHR. The talk also included a discussion as to several judgments pertaining to women’s rights such as *Air India v. Nargesh Meerza* as well as the issues pertaining to restitution of conjugal rights. Towards the end of the talk, Professor (Dr.) Batra mentioned

the proposed implementation of the labour law reforms in the country and described it as a major overhaul of the legislative framework.

Azadi ka Amrit Mahotsav: Virtual Talk on National Unity Day and Contemporary Imperatives for Legal Research in India on October 31, 2021

A virtual talk was held on October 31, 2021, on the theme “Contemporary Imperatives for Legal Research in India”. Eminent academician, Professor (Dr.) Afzal Wani delivered the talk for the event. Marking the birth anniversary of Sardar Vallabh Bhai Patel, October 31st each year is celebrated as National Unity Day. The session began with a commemoration of the contribution of Sardar Vallabh Bhai Patel to the cause of national integration. To begin the session, Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, administered the national unity pledge to all the participants in both Hindi as well as English. After the pledge, Professor (Dr.) Wani delivered his lecture wherein he apprised the participants about the changing role of legal education in the country. Professor (Dr.) Wani mentioned that legal education must cater to the development of the understanding of the ‘functions of law in society’. Turning his attention towards legal research, Professor (Dr.) Wani highlighted how legal research in the country was confined to popular topics such as on environmental issues, gender justice, pendency in courts etc. He further questioned: “What is the incentive/motivation for legal research for researchers in the country.” Professor (Dr.) Wani emphasized that the pursuit of legal research needs to be given a different orientation. Research today, he stressed, needs to be more original and creative. He further expressed that there was a pressing need to look beyond the traditional methods of legal research and how the same can no longer be confined merely to an exercise of compiling cases and provisions of law. Raising another important issue, he also mentioned the need to re-orient the law text books to provide a fresh perspective to students of law. Textbooks, Professor (Dr.) Wani stressed, must be oriented in a manner that promotes development of research acumen and ethics in students. The enriching talk was followed by a short round of questions and answers. To conclude the event, Professor (Dr.) Jyoti Dogra Sood, Professor, Indian Law Institute, thanked Professor (Dr.) Wani for his insightful lecture and highlighted the key take aways from the session. Dr. Sood tendered the formal vote of thanks post which the event came to a close.

Azadi ka Amrit Mahotsav: Virtual talk on Indian Philosophy Reflecting through the Constitution: Special Reference to Fundamental Duties November 8, 2021

As a part of the lecture series celebrating Azadi ka Amrit Mahotsav, a virtual talk was organized on November 8, 2021, on the theme “Indian Philosophy Reflecting through the Constitution: Special Reference to Fundamental Duties.” Professor (Dr.) Amar Pal Singh, Dean, University School of Law and Legal Studies, GGSIPU, was the guest speaker for the session. Professor (Dr.) Amar Pal Singh in his lecture highlighted how there is a common understanding among the masses that the Indian constitution is not reflective of the indigenous Indian philosophy. He dispelled the notion and discussed the contribution of Indian historians such as K.P. Jayaswal and A.S. Altekar, in exposing how modern systems of governance based on democracy, self-rule and representation were already a part of the medieval Indian landscape. Professor (Dr.) Singh explained in detail the concept of ‘Prajā Rājan’. By Praja Rājan, Professor (Dr.) Singh explained, what was meant was the pursuit of the welfare and happiness of the ‘praja’, the people in the state and the same must guide the king or monarch. He elaborated upon the scheme of the Indian constitution and explained how the theme of ‘prajaranjan’ runs throughout the constitutional document. Further, while discussing about the fundamental duties contained in Part IV A of our constitution, Professor (Dr.) Singh mentioned that the different duties as prescribed (abiding by the constitution, cherishing the ideals that inspired our freedom struggle, protecting the unity and integrity of India, rendering national service, promoting harmony, preserving the rich heritage of our composite culture and protecting environment etc.), they all can individually be associated with the Indian tradition and culture and the karmic philosophy contained in the Bhagwat Gita. Professor (Dr.) Singh concluded with the remarks that the Indian Constitution physically may be derived from some western elements but, he stressed, the whole philosophy underlying the document typically belongs to India and its innate wisdom. Post the enlightening session, Professor (Dr.) Anurag Deep, Professor, Indian Law Institute thanked Professor (Dr.) Singh for his insightful talk and the session ended.

Azadi ka Amrit Mahotsav: Virtual Talk on “Victim Justice and Law Reforms in India” on November 9, 2021

Continuing the series of lectures that are being organized as a part of the celebration of seventy-five years of independence of our country, Azadi ka Amrit Mahotsav, a virtual talk was held on November 9, 2021, on the theme ‘Victim Justice and Law Reforms in India’. Professor (Dr.) Nirmal Kanti Chakrabarti, Vice Chancellor, West Bengal National University of Juridical Sciences was the guest speaker for the session. Professor (Dr.) Chakrabarti in his lecture presented a comprehensive discussion on several aspects of the theme ranging from the origin and development of victim justice system in the country, the underlying philosophy, different international instruments as well as the framework for victim compensation and victim assistance in India. Further, he also gave an overview of the various victim justice programs in the world to provide a comparative perspective of the issue. He explained, how there has been a gradual development of the branch of victimology over the years. Elaborating upon the same, he informed the participants about the development of the branch in the late 1970s with the setting up of the World Society of Victimology in 1979. Professor (Dr.) Chakrabarti also discussed the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 and its five elements: Access to Justice, Fair Treatment, Restitution, Compensation and Assistance. Turning his attention towards the developments in the Indian criminal justice system, he discussed the law reforms pertaining to the goal of ensuring victim justice in India. He discussed the situation existing prior to the adoption of the UN declaration of 1985, the judicial law making in the field and the provisions and amendments in the PWDV Act, 2005, the amendments in the Code of Criminal Procedure in 2008 and subsequently in 2013, the Juvenile Justice Act, 2015 and also the several administrative orders passed in this regard. Professor (Dr.) Chakrabarti concluded his talk with the observation that the trends of law reforms in India reflect that there has been a recognition of the need to pay compensation to victims of crime on the foundation of a rights-based approach rather than the same being looked at as an act of grace by the Court.

Azadi ka Amrit Mahotsav: Virtual talk on “Quest for Balanced Approach on Maintenance Laws in India” on November 10, 2021

A virtual talk was organised on November 10, 2021 on the topic ‘Quest for a Balanced Approach on

Maintenance Laws in India'. Professor (Dr.) Vijender Kumar, Vice-Chancellor of Maharashtra National Law University, Nagpur was the guest speaker for the session. In his session, Professor (Dr.) Kumar elaborated upon the intricacies of the concept of maintenance laws in the Indian legislative framework. Professor (Dr.) Kumar explained the rationale for the law of maintenance and informed the participants that there were various statutes under personal as well as public laws which govern the law of maintenance. Discussing the concept of quantum of maintenance, which is often misunderstood, he clarified that the laws dealing with maintenance are primarily dependent on the income, status, financial hardships etc. of the parties and thus the quantum of maintenance is decided based on facts and circumstances of each case. During his talk, Professor (Dr.) Kumar also mentioned about the various important judicial precedents to clarify the conceptual difficulties that often arise with respect to the issue of maintenance. Discussing the recent judicial pronouncement in the field, *Rajnesh v. Neha*, he highlighted how the court has taken note of the need to frame guidelines that would cover overlapping jurisdictions under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and the enforcement of orders of maintenance. He also explained the scheme of the Hindu Adoptions and Maintenance Act, 1956 and the provisions in the Code of Criminal Procedure. He further discussed the contentious issue of introduction of the Uniform Civil Code, which he expressed "aims to conquer the pluralistic and intransigent feature of personal laws of different communities and tries to bring equality among all." Concluding his talk, Professor (Dr.) Kumar remarked that registration of marriage must be made mandatory for all and further expressed that, discussions about pre-nuptial agreements must be given serious thought. He stressed that there has to be joint contribution toward matrimonial home by both the spouses and shared parental responsibilities must be promoted. While offering some viable suggestions towards the end of the talk, he mentioned about introduction of matrimonial property law as a desirable option in contemporary society.

Azadi ka Amrit Mahotsav: Virtual talk on 'The Constitution in its Eighth Decade' on November 11, 2021

A virtual talk was organised by the Indian Law Institute on November 11, 2021, on the topic: 'The Constitution in its Eighth Decade'. Professor (Dr.) Sudhir Krishnaswamy, Vice-Chancellor of the National Law School of India University, Bengaluru was the guest speaker for the talk. Professor (Dr.) Sudhir Krishnaswamy began his lecture by highlighting the reasons why we must celebrate the completion of seventy-five years of independence. He expressed that the celebration of the independence of the nation is the celebration of the attainment of sovereignty, the winning of the right to make one's own free choices, one's own mistakes. Further, the celebration must also include commemoration of the various social and political forces that fought in the independence struggle and the unique socio-political framework in which our political independence emerged. He spoke about the distinctiveness of the non-violent mass action that marked the Indian independence struggle. Professor (Dr.) Krishnaswamy also discussed the radical transformation that was effectuated after the adoption of the constitution, in terms of the economic and social structure. While discussing the radical transformation, he also explained how India adopted democracy as the engine for the transformation, adopting universal adult franchise as its basis. Professor (Dr.) Sudhir Krishnaswamy also clarified that unlike some other constitutions such as that of South Africa or Nepal, the Indian constitution is not a historically self-conscious document and does not contain any references to the past of colonialism or the social ills that it in fact seeks to remedy. Professor (Dr.) Sudhir Krishnaswamy, further explained the 'eighth decade curse' that countries are often faced with and gave examples of countries like America which experienced civil wars in the eighth decade after the adoption of constitutional system in the country. Underlining the two challenges that hold the potential to disrupt the constitutional set up of the country today, he called attention to the issue of external threats in the form of border tensions with China as well as internal threats of the discord and disagreement. Ending his talk with a positive note, he mentioned that discord and dissent is healthy in a noisy democracy, however, avoidance of the eighth decade curse requires that our disagreements are resolved through constitutional means. He further added that it was essential for law students and academicians to understand and engage with the history of the framing of the constitution, so as to

foster development of a civic culture conducive for constitutional endurance. The articulate deliverance by Professor (Dr.) Sudhir Krishnaswamy was followed by an interaction between the participants with him, post which Professor (Dr.) Manoj Kumar Sinha, Director, ILI proposed the vote of thanks.

Azadi ka Amrit Mahotsav: Virtual talk on “Constitution and Composite Culture” on November 12, 2021

As a part of the Azadi ka Amrit Mahotsav lecture series, a virtual talk was organised by the Indian Law Institute on November 12, 2021, on the topic: Constitution and Composite Culture. Professor (Dr.) S. Surya Prakash, Vice-Chancellor, Damodaram Sanjivayya National Law University, Visakhapatnam was the guest speaker for the session. Professor (Dr.) S. Surya in his lecture elaborated upon the magnificent culture and the rich heritage of the Indian civilisation and explained how the Indian Constitution is an embodiment of the values, morals and principles derived from this composite culture. Professor (Dr.) S. Surya began his lecture with an explanation of the concept of culture and civilisation. He asserted that the culture of a group, society or nation develops with its civilisation and discussed the numerous civilisations that have emerged and perished over the centuries. He further expressed that the culture of Bharat was deeply rooted into the five-thousand-year-old Indus valley civilisation and unlike most other civilisations such as the Mesopotamian or the Roman civilisation, which have perished over time, the Indian civilisation, has continued to flourish. Reminding all the participants about one’s duty to preserve the culture that has emanated from this civilisation, Professor (Dr.) S. Surya, in his deliverance, highlighted how the Constitution of India casts upon us this fundamental duty “to value and preserve the rich heritage of our composite culture”. Taking a rather interesting route to familiarise the participants with the composite culture of India and its relevance, Professor (Dr.) S. Surya Prakash in his lecture presented a visual sojourn of the sketches and artwork which adorn the pages of the original copy of the Indian constitution. Professor (Dr.) S. Surya informed the participants that these artworks were created by prominent artist, Nandalal Bose and these reflect the diversity and richness of Indian culture and thus while discussing about constitution and how it encapsulates the composite culture of India, these artworks essentially

deserve a mention. Throughout his lecture, Professor (Dr.) S. Surya showed several of these artworks depicting scenes from the two great epics, Ramayana and the Mahabharata, the depiction of Mahavira and Buddha, portrayal of medieval rulers such as Akbar, Shivaji as well as scenes from the Indian liberation struggle, while explaining the constitutional values that these convey. The talk left the participants invigorated with a new zeal to rediscover the Indian civilisational culture. Post the talk, there was a round of interaction between the speaker and the participants. The session came to a close after Professor (Dr.) Jyoti Dogra Sood, Professor, Indian Law Institute, tendered the vote of thanks.

Azadi ka Amrit Mahotsav: Virtual talk on ‘The Limits of Liberty: Rights and Duties in the Constitution’ on November 13, 2021

A virtual talk was organised on November 13, 2021 on the theme, ‘The Limits of Liberty: Rights and Duties in the Constitution’ by the Indian Law Institute. Professor (Dr.) Dilip Ukey, Vice Chancellor, Maharashtra National Law University, Mumbai graced the event as the speaker for the session. Professor (Dr.) Dilip Ukey began his lecture with the explanation of the concept of liberty. He referred to the ideas of influential English philosopher and political economist, J.S. Mill whose classic work ‘On Liberty’ constitutes essential reading for anyone interested in exploring the idea of liberty. Mill, Professor (Dr.) Ukey, expressed, had always kept the idea of liberty at the upper most echelon of values, and had propounded that interference or any limitation with one’s liberty could only be justified if it could satisfy the ‘Harm Principle’. Turning towards the Indian Constitution, Professor (Dr.) Dilip Ukey, explained how Part III and Part IV of the Constitution reflect a distinct right-duty model that has been envisioned by the framers of the Constitution. Professor (Dr.) Dilip Ukey elaborated upon the ‘rights with restriction’ model that has been incorporated in the Indian Constitution. He also spoke about the close-knit nexus between Articles 14, 19, 21 which has been acknowledged by the Indian judiciary over the years and how the transition from Gopalan to Maneka took place. Highlighting how the expanse of article 21 has widened over the years and new categories of rights have been created within its ambit, Professor (Dr.) Dilip Ukey discussed about the concept of personal liberty and its progressive interpretation by the Indian Supreme Court. Professor (Dr.) Dilip Ukey also spoke about the significance of

one's duties while explaining the scheme of fundamental duties contained in the Indian Constitution. Taking a cue from the theme of the event, Professor (Dr.) Dilip Ukey, expressed that the real Azadi(liberty/freedom) which must be sought, should be from sectional, regional, gendered diversities, from all violence, terrorism and arbitrary action. The real elixir of azaadi would only flow when love, affection, peace and progress would prevail. He concluded by stressing upon the need for all to enlighten oneself and to resolve within that "it is only I and I who can change and transform this great nation to a liberal society". Post the talk, there was a short round of questions and answers which was followed by the tendering of the vote of thanks by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute.

Azadi ka Amrit Mahotsav: Virtual talk on "Cartographing IP issues in Social Media" on November 14, 2021

Indian Law Institute on November, 14, 2021 hosted a session titled 'Cartographing IP issues in Social Media'. The lecture for the session was delivered by Professor (Dr.) V.C Vivekanandan, Vice Chancellor, HNLU as a part of 'Azadi Ka Amrit mahotsav' celebrations. The event witnessed the presence of researchers, academicians and students who joined the event online. The session was held on the virtual conference platform (Webex) and IP enthusiasts from across the country joined the event online.

Professor (Dr.) Manoj Kumar Sinha welcomed Dr. V.C Vivekanandan and extended his words of gratitude for agreeing to deliver the lecture on an issue of contemporary relevance. Dr. V.C Vivekanandan started the lecture with an enthusiastic interaction with the students on 'Disseminating the role of media'. He stressed on how media as a medium mediates between the public power holders and power generators of the society. The functioning roles of media was also a matter of discussion. He contemplated on active, passive, socio-political, entertainment, ad-driven, value driven, ideological, plural, information and agenda setting roles played by media.

The session concluded with Dr. Vivekanandan pointing out that the wide-ranging technological issues in IP imply that every social media user would be tagged to IP and every social media user needs to be aware of the fact that there is a lawyer waiting to send a notice at every instance.

Azadi ka Amrit Mahotsav: Virtual talk on 'Indian Constitution- Living Document' November 26, 2021

A lecture was organised on November 26, 2021 by the Indian Law Institute on the theme: 'Indian Constitution-Living Document'. November 26, each year is celebrated as Constitution Day (Samvidhaan Diwas), marking the historic day in 1949 when the Constitution of India was formally adopted by the Constituent Assembly. To commemorate the momentous occasion, the theme of the talk revolved around the dynamism of the Indian Constitution. Professor (Dr.) T.V. Subba Rao, Professor-Emeritus, Vivekananda School of Law and Legal Studies and Former Professor, National Law School of India University, Bangalore, was invited as the speaker for the session. The event was also graced by Professor (Dr.) R. Venkata Rao, Chairperson, Vivekananda School of Law and Legal Studies (VSLLS). In his lecture, Professor (Dr.) T.V. Subba Rao, chronicled the history of the adoption of the Constitution of India and asserted that the awareness of the constitution and its principles was essential for all. He expressed that if it is education which makes a human being, it is the Constitution which holds the key to make responsible citizens. Professor (Dr.) T.V. Subba Rao also highlighted how the country in the present was faced with numerous challenges that posed an obstruction in the proper working of the constitutional set up of the country such as executive inertia, legislative lethargy and judicial overreach. He also discussed how the constitution has stood the test of time despite there being many attempts to weaken it through politically motivated amendments. Professor (Dr.) T.V. Subba Rao also discussed the organic nature of the Constitution and described it as a live wire, he asserted that if constitutional growth is stunted, the nation is undone. Professor (Dr.) T.V. Subba Rao also mentioned constitutionalism and how countries, despite having a constitution, may not adhere to precepts of constitutionalism. Elaborating upon the significance of the preambular goals of Justice, Liberty, Equality and Fraternity, Professor (Dr.) T.V. Subba Rao expressed that we should ask ourselves if these goals have been sufficiently achieved. He further mentioned that the attainment of justice in true sense, would be possible only if all the aspects of 'availability, accessibility, quality assurance and acceptability' were met. The enthusiastic deliverance

by Professor (Dr.) T.V. Subba Rao was followed by the pledge taking ceremony and the pledge on the occasion of Constitution Day was administered to all the participants by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute. There was also a short round of questions that were taken up post the talk and the event came to a close after the vote of thanks was proposed by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute.

Webinar on Human Rights in the Brazilian Supreme Court: Achievements and Challenges by Professor (Dr.) Jairo Lima, State University of Northern Parana (UENP) on October 5, 2021

A webinar was organized on October 5, 2021 on the theme “Human Rights in the Brazilian Supreme Court: Achievements and Challenges”, for which Professor (Dr.) Jairo Lima, Professor at the State University of Northern Parana (UENP) was invited as the guest speaker. Professor (Dr.) Jairo Lima exclaimed how events such as these were initiatives for commencement of a dialogue between Indian and Brazilian academic scholarship. Beginning with his deliverance, Professor (Dr.) Jairo Lima mentioned the distinctiveness of the constitutionalism model that is associated with Brazil and other countries of the Global South. Stressing upon the need to encourage taking comparative views, he highlighted how similarities and differences both existed between the Global North and Global South and therefore, there was much learning that could be achieved if exchanges about the peculiar features of both systems could be organized. Professor (Dr.) Lima discussed the political history of Brazil and explained how the process of constitution making in Brazil was based on true social participation and how regular open debates, public proposals and public hearings were a part of it. Describing the Brazilian judiciary as the protector of the rights of the people, Professor (Dr.) Lima highlighted the role of judiciary in furthering the cause of human rights by discussing examples of adjudication of matters pertaining to hate speech, right to abortion, racial quotas at universities, gay marriage and criminalization of homophobia, right to health as well as corporate financing at elections. Professor (Dr.) Lima also mentioned the inadequate and ill-prepared response of the Brazilian government to the COVID-19 pandemic and how that exposed all Brazilians to grave danger which

ultimately led to the intervention by the judiciary. In his talk, Professor (Dr.) Lima also focused upon the challenges before the judiciary which include the issue of competence of the court as well the problem of the cult of individuality. Professor (Dr.) Lima concluded his session by expressing hope that the Brazilian constitutional court shall continue with the progressive jurisprudence that it has been instrumental in developing for protection of human rights. The session was followed by a small round of questions and answers and came to an end after the tendering of vote of thanks by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute.

Webinar on “The Rights of Indigenous and the Relationship with the Rights of Nature in the Inter American Court of Human Rights” on November 3, 2021

Continuing the tradition of fostering academic ties beyond the borders, the Indian Law Institute organised a webinar on the topic: The Rights of the Indigenous and the Relationship with the Rights of Nature in the Inter American Court of Human Rights on November 3, 2021, wherein Professor (Dr.) Alex Valle Franco, Professor of Law, IAEN/PUCE University, Ecuador was invited as the guest speaker. Ecuador holds the special distinction of being the first nation to have recognised the rights of nature in its constitution. In his lecture, Professor (Dr.) Alex Valle Franco, explained in detail about the constitutional provisions in Ecuador with respect to the rights of nature and its status as a legal subject as well as elaborated upon the decisions of the Inter American Court of Human Rights dealing with the same issue. Professor (Dr.) Alex Valle Franco also highlighted the distinction between the anthropocentric and eco-centric approaches and expressed concern about the increased preference shown by the IACHR towards the development centric viewpoints which allow for the sacrifice of the environment at the altar of development and economic progress. He further discussed the cases pertaining to the rights of indigenous people such as those of the Yanomami people of Brazil and those of the Mayan tribe in Guatemala. He concluded the lecture by proposing a new protocol for the rights of nature and asserted that autonomous recognition for the rights of nature was the need of the hour. He emphasised upon the judicialization of these rights. The lecture was

followed by a short round of questions and answers, which saw enthusiastic participation by all participants. Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute also contributed to the discussion and mentioned the place of environmental rights in the larger scheme of the international framework of human rights. Post the interaction between the speaker and the participants, the vote of thanks was tendered by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, after which the event came to a close.

Webinar on “Intersections of Human Rights and Criminal Law” on December 9-10, 2021.

Indian Law Institute in collaboration with Human Rights Studies Programme, School of International Studies (JNU) in collaboration with the Centre for Inner Asian Studies, School of International Studies (JNU), and the Indian Law Institute (Delhi), organized a Human Rights Day Webinar on the Intersections of Human Rights and Criminal Law on December 9-10, 2021. The members of the organizing team included Professor Sharad K. Soni, Director, Human Rights Studies Programme (JNU), Professor Sangeeta Thapliyal, Chairperson, Centre for Inner Asian Studies (JNU), Professor Manoj Kumar Sinha, Director, Indian Law Institute, Professor Anuragdeep, Faculty, and Webinar Coordinator, Indian Law Institute, and (Dr.) Deepa Kansra, Faculty and Webinar Coordinator, Human Rights Studies Programme, JNU. The presentations were organized under four sessions including Session I on Rights Jurisprudence and Criminal Law (Session Chair- Professor Sangeeta Thapliyal), Session II on Proposals for Criminalisation and Decriminalisation (Session Chair- Professor Sharad K. Soni), Session III on Crimes, Victims, and Punishments (Session Chair- Professor Anju Vali Tikoo), and Session IV on Agendas for Reform (Session Chair- (Dr.) Upma Gautam).

E- International Seminar on “Data Protection and Data Privacy” on December 18, 2021

An International Seminar was organized by Law Mantra in collaboration with The Indian Law Institute, New Delhi, Rajiv Gandhi National University of Law, Punjab, Maharashtra National Law University, Nagpur and Advanced Centre on Research, Development & Training in Cyber Law and Forensics, National Law School of India University, Bangalore. The seminar was inaugurated in the august presence of Hon’ble Justice A. Muhamed Mustaque,

Judge, High Court of Kerala who graced the event as the Chief Guest. Other dignitaries who graced the occasion included: Ms. Mishi Choudhary, Technology Lawyer, Legal Director at SFLC, New York and Partner, Moglen & Associates, Professor (Dr.) Manoj Kumar Sinha, Director, The Indian Law Institute, New Delhi, Professor (Dr.) G. S Bajpai, Vice-Chancellor, Rajiv Gandhi National University of Law, Punjab, Professor (Dr.) Himanshu Pandey, Professor of Law, Maharashtra National Law University, Nagpur and Mr. Kishor Kumar Mishra, President, Law Mantra Trust. The guests emphasized on the upcoming Data Protection Legislation in India and how it would impact the international diaspora. They also talked about the recent report by the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019 which recommended certain changes to widen the scope of the Bill. Comparisons were also made between European GDPR and the draft of the aforementioned bill. The guests emphasized on the fact that it is about time and we need new laws in place to protect our personal data. Reference was also made to the landmark K Puttaswamy judgment which has firmly established ‘Right to Privacy’ as our fundamental right enshrined in the constitution.

Total 62 papers were presented in 5 different technical sessions.

Visit of Hon’ble Minister of State for Law and Justice, Professor S. P. Singh Baghel to Indian Law Institute on October 08, 2021

On October 08, 2021, the Indian Law Institute felicitated Professor S P Singh Baghel, Hon’ble Minister of State for Law and Justice. The event was attended by several prominent guests including Professor (Dr.) Ranbir Singh and Reeta Vashist, Secretary, legislative Dept., Ministry of Law and Justice.



Lighting the ceremonial lamp by the distinguished guests at the function

The event commenced with the lighting of the ceremonial lamp by the distinguished guests,

subsequent to which Professor (Dr.) Manoj Kumar Sinha, Director, ILI, welcomed the guests by presenting bouquets of flowers. The mementos of felicitation were then presented to the distinguished guests.

Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the formal welcome address, where he gave a brief description of the establishment and development of the Institute. The Minister showed keen interest in the activities of the Institute and engaged with the structural and academic aspects of the same. With the queries from the Hon'ble Minister, the Welcome Address also became an interactive session between the guests. All the academic, administrative, and ancillary staff of the Institute were individually introduced during the event.



Professor Baghel addressing the participants of the programme

Professor Baghel delivered his address welcoming and acknowledging all the persons present and attending the event. He spoke of his previous engagement with academic institutions, beginning with the prior attendance of meeting with the VCs of all the State of UP during his tenure at the State. He expressed his gratitude on being invited to the ILI. He reiterated the importance of books and the requirement of a full-fledged library, for the purposes of research and academics. He floated several suggestions, including the widening of the Institute's academic mandate to offer LLD degree as well. He spoke of how he values qualitative aspects of education rather than quantitative aspects, and expressed his disappointment at the current trend that determines students' future solely focusing on academic grades. He recalled his experience of listening to the counter-opinions of Kapil Sibal, Abhishek Manu Singhvi and Jethmalani, Salman Khurshid regarding how 'correct' the law is; highlighting how different perspectives form different convictions in the listener's mind. He raised the question of what the "truth" is, then, urging the

audience to realize that law does not have an ultimate exclusive truth as such, and it is perspective that matters. He used anecdotes from his experiences to reiterate how law has emerged as a promising profession over the past decades. He also spoke of the rich academic history of the ancient Indian subcontinent, with Institutes such as the Nalanda University which we unfortunately lost over invasion. He advised current law graduates to focus on ethical practices and to not indulge in malpractices that he has often witnessed in careers crossing politics and law. He remarked how technical educational qualifications are not necessarily the sole indicators of intellect, and actual conduct and critical thinking are more important in actual intellectual engagements. He also expressed his displeasure at unethical political practices, where national security laws are misused to suppress political dissent by imprisoning persons to silence them. He criticized such political conduct in severe terms, expressing his deep disgust towards such blatant misuse of power. He thus urged persons to not be apologetic at the face of such clampdown, and to keep up dissent and to speak for what is right, fearlessly, taking inspiration from the history of Emergency period. He also critiqued those lawyers pursuing exclusively high-profile cases in the guise of performing pro-bono work, with the ulterior motive of acquiring fame. He expressed how we must strive to undertake legal aid and pro-bono work with genuine intentions. The Director Professor (Dr.) Manoj Kumar Sinha expressed his special gratitude to the Hon'ble Minister for his suggestions and detailed engagement.



Dr. Reeta Vashist addressing the participants of the programme

(Dr.) Reeta Vashist, Secretary, legislative Department, the Ministry of Law and Justice subsequently spoke in detail regarding her long association with the Institute, beginning her academic years in Himachal Pradesh. She reiterated the academic engagements she has had with the Institute over the decades, and briefly described the history of ILI.



Felicitating Professor S P Singh Baghel, Hon'ble Minister of State for Law and Justice by Professor (Dr.) Ranbir Singh and Professor (Dr.) Manoj Kumar Sinha

Professor (Dr.) Ranbir Singh addressed the gathering and highlighted his close association with the Institute spanning over years. He shared fond memories from the time he served as the Vice Chancellor of NALSAR and then NLUD. He spoke on length about the academic importance and relevance that ILI has in the field of legal research. He spoke about the publications and research that the Institute has undertaken over the years, highlighting how the stature of ILI speaks for itself. He also highlighted the evolution of the society and the need for educational institutes to keep up with the pace and adapt with these changes.



Professor (Dr.) Ranbir Singh addressing the gathering in presence of the distinguished guests

To conclude the events, Shri S.C. Prusty, Registrar, Indian Law Institute, delivered the vote of thanks, expressing gratitude to the Hon'ble guests and all other participants.

Visit of Hon'ble Union Minister of State for Education, (Dr.) Subhas Sarkar to Indian Law Institute on November 11, 2021

The Union Minister of State for Education, (Dr.) Subhas Sarkar paid a visit to the Indian Law Institute, New Delhi on November 11, 2021. The institution fraternity welcomed and felicitated the Minister for his appointment as the Minister of State for Education. The Director of the Institute, Professor (Dr.) Manoj Kumar Sinha welcomed the Chief guest, (Dr.) Subhas Sarkar and the Guest of Honour, Shri Rakesh Munjal.



(Dr.) Subhas Sarkar lighting the lamp and addressing the audience of the programme

(Dr.) Subhas Sarkar in his address as the Chief Guest of the function appreciated the efforts of the Institute in taking up the academic pursuit of realizing the promise of justice education. In his address, he acknowledged that prior to his visit, he had known about the interventions of the Institute in translating legal education into justice education by creating an intellectually stimulating environment that fosters critical legal discourse. He also appreciated the institute for the smooth functioning of academic activities even in testing times and adhering to COVID protocols and providing a safe academic atmosphere for students and faculty. In his address, he also emphasized that, in this era of globalization, the relevance of legal research in fields of Comparative Law, Human Rights and International Law is increasing and thus an in-depth analysis is needed in this arena. He went on to elaborate that the areas such as Human Rights, International Trade Law and Diplomacy hold extreme significance in the current scenario and exchange of ideas among legal experts could help in collaborations as well as required academic and legal interventions. While concluding, he also extended his wholehearted support to the institution in its interventions in the global legal discourse.



Shri Rakesh Munjal addressing the participants of the programme



Felicitation of Dr. Subhas Sarkar by Professor (Dr.) Manoj Kumar Sinha

Shri Rakesh Munjal, Senior Advocate of the Supreme Court of India, who was the Guest of Honour, in his special address contemplated on the role of research institutes and academia in envisaging justice. He also highlighted how ILI has played a key role in creating an orientation towards critical legal research, thereby promoting socially relevant legal education and contributing to higher education in India.

In his welcome address, Professor (Dr.) Manoj Kumar Sinha briefly summed up the objective of the Institute in promotion of legal education through research, teaching and creating an interdisciplinary orientation through special lectures and discussions by eminent scholars from India and abroad on a regular basis. He further emphasized that the Institution has played a key role in helping all stakeholders in research since its inception in 1956. He also acknowledged the then MHRD for granting the institution, deemed university status and providing all logistical and legal support for the academic and research activities of the institute. He highlighted that the Institution's law library, one of the biggest in Asia with about 80,000 titles in law and allied subjects remains regularly updated to ensure that the collection reflects the latest research and writing in various fields allied to law.

The event concluded with the Vote of thanks by Shri S.C. Prusty, Registrar, Indian Law Institute.

EXAMINATIONS

- Supplementary Examination for LL.M. 1 Year was held in the month of October, 2021.
- Examination for LL.M 1 Year (2nd Semester) was held in the month of September-October, 2021
- Result for the PG Diploma Annual Examination was declared in the month of October, 2021.
- Supplementary Examination for the PG Diploma Courses was held in November, 2021 and the Result for the same was declared in the month of December, 2021

LIBRARY

- ❖ Library Added 14 Books on Legal Education, Human Rights and reference material.
- ❖ The library started the subscription of ,Off Campus access service- KNIMBUS, to provide smooth off campus access of subscribed resources to ILI students.
- ❖ Hands on Session of Library resources and services and digital repository was organized for Post Graduate Diploma Programme on Monday, October 4, 2021

RESEARCH PUBLICATIONS

Released Publications

- ❖ *Annual Survey of Indian Law*, Vol LV, 2019
- ❖ *ILI Newsletter* Vol XXIII, Issue III (July - September 2021).

Forthcoming Publications

- ❖ *Journal of the Indian Law Institute* Vol 63(3) (July-September), 2021.
- ❖ *ILI Newsletter* Vol XXIV, Issue I (January-March, 2022).

E-LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E Learning courses of three months duration on “**Cyber Law**” (39th batch) and “**Intellectual Property Rights and IT in the Internet Age**” (50th batch) were completed on October 19, 2021 and “**Cyber Law**” (40th batch) and “**Intellectual Property Rights and IT in the Internet Age**” (51st batch) were started on November 15, 2021.

FORTHCOMING EVENTS

Indian Law Institute will organise following online Lectures under the series on Azadi ka Amrut Mahotsav:

- “Business and Human Rights : How to Move Forward?” on February03,2022 Key Speaker: Professor Jernej Letray Cervic, Professor of Constitutional and Human Rights Law, Faculty of Government & European Studies, Kranj, Slovenia
- Protecting Human Rights in the Twenty First Century on February09,2022 Key Speaker: Professor (Dr.) Bertrand G. Ramcharan, Former High Commissioner for Human Rights (Ag.), Geneva
- Cooperative Federalism on February 11,2022 Key Speaker: Dr. Vijayashri Sripathi, Visiting Scholar, Department of Criminal Justice and Social Work, University of Toledo, Ohio, United States

LEGISLATIVE TRENDS

THE FARM LAWS REPEAL ACT, 2021

(Act No 40 of 2021)

The Farm Laws Repeal Act, 2021 was aimed at repealing the three farm laws – Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, the Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, the Essential Commodities (Amendment) Act, 2020 – and amending the Essential Commodities Act, 1955. The Act also omitted sub-section (1A) of section 3 of the Essential Commodities Act, 1955 (10 of 1955) which was inserted vide the Essential Commodities (Amendment) Act, 2020.

THE DAMS SAFETY ACT, 2021

(Act No 41 of 2021)

The Act was enacted to provide for surveillance, inspection, operation and maintenance of the specified dam for prevention of dam failure related disasters and to provide for institutional mechanism to ensure their safe functioning and for matters connected therewith or incidental thereto. The Act is divided into 56 sections under 9 chapters. The Act applies to the owner of every specified dam (a) being a public sector undertaking or institution or a body owned or controlled by the Central Government or a State Government or jointly by one or more Governments, as the case may be; and (b) being an undertaking or company or institution or a body other than those owned or controlled by the State Government or the Central Government, as the case may be.

THE NATIONAL INSTITUTE OF PHARMACEUTICAL EDUCATION AND

RESEARCH (AMENDMENT) ACT, 2021

(Act No 43 of 2021)

The Act amended the National Institute of Pharmaceutical Education and Research Act, 1998. The 1998 Act established the National Institute of Pharmaceutical Education and Research, Punjab and declared it as an Institution of National Importance. An Institution of National Importance refers to an autonomous institute established under an Act, with the power to hold examinations, grant degrees, diplomas and other academic distinctions or titles. These institutes of national importance receive funding from the central government. The Act declared six additional National Institute of Pharmaceutical Education and Research as Institutions of National Importance. These institutes are in: (i) Ahmedabad, (ii) Hajipur, (iii) Hyderabad, (iv) Kolkata, (v) Guwahati, and (vi) Raebareli.

THE DELHI SPECIAL POLICE ESTABLISHMENT (AMENDMENT) ACT, 2021

(Act No. 45 of 2021)

The Amendment Act replaced the Delhi Special Police Establishment (Amendment) Ordinance, 2021. The Act seeks to amend the Delhi Special Police Establishment Act, 1946. The Act provides for the constitution of the Delhi Special Police Establishment for investigation of certain offences, as notified. The Act provides for the appointment of the Director of the Delhi Special Police Establishment (Central Bureau of Investigation).

THE SURROGACY (REGULATION) ACT, 2021

(Act No 47 of 2021)

The Act was enacted to regulate the practice and process of surrogacy, constitute National Assisted Reproductive Technology and Surrogacy Board, State Assisted Reproductive Technology and Surrogacy Boards. The key feature of the Act includes prohibition and regulation of surrogacy clinics, regulation of surrogacy and registration of and surrogacy procedures and surrogacy clinics etc.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 2021

(Act No. 48 of 2021)

The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2021 was enacted to replace the Narcotic Drugs and Psychotropic Substances (Amendment) Ordinance, 2021. The Act amended

the Narcotic Drugs and Psychotropic Substances Act, 1985 to correct a drafting error. The Act regulates certain operations (such as manufacture, transport, and consumption) related to narcotic drugs and psychotropic substances. Under the Act, financing certain illicit activities (such as cultivating cannabis or manufacturing narcotic drugs) or harbouring persons engaged in them is an offence. Persons found guilty of this offence will be punished with rigorous imprisonment of at least ten years (extendable up to 20 years) and a fine of at least one lakh rupees.

THE ELECTION LAWS (AMENDMENT) ACT, 2021

(Act No. 49 of 2021)

The Act amended the Representation of the People Act, 1950 and the Representation of the People Act, 1951 to implement certain electoral reforms. The salient feature of the Act includes linking electoral roll data with Aadhaar, Qualifying date for enrolment in electoral roll, requisitioning of premises for election purposes and gender-neutral provisions.

LEGAL JOTTINGS

Is Preliminary Enquiry mandatory in all corruption cases?

The 3-judge bench of Dr. DY Chandrachud, Vikram Nath and BV Nagarathna, JJ has held that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption.

The Court said that in case the information received by the CBI, through a complaint or a “source information”, discloses the commission of a cognizable offence, it can directly register a regular case instead of conducting a preliminary enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence. Holding that the institution of a preliminary enquiry in cases of corruption is not made mandatory before the registration of an FIR under the CrPC, Prevention of Corruption Act or even the CBI Manual, the Court said that issuing a direction to that affect will be “tantamount to stepping into the legislative domain.” However, it was made clear that holding the aforesaid will not take away from the value of conducting a preliminary enquiry in an appropriate case:

“The registration of a Regular Case can have disastrous consequences for the career of an officer if the allegations ultimately turn out to be false. In a Preliminary Enquiry, the CBI is allowed access to documentary records and speak to persons just as they

would in an investigation, which entails that information gathered can be used at the investigation stage as well. Hence, conducting a Preliminary Enquiry would not take away from the goal of prosecuting accused persons in a timely manner. However, we once again clarify that if the CBI chooses not to hold a Preliminary Enquiry, the accused cannot demand it as a matter of right.”

In *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1 it was held that:

“If the information received discloses the commission of a cognizable offence at the outset, no Preliminary Enquiry would be required. Further, the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offence. Likewise in *Union of India v. State of Maharashtra*, (2020) 4 SCC 761, the Court reversed the decision of a two Judge Bench in *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454 and held that “a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and that the allegations are not frivolous or motivated”.

The three Judge Bench held that such a direction was impermissible since neither the CrPC nor the Atrocities Act mandate a preliminary inquiry.

“In case a cognizable offence is made out, the FIR must be outrightly registered, and no preliminary inquiry has to be made. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered, in such a case how a final report must be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-à-vis to the complaints lodged by members of upper caste, for latter no such preliminary investigation is necessary. In that view of the matter, it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act, 1989.”

An enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of

misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, based on the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged.

However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged, and the criminal proceedings will be put in motion and further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also, against whom the complaint is made.

[CBI v. Thommandru Hannah Vijayalakshmi, 2021 SCC Online SC 923, 08.10.2021]

Compassionate ground appointment is a concession and not a right

The bench of MR Shah and AS Bopanna, JJ has held that the dependent of the deceased employee cannot seek the appointment on compassionate ground on the higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post.

Interpreting the term ‘suitable post’ under Rule 5 of the Dying--In-Harness Rules, 1974, the Court held that ‘Suitable post’ has to be considered, considering status/post held by the deceased employee and the educational qualification/eligibility criteria is required to be considered, considering the post held by the deceased employee and the suitability of the post is required to be considered vis a vis the post held by the deceased employee, otherwise there shall be no difference/distinction between the appointment on compassionate ground and the regular appointment.

Explaining by way of an example, the Court said that

“In a given case it may happen that the dependent of the deceased employee who has applied for appointment on compassionate ground is having the educational qualification of Class-II or Class-I post and the deceased employee was working on the post of Class/Grade IV and/or lower than the post applied, in that case the dependent/applicant cannot seek the appointment on compassionate ground on the

higher post than what was held by the deceased employee as a matter of right, on the ground that he/she is eligible fulfilling the eligibility criteria of such higher post.”

The Court said that allowing so shall be contrary to the object and purpose of grant of appointment on compassionate ground i.e., to enable the family to tide over the crisis on the death of the bread earner.

“Appointment on compassionate ground is provided out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is provided, and family would be able to make both ends meet.”

[State of Uttar Pradesh v. Premlata, 2021 SCC OnLine SC 872, decided on 05.10.2021]

Preventive detention in independent India is to be exercised with utmost regard to constitutional safeguards

In a case where the Government caused unreasonable delay in considering the representation and thereafter failed to communicate the rejection to a person detained under Section 3(2) of National Security Act 1980 (NSA), the 3-judge bench of Dr. DY Chandrachud, Vikram Seth and BV Nagarathna, JJ has held that the procedural rights of the detenu emanating from Article 22 of the Constitution and Section 8 of the NSA were not sufficiently protected in the present case.

“The State Government cannot expect this Court to uphold its powers of subjective satisfaction to detain a person, while violating the procedural guarantees of the detenu that are fundamental to the laws of preventive detention enshrined in the Constitution.”

The order of detention was passed on 11 May 2021 and the appellant was detained on 12 May 2021. The order of detention was approved by the State Government on 13 May 2021, upon which the State Government submitted the order of detention to the Central Government on the same day. On 18 May 2021, the detenu submitted a simultaneous representation before the District Magistrate, State Government, and the Central Government. The representation was communicated by the District Magistrate to the State Government and the Central Government on 20 May 2021.

Representation was rejected by the Advisory Board on 15 June 2021. The State Government rejected the representation, after the decision of the Advisory Board. While the affidavit filed before the High

Court, did not specify the date on which the representation was rejected by the State Government, but leaves no manner of doubt that until the representation was rejected by the Advisory Board on 15 June 2021, no steps had been taken by the State Government to deal with the appellant's representation dated 18 May 2021. However, the counter-affidavit of the District Magistrate showed that the representation was rejected and the State Government has the power to revoke an order of detention.

The Court noticed that there was no reasonable basis for explaining the circumstances in which the representation dated 18 May 2021 was not considered by the State Government until after the Advisory Board had submitted its report on 15 June 2021. In *Ankit Ashok Jalan v. Union of India*, (2020) 16 SCC 127 it was held that State Government is not bound to wait on the Advisory Board's report before deciding the representation and must do so, as expeditiously as possible.

However, in spite of awaiting the receipt of the report of the Advisory Board, which was eventually issued on 15 June 2021, the State Government took another one month in arriving at a decision on the appellant's representation dated 18 May 2021. The State Government did not furnish any valid reasons for either of the two courses of action.

The Court, hence, held that by delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) of having the representation being considered expeditiously. It was, hence, held that,

"The delay by the State Government in disposing of the representation and by the Central and State Government in communicating such rejection, strikes at the heart of the procedural rights and guarantees granted to the detenu. It is necessary to understand that the law provides for such procedural safeguards to balance the wide powers granted to the executive under the NSA."

[*Sarabjit Singh Mokhav. District Magistrate, Jabalpur*, 2021 SCC Online SC 1019, decided on 29.10.2021].

FACULTY NEWS

Invited/Delivered/Lectures

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

❖ Invited to deliver a talk before participants of the

Research Methodology programme, organised by CNLU, December 21, 2021.

❖ Invited to deliver a talk before participants of Faculty Development Programme on "Scientific conduct: Falsification, Fabrication and Plagiarism" organised by HNLU, December 20, 2021.

❖ Invited as Guest of Honour to participate in the One Day International Seminar on "Data Protection and Data Privacy" organised by Law Mantra, December 18, 2021.

❖ Invited to deliver a talk before participants of Faculty Development Programme on "Implementation of Human Rights: National and International Perspectives" organised by Faculty of Law, Patna University, December 17, 2021.

❖ Invited to deliver a talk before participants of Faculty Development Programme on IPR and Human Rights, organised by National Law School, Nagpur, December 14, 2021.

❖ Invited as a Chief Guest to address the participants on Human Rights, organised by SRM University, Sonapat, December 10, 2021.

❖ Invited to deliver a talk before the participants of a webinar on "Women and Child Rights" organised by Amity University and the National Human Rights Commission of India, December 10, 2021.

❖ Invited as the Chief Guest to address the participants on Human Rights, United Nations & International Law, organised by My Lawman, New Delhi, December 10, 2021.

❖ Invited as Guest of Honour to address the participants on Human Rights Day, organised by Department of Law, Bharati Vidyapeeth University, New Delhi, December 10, 2021.

❖ Invited as a Chief Guest to address the participants on Human Rights, organised by Department of Law, Cooch Behar Panchanan Barma University, Cooch Behar, West Bengal, December 10, 2021.

❖ Invited to address Ph.D. Scholars, "Preparation of Courses and Reading Materials along with a class plan and communication in delivering a class" organised by Faculty of Law, University of Delhi, December 03, 2021.

❖ Invited as the Chief Guest in the Valedictory Function to address the participants of National Conference on the Independence of Judiciary and

Rule of Law, organised by AGISS and Independent thought, New Delhi, November 28, 2021.

❖ Invited as Chief Guest to address the participants of “Constitution Day Celebrations” organised by, Department of Law, IMS Unison University, Dehradun, November 26, 2021.

❖ Invited as Guest of Honour to address the Participants of “Constitution Day Celebrations” organised by Law Centre I, Faculty of Law, University of Delhi, November 26, 2021.

❖ Invited as Guest of Honour to address the participants of UGC Refresher/ Multi-Disciplinary Course “Changing Dimensions of Social and Economic Justice in India”, organised by Dr. Hari Singh Gaur University, Sagar, November 18, 2021.

❖ Invited to deliver a talk to interns of the National Human Rights Commission of India, on “Protection of Human Rights: An International Perspective” on November 09, 2021.

❖ Invited to deliver a talk on the occasion of Azadi Ka Amrut Mahotasav to the officials of Ministry of Law & Justice on, “Indian Freedom Movement and Its Impact on Development of Legal Framework of the Country” Shastri Bhavan, New Delhi, November 08, 2021.

❖ Invited to Director’s Panel Discussion on “Book, Library as ocean of Knowledge, Civilisation, Culture and National Heritage” organised by Department of Library and Information Science and Delhi University, October 28, 2021.

❖ Invited as a Guest of Honour to participate in Professor C.H. Alexandrowich Memorial Lecture, organised by Maharashtra National Law University, Mumbai, October 26, 2021.

❖ Invited to deliver a talk on “Hinduism and International Humanitarian Law” to the participants of ‘One week Multidisciplinary Workshop on Interfaith and International Humanitarian Law’ organised by Centre for Advanced Study in International Humanitarian Law (CASH), Department of Political Science, Rajiv Gandhi National Law University, Patiala, October 18, 2021.

❖ Invited to address the participants of Refresher programme on “Legal Research Methodology in the field of Public International Law” organised by Jagran Lakecity University, Bhopal, October 04, 2021.

❖ Invited to address the newly inducted students in the various law courses of Bharti Vidya Bhavan University, October 04, 2021

❖ Invited to address the newly inducted students in the various law courses of Prestige University, Indore, October 02, 2021.

Professor (Dr.) Jyoti Dogra Sood, Professor, ILI

❖ Delivered a lecture on "Human Rights and Criminal Justice Administration" in an Interdisciplinary Refresher Course in Human Rights organized by UGC-Human Resource Development Centre, Bangalore University, Bengaluru on November 19, 2021.

Dr. Latika Vashist, Assistant Professor, ILI

❖ Invited as speaker on “Feminist understanding of Desire and Body” at Jindal Global Law School, O.P. Jindal Global University, October 22, 2021.

❖ Invited as speaker on “Domestic Violence and Indecent Representation of Women Act” organized by Maharaja Agrasen Institute of Management Studies, New Delhi, October 25, 2021

❖ Invited by Dean, IFIM Law School, Bangalore to offer a seminar course titled "Thinking Law and Feminism through Psychoanalysis to BALLB students. The course was jointly conceived and taught with Amit Bindal, Jindal Global Law School.

CASE COMMENTS

Citizens for Green Doon and Ors. v. Union of India (UOI) and Ors.

2021(15) SCALE 255

Decided on December 14, 2021

In the present case dealing with the issue of broadening of the roads connecting the ‘chaardhaam’ in the Uttarakhand region, the Supreme Court while agreeing with the security needs of the country as highlighted by the Ministry of Defence (MOD), held that the project must also ensure environment sustainability. Carefully balancing the infrastructural needs and national security concerns involved in the project, with the need for ecologically sensitive development, the Apex Court pronounced a significant judgment modifying its earlier order. The bench of Justices DY Chandrachud, Surya Kant and Vikram Nath modified the decision of the Apex Court dated 8 September 2020 in which the Court had directed the Ministry of Road Transport and Highways (MoRTH) to stick to the circular passed in 2018 pertaining to the widening of the roads in hill

terrain. The 2018 circular had prescribed that “in hills and mountainous terrains, where the traffic volumes range from 3,000 to 8,000 Passenger Car Units a day, the carriageway width should be of intermediate lane configurations (Intermediate Width 17 standard), i.e., of 5.5m width with two-lane structures”. The Apex Court modifying the order, allowed the construction of roads as per the subsequent circular that was passed in 2020 which prescribed that “roads in hilly and mountainous terrain, which act as feeder roads to the Indo-China border should be of DL-PS standard, with a 7m carriageway and 1.5m paved shoulder.”

The judgment following a long litigious chain involving both the NGT and the Apex Court, arose out of the following factual matrix. On 23rd December 2016, the MoRTH, had announced the Chardham Mahamarg Vikas Pariyojna which was aimed at widening of the roads of around 900 kms of national highways, in order to ensure safer, smoother and faster traffic movement. These highways would connect the four religious places in the state of Uttarakhand, namely, Gangotri, Yamunotri, Kedarnath and Badrinath, which have been popularly known as the “Chote Char Dham.” An original application was filed before the principal bench of the National Green Tribunal on 27th February 2018 in public interest challenging the construction, alleging that the same would have a negative impact on the Himalayan ecosystem. Taking note of the concern of the applicant, the NGT directed the constitution of an “Oversight Committee” to monitor the environmental safeguards for the execution of the project. However, the order by the NGT was challenged before the Apex Court and the Court modified the same and constituted a High-Power Committee (HPC) to look into the matter. The court framed detailed terms of reference for HPC so that the issues of protection and conservation of environment in the ecologically sensitive areas could properly be addressed. The HPC submitted its report to the Court on 13 July 2020 where after the Court noted that the conclusions of the report were unanimous, except for the issue relating to the width of the road. The divergence of opinion on the matter of the width of the road rested on the different specifications that were prescribed in the two circulars passed by the MoRTH, one in 2012 and the other in 2018. The 2012 MoRTH Circular had stipulated that all national highways were to have a carriageway width of two lanes. While this circular acknowledged that, generally, the carriageway width is dictated by the traffic volume, but to ensure smooth flow of traffic, all highways were henceforth to be

converted to two lanes with paved shoulders. Thus, according to the 2012 MoRTH Circular, all highways were to conform to the DL-PS standard. However, the 2018 MoRTH Circular modified the 2012 version and prescribed that in hills and mountainous terrains, for areas where the PCUs are in the range of 4,000-8,000 PCUs per day, the carriageway width cannot be of double lane configuration but has to be of intermediate configuration (i.e., 5m); along with this, adequate passing places with 2.5m width have to be included. The Apex Court in its order dated 8 September, decided in the favour of the circular passed in 2018.

Another miscellaneous application was filed by the Union of India, through the Ministry of Defence seeking modification of this order by the Apex Court. The Court examined the specific issues in the context of the project considering the relevant decisions of the Court and various circulars and guidelines which were issued in regard of the issues raised in this case. In this case, the Court undertook an elaborate examination of the principles of environmental law. The court noted that the principle of sustainable development is deep rooted in the jurisprudence of environmental law. It has emerged as a multifaceted principle, which does not prohibit development, but structures it around what is sustainable. The Court observed that though the need for development to be sustainable was well recognized and accepted, there remains a lack of consensus as to the manner by which it could be ascertained whether a particular development project has strictly adhered to the principle of sustainable development or not. The Court suggested that the appropriate way to overcome this problem was through adoption of the standard of the environmental rule of law to test governance decisions under which developmental projects were approved. The Court after examining the various reports and guidelines observed that the national highways provide vital connections to the establishments of the Armed Forces. It noted that the importance of the requirement of double-laned highways has been emphasized as it is necessary for the movement of trucks, equipment, and personnel of the Armed Forces. The Court opined that the HPC was mandated to assess the environmental and social impact of the project and it was in no way, competent to address the security needs of the country. Balancing the interests of defence as against environmental considerations was outside the purview of the HPC. The Court did not shy in expressing its dissatisfaction regarding the indifferent approach of the government

in giving serious consideration to the HPC report that highlighted that the project was riddled with environmental issues, which required resolution to make it environmentally sustainable. The HPC report had highlighted several environmental concerns and suggested recommendations for issues such as proper disposal of muck, disaster management measures, management of springs, streams, and surface drainage as well as the socio-cultural issues such as lack of footpaths for the traditional padyatra or pilgrimage, impact on traditional forest conservation methods and loss of livelihoods. The Court categorically stated that the general recommendations issued by the HPC should form the baseline and they should be implemented. The Court directed that the MoRTH and MoD could proceed with the project however, this was subject to the fulfilling of the conditions that have been raised by the HPC and enumerated by this Court. To ensure the effective implementation of the recommendation, the Court also constituted an “Oversight Committee, which shall report to the court directly.” The Court carefully balanced the two important issues linked in this case, on one hand, protection of the environment and on the other national security and its operational requirements. The Court nicely carved out its decisions based on an elaborate discussion related to environmental rule of law and sustainable development. Noting that “Making the Project environmentally compliant should not be seen a “checkbox” to be obtained on the path to development, but rather as the path to sustained development itself”, the court has sounded a call for a shift in the approach towards the concept of environmental impact assessment of developmental projects.

Time and again, the judiciary has delivered judgements displaying its honest commitment to the agenda of sustainable development and the present judgment is another example of the same. This decision must be referred to by each law school and college in the environmental law course and the same shall certainly help the students to understand the practical aspects of application of environmental law.

Manoj Kumar Sinha

Lochan Shrivastava v. State of Chhattisgarh

2021(15) SCALE 357

Decided on December 14, 2021

The factual matrix of the case was that a 3-year-old girl was raped and strangled to death in which

court commuted the sentence of capital punishment to life imprisonment. The Fast Track Court, Raigarh had convicted the appellant for the offences punishable under Sections 363, 366, 376(2)(I), 377, 201, 302 read with Section 376A of the Indian Penal Code, 1860 and Section 6 of the POCSO Act, 2012 and vide the same judgment and order, the appellant was sentenced to death for the offence punishable under Section 302 of the IPC. Subsequently, vide the impugned judgment and order, the High Court had confirmed the death penalty.

The victim aged 3 years went missing on the unfortunate day and when she couldn't be traced till evening, a missing case was lodged. Later that day, the appellant himself came forward to claim that if he were permitted to conduct worship, he could tell the whereabouts of the victim child. Accordingly, after worship the appellant stated that the child was inside a sack in the bushes near a pole beside the Amlibhauna road. On suspicion, the police were informed and during search the dead body of the victim soaked in blood and in a naked condition was found from the stated place.

On being interrogated, the appellant revealed that the previous day, he saw the victim girl who lived on the floor above his house coming downstairs, whom he persuaded and took her into his room, where he forcibly made physical relation with her and when the deceased started crying loudly, he pressed her mouth and nose with a pillow and murdered her by strangulating. He then wiped the blood and the ejaculated sperm smeared on his penis with a towel kept in the room, filled the dead body in a plastic sack of lentil by twisting her hands and legs and hid it in the stated place.

As the conviction was based on circumstantial evidence, the appellant submitted that the prosecution had utterly failed to establish the incriminating circumstances and, in any case, failed to establish the chain of events, which lead to no other conclusion than the guilt of the accused.

On the contention that the memorandum of the appellant with regard to recovery of dead body was not admissible under Section 27 of the Evidence Act as the same was from an open place, accessible to one and all, the Bench stated that in *State of Himachal Pradesh v. Jeet Singh*, (1999) 4 SCC 370, it had been held that what is relevant is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If the place at which the

article hidden is such where only the person hiding it knows until he discloses that fact to any other person, then it will be immaterial whether the concealed place is accessible to others.

Further, the High Court, after going through the photographs and video clips of the search had noted, “the recovery of dead body was made from a place which could not be said to be accessible to an ordinary person without prior knowledge as the body recovered was kept concealed in a gunny bag inside the shrubs situated at sufficient distance from the main road. In the statement under Section 313 CrPC, the accused/appellant failed to explain how he came to know that the deceased had been murdered and thrown in the shrubs after wrapping her in a gunny bag”.

Hence, the Bench held that in any case, the recovery of the body on the information given by the appellant was duly proved by the memorandum of the appellant under Section 27 of the Evidence Act and the recovery panchnama.

Opining that though a speedy trial is desirable, however, sufficient time ought to have been given to the counsel for the accused to prepare for the case after he was appointed, the Bench stated that even insofar as the award of sentence is concerned, some period ought to have been given between the date of conviction and the award of sentence, specifically when a death penalty was awarded. However, after scrutinizing the evidence in depth, the Bench denied the allegations that any prejudice was caused to the accused since the witnesses had been cross-examined in detail by the lawyer appointed by the court.

Capital Punishment and Possibility of Accused being reformed

While elaborating whether a case falls within the

category of the rarest of rare, the Supreme Court, in *Mannan v. State of Bihar*, (2019) 16 SCC 584, had held that the brutality, and/or the gruesome and/or heinous nature of the crime is not the sole criterion. It is not just the crime which the Court is to take into consideration, but also the criminal, the state of his mind, his socio-economic background, etc. as awarding death sentence is an exception, and life imprisonment is the rule.

Noticing that the Trial Court had convicted the appellant and imposed death penalty on the very same day, the Bench opined that the Trial Court as well as the High Court had only taken into consideration the crime, but they had not taken into consideration the criminal, his state of mind, his socio-economic background, etc. Therefore, considering that the appellant was a young person, who was 23 years old at the time of commission of the offence, came from a rural background and his conduct in the prison had been found to be satisfactory and the fact that he had no criminal antecedents, the Bench held that it could not be said that there was no possibility of the appellant being reformed and rehabilitated foreclosing the alternative option of a lesser sentence and making imposition of death sentence imperative.

The judgement is appreciated on the ground that the court stressed on the behaviour of the accused and the possibility of reformation and rehabilitation. The criminal was a bright and young student and even though he committed a heinous crime, it was his first. Thus, the death penalty under the Section 302 of IPC was commuted to life imprisonment and rest of the offences by the High Court were maintained.

Arya A. Kumar

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