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ILI Newsletter

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Editorial

Climate Change was again placed at the centre of global diplomacy in the 23rd Annual UN Climate Conference (COP 23) meeting held in Bonn, Germany from 6 to 18 November 2017. The COP 23 meeting ended on a positive and an optimistic note. Germany was the technical host of COP 23 whilst it was presided by Fiji. The 197 parties achieved important progress relating to the implementation of the Paris Agreement. All the attention was focused on the implementation of the Paris Accord that is going to enter into force in 2020. The modest objectives of the Conference were achieved by developing a rulebook for the Paris Agreement and agreeing how to conduct the first post-Paris stock-taking of collective action. The stock-taking is meant to evaluate the implementation and effectiveness of the agreement and developing countries, at least for now, were determined that equity should be an essential part of the basis for such an evaluation. The other key outcome related to agreeing on the terms of the so-called 2018 facilitative dialogue, now officially renamed as the Talanoa Dialogue. Talanoa is a traditional approach used in Fiji and the Pacific to engage in an inclusive, participatory and transparent dialogue. According to the COP decision, it has been structured around three questions-where are we ? Where do we want to go? and how do we get there?- to arrive at answers with consensus. The Talanoa Dialogue aims to encourage the international community to take more ambitious action to close the global mitigation gap. The most significant achievement perhaps in the longer term for developing countries is the return of the question of equity to the centre - stage of implementing the Paris Agreement.

In a number of ways COP 23 at Bonn had a limited scope and the negotiations are likely to be much more difficult between 2018 and 2020. Developed countries are always looking for an opportunity to point out seemingly minor technical issues from a particular summit and then using them subsequently to drive matters in their favour. In these circumstances, countries like India need a clear, long-term strategy that can effectively protect the interest of the developing countries during negotiations. The overall outcome of the Conference was, however, a mixed one for developing countries, including India.

Manoj Kumar Sinha

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NEW PRESIDENT OF ILI

Hon'ble Mr.Justice Dipak Misra

Chief Justice of India / President, ILI

Hon'ble Mr. Justice Dipak Misra, assumed the august office of the Chief Justice of India on August 28, 2017. Born on October 3, 1953, His Lordship was enrolled as an advocate on 14th February, 1977 and practiced in Constitutional, Civil, Criminal, Revenue, Service and Sales Tax matters in the Orissa High Court and before the Service Tribunal. He was appointed as an Additional Judge of the Orissa High Court on 17th January, 1996 and transferred to the Madhya Pradesh High Court on 3rd March, 1997 and became the permanent judge in the same year. Justice Misra assumed charge of the office of Chief Justice, Patna High Court on 23rd December, 2009 and charge of the office of the Chief Justice of Delhi High Court on 24th May, 2010. His Lordship was elevated as a Judge of the Supreme Court of India on October 10, 2011.

His Lordship has several landmark judgments to his credit. Some of the significant Judgments of Justice Misra includes directions to Delhi Police to upload First Information Report on their website within 24 hours of the FIR being lodged in order to enable the accused to file appropriate applications before the court for redressal of their grievances, Judgment confirming the death penalty of four convicts in the brutal Delhi gang rape and murder case, 2012 which shook the nation and spurred the genesis of a stringent anti-rape law and the order to stand up in respect of patriotism and nationalism 'when the National Anthem and National Flag' are featured before shows in Cinema theatres across the Country.

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ACTIVITIES AT THE INSTITUTE

Review and Discussion on Existing Legal Framework for Child Marriages

The Indian Law Institute and SAARC-LAW India chapter jointly organized a Review and Discussion on 'Existing Legal Framework for Child Marriages in India' on October 7, 2017.

A view from the Review and Discussion programme

Professor (Dr.) Manoj Kumar Sinha, Director, the Indian Law Institute delivered the welcome address. The discussion focused on important areas on Child Marriages. Mr. Shashank Shekhar, Advocate, Supreme Court of India spoke on "Challenge of Ensuring Justice to Children for their Defence where the Law may lack clear Protective Provisions or Consistency" and Mr. Vikram Srivastava, Founder of Independent Thought spoke on "Marital Rape within Child Marriage- Seeking Legal Awareness for a Legal Problem" and Ms. Yashita Munjal, Advocate, High Court of Delhi presented her views on the topic "Current Status of Compulsory Registration of Marriages in India". The discussion was followed by the interactions with the participants and their suggestions and feedback.

ILI - NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

I. Two Days Training Programme for First Class Judicial Magistrates on "Human Rights Issues and Challenges" (October 7-8, 2017)

The Indian Law Institute in collaboration with National Human Rights Commission have organized a Two Day Training Programme for First Class Judicial Magistrates on "Human Rights: Issues and Challenges" on October 7-8, 2017 at the Plenary Hall of the Institute. Hon'ble Mr. Justice Anil. R. Dave, Former Judge, Supreme Court of India inaugurated the training programme and presided over the function.

Hon'ble Mr.Justice Anil. R. Dave, Former Judge, Supreme Court of India inaugurating the training programme

While delivering the inaugural address His Lordship emphasised on important aspects of Human Rights. Prof. (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Mr. Rakesh Munjal, Sr. Advocate, Supreme Court of India addressed the participants. Dr.Anurag Deep, Associate Professor, ILI interacted with the audience.

From L-R, Prof. (Dr.) Manoj Kumar Sinha, Hon'ble Mr.Justice Anil. R. Dave, Mr. Rakesh Munjal and Dr.Anurag Deep

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The programme was designed for first class judicial magistrates and judicial officers to bring a clear understanding about human rights violations and to adopt an approach towards effective implementation of human rights issues. The programme included nine technical sessions covering the following broad themes:

- Role of NHRC in Protecting Human Rights Violations of Vulnerable Groups
- Immoral Traffic (Prevention) Act, 1956 in protecting Human Rights
- Role of Courts in promotion of Human Rights
- Protection of Human Rights of Juveniles *vis-a-vis* Juvenile Justice (Care and Protection Act, 2015)
- Indian Judiciary and Prison Reforms

The participants were addressed by experts in the field of Human Rights and Justice Delivery System. During the Training Programme eminent speakers delivered lectures and interacted with the participants in different sessions. Prof. (Dr.) Manoj Kumar Sinha, Director, the Indian Law Institute spoke on "Role of NHRC in Protecting Human Rights Violations of Vulnerable Groups-I" and Shri. Jaideep Singh Kochher, Joint Secretary (Training and Research), NHRC interacted with the participants on "Role of NHRC in Protecting Human Rights Violations of Vulnerable Groups-II" in the first and second sessions of the training programme respectively. The Speakers of the other sessions were Mr.Amod K. Kant, General Secretary, Prayas Institute of Juvenile Justice, Smt. Chhaya Sharma, DIG, NHRC and Prof. S.N. Singh, Former Head and Dean, Delhi University. They interacted with the participants on the topics "Human Rights Violations: Critical Concerns and Challenges" and "Immoral Traffic (Prevention) Act, 1956 and Role of Judicial Officers in Protection of Human Rights" and "Role of Court in Promotion of Human Rights" respectively in third, fourth and fifth sessions of the training programme.

Dr. Jyoti Dogra Sood, Associate Professor, ILI delivered a lecture on "Protection of Human Rights of the Juveniles *vis- a vis* the Juvenile Justice (Care and Protection of Children) Act, 2015" and Dr.Anurag Deep, Associate Professor, ILI delivered a lecture on "Criminal Justice and Human Rights: With Special Reference to Burden and Standard of Proof" on the second day of the Training programme. Prof. B.T.Kaul, Chairperson, Delhi Judicial Academy delivered a lecture on "Role of Judicial Officers in Protecting Human Rights" and Shri. Sunil Gupta, Former Law officer and PRO, Tihar Jail spoke on "Indian Judiciary and Prison Reforms".

Certificates of participation were distributed to the participants of the training programme. Thirty five participants serving as First Class Judicial Magistrates from various States participated in the training programme.

Participants of the training programme along with Director and Faculty of ILI

II. Two Days Training programme for Police Personnel on "Human Rights Issues and Challenges" (November 4-5, 2017)

The Indian Law Institute and the National Human Rights Commission jointly organized a Two Day Training Programme for Police Personnel on "Police and Human Rights: Issues and Challenges" from 4-5 November, 2017 at the Plenary Hall of ILI. The objectives of the training programme was to help the police officers in understanding and improving the capabilities in handling various aspects of Human

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Rights while dealing in day -to - day working in their areas of operation.

Shri J.S. Kochher inaugurating the training programme

The programme was inaugurated by Shri Jaideep Singh Kochher Joint Secretary (Training and Research), NHRC. During the inaugural session of the programme, Shri J.S. Kochher highlighted the importance of organising the training programme for the police personnel on the issues and challenges pertaining to Human Rights. Prof. (Dr.) Manoj Kumar Sinha, Director of the Indian Law Institute emphasised on the 'International Law and National Legislations enacted for the protection of Human Rights'. The Two days training programme comprised of eight technical sessions which were followed by detailed discussions and interactions. It involved a series of intensive technical sessions that covered numerous contemporary issues on 'Human Rights'.

On the first day of the training programme the Role of NHRC in protection of Human Rights, Terrorism, National Security, and Role and Responsibility of police in protection of women and children were discussed by the eminent speakers. On the second day of the programme the role of police officers in investigating cyber-crimes, Evidence collection and evidentiary value of proof, Constitutional Rights of persons in custody and impact of media during police investigation had been discussed by the renowned experts.

Speakers of the technical sessions included Dr.Sanjay Dubey, Director (Admn &Policy Research), NHRC, Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, Mr.Amod K. Kant, General Secretary, Prayas Institute of Juvenile Justice, Ms.Daksha Sharma, Ph.D Scholar, ILI, Mr.Neeraj Aarora, AOR, Supreme Court of India, Dr.Anurag Deep, Associate Professor, ILI, Shri P.D.Prasad, Sr.Superintendent of Police, Heading Group –III of the Investigation Division, NHRC and Mr.Sudhanshu Ranjan, Journalist, Doordarshan.

Shri P.K. Malhotra delivering the valedictory address in the presence of Director and Registrar, ILI

The valedictory session was graced by former law Secretary Shri P.K. Malhotra wherein he stressed on the need of creating awareness on Human Rights and challenges. Fifty police personnel from all over India ranking from Sub-Inspector to Superintendent Level participated in the training programme with great enthusiasm. Certificates were distributed to the participants of the training programme.

Participants of the training programme along with Director and Registrar, ILI

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III. Two Days Training programme for Prison Officials on "Human Rights Issues and Challenges" (December 16-17, 2017)

The Indian Law Institute and National Human Rights Commission jointly organised a two day training programme for prison officials on "Human Rights : Issues and Challenges" from December 16-17, 2017.

Hon'ble Mr.Justice Pinaki Chandra Ghose, Former Judge, Supreme Court of India inaugurating the training programme

The programme was inaugurated by Hon'ble Mr.Justice Pinaki Chandra Ghose, Former Judge, Supreme Court of India. Prof. (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Dr.Ranjit Singh, Joint Secretary (P & A), NHRC addressed the audience. Mr. Surjit Dey, Registrar (Law), NHRC also addressed the participants and Mr. Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

From L-R, Dr. Ranjit Singh, Prof. (Dr.) Manoj Kumar Sinha, Hon'ble Mr.Justice Pinaki Chandra Ghose and Mr. Surjit Dey

The first day of the programme consisted of five interactive technical sessions on different themes namely:

- National Policy on Prison Reforms and Correctional Administration
- Protection of Human Rights of Juveniles in Remand Home, Correctional Home with Special Reference to new Juvenile Justice Act
- Social and Economic Rehabilitation and After Care Services to Released Prisoners
- Treatment of Women Prisoners and Treatment of their Accompanying Children *vis-à-vis* Human Rights
- Gender Sensitization of Prison Officials

The speakers included Mr. Sunil Gupta, Former Law Officer, Tihar Jail, Shri Shashank Shekhar, Member, Juvenile Justice Board, Buxar, Professor. G.S Bajpai, Registrar, National Law University, Delhi, Ms. Anju Mangla, Superintendent, Tihar Jail and Ms. Priya Hingorani, Advocate, Supreme Court of India.

On the second day of the programme important topics like, Role of Judiciary in Prison Reforms, Overcrowding of Prisons and Under-trial Prisoners, Role of United Nations Standarads and Norms dealing with Prison Reforms and Mental and other Health Issues of the Prisoners were discussed at length. The speakers of the session included Mr. Sunil Gupta, Former Law Officer, Tihar Jail, Mr. Vivek Kishore, IPS, Professor (Dr.) Manoj Kumar Sinha, Director, ILI, Dr. Rajesh Sagar, AIIMS. The programme was concluded with the distribution of certificates to the participants of the training programme.

Participants of the training programme along with Director and Registrar of ILI

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UGC Expert Review Committee Meeting

A Review Committee constituted by the University Grants Commission visited the Indian Law Institute from 8- 10 October, 2017 to review the functioning and progress made by the ILI after the attainment of Deemed University status in 2004. The Committee was headed by Professor (Dr.) R.Venkata Rao, Vice Chancellor, National Law School of India University, Bangalore. Other members of the Expert Review Committee were Professor A. David Ambrose, Head, Department of Legal Studies, University of Madras, Chennai, Professor (Dr.) K. Chockalingam, Former Vice Chancellor, M.S. University, Tirunelveli, Tamil Nadu, Professor (Dr.) B. N. Pandey, Dean, School of Law, Adamas University, Kolkata and Dr. (Ms.) Urmila Devi, Joint Secretary, University Grants Commission.

From L-R, Prof. A David Ambrose, Dr. (Ms.) Urmila Devi, Prof. (Dr.) R.Venkata Rao, Prof. (Dr.) K. Chockalingam and Prof. (Dr.) B. N. Pandey

The UGC Expert Review Committee interacted with the Director, Heads of various departments of ILI. The deliberations started with a detailed presentation made by the Institute to the committee members followed by discussions and interactions with the Faculty Members, Administrative Staff and Students of ILI regarding the course curricula and future course of actions of the Institute.

UGC Expert Review committee interacting with Faculty and Administrative staff of ILI

Dr. (Ms.) Urmila Devi, Member, UGC Expert Review Committee alongwith the Library Staff, ILI

The team visited different departments of the Institute, classrooms and academic section for a review of the facilities at the Institute and future growth and expansion possibilities. During their visit, the Committee inspected and verified the infrastructure facilities, academic programmes, research activities of the Institute.

One-Day Workshop on 'Child Rights: Mapping the Issues and Concerns' (November 16, 2017)

The Indian Law Institute and the Delhi Commission for Protection of Child Rights (DCPCR) organized a One-Day Workshop on 'Child Rights: Mapping the Issues and Concerns' on November 16, 2017 at the Institute. The objective of this training programme was to sensitise the Delhi Government officials included SDMs, Directorate of Education, CWCs engaged with children for protecting the 'Child Rights'. The highlights of the programme were

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'revisiting Juvenile Justice Act and POSCO, Labour Laws *vis-a-vis* Child, Children in distress/rescued, Strategies of care and protection, Children in conflict with law, strategies for diversion and strategies for intervention through community participation.

From L-R, Dr. Jyoti Dogra Sood, Prof. (Dr.) Manoj Kumar Sinha, Mr.Ramesh Negi and Mr. Shreenibas Chandra Prusty

The programme was inaugurated by Mr. Ramesh Negi, Chairperson, Delhi Commission for Protection of Child Rights (DCPCR). Professor Manoj Kumar Sinha, Director, Indian Law Institute welcomed the participants. Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.

Dr. Jyoti Dogra Sood, Associate Professor, ILI addressed the issues pertaining to Juvenile Justice (Care and Protection of Children) Act, 2015 and Ms. Latika Vashist, Assistant Professor, ILI discussed "the Protection of Children against Sexual Offences Act, 2012 (POCSO)'. Mr. Jonathan Derby and Ms. Urvashi Tilak, Counsel for Social Justice took the session on 'Restorative Justice as an alternative to Criminal Justice Proceedings'. Dr. Rajender Dhar, Addl. Labour Commissioner, Delhi spoke about 'Labour Laws *vis-a-vis* Child' and Dr. Helen R. Sekar, V.V. Giri National Labour Institute discussed about 'Situation of Working Children in NCT Delhi: Reality and Options'. Ms. Richa Nagaich and Ms.Tasha Koshi, Child Rights Activists deliberated on 'Children in Conflict with Law: Strategies for Diversion, Intervention through Community Participation'. Certificates of participation were distributed to the participants of the workshop. Dr. Jyoti Dogra Sood, Associate Professor, ILI was the Coordinator of the workshop.

Civil Society Organisations Coalition on Child Marriage Strategy Meeting

The Indian Law Institute and Civil Society Organisations (CSO) Coalition on Child Marriage organised a strategy Meeting to promote joint commitment of South Asia Initiative to End Violence Against Children (SAIEVAC) and National Human Rights Commission (NHRC) and Civil Society for the Change Children Deserve (Ending Child Marriage in India) on November 24, 2017.

The agenda for the Strategy Meeting included sharing of information on the present status of CSO coalition and its geographical spread was presented by Mr. Shankar Chowdhury, from India Alliance for Child Rights. Brief meetings with NHRC and its expectations from the CSO Coalition, action taken till date and future strategies were shared by Ms. Razia Ismail, from India Alliance for Child Rights. This was followed by a round table discussion for suggestions and action taken for further outreach were discussed by Ms. Yashita Munjal, Advocate, High Court of Delhi and Ratna Saxena, Senior Manager, Justice and Care. Finally discussions on regional commitments were elaborated upon by Ms. Karuna Bishnoi, Child Rights Activist.

Roundtable Discussion on Trafficking of Indian Migrant Workers

A Round table discussion on 'Trafficking of Indian Migrant Workers (Suggestions for Prevention)' was held on December 6, 2017 from 2:00-4:30 pm at the Indian Law Institute, Delhi. This program was a joint effort of Goeman Bind HTO, the Solidarity Centre and SAARC LAW with the Indian Law Institute. The round table discussion began with a presentation of a Country Report on the trafficking and forced labour of Indian migrant workers within the international labour migration process, followed by an analysis of its findings and recommendations. The objective of the discussion was to strategize and identify targeted recommendations for future advocacy with relevant stakeholders to provide better protections for migrant workers. Ms. Swati Sharma, Project coordinator for

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Goeman Bind HTO and Ms. Yashita Munjal, Advocate, High Court of Delhi were the conveners for the programme.

STATE UNIT ACTIVITIES

The Post Graduate Department of Law, Gauhati University in collaboration with the Assam Chapter of the Indian Law Institute conducted a One-day workshop on "The Sixth Schedule to the Constitution of India" at the Phanidhar Hall, Guwahati University on the 23rd September, 2017. Numerous legal luminaries and experts attended the Workshop to enlighten and educate the participants on the subject of the workshop.

From L-R, Shri Vijay Hansaria, Shri Nilayananda Dutta, Prof. N. Mridul Hazarika, Dr. Samujjal Bhattacharya and Prof. Stuti Deka

Senior Advocate and former Advocate General of Nagaland Shri Nilayananda Dutta while reflecting on his personal experiences spoke on the basic legal basis of the financial powers of the District Councils and the role of the Governor. Speaking on the future course, he strongly felt that the powers of the Governor and the conflict with the State and the district councils have to be sorted out at the earliest.

The inaugural speech was delivered by the Vice Chancellor Dr. Mridul Hazarika, who highlighted the diversity of the North east region and the need to strengthen it to ensure growth for all. The Chief Guest Hon'ble Mr. Justice Hrishikesh Roy, Judge, Gauhati High Court recalled the words of Hon'ble Justice Hidayatullah that the "Sixth Schedule was a Constitution within the Constitution" and his experiences as a budding lawyer in his initial years of practice when he had the occasion to handle briefs relating to the Sixth Schedule of the Constitution.

Hon'ble Mr. Justice Suman Shyam, Judge, Gauhati High Court was the Guest of Honour who spoke on the constitutional provisions and felt that like most laws, the main lacuna lies in its implementation in its true letter and spirit. With reference to Sixth Schedule he stated that the North East being endowed with ample natural resources the organized utilization of these resources in the sixth Schedule areas has to be the main focus. Delivering the welcome address, Mr. Sanjoy Medhi, Senior Advocate and honorary secretary of the Assam chapter of the Indian Law Institute too highlighted the observations of Justice Hidayatullah on the Sixth Schedule of the Constitution.

The inaugural session was chaired by Professor Subhram Rajkhowa, Head of the Department of Law. He stressed upon the need to protect tribal groups and fill the gaps in the implementation of the sixth Schedule. In this context, he acknowledged the need to learn and unlearn, towards understanding and developing the issues further. The technical session began with an intriguing lecture of Shri Vijay Hansaria, Senior Advocate, Supreme Court of India who dwelt at length on the historical aspect of the drafting of the Sixth Schedule in the course of his detailed presentation. He also enlightened the participants on the status of the sixth Schedule in various states of the North East. While providing numerous concrete illustrations and instances, he stressed the need to undertake in depth study of the Sixth Schedule to review its implementation and utility.

Dr. Samujjal Bhattacharya, Chief Advisor, All Assam Students Union discussed the ground realities of Assam and hence the need for collaboration at the level of States to ensure that autonomy is truly given to the people under the Sixth Schedule. Professor Stuti Deka from the Department of Law, Gauhati University focused on the drawbacks and lacunas and

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cited possible solutions to such issues. She stressed that these provisions should not remain a dead letter. This was followed by a very lively interactive session, wherein several participants interacted with the speakers on numerous issues pertaining to the Sixth Schedule. The Workshop concluded with a vote of thanks from the organizers.

RESEARCH PUBLICATIONS

Released Publications

* *Journal of the Indian Law Institute (JILI)* Vol. 59 (2) (April-June, 2017)
* *ILI Newsletter* Vol. XIX, Issue III (July-September, 2017)
* *ILI Law Review* (Winter, 2017)

Forth coming Publications

* *Journal of the Indian Law Institute (JILI)* Vol. 59 (3) (July-September, 2017)
* *Annual Survey of Indian Law* – 2016

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.

SPECIAL LECTURES

Ms. Ghazala Jamil, Assistant Professor, Centre for the Study of Law and Governance, Jawaharlal Nehru University delivered a special lecture about her book titled **"**Accumulation by Segregation: Muslim Localities in Delhi" on 2nd November, 2017.

Mr. Rakesh Ankit, Assistant Professor and Assistant Director, Centre for Law and Humanities, Jindal Global Law School delivered special lectures on the topics "Myth, Memory and History: Jammu and Kashmir, 47-52" and "History and Archaeology of an Epic: Ayodhya through Ages" on 27th October, 2017 and 30th October, 2017 respectively.

E-LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights law

E-Learning Certificate Courses of three months duration on ***"Cyber Law***" (28th batch) and "***Intellectual Property Rights and IT in the Internet Age*****"** (40th batch) was completed on December 31, 2017.

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LIBRARY

- Library added 59 books on various subjects such as Copyright Law, Banking Law, Contract Law, Constitutional Law, Criminal Law, Environmental Law, Globalization and Intellectual Property Rights to enrich the collection.
- Library added around 120 articles to its catalogue on various subjects such as Company Law, Cyber Law, ADR, Employment, Human Rights, Intellectual Property Rights, Money Laundering, Muslim Law, Triple Talaq etc.
- Around 28 students from Pendekanti Law College, Hyderabad, 47 students from University of Burdwan, West Bengal and 27 students from Nerim Law College, Guwahati visited the library in the month of November, 2017 and a brief introduction was given to them about the various print as well as E-resources available in the library.

VISITS TO THE INSTITUTE

Mr. Rinzin Jamtsho, Member of Parliament, National Assembly of Bhutan visited the Indian Law Institute on October 10, 2017. They discussed with Director about the growth and forthcoming activities of the Institute.

Mr. Rinzin Jamtsho presenting a memento to the Director, ILI

STAFF MATTERS

- **Bhoopendra Singh**, Computer System Administrator attended the "National Cyber safety and security standards Summit'15" organised by the National Cyber Safety and Security Standards in association with Ministry of Communications & Information Technology, Government of India from December 15-16, 2017 at Birla Institute of Technology and Science, Pilani, Goa.
- **Sanjeev Kumar**, Library Assistant presented a paper titled 'Introduction the Plagiarism at ILI: A Case Study' in Two days International Conference on "KOAL-2017 (Knowledge Organization in Academic Libraries) organized by Libraries Professional Association, at Goa University during December 15-16, 2017.

FORTHCOMING EVENTS

- ILI will be holding the 5th Convocation on February 7, 2018 at Vigyan Bhawan, New Delhi. Hon'ble Chief Justice of India/President, ILI, Hon'ble Mr. Justice Dipak Misra will preside over the function and Shri Ravi Shankar Prasad, Hon'ble Union Minister for Law and Justice, Government of India/Vice President, ILI will be the Chief Guest of the Function.
- ILI in collaboration with NHRC will organise a One Day Training Programme on "Human Rights Issues and Challenges of Juvenile Homes, Old age Home and Health Officials" on 10th February, 2018 at ILI.

FACULTY NEWS

Manoj Kumar Sinha delivered a talk on "Peace and Human Rights" in an International conference organised by the University of Caen Normady, France on the 'European Union and Peace: What Progress Towards a European Federation? 'at Caen, France on 10th November 2017.

Participated and delivered a talk on "Indo-US Relations and its Impact on South Asian Countries" in a conference on 'Globalisation and United States' organised by Sciences Po Aix University, Aix- en-Provence, France on 14th November 2017.

Addressed the participants in the inaugural function of Two days Conference on 'National Level Workshop on Developing LL.B Curriculum in India', organised by KIIT School of Law & AILTC at Bhubaneswar, Odisha on 18-19th November 2017.

Delivered a talk on "Role of the NHRC in Promotion and Protection of Human Rights of Women" organised by the Law Centre-II, Faculty of Law, University of Delhi on 20th November 2017.

Invited to chair a session in National Conference Against Child Labour and Sexual Exploitation organised by Apne Aap Women worldwide on 23rd November 2017 at India International Centre, New Delhi.

Invited as Chief Guest to inaugurate the National Moot Court Competition organised by Noida National University, Greater Noida on 24th November 2017.

Invited as Chief Guest to address the participants on the occasion of 'Celebration of Law Day' organised by Mewar Institute of Law, Vasundhara, Ghaziabad, on 29th November 2017.

Invited to address the participants of One day workshop on Human Rights participants on "Role of the Human Rights Institutions in India in protection of Human Rights" organised by National Human Rights Commission of India (NHRC) and Human Rights Development, Rabindra Bharti University, Kolkata on 11th December 2017.

Invited as Chief Guest to address the participants of 2nd International Conference on Human Rights and Gender Justice, organised by Knowledge Steez and Youth for Human Rights Forum on 24th December 2017 at the Indian Law Institute, Delhi.

Invited as Chief Guest to address the Interns of National Legal Services Authority (NALSA), at ILI New Delhi on 26th December, 2017.

Invited as Special Guest to address the participants of Seventh Course on International Maritime Law (26-30 December, 2017), organised by the Indian Society of International Law, Delhi on 26th December, 2017.

Anurag Deep delivered a lecture as a resource person on "Criminal Justice and Human Rights with special reference to Burden of Proof and Standard of Proof" in the Training Programme on "Human rights : Issues and Challenges," organised by Indian Law Institute in collaboration with NHRC for First Class Judicial Magistrate on 8 October, 2017. He delivered a lecture on "The Law of sedition in India: Controversies, Constitutional issues and Contextual Interpretation" in the Ph.D course work of law students in the Faculty of Law, University of Delhi on 18 November 2017. He also delivered a lecture on "Plagiarism issues in Research and Law" in the Two-Days National Workshop on "Writing Research Paper" held at Nirmala College, Ranchi, Jharkhand on 9-10 December, 2017.

Jyoti Dogra Sood delivered a special lecture on "Women and Law" on 24th November 2017 at Manav Rachna University during their Law Week celebrations. She has coordinated a workshop in collaboration with DCPCR on "Child Rights: Mapping of Issues and Concerns" on 16 November 2017 and took a session on "Revisiting the Juvenile Justice Act" at the Indian Law Institute.

She was invited as a Resource Person by National Law University, Delhi for a National Conference on Wrongful Prosecution: Rights, Protection and Assistance on 18th November, 2017. She presented a paper on the theme "Wrongful Prosecution: Adambhai in Perspective" and chaired a session on the theme, "Victims in Wrongful Prosecution" in the National Conference.

She was also a member of the Academic Committee for the National Law Day - 2017 on "Balancing Roles of Three Wings of the State towards India's Development" jointly organized by Law Commission of India and Niti Aaayog on 25-26 November, 2017.

Arya A. Kumar, participated and presented a paper titled "Human Rights of the Disabled: International Practices and Commitments" at the National Seminar on Socio Legal Aspects of Disability in India organised by the Faculty of Law, Jamia Milia Islamia University, New Delhi on 1st November, 2017.

Susmitha P. Mallaya was invited to judge Indian Round of Third Professor N.R.Madhava Menon SAARC Mooting Competition, 2016 at Llyod Law College, Greater Noida on 28th October 2017. She was invited as a Resource Person for the National Seminar On 'Litigating Equality: Are Human Rights Effective?' at the Delhi Metropolitan Education affiliated to Guru Gobind Singh Indraprastaha University, New Delhi on 11th November 2017. She has also contributed an article titled "Globalization and Financial Sector in India: Issues and Challenges with special emphasis to Banking Services" in *Ideal Journal of Legal Studies* (Vol.8 August, 2017) Pp.172-178.

Stanzin Chostak became member of the International Association for Ladakh Studies (IALS) on 28th October 2017. IALS seeks to promote the study and awareness of all aspects of the art, history, language, culture and natural environment of Ladakh and its surrounding regions, both within Ladakh itself, within academic world, and on the international stage.

LEGAL JOTTINGS

Inherent powers under Section 482 Cr.PC

The Supreme Court explained the principles governing the inherent powers of the High Court under Section 482 Cr.PC that the inherent power of the High Court has a wide ambit and plenitude it has to be exercised to secure the ends of justice or to prevent an abuse of the process of any court.

The Court summarised the elaborate principles laid down by the Supreme Court in various cases. Below is the summary of the principles:

- The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. Also, the power to quash under Section 482 is attracted even if the offence is non-compoundable.

- In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

- As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

- Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute. In such a case, the High Court may quash the criminal proceeding if in view of the

compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.

- Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

The Court, however, said that the decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

Parbatbhai Aahir v. *State of Gujarat*, 2017 SCC On Line SC 1189, decided on October 4, 2017.

Video conferencing in matters relating to marital disputes

For the issue of allowing video conferencing in matters relating to marital disputes, the apex court held that the discretion as to allowing Video Conferencing has to rest with the Family Court and it is to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing. The court ruled that "the procedure of video conferencing which is to be adopted when one party gives consent is contrary to section 11 of the Family Courts Act, 1984 there is no provision that the matter can be dealt with by the Family Court Judge by taking recourse to videoconferencing." Stating that video conferencing may create a dent in the process of settlement, it was held that what one party can communicate with other, if they are left alone for some time, is not possible in videoconferencing and if possible, it is very doubtful whether the emotional bond can be established in a virtual meeting during videoconferencing. Therefore the court states that "the statutory right of a woman cannot be nullified by taking route to technological advancement and destroying her right under a law, more so, when it relates to family matters."

The minority held that whether video conferencing should be allowed in a particular family dispute before the Family Court, the stage at which it should be allowed and the safeguards which should be followed should best be left to the High Courts while framing rules on the subject. Subject to such rules, the use of video conferencing must be left to the careful exercise of discretion of the Family Court in each case.

Santhini v. *Vijaya Venketesh*, 2017 SCC OnLine SC 1080, decided on October 9, 2017

Procedure for appointment of judges should be drafted at the earliest

The apex court while noticing that more than one year and ten months have already gone by since the Court ordered in *Supreme Court Advocate-on Record Association* v. *Union of India,* (2016) 5 SCC 1, for the finalisation of Memoranda of Procedure (MoP), for the appointment of judges ordered that there should be no further delay in finalization of MoP in larger public interest and issued notice to Centre. Emphasising upon the independence of judiciary the court said that "Even though no time limit was fixed by this Court for finalization of the MOP, the issue cannot linger on for indefinite period."

R.P. Luthra v. *Union of India*, 2017 SCC OnLine SC 1254 decided on October 27, 2017

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Gender Neutrality in Criminal Law: Section 497 IPC

The apex court agreeing to hear the petition that sought for examining Section 497 of Penal Code, issued notice to Central Government asking why a married woman, who is equally liable for the offence of adultery with a married man who is not her husband, be not punished along with the man.

Section 497 IPC that deals with the offence of adultery, says that a man who has sexual intercourse with the wife of another man, without that man's consent, will be punished for the offence of adultery. The said provision, however, expressly states that the woman will not be punished for the offence. The Court noticed that the provision grants relief to the wife by treating her as a victim. Hence, when an offence is committed by both of them, one is liable for the criminal offence but the other is absolved. The Court said that the provision:

> "seems to be based on a societal presumption. Ordinarily, the criminal law proceeds on gender neutrality but in this provision, as we perceive, the said concept is absent. That apart, it is to be seen when there is conferment of any affirmative right on women, can it go to the extent of treating them as the victim, in all circumstances, to the peril of the husband."

Not only this, the Court also noticed that the provision creates a dent on the individual identity of woman as: "the fulcrum of the offence is destroyed once the consent or the connivance of the husband is established. Viewed from the said scenario, the provision really creates a dent on the individual independent identity of a woman when the emphasis is laid on the connivance or the consent of the husband. This tantamount to subordination of a woman where the Constitution confers equal status. A time has come when the society must realise that a woman is equal to a man in every field."

Joseph Shine v. *Union of India,* 2017 SCC OnLine SC 1447, decided on December 8, 2017.

CASE COMMENTS

Disabled Rights Group*. v. *Union of India

2017 (14) SCALE 496

Decided on December 15, 2017

In this landmark case, the Supreme Court of India gave a couple of important directions pertaining to the disabled persons educational rights. The petitioner raised three issues in this petition which was filed in the public interest for the benefit of persons suffering from disability. The first issue was the non-implementation of the 3% reservation of seats in educational institutes according to section 39 of the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (PWD) Act. It should be noted that the PWD Act has been replaced by the Rights of Persons with Disabilities Act, 2016 (RPWD) and that under the latter reservation has been increased to 5 percent. The second issue was related to providing proper access to orthopaedic disabled persons so that they can move freely in the educational institutions and access all facilities without facing any discomfort. The third issue focused on pedagogy as it involves making available adequate provisions and facilities of teaching for disabled persons, depending upon the nature of their disability so that disabled persons can undertake their studies effectively. The issues raised in this petition were originally confined to law colleges. However, realizing the importance of these issues the Court decided to enlarge its ambit by including all educational institutions. This petition was originally filed in the year 2006 and it almost took 11 years to decide on this matter. The reason for this delay was largely due to the late submission of a report by the various governmental authorities regarding the implementation of the provisions of the PWD Act. The Court directed all higher educational

institutions to comply with section 32 of the RPWD Act while admitting students each year. Section 32 of the RPWD Act requires all governmental institutions of higher education and other higher education institutions receiving aid from the government to reserve no less than 5% of seats for persons with disabilities. The Higher educational institutions are directed that they shall submit a list of admitted disabled students in each course to the Chief Commissioner or the State Commissioner. In case of non-compliance an action shall be initiated against the defaulting institutions. Regarding the provision for accessibility as well as facilities, the Court relied on another judgment delivered by the same bench on the same day in *Rajive Raturi* v. *Union of India* (2017 (14) SCALE 412) in which the Court gave a number of directions to the central and state governments to ensure that public infrastructure and facilities are accessible to persons with disabilities. In particular, the Court asked the governments to provide detailed reports and plans to make public buildings, airports, railway stations, public transport carriers, government websites and public documents accessible within three months. Such reports will be submitted to the Court which will then issue further directions. With regard to the petitioners' suggestion of drafting "Guidelines for Accessibility for Students with Disabilities in Universities/colleges", the UGC shall constitute a committee to examine the feasibility of such guidelines. The Committee shall undertake a detailed study in relation to making provisions in respect of accessibility as well as pedagogy as well as suggest modalities for implementing those suggestions.

The RPWD Act was enacted to fulfil India's commitment to implement the United Nations Convention on the Rights of Persons with Disabilities, 2007 (CRPD). The purpose of the CRPD is to promote, protect and ensure the full enjoyment of human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. These two judgments of the Court fulfil the purpose set in the CRPD, and more particularly in relation to educational institutions and governmental authorities that will need to take the necessary steps to implement the decision at the earliest. In the judgments, the Court introduces elements of a social model of disability into the jurisprudence of disability rights discourse in India.

Manoj Kumar Sinha

M.C. Mehta v. *Union of India*

2017 (14) SCALE 460

Decided on December 15, 2017

In this case a PIL was filed against the unauthorized constructions and misuse of residential premises for industrial and other commercial purposes. The judgment was delivered on 15th December 2017. A prior writ petition had already been filed by the same person wherein he sought a remedy for Delhi's air pollution crisis among other reliefs, which was decided by the apex court on 7th May, 2004. The court focused on unauthorized constructions and misuse of residential premises for industrial and other commercial purposes. The court in its 2004 decision directed that the Master Plan for Delhi must be followed. It was later noted that the union or the state government did not do anything to remedy the situation and instead had started a blame game. Later, the court also appointed a Monitoring Committee to oversee and ensure compliance with its directions. Another Public Interest Litigation was filed by M. C Mehta in the year 2006 regarding the same environmental concerns. The court in its 2006 judgment made it clear that such blatant violations of environmental law could not take place without the

connivance of the government officers. The court also noted that this was a symptom of corruption, nepotism and total apathy towards the rights of the citizens. In 2006 the apex court directed the Municipal Corporation of Delhi (MCD) for its wide publicity through print media that such violations on residential premises must cease and a time period of 30 days was given after which such premises would be sealed. Even then there were barely any rectifications. Yet again, on 24th March 2006, the apex court decided in *M.C. Mehta* v. *Union of India,* (2006) 3 SCC 429. that a Monitoring Committee be set up and MCD was required to assist this Monitoring Committee. Some people asked for a reasonable amount of time before the sealing could be done and the court stated that if the misuse was not stopped by 30th June 2006 then it would amount to contempt proceedings.

As a follow up action the Delhi Development Authority (DDA) modified the Master Plan for Delhi with regards to the chapter on mixed land use on 28th March 2006. Surprisingly, soon afterwards, the union government moved an application in the apex court requesting a time period of six months for completing the exercise of identification of mixed use of land/roads/streets. A report was also asked to be prepared by the union government and to be tabled in front of the Monitoring Committee. But after the submission of the report the union government withdrew its application. Later a Bill surfaced in the Parliament for maintaining the *status quo*. The *status quo* was to be maintained until 31st December 2017. The Delhi Laws (Special Provisions) Bill after being passed by the parliament received President's assent on 19th May 2006 and was notified the same day. As a natural consequence of this, *status quo* was maintained. A reaction emerged when some people challenged the constitutionality of the Act. Later, the apex court in its decision on 10th August 2006 in *Delhi Pradesh Citizens Council* v. *Union of India,* (2006) 6 SCC 305extended the time to comply with its own earlier orders till 15th September 2006 as many commercial establishments had given an affidavit that they would stop the violations. The DDA came up with a new Master Plan on 7th September 2006. The apex court opined that the legislature was performing judicial functions by extending the time fixed by the court and that it lacked the legislative competence to do so. The court issued some directions on 29th September 2006, viz. (i) those who have given affidavits shall stick to the deadline mentioned in the affidavits (ii) premises covered under DDA's notification would continue to work until the petition challenging the Act or notification was disposed off. (iii) premises not covered by DDA's notification would continue to be sealed under the sealing process. Lastly, (iv) the court restrained the union government or any other authorities from issuing notifications declaring a residential premise to be commercial premise without the leave of the court.

The court also allowed one company to carry on its commercial activity in a residential premise on the condition that it pays conversion charges. However it was finally re-sealed on 1st July, 2008. On 30th April, 2013 the apex court passed a decision regarding the validity of the Act and subsequent legislations following the Act. The court in its 2013 judgment issued the directions namely, (i) all writ petitions challenging the Delhi Laws (Special Provisions) Act, 2006 were transferred to the Delhi High Court with a request to expedite these matters and (ii) till the matter was heard, the Monitoring Committee would not seal any more premises under its scrutiny and that no construction shall be done on such premises and that no order shall be passed by the government regularizing such constructions.

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In the 15th December judgment the apex court held that all applications filed by applicants for the de-sealing of their premises shall be treated as statutory appeals and shall be transferred to the statutory Appellate Tribunal. Also, those applicants who were intending to use the premises for residential purposes were allowed the relief of de-sealing.

With regards to an applicant Infinity Knowledge Systems, the apex court issued some directions, namely, (i) file an affidavit before the Monitoring Committee proving that they will use such premises only for residential purposes and also identify the persons who will be residing in the premises (ii) affidavit should provide the name, address & other particulars of persons who will be responsible in case the premises are used for any other purpose not permitted by this court (iii) affidavit should also provide that the person responsible for such premises will ensure that the premises are used only for residential purposes and in case they are used for commercial purposes, then that person will be liable for contempt of court (iv) applicants will file with the Monitoring Committee the proof of payment of conversion charges to the statutory authority (v) Monitoring Committee may impose such other conditions on the applicant/deponent as it deems appropriate. Further the court held that: (i) any challenge to the decision of the Monitoring Committee will lie to the Supreme Court only; (ii) any person whose premises have been sealed need not approach the statutory Appellate Tribunal and can instead approach the Monitoring Committee after depositing an amount of INR 1,00,000; and (iii) Any person who has already filed an appeal before the statutory Appellate Tribunal may withdraw the same and approach the Monitoring Committee after depositing an amount of INR 1,00,000. The court also lamented that even after four years since transfer of the matter to the Delhi High Court to decide the validity of the Act, it had not been heard. And therefore the apex court transferred the matter back to itself. The court also requested the Monitoring Committee to set up a website where its reports could be accessed by the general public.

The apex court must be appreciated for its concern towards healthy environment. However, this eye-spy game between the various organs of the state does not seem appropriate to prevent damage to the environment. It must be questioned that why in most of the cases we first allow damage to be done to the environment and then we take steps for its rectification. In this case the apex court seemed very active, but when residential complexes will be free from commercial and industrial activities, only time will tell.

Furqan Ahmad

Manohar Lal Sharma* v. *Sanjay Leela Bhansali

MANU/SC/1583/2017

Decided on November 28, 2017

Can the release of a movie be prohibited on the ground that it is likely to injure public sentiments? This question is not *res inegra* and has been agitated in the courts a number of times. The petitioner approached the court before the movie was granted any certificate by Central Board of Film Certification (CBFC). He argued that based on certain reports, trailer, promo of the movie *Padmavati* he apprehends that it injures the sentiments of a group of Indian community and the court should ban the release of movie. The court obviously dismissed the petition. It also struck down a few paragraphs in the pleadings also because 'pleadings in a court are not meant to create any kind of disharmony in the society which believes in the conceptual unity among diversity.'

The petitioner was daring not only because he filed a fresh petition in a couple of days but also because he used the similar objectionable passages. The pleadings were again struck out by the Supreme Court again by observing that 'rambling of irrelevant facts only indicates uncontrolled and imprecise thinking and exposes the inability of the counsel.' In this PIL he also requested the Supreme Court to direct registration of an FIR against the makers of film *Padmavati* and their team members for offence punishable under section 7 of the Act read with Sections 153A, 295, 295A, 499 and 500 IPC 1860 read with Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. The court found it 'unfathomable how any offence is made out' when film is not available at for public. The court also expressed its anguish on the misuse of public interest litigation and on how 'anyone in public office can pre-judge the issue and make public utterances… When the matter is pending for grant of certification, if responsible people in power or public offices comment on the issue of certification pending consideration before the statutory authority, that is a violation of the Rule of law.' It may also prejudice the decision of the certifying authority. The court reiterated the meaning 'poetic licence' from the case of *Devidas Ramachandra Tuljapurkar* v. *State of Maharashtra,* (2015) 6 SCC 1 and observed that 'artistic licence should be put on a high pedestal.' Another precedent of *Sudhir Kumar Saha* v. *Commissioner of Police, Calcutta*, (AIR 970 SC 814) has also been quoted which was indeed a *habeas Corpus* petition for violation of article 21. Krishna Iyer. J, Harold J. Laski and Benjamin Cardozo also find some space in the decision. More useful authority was *Nachiketa Walhekar* v. *Central Board of Film Certification,* (2018) 1 SCC 778 (where a ban on An Insignificant Man-A Documentary on Arvind Kejrival was prayed before release). The court dismissed the PIL and refused to pre-judge the movie *Padmavati.*

This case was a 'text book' illustration of misuse of PIL which the court recognised in no uncertain terms. It also recognised that the petitioner used the same objectionable passages in pleadings in the second petition despite the court warned him previously. The petitioner could be prosecuted for contempt for not complying the previous direction deliberately and heavy cost could have been imposed for abuse of process through PIL. However, no such power was exercised and the patience of Dipak Misra, CJI has to be appreciated.

It is also noticeable that *Padmavati* case was purely on freedom of speech and expression article 19(1)(a) while one of the precedent *ie Sudhir Kumar Saha* (1970) was on article 21. What is the purpose of use of this precedent? Is this a *reiteration* that 'freedom' used in 19(1)(a) and 'liberty' used in article 21 merges at certain point, as held in a number of cases? Or the court should have avoided using the precedent of article 21 for the purpose of article 19(1)(a) in the light of the fact that there are a number of cases on freedom of speech and expression which could be used as precedents. Unnecessary use of precedents not only makes the judgement long (fortunately here it is short judgement) but also leads to confusion. Ideally, the precedents should be on the similar issues and on the similar provisions. There was no issue of law, which was not already decided by the courts previously. All arguments of the petitioner has been already addressed and conclusively decided by the Supreme Court previously on various cases. Such petitions should be dismissed at admission stage with a short order in one line. This was sheer waste of time, energy, intellect, human resource of country and money. The learned advocates should refrain from taking those cases and add to the difficulties of the over burdened courts.

The case re-establishes the value and significance of freedom of speech and expression. A conflict in context of freedom of speech and expression in India follows four types of approaches. (i) Individual freedom dominates (rights based approach) (ii) Group sentiments (or claims) dominates[group interest approach] (iii) balancing of both and (iv) National interest dominates. The USA follows 'rights' based approach. 1st amendment of the Constitution of the USA guarantees 'free speech' with no express restrictions in the constitution. Therefore the movies in the USA are not required to go for a certification process by a union government appointed body like CBFC in India. This approach is partially applicable in India. Individual interest prevails in making a film or writing a book and no one can stop it in the name of public interest. Every such film has to pass CBFC criteria. No question of balancing or dominance of group interest is involved because there is no group interest involved in pre-censorship by any other authority except CBFC. Once an artistic or literary product is out in the public domain the balancing approach comes in picture, *ie* third approach. That has to be based on article 19(2).

In the considered opinion of this commentator there is a fourth approach also which has no direct link with this case but has direct link with restrictions on freedom of speech and expression. The scheme of the Constitution of India suggests that India has rejected the USA model of absolute 'right' based free speech. Indeed it is 'right with responsibility' based approach because of three reasons. (A) Express provision of reasonable restrictions under article 19(2); (B) Provision of suspension of fundamental right of 19(1)(a) under article 358 during national emergency (C) 1st and 16th constitutional amendment (1951 and 1963-which further restricts free speech) followed by 42nd amendment (incorporation of fundamental duties in 1976). Therefore, while general cases of freedom of speech and expression has to follow the established judicial precedents as rightly done in this case under comment, a matter of compelling national interest stands on a different footings and in real cases (not imaginary or hypothetical) national interest prevails over individual interest or public interest.

Anurag Deep

Independent Thought v. *Union of India*

(2017) 10 SCC 800

Decided on October 11, 2017

Rape is the most heinous and violent crime against humanity affecting the dignity and decency of women. Unfortunately, the plethora of progressive legislations enacted to ensure women's safety and security proved that the women remain vulnerable in public places in the Society. In order to curb the issue of 'rape' especially against female children, more than enacting legislations, the judicial interferences are required to put an end to the sexual violence against Women. Such an active interference from the judiciary can be seen in the case under comment in which court took note of the alarming number of crimes against female children.

In this significant ruling the apex court considered an issue of considerable public importance which was whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 answers this issue in the negative. Considering the importance of this matter, the apex court has struck down Exception 2 to Section 375 IPC on the ground that it is 'arbitrary, capricious, whimsical and violative of the rights of the girl child and violative of Article 14, 15 and 21 of the Constitution of India'. The court also clarified that

section 198(6) of the Code will apply to cases of rape of "wives" below 18 years, and cognizance can be taken only in accordance with the provisions of Section 198(6) of the Cr. PC.

The petitioners filed a PIL challenging that the non-consensual sexual intercourse with a married girl child between 15 and 18 years of age by her husband is not penalized under section 375 of the IPC since it is exempted. Almost every statute in India recognizes that a girl below 18 years of age is a child and it is for this reason that the law penalizes sexual intercourse with a girl who is below 18 years of age. Unfortunately, by virtue of Exception 2 to Section 375 of the IPC, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalized under the IPC, only because she is married to him and for no other reason. The right of such a girl child to bodily integrity and to decline to have sexual intercourse with her husband has been statutorily taken away and non-consensual sexual intercourse with her husband is not an offence under the IPC.

Hon'ble Justice Deepak Gupta, held that when a girl is compelled to marry before she attains the age of 18 ears, her health is put in serious jeopardy. As is evident from various reports referred to above, girls who were married before the age of 19 years are likely to suffer medical and psychological problems. A 15 or 16 year old girl, when forcibly subjected to sexual intercourse by her "husband", undergoes a trauma, which her body and mind is not ready to face. The girl child is also twice as more likely to die in child birth than a grown up woman. The least, which one would expect in such a situation, is that the State would not take the defence of tradition and sanctity of marriage in respect of girl child, which would be totally violative of Article 14, 15 and 21 of the Constitution. Therefore, the court is of the view that Exception 2 to section 375, I.P.C. is arbitrary since it is violative of the principles enshrined in Article 14, 15 and 21 of the Constitution of India. In the concurring judgement Hon'ble Mr. Justice Deepak Gupta ruled that "exception 2 to section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the ground that it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India".

With this landmark judgement which ruled that 'sexual intercourse with minor wife is rape' has proved that bad law in the legislative provisions can be removed with the timely judicial interpretations. It is evident from the ruling of the court that "this Court is not creating any new offence but only removing what was unconstitutional and offensive." It is to be appreciated that court as a guardian of people's rights emphasised on gender justice which is a facet of social justice. Ironically, it is to be noted that though the court has declared eexception 2 to Section 375 IPC as unconstitutional, it was reluctant to comment upon another contentious issue of 'marital rape' which is also a serious version of the offence of rape.

Arya A. Kumar

Patel Field Marshal Agencies* v. *P.M. Diesels Ltd.

(2018) 2 SCC 112

Decided on November 29, 2017

Dealing with the interplay between sections 46 & 56 on one hand, and sections 107 & 111 on the other hand of the Trade and Merchandise Marks Act of 1958 (Act of 1958 hereinafter), the bench comprising Justice Ranjan Gogoi and Justice Navin Sinha settled an important question of law on trademarks law. Though

the court was dealing with the 1958 Act, it clarified that the given interpretation will be applicable to the *pari materia* provisions (i.e. section 47, 57 124 & 125) of the Trademarks Act 1999(Act of 1999 hereinafter) as well.

The issue in the case was whether after the party in an infringement suit fails to pursue the issue of rectification of trademark as per section 107 r/w section 111 will result in foreclosure of his right to independently pursue the procedure for rectification under section 46 & 56 of the Act of 1958.

The bench after revisiting the relevant provisions of the Act of 1958(& 1999 as well) concluded that the Act provides a different procedure to govern the exercise of the same jurisdiction in two different situations. The intention of the legislature is clear. All issues relating to and connected with the validity of registration are to be dealt with by the Tribunal (Registrar/IPAB) and not by the civil court. In cases where the parties have not approached the civil court, sections 46 and 56 provide an independent statutory right to an aggrieved party to seek rectification of a trade mark. However, in the event the civil court is approached, inter alia, raising the issue of invalidity of the trade mark, such plea will be decided not by the civil court but by the Tribunal only under the Act of 1958. The Tribunal will however come into *seisin* of the matter only if the civil court is satisfied that an issue with regard to invalidity ought to be framed in the suit. Once an issue to the said effect is framed, the matter will go to the Tribunal and the decision of the Tribunal will thereafter bind the civil court. However, if despite the order of the civil court the parties do not approach the Tribunal for rectification within the time limit specified under section 111, the plea with regard to rectification will no longer survive.

Supreme Court while addressing the issue categorically stated that an independent procedure for rectification of the trademark was not maintainable once the issue was abandoned in the suit. The bench held that the legislature while providing consequences for non-compliance with timelines for doing of any act must be understood to have intended such consequences to be mandatory in nature, thereby, also affecting the substantive rights of the parties.

While arriving the said conclusion, the court disagreed with the full bench decision of the Delhi High Court in *Data Infosys Limited* v. *Infosys Technologies Limited* [2016 (65) PTC 209 Delhi FB], wherein it was held that a party could independently pursue procedure for rectification of trademark even if that issue was abandoned in the suit. The bench also clarified that section 111 (corresponding section 124 in Act of 1999) nowhere contemplates grant of permission by the civil court to move the High Court/IPAB for rectification, as has been contended.

The apex court was of the view that rectification proceedings are governed by the specific provisions and the satisfaction of the civil court that the invalidity plea is tenable or not provides an opportunity for the party to raise the same during pendency of infringement proceedings. It is a basic requirement to further the cause of justice by elimination of false, frivolous and untenable claims of invalidity that may be raised in the suit and is not a grant of permission by the court to agitate the issue afresh even though validity was not assailed earlier or within time prescribed.

The judgment has tried to provide much needed clarity regarding the scheme of the Act, something which has not received the attention of the apex court earlier, and at the same time acknowledges the exclusive power of the Tribunal (Registrar/IPAB) regarding rectification of trademarks even in cases where the suit for infringement is pending before a

court. The interpretation rendered by the two judges is intended to maintain the finality fundamental to *lis* so that the decrees/judgments which have attained finality in law are not reopened, correctly visualising the possible uncertainty and possible anarchy it may lead to.

Deepa Kharb

Nikesh Tarachand Shah* v. *Union of India

2017 (13) SCALE 609

Decided on November 23, 2017

Money laundering is recognized world over as a serious economic offence and a major threat to the economy of a nation. One of the *modes operandi* of the money launderer is to remain one step ahead of the law enforcement agencies. It has been precisely the innovations of the money launderer that have prompted the reach of anti-money laundering regimes getting extended to new sectors of the economy. In order to meet the global commitment to prevent the menace of money laundering, the Prevention of Money Laundering Act (PMLA) was introduced in the year 2002 in India. However, it came into force only in 2005 and amended in the year 2012. The provision relating to bail in money laundering cases is very crucial and the apex court strictly followed in its decisions in *Gautam Kundu* v. *Directorate of Enforcement (Prevention of Money Laundering Act,* (2015) 16 SCC 1 as well as in *Rohit Tandon* v. *The Enforcement Directorate*, 2017 SCC Online SC 1304. The present case however, for the first time challenged the constitutional validity of section 45 of the PMLA which imposes twin conditions for granting bail in the cases involving offences where the punishment prescribed is for a term of imprisonment of more than 3 years under part A of the Schedule mentioned in PMLA. The apex court ordered fresh trial in all cases in which bail was denied because of these conditions. The court held that "We declare section 45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India". The bench consisting of R.F.Nariman and Sanjay Kishan Kaul, JJ considered the personal liberty of the persons languishing in jail and ignored the objective of the PMLA and failed to address the repercussions of granting bail for the accused in PMLA.

In PMLA, scheduled offences mentioned in Part A and Part B and the offences under section 3 and 4 needs to be read together. PMLA is a special legislation and a complete Code in itself, hence, section 45 being part of a complete code cannot be separated, so that money that is laundered can be brought back into the economy and the persons responsible for the same will get punished. The expression "there are reasonable grounds for believing that he is not guilty of such offence" under section 45 provides an opportunity for the court to make prima facie assessment of reasonable guilt. This is one of the twin conditions mentioned for granting of bail in money laundering cases. The people involved in money laundering cases are generally, influential as they conduct these activities in a very secretive manner making it very difficult for the enforcement agencies to prove that the money laundered are "proceeds of crime". Therefore, making the provision for granting bail easy based on the arbitrariness in the scheduled offences under part A and part B needs reconsideration. In order to test the arbitrariness of the section 45 in violation of article 14 of the Constitution of India, the court relied upon the *State of Bombay* v. *L.F.N. Balsara,* (1951) SCR 682 especially the law which states that "while reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object

sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis." On the other hand, the court overlooked the other principle of law laid down in the same case which states that "the presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate ground and also that the principle does not take away from the State the power of classifying persons for legitimate purposes". In this scenario, the amendment made to the schedule under PMLA by which the entire Part B offences were transplanted into Part A by way of Amendment Act of 2012 of PMLA needs to be looked into. The object states, "(j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in two Parts so that the provision of monetary threshold does not apply to the offences". The court viewed the entire case from the angle of right to life and personal liberty of the person accused and referred various landmark decisions including *Menaka Gandhi* v. *Unionof India*, (1978) 1 SCC 248 and *Sunil Batra* v. *Delhi Administration,* (1978) 4 SCC 494 and observed that there is an established trend to infuse the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens or even a person. It is appreciable that the court upheld the fundamental rights of the accused persons and made an attempt to interpret the criminal justice principles in favour of the accused. It held that section 45 of the PMLA violated articles 14 and 21 of the Constitution. However, considering the technical and peculiar feature of offence of money laundering, declaration of section 45 of the PMLA as unconstitutional created a roadblock to book the culprits of financial crimes in tune with the international obligations to tackle the money laundering offence. The court viewed the seriousness of money laundering cases depending upon the amount of money involved (para 29and 30). Since there is no monetary limit fixed in schedule A, the court concluded that the likelihood of being granted bail was being significantly affected under section 45 by factors that had nothing to do with allegations of money laundering. The court would have done well if it answered whether the classification of offences under schedule A of PMLA as well as other offences is in consonance with the objects of the PMLA and if they were not in tune with it could have struck down such classification instead of striking down the whole provision as unconstitutional.

This decision diluted the stringent standard once set by the legislature and judiciary for granting bail in the cases relating to money laundering considering its peculiar nature which is a threat to the national economy in particular and society in general. There is a need to make money laundering *per se* a separate offence instead of compounding it with the scheduled offences mentioned in the PMLA. This will create the PMLA legislation more effective and the differential treatment to the persons accused of money laundering as discussed in this judgment will get addressed.

Susmitha P. Mallaya

Arjun Gopal v. *Union of India*

2017(11) SCALE 283

Decided on September 12, 2017

In the present case a petition was filed under Article 32 of the Constitution seeking direction from the Hon'ble Supreme Court to ban use of fireworks, sparklers and minor explosives in any form, during festivals or otherwise. It is pertinent to understand the background of the present petition which is that the

prayer for a complete prohibition on the sale of fireworks due to pollution in the air caused by the bursting of fireworks was already considered at an interim stage by the court in *Arjun Gopal* v. *Union of India*, (2017) 1 SCC 412 and a detailed order was passed on 11th November, 2016 which put a complete ban on the sale of fireworks in Delhi and NCR. Feeling aggrieved by the continuance of the interim order passed on 11th November, 2016 the concerned manufacturer and supplier of fireworks moved an application on 5th July, 2017 for modification of that interim order. The background for the interim order passed on 11th November, 2016 is that Diwali was celebrated in 2016 on 30th October. On the next day, it was discovered in Delhi that PM2.5 levels in the air had crossed 700 Ã¦g/m3 being among the highest levels recorded in the world and about 29 times above the standards laid down by the World Health Organization (WHO). This resulted in many falling sick and other having to purchase face masks for personal use and install air purifiers in buildings.

While challenging the modification of the said order as prayed for by the applicants who are manufacturers of fireworks etc. the learned Counsel for the petitioners contended that the poor air quality in November 2016 justified the passing of the interim order on 11th November, 2016 and there was no reason to vary that order. The submission was that virulent air pollution is a cause of concern and the only remedy to stop its ill effects is to continue the suspension of licences for the sale of fireworks in Delhi and in the NCR. It was further submitted that if there is any doubt regarding the effect of bursting fireworks on air pollution, and in the absence of any standards to measure the same, the safer course would be to continue such suspension rather than risk the health of large sections of people in Delhi and the NCR, particularly children.

On the other hand the main contention of the applicant was that fireworks are not a major contributor of air pollution and it relied not only on decision of the National Green Tribunal but also upon study conducted by reputed institutes as well as views expressed by the Central Pollution Control Board to bring home the point that fireworks are not a major contributor of air pollution. It was submitted that on an overall consideration of the issues, the ban and sale of fireworks in Delhi and in the NCR should be modified if not lifted. The court however, held that whether or not the bursting of fireworks is a major cause of air pollution in the NCR, it is certainly one of the causes of air pollution, particularly in Delhi.

While disposing off the petition the court held that:

> It could not be said with any great degree of certainty that the extremely poor quality of air in city was the result only of bursting fireworks around Diwali. Certainly, there were other causes as well, but even so the contribution of the bursting of fireworks could not be glossed over. Unfortunately, neither was it possible to give an accurate or relative assessment of the contribution of the other identified factors nor the contribution of bursting fireworks to the poor air quality in city and in the National Capital Region (NCR). Consequently, a complete ban on the sale of fireworks would be an extreme step that might not be fully warranted by the facts available. There is, therefore, some justification for modifying the interim order passed earlier and lifting the suspension of the permanent licences.

The present comment will focus on one important issue i.e., with regard to the precautionary principle

(hereinafter referred to as PP). The PP 'requires' that action needs to be taken even in the absence of concrete scientific findings if there are chances that irreversible damages to the environment is about to be caused. While there are numerous definitions, the most widely quoted is the one in the Rio Declaration (Principle 15). Under this definition, the triggering factor is the "threat" of serious or irreversible damage. Once the approach has been triggered, the wording "allows" but "does not require" action to be taken and leaves this open for governments to decide on a case-by-case basis. There are similar definitions in various international treaties including the 1992 Convention on Climate Change, the 1992 Convention on Biological Diversity and the 2000 Protocol on Biosafety. The principle's general formulation is both strength and a weakness.

There is much criticism of the precautionary principle due to its lack of clarity (eg, Majone, 2002; Treich, 2001). However, the general formulation is both the strength and weakness of the precautionary principle. It is strength because it has a high degree of generality and may be applied to all environmental protection and health safety issues; whereas excessive prescription could remove the flexibility needed to take into account the circumstances of each case (eg, Cooney, 2005; Peterson, 2006). It is also a weakness because it offers little guidance for regulatory policies (Treich, 2001).

While most definitions of the precautionary principle share common features, there are some key areas of difference (Peterson, 2006):

- What level of threat or harm is sufficient to trigger application of the principle (the threshold of harm)?
- Are the potential threats balanced against other considerations, such as costs or non-economic factors, in deciding what precautionary measures to implement?
- Does the principle impose a positive obligation to act or simply permit action?
- Where does the burden of proof rest to show the existence or absence of harm?
- Is liability for environmental harm assigned and, if so, who bears the liability?

The judgment provides us with an opportunity to critique the justification given by the court in modifying the order *vis-a-vis* the application of PP notwithstanding the balancing role that the court plays in the interest of justice. To the above effect the court held that graded and balanced approach is not intended to dilute its primary concern which is the health of everybody and the human right to breathe good quality air or at least not be compelled to breathe poor quality air. It held that health must take precedence over the commercial or other interest of the applicant and those granted a permanent licence and, therefore, a graded regulation is necessary which would eventually result in a prohibition. Taking all factors into consideration, especially the concern for the health of children the court issued various directions which is beyond the scope of the present write up.

Stanzin Chostak

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