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Editorial

The Coronavirus came to light on December 31, 2019, when the Government of China officially communicated to the World Health Organization (WHO) about the spread of a string of pneumonia like cases in Wuhan, the capital of Hubei province. Gradually the virus paved its way to other provinces of China and also other parts of the world. The World Health Organization (WHO) on 30 January 2020 declared the outbreak to be a Public Health emergency of International Concern. (PHEIC). Subsequently, on 11th March 2020, it was declared a pandemic as it had spread to a large number of countries of the world. Many nations beset by the pandemic opted for complete lockdown to contain the spread of the virus by placing restrictions on the movement of people and advising their citizens to adhere to social distancing norms, wearing the mask and use of sanitizer. All these protective practices have become quite essential in the fight against Covid-19. The Coronavirus pandemic is indeed the defining global health crisis of our time and the greatest challenge humanity is facing since World War II. In India, the first case of COVID-19 was reported on 30th January 2020, followed by two similar cases on February 2nd and 3rd February 2020. All three had a travel history to Wuhan, China. It may take a couple of years to significantly arrest the spread of Covid-19 and till then the public health interventions will be largely focused on observance of social distancing measures and improving hygienic practices. These measures will be effective in delaying the onset of wide community transmission, reducing peak incidence and its impact on public services. Multiple trials are currently underway both at national and international levels to develop a vaccine to treat the coronavirus, but results are still awaited. Remote working and staggered shifts may have to be adopted to mitigate COVID-19 transmission in the future. The global experience has shown that containment measures and aggressive contract tracing are essential to keep the infection under control until a vaccine is available to the global community. The global community should also minimize the economic burden of disease, and improve understanding of disease mechanisms, health problems, disease emergence, and reemergence to respond in a proportionate and timely manner. This will help in development of foresight to combat future pandemics. The creation of Health collaborations on a global scale have become critical in reducing the threat of emerging viruses. The most effective way to prevent the spread of the virus locally is to empower the citizens with the right information and urging them to take cognizance of necessary precautions as advised by the relevant Ministries from time to time.

Manoj Kumar Sinha

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SUBSCRIPTION RATES

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Web Series of Lectures

Law and COVID 19 Webinar Series

The Indian Law Institute and Association of ILI Alumni organised the Webinar Series on Covid 19 and Law. The webinar started during lock down in May, 2020 and concluded in June 2020. During lockdown the Ministry of Human Resource and Development, Government of India and UGC directed the educational institutes and academicians to engage in online intellectual activities and research endeavour. UGC also suggested taking up topics like domestic violence for Webinar series of lectures. A number of ILI alumni are in teaching profession in various universities. They took up this challenge of online research activity under the guidance of Professor (Dr.) Manoj Kumar Sinha, Director and supervision of Dr. Anurag Deep, Associate Professor. Accordingly, it was thought to conduct weekly webinars on every Wednesday starting with the inaugural webinar on May 20, 2020. The contemporary topics touched upon areas like 'rights of migrant workers during Covid 19, Law Media and Covid 19, Future of Sustainable Development in a Post Covid-19 world, Domestic Violence during Lockdown, Right to Health and Covid-19 and Impact of Covid- 19 on Legal Education sector. The coordinator for the webinar series was Ms. Mini Srivastava, an ILI alumni/Asst. Prof, Amity Law School, Noida.

In the **First Webinar** on May 20, 2020 **“India's governance over Covid-19 with Special Focus on Migrant Workers”** was discussed by panellists viz., Mr. Rakesh Dwivedi Sr. Advocate, Supreme Court of India, Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute and Patron AILIA, and Mr. Amit Vashist Regional PF Commissioner, Ministry of Labour and Head, Legal division, EPF Organisation in the presence of Moderator Dr. Anurag Deep, Associate Professor, Indian Law Institute and Chief

Advisor, AILIA and Convenor Ms. Mini Srivastava Assistant Professor, Amity Law School Noida and Executive Member AILIA. It was attended by 55 lawyers, academicians and Law students. Mr. Rakesh Dwivedi described the plight of migrant workers and problems being faced by them, evident by their mass exodus from the cities. Professor (Dr.) Manoj Kumar Sinha discussed the performance of India *vis-à-vis* developed countries during Covid-19 by highlighting the role of WHO, UN Charter, International Human Rights Instruments and the Constitution of India. Mr. Amit Vashist, Regional PF Commissioner, shared his views on Migrant labour crisis: Statutory protection, governmental response and long term plan by laying emphasis on various challenges faced by workers including proving the employer-employee relationship.

The **Second Webinar** was organised on May 27, 2020 wherein **“Law, Media and Covid-19 Issues and Challenges”** were discussed in which the Chief Guest was Professor (Dr.) Manoj Kumar Sinha, Director, ILI and Chief Patron, Association of Indian Law Institute Alumni. Panellists were Dr. Mohan Parasain, Joint Director, Lok Sabha, and Parliament of India and Mr. Sudhnasu Ranjan, working with DD News as a TH Senior Journalist. The Convenor was Mr. Amit Raj, Legal Researcher, Legal Consultant, AILIA representative and the Co-Convenor was Ms. Upasana Singh, Assistant Professor (Law) with Delhi Metropolitan Education, (GGSIU) and AILIA representative. It was attended by lawyers, academicians and Law students. Dr. Mohan Parasain highlighted the lack checking programmes launched by the mainstream media. He also stressed upon understanding the importance of Cross-Institutional Accountability of the Institutions. Mr. Sudhanshu Ranjan stated that 'no law can regulate the media *per se*'. He further highlighted that truth is the first casualty always when personal agendas take priority. Finally concluded by Professor (Dr.) Manoj Kumar Sinha that till the time fake news is not undermining any Women, Minority, Community, Individual, it

should be left upon the people to introspect and decide the truth. The programme was conducted smoothly by Mr. Amit Raj, convener and Ms Upasana Singh, Co-convener of this programme.

The **Third Webinar** was organised on June 03, 2020 wherein the **interlink between environment and COVID-19** was sought to be analysed with special emphasis on the future of sustainable development in a post COVID-19 world. The panel comprised of Sr. Advocate, Mr. Sanjay Sen, Supreme Court of India, Mr. Sanjay Upadhyay, Advocate, Environmental Law expert and Managing Partner of Enviro-Legal Defence Law Firm. Dr. Vishnu Konoorayar, HoD and Associate Professor, Centre for Postgraduate Legal Studies, TERI, moderated the session. The Convenors were Ms. Surabhi Pandey, Advocate, Delhi and Executive Member AILIA and Ms. Bhavna Mehrotra, Research Scholar, Faculty of Law, University of Allahabad and AILIA Representative. It was attended by around 55 lawyers, academicians and Law students. Mr. Sanjay Sen, Advocate, Supreme Court of India, focussed on the role of institutions during a crisis and brought to the notice of the audience the important fact the lack of efforts being undertaken by the National Human Rights Commission (NHRC) and how in such times of crisis when there is a flagrant violation of human rights, the only institution that is approached is the Supreme Court of India. Mr. Sanjay Upadhyay, Advocate, Supreme Court of India gave a holistic view on the co-relation between the environment and economy and stressed upon the fact that the environment and the economy can always co-exist and that businesses ought to take the step in this direction.

The **Fourth Webinar** was successfully conducted on June 10, 2020 on **“Domestic Violence during Lockdown: An Invisible Pandemic”** with Convenors being Mrs. Neema Noor Mohamed, Assistant Public Prosecutor, Mahila Court, Govt. of NCT of Delhi and distinguished speakers were Hon'ble Ms Justice Hima Kohli, Delhi High Court and Executive Chairperson DSLSA, Smt. Rekha

Sharma, Chairperson for National Commission for Women and Moderator being (Dr.) P. Puneeth, Associate Professor, Jawaharlal Nehru University, Delhi. The webinar saw participation from a diverse audience consisting of law students, legal academia and members of the Bar. Hon'ble Ms. Justice Hima Kohli stated that when it comes to immediate relief, there are protection officers with powers who can act. But if the person feels that the court of law has not acted upon despite urgency, then there is Appellate Court available to reach at. Just like under the Family Courts Act, the other Courts of Law in emergent situations always try their best to act upon and provide relief. Also during this lockdown, DSLSA has also started the Vidhik Seva, Mobile APP to provide relief to the victims and ensure awareness. She also stated that it is the stark reality is paucity of basic needs of life which in turn can lead to spike in Domestic Violence cases. Ms Rekha Sharma highlighted that the experience during the entire lockdown with regard to DV Cases was not positive but only hints at the amount of work that remains to be done. Pandemic is our first experience and hence the discussion was done on the ways to work in more effective and innovative manner. A lot of measures, reaching out and works remain to be done.

The **Fifth Webinar** was organised on June 17, 2020 wherein the **“Challenges to the Right to Health and Access to Healthcare in Light of the Covid-19 Pandemic”** were discussed by the distinguished speakers Professor A.P. Singh, Dean, University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University; Mr. Rana Mukherjee, Senior Advocate, Supreme Court of India and Mr. Ashok Agarwal, Social Activist and Advocate, Supreme Court of India and Delhi High Court. The session was moderated by Ms. Megha Nagpal, Assistant Professor, Symbiosis Law School and convened by Ms. Radhika, Advocate and Joint Secretary, Association of Indian Law Institute Alumni. The webinar saw participation from a diverse audience consisting of law students, legal academia and

member of the Bar with a total of 175 participants. Professor A.P. Singh stated the constitutional bearings of the right to health and right to access to healthcare for the citizens supplemented by precedents and landmark decisions of the court on this aspect. Mr. Mukherjee highlighted the role of courts in effecting the right to access to healthcare and the challenges in securing this right for the citizens. Mr. Ashok Agarwal stated directions to ensure that the right to access to healthcare to patients of Covid-19 is secured by the state as an activist in filing Writ Petitions before the Courts.

The **Sixth Webinar** was organised on June 24, 2020 with main theme of “**Impact of Covid-19 on Legal Education Sector and its responses thereon**” with main speakers Professor (Dr.) G. S. Bajpai, Professor & Registrar, NLU Delhi discussed on development of legal education on Covid-19 times. Manpower Reduction in Covid-19 and reliance on technology is less so being technology savvy needs to be enhanced and by training it can be done. Professor Arjya B.Majumdar Professor & Dean, Admissions & Outreach, Centre for Global Corporate and Financial Law and Policy, JGLS focused on practical viewpoint 5 aspects basic teaching and learning, examinations, admissions, Internships and foreign admissions. Suggestions online classes were not equipped with learning in class turn into online learning is an obstacle. Technical Knowhow, Internet Connectivity remains a problem and still a challenge. Internet Access still remains in the hands of Minorities. Access to Research also remains problem being at offline mode. Professor (Dr.) M.K. Prasad, Fulbright Scholar, Principal V.M Salgoakar College of Law, Goa also focused on 5 areas-Admissions, Online classes, Infrastructure, Evaluation and Assessment and Attitude of a Teacher and student. Challenges remain all students not able to connect and cope up with Online Classes. Technical Knowhow is not widespread so it brings divide. New Skills are required. Power cut, Internet also remains problem. Time remains a problem as to duration of Classes. Journal offline remains problem being available at

home. Laptop access remains biggest hurdle. Face to Face Classes is possible Online.

The webinars were successful because of the joint effort of ILI alumni and ILI. Special thanks to Mr. S.C.Prusty, Registrar, ILI, Dr. A.K Verma, Dy Registrar, ILI, Bhoopendra Chauhan, Computer System Administrator, ILI, Mr. R.C Meena, Mr..Shailendra K Nirmal, Mr. Puneet Singh Bindra, Mr. Deepak Parashar, (ILI alumni) etc.

RESEARCH PUBLICATIONS

Released Publications

- * Annual Survey of Indian Law Vol. LIV, 2018
- * Journal of the Indian Law Institute (JILI) Vol. 62(1) (January - March, 2020).
- * Journal of the Indian Law Institute (JILI) Vol. 62(2) (April - June, 2020).
- * ILI Newsletter Vol. XXII, Issue (I) (January-March, 2020).

Forthcoming Publications

- * Book titled *Human Rights of Vulnerable Groups: National and International Perspectives* by Prof. (Dr.) Manoj Kumar Sinha and Arya A. Kumar
- * Journal of the Indian Law Institute (JILI) Vol. 62(3) (July-Sept., 2020).
- * ILI Newsletter Vol. XXII, Issue (III) (July-Sept, 2020).

E- LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E Learning courses of three months duration on “**Cyber Law**” (35th batch) and “**Intellectual**

Property Rights and IT in the Internet Age” (46th batch) was completed on April 20, 2020 and **“Cyber Law”** (36th batch) and **“Intellectual Property Rights and IT in the Internet Age”** (47th batch) was started on June 22, 2020.

FORTHCOMING EVENTS

The Indian Law Institute will organise the following Webinars:

- Covid 19: A Turning Point in our Lifestyle, July 30, 2020.
- Gender Mainstreaming : Have we learnt the Lesson from the Pandemic”- July 28, 2020.
- The Impossibility of Love in Meghna Gulzar's “RAAZI”- July 24th, 2020
- Changing Dimensions of Authorship in Corporate Law – July 23rd, 2020
- Research Metrics : Impact Factor and H-Index – July 22nd, 2020
- Perverse Economies of Intimate and Personal Labour : Resuming Domestic Work in Households after the Lockdown – July 06, 2020

LEGAL JOTTINGS

Uniform NEET for admission to Medical & Dental courses does not violate rights of the unaided/aided minority institutions

The 3-judge bench of the apex court held that prescribing uniform examination of NEET for admissions in the graduate and postgraduate professional courses of medical as well as dental science is not in violation of the rights of the unaided/aided minority to administer institutions

under Articles 19(1) (g) and 30 read with Articles 25, 26 and 29(1) of the Constitution.

The court was hearing the challenge to the provisions of Medical Council Act, 196 and Dentists Act, 1948 and Regulations thereto by which a uniform NEET examination was made mandatory for admissions in graduate and postgraduate medical and dental courses. It was argued before the court that State had no power to compel an unaided minority institution to admit students through a single centralized national examination such as NEET. The unaided minority professional colleges have the fundamental rights to choose the method and manner in which to admit its students, subject to satisfying the triple test of having a fair, transparent, and non exploitative process. The Court, referred to a long list of judgments dealing with the right of unaided/aided minorities and the scope of rights under Article 19(1)(g) and Article 30 of the Constitution and came to the conclusion that, “rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. It is open to regulating the course of study, qualifications for ensuring educational standards. it is open to imposing reasonable restrictions in the national and public interest.”

Unimpressed with the present education system, the bench said that by and large, at present education is devoid of its real character of charity, it has become a commodity. To weed out evils from the system, which were eating away fairness in admission process, defeating merit and aspiration of the common incumbent with no means, the State has the right to frame regulatory regime for aided/unaided minority/private institutions as mandated by Directives Principles, Articles 14 and 21 of the Constitution. The fundamental right under Article 19(1)(g) was subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices.

The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions. In case they have to impart education, they are bound to comply with the conditions which are equally applicable to all.

“There is no right given to mal administer the education derogatory to the national interest. The quality of medical education is imperative to subserves the national interest, and the merit cannot be compromised.”

The rights to administer an institution under Article 30 of the Constitution are not above the law and other Constitutional provisions and hence, are not violated by provisions carved out in Section 10D of the MCI Act and the Dentists Act and Regulations framed by MCI/DCI. Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution. Professional educational institutions constitute a class by themselves. Specific measures to make the administration of such institutions transparent can be imposed.

“The regulatory measures by prescribing NEET are to bring the education within the realm of charity which character it has lost. It intends to weed out evils from the system and various malpractices which decayed the system.”

While the Court agreed that there was no doubt as to the concept of limited Government and least interference is welcomed, it however, said that in which field and to what extent balancing with the larger public and national interest is required.

“The Constitution provides a limitation on the power of the State to interfere with life, liberty, and rights, however, the concept of limited government cannot be extended to a level when it defeats the very national interest.”

Holding that the impugned provisions qualify the doctrine of proportionality, the Court explained that

the maladies with which professional education suffers in this country are writ large and that the regulatory framework created by the MCI/ DCI is concomitant of conditions, affiliation and recognition, and providing central examination in the form of NEET cannot be said to be violative of the rights under Articles 19(1)(g) and 30. The regulatory framework is not restrictive, but caters to the effective enjoyment of the rights conferred under the aforesaid provisions.

(*Christian Medical Vellore Association v. Union of India*, 2020 SCC On Line SC 423, decided on April 29, 2020)

SC issues extensive directions to protect children in Protection Homes from spread of corona virus

Taking *suo motu* cognizance of the issue involving protection of children who fall within the ambit of Juvenile Justice (Care and Protection of Children) Act, 2015 from the spread of Corona virus that is sweeping the world, the bench of L. Nageswara Rao and Deepak Gupta, JJ issued extensive directions to various authorities.

Directions to child welfare committees

- Ensure whether a child or children should be kept in the CCI considering the best interest, health and safety concerns.
- Special online sittings or video sessions may be called to consider measures that may be taken to prevent children residing in the Children's Homes, SAAs, and Open Shelters from risk of harm arising out of COVID 19.
- Gatekeeping or preventive measures need to be considered and families counselled to ensure that institutionalization is the last resort.
- Online help desks and support systems for queries to be established at the state level for children and staff in CCIs.
- Violence, including sexual and gender based violence may be exacerbated in contexts of anxiety and stress produced by lockdown and

fear of the disease, CWCs can monitor regularly through video conferencing, WhatsApp and telephonically to ensure prevention of all forms of violence.

Directions to juvenile justice boards and children courts

- Measures to be take to prevent children residing in Observation Homes, Special Homes and Places of Safety from risk of harm arising out of COVID 19.
- Steps to be taken to release all children alleged to be in conflict with law on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015
- Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.
- Ensure that counselling services are provided for all children in Observation homes.
- Develop a system for how to organise trained volunteers who could step in to care for children, when the need arises.
- Make provisions to ensure that counselling is made available, and that there are monitoring systems in place to prevent violence, abuse, and neglect, including gender based violence, which may be exacerbated in contexts of stress produced by lockdown.
- Ensure adequate budgetary allocation is made to meet the costs that are likely to arise for the effective management of the pandemic, and that all bottlenecks and procedural delays are effectively curbed.
- Ensure adequate availability of good quality face masks, soap, disinfectants such as bleach, or alcohol based disinfectants, etc.
- Ensure availability of adequate food, drinking water, and other necessities such as clean clothes, menstrual hygiene products, etc.

(In re contagion of covid-19 virus in children protection homes, 2020 SCC online SC 354, decided April 3, 2020)

Can Family Court convert petition for maintenance under Section 125 CrPC to one under Muslim Women's Protection Act?

The bench of R Banumathi and Indira Banerjee, JJ has given a split verdict on the issue whether a Family Court can convert the petition for maintenance under Section 125 Cr.P.C. to one under Section 3 or Section 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The matter has, hence, been referred to a larger bench.

The factual matrix of the case was that a Muslim woman filed a petition under Section 125 Cr.P.C. alleging that she was subjected to cruelty and harassment for additional dowry and that she was thrown out of matrimonial home. The Family Court held that as the appellant is a Muslim divorced woman, her petition for maintenance under Section 125 Cr.P.C. is not maintainable. Treating the application under Section 125 Cr.P.C. as application under Section 3 of the Muslim Women's Protection Act in the light of the judgment in Iqbal Bano v. State of Uttar Pradesh, (2007) 6 SCC 785, the Family Court directed the husband to pay rupees three lakh in lump sum to appellant towards her maintenance and future livelihood. Rajasthan High Court held that the order of the Family Court converting the application under Section 125 Cr.P.C. into an application under Section 3 of the Act is without jurisdiction and on those findings, set aside the order of the Family Court to that extent.

Holding that the Family Court cannot convert the petition for maintenance under Section 125 Cr.P.C. to one under Section 3 or Section 4 of the Act of 1986, Banumathi, J said

“the application under Section 3(2) of the Act of 1986 by the divorced wife has to be filed before the competent Magistrate having jurisdiction if she claims maintenance beyond the *iddat* period. Even if

the Family Court has been established in that area, the Family Court not having been conferred the jurisdiction under Section 7 of the Family Courts Act, 1984 to entertain an application filed under Section 3 of the Muslim Women Protection Act, the Family Court shall have no jurisdiction to entertain an application under Section 3(2) of the Act of 1986.”

On Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986

Section 3 of 1986 Act opens with the words “notwithstanding anything contained in any other law for the time being in force,” a divorced woman shall be entitled to rights enumerated in clauses (a) to (d) of Section 3(1) of 1986 Act. Muslim Women Protection Act may have conferred more rights but the Act confers these rights notwithstanding anything contained in Section 125 Cr.P.C. The nonobstante clause has to be understood fairly and reasonably. The non-obstante clause cannot be lightly assumed to bring in the effect of supersession. It should not be allowed to demolish or extinguish the existing right unless the legislative intention is clear, manifest and unambiguous.

On Section 7 of the Family Courts Act, 1984

The expression “conferred on it” occurring in sub-clause (b) of Section 7(2) speaks of conferment of the jurisdiction on the Family Court by an enactment. Thus, under Section 7(2)(b), the jurisdiction must be specifically conferred and cannot be assumed or deemed to have been conferred. The provisions of the Muslim Women's Protection Act do not confer any jurisdiction on the Family Court.

Section 3(2) of the Muslim Women's Protection Act provides that the application may be made to a Magistrate; but not to the Family Court. Also, the Muslim Women's Protection Act was enacted in 1986 subsequent to the Family Courts Act, 1984. Hence, the Family Court has no jurisdiction to entertain the petition under Sections 3 and 4 of the Act of 1986 and that the Family Court cannot convert the petition for

maintenance under Section 125 Cr.P.C. to one under Section 3 or Section 4 of the Act of 1986.

Disagreeing with Justice Banumathi's opinion, Banerjee, J said

“Family Courts Act is a secular statute, which applies to matters contemplated therein, irrespective of the religion of the litigating parties.”

On Family Court's scope of power to lay down procedure notwithstanding sub-section (1) and sub-section (2) of Section 10 of the Family Courts Act, which makes the provisions of the CPC applicable to suits and proceedings before the Family Court, other than those under Chapter IX of the Cr.P.C., and the provisions of the Cr.P.C. applicable to all the proceedings under Chapter IX of that Code, it is open to the Family Court to lay down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceeding.

On Territorial Jurisdiction of Family Courts

Where a Family Court has been established for any area, Section 8 of the Family Courts Act denudes the District Court or any Subordinate Civil Court referred to in sub-section (1) of Section 7 of jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section. Section 8(b) of the Family Courts Act prohibits any Magistrate from exercising jurisdiction or powers under Chapter IX of the Cr.P.C. in relation to any area for which a Family Court has been established.

On Overriding effect of Family Courts Act

It is important to note that Section 20 of the Family Courts Act, with its non-obstante clause gives the provisions of the Family Courts Act overriding effect, over any other law, which would include the 1986 Act for Muslim Women. The Family Courts Act is to have effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force, or in any instrument having effect, by virtue of any law other than the Family Courts Act.

“the expression “in any other law, for the time being in force”, cannot be construed narrowly to mean a law which was in force on the date of enactment and/or enforcement of the Family Courts Act”

There is no conflict between Section 3(2) of the 1986 Act for Muslim women and the Family Courts Act. On the other hand, Section 20 of the Family Courts Act, 1984 gives overriding effect to the Family Courts Act notwithstanding anything therewith contained in any other law in force. The Family Court is to exercise all the jurisdiction exercisable by any District Court or any other subordinate Civil court in respect of a proceeding for maintenance.

Banerjee, J, hence, concluded that there can be no dispute that the Family Court alone has jurisdiction in respect of personal and family matters relating to women and men, irrespective of their religion. Family matters of Muslim women pertaining inter alia to marriage, divorce etc. are decided by Family Courts, as also claims of Muslim wives to maintenance under Section 125 of the Cr.P.C.

“There could be no reason to single out divorced Muslim wives to deny them access to the Family Courts, and that in my view, was never the legislative intent of the 1986 Act for Muslim Women.”

(*Rana Nahid v. Sahisul Haq Chisti*, 2020 SCC On Line SC 522, decided on June 18, 2020).

FACULTY NEWS

Invited/Delivered/Lectures

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

- ❖ Delivered a talk on “International Human rights and Role of State in Protecting Right to Health”, organised by Christ University on May 8, 2020.
- ❖ Invited as a speaker in a Webinar to speak on “Covid- 19 in Today's World: Challenges to the Protection of Fundamental Rights”

organised by the Centre for Constitution and Public University Institute of Legal Studies, Panjab University on May 16, 2020.

- ❖ Invited to deliver a talk on May 30, 2020 on "Coping With the Transition in Legal Education during Covid-19: The Way Forward" to the participants of Webinar Series cum FDP, organised by North Cap University from May 30- June 2, 2020.
- ❖ Invited to deliver a talk on June 2, 2020 on "Teaching Technique to teach International Human Rights Law in the present era" to the participants of Webinar Series cum FDP on Emerging Contours of Legal Education and Teaching Techniques organised by VIPs from 1-6, June, 2020.
- ❖ Invited to deliver a talk on June 11, 2020 on "International Law with Respect to Human Rights" to the participants of Webinar Series cum FDP on 'Structured Experiential Learning on various on Practical Legal Arenas' organised by ICAI University, Dehradun from 6- 12, June 2020.
- ❖ Invited as a Guest of Honour in the Inaugural function of International Webinar on, “Managing the Impact of Covid-19 on Higher Education Teaching Pedagogy: Accessibility, Affordability & Accountability Globally” organised by Jain Bundelkhand College of Law, Lalitpur on June 13, 2020.
- ❖ Invited to deliver a talk on "Right to Health and Responsibility of the State” to the participants of Webinar Series cum FDP on 'Contemporary Issues of Law' organised by School of Legal Studies, Cochin University of Science and Technology, Kerala on June 20, 2020.
- ❖ Invited to address the participants of 1st National Moot Court Competition organised by Legalfoxes, and JEMTEC in association with DLSA, New Delhi on June 22, 2020.

- ❖ Invited as chief guest to address the participants of the 1st National Moot Court Competition organised by IMS, Noida on June 25, 2020.
- ❖ Invited to deliver a special talk on “Right to Health: National and International Perspectives” organised by Legal Academia on June 27, 2020.

Professor (Dr.) S. Sivakumar, Professor, ILI

- ❖ Delivered an introductory address in Fifth Prof. N. R. Madhava Menon SAARCLAW Mooting Competition, Law Students Conference & Colloquium 2019-20 organized by Lloyd Law College in association with SAARCLAW-South Asian Association for Regional Co-operation in Law and MILAT- Menon Institute of Legal Advocacy Training from 21-23 February, 2020. He has introduced the topic and spoke on the opening session of the Commonwealth Comparative Constitutional & Public Law (3CPL) Colloquium on "Public Law & Good Governance" on 22 & 23 February, 2020.
- ❖ He also delivered a lecture on the topic “Prevention of sexual harassment at workplace, best practices and global norms international laws conventions and treaties etc.” in the Training cum Awareness Programme on “Sexual Harassment of Women at the Workplace – Prevention, Prohibition and Redressal” organized by Madurai Bench of Madras High Court, Madurai, at Tamil Nadu State Judicial Academy Regional centre, Madurai, on 29 February, 2020 and 1st March, 2020.
- ❖ He was the chief speaker in the National Webinar organised by the Banaras Hindu University, Law School on “Law Relating to Pandemic and Health Services in India” on June 02, 2020.

Dr. Jyoti Dogra Sood, Associate Professor, ILI

- ❖ Delivered a talk on the topic 'Legal Aid for children' in a webinar "Challenges in Legal

Aid during Lockdown and beyond" on May 1, 2020 hosted by New Delhi, Delhi State Legal Services Authority.

- ❖ Chaired a technical session in national E-seminar on "Access to Justice through Video-Conferencing - a way forward" on May 12, 2020 hosted by New Delhi, Delhi Legal Services Authority.

CASE COMMENTS

Christian Medical College, Vellore Association v. Union of India (UOI) and Ors

2020 SCC OnLine SC 423

Decided on April 29, 2020

In this case the petitioners challenged notifications issued by the Medical Council of India (MCI) and the Dental Council of India (DCI) regarding adoption of National Eligibility cum Entrance Test (NEET) for admission into MBBS and post graduate medical courses. Christian Medical College had been the primary petitioner in this case since the introduction of uniform entrance examination in the year 2011 to all medical institutions at the undergraduate level through National Eligibility cum-entrance test (NEET) for admission to MBBS course in each academic year. It was alleged that the imposition of the pre-requisite of qualifying NEET for admission violated the fundamental rights guaranteed under Article 19(1)(g) of the Constitution and also the rights of religious and linguistic minorities to establish and administer educational institutions of their choice as guaranteed under Article 30 of the Constitution. It was further asserted that subordinate legislation could not have overriding effect over the fundamental rights guaranteed under Articles 25, 26, 29(1) and 30 of the Constitution. The petitioners had argued that these amendments impinged upon the rights of private minority institutions to run educational institutions according to their preferences. The right to admit students is one of the fundamental rights of the unaided minority institutions and thus imposing the conditions that students have to clear NEET to secure

a seat in these institutions clearly violates the rights mentioned under Part III of the Constitution. The petitioners further emphasized that they have rights to admit students of their choice according to Article 30 of the Constitution. The Court while referring to *Dar-us-Salam Educational Trust and Ors. v. Medical Council of India and Ors* stated that common counselling did not in any manner affect the right of minority institutions to admit students of their own minority community. The Court also referred to *Modern Dental College and Research Centre v. State of M.P.* (2016) 7 SCC 353 where it was observed that the right of private unaided minority and non-minority educational institutions is not absolute and subject to reasonable restrictions in larger public interest aimed at promotion of merit and excellence and curbing malpractices such as by holding common entrance test for admission. Reference was made to a host of cases in which imposition of reasonable restrictions on aided or unaided minority institutions was the issue and the restrictions were held to be justified as long as they didn't affect the minority character of the institution and were aimed at curbing maladministration and promoting merit. The court, in the present case therefore observed that NEET is a qualifying examination and is aimed at ensuring fair procedure and equality of opportunity so that meritorious students are able to secure admission in medical and dental courses. The Court did not accept the argument that all private minority institutions should conduct their own entrance examination and thus not required to join the NEET.

The Court, therefore, held that “there was no violation of the unaided/ aided minority to administer institutions under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29 (1) of the Constitution of India by prescribing the uniform examination of NEET of admissions in the graduate and postgraduate professional courses of medical as well as dental science. The provisions of the Act and regulation cannot be said to be *ultra vires* or taking away the rights guaranteed under the Constitution of India under Article 30(1) read under Article 30(1) read with Articles 19(1) (g), 14, 25, 26 and 29(1)”. The Court also stated that the rights guaranteed under Article

19(1)(g) are not absolute and are subject to reasonable restrictions and it could be applied to curb the malpractices in the interest of the student's community to promote merit and excellence. The Court further noted that rights of religious or linguistic minorities under Article 30 are not in conflict with other parts of the Constitution.

The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not free from regulation. Regulatory measures are very important to ensure that the minority institutions maintain the educational standards and to run the institutions in orderly and efficient and as per sound administration. The Court held that the introduction of the NEET was required to curb the prevalent “malpractices” and to ensure transparency in the admission process. The Court observed that a uniform entrance test qualifies the test of proportionality and is reasonable. This judgment appropriately balanced the autonomy of minority institutions and also clearly indicated that these institutions were subject to regulatory bodies so that the standards of education are maintained.

Manoj Kumar Sinha

Nisha Priya Bhatia v. Union of India

2020 SCC OnLine SC 394

Decided on April 24, 2020

The significant legislation Sexual Harassment of Women at Workplace Act, 2013 was an outcome of the *Vishaka* (*Vishaka and others v. State of Rajasthan and others* (1997) 6 SCC 241) and the Guidelines and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) which predicates that a non-hostile working environment is the basic limb of a dignified employment.

The Supreme Court reiterating the principles laid down in *Vishaka* judgment and Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) laid down that, “the cases of sexual harassment at workplace is not confined to cases of actual commission of acts of harassment, but

also covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace.”

The factual matrix of the case was that Nisha Priya Bhatia was an employee of the Research & Analysis Wing, who filed a complaint of sexual harassment against the Secretary and Joint Secretary by alleging that the officers subjected her to harassment by asking her to join the sex racket running inside the organization for securing quicker promotions and upon refusal she was harassed.

The organization constituted a Committee after about 3 months of the complaint but it did not comply with *Vishaka* guidelines as it did not include a representative from an NGO or other body dealing with sexual harassment, it was then reconstituted. Departmental Complaint Committee, in its *ex parte* decision, freed both the accused. Later on an incident occurred at the Prime Minister's Office (PMO) where Nisha Priya Bhatia tried to Commit suicide and this incident was widely covered by the media and her psychological state was questioned and she was also declared unemployable as she had “exposed” herself which was against the Rule 135 of 1975 Rules of the R&AW (RCS) Rules and thus began a long battle of allegations and counter-allegations which culminated in the present judgment where the Supreme Court directed the respondent(s) (Union of India) is directed to pay compensation quantified at Rs.1,00,000/ (Rupees one lakh only) to the appellant/petitioner herein for violation of her fundamental rights to life and dignity as a result of the improper handling of her complaint of sexual harassment and also held that “a non-hostile working environment is the basic limb of dignified employment.” And that procrastination in meting out justice threatens not just individuals but also the larger public interest.

The bench of AM Khanwilkar and Dinesh Maheshwari, JJ has upheld the compulsory retirement for former RAW agent Nisha Priya Bhatia, who had leveled sexual harassment complaints against colleagues Ashok Chaturvedi and Sunil Uke, on the ground of “exposure” having regard to the nature of work of the organization of which confidentiality and secrecy are inalienable elements.

The Court took note of the fact that in the present case, the appellant had faced exceedingly insensitive and undignified circumstances due to improper handling of her complaint of sexual harassment. Regardless of the outcome of the inquiry into the stated complaint, the fundamental rights of the petitioner had been clearly impinged.

“The approach of law as regards the cases of sexual harassment at workplace is not confined to cases of actual commission of acts of harassment, but also covers situations wherein the woman employee is subjected to prejudice, hostility, discriminatory attitude and humiliation in day to day functioning at the workplace. Taking any other view would defeat the purpose of the law.”

The Court, hence, concluded that “the effect of any action taken under Rule 135 does not entail any penal consequence for the employee and, therefore, it cannot be put at the same pedestal as an action of dismissal or removal, and no inquiry or opportunity of hearing as envisaged under Article 311 is required while taking an action under this Rule.”

It is unfortunate to note that in this case, the court did not laid much emphasis on the important issue of sexual harassment as a form of workplace discrimination instead focussed on the appellant's compulsory retirement by RAW. Moreover, the case reminds that the present legal framework in India dealing with sexual harassment should include different kinds of employment discriminations too.

Arya A Kumar

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