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Editorial

A healthy environment is necessary for the full enjoyment of human rights, including the right to life, health, food, water and development. The protection and improvement of human environment is a major issue, which affects the well-being of people and economic development throughout the world. The interdependence between human rights and the environment has become an undeniable truth. World Environment Day was first established to be celebrated by the United Nations General Assembly and United Nations Environment Programme (UNEP) in the Conference on Human Environment held on June 5-16, 1972 in Stockholm (Popularly known as Stockholm Conference). Each year on 5th June, the World Environment Day is celebrated on a particular theme decided by the United Nations to make the celebration more effective by encouraging mass participation of people worldwide to tremendously take part in addressing environmental issues on global scale. It was first celebrated in 1973 with the particular theme "Only one Earth". The celebration of this day provides us with an opportunity to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in preserving and enhancing the environment. Since it began in 1973, it has grown to become a global platform for public outreach that is widely celebrated in more than 100 countries. Each World Environment Day is organized on a theme that focuses attention on a particularly pressing environmental concern. The theme for 2018, "Beat Plastic Pollution," is a call to action for all of us to come together to combat one of the greatest environmental challenges of our time. "Beat Plastic Pollution", the theme for World Environment Day 2018, urges governments, industries, communities, and individuals to come together and explore sustainable alternatives and urgently reduce the production and excessive use of single-use plastic polluting our oceans, damaging marine life and threatening human health. Changes in natural resource base due to human activities have taken place more rapidly in the past 50 years than at any time in human history, causing continued deterioration of environment. As a result, many of the earth's ecosystems are nearing critical tipping points of depletion. India was the global host of 2018 World Environment Day, by hosting World Environment Day the Indian government accelerated its leadership on an issue of tremendous magnitude. It's a global emergency affecting every aspect of our lives. India is leading the push to save our oceans and planet. Indian philosophy and lifestyle has long been rooted in the concept of co-existence with nature and India has had a long cultural tradition of frugality and simple living in harmony with nature. As a result, conservation ethos is deeply ingrained in our tradition and life of people. Unfortunately the symbiotic relationship of man with nature gets debilitated as societies develop risking the well being of future generations.

Positively, these World Environment Day celebrations will inspire the people about the need to conserve the nature for our present and future generations.

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ACTIVITIES AT THE INSTITUTE

UGC Expert Committee visit for the inclusion of the Institute in the list of Deemed Universities U/s-12 B of the UGC Act, 1956

An Expert Committee constituted by the University Grants Commission for the inclusion of the Indian Law Institute under section 12B of the UGC Act, 1956 visited the Institute from April 9- 10, 2018 to examine the various Academic, Research, Infrastructural and other facilities available with the Institute.



UGC Expert Committee visit of ILI

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 included Professor (Dr.) A. David Ambrose, Head, Department of Legal Studies, University of Madras, Chennai, Professor (Dr.) Sukh Pal Singh, Vice Chancellor, Hidayatullah National Law University, Chhattisgarh and Dr. Archana Thakur, Joint Secretary, UGC, Delhi.



From L-R, Dr. Archana Thakur, Prof. A David Ambrose, Prof. R.Venkata Rao and Prof. (Dr.) Sukh Pal Singh

The deliberations started with a detailed presentation by Director, ILI Professor (Dr.) Manoj Kumar Sinha, before the committee members about achievements and the future research and academic activities of the Institute. Thereafter the Committee interacted with the Faculty Members, Administrative staff and Students of the Institute and discussed about the various research and academic activities of the Institute.



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

The team visited different departments of the Institute including classrooms, Library, Legal Information Resource Centre (LIRC), Examination and Publication Sections, Annexe and Canteen of the Institute for a review of the facilities at the Institute. During their visit, the Committee also inspected and verified official documents regarding the infrastructure facilities, examinations, academic programmes and research activities of the Institute.



UGC Team visiting the Library and Examination Sections of ILI

Two Day National Workshop on "Intellectual Property: Procedure and Practice"

The Indian Law Institute organized two days National Workshop on "Intellectual Property: Procedure and Practice" on April 20-21, 2018 at the Plenary Hall of ILI.

The objectives of the workshop was to empower students with the practical understanding of issues pertaining to procedure, processing, management and enforcement of intellectual property *i.e.* the filing,

drafting, valuation, licensing etc. It intends to provide a platform for academicians, professionals and students to interact and discuss contemporary issues related to Intellectual Property practice.



From L-R, Professor Manoj Kumar Sinha, Shri P.K. Malhotra, Shri Shreenibas Chandra Prusty and Dr. Deepa Kharb

The workshop was inaugurated by Shri P.K. Malhotra, Former Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. Delivering the inaugural address, he emphasised on the need to equip students with the necessary critical assessment skills, insight and analytical ability to practice effectively in the field of Intellectual Property law. Professor Manoj Kumar Sinha, Director ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed vote of thanks. Dr. Deepa Kharb, Assistant Professor, ILI spoke about the theme of the workshop.

The two days workshop consisted of five technical sessions on diverse issues related to the main theme of the workshop. The distinguished speakers of the workshop were: Professor S.K. Verma, Secretary General, ISIL, Delhi, Mr. G.R. Raghavender, Joint Secretary, Department of Justice, Ministry of Law and Justice, Government of India, Mr. V.K. Jain, Senior Manager, National Research & Development Corporation, Ms. Rachna Bakhru, Partner at Ranjan Narula Associates and IP Attorney, Mr. Vedant Pujari, Founder Accures Legal, Mr. Daleep Kumar, Senior Associate at Ranjan Narula Associates, Mr. Vivek Dahiya, Director, Boudhik Ventures Private Limited, Ms. Suvarna Pandey, Senior Associate with Ranjan Narula Associates, Dr. Raman Mittal, Associate Professor, Faculty of Law, University of Delhi, Mr. R.K. Jain, Manager, Bharat Electronics Ltd., Dr.

Sakthivel, Assistant Professor, USLLS, GGSIP University, Delhi, Dr. Alka Chawla, Associate Professor, Faculty of Law, University of Delhi, Mr. Abhishek Nangia, Partner Ranjan Narula Associates, Dr. Lisa P. Lukose, Associate Professor, USLLS, GGSIPU and Mr. Lalit Ambastha, Founder, Patentwire IPR Attorneys.



From L-R, Mr. V.K. Jain, Prof. S.K. Verma and Mr. G.R. Raghavender.

The topics covered in the workshop were: “overview of IP protection: legislation, policy & emerging trends”, IP registration: procedure of filing and litigation trends, patents & industrial designs and IP infringement & enforcement” etc. The workshop provided a platform for students, researchers, academicians and advocates for fruitful interactions with the experts in the concerned subject. Almost Ninety two participants attended the workshop. The programme was concluded with the distribution of certificates to the participants. Dr. Deepa Kharb, Assistant Professor, ILI was the coordinator of the programme.



Participants of the workshop with Director and Registrar, ILI

Training Programme for Judicial officers from Myanmar

The Indian Law Institute organised a Training Programme for Law officers from Myanmar on various subjects *i.e* “Comparative Constitutional Law, Intellectual Property Rights, Cyber Law, Refugee Law, International Criminal Law’ from May 6-13, 2018. The training programme was conducted at Rajasthan Guest House and twenty law officers from Myanmar participated in the programme.



Participants of the training programme.

Director, ILI, Professor Manoj Kumar Sinha formally welcomed the participants of the training programme. The six days training programme consisted of twelve sessions on important subjects of Indian law. During the Training Programme eminent speakers delivered lectures and interacted with the participants in different sessions.

Speakers included Dr. Anurag Deep, Associate Professor, ILI, Mrs. Arya A.Kumar, Assistant Professor, ILI, Ms. Supriya, ICRC, Professor (Dr.) Manoj Kumar Sinha, Director, ILI, Professor (Dr.) M.P. Singh, Visiting Professor, NLUD, Professor (Dr.) A.K. Koul, Former Vice Chancellor, NUSRL, Dr. Deepa Kharb, Assistant Professor, ILI, Mr. G.R. Raghavender, Joint Secretary, Department of Justice, Ministry of Law and Justice, Mr. T.C. James, Visiting Fellow, Research and Information System for Developing Countries, Dr. Burra Srinivas, Assistant Professor, SAU, Dr. Jyoti Dogra Sood, Associate Professor, ILI, Mr. Neeraj Aarora, Advocate-On-Record, Supreme Court of India and Professor Furqan Ahmad, Professor, ILI.

The valedictory Session was held on May 12, 2018 at the Conference Room, Rajasthan State Guest House, New Delhi. Mr. Suresh Chandra ILS, Secretary, Department of Legal Affairs, Ministry of Law and Justice was the guest of Honour at the valedictory session of the training programme. His Excellency U.Moe Kyaw Aung, Ambassador of Myanmar to India was the Chief Guest of the function. Professor (Dr.)Manoj Kumar Sinha, Director, ILI proposed vote of thanks. Shri Shreenibas Chandra Prusty, Registrar, ILI and Professor Furqan Ahmad were also present at the occasion. The programme was concluded with the distribution of certificates to the participants. Dr. A.K.Verma, Deputy Registrar, ILI coordinated the training programme.



Valedictory session of the training programme.



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

World Environment Day Celebrations, 2018

The World Environment Day was celebrated on the theme 'plastic pollution' on June 5, 2018 as a

reaffirmation of national efforts towards sustainable development and mainstreaming environmental concerns in the national developmental agenda. It was observed to make people aware about the environmental issues and negative changes in environment due to human activities and encourage them to be proactive in environmental protection, to make their surroundings safe and clean. As part of the celebrations, the employees of the Institute along with the Director and Registrar of the Institute planted trees in the premises of the Institute.



View from the World Environment Day celebrations

International Yoga Day Celebrations

The International Yoga Day was celebrated at the Indian Law Institute on June 21, 2018. A Yoga practice session was organised under the guidance of Director, Professor Manoj Kumar Sinha in which the employees of the Institute participated and practiced Yoga activities.



Yoga Day celebrations at ILI

ACHIEVEMENTS

Grant of Graded Autonomy to the Institute by UGC

For the first time, University Grants Commission promulgated to grant Graded Autonomy to various Higher Educational Institutions in the Country on the basis of score/accreditation grade in the Country. Accordingly, sixty (60) Higher Educational Institutions were awarded Graded Autonomy (Grade I, II or III). The Indian Law Institute was granted Grade II Autonomy on the basis of CGPA 3.35/4.00 (Accredited by the NAAC on March 28, 2017) on March 20, 2018.

Inclusion of the Institute in the list of Deemed Universities U/s-12 B of the UGC Act, 1956

The UGC Expert Committee visited the Indian Law Institute on April 9-10, 2018 for review of the Institute's Research/Academic activities for inclusion of ILI U/s-12 B of the UGC Act, 1956 for making it

eligible for government grants. On the basis of the recommendation of the Review Committee, the UGC approved the inclusion of the Institute in the 532nd Meeting of the University Grants Commission and communication to that effect was received by ILI on June 5, 2018.

COMMITTEE MEETINGS

• Membership Committee

The meeting of the Membership Committee was held on April 16, 2018 under the Chairmanship of Hon'ble Mr. Justice J. Chelameswar, Judge, Supreme Court of India.

• Building Committee

The meeting of the Building Committee was held on April 17, 2018 under the Chairmanship of Hon'ble Mr. Justice R.K. Agrawal, Judge, Supreme Court of India.

• Finance Committee

The meeting of the Finance Committee was held on April 18, 2018 under the Chairmanship of Hon'ble Mr. Justice L.Nageswara Rao, Judge, Supreme Court of India.

• Library Committee

The meeting of the Library Committee was held on April 23, 2018 under the Chairmanship of Hon'ble Mr. Justice Kurian Joseph, Judge, Supreme Court of India.

• Academic Council

The meeting of the Academic Council was held on April 24, 2018 under the Chairmanship of Hon'ble (Dr.). Justice A.K.Sikri, Judge, Supreme Court of India.

• Board of Studies

The meeting of the Board of Studies was held on April 20, 2018 under the Chairmanship of Professor (Dr.) Manoj Kumar Sinha, Director, ILI.

SPECIAL LECTURES

Professor G. Mohan Gopal, Director, Rajiv Gandhi Institute for Contemporary Studies delivered a Special lecture on the judgment of *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra*, 2018 (4) SCALE 661.

Ms. Christine Haight Farley, Professor of Law at American University Washington College of Law delivered a Special Lecture on the topic “Non-Traditional Trademarks under U.S. Law” on May 4, 2018.

RESEARCH PUBLICATIONS

Released Publications

- * *Journal of the Indian Law Institute (JILI) Volume 60* (1) (January -March, 2018)
- * *ILI Newsletter* Vol. XX, Issue I (January-March, 2018)
- * Book titled *Towards the Renaissance: Shibli and Maulana Thanvi on Sharia* with an introduction by Dr. Werner Menski, Professor Emeritus and authored by Professor Furqan Ahmad.

Forth coming Publications

- * *Journal of the Indian Law Institute (JILI)* Vol. 60 (2) (April-June, 2018)
- * *ILI Law Review* (Summer, 2018)

EXAMINATIONS

Admissions to various Academic Programmes: 2018-2019

The admission process for academic year 2018-2019 started with the sale of prospectus for Ph.D., LL.M. (1 Year) and Post Graduate Diploma Courses w.e.f. May 1, 2018.

All India Admission Test- 2018 for Admission to LL.M and Ph.D programmes

The All India Admission Test for LL.M (1year) and PhD programme was conducted by the Institute on June 9, 2018 at ILI, Delhi. Total 827 and 101 candidates appeared for the LL.M and Ph.D Admission test. The Merit list of the shortlisted candidates has been declared for the All India Admission Test - 2018. The Viva-Voce/Presentation for exempted/Non-Exempted Category of Candidates is scheduled to be held on July 23, 2018.

Post Graduate Diploma Admission 2018-19

The admission process for four Post Graduate Diploma Courses of one year duration in 'Alternate Dispute Resolution (ADR), Corporate Laws and Management (CLM), Cyber Law (CL) and Intellectual Property Rights Law (IPRL) will start in the month of July, 2018. The last date for application for the Post Graduate Diploma Courses will be July 3, 2018. The merit lists for the same shall be displayed within the time frame.

Annual Examinations: Post Graduate Diploma - 2018

The Annual Examinations for the Post Graduate Diploma Courses for the Session 2017-2018 was held from April 13-27, 2018.

Semester-End-Examinations, LL.M (1 Year) - 2018

The Semester-End-Examinations for the LL.M. 1 year (2nd Semester) for the Session 2017-2018 was held from May 14-24, 2018. The Viva-Voce/Presentation of the dissertations of LL.M. 1 year (2nd Semester) students is scheduled to be held from July 23 and 25, 2018.

The Supplementary Examinations for LL.M. 1 year (2nd & 3rd Trimester) was held from May 14-18, 2018. The Supplementary Examinations for LL.M. 2 year (2nd & 4th Semester) was held from May 14-24, 2018.

Ph.D. Course Work Examinations- 2018

The course work examinations for Ph.D. Programme were held from May 25-29, 2018. The Presentation for Ph.D. Course Work Examination (Paper-III) is scheduled to be held on July 18, 2018.

Post Graduate Diploma Supplementary Examination-2018

The supplementary examination for the PG Diploma Courses will be held in the last week of September, 2018.

E-LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights law

E-Learning Certificate Courses of three months duration on *“Cyber Law”* (30th batch) and *“Intellectual Property Rights and IT in the Internet Age”* (41th batch) was started from May 21, 2018.

88 students were enrolled for the 30th batch of Online Certificate Course in 'Cyber Law' and 56 students were enrolled for the 41th batch of Online Certificate Course in IPR.

LIBRARY

The Indian Law Institute Library has signed the content partner agreement with National Digital Library of India an initiative of Ministry of Human Resource Development (MHRD).

Under Staff development programme the library staff training for Westlaw India and EBSCO Discovery Service was organized. As part of the programme, the library staff visited the Parliament Library, Supreme Court of India Library, Delhi High Court and Nehru Memorial Museum and Library in June 2018 to understand the best practices followed there.

Library Added 53 Books on 'Indian penal code, Hindu Law, Cyber Law, Intellectual Property Rights, Family

Law, Muslim Law, International Law, Criminal Law, Environmental Law, ADR and Sports Law' to enrich the library collections.

Around 51 students from Rabindra Shiksha Sammillani Law College, Calcutta, 10 students from Kashmir University, 40 students from Bundelkhand University, Jhansi, 86 students from Indian Institute of Legal Studies, West Bengal, 29 students from NBT Law College, Nasik, Maharashtra, 40 students from Excellent Law College, Kota, 48 students from Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal, 13 students from INVERTIS University, Bereilly, 35 students from Bengal, Law College, Santiniketan, 37 students from Durgapur Institute of Legal Studies, West Bengal visited the library 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

15 Trainee Judges of Civil Judge (Jr.Division) 2015 batch along with the Faculty Member, UJALA (Uttarakhand Judicial and Legal Academy) visited the Institute on June 21, 2018 as part of their Foundation Training programme organised by the Uttarakhand Judicial and Legal Academy.

Student's visit at ILI

- 19 students from Dr. B.R. Ambedkar Law College, Osmania University, Hyderabad visited the Institute on April 6, 2018.
- 105 students from the University of Kashmir, Department of Law, Hazratbal, Srinagar visited the Institute on May 7, 2018.
- 40 students from IIMT Law College, IIMT University, Ganga Nagar, Meerut visited the Institute on May 9, 2018.

The Institute offered internship opportunities to the law students from various universities during April - June, 2018. Around 20 interneers participated from different universities viz., National Law University, Odisha, Mody University of Science and Technology,

Amity University, Bharti Vidyapeeth Pune, Central University of South Bihar and Jindal Global Law School etc.

STAFF MATTERS

Bhoopendra Singh, Computer System Administrator, ILI attended two days Workshop on "Certified Cyber Security Professional" organised by the National Cyber Safety and Security Standard from June 23-24, 2018 at Raja Rajeshwari Medical College Bangalore.

Gunjan Jain, Assistant Librarian attended Orientation Programme held from June 8, 2018 to July 6, 2018 at CPDHE (UGC-HRDC), Academic Research Centre Building, University of Delhi, Delhi-110007.

FORTHCOMING EVENTS

The Supreme Court of India in collaboration with the Indian Law Institute will organise a Conference on 'National Initiative to Reduce Pendency and Delay in Judicial System' on 27-28 July, 2018 at Pravasi Bharatiya Kendra, New Delhi. Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI will inaugurate the Conference.

FACULTY NEWS

Manoj Kumar Sinha, Director, ILI delivered lectures on "Detention in Armed Conflict" and "IHL and Terrorism" to the participants of 31st South Asian Teaching Session (SATS), organised by the International Committee of the Red Cross (ICRC), Kathmandu on April 3, 2018 (April 1-7, 2018).

Invited as the Guest of Honour in the 3rd National Moot Court Competition on "Honour Killing" organised by SGT University on April 5, 2018.

Invited as the Guest of Honour to address the participants of National seminar on "Combating

Sexual Harassment at Workplace" organised by Amity Law School, Delhi on April 6, 2018.

Invited as Chief Guest in the valedictory function to distribute prize to the participants of National Youth Parliament Competition 'Rastraniti -2018' organised by IMS Unison, Dehradun on April 7, 2018.

Invited to deliver the valedictory address to the participants of ICSSR Comprehensive workshop on Contemporary Developments in Social Science Research, organised by GGSPUI university, New Delhi on April 12, 2018.

Invited as Guest of Honour on the occasion of 127th Birth Anniversary of Dr. Bhim Rao Ambedkar to address participants on "the Rule of Law and the Role of Dr. Bhim Rao Ambedkar in Nation Building" organised by the University of Delhi on April 14, 2018.

Delivered a talk on "Humanitarian Action and Services: Prospects & Challenges" to the participants of three day Teachers Training Programme on 'Humanitarian Issues in Emergencies', organised by School of Legal Studies, Cochin University & the International Committee of the Red Cross, Kochi on April 19, 2018.

Delivered a talk to the faculty and students of Amity Law School on "International Law," Kolkata on April 27, 2018.

Invited to Chair a session on "River Diversion and Ethnic Contestation," in SAARC Law Conclave on Trans-boundary Water Conflicts in South Asia Towards "water for peace" organised by Indian Institute of Legal Studies, Siliguri on April 29, 2018.

Delivered Valedictory address to government officials on "Human Rights: National and International Perspectives" organised by LNJNI National Institute of Criminology and Forensic Science, Rohini on June 8, 2018.

Delivered a talk on “Refugee Rights and IHL” to the participants of Summer course, organised by Llyod Law college, Greater Noida on June 21, 2018.

Furqan Ahmad, Professor, ILI delivered a Lecture in a training programme organised by ILI for the Delegation of Judicial Officers from Myanmar on 'International Environmental Law' on May 12, 2018. He was the guest speaker in a training Programme on "Land Acquisition in Hydro Power Development & Judicial Scrutiny" organised on April 5-6, 2018 at Satluj Jal Vidyut Nigam, Shimla under GNLU-SJVN Fellowship on Hydro Power Development and Environment Law and Rehabilitation & Resettlement Laws.

Jyoti Dogra Sood, Associate Professor, ILI was invited as a panellist in a national Seminar on Combating Sexual Harassment at workplace and chaired a session on “Gaps between Organizational Practice and prevalence of sexual harassment at workplace”, organized by Internal Committee, Amity Law School, Delhi on April 6, 2018. She delivered a lecture in a training programme organised by ILI for the Delegation of Judicial officers from Myanmar on "Internally displaced persons" on May 12, 2018. She also shared her views on "Child Marriage: Issues and Challenges" in Delhi State Consultation on Ending Child Marriage convened by DCPCR and CSO Coalition to End Child Marriage on May 30, 2018.

Arya. A. Kumar, Assistant Professor, ILI delivered a Lecture in a training programme organised by ILI for the Delegation of Judicial officers from Myanmar on 'Indian Constitution and Gender Perspective' on May 7, 2018.

Deepa Kharb, Assistant Professor, ILI delivered a Lecture in a training programme organised by ILI for the Delegation of Judicial officers from Myanmar on 'Recent Judicial Trends in Enforcement of IPR' on May 10, 2018. She also organised a Two-Day Workshop on 'Intellectual Property: Procedure and Practice' at ILI on April 20 and 21, 2018.

Latika Vashist, Assistant Professor, ILI delivered a special lecture on "Gender and the Constitution" at Motilal Nehru College (Evening), University of Delhi on April 12, 2018. She also presented a paper on '*Mahmood Farooqui* case in Feminist Judgments' at the project workshop organized by Jindal Global Law School from May 15-16, 2018.

LEGISLATIVE TRENDS

UTTAR PRADESH KRISHI UTPADAN (SANSHODHAN) ADHINIYAM, 2018

The Uttar Pradesh Krishi Utpadan (Sanshodhan) Adhiniyam, 2018 was enacted on April 11, 2018 to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of markets therefore in Utter Pradesh.

UTTAR PRADESH MUNICIPAL CORPORATION (AMENDMENT) ACT, 2018

was enacted on April 10, 2018 with a view to provide for the establishment of the Municipal Corporation for certain cities in the State of Uttar Pradesh. The Act extends to the whole of State of Uttar Pradesh.

LEGAL JOTTINGS

Anticipatory Bail in Rape Case

The apex court upheld the bail granted to a rape offender by the Hyderabad High Court. In the present petition, the learned bench of the Supreme Court Judges by emphasising on the essence of “consent” in a sexual relationship heard the contentions of the parties and arrived on a decision. The accused was charged under Sections 376, 342, 493, 506 and 354 (C) of the Indian Penal Code for which he was granted anticipatory bail by the sessions judge which was further cancelled on the ground that the accused had hidden the fact of his involvement in another case and the stated order was affirmed by the High Court.

The High Court on receipt of the bail application filed by the accused had granted bail with a bond of Rs. 50,000. For the granted bail, the learned counsel of the appellant submitted that the allegations on the accused were of grave nature involving rape of an aspiring actress and on filing a complaint in that regard, she came across a large number of threats at her end in order to withdraw the filed complaint.

On considering the submissions of the parties, Supreme Court agreed and found “no fault” on the part of the High Court in granting anticipatory bail to the accused as the ground of the complainant in the issue was of rape, though it had been noted that the complainant had visited the accused on her own will which lead the Court towards the “consensual” relationship between the complainant and the accused. Therefore, the Supreme Court without making any further delay in the present case stated that bail once granted should not be cancelled unless or a cogent case based on a supervening event is being made out. Further, bail granted was not cancelled, though the bond was modified to Rs. 10 lakhs.

X v. State of Telangana, 2018 SCC Online SC 549, decided on May 17, 2018.

Reservation in promotion

The Supreme Court allowed the Centre to go ahead with the reservation in promotion for employees belonging to the cadre of SC/ST in accordance to law.

Centre had stated various submissions for explaining their concern on the whole process of promotion being “standstill” due to the various orders passed by the High Courts and apex court. The government also cited the cases on the issue of quota in promotion in government jobs by placing the apex court's decision in *M Nagaraj v. Union of India*, (2006) 8 SCC 212 would be applicable, as in reference to the said case, creamy layer concept cannot be applied to the ST/SC for promotions as decided in the verdict of *Indra Sawhney v. Union of India*; 1992 Supp (3) SCC 210 and *E.V Chinnaiah v. State of A.P.*; (2005) 1 SCC 394.

ASG Mahinder Singh also referred to an order passed on May 17th in which it was said that “pendency of petition before it shall not stand in the way of the Centre taking steps for the promotion”. He also mentioned Article 16 (4A) of the Constitution, which enabled the state to provide reservation in matters of promotion to SC/ST which in its view was not effectively represented for services.

By a decision of the Supreme Court in *M Nagaraj v. Union of India* (2006) 8 SCC 212, the constitutional validity of Article 16(4), (4A) and (4B) was upheld. Subsequent to the pronouncement of law in *M Nagaraj*, there were decisions by the Supreme Court stating that the government could not blindly provide for reservation in promotions, in favour of SCs and STs unless, prior thereto, the requisite exercise, to acquire quantifiable data regarding lack of representation of SCs and STs in public services was undertaken.

On noting the Delhi High Court verdict of August 23, 2017, in which the government was restrained from granting any reservation, in promotion to SC/ST, in exercise of the power conferred by Article 16 (4A) of the Constitution, without, in the first instance, carrying out the necessary preliminary exercise of acquiring quantifiable data indicating inadequacy of representation, the instant petition was filed and till any further decision of the Constitution bench, as per law permission has been granted in regard to the promotions.

State of Maharashtra v. Vijay Ghogre, 2018 SCC OnLine SC 589, decided on June 5, 2018.

Anticipatory bail for a limited period of time

The 3-judge bench of Kurian Josph, MM Shantanagoudan and Navin Sinha, JJ asked larger bench to authoritatively settle the following questions in a clear and unambiguous way:

- Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender

before the Trial Court and seek regular bail.

- Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

The issue as to whether an anticipatory bail should be for a limited period of time was before the bench for consideration and it took note of the fact that there were conflicting views of the different Benches of varying strength on the said issue.

While the Constitution Bench verdict in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565, holds that anticipatory bail should not be for a limited period, the 3-judge bench verdict in *Salauddin Abdulsamad Shaikh v. State of Maharashtra*, (1996) 1 SCC 667, without referring to the aforementioned Constitution Bench verdict, holds that anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

The Court noticed that in *Sibbia* case, the Court has only briefly dealt with the question of duration of anticipatory bail and has not laid down the law that once an anticipatory bail, it is an anticipatory bail forever. Hence, the Bench referred the matter to a larger bench.

Sushila Aggarwal v. State (NCT of Delhi), 2018 SCC OnLine SC 531, decided on May 15, 2018.

CASE COMMENTS

Swaraj Abhiyan (VI) v. Union of India & Ors

JT 2018 (6) SC 53

Decided on May 18, 2018

India as the world's largest democracy of the world strictly adheres to the socio-economic welfare of the people. Part IV of the Indian Constitution deals with

the Directive Principles of State Policy, which enjoins the State to make effective provisions for securing the right to work and right to public assistance in cases of unemployment. Article 41 of the Constitution provides that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” It is interesting to note that the word 'right' is used only in Article 41 of the Part IV.

In this case the petitioner highlighted three important issues pertaining to the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) and the scheme framed there under. Three issues are, namely (1) delay in payment of wages and compensation to the beneficiaries under the Act and the Scheme framed there under; (2) reduction in person days and consequent reduction in allocation of funds from the projection made by the State Governments and the Union Territory Administrations; and (3) Absence of social audits being conducted. The MGNREGA was adopted by Parliament with the objective of enhancing the livelihood security of poor households in rural areas by providing at least one hundred days guaranteed wage employment to every such household whose adult members volunteer to do unskilled manual work. Regarding the first issue raised by the petitioner the Court held that the Central Government is statutorily empowered to scrutinize and assess the funds to be released to the State Governments and Union Territory Administrations for the purposes of the Act. The final assessment is made by the Empowered Committee in consultation with the State Governments and Union Territory Administrations. Therefore, it is not as if the 'agreed to labor budget' or the 'approved labor budget' is fixed arbitrarily by the Central Government. The Court held that the process is backed by the statutory provisions. The Court further held that, in case of unreasonable reduction in the funds made available to the State Governments, in such a situation the concerned State Government has to object about and non-availability

of funds and not the petitioner. However, the Court did not accept the view of the Central Government that implementation of the scheme is the responsibility of the States and hence securing funds for implementation is the responsibility of the States.

The second issue raised by the petitioner is of delay in payment of wages to the beneficiaries and nonpayment of compensation in terms of the Act. According to Section 3(3) and 3(4) of the MGNREGA the payment of wages not later than a fortnight after the date on which the work was done by the worker or laborer. The Court observed that the delay in receiving wages is not at all the concern of the worker. He or she is entitled to get the due wages within a fortnight of completion of the work. If there are any administrative inefficiencies or deficiencies or laxity, it is entirely for the State Government and the Ministry of Rural Development to sort out the problem. It is precisely to overcome any inefficiency or deficiency that payment of compensation is postulated, otherwise the purpose of Section 3 and paragraph 29 of Schedule II of the Act would get completely defeated. Any delay in payment of wages or compensation violates statutory provisions. The Court made it clear and direct that in terms of the Act and Schedule II thereof a worker is entitled to payment of wages within a fortnight of the date on which the work was done, failing which the worker is entitled to the compensation as prescribed in paragraph 29 of the Schedule II of the Act.

The Court directed the Ministry of Rural Development to take urgent remedial steps to iron out the creases, since there is still some way to go before the Act finally touches the lives of millions of unemployed persons. The problem of unemployment is in urgent need of redressal in India. India has about 250 million people who are so unimaginably poor that they can't cross the poverty line that is set way below what can be considered necessary for a human existence. Therefore it is imperative to protect the right to work in the second most populous nation on the earth.

Manoj Kumar Sinha

Wild Life Warden v. Elias

2018 (2) KLT 787(SC)

Decided on May 8, 2018

In the instant case, it was alleged that the respondent unauthorisedly collected and stored elephant tusks, unlicensed gun and other accessories. Following this, a jeep belonging to the respondent was seized by the authorities and a criminal proceeding was also initiated under the Kerala Forest Act, 1961. The respondent was acquitted at the trial level and consequently this order was challenged before the District Judge, Wayanad, Kerala. The District Judge held that the elephant tusk was not a forest produce and that there was no clinching evidence on record to arrive at the finding that it was a Government property hence the presumption as contemplated under section 69 of the 1961 Act could not be attracted. An appeal was preferred before the Kerala High Court which concurred with the lower courts in stating that the presumption under section 69 was not attracted and further the elephant tusk was not a forest produce as it was not mentioned in the definition as a forest produce under section 61A of the 1961 Act. The above mentioned provisions run thus:

Section 61 A- Confiscation by Forest Officers in certain cases.-

- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property Under Sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorized officer).

(2) Where an authorized officer seizes Under Sub-section (1) of Section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorized officer Under Sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorized officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

Thus, followed the appeal before the Supreme Court. The plea made by the appellant before the apex court was that the Hon'ble High Court misconstrued the definition under section 2(f) and if it is read inclusively it would include ivory as the property of the Government. Section 2(f) that defines 'forest produce' reads as follows:

(f) "forest produce" includes-

- (i) the following whether found in or brought from, a forest or not, that is to say timber, charcoal, wood oil, gum, resin, natural varnish, bark lac, fibres and roots of sandalwood and rosewood; and
- (ii) the following when found in, or brought from, a forest, that is to say,-
 - (a) trees and leaves, flowers and fruits, and all other parts or produce not herein before mentioned, of trees;
 - (b) plants not being trees (including grass, creepers, reeds and moss) and all parts or produce of such plants; and
 - (c) silk cocoons, honey and wax;
 - (d) peat, surface oil, rock and minerals (including limestone, laterite), mineral oils and all products of mines or quarries.

The three judges bench of the Supreme Court presided by the Chief Justice of India looked into

Section 39(1) of the Wild Life (Protection) Act, 1972 to state that it is "clear that an ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed, shall be deemed to be the property of the State Government, and where such animal is hunted in a Sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat derived from such animal shall be the property of the Central Government."

Accordingly, the bench of the apex court held that, as effected by section 39(1) of 1972 Act, elephant tusk is a property of the Government. As far as exploitation of the forest produce and wildlife is concerned, the apex court has rightly disposed of the matter and interpreted the related provisions. The interpretation by the High Court and the lower courts were not in conformity with the protection of forest produce and wildlife and was not in consonance with the law to protect this national treasure. Whereas the reinterpretation relating to forest and wildlife produce by the learned judges the Supreme Court was inevitable and the apex court through its observation once again affirmed its concern towards protection of ecology and environment.

Furqan Ahmad

Nandakumar v. State of Kerala,

2018 (2) KLT 783 (SC)

Decided on April 20, 2018

The issue of *Live-in-relationship* has always been a controversial legal issue since there is no separate legislation that lays down the provisions of *live-in-relationship* which provides legality to this concept. Though section 2(f) of the Protection of women Against Domestic Violence Act, 2005 covers the expression "relationship in the nature of marriage," society always considered it as an illegal and immoral issue. Remarkably, the Indian judiciary recognised *live-in-relationship* as a valid marriage in a catena of judicial interpretations.

In the present case, the Kerala High Court ordered the custody of a 19-year-old girl who had married a 19-year-old boy to her father on the ground that she was not lawfully married to the boy as he was not of marriageable age as per the law. Against the order of the High Court, the petitioner approached the apex Court which noticed that merely because the boy was less than 21 years of age, it cannot be said that marriage between the parties is null and void. Reversing the judgement of the High Court, the apex court removed the girl from the custody of her father and held that "the freedom of choice would be of the girl as to with whom she wants to live".

Noticing that both the parties were major at the time of marriage, the Court observed:

"Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that 'live-in relationship' is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."

It is to be appreciated that for protecting the rights of the women and children born out of *live-in-relationship*, the Supreme Court gave many positive judicial interpretations. In addition to this judicial activism, the Parliament has to ponder over the issue to bring a proper legislation addresses the issue of *live-in-relationship*.

Arya A.Kumar

***Union of India v. Hardy Exploration and
Production (India) INC***

JT 2018(5) SC 432

Decided on May 1, 2018

In International Commercial Arbitration it is generally witnessed that arbitration clauses specify the 'venue' for conducting the arbitration proceedings but leave out specifying the 'seat' of the arbitration. This leads to confusion regarding the applicable laws

and since the issue goes to the root of the matter, it has been litigated several times by the parties before courts to determine the applicability of laws of a particular country for deciding the post award arbitration proceedings.

A similar issue came before the Hon'ble Supreme Court of India in the present appeal wherein the two judges' bench of the Hon'ble Supreme Court considered it appropriate to refer the issue to be decided by a larger bench. The seminal issue before the two judges bench comprising of R.K.Agrawal and Abhay Manohar Sapre JJ. was that when the arbitration agreement specify the "venue" for holding the arbitration sittings by the arbitrators but does not specify the "seat", then on what basis and by which principle, the parties have to decide the place of "seat"?

The bench observed that though the question of juridical 'seat' and 'venue' for holding arbitration arising under International Commercial Arbitration Agreement is primarily required to be decided in accordance with the terms of arbitration agreement itself, but having regard to the law laid down by the apex court in several decision by the benches of variable strength and keeping in view the issues which frequently arise in International Commercial Arbitration, it was a fit case to be dealt with by a larger bench of this court.

The facts pertaining to the present case are that Hardy Exploration & Production (India) Inc. ('HEPI' hereinafter) and Union of India ('UOI') entered into a contractual relationship through a production sharing contract ('PSC') for the extraction, development and production of hydrocarbons in a geographic block in India in November, 1996. Some disputes arose between the parties later which were referred to arbitration with Kuala Lumpur as the venue of arbitration in accordance with the clauses in PSC. The final award ('award') was tendered by the arbitral tribunal in the favour of HEPI in February 2013.

UOI filed an application for setting aside of the award challenging its legality, validity and correctness under

section 34 of the Arbitration and Conciliation Act, 1996 ('Act'). HEPI, on the other hand, filed application for enforcement of the award before the Delhi High Court ('Delhi H.C.'). HEPI opposed the setting aside proceedings contending that the award was a 'foreign award' rendered under International Commercial Arbitration, therefore Indian Courts have no jurisdiction to entertain the appellant's application filed under Section 34 of Part-I of the Act, to challenge the legality and correctness of an award in question.

Delhi HC held that since the PSC did not specifically mention the place or seat of arbitration; therefore, it was necessary to ascertain the seat/place of arbitration to decide on the maintainability of the application. The award was pronounced and signed at Kuala Lumpur, therefore, the 'place' of making the award, was Kuala Lumpur as per Article 31.3 of the UNCITRAL Model Law. Further, as the PSC was entered much prior to the date of decision in BALCO case [*Bharat Aluminium Co. v. Kaiser Aluminium Technical Service*, (2012) 9 SCC 552], it was also contended that the *Bhatia International v. Bulk Trading*, [(2002) 4 SCC 105] decision would be applicable here making Part I of the Act applicable on international arbitrations also unless excluded by parties expressly or by necessary implication. Delhi H.C. therefore relied on *Union of India v. Reliance Industries Limited*, (2015) (10) SCC 213) to rule that Part I of the Act will not apply and Section 34 application is not maintainable here since seat of arbitration is outside India. Hence this appeal was filed by UOI before the Hon'ble Supreme Court against this decision.

The apex court observed that the clauses in the PSC do not specify the place of the arbitration. Article 33.12 of the PSC simply speaks of the venue of arbitration proceedings to be Kuala Lumpur unless parties agree otherwise. The contract was stated to be governed and interpreted in accordance with the laws of India (Article 32.1) whereas the arbitration proceedings was to be conducted in accordance with UNCITRAL Model Law of 1985 as per Article 33.9 of the PSC. In

the light of arguments and counter arguments of both the parties, it becomes evident for the apex court that the key question is with regard to the place of arbitration. The Court recorded the series of judgments passed in relation to this issue in both foreign cases and Indian cases to arrive at conclusion that this was a fit case to be dealt with by a larger bench.

Another interesting development is worth mentioning here regarding this case. During the pendency of the case before the Delhi H.C., HEPI approached California District Court for enforcement of award citing delay in execution in India wherein the District Court judge accepted the doctrine of *forum non convenient* and international comity plea of Indian government. Rejecting the petition of HEPI the US district judge said that it does not have the authority to enforce the arbitration award. It held that any such confirmation would divest India of possession and control of its own territorial waters and natural resources and would also contravene the U.S. public policy interest in respecting the territorial integrity and sovereignty of other nations.

The issue of seat of the arbitration and the applicability of Part I of the Act to foreign awards has resurfaced before various courts at different stages because of ill drafted arbitration clauses and conflicting judgements by variable benches, differently interpreting BALCO ratio leading to parallel streams of law being developed. Whether this decision will finally settle the dust on the much debated issue of the applicability of Part I of the Act to foreign-seated awards only time will tell. However, a pro-arbitration approach adopted by the Indian courts since 2012 and recent amendments to the Act of 1996 are in line with India's aim of becoming a model arbitration friendly jurisdiction. The proposed amendment bill of 2018 is another step in this direction and is expected to introduce more independence and reduce judicial intervention further.

Deepa Kharb

Shafin Jahan v. Asokan K.M. & Ors

JT 2018 (5) SC 205

Decided on April 9, 2018

A writ petition of habeas corpus was filed by Asokan K.M. before the High Court of Kerala to secure his daughter, Akhila alias Hadiya's custody who, he believed, was forced to change her faith. Hadiya impleaded before the court as a respondent and showed her reluctance to go to her parental house. She wanted to stay in "Satyasarani" institution and pursue her internship in the BHMS degree course. The high court on January 1, 2016 declared that there were "no circumstances warranting interference for issuance of any writ of Habeas Corpus" as she was staying away from her family on her own free will.

Thereafter, a second writ petition was filed by the father stating that he feared his daughter will be transported to Syria. Hadiya denied this allegation and stated that she wanted to stay at the place of her choice. While initially the high court allowed her to stay with one Saibala, in a later order it was directed that she "shifts her residence to a more acceptable place, without further delay." On the next date of hearing, Hadiya appeared before the court and stated that she had married Shafin Jahan, the appellant in the present decision. Responding to this development, the court extended the *parens patriae* jurisdiction over 24-year old Hadiya. Sharing paternal anxiety, the court saw Hadiya as "weak and vulnerable, capable of being exploited in many ways", annulled her marriage and ensured that she was in the "safe hands" of her father. Infantilizing her, the court prohibited her from possessing or using mobile phone and directed that "[s]he shall be cared for, permitted to complete her House Surgency Course and made professionally qualified so that she would be in a position to stand independently on her own two legs. The marriage being the most important decision in her life can also be taken only with the active involvement of her parents" (emphasis mine). The high court further directed that a police officer should escort her from the hostel (where she was then residing) to her father's house and continuous surveillance should be

maintained over them. An investigation was also ordered into the activities of the organisations to which reference was made during the case, and thus National Investigating Agency (NIA) was involved in this matter.

Challenging the above decision of the high court, Shafin Jahan sought permission to file the special leave which was granted by the Supreme Court. When Hadiya appeared before the apex court, she expressed her desire to be taken to Salem so that she could pursue her internship. While NIA investigation was not stalled, the Supreme Court directed that she be taken to Salem and supported so that she can continue her studies. The state of Kerala was directed to bear the expenses of the same.

On the question of the scope of *parens patriae* jurisdiction, Supreme Court's decision disrupted the network of sexual governance between the two men claiming Hadiya's custody and the state machinery that sought to protect and safeguard Hadiya from herself. The court observed that *parens patriae* jurisdiction can only be invoked in exceptional situations. For instance, in case a person is mentally ill, or, when a minor girl who has eloped with a person is produced before the court at the behest of her parents' habeas corpus petition but the girl expresses fear of her life in parents' custody, then the court may exercise the jurisdiction and send her to an appropriate shelter home. (It is interesting to notice the court's silence on how the judiciary over the years has been complicit in regulating women's sexual agency as it allowed habeas corpus petitions that are recurrently used as tools by parents to claim the custody of their minor daughters who have willingly eloped with their lovers).

While Hadiya was represented by feminist lawyer, Indira Jaising, amongst others, the patriarchal claims of the father were argued by the champion of right to privacy, Shyam Divan along with Madhavi Divan. Shyam Divan, arguing for an expanded interpretation of the *parens patriae* doctrine, directed the court's attention to a range of foreign cases where it was held

that *parens patriae* jurisdiction can be extended to cases relating to “vulnerable adults” [he cited *DL v. A Local Authority and ors*, 2012 (3) All ER 1064; *Re: SA (Vulnerable Adult with Capacity: Marriage)*, 2005 EWHC 2942 (FAM); *A Local Authority v. Y*, 2017 EWHC 968 (FAM)]. The court, rightly, refused to extend the rationale of these cases to the present cases. In the court's considered opinion (Dipak Misra J (for himself and A.M. Khanwilkar J)), “there [was] nothing to suggest that she suffers from any kind of mental incapacity or vulnerability.” In fact, “[s]he was absolutely categorical in her submissions and unequivocal in the expression of her choice” (para 52).

Setting aside the erroneous high court order, the court restated the law pertaining to habeas corpus: “the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law [...] The role of the Court is to see that the detainee is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal.” [para 27]. The court not only declared that the “[f]aith of a person is intrinsic to his/her meaningful existence” [para 53] but also emphasised that “[t]he adamant attitude of the

father, possibly impelled by obsessive parental love [...] cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married” [para 28].

In a concurring judgment, D.Y. Chandrachud J, categorically affirmed that the high court transgressed in its jurisdiction in habeas corpus petitions by declaring the marriage null and void. In his words, “The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intricacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the state” [para 78]. The state must refrain from interfering in the matters of personal liberty of an individual for that would have pernicious “chilling effect” on others. It was clarified that even as the NIA continues its investigation permitted by law, the validity of Hadiya's marriage would not form the subject of that investigation. Thus, the Supreme Court brought to close one of the most controversial cases of our time which brought to fore the questions of faith, autonomy, sexual agency, parental authority and state control.

Latika Vashist

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