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Editorial

Traversing Borders in Indian Legal Education

With India leading the voice of Global South on international arenas, shaping the foundations of the world political economy, and dominating global financial services market, the very idea of traditional boundaries and borders vanishes in the thin air. The significant existence of India in global market cannot be ignored by any law school let alone the legal education system.

The school of thought that contends that legal developments that are taking place on global arena are of miniscule importance to lawyers practicing with in state is untenable. The surge in 'Internationalization' of operations of state and domestic entities alike in terms of trade and commerce, environmental and human rights issues, technology transfers, cyber-crimes etc. makes it imperative for law students and practitioners to acquire an international perspective and understanding of law in a global context. Even the areas of domestic laws often tangle into complexities of international laws, like the case of child custody by NRIs, child pornography on internet, or regulation of technology, etc. To engage and address with these issues legal education and legal profession calls for broader vision which encompasses the vast realities of world beyond the border and adapt foreign legal practices where found appropriate to interpret domestic laws and to solve new problems.

To start with these reforms, NEP 2020 and University Grant Commission (UGC) came up with myriad of solutions. UGC initiated the process of setting up campuses of higher-ranked Foreign Higher Education Institutions (HEIs) in India to foster academic collaboration between Indian HEIs and Foreign HEIs and vice-versa. NEP 2020 under Para 20.4 specifically deals with legal education. It stresses on formulating legal curricula reflecting socio-legal contexts and aim to incorporate Trans and Interdisciplinary approaches in legal education at all levels. The intrinsic purposes behind these measures are multi-fold. With Foreign HEIs collaborating with Indian HEIs, the premium of international dimension will be added to higher legal education. Further, such collaborations inherently cater to the Trans and Multi-disciplinary researches considering diverse legal cultures at parent states of HEIs. Also, both these measures buttress the stand of India at global law-making bodies.

Amidst the emphasis on having broad vision for curricula drafters to engage with events occurring beyond horizons, one need to be cognizant of the fact that such approach should not led to 'overshadowing' the national character of legal education as stressed in the NEP 2020. Furthermore, with the establishment of International Centres like New Delhi International Arbitration Centre in India, government needs to ensure that these centres and other legal institutions in foreign destinations with seat for India should be represented by law professors or practitioners honed with legal acumen, instead of going with bureaucrats, thus incentivising and encouraging advanced studies in law.

The future shall witness radical transformation in content as well as method adopted to impart legal education in India. Rising stature of India at global level will bring global opportunities, which will essentially challenge the status quo and call for best mechanisms to reap the benefits of these opportunities-staring with overhauling legal education.

Sr. Prof. (Dr.) V. K. Ahuja

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ACTIVITIES AT THE INSTITUTE

Panel Discussion on “Exploring the role of Dr. B.R. Ambedkar in shaping the Democratic Institutions and Principles of Bharat” on April 14, 2024

As part of “Commemorating 75th Year of Indian Republic- India @ 75: Past, Present and Future”, the Department of Justice, Ministry of Law & Justice, in association with the Indian Law Institute, organised a Panel Discussion on the theme of “Improving Justice Delivery System through Constitutional Ideals” on April 14, 2024, at Vigyan Bhawan, New Delhi.



Inaugural session of the program "Commemorating 75th Year of Indian Republic—India @ 75: Past, Present, and Future

Moderated by Prof. (Dr.) P. Puneeth, Professor, CSLG JNU, the session began with an insightful introduction to Dr. Ambedkar's life and contributions. Describing him as a visionary thinker, intellectual giant, and the chief architect of the Indian Constitution, the moderator highlighted his pivotal role in drafting and piloting the Constitution in the Constituent Assembly, defending numerous amendments, and addressing criticisms during deliberations.

The discussion commenced with a question to Prof. (Dr.) Yogesh Pratap Singh, Vice- Chancellor, National Law University, Tripura regarding the impact of the 10th Schedule on executive responsibility. Prof. Singh endorsed Dr. Ambedkar's preference for a parliamentary system, emphasizing

its focus on accountability over stability through mechanisms like question hour and debates. He critiqued the 52nd Constitutional Amendment, arguing it was enacted without the required state ratifications under Article 368(2) and contested its validity in *Kihoto Hollohan v. Zachillhu* (1992). Prof. Singh contended that the law has paradoxically encouraged defection by empowering party whips over individual legislators. He suggested reforming the anti-defection law to apply only to votes on no-confidence motions and money bills, aligning with the National Commission to Review the Working of the Constitution's (NCRWC) recommendations.

Next, the moderator engaged Dr. Udaya Shankar, Registrar, Hidayatullah National Law University, Raipur Chhattishgarh on the sufficiency of constitutional provisions for achieving social equality. Dr. Udaya Shankar highlighted Dr. Ambedkar's vision of a welfare-oriented Constitution, balancing fundamental rights with Directive Principles of State Policy (DPSPs). He called for legislative and executive actions to identify minimum core socio-economic rights and realize them progressively, using examples like the Minimum Wages Act. While acknowledging progress in welfare objectives, he stressed the need for collective institutional efforts beyond reliance on the judiciary. He warned against complacency with electoral democracy and advocated for grassroots implementation of social and economic democracy.

In response to a question about Dr. Ambedkar's feminist legacy, Prof. Nupur Tiwary, Chair Professor, Dr. Ambedkar Chair in Social Justice, IIPA affirmed his role as India's first male and Dalit feminist. She underscored his critique of Manusmriti, advocacy for women's education, and inclusion of gender empowerment provisions in the Constitution. Highlighting his work in "Mooknayak" and "Bahishkrit Bharat," she noted his radical stance on women's liberation and buttressed this by stating the fact that Dr. Ambedkar's resignation as Law Minister following the Hindu Code bill's failure showcases his steadfastness towards the causes of women.

During the Q&A session, Dr. Udaya addressed a question on distributive justice, emphasizing Dr. Ambedkar's individual-centric constitutional model. He called for institutional mechanisms to ensure marginalized voices are reflected in welfare planning and implementation. Prof. Singh responded to another question on anti-defection law reforms, advocating for disqualification only in cases affecting government stability or money bills, thus empowering legislators to deliberate freely. Addressing Article 32, Prof. Singh criticized the Supreme Court's reluctance to hear petitions and recommended prioritizing High Courts under Article 226 for broader and faster remedies.

Concluding the discussion, the panel reflected on appointments to democratic institutions. Prof. Singh highlighted Dr. Ambedkar's emphasis on institutional strength over individual leadership. Dr. Udaya underscored provisions ensuring institutional independence, such as salary protections and stringent removal procedures. Prof. Tiwary emphasized the broader vision of democracy as a process of change embraced without violence. The moderator noted the Constitution's provision for independent institutions like the Election Commission and CAG but lamented the underutilization of their accountability mechanisms. The panel successfully showcased Dr. Ambedkar's enduring influence on India's democratic framework.



Dignitaries at the programme. Commemorating 75th Year of Indian Republic- India @ 75: Past, Present and Future

Website Launch

The new website of the Indian Law Institute was officially launched on April 26, 2024. It was a grand and memorable event, marking a significant milestone in ILI's digital journey. The website was launched by the chief guest, Hon'ble Mr. Justice Suryakant, Judge Supreme Court of India along with guest of honour Dr. Rajiv Mani, Secretary, Ministry of Law and Justice and Sr. Prof. (Dr). V.K. Ahuja, Director, ILI. The event commenced with a welcome speech by Sr. Prof. (Dr.) V.K. Ahuja, Director, ILI highlighting the website's innovative features and the enhanced user experience it offers. This was followed by a detailed presentation and live demonstration by Mr. Bhoopendra Singh, Computer System Administrator, ILI showcasing the website's intuitive design, advanced functionalities, and seamless navigation.



(From L-R) Sr. Prof. (Dr.) V.K Ahuja, Hon'ble Mr. Justice Suryakant and Dr. Rajiv Mani, Dr. Anju Rathi Rana and Shri Shreenibas Chandra Prusty

Lecture on “Balancing Innovation and Access under IP Laws in India”

On World Intellectual Property (IP) Day, April 26th, 2024 the Indian Law Institute organised an enlightening lecture by Hon'ble Mr. Justice Suryakant on “Balancing Innovation and Access under IP Laws in India.” It was marked by the felicitation of Hon'ble Mr. Justice Suryakant by Sr. Prof. Dr. V.K. Ahuja, Director of the Indian Law Institute.



From (L-R) Dr. Deepa Kharb, Sr.Prof. (Dr.) V.K Ahuja, Hon'ble Mr. Justice Suryakant, Dr. Rajiv Mani, Dr. Anju Rathi Rana and Shri Shreenibas Chandra Prusty

The coordinator of the programme Dr. Deepa Kharb, Asst. Professor (SS), Indian Law Institute invited Director, ILI Sr. Prof. (Dr.) V.K. Ahuja to deliver the welcome address who highlighted the complex interplay between patents and access to essential medicines in his welcome address. He noted that patents, while fostering innovation, often create monopolies that lead to exorbitant prices for critical drugs. He also pointed out that the pandemic has further exposed health rights disparities, with developed countries prioritising their populations over global needs. He pointed out that compulsory licensing under patents and fair use provisions under copyright law are a mechanism that balance innovation & access and with this Prof. Ahuja has laid down the tone for the lecture and once again welcomed the Lordship.



Hon'ble Mr. Justice Suryakant delivering the special lecture

Hon'ble Mr. Justice Suryakant's lecture addressed the critical issues of law, economics, and public health, the delicate balance between incentivising innovation

through IP protection and ensuring equitable access to essential goods and services. He divided into the intersection of patent rights and accessibility, especially in the pharmaceutical industry. Patents incentivise drug discovery and development by granting exclusive rights to inventors. However, this exclusivity can hinder access to life-saving medications, particularly in low-income countries. His Lordship elucidated the importance of compulsory licensing, which permits using a patented product without the patent holder's consent. The Doha Declaration on the TRIPS Agreement and fundamental human right to the 'Right to Health' under Art. 25 of UDHR support such measures.



Group photograph of the Hon'ble chief guest, distinguished invitees, Director, Registrar, Faculty and Staff of ILI

Hon'ble Mr. Justice Suryakant also discussed the importance of protecting traditional knowledge related to medicinal plants and biodiversity. Hon'ble Mr. Justice further stressed on fair use provisions and compulsory licensing of copyrighted works ensures access to essential cultural and educational resources, preventing monopolies and promoting access. His Lordship, in his concluding remarks, asserted that India's IP laws must continue evolving to balance innovation and access. Smarter IP protection, coupled with targeted interventions, can improve public health outcomes. Balancing these interests is essential for a more inclusive and equitable world. The programme concluded with vote of thanks delivered by Mr. S.C. Prusty, Registrar, Indian Law Institute.

Conference on Criminal Law Reforms, 2023 – “India's Progressive Path in the Administration of Criminal Justice System” at Guwahati – 18-19 May, 2024

The conference commenced with an introduction to its theme by Dr. Anju Rathi Rana, Additional Secretary, Department of Legal Affairs, Govt. of India. Hon'ble Mr. Justice Hrishikesh Roy, Judge, Supreme Court of India addressed the gathering, followed by Shri Arjun Ram Meghwal, Hon'ble Minister of State (I/C), Ministry of Law & Justice and esteemed justices, Hon'ble Mr. Justice Vijay Bishnoi, Chief Justice of the Guwahati High Court, and Hon'ble Mr. Justice Biswanath Somadder, Chief Justice of the High Court of Sikkim. Dr. Reeta Vasishtha, Member Secretary of the Law Commission of India, and Dr. Rajiv Mani, Secretary, Department of Legal Affairs, Ministry of Law and Justice, Govt. of India also delivered their addresses.

The valedictory session began with a welcome address by Dr. Rajiv Mani, Secretary, Department of Legal Affairs, Ministry of Law and Justice, Govt. of India. Chief Guest Shri Gulab Chand Kataria, Hon'ble Governor of Assam, delivered the Valedictory Address. Hon'ble Mr. Justice Manash Ranjan Pathak, Judge of the Guwahati High Court, shared his insights, followed by speeches from Hon'ble Mr. Justice (Retd.) Mir Alfaz Ali, Vice Chancellor (I/C) of NLUJA, Assam and Sr. Prof. (Dr.) V.K. Ahuja, Director of ILI.



Sr. Prof. (Dr.) V.K. Ahuja, Director of ILI, addressing the august gathering.

In his speech, Sr. Prof. (Dr.) V. K. Ahuja, Director, ILI highlighted India's shift from colonial-era criminal laws to a modern, restorative justice system and the importance of embracing cultural roots while implementing new laws prioritising justice, rehabilitation, and community service. The speaker emphasises that community service offers numerous benefits. How it reduces social stigma for such persons and their families, prevents jails from overcrowding, and saves government resources. Additionally, it keeps such persons away from hardened criminals, allowing them to maintain their professional lives post-community service. This approach fosters empathy, suggesting that petty offences should be addressed through more culturally appropriate methods.

The focus of the criminal justice system, according to the speaker, should not be solely on punishment but also on compassion, equity, and human dignity. The session concluded with a Vote of Thanks by Dr. Anju Rathi Rana, Additional Secretary, Department of Legal Affairs, Ministry of Law and Justice.

One-day NHRC Training Programme on “Human Rights: Issues and Challenges” for officials working in juvenile homes, old-age homes, and the health sector” on June 14, 2024 at Plenary Hall, Indian Law Institute, New Delhi.



Inaugural session of the NHRC Training programme.

The Indian Law Institute (ILI) hosted a Human Rights Training Program, inaugurated with a warm welcome

by Sr. Prof. (Dr.) V. K. Ahuja, Director of the Institute. He welcomed Mr. Devendra Kumar Nim, Joint Secretary of the National Human Rights Commission (NHRC), Prof. (Dr.) Anurag Deep, Professor, ILI, Mr. S. C. Prusty, Registrar, ILI and various officers, teachers, and students in attendance. Dr. Ahuja began by citing Nelson Mandela's profound statement, "To deny people their human rights is to challenge their humanity," highlighting the inseparable link between human rights and humanity.

Dr. Ahuja spoke about the interplay between human rights and intellectual property rights (IPR), noting the conflicts that arise in areas like food, education, and healthcare. He discussed how IPR laws under the WTO TRIPS Agreement, such as those protecting plant varieties and breeders' rights, create barriers to the right to food, citing Monsanto's high seed prices as an example. He also reflected on how copyright laws can impede access to education, referencing the Delhi University photocopy case and India's ratification of the Marrakesh Treaty, which promotes accessibility for visually impaired individuals. Dr. Ahuja noted how pharmaceutical patents restrict access to affordable medicine, thereby undermining the right to health. He called attention to persistent challenges such as inequality, gender discrimination, poverty, and violence, aggravated during the pandemic, and stressed the need for ongoing discourse to address these issues.

Mr. Devendra Kumar Nim, Joint Secretary of the NHRC, delivered an insightful address, focusing on the role of human rights for vulnerable communities. He emphasised the importance of ensuring dignity and care for children in juvenile homes, providing access to education and psychological support. Highlighting the challenges faced by senior citizens in nursing homes, he stressed the need for improved healthcare and living conditions. Mr. Nim elaborated on the NHRC's mechanisms under the Protection of Human Rights Act, 1993, including monitoring facilities and issuing advisories to state governments to address discrepancies. He announced the NHRC's plans for an award scheme recognising the best-

managed shelter and juvenile homes and called for increased collaboration with stakeholders to uphold human rights.

Dr. Anurag Deep, Professor, ILI expressed gratitude to all contributors to the training program, including the NHRC and the ILI team. He acknowledged the efforts of participants, researchers, and organisers in making the program a success and underscored the importance of continued engagement with pressing human rights issues.

Ms. Jyotika Kalra, Managing Partner of Resolve Legal and former NHRC member, discussed the broader challenges of human rights protection. She tied the session's discussions to the 75th anniversary of the Universal Declaration of Human Rights, emphasising the themes of freedom, equality, and justice. Highlighting Articles 14 and 19 of the Indian Constitution, she discussed their relevance to dignity and equality. Ms. Kalra underscored the NHRC's role in protecting inmates' rights and emphasised the importance of awareness programs, training, and technology-driven initiatives like facial recognition to address issues such as missing children.

Dr. Nimesh G. Desai, former director of the Institute of Human Behaviour and Allied Sciences, focused on the rights of persons with mental illnesses and disabilities. He explained how the Mental Health Care Act of 2017, influenced by the UN Convention on the Rights of Persons with Disabilities, marked a shift in legal and policy frameworks by prioritising patients' rights. Dr. Desai distinguished between mental illness and intellectual disability and highlighted the Act's emphasis on non-discrimination, confidentiality, and treatment in the least restrictive environments.

Dr. Rajesh Parthsarathi, a distinguished physician, addressed the rights of juveniles and the elderly. He highlighted the demographic challenges of India's ageing population and the need for practical solutions to enhance accessibility and healthcare. He emphasised informed consent in medical procedures for juveniles and advocated for a shift in societal

attitudes toward the elderly, urging holistic and compassionate approaches to healthcare.

Mr. Amod K. Kanth, former DGP and Chairperson of the Delhi Commission for Protection of Child Rights, concluded the program with a session on the rehabilitation of juvenile and youthful offenders. He reflected on the evolution of juvenile justice laws in India and shared insights from his decades of experience. Mr. Kanth emphasised the importance of structured care systems and legal frameworks to ensure the welfare and rehabilitation of vulnerable juveniles.

International Yoga Day Celebrations

International Yoga Day was celebrated on June 21, 2024 at the institute, as a global celebration of well-being. This worldwide movement recognises the ancient Indian art of yoga and its significant effects on our mental, physical, and spiritual well-being, cutting across cultural and geographic barriers.



Yoga Day celebrations held at ILI.

This year the theme for International Yoga Day 2024 was “Yoga for Self and Society.” A Yoga session was organised under the guidance of Senior Prof. (Dr.) V.K Ahuja, Director, Indian Law Institute, in which all the employees of the institute practised different Yoga Asanas. He encouraged people to do yoga at home with their families creating mass awareness about the health benefits of yoga.

RESEARCH PUBLICATIONS

Released Publications

- ❖ *Journal of the Indian Law Institute* Vol. 66(1) (January -March) 2024
- ❖ *ILI Newsletter* Vol XXVI Issue I (January-March, 2024).

Publications on the Anvil

- ❖ *Journal of the Indian Law Institute* Vol. 66(2) (April-June) 2024
- ❖ *ILI Newsletter* Vol XXVI Issue III (July-September, 2024).
- ❖ Book on “Indigenous Justice Delivery System in India” Editors: Sr. Prof. (Dr.) V.K.Ahuja, Director, ILI, Prof (Dr.) Anurag Deep, Professor, DU and Mr. Avinash Kumar Paswan, Ph.D Scholar, ILI.
- ❖ Book on “Gender Justice: Contemporary Developments” Editors: Sr. Prof. (Dr.) V.K.Ahuja, Director, ILI and Dr. Arya. A. Kumar, Asst Professor, ILI (SG).

E-LEARNING COURSES

Online Certificate Courses on Cyber Law and Intellectual Property Rights Law

E Learning courses of three months duration on “**Cyber Law**” (46th batch) and “**Intellectual Property Rights and IT in the Internet Age**” (58th batch) were started on April 26, 2024.

VISIT TO THE INSTITUTE

Students of Dr. M.G.R. Educational and Research Institute, Chennai visited the institute on April, 12, 2024.

EXAMINATION

All India Admission Test for LL.M

The All India Admission Test for LL.M.-2024 was held on May 5, 2024. The result for the said entrance test was declared on May 22, 2024. The *viva-voce* for the shortlisted candidates was held on May 27-30, 2024 and May 31, 2024 and the final result was declared on June 4, 2024.

Ph.D. Entrance Test

The Entrance Test for Ph.D. Programme was held on May 05, 2024. The result for the said entrance test for non-exempted category candidates was declared on May 13, 2024. The *viva-voce* for the shortlisted candidates was held on May 22, 2024 and May 24, 2024. The final result was declared on May 31, 2024.

Award of Ph.D. Degree

The *viva-voce/ open defense* of thesis of Ms. Chingri Vashum was held on May 24, 2024. She has been awarded the Degree of Philosophy (Ph.D. in Law) on June 22, 2024.

LL.M. Programme

LL.M. 2nd Semester end examination for the LL.M. 1 year programme for the Session 2023-2024 was held during May 15, 2024 to May 29, 2024.

The Supplementary Examination for 1st Semester for the LL.M. 1 year programme was held during May 29, 2024 to May 31, 2024.

PG Diploma Programme

The Annual Examination for PG Diploma Courses for the Session 2023-24 was held during April 08, 2024 to April 25, 2024. The result of the same was declared on June 24, 2024.

FACULTY NEWS

Sr. Prof (Dr.) V. K Ahuja, Director, ILI

- Was a panellist in *Legislative and Policy Framework for Zoo noses in India* at National Consultation on Legal Environment

Assessment for One Health Activities in India organised by Ministry of Health and family Welfare, Government of India on June 27, 2024.

- Delivered a lecture on *Innovative Teaching Methods in Higher Education* in Faculty Development Program at Jaipur National University on June 10, 2024.
- Delivered a lecture on *Mediation as an Indigenous Mode of Dispute Resolution* at UGC-HRDC University of Allahabad on May 23, 2024.
- Addressed at valedictory session of Conference on 'India's Progressive Path in the Administration of Criminal Justice System' organised by the Ministry of Law and Justice, at Guwahati on May 19, 2024.
- Delivered lectures on *Mediation as an Indigenous Mode of Dispute Resolution* at Chotanagpur Law College, Ranchi on May 14, 2024 and *An Overview of IPR Laws* at Chotanagpur Law College, Ranchi on May 14, 2024.
- Delivered a lecture on *Relevance of IPRs in Viksit Bharat@2047* at Vivekananda Institute of Professional Studies, Delhi on April 30, 2024.
- Delivered a lecture on *Dispute Resolution through Mediation: Bridging Past, Present and Future in India* at Campus Law Centre, Faculty of Law, University of Delhi, on April 25, 2024.
- Delivered a lecture on *'IPR- A Pathway to a Sustainable Future'* at Inaugural Ceremony of IPR Week (22 April-26 April 2024) at GGSIP University, Delhi on April 22, 2024.
- Delivered a lecture on *Administrative Skills for Good Leadership* in Leadership Development Programme in Science and

Technology LEADS – 2024 at Indian National Science Academy and National Centre for Good Governance, New Delhi on April 7, 2024.

- Was a distinguished guest at valedictory Session of Anand Swaroop Gupta Memorial International Moot Court Competition 2024 at Sharda University on April 6, 2024.

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

- Invited as a resource person for introductory session in a Online Certificate Course on BNS, 2023 organized by Chandraprabhu Jain College of Higher Studies and School of Law on June 30, 2024.
- Chaired a session in an International conference titled "Championing Inclusivity: Interdisciplinary Perspectives on Disability Rights and Social Justice organized by Delhi Metropolitan Education University on May 26, 2024.
- Chaired a session on "Sensibilities of Criminal Law in India: Law Society and the Indian Judiciary" in an International Law, Culture and Humanities workshop organized by University of Columbia on May 17, 2024.
- Invited as a resource person for training for judicial officers of Odisha on Bhartiya Nyaya Sanhita, 2023; Bhartiya Nagarik Suraksha Sanhita, 2023 and Bhartiya Sakshya Adhiniyam, 2023 organized by Odisha Judicial Academy on April 28, 2024.
- Invited as a resource person in a course on Forensic Science Approaches in New Criminal Laws (BNS, BNSs, & BSA) for Officers and Forensic Scientists of CFSLs and SFSLs from all over the county on the topic "Investigation Procedure (BNSS)" organized by National University of Forensic Sciences Delhi on April 12, 2024 & May 10, 2024.

Dr. Arya A. Kumar, Asst. Professor (SS), ILI

- Invited as a resource person for the Final Consultation on the 'Rights of Women under Property Laws' organised by the National Commission for Women at Vigyan Bhawan, New Delhi on June 1, 2024.
- Invited to deliver a lecture on "Jurisprudence of Criminal Liability" at Christ University, NCR on April 30, 2024.

LEGAL JOTTINGS

Hindu female must have both possession and acquisition to establish full ownership of undivided joint family property

“Such acquisition must be either by way of inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion, or by purchase or by prescription.” In a civil appeal against Rajasthan High Court's Division Bench decision whereby, the appeal against decision of the Single Judge for upholding the Civil Court's decision as to widow wife's right to be maintained from the suit property of the Hindu family, was dismissed appeal and set aside the impugned decisions. The Bench reiterated that for establishing full ownership on the undivided joint family estate under Section 14(1) of the Succession Act, the Hindu female must not only be possessed of the property but she must have acquired the property. Factual Matrix The suit property was owned by A who had two sons, namely, M1 and M2. M2 was married to the original petitioner (widow-wife). The widow-wife, in the original suit claimed to adopt the plaintiff-son on 12-06-1959, nearly after 30 years of death of her husband. M1's son had executed a will of the entire unpartitioned estate in favour of his son (the present appellant). M1's son passed away in 1954 and the suit property devolved upon the present appellant under the will executed by his father/ M1's son. The widow-wife filed a civil suit seeking a declaration of title and possession over the suit property contending that the

property in question was a joint Hindu family property and the will allegedly executed by M1's son was illegal. The present appellant was the defendant in the said civil suit and it was contended that he was not entitled to any share in the HUF property by virtue of the will. The Civil Court dismissed the said suit vide judgment and decree however recognised her rights of widow-wife only to the extent of receiving maintenance from the suit property. The said decision was challenged by the present appellant which was allowed by the Senior Civil Judge vide judgment dated 09-02-1968 and set aside the Civil Court's judgment and decree. A second appeal was preferred by the widow-wife before the Single Judge of the High Court, however, during the pendency of the same, when widow-wife passed away, her legal heir i.e. plaintiff-son was taken on record. The Single Judge allowed the second appeal and restored the Civil Court's judgment to the extent of her right to be maintained from the suit property. Subsequently, the plaintiff-son filed Revenue Suit for partition of the suit property before the Revenue Court claiming his mother/ widow-wife was entitled to a rightful share in the property by virtue of Section 14(1) of the Succession Act, 1925. The appeal from the said Revenue Suit seeking partition which culminated in the impugned judgment dated 02-11-2017 passed by the Division Bench.

Analysis and Decision - The Court reiterated that the issue regarding title and possession over the suit property was concluded against widow-wife and that she was never in possession of the suit property was an admitted position from the record because she never challenged the judgment and decree dated 21-05-1959 whereby the suit filed by her for declaration of title and possession was dismissed by the Civil Court and she was held only entitled to receive maintenance from the undivided estate. The Court referred to *Munni Devi v. Rajendra*, 2022 SCC Online SC 643, wherein, the widow was actually residing in the suit property during the time the coparcener was alive and even after his death, she continued to reside in the said house and used to collect the rents from the

tenants who were occupying the suit property till the date of filing of suit, hence, the Court after taking into consideration the pre-existing right of the female to maintenance from the estate of the HUF of her husband and her exclusive settled possession over the suit property concluded that she had acquired the suit property in lieu of her pre-existing right to maintenance and that she had held the suit property as the full owner and not limited owner by virtue of Section 14(1) of the Succession Act. Regarding the question that whether in absence of even a semblance of possession either actual or legal over the suit property, plaintiff-son being the legal heir of widow-wife was entitled to institute a revenue suit for partition of the suit property based on the succession rights of the widow on the joint Hindu family property, the Court referred to *Ram Vishal v. JaganNath*, (2004) 9 SCC 302, wherein, it was held that, a pre-existing right is a *sine qua non* for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property. Hence, the Court reiterated that, for establishing full ownership on the undivided joint family estate under Section 14(1) of the Succession Act, the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or “in lieu of maintenance or arrears of maintenance” or by gift or be her own skill or exertion, or by purchase or by prescription. Thus, the Court held that since, the widow-wife was never in possession of the suit property, as a necessary corollary the Revenue suit for partition claiming absolute ownership under Section 14(1) of the Succession Act could not be maintained by her plaintiff-son by virtue of inheritance. Hence, the Court allowed the appeal and set aside the judgments of the Division Bench and the Single Judge.

[*Mukatlal v. Kailash Chand*, 2024 SCC Online SC 964].

Sexual orientation an innate part of identity of LGBTQ+

“Many LGBTIQ+ youth face familial rejection, often from an early age. This rejection can take a devastating toll on individuals and isolate them from physical, emotional and economic resources that are essential to their well-being. In such cases, it is important to recognise the family as a site of violence and control for many queer women. In a writ petition filed by the parents of a 23-year-old member of the LGBTQ+ community residing with her transgender partner, praying that her custody be given to the State so that she may be committed to the Medical District Board to undergo psychological evaluation to 'treat her sexual orientation', The Division Bench of Raja Vijayaraghavan and P.M. Manoj, JJ., while upholding petitioner daughter's right of choice and right to live life on her own terms, said that sexual orientation of a person is an innate part of a person's identity and that the petitioner's daughter was an adult who consented to living with her partner. Background of the case at hand is that the daughter of the petitioners, aged about 23 years old, had formed an acquaintance with respondent 5, who is a member of the LGBTQ+ community. Respondent 5, along with others, had formed an online social media group by the name of “Mazhavillu”, and have been alleged to have lured the petitioners' daughter into joining the group. The petitioners contended that their daughter was suffering from certain behavioural issues and on previous occasions has had to resort to seeking treatment under a psychologist who had also issued a certificate indicating that she was engaged in a toxic relationship with a person of the same gender. The petitioners asserted that when their daughter went missing, they filed a complaint with the police, leading to the registration under Section 57 of the Kerala Police Act, however, their daughter was located and produced before the Magistrate. The Petitioners further claimed that when they attempted to save their daughter from the clutches and influence of respondent 5, a complaint was lodged by the latter, resulting in the registration of offences under various provisions of the IPC, wherein the petitioners and others have been named as the accused. They further

asserted that, under the pretext of dispute resolution, their daughter was invited by the respondent 5 and subsequently forcefully taken away, and that despite lodging a complaint with the police, no action had been taken till date. Therefore, with the grievance that their daughter was being detained illegally by respondent 5, the petitioners have filed this writ petition. Contentions raised in the case were - the petitioner's daughter contended that she and respondent 5 a transman are in a consensual relationship with each other. She further stated before the Court that her parents, the petitioners were under the impression that she suffered from some psychiatric issues and forced her to undergo counselling to persuade her to overcome her identity and sexual orientation. She further contended that as she found that the attitude and behaviour of her natal family was traumatic to her psyche, she left the company of her parents to join her partner, respondent 5 and this prompted her parents to lodge a complaint before the police under the caption “person missing”. She said that she appeared before the Magistrate and had stated that the respondent 5 was her chosen partner, and that she intended to live with him, to which the Magistrate permitted her to join respondent 5. However, she told the Court that her parents and relatives attempted to abduct her, and they assaulted respondent 5 and inflicted injuries. She asserted that she was safe in the company of the respondent 5, with whom she intended to stay. The petitioners on the contrary submitted that their daughter was suffering from various psychological issues and that she had undergone psychology counseling and as advised by the Counsellor, she has been referred to the Psychiatric Department attached to the District Hospital, stating that they had also filed an application to refer their daughter to the District Medical Board for psychological evaluation and to ascertain as to whether she was in a fit state of mind to take an independent decision.

Analysis and Decision - Upon considering the submissions made, the Court noted that the petitioner's daughter was an adult who on her own volition decided to live with respondent 5, and that she as capable of making her own decisions as to how

she wanted to lead her life. The Court examined the counselling report issued by the psychologist that said that the daughter was in a toxic relationship with respondent 5, and decided that the said report as 'fundamentally flawed' and was liable to be ignored as the psychologist had formulated the report upon the erroneous presumption that the expression of gender identity or sexual preferences by the daughter was merely an act of defiance and that treatment could alter her sexual orientation. The Court referred to *K v. State of Kerala, 2024 SCC OnLine SC 351* that laid down the guidelines for habeas corpus and police protection matters and held that directions for counselling or parental care had a deterrent effect on members of the LGBTQ+ community. The Court then went on to refer to the Yogyakarta principles whose preamble defined 'Sexual Orientation' as "each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender". The Court remarked from an early age, LGBTIQ+ individuals face stigma, violence, and discrimination on the basis of their identity. This stigma is often rooted in inaccurate beliefs and cultural norms that repress gender non-conforming behaviour and expressions. The Court said that the right to privacy has been recognised as an intrinsic part of the right to life and personal liberty under Article 21, and sexual orientation is an innate part of the identity of LGBT persons and is an essential attribute of privacy. Based on these premises, the Court upheld the right of choice of the daughter and respected her right to live life on her own terms. Further, the Court rejected the petitioners' application for referring her to the medical board, as well dismissed the writ petition, with the following directions: (i) The petitioners were directed to submit all the certificates, identity cards and relates documents of their daughter to the SHO within a week's time. (ii) Upon receipt of said documents, the daughter was to be notified and appropriate measures would be taken to ensure handover of the documents to her. (iii) The SHO was further instructed to ensure no acts of violence or threats were metes out to the daughter by her family members. The Court ended on

a hopeful note that the petitioners may come to accept their daughter's sexual orientation and preferences with understanding and compassion.

[*Shereena Hakkim v. State Police Chief, 2024 SCC Online Ker 3203*].

'Sec. 149(1) neither effaces nor removes the first proviso to Sec. 153C (1)'

In cases where a search is conducted after 31-03-2021, the first proviso to Section 153C (1) would have to be construed and tested as regards the date when the Assessing Officer decides to initiate action against the non-searched entity. In a petition impugning the initiation of reassessment action under Section 148 of the Income Tax Act, 1961 ('Act') pertaining to assessment year 2013-14 triggered by a search conducted on Proform Interiors Private Limited, a Single Judge Bench of Yashwant Varma, J. held that the assessment year 2013-14 fell beyond the ten-year block period as set out under Section 153C read with Section 153-A of the Act and hence, the impugned notice dated 30-03-2022, issued beyond limitation, was liable to be quashed and set aside. The present petition was based on a search conducted in the case of Proform Interiors Private Limited on 09-02-2022. The reassessment took place after the issuance of a notice dated 30-03-2023 under Section 148 of the Act. The respondents contended that they were not bound to follow Section 148-A of the Act due to the presence of the first proviso placed in that provision that exempted the respondents from following the procedure prescribed by clauses (b), (c), and (d) of Section 148A in a search case and where the search was initiated on or after 01-04-2021. Upon initial consideration of the writ petition, the Court prima facie found that the reassessment would fall foul of Section 149(1) of the Act bearing in mind the timeframes within which an assessment could have been reopened. The Court stated that they had issued notice on the present petition and stayed the reassessment proceedings only after taking note of the above contention. The Court noted the respondent's contention that since the search took place after 01-04-2021, the provisions of Section 148 would apply and the timeframe within which a notice could have

been issued would be governed by the first proviso to Section 149(1). The Court also took note of the respondent's contention wherein it was stated that by the time the search was conducted in the present case, Section 153C had ceased to apply and as a consequence, the respondents stood absolved of making a reference or transmitting the material gathered in the course of the search to the jurisdictional Assessing Officer ('AO'). The Court stated that in terms of Section 153-C(3) of the Act, it was undisputed that any search if conducted after 01-04-2021, would cease to be regulated by that provision. Further, it was stated that sub-section (3) embodies a sunset clause as far as the applicability of Section 153C is concerned. The Court stated that the first proviso essentially required the Court to consider the timeframes that stood specified in Sections 149, 153A, and 153C as they were before the commencement of the Finance Act, 2021. Thus, the Court stated that an action of reassessment that is initiated in relation to a search undertaken on or after 01-04-2021 would have to meet the foundational tests as specified in the first proviso to Section 149(1). It was also stated that a reassessment action would not only have to satisfy the time frames as per Section 149 but also those which would be applicable through Sections 153A and 153C in a relevant case that is concerned with a search. The Court stated that it was an undisputed fact that the proceedings under Section 148 had commenced based on the impugned notice dated 30-03-2023 and that this date holds seminal importance since the period of six assessment years or the 'relevant assessment year' would have to be made out from the date when the action was initiated to reopen the assessment pertaining to assessment year 2013-14. The Court referred to CIT v. Ojjus Medicare (P) Ltd. 2024 SCC OnLine Del 2439 while stating that it was manifest that the assessment year 2013-14 would fall beyond the block period of ten years. Further, the Court stated that while it was true that Section 153C and the procedure prescribed therein had ceased to be applicable post 31-03-2021, the first proviso to Section 149(1) did not appear to suggest that the first proviso to Section 153C (1) would either become inapplicable or be liable to be ignored. The

Court, while referring to CIT v. Jagjit Singh 2023 SCC OnLine SC 1265, noted that the computation of the six preceding assessment years or the 'relevant assessment year' in the case of a non-searched entity has to be construed from the time when the material scooped out in the search is handed over to the jurisdictional AO. The Court stated that in cases where a search is conducted after 31-03-2021, the first proviso to Section 153C (1) would have to be construed and tested in terms of the date when the AO decides to initiate action against the non-searched entity. The Court held that notwithstanding the procedure under Section 153C having not been adhered to, due to the search having been conducted after 31-03-2021, there existed no justification to reconstruct the point from which the computational exercise would have to be undertaken. Further, the Court held that the above-mentioned action would not only amount to a virtual reconstruction of the statutory prescription of limitation, but it would also be contrary to the first proviso to Section 149(1) which compelled the Court to adjudge the validity of reopening based on the test specified therein. The Court said that since no transmission of material would have occurred in case of a search that takes place on or after 01-04-2021 and on which a reassessment action has to commence in relation to an assessment year before 01-04-2021, the Court would have to bear in mind the date when a decision may be taken by the jurisdictional AO to proceed against the non-searched entity in terms of the amended scheme of search assessments, which are now merged with the larger power of reassessment which is comprised in Sections 147 and 148 of the Act. The Court, further, computed the ten-year block period from the date of the impugned notice dated 30-03-2023 and stated that it was *ex facie* evident that the assessment year 2013-14 falls beyond the ten-year block period as set out under Section 153C read with Section 153A of the Act. Thus, while allowing the petition, the Court held that the impugned notice had been issued beyond limitation and was liable to be quashed and set aside.

[Dinesh Jindal v. Assistant Commissioner of Income Tax, 2024 SCC OnLine Del 4230].

'Corporal punishment is never a solution to guide a child'

“The next era of child rights must move forward with a better and more equipped and pragmatic approach where the children are better heard and treated with more respect. We need to be more receptive to the needs of the children. We have to start listening to them”. In a writ petition filed by a father praying to direct the State to implement the Guidelines for Elimination of Corporal Punishment in Schools ('Guidelines') provided by the National Commission for Protection of Child Rights ('NCPCR') and further reliefs sought for are relating to grant of nominal compensation regarding the incident occurred to his daughter in the school, S.M. Subramaniam, J. has issued the following directions: The Principal Secretary to Government, School Education Department was directed to implement the Guidelines provided by NCPCR. The guidelines are directed to be communicated to all the Educational Institutions across the State of Tamil Nadu and to the District Educational Authorities, who in turn, are directed to sensitise the Authorities, to follow the guidelines scrupulously to protect the mental health of the children, studying in the schools. Suitable instructions are directed to the District Educational Authorities to conduct Seminars/Awareness Camps etc., to create awareness about the guidelines issued by NCPCR. In the event of any complaint in this regard, action is to be initiated scrupulously by the Competent Authorities. In case of any lapse, dereliction or negligence, the Authorities are subjected to departmental disciplinary proceedings under the Service Rules. The idea is not only for elimination of corporal punishment in schools, any indirect form of harassing the children or circumstances affecting the mental health of the children, are also to be taken note of and suitable remedial measures are to be provided by the Competent Educational Authorities. To effectively implement the guidelines, the Principal Secretary to Government was directed to command all the District Educational Authorities to constitute Monitoring Committees in each school headed by the Head of the Institution, parents, teachers, senior students etc., as

decided by the Government. Further, such Monitoring Committees were directed to ensure that the guidelines are implemented scrupulously and any untoward incidents or any different behaviour of the staff members and the children are brought to the notice of the Authorities, for initiation of remedial measures. The Principal Secretary to Government was directed to issue the guidelines in consonance with the Clauses 7.8 and 7.9 of the Guidelines for Elimination of Corporal Punishment in Schools. The consolidated Circular/Instructions were directed to be issued, within a period of five weeks from the date of receipt of a copy of this order. The Court noted that Corporal punishment of any form is completely unacceptable and prohibited under Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009. Further, the Court said that a child in his / her growing years require a safe and caring environment. Any untoward experiences for the child may have a long-lasting unpleasant impression, capable of shaping the characteristic of the child in unpalatable ways. Corporal punishment is never the solution to guide the child. The Court suggested that children must be inspired by the adults' respectful and dignified conduct. Controlling the child with unjustifiable measures will serve no purpose and do more harm than good. Patience is the key quality required for handling children. The Court noted that Child rights are globally recognised and India is a signatory in several accords. Therefore, it is said that the well-being and mental health, environment in schools, are to be closely monitored and to be maintained by the competent authorities of the Education Department in the State. The Court said that Children must be taught to acquire multi-dimensional knowledge, which would be of greater assistance to transform them as good citizens. Good citizen alone can contribute for the development of our great Nation. Therefore, implementation of such guidelines issued by the NCPCR is of paramount importance. Thus, the Court issued certain directions and listed the matter for reporting compliance on 14-06-2024.

[*Kamatchi Shanker Arumugam v. State of Tamil Nadu*, WP No.4507 of 2024].

Prisoners also have right to adequate and required healthcare

“Failure on the part of a government hospital to provide the timely medical treatment to a person in need of such treatment results violation of his right to life guaranteed under Article 21 of the Constitution, as has been done in the instant case.” Petitioner had filed the present petition seeking regular bail under Section 439 of Criminal Procedure Code, 1973 ('CrPC'), on medical grounds, as he was suffering from Human Immunodeficiency Virus. Ranjan Sharma, J., opined that since the Jail Authorities had failed to provide the required medical treatment and failed to extend required advisories given by medical experts of Indira Gandhi Medical College and Hospital, Shimla, therefore, petitioner was needed to be enlarged on bail on extreme adversarial medical grounds. The Court further noted that the medical records indicated that petitioner was HIV positive and had lost about 9-10 kgs of weight during last two weeks. Further, even the officials of Kaithu Jail, Shimla had expressed their practical difficulty in not providing adequate medical healthcare and personal hygiene, therefore, the prayer of petitioner for enlargement of bail was needed to be accepted. Thus, the Court stated that petitioner should be enlarged on bail, subject to furnishing a personal bond of Rs. 30,000 with one surety in like amount to the satisfaction of Station House Officer ('SHO'), Police Station, Shimla/ Investigating Officer ('IO'). Background of the case at hand is that, Petitioner was a co-accused along with five others in FIR dated 19-02-2024, registered under Sections 419, 420, 465, 467 and 471 of the Penal Code, 1860 ('IPC') and was in custody since 20-02-2024. Petitioner stated that he had been falsely implicated and the facts in the FIR were fabricated, concocted and without any basis. It was averred that petitioner had good antecedents and he had no connection or concern with the alleged offence. After the registration of FIR on 19-02-2024, petitioner had filed a bail application before the Trial Court, but the same was rejected on 27-02-2024. Thereafter, petitioner filed another bail application on 29-02-2024, but the same was also dismissed. Thus, the petitioner filed the present petition. Petitioner stated that he had developed the chronic health

ailment owing to his being HIV positive and he was also susceptible to many other diseases which could be fatal for his survival. Analysis of the decision - The Court opined that fundamental right to life, which included the right to health and healthcare, right to live with dignity could not be shrunk or curtailed even in case of a person who was in custody. The State authorities were under an obligation to safeguard the right to life, be it related to the right to health of a commoner or prisoner. The right to life of a prisoner was more than a mere animal existence or vegetable subsistence. Even, prisoners have basic human rights, human dignity and human sympathy and any kind of de-humanizing factor or any attempt to defeat the real, meaningful and healthy living could not be permitted to sustain in case of prisoners. Failure on the part of a government hospital to provide the timely medical treatment to a person results in violation of his right to life under Article 21 of the Constitution, as had been done in the instant case. The Court referred to Prisons Act, 1894, Himachal Pradesh Prison Manual, 2021, the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 and opined that in the background of the mandate of law and statutory provisions, the inaction of Department of Prisons and Correctional Home Services to provide the needed health care medical facilities, was certainly an attempt to shrink the fundamental rights, human rights and human dignity of petitioner. The Court further opined that the Jail Authorities had also failed to implement Himachal Pradesh Prison Manual, 2021, as no regular Medical Officer was posted in Kaithu Jail, Shimla. A visiting doctor was deployed to visit the jail, twice a week, which schedule was also by and large at the mercy of higher authorities. Further, inmate capacity in Kaithu Jail was 183, whereas 254 prisoners' inmates existed as on the present day. Medical assistance of prisoner was being addressed by pharmacist, which could have any adversarial effect in case of any untoward incident. The Court opined that since the Jail Authorities had failed to provide the required medical treatment and failed to extend required advisories given by medical experts of Indira Gandhi Medical College and Hospital, Shimla,

therefore, petitioner was needed to be enlarged on bail on extreme adversarial medical grounds. Petitioner should report at Police Station [East] Shimla, as and when called by Investigating Agencies and should disclose his functional e-mail IDs/WhatsApp number to SHO/IO concerned. Further, in case petitioner needed to visit any medical institution inside Shimla, the petitioner himself or through his surety furnish the details of his whereabouts to SHO/IO. However, if petitioner needed to visit medical institution outside Shimla, then petitioner should daily furnish the details regarding date, time, place of stay and institution where he intended or sought treatment. Petitioner should also furnish copy of OPD or IPD slips where he sought treatment and should keep his mobile/WhatsApp number, with live GPS location. The Court stated that petitioner should not leave the country without prior information of the Court and should not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or the witnesses. Further, petitioner should neither involve himself in any offence nor should abet commission of any offence. The Court stated that violation of any condition should entail cancellation of bail automatically and if circumstances necessitated, respondent was at liberty to move this Court for modification or cancellation of bail. Further, to ensure implementation of prison reforms and to safeguard and preserve the fundamental right of life in terms of Article 21 of the Constitution, the Court requested the Registry to place the matter to the Chief Justice of the present Court for considering it to be taken up as Public Interest litigation, so that the mandate of law and Prisons Act, 1894, Himachal Pradesh Prison Manual, 2021 saw the light of day, instead of allowing it merely to remain a mere paper document.

[Xv. State of H.P., 2024 SCC Online HP 1906].

A Habeas Corpus writ for the grant of visitation rights is not maintainable where matrimonial disputes between parties pending before Family Court

“The writ of habeas corpus is a prerogative writ, an extraordinary remedy, evolved under the common

law and incorporated in our constitutional law, having the objective to protect and safeguard individual liberty.” In the writ of habeas corpus filed for the grant of visitation rights, the court while refusing to exercise its extraordinary prerogative jurisdiction for issuance of a writ of habeas corpus, said that habeas corpus writ would not ordinarily be issued for grant of visitation rights particularly where proceedings between the parties are pending before the Family Court. Further, it emphasised that for a claim of visitation rights, it is always open to the party to avail the remedy by moving an appropriate application before the Family Court where proceedings of matrimonial disputes between the parties are pending. The petitioner's wife left their matrimonial home along with their one-month-old infant daughter and several legal proceedings related to matrimonial matters in the form of proceedings under Sections 9 and 13 of the HMA, 1955; Maintenance proceedings under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC') were ongoing between the parties in a Family Court. The claim of the petitioner is confined to a relief for grant of visitation rights. After analysing the principle regarding writ of *habeas corpus*, the Court said that the exercise of the extraordinary jurisdiction for issuance of a writ of *habeas corpus* would be seen to be dependent on the jurisdictional fact where the applicant establishes a *prima facie* case that the detention is unlawful. It is only where the jurisdictional fact is established that the applicant becomes entitled to the writ as of right. The Court noted that in the instant case, the minor child, soon after her birth has been in the custody of her mother who had left her matrimonial home, and is living separately since then. The Court said that the law relating to guardians and wards is governed in terms of the Guardians and Wards Act, 1890, ('GWA') and an order regarding guardianship upon an application filed by a person claiming entitlement may be passed under the aforesaid enactment. The Court further stated that the subject nature of disputes concerning the family, and due to the need to adopt an approach radically different from that adopted in an ordinary civil proceeding, the Family Courts Act, 1984 was enacted for establishing Family Courts for

speedy settlement of family disputes and the jurisdiction in respect of suits and proceedings relating to matrimonial matters and also relating to guardianship and custody of a minor. Discussing the objective of Hindu Minority and Guardianship Act, 1956, the Court said that this Act was enacted to amend and codify certain parts of the law relating to minority and guardianship among Hindus. The Act is supplementary to the GWA, and in terms of Section 2 thereof its provisions are in addition to and not in derogation to the GWA. The Court said that the minor daughter was a one-month-old infant when her mother is said to have left her matrimonial home, thus, in terms of Section 6(a) of HMGA, 1956 the custody of a minor with his/her mother, could not prima facie be said to be illegal. The Court noted that the subject matter relating to custody of children during the pendency of the proceedings under the HMA is governed in terms of the provisions contained under Section 26 thereof. The aforesaid section applies to 'any proceeding' under the HMA and it gives the power to the Court to make provisions regarding custody, maintenance, and education of minor children. Thus, the Court can make such provisions in the decree as it may deem just and proper and can also pass interim orders during the pendency of the proceedings and all such orders even after passing of the decree. The Court further noted that as the proceedings under the HMA being pending between the parties before the Family Court, the jurisdiction of the Court under Section 26 may be invoked for seeking orders with regard to custody of the minor and relief in respect of visitation rights. The Court said that an application seeking a writ of habeas corpus for custody of a minor child, the principal consideration for the court would be to ascertain whether the custody of the child is unlawful or illegal and whether the welfare of the child requires that the present custody should be changed and the child should be handed over in the care and custody of somebody else other than in whose custody the child presently is. The Court reiterated that in matters of custody the welfare of child would be of a paramount consideration and the role of the Court in examining the cases of custody of a minor is on the touchstone of

'principle of *parens patriae* jurisdiction'. The Court said that the proceedings in the nature of habeas corpus may not be used to examine the question of the custody of a child. The power of the High Court, in granting a writ, in child custody matters, would be qualified only in cases where the detention of a minor is by a person who is not entitled to his/her legal custody. In a case where facts are disputed and a detailed inquiry is required, the court may decline to exercise its extraordinary jurisdiction and may direct the parties to approach the appropriate court. The Court emphasised that for a claim regarding visitation rights, it is always open to the party to avail the remedy by moving an appropriate application before the Family Court where proceedings regarding the matrimonial disputes between the parties are pending. Thus, the Court refused to exercise its extraordinary prerogative jurisdiction for issuance of a writ of *habeas corpus*.

[Mithlesh Maurya v. State of U.P., 2024 SCC On Line All 1261]

CASE COMMENTS

Vodafone Idea Limited v. Saregama India Limited **(2024 SCC OnLine Cal 5131)**

Decided on May 17, 2024 Calcutta High court

The case delves into a detailed discussion concerning the authors' statutory rights to receive royalties for any public communication of sound recordings under the Copyright (Amendment) Act, 2012. In other words, the issue involved was, whether Vodafone was required to seek a separate license from IPRS and pay royalty before commercially exploiting its members' literary and musical works.

The foundation of the analysis by the court lies in the interpretation of Copyright (Amendment) Act, 2012. The court applied the rule of construction and emphasized reading statute conjunctly as a whole and not in isolation. The court observed that though sections 13 and 14 of the Copyright Act have not been altered by the amendment of 2012 but the authors of

musical and literary works now have additional rights as per the amended provisions in sections 17, 18, and 19. On collective reading of these provisions, it may be observed that Copyright Act confers specific right to authors for their works in exchange for an equal share of royalties and forbids the unauthorized commercial exploitation of those works without receiving a license from IPRS and paying the due royalties.

In light of the conflicting provisions within the Act, the court proceeded to apply the rule of harmonization. The court relied on *IPRS v. Eastern Indian Motion Pictures* [(1977) 2 SCC 820] where J Krishna Iyer observed that section 14 is an integral yoga and it should be harmoniously construed so that both artist and filmmaker can coexist with each other without any conflicts within the Act. The authors of literary and musical works were not granted any specific right to receive royalty by sections 13 and 14 of the Act, however, the later amendment of Copyright Act in 2012 clearly guaranteed a right to an equitable portion of royalties to the authors, signifying a statutory right to receive the rightful royalty share for the commercial exploitation of the work.

The court further proceeded by relying on “*The Globalization of Copyright- A Paper for The Conference of The Australian Copyright Society, November 2005 by Robin Jacob and The Background Score to The Copyright (Amendment) Act, 2012 by Prashant Reddy, 5 NUJS Law Review 469 (2012)*” giving an example of young author who unintentionally ceded all of his rights for a pittance in all future technology, and then he found out that the large corporations have amassed enormous wealth. For some people, this is mode of trading. For others, it is bad luck. Now, after the 2012 amendment, the authors of the original work have the statutory right and this protection is justified by the technological changes. The aim and objective is to prevent parties from being forced to cede all of their rights to a more powerful entity. In this sense, “Copyright is not only

viewed as a property right or an economic tool but as an expression of the author's personality, perhaps something that would help him and his heirs.”

The court analysed the issue of waiver of author's right with the help of case named, *Adani Gas Limited v. Union of India* [(2022) 5 SCC 210], in which it was observed that authors were not allowed to give up their royalties in exchange for the use of their original works other than cinematographic films in theatres. Therefore, an author's right to receive royalties cannot be avoided or circumvented, even if the original owner granted permission to use the sound recordings. Vodafone is legally required to pay IPRS royalties to the authors of the literary and musical works that are integrated into the sound recordings, even though Saregama may have given Vodafone the right of exploitation of the sound recordings as the original proprietors. This obligation was created by the Act's amendment of 2012.

The Master Agreement, whose duration was not mentioned, was read in combination by the court and relied upon by Vodafone. The court noted that Saregama could not have provided Vodafone any permission to use the underlying literary and musical works included in the sound recording, and for this reason it is quite evident that Saregama has not granted Vodafone any permission at all. Vodafone is now required by law to obtain IPRS licenses. The Court decided that although Saregama was regarded as the original owner of the sound recordings, the rights of the writers were acknowledged in later amendments, superseding the rights of Saregama. Therefore, in order to use literary and musical works, Vodafone was required by law to pay royalties to IPRS.

To conclude, it can be stated that 2012 amendment guarantees authors the right to collect royalties, which cannot be avoided or evaded. This amendment's goal is to safeguard authors' rights by ensuring them royalties for public distribution of sound recordings. To resolve the contradictory clauses of the statute, the

court applied the rule of construction while interpreting various provisions of the Act.

V.K.Ahuja

Deepa Tomar v. Ajay
2024 SCC Online MP 4436.

Decided on May 14, 2024 Madhya Pradesh High Court

In this significant ruling the apex court held that “No wife can live in the matrimonial relationship with the person who is so short-tempered and impulsive turned criminal.” The factual matrix of the case was that in a first appeal against the order of Family Court dismissing appellant/wife's petition seeking dissolution of her marriage with the husband who is sentenced to life imprisonment for murder, a division bench held that the husband's conviction for murder and other criminal activities constitute mental cruelty towards the wife and the separation due to the husband's imprisonment amounts to desertion. The Court dissolved the marriage between the appellant and respondent and directed to draw a decree accordingly. Factual Matrix of the case was that the appellant/wife and the respondent/husband were married on 21-11-2011 under Hindu customs in Gwalior. They have a daughter born on 30-07-2012. The appellant/wife alleged cruelty and aggressive behaviour by the husband, including physical and mental torture. Two criminal cases were registered against the husband first under Sections 364A, 307, 147, 148, and 149 of the IPC and second under Sections 302, 307, and 323 of the IPC, and Sections 25 and 27 of the Arms Act, for the murder of his father. The husband was later convicted and sentenced to life imprisonment on 30-09-2019. The wife sought divorce on grounds of cruelty and desertion. The Family Court, vide order dated 29-11-2023, dismissed her petition under Section 13(1) of the Hindu Marriage Act, seeking dissolution of her marriage with the husband. The wife filed the present first appeal under Section 19 of the Family Courts Act, 1984, challenging the judgment and decree dated

29-11-2023 passed by the Principal Judge, Family Court, Gwalior. The wife contended that the husband's criminal activities and conviction for murder constitute mental cruelty, making it impossible for her to live with him. However, the husband denied the allegations of cruelty and asserted his love and affection for his wife and daughter, opposing the divorce. Moot Point was whether the husband's conviction under Section 302 of the IPC and his life imprisonment amounts to “mental cruelty” to the wife, justifying the dissolution of the marriage?

Analysis of the decision - The Court referred to *Sivasankaran v. Santhimeenal*, (2022) 15 SCC 742, where the Supreme Court highlighted the importance of mental and physical safety in marital relationships, *Savitri Pandey v. Prem Chandra Pandey*, (2002) 2 SCC 73, where the Supreme Court defined desertion and upheld divorce on grounds of cruelty and desertion and *Swati v. Arvind Mudgal*, 2015 SCC On Line Del 6930, where the Delhi High Court granted divorce based on the husband's conviction under IPC provisions. The Court stated that the Family Court has wrongly dismissed the case relying on the condition prior to the registration of a criminal case and conviction when a wife cannot live with her husband in future because of the uncertainty of releasing him on bail. The Court held that the husband's conviction and life imprisonment for murder indicate mental cruelty, causing reasonable apprehension in the wife's mind about her safety and that of her daughter. The Court further held that since the couple had not lived together since the husband's arrest on 23-05-2017, the same amounts to situational desertion. “...although under the Hindu Marriage Act, there is no such provision for the grant of divorce on account of conviction of wife or husband, as the case may be, for life imprisonment, there is the provision of grant of divorce on the ground of mental cruelty. Therefore, the conviction of the husband under Section 302 of IPC and sentence of life imprisonment amounts to mental cruelty towards the wife which entails her getting the divorce from her husband.” The Court held

that the respondent's conviction for murder and life imprisonment constituted mental cruelty, warranting the dissolution of the marriage. The Court held that marriage between the appellant/wife and respondent/husband is dissolved, and a decree be drawn accordingly.

The Court also determined that the husband's imprisonment since May 23, 2017, constituted desertion, as it represented an intentional and permanent abandonment without consent or reasonable cause. The Family Court's dismissal was overturned because it incorrectly focused on the situation before the conviction rather than the enduring impact of the life sentence on the wife's ability to continue the marriage. The High Court

dissolved the marriage, issuing a decree accordingly. The ruling highlights that a life sentence for murder, creating a climate of fear and insecurity, can be sufficient grounds for divorce based on mental cruelty and desertion.

In this case, the Court stated that cruelty is defined as conduct endangering the petitioner's life or health and mental cruelty includes conduct causing fear and suffering, beyond ordinary wear and tear of marital life. It is to be appreciated that the Court vehemently stated that desertion means intentional and permanent abandonment without consent or reasonable cause, considered as repudiation of marital obligations.

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