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Editorial

The General Assembly of the United Nations proclaimed 21st of March as the International day for the elimination of Racial Discrimination. On this day in 1960, the South African police killed 69 people and wounded 80 individuals who were demonstrating peacefully in Sharpeville, South Africa against the apartheid pass laws. The Security Council in an unprecedented move condemned the Sharpeville massacre by the South African police. The day aims to remind the people about the negative consequences of Racial Discrimination. The UN General Assembly urged the international community to increase its efforts to eliminate all forms of Racial Discrimination. The International Convention on the Elimination of all forms of Racial Discrimination, which was adopted in 1961 and entered into force in 1965, is considered as the most important human rights instrument requiring respect for and observance of human rights and fundamental freedoms for all, without distinction as to race. In 2001 the World Conference against Racism and Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa. The World Conference on racism produced the most successful and comprehensive programme for fighting Racism, Racial Discrimination, Xenophobia and Related Intolerance. The rights to Equality and Non-discrimination are cornerstones of human rights law. Article 1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in dignity and rights, and Article 2 of the UDHR states that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of race or any other kind. Unfortunately, Racism, Xenophobia and Intolerance are problems prevalent in all societies and discriminatory practices are widespread, particularly the targeting of migrants and refugees. It is important that each State take serious note of the statement of Antonio Guterres, Secretary General of the United Nations on the eve of the March 21: "it is time for all nations and all people live up to the words of the Universal Declaration of Human Rights, which recognizes the inherent dignity and equal and inalienable rights of all members of the human race,". States have an obligation under International human rights instruments in general and specifically under the UN Convention on the Elimination of Racial Discrimination to adopt comprehensive measures to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, and to promote tolerance, inclusion, unity and respect for diversity. Hopefully, this positive effort of the United Nations will create a global consciousness to curb Racial Discrimination all over the World.

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ACTIVITIES AT THE INSTITUTE

CONVOCATION - 2018



Convocation at a Glance

The 5th Convocation of the Indian Law Institute was held on Wednesday, 7th February 2018 at Vigyan Bhawan, New Delhi. The Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI presided over the function. Shri Ravi Shankar Prasad, Hon'ble Union Minister for Law & Justice/Vice President, ILI, was the Chief Guest of the function. The other guests were Hon'ble Mr. Justice R.K. Agrawal, Judge, Supreme Court of India/Chairman, Building Committee, ILI, Hon'ble (Dr.) Justice A.K. Sikri, Judge, Supreme Court of India/Chairman Academic Council, ILI, Hon'ble (Dr.) Justice B.S. Chauhan, Chairman, Law Commission of India/Member, Governing Council, ILI and Hon'ble (Dr.) Justice D.Y. Chandrachud, Judge, Supreme Court of India.



Academic procession of the Convocation



Invited dignitaries at the Convocation

The Convocation ceremony was commenced with an academic procession led by the Governing Council, Executive Committee, Academic Council and the Faculty Members of the Institute which was followed by lighting of lamp by the dignitaries. Prof. (Dr.) Manoj Kumar Sinha, Director, ILI welcomed the august gathering and presented the Annual report of the Institute which highlighted the achievements and contributions of ILI during the last few years.



Prof. (Dr.) Manoj Kumar Sinha, Director, ILI presenting the Annual report



Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI declaring the opening of Convocation

Speaking on the occasion, the Chief Justice of India, Hon'ble Mr. Justice Dipak Misra opined that “one of the foremost areas of concern today is making courts and legal aid accessible to the downtrodden sections of the Society”. Congratulating the graduating students, Chief Justice added, “the concept of 'access to Justice' has gained momentum and it is imperative that the younger generation recognises the need to

uphold this principle in the sense of trust.” Chief Guest of the function, Shri Ravi Shankar Prasad, Hon'ble Union Minister for Law and Justice mesmerized the audience with his motivational speech. Delivering the Convocation address, the Hon'ble Union Minister for Law and Justice emphasised on 'the interconnection between law and technology and the need for the lawyers to adopt technological advancements in practicing law'.

During the Convocation, Degrees and Diplomas to the passed out students of various academic programmes were conferred by the invited dignitaries. LL.M Degrees were awarded to 116 candidates and Post-Graduate Diplomas were conferred to 368 candidates in the subjects like Alternate Dispute Resolution, Corporate Laws and Management, Cyber Law, Intellectual Property Rights Law, and Labour Laws. Degrees of the LL.M One Year session, 2015-2016 were awarded by Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI. Degrees of the LL.M One Year, session 2016-2017 were awarded by Shri Ravi Shankar Prasad, Hon'ble Minister for Law & Justice/Vice President, ILI. Degrees of the LL.M Two Year session 2014-2016 were awarded by Hon'ble (Dr.) Justice A.K.Sikri, Judge, Supreme Court of India/Chairman, Academic Council, ILI. Degrees of the LL.M Two Year session 2015-2017 were awarded by Hon'ble Mr. Justice R.K.Agrawal Judge, Supreme Court of India/Chairman, Building Committee, ILI.

Gold Medals and Merit certificates to the first rank holders of various P.G.Diplomas of 2015-16 & 2016-2017 batches were awarded by Shri Ravi Shankar Prasad, Hon'ble Minister for Law & Justice/Vice President, ILI, and Gold Medals to LL.M Topper/Best Researcher/Topper in Jurisprudence/Human Rights/Criminal Law of 2015-16 & 2016-2017 batches were awarded by Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI.



Graduating students receiving degree certificates from the dignitaries

Members of the Governing Council, Executive Committee, Academic Council and distinguished invitees and dignitaries participated in the Convocation. The Convocation ceremony was successfully concluded with the declaration by the Hon'ble Chief Justice of India/President, ILI followed by the National Anthem.

NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

1. One Day Training programme for officials working in Juvenile Homes, Old Age Homes, and Health Sector on “Human Rights Issues and Challenges” (February 10, 2018)

The Indian Law Institute in collaboration with the National Human Rights Commission organized a One Day Training programme for officials working in 'Old Juvenile Homes, Old Age Homes, and Health Sector' on “Human Rights Issues and Challenges” on February 10, 2018 at the Plenary Hall of the Institute.

The programme was inaugurated by Dr. Sanjay Dubey, Director (Administration & Policy Research), NHRC. Director, ILI, Professor (Dr.) Manoj Kumar Sinha, welcomed the participants and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.



Dr. Sanjay Dubey inaugurating the training programme

The Programme consisted of four technical sessions on various themes of Human Rights. Mr. Vikram Srivastava, Independent Thought, Noida deliberated on “Securing the Rights of Children in Need of Care and Protection” and Dr. Sanjay Dubey, Director (Administration and Policy, Research) NHRC spoke on “Role of NHRC in Protecting Human Rights Violations of Vulnerable Groups.” Professor (Dr.) Manoj Kumar Sinha, Director, ILI deliberated on “Role of Health Officials in Protecting Human Rights of Juveniles and Old Age Persons”. Shri Amod K. Kanth, General Secretary, Prayas Juvenile Aid Centre Society, spoke on “Protection of Human Rights of Juveniles”. Certificates of participation were distributed to the participants of the training programme.



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

II. Two Days Training programme for Judicial Officers on “Human Rights Issues and Challenges” (March 10-11, 2018)

The Indian Law Institute in collaboration with National Human Rights Commission organized Two Days Training Programme for Judicial Magistrates on “Human Rights: Issues and Challenges” on March 10-11, 2018 at the Plenary Hall of the Institute.



Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India addressing the participants of the training programme

Hon'ble Mr. Justice Madan B. Lokur, Judge, Supreme Court of India inaugurated the training programme and presided over the function. While delivering the inaugural address His Lordship emphasised on important issues of Human Rights. Professor (Dr.) Manoj Kumar Sinha, Director, ILI delivered the welcome address and Shri Shreenibas Chandra Prusty, Registrar, ILI proposed the vote of thanks.



From L-R, Prof. (Dr.) Manoj Kumar Sinha, Hon'ble Mr. Justice Madan B. Lokur and Shri Shreenibas Chandra Prusty

The programme was designed for judicial magistrates and judicial officers to bring a clear understanding about human rights violations and adopt an approach towards effective implementation of human rights issues. The programme included eight technical sessions covering the broad themes on Human Rights.

The participants were addressed by experts in the field of Human Rights and Justice Delivery System. During the Training Programme eminent speakers delivered lectures and interacted with the participants in different sessions. Prof. (Dr.) Manoj Kumar Sinha, Director, the Indian Law Institute spoke on the topic “Role of NHRC in Protecting Human Rights Violations of vulnerable groups” and Ms. Geeta Luthra, Advocate spoke on “Protection of Women from Domestic Violence and other Atrocities: Facilitating Justice for Victims” in the first and second sessions of the training programme respectively. The speakers of the other sessions were Shri Majeed Memon, Advocate, Supreme Court of India/Member of Parliament (Rajya Sabha) and Dr. Rajesh Sagar, Doctor of Medicine, AIIMS. They interacted with the participants on the topics “Criminal Justice and Human Rights” and “Role of Judiciary in Protecting Human Rights of Juvenile and Old Age Persons” respectively in third and fourth sessions of the training programme.

Dr. Anurag Deep, Associate Professor, ILI delivered a lecture on “Law of Sedition in India and Human Rights Concerns” and Dr. Jyoti Dogra Sood, Associate Professor, ILI deliberated on “Decoding the Juvenile Justice Act” on the second day of the Training programme. Smt. Chhaya Sharma, DIG, NHRC deliberated on the topic “Immoral Traffic (Prevention) Act, 1956 and the Role of Judicial Officers in Protecting Human Rights” and Mr. P.K. Malhotra, Former Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India spoke on the topic “Role of Judiciary in Protection of Human Rights with Special Reference to Right to bail and Speedy Trial”.



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

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

III. One Day Training programme for Media Personnel and Government Public Relation Officers on “Media and Human Rights: Issues and Challenges” (March 17, 2018)

The Indian Law Institute in collaboration with the National Human Rights Commission organized a One Day Training programme for Media Personnel and Government Public Relation Officers on “Media and Human Rights: Issues and Challenges” on March 17, 2018 at the Plenary Hall of the Institute.



Inaugural Session of the training programme

The programme was inaugurated by Shri Surajit Dey, Registrar (Law) NHRC. Professor (Dr.) Manoj Kumar Sinha, Director, ILI welcomed the participants and Shri Shreenibas Chandra Prusty,

Registrar, ILI proposed the vote of thanks. The programme consisted of three technical sessions on various issues of 'Media and Human Rights'. The participants of the training programme was addressed by eminent speakers in the field of media reporting and involved in the Human Rights issues.



From L-R, Shri Surajit Dey, Prof. (Dr.) Manoj Kumar Sinha and Shri Shreenibas Chandra Prusty

Professor (Dr.) Manoj Kumar Sinha, Director, ILI deliberated on “Protection of Human Rights Act, 1993: NHRC and Role of Media”. Mr.Sudanshu Ranjan, Journalist, Doordharshan spoke on “Human Rights Violations: Identification and Reporting of Critical Concerns and Challenges” and Shri Vikram Srivastava, Independent Thought, Noida interacted on the topic “Media's Role in Championing Child Rights”. Certificates of participation were distributed to the participants of the programme.

International Mother Language Day/ Mathribhasha Diwas Celebrations (February 21, 2018)

The Indian Law Institute celebrated the International Mother Language Day/Mathribhasha Diwas on February 21, 2018 to promote the dissemination of mother tongues, and fuller awareness of linguistic and cultural traditions throughout the world and to inspire solidarity based on understanding, tolerance and dialogue. As part of the Mathribhasha Diwas celebrations, the Institute organised several competitions like elocution, debating, essay writing competition, painting etc among the students of the Institute. Cash awards and certificates of participation were awarded to the winners of the Mathribhasha Diwas competitions.



International Mother Language Day/Mathribhasha Diwas celebrations held at ILI.

Professor Pushpesh K.Pant, Professor (Retd) in Diplomatic Studies, Centre for International Politics, JNU, Mr.Anup Vashney, Joint Secretary, Ministry of Law and Justice, Government of India, Mr. M.C. Pandey, Director, Vidhi Sahitya Prakashan and Dr, Kavita Surbhi, Bachpan Bachao Aandolan were the invited dignitaries for the prize distribution function held on March 23, 2018. Dr.Anurag Deep, Associate Professor, the Indian Law Institute coordinated the programme.

International Conference on Human Trafficking (March 24, 2018)

The Indian Law Institute and SAARC- Law India Chapter in technical partnership with Justice and Care, an organisation working on combating human trafficking organised an International Conference on “Human Trafficking: Legal and Technological Perspectives for Solutions within South Asia” at India International Centre, New Delhi on March 24, 2018.



Hon'ble Mr. Justice Dipak Misra, CJI with the dignitaries at the International Conference

The objectives of the Conference included “Strengthening the understanding of the issue of human trafficking and how the amalgamation of law and technology plays a vital role for effective intervention strategies; Information sharing from representatives of the SAARC nations and other countries on how law and technology around trafficking are currently positioned within their local jurisdictions; Identifying gaps that exist in the current legislative frameworks as well as technological know-how and offering suggestions for change; Devising innovative solutions for effectively combating the issue in both national as well as the international sphere; Building and presenting sound recommendations that would assist in addressing the issue at national as well as the SAARC regional level”.

Hon'ble Mr. Justice Dipak Misra, Chief Justice of India/President, ILI was the Chief Guest of the Conference. While addressing the participants of the Conference His Lordship emphasised on the role of Judiciary in addressing the problems of 'Human Trafficking as an organised Crime and a grave Human Rights violation'.

The Conference was inaugurated by Mr. Mehmood Mandviwalla, President- SAARC LAW and Mr. Hemant Batra, Vice President, SAARC LAW and Policy Lawyer introduced the SAARC LAW and its potential role in partnering with International Bodies. Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute delivered the welcome address and Prof (Dr.) Ranbir Singh, Vice Chancellor, National Law University; Delhi presented the theme of the Conference. Hon'ble Ms. Justice Gita Mittal, Acting Chief Justice, High Court of Delhi delivered the Presidential address. Hon'ble Mr. Justice Kalyan Shrestha, Former Chief Justice, Nepal and Patron, SAARCLAW and Hon'ble Mrs. Justice Sapan Pradhan Malla, Judge, Supreme Court of Nepal also addressed the participants of the Conference. Mr. K.K. Venugopal, Attorney General for India and Patron, SAARCLAW addressed the audience and Ms.

Joyita Ambett, CEO, Justice and Care proposed the vote of thanks.

SPECIAL LECTURES

- ✦ **Hon'ble Mr. Michael Kirby AC CMG**, Former Judge, High Court of Australia delivered a Special Lecture on the topic “Evolving Constitutional Democracies”: An Indian and Australian Comparison” on January 11, 2018 at the Plenary Hall of the Institute. Hon'ble (Dr.) Justice D.Y. Chandrachud, Judge, Supreme Court of India presided over the Lecture.



Hon'ble (Dr.) Justice D.Y. Chandrachud with the dignitaries on the dias.

- ✦ **Prof. Gianfranco Tamburelli**, Professor of Law delivered a Special Lecture on the topic “The EU Relations with the Eastern Countries and the Ukraine's Issues” on January 16, 2018.
- ✦ **Prof. (Dr.) Moshe Cohen**, President, College of Law and Business, Israel delivered a distinguished Public Lecture on “Constitutionalism and the Culture of Justification” on February 12, 2018 at the Plenary Hall of the Institute. Hon'ble Mr. Justice A.K. Sikri, Judge Supreme Court of India/Chairman, Academic Council, ILI delivered the presidential address. Professor (Dr.) C.Rajkumar Founding Vice Chancellor, O.P.Jindal Global University & Dean, Jindal Global Law School delivered the welcome address. Professor Khagesh Gautam, Associate Professor and Assistant Dean (Research & Publications), JGLS introduced the distinguished Speaker and the theme of the

Lecture to the participants of the programme. Professor (Dr.) Manoj Kumar Sinha, Director, ILI proposed the vote of thanks.



From L-R Hon'ble (Dr.) Justice A.K. Sikri, Professor (Dr.) Moshe Pohen, Shri Shreenibas Chandra Prusty

✦ **Professor M. K. Bhandari**, Former Director Legal, Narsee Munjee University (NMIMS), Mumbai delivered a Special Lecture on “Regulatory Framework of Blockchain and Crypto currency” on February 22, 2018 at the Plenary Hall of the Institute.

✦ **Professor Jorg Molt**, Bitcoin and Blockchain Specialist & CEO Satoshi School delivered a Special Lecture on “Bitcoin- Law and Role in Global Economy” on February 22, 2018 at the Plenary Hall of the Institute.

✦ **Majeed Memon**, Advocate, Supreme Court of India and Hon'ble Member of Parliament (Rajya Sabha) and Member, Parliamentary Standing Committee on Law, Justice and Public grievance delivered a Special Lecture on 'Personal Liberty and Right to Bail' on March 20, 2018 at the Plenary Hall of the Institute.

RESEARCH PUBLICATIONS

Released Publications

- * *Journal of the Indian Law Institute (JILI)* Volume 59 (4) (October-December, 2017)

- * *ILI Newsletter* Vol. XIX, Issue IV (October-December, 2017)

- * *Annual Survey of Indian Law* - 2016

Forthcoming Publications

- * *Journal of the Indian Law Institute (JILI)* Vol. 60 (1) (January-March, 2018)
- * Book titled *Bail: Law and Practice in India* – Prof. Manoj Kumar Sinha and Dr. Anurag Deep
- * Book titled *Towards the Renaissance: Shibli and Maulana Thanvi on Sharia* – Prof. Furqan Ahmad
- * Book titled *Law of Sedition in India and Freedom of Expression* – Prof. Manoj Kumar Sinha and Dr. Anurag Deep
- * Book titled *Intellectual Property and Human Rights in India* – Prof. Manoj Kumar Sinha and Ms. Jupi Gogoi

E-LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights law

E-Learning Certificate Courses of three months duration on “*Cyber Law*” (29th batch) and “*Intellectual Property Rights and IT in the Internet Age*” (40th batch) was started from January 10, 2018.

85 students were enrolled for the 29th batch of Online Certificate Course in **Cyber Law** and 46 students were enrolled for the 40th batch of Online Certificate Course in **IPR**.

LIBRARY

- The Indian Law Institute Library has received a certificate of Content Contribution from National Digital Library of India as a content partner of National Digital Library of India for its generous contribution of content.

- Gunjan Jain, Assistant Librarian received a certificate of Nodal Coordination from National Digital Library of India as a Nodal Person of the Indian Law Institute for integrating Indian Law

Institute digital resources to National Digital Library of India.

Library added 48 Books on Cyber Law, Intellectual Property Rights, Family Law, Muslim Law, International Law, Criminal Law, Human Rights and International Trade to enrich the library collections.

The Libsys Hybrid Circulation Staff Station has been upgraded for smooth execution of circulation work. The product was working with both RFID and EM tags.

VISITS TO THE INSTITUTE

Distinguished legal scholar, Professor Ved P. Nanda, University of Denver, USA visited the Institute on January 24, 2018. He interacted with the faculty members of the Institute and deliberated on 'Various aspects of Legal Research'.



Professor Ved P. Nanda along with the Faculty Members, ILI

Students' visit at ILI

- 51 students from Rabindra Shiksha Sammillani Law College, Calcutta visited the Institute on January 4, 2018
- 10 students from Kashmir University, Jammu and Kashmir visited the Institute on January 18, 2018
- 40 students from Bundelkhand University, Jhansi visited the Institute on February 1, 2018
- 86 students from Indian Institute of Legal Studies, West Bengal visited the Institute on February 13, 2018

- 29 students from NBT Law College, Nasik Maharashtra visited the Institute on February 23, 2018
- 40 students from Excellent Law College Kota visited the Institute on March 9, 2018
- 48 students from Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal visited the Institute on March 13, 2018
- 13 students from INVERTIS University, Bareilly, Lucknow visited the Institute on March 15, 2018
- 35 students from Bengal Law College, Santiniketan visited the Institute on March 15, 2018
- 6 students from JRSET College of Law, Kolkata, West Bengal visited the Institute on March 20, 2018
- 13 students from Nawada Vidhi Mahavidyalaya, Bihar visited the Institute on March 21, 2018
- 37 Students from Durgapur Institute of Legal Studies, West Bengal visited the Institute on March 22, 2018

FORTHCOMING EVENTS

UGC Expert Committee Visit

An UGC Expert Committee will visit the Indian Law Institute on April 9-10, 2018 regarding the 12-B status of the Indian Law Institute.

Training Programme for Judicial Officers of Myanmar

The Indian Law Institute and Ministry of External Affairs, Government of India will jointly organize a Training programme on various aspects of 'National and International laws' for Legal Officers of Myanmar from May 6-13, 2018.

Admission process for various Academic programmes of ILI

The admission process for the various Academic programmes (Admission to Ph.D, LL.M. (One Year) and Five Post Graduate Diploma

Programmes (Alternative Dispute Resolution, Cyber Law, Corporate Laws & Management, Intellectual Property Rights Law and Labour Law) for the academic year 2018-19 will start with the commencement of the sale of prospectus w.e.f. May 2018.

Examinations of various Academic Programmes:

➤ Annual Examinations: Post Graduate Diploma-2018

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

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

- The Semester-End-Examinations for the LL.M. 1 year (2nd Semester) for the Session 2017-2018 will be held from May 14-24, 2018.
- The Supplementary Examinations for LL.M. 1 year (2nd & 3rd Trimester) will be held from May 14-18, .2018.
- The Supplementary Examinations for LL.M. 2 year (2nd & 4th Semester) will be held from May 14-24, .2018.

➤ Ph.D Course Work Examinations - 2018

- The course work examinations for Ph.D programme will be held from May 25-29, 2018.

➤ CAT - 2018

- All India Common Admission Test will be held in the month of June, 2018 for LL.M. & Ph.D courses.

LEGISLATIVE TRENDS

COMPANIES (AMENDMENT ACT) ACT, 2017 (Act No.1 of 2018)

The Companies (Amendment) Act, 2017 was enacted on January 3, 2018. The amendment act addresses difficulties in implementation, facilitates ease of

doing business helps achieving better harmonisation with other Statutes such as Reserve Bank of India Act, and regulations made there under, and rectifies inconsistencies in the Companies Act, 2013. Some of the key areas of the Act like definitions, loans and investments, Related Party Transaction (RPT), Corporate Social Responsibility(CSR), Corporate Governance, declaration and payment of Dividend, Financial Reporting, Audit and Auditors, Board matters, Managerial Remuneration, Acceptance of Deposits by Companies, Merger, Amalgamation, Reconstruction and other matters have been amended under the new Act.

THE INDIAN FOREST (AMENDMENT) ACT, 2017 (Act No.5 of 2018)

Enacted on January 5, 2018, the Indian Forest (Amendment) Act, 2017 replaced the Indian Forest (Amendment) Ordinance, 2017 and amended the Indian Forest Act, 1927. The Act consolidates laws relating to forests, transit of forest-produce and the duty to be levied on them. Under the Act, the definition of tree includes palms, bamboos, stumps, brush-wood, and canes. The Act amended this definition of tree to remove the word bamboos.

THE APPROPRIATION ACT, 2017 (Act.No.6 of 2018)

The Appropriation Act, 2017 was enacted on January 18, 2018 to authorise the payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 2017-18.

LEGAL JOTTINGS

Admissibility of the electronic evidence

In this case, the apex court has clarified the legal position in context of admissibility of electronic evidence to hold that furnishing of certificate under section 65 (b) 4 of the Evidence Act was not a mandatory provision and its requirement could be waived off in view of facts and circumstances and if interest of justice required the same.

In the case the core issue was whether videography of the scene of crime or scene of recovery during investigation should be necessary to inspire confidence in the evidence? During the course of hearing in the case apprehension was expressed on the question of applicability of conditions under section 65 (b) 4 of the Evidence Act to the effect that if a statement was given in evidence, a certificate was required in terms of the said provision from a person occupying a responsible position in relation to operation of the relevant device or the management of relevant activities.

It was submitted that if the electronic evidence was relevant and produced by a person who was not in custody of the device from which the electronic document was generated, requirement of such certificate could not be mandatory. The applicability of requirement of certificate being procedural can be relaxed by court wherever interest of justice so justifies.

Shafhi Mohammad v. State of Himachal Pradesh, AIR 2018 SC 714, decided on January 30, 2018.

'Owner' under Section 2 (30) of the Motor Vehicles Act, 1988

The Supreme Court in this case interpreted the expression 'owner' in section 2 (30) of the Motor Vehicles Act, 1988, to be the person under whose name the motor vehicle stands registered. The Hon'ble Court further clarified that instances where the transfer of vehicle is not registered with an authority the original owner will be liable. As per the facts of the case, an accident took place at about 7:30 p.m. on 27 May, 2009 when Smt. Jai Devi and her nephew Nitin were walking down a street in their village. A motor vehicle driven by Rakesh in the reverse gear hit them. Nitin was run over by the rear wheel of the car and died on the spot. Smt. Jai Devi received multiple injuries. Two claim petitions were filed before the Motor Accident Claims Tribunal (the Tribunal). One of them was by Smt. Jai Devi. The second was by Somvir and Smt. Saroj, the parents of Nitin. The vehicle involved in the accident (a Maruti 800 bearing Registration No DL-3CC-3684) was registered in the name of Vijay Kumar, the first respondent. According to the first respondent, he had

sold the vehicle to the Second respondent on 12 July, 2007 prior to the accident and had handed over possession of the vehicle together with relevant documents including the registration certificate, and forms 29 and 30 for transfer of the vehicle. The second respondent stated before the Tribunal that he sold the vehicle to the third respondent on 18 September, 2008. The third respondent in turn claimed before the Tribunal to have sold the vehicle to the petitioner. The petitioner, in the course of his written statement claimed that he had sold the vehicle to Meer Singh.

Hon'ble Dipak Misra, CJI, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ., held that in view of the definition of the expression 'owner' in section 2 (30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. The Court pointed out that section 2 (30) of the Act states that it is the person in whose name the motor vehicle stands registered would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner.

The Court also held that a claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under that agreement is treated as the owner. In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression 'owner' in section 2 (30), making a departure from the provisions of section 2 (19) in the earlier act of 1939. The principle underlying the provisions of section 2 (30) is that the victim of a

motor accident or, in the case of death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the First respondent was the 'owner' (30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured.

Naveen Kumar v. Vijay Kumar, 2018 (183) AIC 27 SC, decided on February 6, 2018.

FACULTY NEWS

Manoj Kumar Sinha, Director, ILI delivered a talk on “Policy Framework: Programmatic and Legal Aspect of Child Marriage” in the Regional Conference on Child Marriage, organised by the National Human Rights Commission of India along with the Department of Women & Child Development, and Mission Shakti, Government of Odisha, Bhubaneswar on January 4-5, 2018.

Invited to deliver a talk on “Role of the International Committee of the Red Cross (ICRC) in Implementation on International Humanitarian Law” to the interns of Winter Internship Programme of the National Human Rights Commission of India, New Delhi on January 8, 2018.

Invited to address in the inaugural function of Two days Conference on 'National Conference on Citizenship, Refugees and Human Rights in the Contemporary World' organised by the Tamil Nadu National Law School, Trichy, on January 20-21, 2018.

Invited as the Chief Guest to address the Interns of National Legal Services Authority (NALSA), New Delhi on January 22, 2018.

Presented a paper on “International Human Rights and Religious Freedom” in an international conference organised by the South Asia Consortium

for Religion and Law Studies (SACRALS), on February 2, 2018 held in Delhi from February 1-3, 2018.

Invited as visiting Professor, Sciences Po Aix University, Aix - en - Provence, France on February 11-21, 2018.

Invited as the Chief Guest to address the participants of One week training programme on Environment organised by Ramanujan College, New Delhi on March 14, 2018

Invited as a judge in the final round of International Criminal Court Moot Competition organised by the National Law University, Delhi, ICC and Leiden University on March 18, 2018.

Invited to address the students of Symbiosis Law School, Pune on 'International Organisations and International Humanitarian Law' on March 19, 2018.

Furqan Ahmad, Professor, ILI was the speaker for panel discussion in Jesus and Mary College, Chanakyapuri, New Delhi on the topic 'Triple Talaq: Problems with the recent Bill and contextualizing Muslim law' on January 17, 2018.

Anurag Deep, Associate Professor, ILI contributed an article entitled 'Judicial Appointments in India and the NJAC judgment: Formal Victory or Real Defeat' in *Jamia Law Journal*, vol III, 2018, Pp. 49-76.

Delivered lectures on "Membership of Terrorist Organization in the light of Freedom of Expression and Association" and "Law of Sedition in India and Human Rights Concerns" in the Two days Training programme for Judicial Officers on 'Human Rights Issues and Challenges' jointly organized by ILI and NHRC at ILI, New Delhi on March 10, 2018 and March 11, 2018 respectively. He delivered a lecture on 'Rule of Law' in CBI Academy, Ghaziabad on March 20, 2018. He also participated as a member of jury in the S.K. Puri Memorial Moot Court Competition at the Faculty of Law, University of Delhi on March 24, 2018.

Jyoti Dogra Sood, Associate Professor, ILI, delivered a lecture on 'decoding the Juvenile Justice

Act' in the Two days Training programme for Judicial Officers on 'Human Rights Issues and Challenges' jointly organized by ILI and NHRC at ILI, New Delhi on March 11, 2018.

Deepa Kharb, Assistant Professor, ILI was invited as a keynote speaker at the 6th National Conference on Management & Technical Innovations on Intellectual Property Rights organised by Management Education & Research Institute, New Delhi with the Ministry of Electronics and Information Technology on the topic 'Patenting of Computer Related Inventions in India' on March 10, 2018.

CASE COMMENTS

Bar Council of India v. A. K. Balaji and Ors.

2018 (4) SCALE 475

Decided on March 13, 2018

The apex court in the present case held that foreign law firms can neither set up offices in India nor be allowed to practice in Indian courts. However, they are allowed to provide legal advice to Indian clients on a 'fly in and fly out' mode, ie on a casual basis. The Madras High Court and Bombay Court had previously ruled on this matter. The Bar Council of India filed a case against the judgment of the Madras High Court while Global India Lawyers challenged the Bombay High Court decision before the Supreme Court. The Court held that the practicing of law includes not only appearance in courts but also the formulation of opinions, the drafting of instruments and the participation in conferences involving legal discussions. The latter examples are in fact parts of non-litigation practice which is nonetheless considered as part of practice of law. The Court also interpreted the word whether visit of any foreign lawyer on a 'fly in and fly out' basis may amount to practice of law if it is carried out on a regular basis. The Court held that a casual visit for giving advice may not be covered by the expression 'practice' though how 'casual' or 'frequent' the visit is would depend on the facts of the case. That being said, the Bar Council of India is free to make rules in this regard. Regarding the

BPO companies the Court held that these companies are providing a range of customized services and functions to their customers and may not violate the provisions of the Advocates Act, unless if the activities in pith and substance do not amount to practice of law. The Court upheld the view of the Bombay High Court and Madras High Court to the extent that foreign law firms/ companies or foreign lawyers cannot practice in India in both litigation and non-litigation situations. However, the Court modified the direction of the Madras High Court inasmuch as it clarified that there was no bar for the foreign law firms or foreign lawyers to visit India for the purpose of giving legal advice to their clients in India for a temporary period on a 'fly in and fly out' basis. The Court interpreted the expression 'fly in and fly out' so as to cover a casual visit not amounting to practice. The Court also modified the direction of the Madras High Court which stated that foreign lawyers could not be debarred from coming to India to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. The Court held that there is no absolute right of a foreign lawyer to conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration. However, if the rules of institutional arbitration apply or if the matter is covered by the provisions of the arbitration act then foreign lawyers may not be debarred from conducting arbitration proceedings arising out of international commercial arbitration in view of sections 32 and 33 of the Advocates Act. Nevertheless, they will be subject to the code of conduct applicable to the legal profession in India. In the age of economic globalisation where many sectors have opened to foreign players and the Governments deep desire to make India is a favourite investment destination, it is important that regulatory bodies should frame the policies accordingly. Thus, it is imperative for the Bar Council of India to adopt appropriate measures in line with the spirit of the Supreme Court's ruling and the Government of India's economic policy.

Manoj Kumar Sinha

***Kerala State Coastal Management Authority v.
DLF Universal Limited***

(2018) 2 SCC 2013

Decided on January 10, 2018

In this case, a dispute arose between the respondent developers, DLF, and the environment authorities. The respondent claimed that they had proceeded with the housing project after obtaining all the requisite clearances and permissions while the coastal and environmental authority contended otherwise. But by the time the authority challenged the construction, the project had already entered its final leg. The builders had applied for clearance and building permits but an intervening notification of the Ministry of Environment and Forest dated 14.9.2006 issued under Sections 3(2)(v)(1), Environment Protection Act, 1986 read with Rule 5 (3) (d) Environment Protection Rules, 1986 had modified the previous processes of obtaining permission. Henceforth, all new projects were required to obtain prior environmental clearance by central government. Further, authorities were created under the notification dated 19.12.2011.

The project was examined by the Central Expert Appraisal Committee (CEAC) and was approved but the CEAC had asked the developers to obtain clearance from Centre for Earth Science Studies since certain parts of the project fell under Coastal Regulation Zone (CRZ).

It was apparent to the court that DLF did not wait for environmental clearance and went ahead with the construction activity on a 'perceived' clearance without any communication from the authorities' side. While the inspection of the site and environmental clearance was still under process, a sub-committee found that construction had already begun and a multi-storey project was nearing completion. Therefore, there was a violation of lack of prior approval. Two suggestions were proposed by the sub-committee-

- i) Portion protruding towards backwaters be demolished, and
- ii) Penalty be imposed for procedural violations.

Meanwhile, Centre for Earth Science Studies started to revisit the site and stated that apparent reclamation of land was carried out by DLF which caused shifting of the backwaters' banks and the result was that a portion of the Chilavannur River had been illegally claimed. The Chief Secretary of the state also submitted a report to the Chief Minister reporting certain violations alleging that there was a natural stream canal from the CRZ map submitted to the MoEF for CRZ clearance and that some photographs had been replaced too.

The learned single judge at the trial court level found everything against DLF and categorised the entire construction as illegal, thereby directing its demolition. In the Kerala high court, a division bench upheld the findings of the trial court barring the demolition order, which it set aside owing to the plea made before it by the prospective flat-owners. It instead directed regularization subject to fine/compensation of Rs. 1 crore for building up the environment and maintaining ecological balance.

The court came heavily upon the sleeping authorities, referring to them as "having...a Kumbhakarna sleep of almost four years". The indifference on the part of the authorities involved led to disarray resulting in contradictory claims by different authorities and even by same authority in a short span of time. The court took into account the decision of *Anil Hoble v. Kashinath Jairam Shetye*, (2016) 10 SCC 701 in which the court had ordered demolition of area falling in CRZ disregarding even the permission granted by Coastal Zone Management Authority. The court also took note of other cases like *Union Territory of Lakshadweep v. Seashells Beach Resort*, (2012) 6 SCC 150 in which the court proceeded entirely on humanitarian ground with absolute negation of developmental aspect to hold that the construction was erroneous. In *Piedade Filomena Gonsalves v. State of Goa*, (2004) 3 SCC 445 in which entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

In the instant case, the apex court observed that although DLF had purchased the land legally and obtained requisite permissions, the fault on the part

of DLF was that it should have stayed its hand till obtaining CRZ permission. Instead, DLF initiated construction on the basis of deemed environmental clearance by virtue of Clause 8(3) of the EIA Notification of 2006. Hence, while the environment clearance was applied in 2007, integrated clearance was granted in 2013, after six years, the construction had already been completed in 2012. The court also showed grave doubts over huge reliance placed by the environmental authorities on Google images for coming to the conclusion that the dark area in the image is a water body.

The Supreme court did not agree with the lower courts in their holding DLF solely liable except to the extent that they had proceeded with the construction without having obtained prior clearance and had “deemed” clearance. The court set aside the findings of the lower courts' order while sustaining the fine imposed. The apex court also noticed that as much as seven notified authorities were involved in giving clearance, leading to disorder and confusion regarding the clearance and therefore, suggested single window clearance for future developmental projects requiring environmental clearance.

It is respectfully submitted that the apex court's advice pertaining to single window clearance was inevitable. This humble student was astonished to note that the 2006 notice of EIA talks about clearance of project in various stages like Screening, Scoping, Public hearing, etc. and not in a single go as has also been directed by the court in this instant case. The problem with multiple stages of clearance is that when one stage is over and the clearance report shows environmental damage in the proceeding stages, the court is guided by various considerations other than the ecological damage like the project cost already borne by the project lobby. In recent past, in the Asian game what has happened in the heart of national capital is known to everyone. In order to avoid this type of problem, the only way out is by mandating single window clearance of EIA as pointed out by the SC and for that the honourable court must be highly appreciated.

Furqan Ahmad

Dr. Subhash Kashinath Mahajan v. State of Maharashtra

2018 (4) SCALE 661

Decided on March 20, 2018

Alan Norrie in his book titled *Crime, Reason and History-A Critical Introduction to Criminal Law* 10 (Cambridge, 3rd Ed, 2014) propounds “that criminal law is neither rational nor principled, so that the 'extraordinary' is as much the norm as the ordinary”. This sounds appropriate in context of the recent apex court judgment, *Dr. Subhash Kashinath Mahajan v. State of Maharashtra* which has exercised 'controversial' and 'extraordinary' power of judicial law making under article 32/142 of the Constitution of India for equally controversial and 'extraordinary' provisions of the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SCST Act]. The critics of the judgement have taken 'extraordinary' stand and rushed to declare that the law laid down is “neither rational nor principled” and that the judgement defeats the purpose for which the enactment has been passed. It seems most of the criticism of the judgement is either political in nature or made in hurry because the Supreme Court has successfully addressed all the objections in a lengthy judgement.

A brief sketch of facts necessities the mentioning of caste of the parties for which the commentator begs pardon. Bhaskar Karbhari Gaidwad (BKG-the complainant) belongs to scheduled caste who is a government servant. He registered three FIRs alleging caste discrimination. (i) He alleged that his seniors (belonging to non-scheduled caste category) have deliberately given him an adverse entry in his annual confidential report (ACR) because of caste bias. He filed an FIR against seniors in 2010. The police collected prosecutable evidence against them. As they were public servant, the prosecution was obliged to get sanction of government under section 197 of Cr.PC 1973. A superior officer, Dr. Subhash Kashinath Mahajan (SKM) refused to grant sanction in 2011. (ii) BKG again alleged that the denial of sanction order was due to caste bias. He filed a case against Santosh Kashinath Mahajan on 2016 for the misuse of his authority. (iii) BKG also lodged an FIR in 2017 against a female professor alleging that she, in collusion with the appellant (Santosh Kashinath Mahajan) pressurised him (BKG) to withdraw the

FIR of 2016 registered against SKM and also that she falsely implicated BKG in a sexual harassment case. The three accused under SC/ST Act finally approached the Supreme Court. The issue before the Supreme Court was whether the provision of SC/ST Act was misused in this case. If so, can it be quashed? Is the SC/ST Act in general being misused? Is the misuse only on the margin and therefore, it can be avoided, as some misuse is a part of necessary evil attached to any law? Or, has the misuse of the SC/ST Act crossed the bounds and violating fundamental rights of the citizen seriously. If so, is the Supreme Court obliged to issue appropriate binding directions in the nature of judicial legislation? There were competing arguments as to desirability and legality of dilution of the provisions of SC/ST Act as well as 'competency' of the Court to dilute the rigor of law through judicial legislation. It was argued that such dilution would go against the objective of the enactment and that it would make the enactment practically less effective.

The Supreme Court held that the “proceedings in the present case are clear abuse of process of court and are quashed.” The Court issued directions which can be conveniently summarized as (i) Section 18 of SC/ST Act bars the application of anticipatory bail (under section 438 of CrPC 1973) but it does not (and cannot) bar anticipatory bail on absolute terms. Anticipatory bail cannot be excluded if there is no *prima facie* case against the accused or the complaint is made with *mala fide*. (ii) The SC/ST Act is being abused to the extent that fundamental rights are violated (iii) No arrest of a public servant under SC/ST Act *can* be made without prior approval of the appointing authority. (iv) No arrest of a non-public servant *can* be made without prior approval of the Senior Superintendent of Police. (v) Grant of prior approval of arrest has to be speaking *i.e* with reasons (vi) Magistrate *must* scrutinise the reasons for further detention. (vi) A preliminary enquiry *may* be conducted by the Deputy Superintendent of Police under SC/ST Act to ensure genuine complaint is registered. (vii) Non observance of directions would lead to departmental proceedings and contempt of court. The words of the judgement indicate that directions (iii) to (v) are binding directions. Direction (vi) is non-binding and Direction (vii) is on the consequence proceedings which are binding in nature.

The Supreme Court at first elaborately dealt with the 'competency' issue *i.e* whether the Supreme Court can indirectly legislate the law besides declaration of the law. For this purpose, the Court theorized “basic structure jurisdiction” *i.e* “jurisdiction of this Court to issue appropriate orders or directions for enforcement of fundamental rights is a basic feature of the Constitution.” This principle is supported by the precedent of *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, that the Court cannot 'remain bystander.' The Court recalled the decision of *Bandhua Mukti Morcha v. Union of India*, 1984 AIR 802 that new tools and strategies have to be fashioned, so as to check injustice and violation of fundamental rights. In order to enforce fundamental rights the Supreme Court has to issue certain directions which may be legislative in nature. There are only two limitations on this legislative power of the judiciary. (i) if there is a void in an area due to which fundamental rights are violated and (ii) the judicial directions are “not directly in conflict with a valid statute.” The authority offered by the Supreme Court was *SCORA v. UOI* [(1998) 4 SCC 409, para 48] which is a nine judge bench observation besides other Constitution Bench, full bench decisions. The Court also compared India with the British Courts which does “not believe in fairly tales anymore” that judges only declare law and not make law. The theorizing process continued by rightly admitting that India (*vis a vis* Britain) is on a different footing where Parliament is not sovereign and an enactment of the Parliament as well as a constitutional amendment can be declared unconstitutional. After reiterating its 'competency' to pass judicial legislation, the Court reiterated the arrest jurisprudence beginning from *Joginder Kumar*, 1994 SCC (4) 260, reaching its culmination in *D.K.Basu v. State of West Bengal*, AIR 1997 SC 610 and further developing it to *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

The Court rightly concluded that it is “too late in the day to accept an objection that this Court may not issue any direction which may be perceived to be of legislative nature even if it is necessary to enforce fundamental rights under Articles 14 and 21 of the Constitution.” The Court in this case has developed the law of arrest from “no automatic arrest” to “prior approval before arrest” (not in all criminal cases but under SC/ST Act only. The same may be extended in other criminal cases of similar nature in future

judgments). Bail jurisprudence has also been developed because the provision of absolute exclusion of the application of section 438 of CrPC 1973 has been diluted. This will have impact on recent Rape law ordinance 2018 which has also excluded the application of anticipatory bail provision. It is difficult to understand why the Supreme Court has chosen to raise doubts and clarify precedent of *Ram Krishna Balothia* [1995 SCC (3) 221] which upheld absolute exclusion of anticipatory bail under section 18 instead of developing the jurisprudence of “arrest stay.” The same purpose of securing the victims of mischievous complaints under SC/ST Act could have been served by the judge made law of “arrest stay” as established in Uttar Pradesh where the provision of section 438 of CrPC 1973 is absent since 1976. This could have avoided unnecessary criticism of the approach of judiciary, review petition *etc.* Another lesson is that the Supreme Court is compelled to exercise exceptional power under article 142 because the legislature and executive do not listen the voice of victims of frivolous or revenge complaints under SC/ST Act. In 1990s and in the decade of 2000 itself the high court clearly indicated that the misuse of SCST Act is going beyond proportion. Some preventive measures were required to be taken by the legislature or the executive which they did not take. Compelled by the conscious disregard of the indication of abuse of law of SC/ST Act the Supreme Court has to pass directions in the nature of judicial legislation.

Anurag Deep

Common Cause v. Union of India

2018 (4) SCALE 1

Decided on March 9, 2018

The Hon'ble Supreme Court in the present case ruled that 'right to die with dignity is a Fundamental Right'. The five bench constitutional court comprising of Hon'ble Chief Justice of India, Dipak Misra, A.K. Sikri, A.M. Khanwilkar, D.Y. Chandrachud and Ashok Bhushan, JJ ruled that passive euthanasia and a living will also legally valid. The court also observed that the right to live with dignity also includes the smoothening of the process of dying in case of a terminally ill patient or a person in persistent vegetative state with no hope of recovery.

In this case, petitioners a registered society filed a writ petition under article 32 of the Constitution seeks to declare 'right to die with dignity as a fundamental right within the fold of 'right to live with dignity ' under article 21 of the Constitution of India. By emphasizing on the 'right to self determination of the patient in the vegetative stage, His Lordship Justice Misra observed that 'all adults with the capacity to consent have the common law right to refuse medical treatment and the right of self-determination and cautioned that doctors would be bound by the patient's choice of self-determination, subject to being satisfied that the illness of the patient is incurable and there is no hope of his being cured'. Commenting that the court erred in the judgment of *Aruna Shanbag v. Union of India*, (2011) 4 SCC 454, the court issued guidelines regarding euthanasia and living will. The issue whether right to life under article 21 also includes right to die? was first addressed by the court in *Gian Kaur v. State of Punjab*, AIR 1996 SC 1257 in which the court held that 'Right to life does not include a right to die'.

This landmark decision contributes the development of the concept of right to life under Article 21 of the Constitution in a more expansive manner. Hopefully, this significant ruling of the apex court will bring an end to the never ending debate on whether 'right to life under article 21 of the Constitution includes right to die'. The judgment is quite appreciable since it addressed a number of constitutional issues like scope and ambit of article 21 of the Constitution and Right to self determination of a person who is terminally ill.

Arya A.Kumar

Sundaram Finance Ltd v. Abdul Samad

(2018) 3 SCC 622

Decided on February 15, 2018

The issue before consideration of the apex court in the present appeal was whether an award under the Arbitration & Conciliation Act, 1996 is required to be first filed in the court having jurisdiction over the arbitration proceedings for execution and then to obtain transfer of the decree or whether the award

can be straightway filed and executed in the Court where the assets are located. Different high courts have expressed divergent legal opinion on the issue and a need was felt to settle the issue in this appeal.

The appellant, Sundaram Finance Ltd, granted a loan to the first respondent, Abdul Samad, in accordance with the terms and conditions provided in the loan agreement dated 18.8.2005. Respondent no.2 stood guarantee for the repayment of the loan by executing a separate guarantee letter of the same date. The loan had to be repaid in instalments commencing 3.9.2005 to 3.1.2009. However, due to a default in payment from the 20th instalment onwards, arbitration proceedings were initiated by the appellant as per the arbitration clause in the loan agreement and an ex parte arbitral award was granted on 22.10.2011 since no one appeared for the respondents in the proceedings.

The appellant initiated execution proceedings under s 47 read with s 151 and Order XXI Rule 21 of the Code of Civil Procedure before the courts at Morena, Madhya Pradesh (where assets of the respondent were located) as the ex parte award was enforceable as a decree under Section 36 of the said Act. The District Courts at Morena refused to entertain the application due to lack of jurisdiction. Following the approach adopted by Madhya Pradesh and Karnataka High Courts the district court directed the claimant to file an execution application before the court of a competent jurisdiction (having jurisdiction over the arbitral proceedings) and then seek a transfer of the decree. Being aggrieved by the district court order and the conflicting position of laws as well as the position taken by the Madhya Pradesh High Court on this issue, the appellant directly approached the apex court through a Special Leave Petition.

Two judges bench of the Supreme Court analysed the different judicial opinions adopted by different high courts on the process followed for execution of arbitral awards. Taking into consideration the process of execution laid down in s 36 of the said Act read with section 37, 38 & 39 of CPC (regarding the 'court' which passes a decree and executes a decree and the procedure for transfer of decree), the court concluded that the provisions of

the said Act traverse a different path from Arbitration Act of 1940 wherein the award was required to be filed in court and a decree to be passed thereon to be executable. An award now is to be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of the Court in accordance with s.36 of the said Act. The court created a legal fiction here to arrive at this conclusion as no court passes a decree in case of an award and the tribunal does not have the power of execution of a decree.

An award under Section 36 of the said Act is equated to a decree of the Court for the purposes of execution and only for that purpose. There was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. Therefore, the court concluded that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings. Thus, ss. 38 and 39 of the CPC have no applicability to the execution of awards and execution can be initiated before any court where the judgment debtor resides or carries on business or has properties within the jurisdiction of the said court and there is no requirement to obtain a transfer from court having jurisdiction over arbitral proceedings.

The present judgment has not only clarified the anomaly prevailing with regard to the appropriate jurisdiction for enforcement of an arbitral award because of different judicial decisions of different high court, it has also removed the hurdle generally faced while adopting arbitration mode of dispute resolution. The post arbitration court procedure has been simplified by the judgment making enforcement and execution easier for the award holder. In that respect this judgment is a very progressive step in the direction of promoting arbitration as a means of settling the dispute and avoiding multiplicity of litigation.

Deepa Kharb

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10	Maharashtra State Unit of the Indian Law Institute, High Court of Bombay, Mumbai, Maharashtra - 400 032	Hon'ble Smt. Justice V.K. Tahilramani, Acting Chief Justice, High Court of Bombay.

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17.	West Bengal Unit of the Indian Law Institute, Calcutta High Court, Kolkata, West Bengal - 700 001	Hon'ble Mr. Justice Jyotirmay Bhattacharya, Acting Chief Justice, Calcutta High Court.

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