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ILI Newsletter

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Editorial

The development of a coherent legal system in a country depends upon a qualitative legal education imparted through the various legal institutions. Legal education in India in the initial stage was strictly meant for catering to the legal profession and that too in a technical manner. The establishment of traditional Universities in different parts of the Country marked as the beginning for formal legal education in India. The legal education has changed tremendously when the Universities entered into the scene which is marked as the beginning of formal legal education. Still a lot of improvements and reformations over its traditional methods were required to meet the challenges of Globalisation. With the establishment of National Law Universities all over the country, the institutionalized form of skill oriented legal education came into being since the National law Schools through their rigorous academic curriculum gives emphasis to legal education supplemented with practical and clinical courses.

The establishment of National Law Universities received much accolades as the legal education system was revamped with the introduction of new teaching pedagogies and clinical legal education methods. Unfortunately the need for a research-oriented legal education remains unfulfilled which was essential for the realization of a value based legal education. The Indian Law Institute (ILI) was founded with the primary objective of promoting and conducting legal research. Since its inception, the ILI being the premier legal research Institute in the Country, has always been making series of efforts to promote legal research and education through multi-dimensional research oriented activities. True to its credentials, recently the Hon'ble Supreme Court in collaboration with the ILI organised two significant conferences on 'National Initiative to Reduce Pendency and Delay in Judicial System' and 'Conference of Vice-Chancellors of National Law Universities on Legal Education Reforms'. Envisaged and conceptualised by the Chief Justice of India/President, ILI, the Conferences provided platform for the judges and legal academicians to deliberate on the issues and challenges plaguing legal education in India. The Conferences brought together judges, lawyers and academicians to deliberate the issues on pendency and delay in the judicial system, to explore research domains opened up by the constitutional changes and to chalk out strategies for reforms in legal education.

Manoj Kumar Sinha

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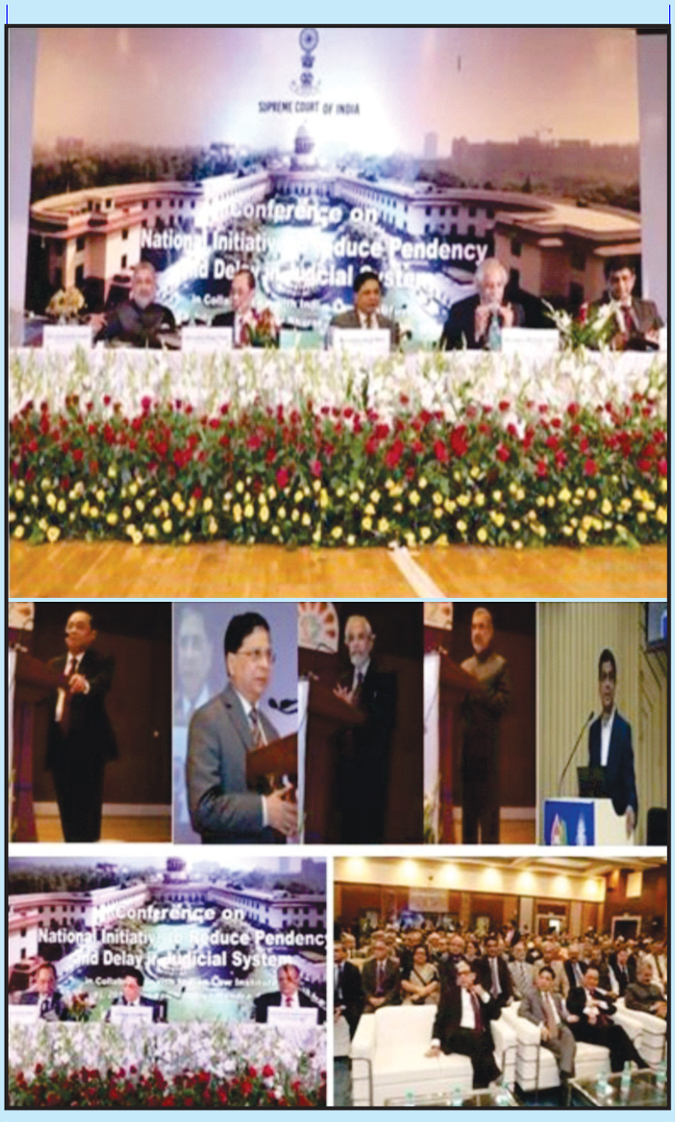
ACTIVITIES AT THE INSTITUTE

Conference on 'National Initiative to Reduce Pendency and Delay in Judicial System' (July 27 - 28, 2018)



Conference at a glance

The Supreme Court of India in collaboration with the Indian Law Institute organised a Conference on 'National Initiative to Reduce Pendency and Delay in Judicial System' on July 27-28, 2018 at Pravasi Bharatiya Kendra, New Delhi.

The conference was an attempt to bring together judges, lawyers and academicians to deliberate the issues of pendency and delay in the judicial system. Another objective was to take stock of technological advancements which may be useful and may be effectively used in the justice administration. The objectives of the conference were:

- To have in place an effective case and court management system to strengthen the Judiciary.
- To identify immediate possible solutions for reducing pendency and delay in the judicial system.
- To review the functioning of alternative dispute mechanism as an effective mode to address the challenges of pendency and delay in the judicial system.
- To analyse the role of technology in addressing the challenges of pendency and delay in the judicial system.
- To identify the role of Bar Council and Lawyers.
- To seek suggestions and recommendations.

The two-day conference consisted of four working sessions on different topics on the main theme 'National Initiative to Reduce Pendency and Delay in Judicial System'. The Conference was inaugurated by Hon'ble Shri Justice Dipak Misra, Chief Justice of India/President, ILI in the presence of Hon'ble Supreme Court Judges, Chief Justices and Judges of various High Courts, Senior members of District courts and Senior Judges of the Supreme Court.

Delivering the inaugural address, Hon'ble Chief Justice of India emphasised on the problem of pendency and delays in the judicial system. His Lordship stressed that the 'effective case management reforms' depend upon establishment of an adequate infrastructure to manage judicial data and records in a reliable and objective manner and concluded with certain suggestions to ensure timely and effective justice for the citizens.

Hon'ble Shri Justice Ranjan Gogoi, Judge Supreme Court of India began his special address by thanking

the dignitaries. On a very encouraging note His Lordship stated that justice cannot be mechanical, it has to be dynamic and everything pragmatic should be done to achieve it. His Lordship further stated that there could exist a more precise and constructive way to deal with backlog of cases and for doing so he recommended that the constructive suggestions of National Court Management System to bifurcate the cases on the basis of number of years of trial be implemented. While concluding he urged the best judicial minds present to brainstorm and come up with innovative and pragmatic solutions for reducing the pendency.

Hon'ble Shri Justice Madan B.Lokur, Judge, Supreme Court of India greeted the august gathering and congratulated the Chief Justice of India for taking an initiative for addressing the issue of pendency affecting the Indian Judiciary. Speaking on the occasion, His Lordship focussed on certain key areas like 'subordinate Judiciary, Setting up of Secretariat for appointment of Judges, Technology and Managerial Cadre, etc. He concluded by urging the judicial officers to introspect as to the path where Judiciary as an institution is heading and how can they by their individual and collective efforts contribute in making this institution great.

Hon'ble Shri Kurian Joseph, Judge Supreme Court of India began his address by extending a hearty welcome to the dignitaries and the august gathering and took the opportunity to congratulate the Chief Justice of India for initiating a dialogue to reduce pendency and delay in Judicial system. His Lordship congratulated the Chief Justices of Guwahati and Orissa High Court for more disposal than institutions of the cases, despite not having full strength of judges. He concluded his address with a vision that in 2019-20, India would be a litigation friendly Country because of independent initiatives of the Judiciary and invited all the participants to share best practices to ensure that the disposal of cases is greater than the institution of cases.

Professor (Dr.) Manoj Kumar Sinha, Director, the Indian Law Institute expressed his gratitude towards all the participants of the Conference. He profusely thanked Hon'ble Chief Justice of India and the other Hon'ble judges for initiating the dialogue on pendency and delay in the judicial system and sharing their valuable experience regarding the same. Professor Sinha spoke that it is a privilege for the Indian Law Institute to be a part of this path-breaking Conference and acknowledged the support extended by the employees of ILI and the staff of Supreme Court.

The first session on the theme 'Case and Court Management to Strengthen Judiciary-the Way Ahead' was chaired by Hon'ble Shri Justice A.K.Sikri, Judge, Supreme Court of India and co-chaired by Hon'ble Shri Justice D.B. Bhosale, Chief Justice High Court of Judicature at Allahabad and Professor (Dr.) M.P.Singh, Chancellor, Central University of Haryana & Chairperson, Centre for Comparative Law, National Law University, Delhi. After the deliberations the session was concluded with certain suggestions for court management to strengthen Judiciary. Session II on the topic 'Alternative Dispute Mechanism- an Effective Solution towards Reducing Pendency' was chaired by Hon'ble Shri Justice Kurian Joseph, Judge, Supreme Court of India and co-chaired by Hon'ble Shri Justice A.M. Khanwilkar, Judge, Supreme Court of India and Professor (Dr.) Ranbir Singh, Vice Chancellor, National Law University, Delhi. Hon'ble Shri Justice Kurian Joseph stressed on the requirement to devise a mechanism to weed out pending cases in order to effectively resolve the cases.

Use of Technology-A Possible Solution to Judicial Delay and to deliver Speedy Justice was the theme for the IIIrd session which was chaired by Hon'ble Shri Justice Madan B. Lokur, Judge, Supreme Court of India and co-chaired by Hon'ble Shri Justice Sanjay Karol, Acting Chief Justice, High Court of Himachal Pradesh. Professor (Dr.) R. Venkata Rao, Vice Chancellor, National Law School of India University, Bangalore was the speaker of the session. The session concluded with recommending greater reliance and use of National Judicial Data Grid and also urging the corporate sector for commercially utilising the data of

NJDG. The valedictory session on the theme 'Immediate Possible Solutions for Reducing Pendency and Delay in Judicial System and Valediction' was graced with the presence of Hon'ble Chief Justice of India, Shri Justice Dipak Misra along with Hon'ble Shri Justice Ranjan Gogoi, Judge, Supreme Court of India and Professor N.R.Madhava Menon, Former Vice Chancellor, NLSIU Bangalore and NUJS, Kolkata.

There was a participation of over 350 dignitaries from various benches of Judiciary all over the country. The members of the bench explored and deliberated on the loopholes in the system, shared best practices, and tried to evolve workable solutions to tackle the issue of pendency and delay in judicial system.

Conference of Vice - Chancellors of National Law Universities on Legal Education Reforms (September 1 - 2, 2018)

Different views from the Two-day Conference

The Supreme Court of India in collaboration with the Indian Law Institute organised a two day Conference of Vice-Chancellors of National Law Universities on Legal Education Reforms on September 1-2, 2018 at the Plenary Hall of the Indian Law Institute, New Delhi. Envisaged and conceptualized by the Hon'ble Chief Justice of India the conference was held to moot over the issues on 'Legal Education Reforms' and to brainstorm the solutions to these seemingly intractable issues. The two day conference consisted of four sessions addressing the issues and challenges of legal education in India, exploring research domains, innovative methods of teaching and necessary reformative steps for improvement of the legal education.

The Conference commenced with the inaugural address by the Hon'ble Shri Justice Dipak Misra, Chief Justice of India/President, ILI along with the Senior Judges of the Supreme Court. Delivering the inaugural address, His Lordship opined that 'law schools must make extra efforts of training their teachers in legal research and methodology, then only the quality of overall legal research and scholarship will improve'. While delivering the special address, Hon'ble Shri Justice Ranjan Gogoi, Judge Supreme Court opined that 'the most challenging reality is the staggering volume of cases in courts and recommended that the fourth phase of legal education reforms should focus on the interlinkages between the judicial system and legal education and admitted that this phase is to be ushered immediately.

Hon'ble Shri Justice Madan B. Lokur, Judge, Supreme Court of India elucidated the importance of technology and advocated that extensive use of technology should be given its due importance in the legal fraternity. Hon'ble Justice Kurian Joseph, Judge Supreme Court of India in his address underscored the need to distinguish the gap between legal principles and advocacy training. Shri K. K. Venugopal, Attorney General for India in his address acknowledged the role of Professor (Dr.) N.R Madhava Menon for the establishment of National Universities in the Country. Professor (Dr.) N.R

Madhava Menon Hony Director, Bar Council of Kerala, MKN Academy for Continuing Legal Education, Kochi in his speech acknowledged the urgent requirement to critically analyse the existing legal education system. Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute proposed vote of thanks by welcoming all the dignitaries and delegates. He thanked them for their participation in the seminar. Dr. Sinha provided a short introduction to the initiatives undertaken by the Institute towards improving the quality of legal education. Dr. Sinha concluded his address with gratitude to the Hon'ble Chief Justice of India for having conceptualised the seminar and with expectation that it would prove to be a milestone in achieving the desired results in legal education.

The first session on the theme 'Legal Education in India: Issues and Challenges' was chaired by Hon'ble Shri Justice Madan B. Lokur, Judge Supreme Court of India and co-chaired by Hon'ble Shri Justice A.M Khanwilkar, Judge Supreme Court of India. The speakers were Professor (Dr.) Ranbir Singh, Vice-Chancellor, National Law University, Delhi, Professor (Dr.) R. Venkata Rao, Vice-Chancellor, National Law School of India University, Bangalore, Professor (Dr.) Poonam Saxena, Vice-Chancellor, National Law University, Jodhpur and Shri Sidharth Luthra, Senior Advocate, Supreme Court of India.

Speaking about the issues of legal education in India, His Lordship Justice Madan B. Lokur pointed out that special attention needs to be given for producing quality research since it is more important than quantity of research. Hon'ble Shri Justice A.M Khanwilkar stressed that such conferences was held on a regular basis, there would have been a lot of progress on account of interaction, exchange of ideas and cross fertilization of thoughts and experiences. Professor (Dr.) Ranbir Singh, emphasised that there is a dire need that the legal educators should focus on the rapid changes occurring in all the aspects of human-societal relations and respond to them judicially: for this new set of skills are needed.

Professor (Dr.) R. Venkata Rao pointed out the crisis recently faced by American law schools, wherein the passed out students agitated various courts against their alma-mater. Referring to these developments as an ominous situation he warned Indian law schools to learn from this purportedly legal education deficits and failures faced by the American Universities. Professor Poonam Saxena reminded 'everyone present that while institutes need good faculty, a good teacher cannot be defined by their higher degrees. The essential qualities of a good teacher is that they must be a very effective communicator, have substantive knowledge content, must be a keen researcher, and most importantly, he must be updated and aware of the recent changes'. Shri Siddharth Luthra, Senior Advocate, emphasized the need of training students in skill building and advocated in adopting inter disciplinary method of teaching. He believed that the adoption of these methods will in turn help in the materialization of quality research and will nurture generation of lawyers who will be equipped with deep understanding of law.

The second session on 'Exploring Research Domains Opened up by Constitutional Change and its Impact on Legal Education.' was chaired by Hon'ble Shri Justice Kurian Joseph, Judge, Supreme Court of India and co-chaired by Dr. Justice D.Y. Chandrachud, Judge, Supreme Court of India. The speakers were Professor Balraj Chauhan, Vice-Chancellor, Dharmashastra National Law University, Jabalpur, Madhya Pradesh, Professor (Dr.) Faizan Mustafa, Vice-Chancellor, NALSAR University of Law, Hyderabad and Shri Shyam Divan, Senior Advocate, Supreme Court of India.

Speaking poignantly over the issue of steady decline in the standards of legal education, Hon'ble Shri Justice Kurian Joseph pointed out many deficits such as lack of quality faculty, funding issues and infrastructural deficiencies which he believed quite ominously and adversely affected the legal education in India. Speaking on the new dimensions emerging in the realm of law and public policy, Hon'ble Justice (Dr.) D. Y. Chandrachud mentioned that in the

emerging scenario each organ of the state are not merely working separately in their respective domain but rather complementary to each other. He quoted, that the function of the legislature and judiciary is not always adversarial in nature particularly in the context of the social welfare legislations.

Professor (Dr.) Faizan Mustafa pointed that law schools are very poor in quantitative methods of research and said remorsefully that not enough research is being done on judicial behaviour, concurring opinions, opinions of two judges bench, privatization of Indian state and etc. Therefore, he proposed that law schools should sit together and set the research agenda and should decide as to what researches are to be undertaken.

Professor Balraj Chauhan pointed out that for a university research is directly connected with knowledge and therefore research is the pivotal aspect of any university and it should be earnestly nurtured as an inseparable aspect of education. Shri Shyam Divan firmly advocated that there is a need for the law students to be technologically sound so that in future when they join the bar it will result in serious reduction of time and arrears.

Session III on the topic 'Innovative Methods of Teaching and Sharing of Best Practices' was chaired by Hon'ble Shri Justice A.K. Sikri, Judge, Supreme Court of India and the speakers were Professor (Dr) Yogesh Kumar Tyagi, Vice-Chancellor, University of Delhi, Delhi, Professor (Dr) Paramjit S. Jaswal, Vice-Chancellor, RGNUL, Punjab, Professor (Dr.) Srikrishna Deva Rao, Vice-Chancellor, NLU, Odisha, Cuttack and Shri Lalit Bhasin, Advocate, Supreme Court of India. Hon'ble Shri Justice A.K. Sikri urged the Vice Chancellors to ponder upon the relevance of legal education and the role of National Law Universities. Professor (Dr.) Yogesh Tyagi, Vice-Chancellor, University of Delhi addressed the august gathering by thanking Chief Justice of India for the conceptualization and organization of the conference. Speaking on the theme Professor (Dr.) Paramjit S Jaswal informed the audience that the ninety-five percent faculty at RGNUL is working as a regular faculty and are paid as per the UGC scale. Professor (Dr.) Krishna Deva Rao referring to the efforts of Professor N. R. Madhava Menon, who initially started with the Pre-Law Book Series, stressed that these series needs to be comprehensively revised with the sense of collective responsibilities. Shri Lalit Bhasin exhorted the audience to bear in mind the inexorable pace of technology and its impact on the legal education.

The valedictory session on the theme 'Necessary Reformative Steps for Improvement of the Legal Education and Valediction' was graced by the addresses from Hon'ble Shri Justice Dipak Misra, Chief Justice of India/President, ILI, Hon'ble Shri Justice Ranjan Gogoi, Judge, Supreme Court of India and Professor (Dr.) N. R. Madhava Menon, Hony. Director, Bar Council of Kerala, MKN Academy for Continuing Legal Education, Kochi, Kerala.

The Hon'ble Chief Justice of India in his valedictory speech acknowledged that the modern legal education is no longer similar to the legal education of the yester-years. The challenges which confront the legal education today bear little resemblance to the obstacles which confronted legal education in the past. It was, perhaps, the most opportune time to hold this conference of the Vice Chancellors of the National Law Schools. His Lordship, Hon'ble Shri Justice Ranjan Gogoi, Judge, Supreme Court of India in the final session discussed the issues and suggestions put forth during the conference. Professor (Dr.) N.R. Madhava Menon summarily mentioned the issues discussed throughout the two day seminar and conveyed the appreciation exhibited by all the participants for the initiative taken by the Supreme Court in organising this unique gathering. He said that this first ever conference provided a robust platform for the leaders of legal academia to address the challenges faced by the existing legal education system and to identify the issues which requires urgent addressal in order to reform the Indian legal education system.

Swachhta Campus Ranking- 2018

As part of the Swachhata drive of the Government, the Swachhata Rankings of Higher Educational Institutions was conducted by the Ministry of Human Resource Development. The University Grants Commission was entrusted with the responsibility of physical verification of Higher Educational Institutions and as part of this programme, the UGC Inspection team visited the Institute on September 17, 2018 examined and verified the infrastructural facilities and the hygiene parameters of the Institute.

The UGC Inspection team consists of Professor S.P. Vats, Department of Defence & Strategic Studies, MDU, Rohtak, Haryana, Professor Roop Kishore Shastri, Department of Vedic Studies, Gurukula Kangri Vishwavidyala, Haridwar, Uttarakhand and Mr. Satish Kumar, Deputy Secretary, University Grants Commission, New Delhi. The team inspected the overall cleanliness and the general upkeep of the ILI campus.

Director, Registrar, ILI along with the UGC Inspection team

As part of the Swachhata Ranking programme, a committee consisting Dr. Ajay Kumar Verma, Deputy Registrar, Mr. Ashish Bawa, Chief Accountant, Mr Rajesh Sharma, Technical Assistant and Mr. Mani Gobind Singh, Research Scholar, ILI went to Dujana, Bishnoli, Badalpur in Gautam Budh Nagar District, Uttar Pradesh on September 14, 2018 in connection with adoption of villages. The Committee met the local members of the village *i.e* Mr. M.S. Bhati, Mr Bijender Singh, Mr. Shyam Singh, Mr. Kalyan Singh, Mr. Sonu Singh and also visited other surrounding villages. They apprised the committee about the cleanliness, education and infrastructural facilities of the villages in order to develop the same. The committee will explore the possibility of adopting the villages for their overall developments.

The Committee interacting with the villagers

STATE UNITS ACTIVITIES

3rd Two Day's State Level Workshop (April 28-29, 2018)

The Indian Law Institute-Rajasthan chapter organised the 3rd two day State Level Workshop on April 28-29, 2018 at Hotel Taj Gateway, Pushkar, Ajmer, Rajasthan. The broad outline of the subjects on which intense deliberations were given hereunder:

- Testimonial Compulsion-A Constitutional Perspective
- Appreciation of Evidence-Its contours and frontiers.
- Overview of Prevention of Money Laundering Act, 2002 with special reference to Criminal Law
- Developments in Information Technology and its use in the field of law

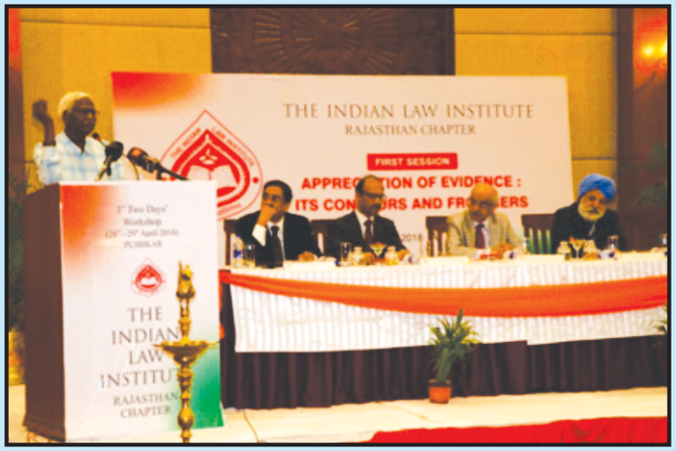
In the inaugural session, the welcome address was given by Hon'ble Shri Justice Sangeet Raj Lodha, Judge, Rajasthan High Court/Executive Chairman, Indian Law Institute, Rajasthan Chapter. His Lordship briefed about the two-day programme, which was followed by the address of advocate general of State Shri N.M. Lodha. The gathering was also addressed by the Hon'ble Chief Justice Shri Pradeep Nandrajog, Rajasthan High Court/ President, Indian Law Institute, Rajasthan Chapter. This session was addressed by Hon'ble Shri Justice U.U. Lalit, Judge, Supreme Court of India. Hon'ble Shri Justice Sandeep Mehta, Judge, Rajasthan High Court/Secretary, Indian Law Institute, Rajasthan Chapter proposed the vote of thanks.

Inaugural session of the Conference

The first session was conducted on the topic "Appreciation of Evidence-its contours and frontiers" which was chaired by Hon'ble Shri Justice Pradeep Nandrajog, Chief Justice, Rajasthan High Court and was also co-chaired by Hon'ble Shri Justice K.S. Ahluwalia, Judge, Rajasthan High Court and Hon'ble Shri Justice Sandeep Mehta, Judge Rajasthan High Court, Mr. Mahesh Bora, Senior Advocate and Mr. Shivkant Shivde, Advocate. The deliberations have thrown light on the subject in relation to today's practical difficulties as well as challenges towards appreciation of evidence in the trial of cases.

The subject of the second session was 'Overview of prevention of money laundering Act, 2002 with special reference to criminal law.' This session was chaired by Hon'ble Dr. Justice Vineet Kothari, Judge Karnataka High Court and was also co-chaired by Hon'ble Shri Justice Vijay Vishnoi, Judge Rajasthan High Court, Mr. Vikas Balia, Ms. Aishwarya Bhati, Mr. Amar Gehlot, advocates, Rajasthan High Court. Dr. Justice Kothari and Justice Vishnoi has given their valuable comments on the money laundering Act, 2002. Mr. Balia, Ms. Bhati and Mr. Gehlot have

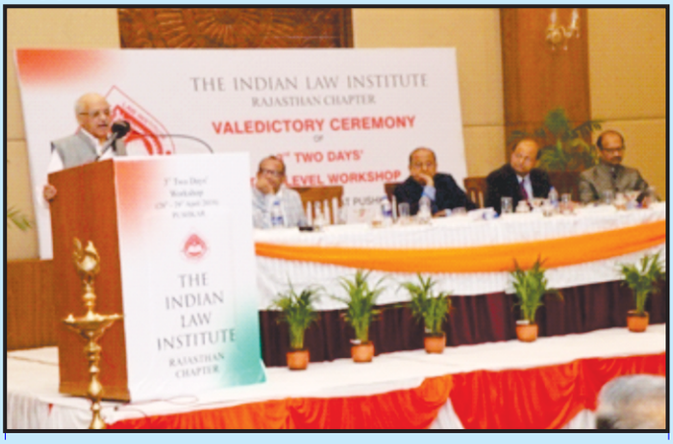
expressed their valuable comments on the money laundering Act, 2002 *vis-a-vis* Income Tax Act. This session has gone quite interesting as the discussions were related to the Act of 2002 with special reference to criminal law.



Technical sessions of the conference

As part of the programme, a cultural event was organized at Hotel Taj Gateway, Ajmer, Rajasthan. All the dignitaries and members visited the world famous temple of Lord Brahma as well as Pushkar Sarovar in the evening. The dignitaries and the other guests enjoyed the musical night and dinner on the pool side.

The third session was organized on "Development in Information Technology and its use in the field of Law". The session was chaired by Hon'ble Mr. Justice Munishwar Nath Bhandari, Judge, Rajasthan High Court and co-chaired by Mr. Rodney D. Rider, Intellectual Property Technology and Media Specialist, Professor Dr. M.K. Bhandari, J.N.V. University, Jodhpur, Dr. Sachin Acharya, Advocate, Rajasthan High Court and Mr. Mukesh Choudhary, Cyber Crime Expert. Justice Bhandari has given an overall view on the Information Technology Act. Mr. Rodney D. Rider given his expert comments and shared his experience with the development in Information and Technology *vis-a-vis* laws relating to Intellectual Properties. Dr. Acharya has shown how better the Information and Technology can be used in the field of law and gave some valuable suggestions.



Valedictory session of the conference

The Valedictory function was addressed by Hon'ble Justice Sangeet Lodha, Executive Chairman, ILI Rajasthan Chapter. This session was also addressed by Hon'ble Justice Mohd. Raffique, Judge Rajasthan High Court. Hon'ble Chief Justice Mr. Pradeep Nandradog and Hon'ble Mr. Justice Amitava Roy, Former Judge, Supreme Court of India. A special vote of thanks was given by Dr. A.A. Bhansali, Joint Secretary, Indian Law Institute, Rajasthan Chapter followed by National Anthem and lunch. From these two days State level workshop, the Rajasthan chapter of the Indian Law institute has come out with the bucketful of legal knowledge on vibrant legal issues.

SPECIAL LECTURES

Niti Manthan Lecture Series

The Indian Law Institute in collaboration with NLU, Delhi with the support of YUVA and PRAGYA Pravah organized the first lecture on "Dynamics of Governance and the Role of Youth in Good Governance" as part of the Niti Manthan Lecture Series on September 7, 2018 at the Indian Law Institute. The chief guest was Hon'ble Shri Justice Banwar Singh, Retired Judge, Allahabad High Court and the keynote Speaker was Professor (Dr.) Amita Singh, Professor, Centre for the Study of Law and Governance, JNU, Delhi and chaired by Professor (Dr.) Amar Pal Singh, Professor of Law, GGSIP University, Delhi.

Special Lecture

The Indian Law Institute in collaboration with the Faculty of Law, SGT University, Gurugram, Haryana organized a lecture on "Fundamental Duties of Citizens and Indian Constitutionalism" on September 10, 2018 at the Indian Law Institute. The panelists were Ms. Pinky Anand, Additional Solicitor General of India, Mr.Parag Tripathi, Senior Advocate, Shri P.K.Malhotra, Former Law Secretary.

Panel Discussion

The Indian Law Institute organized a panel discussion on Professor Ratna Kapur's recent book titled 'Gender, Alterity and Human Rights: Freedom in a Fishbowl' on September 15, 2018 at the ILI. The Panel comprised of Professor Ratna Kapur, Professor, Queen Mary University of London and four commentators on the books: Professor Upendra Baxi, Professor of Law in Development, University of Warwick; Professor Shohini Ghosh, Professor Jamia Millia Islamia; Professor Rajshree Chandra, Associate Professor, Janki Devi Memorial College and Professor Lakshmi Arya, Associate Professor, Auro University, Gujarat. Professor Kapur first gave an overview of the book which was followed by critical remarks of the commentators who engaged with different chapters of the book. Professor Baxi could not participate in person but shared the transcript of his comments which were read out by Ms.Latika Vashist, Assistant Professor, ILI. What followed was a delightful and engaging conversation with the audience on limits and potential of the liberal discourse of rights, the nature of contemporary feminist politics and a critical engagement with non-liberal, alternate philosophical traditions to escape the confines of liberal fishbowl.

EXAMINATIONS

Admission for LL.M., P.G. Diploma and Ph.D Programme for the Academic Session 2018-19

LL.M (I Year)

The interview/viva-voce for the shortlisted candidates for admission to LL.M. (1 year) programme were held on July 3, 4 & 6, 2018. 143 candidates were qualified based on the marks in the written test and the merit list prepared accordingly. 110 candidates appeared before the Screening Committee for the viva-voce. 38 candidates were selected for admission and the final merit list was displayed on July 11, 2018.

Ph.D programme

The Viva-Voce/Interview for Exempted/Non-Exempted Category candidates was held on July 23, 2018. Total 33 candidates of Exempted Category and 12 candidates (as per merit) of Non-Exempted Category were called for the interview. Total 8 candidates were selected and the final merit list was displayed on August 16, 2018.

Classes commenced for LL.M. (one year) and for the Post Graduate Diploma courses from August 1, 2018. Classes for Ph.D. Course Work were commenced from September 11, 2018.

P.G. Diploma Programme

The admission process for four Post Graduate Diploma Courses of one year duration in Alternate Dispute Resolution (ADR), Corporate Laws and

Management (CLM), Cyber Law (CL), and Intellectual Property Rights Law (IPRL) started on July 3, 2018. The merit list for the admission for the P.G.Diploma programmes was displayed on July 12, 2018. Total 303 candidates were admitted for the four P.G.Diploma programmes.

Ph.D. Course work Examination

The Ph.D. Course Work Examination was held on May 25-29, July 2-5 and 18 & August 9, 2018.

Supplementary Examinations

LL.M.- 1 year (II Semester & III Trimester) & LL. M.- 2 year

The Viva-Voce/ Presentation of the dissertations of LL.M. 1 year (II Semester & III Trimester) students were held on July 23 & 25, 2018). The result was declared on August 21, 2018. The result of LL.M. 2 Year (Supplementary) Examinations was declared on August 21, 2018.

P.G Diploma Supplementary Examination-2018

The Supplementary examination for the P.G Diploma Course held from September 24, 2018 to October 4, 2018.

LIBRARY

- The Indian Law Institute has signed an agreement with INFLIBNET- Shodhganga for sharing the institute's Ph.D theses on Shodhganga as per the UGC Guidelines.
- The INFLIBNET- Shodhsindhu database *i.e.* South Asia Archives is now accessible for the users/ researchers of Indian Law Institute.
- Library Orientation was provided to the LL.M (1 Year) 2018-2019 Academic batch students. A presentation was given by the Ms. Gunjan Jain, Assistant Librarian to the students about the library, resources and services followed by the library visit. The training/interactive sessions were also organized for the students on various subscribed e-Resources such as Manupatra, EBSCO Discovery Service and SCC online in the month of September.
- Library added 36 Books on Indian penal code, Arbitration, Intellectual Property Rights, Family Law, Muslim Law, International Law, Criminal Law and Environmental Law to enrich the library collections.

STAFF MATTERS

- Ms. Sonam Singh, Library Superintendent & Mr. Sanjeev Kumar, Library Assistant participated in the 'International Seminar on Scholarly Writing and Publication' jointly organised by NLU, Delhi, NLIU, Bhopal and RGNUL, Patiala at National Law University, Delhi on August 27, 2018.
- Staff members from ILI library participated in Librarian Leadership Summit-2018 at Symbiosis Law School, Noida on September 15, 2018.

RESEARCH PUBLICATIONS

Released Publications

* *Journal of the Indian Law Institute (JILI)* Volume 60 (2) (April-June, 2018).
* *ILI Newsletter* Vol. XX, Issue (II) (April-June, 2018).

Forthcoming Publications

* *Journal of the Indian Law Institute (JILI)* Vol. 60 (3) (July-September, 2018)
* *ILI Law Review* (Summer, 2018)
* The book titled *Law of sedition in India and Freedom of Expression* authored by Professor Manoj Kumar Sinha & Dr. Anurag Deep.
* The book titled *Bail: Law and Practices in India* edited by Professor Manoj Kumar Sinha & Dr. Anurag Deep.

E-LEARING COURSES

Online Certificate Courses on 'Cyber Law & Intellectual Property Rights Law'

E-Learning Certificate Courses of three months duration on "***Cyber Law***" (31st batch) and "***Intellectual Property Rights and IT in the Internet Age***" (42nd batch) was started from September 20, 2018. 85 students were enrolled for the 31st batch of Online Certificate Course on Cyber Law and 55 students were enrolled for the 42nd batch of Online Certificate Course on IPR.

VISITS TO THE INSTITUTE

- 36 Students of George School of Law, Hooghly, Kolkata visited the Institute on July 12, 2018.
- 27 (24 Students + 3 Staff) students of Indira Priyadarsini Law College, Andhra Pradesh visited the Institute on September 7, 2018.
- 40 Students of Mody University of Science and Technology, School of Legal Studies, Rajasthan visited the Institute on September 11, 2018.
- 40 Students of Integrated School of Law, Ghaziabad visited the Institute on September 27, 2018.

FORTHCOMING EVENTS

- ILI in collaboration with NHRC will organise a One Day Training Programme for different functionaries (Juvenile Homes, Old Age Homes and Health Officials) on October 6, 2018 at the ILI.
- The Indian Law Institute in collaboration with NLU, Delhi will organize the second lecture on "Constitutional Underpinnings for Minority Rights" as part of the Niti Manthan Lecture Series on October 12, 2018 at the ILI.
- ILI in collaboration with NHRC will organise a Two Days Training Programme for First Class Judicial Magistrates on October 27-28, 2018 at the ILI.
- The National Law University, Delhi jointly with the Indian Law Institute and other organisations will organise an International Conference on "Digital Transformation : Preservation, Policy and Privacy" (ICDT-2018) on November 29-December 1, 2018 at National Law University, Delhi.
- The Increasing Diversity by Increasing Access to Legal Education (IDIA) in collaboration with the Indian Law Institute will organise a workshop on 'law and storytelling competition' on December 7 & 8, 2018 at the ILI.
- The ILI in collaboration with DCPCR will organise a One Day Consultation on "Child Welfare Committees" on December 15, 2018 at the ILI.
- ILI in collaboration with NHRC will jointly organise a One day Training Programme for Media Personnel & Government Public Relation Officers on "Media and Human Rights : Issues and Challenges" on December 22, 2018 at the ILI.

FACULTY NEWS

Manoj Kumar Sinha, Director, ILI invited as a chief guest to inaugurate the 7th Conference on 'International Humanitarian Law & Refugee Laws' organised by Nirma University, Ahmedabad, Gujarat and International Committee of the Red Cross on August 8, 2018.

Invited as Chief Guest for the inaugural ceremony of Annual Orientation Programme 2018 organised by Asian Law College, Noida, Uttar Pradesh on August 18, 2018.

Invited as the main speaker in an Induction programme organised by Institute of Management Studies, Noida Uttar Pradesh on August 25, 2018.

Invited to co-chair a session on "National Conference on Child Marriage" organised by National Human Rights Commission of India, SAIEVAC, CSO coalition, New Delhi on August 29, 2018.

Addressed the participants of NITI MANTHAN lecture series on "Dynamics of Governance and the Role of Youth in Good Governance" at ILI, New Delhi on September 7, 2018.

Anurag Deep, Associate Professor, ILI was invited to submit a capsule on "Custodial Justice" under Massive open online courses (MOOCS) at SWAYAM (indigenous platform of the MHRD, Govt of India), at National Law University, Delhi which was recorded and uploaded. On invitation, he delivered a lecture in the HRDC (Academic Staff College), JNU, New Delhi on "The Law of Sedition in India: Repeal, Retain or Reform" on August 31, 2018.

Arya. A. Kumar, Assistant Professor, ILI published a book titled "*Socio Economic Crimes in India: A Nutshell*" ISBN 978-93-88332-09-5.

Latika Vashist, Assistant Professor, ILI was the faculty coordinator of the panel discussion on Ratna Kapur's book, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* organised on September 15, 2018 at the Indian Law Institute.

LEGISLATIVE TRENDS

THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018

(Act No. 16 of 2018)

The parliament passed the Prevention of Corruption (Amendment) Act, 2018 which has brought significant changes in the parent act. The new has amended section 2 of the parent act. To ensure speedy trial and disposal of corruption case, section 4 of the parent act which deals with the trial of corruption cases has been amended by substituting sub section (4) which stipules that the trial of the offence shall be held as far as practicable on day-to-day basis and should be concluded withi.n a period of two years. Similarly for sections 7, 8, 9 and 10 of the parent act new section were added on offences relating to public servants being bribed. The Act introduced 'both giving and accepting of bribe' as a direct punishable offence.

THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

(Act No. 18 of 2018)

The Specific Relief (Amendment) Act, 2018 amended the provisions of the Specific Relief Act, 1963. The Amendment Act seeks to address the issue of delay in relation to the enforceability of contracts. It further seeks to provide additional remedies to parties whose contractual rights have been violated. The Amendment Act has been introduced with the primary intent of introducing greater certainty in enforcement of contracts and enabling faster and easier enforcement of contracts and resolution of contractual disputes.

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018

(Act No. 20 of 2018)

The Negotiable Instrument (Amendment) Act, 2018 amended the Negotiable Instruments Act, 1881. The Amendment incorporates Section 143A in the Negotiable Instrument Act, 1881 which provides for the power to provide for interim compensation to the complainant. The insertion of new provisions in the Negotiable Instrument Act aims at addressing the issue of undue delay in finality of cheque dishonour cases.

THE CRIMINAL LAW (AMENDMENT) ACT, 2018

(Act No. 22 of 2018)

The Criminal Law (Amendment) Act, 2018 amended the Indian Penal Code,1860, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012. It stipulates a minimum jail term of 20 years which may go up to life in prison or death sentence, for the rape of a girl under 12 years. While perpetrators involved in the gang rape of a girl below 12 years of age will get life imprisonment or death.

Amendment was made to sub-section (1) of section 376, increasing the term of punishment for perpetrators, from 7 years to 10 years. The amendment under section 376 additionally makes a provision for the fine to be payable to the victim. Section 439 of the Cr.PC was amended to make it

imperative for the courts in cases of grant of bail to an accused under section 376(3), 376 AB, 376 DA or 376 DB of the IPC to give notice of the application for bail to the public prosecutor.

THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATRORICITIES) AMENDMENT ACT, 2018

(Act No. 27 of 2018)

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 amended the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The new Act has inserted a new section 18A in the Act of 1989, which does away with the court-imposed requirements of undertaking preliminary inquiry and of procuring approval prior to making an arrest.

LEGAL JOTTINGS

Misuse of Section 498 A of IPC

In the present case, the convicted accused questioned the Judgment of the High Court of Judicature at Bombay (Aurangabad Bench). By the impugned judgment, the High Court confirmed the Judgment and order of conviction passed by the Trial Court for the offences punishable under section 302 read with section 34 and section 498-A read with section 34 of the Indian Penal Code. The case of the prosecution in brief is that Kavita (the victim) sustained 100% burn injuries while she was in her matrimonial house. Immediately thereafter, she was brought to the Civil Hospital, Parbhani wherein she succumbed to her injuries and during the course of treatment, her dying declaration was recorded in the hospital in which she implicated both accused. As mentioned supra, the Trial Court as well as the High Court convicted both the accused. The Supreme Court acquitted the Appellant who was accused of offence under Section 498A of IPC holding that in absence of any definite evidence no offence could be established for the offence of dowry harassment under Section 498A of IPC.

Sow. Chhaya v. *State of Maharashtra,* 2018 (189) AIC 17 SC, decided on August 3, 2018.

Devotion is not subject to gender discrimination

The Hon'ble Supreme Court ruled that women, irrespective of age, can enter Kerala's Sabarimala temple. A five-judge Constitution bench, headed by Hon'ble Chief Justice of India, Dipak Misra, said that the provision in the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which authorised the restriction, violated the right of Hindu women to practice religion. It also said that patriarchy in religion cannot be allowed to trump the right to pray. A clutch of petitions had challenged the ban, which was upheld by the Kerala High Court. The High Court had ruled that only the "tantri (priest)" was empowered to decide on traditions. The petitioners, including Indian Young Lawyers Association and Happy to Bleed, argued in court that the tradition is discriminatory in nature and stigmatised women, and that women should be allowed to pray at the place of their choice.

Four judges on the bench ruled in favour of lifting the ban on women entering Sabarimala temple. The court found the practice discriminatory in nature and that it violates Hindu women's right to pray.

The Hon'ble Chief Justice said that the devotion cannot be subjected to discrimination. He held that "Patriarchal rules have to change. Patriarchy in religion cannot be allowed to trump right to pray and practise religion". Hon'ble Justice Khanwilkar concurred with the CJI's verdict. Hon'ble Justice Nariman ruled that "To exclude women of the age group 10-50 from the temple is to deny dignity to women. To treat women as children of lesser god is to blink at the Constitution" and Hon'ble Justice Chandrachud held that "Religion cannot be used as cover to deny rights of worship to women and it is also against human dignity." "Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries."

Indian Young Lawyers Association v. *State of Kerala*, 2018 (13) SCALE 75, decided on September 28, 2018.

CASE COMMENTS

Re- Inhuman conditions in 1382 Prisons

2018 (13) SCALE 52

Decided on September 25, 2018

The present petition related to the rights of prisoners was initiated on the basis of a letter written by former Chief Justice of India R.C. Lahoti to the Supreme Court of India, highlighting the deplorable conditions of Indian prisons. In this letter four issues related to prisons were highlighted, namely, (i) overcrowding in prisons; (ii) unnatural deaths of prisoners;(iii) gross inadequacy of staff and (iv) the available staff being untrained or inadequately trained. The Court has issued several directions from time to time, no finality has yet been attached to rights of prisoners. The first effort relating to the rights of prisoners was made through the Report of the All India Committee on Jail Reforms, 1980-1983, commonly known as the Mulla Committee. Some of the recommendations made by the Mulla Committee were accepted by the Government of India, while some were not. The Bureau of Police Research and Development (BPR&D) also gave a report in 2007. Amongst other things, a National Policy on Prison Reforms and Correctional Administration was also framed. In addition to the above mentioned efforts, there have been some initiatives by individuals and NGOs. The Commonwealth Human Rights Initiative in 2005 submitted a Report on Prison Visiting System in India. No doubt, there is a wealth of material available on record, in addition to several milestone decisions rendered by this Court and other Courts, but still there are a number of burning issues related to prison reforms that need to be addressed on priority basis. Keeping in mind and the dire necessity of reforms in prison administration and prison management, a Committee was constituted by the Court to look into the entire range of issues raised, not only in this petition, but also other issues that have cropped up during the hearing on several dates and from time to time.

On September 25th 2018, the Supreme Court constituted a three-member committee headed by its former judge Justice Amitava Roy to look into the aspect of jail reforms across the country and suggest measures to deal with them. A bench of Justices Madan B. Lokur, S.Abdul Nazeer and Deepak Gupta said the committee would "examine the extent of overcrowding in prisons and correctional homes and recommend remedial measures, including an examination of the functioning of under trial review committees, availability of legal aid and advice, grant of remission, parole and furlough". The committee would review the implementation of the guidelines contained in the Model Prison Manual 2016 by states and Union Territories (UTs) and also recommendations made by the Parliamentary Committee on Empowerment of Women in its report tabled in Parliament titled 'Women in Detention and Access to Justice'. The Committee may also suggest changes or amendments to various guidelines contained in the Modern Prison Manual, 2016 and also various directives issued by the Government of India from time to time.

The court asked the committee to complete the collection of data and information and make appropriate recommendation preferably within a period of 12 months. There is a dire need for comprehensive policy to be adopted by the government to address the rights of prisoners and the constitution of the committee by the Supreme Court of India will definitely ensure effective implementation of human rights of prisoners languishing in Indian jails.

Manoj Kumar Sinha

M. Siddiq (D) Thr. Lrs.* v. *Mahant Suresh Das and Others

2018 (II) SCALE 667

Decided on September 27, 2018

The focal point in the present case is a re-visit of the 1994 case of *Dr. M. Ismail Faruqui* v. *Union of India*, (1994) 6 SCC 360 wherein the validity of Acquisition of certain area at the Acquisition of Certain Area at Ayodhya Act, 1993 was challenged. The Act of 1993 pertained to acquisition of disputed land at Ayodhya and the Constitution bench therein held that the places of religious worship like mosques, churches, temples *et al* can be acquired by the state under its sovereign powers of acquisition. And that such acquisition per se doesn't violate Article 25 of the Constitution. Also

contentiously it was held that a mosque is not an essential part of the practice of Islam and *namaz* (prayer) by Muslims can be offered anywhere.

In the present case the judgement is written by Ashok Bhushan J. for self and Dipak Misra CJI. This case encompasses various appeals which were fixed for commencement of the final argument on 05.12.2017 when Rajeev Dhavan, learned counsel appearing on behalf of the appellants submitted that the constitutional bench judgement of the *Ismail Faruqui* case needs reconsideration, hence it was requested that a reference be made to a larger bench. This submission was opposed by the learned counsel of the respondents. After completion of the proceedings when matter was again taken on 14.03.2018, the majority judges agreed to consider whether *Ismail Faruqui* case needs revision. The learned judges heard the appellants' counsel as well as respondents' counsel namely K. Parsaran and C.S. Vidyanathan. The bench also heard the Additional Solicitor General P.N. Misra, S.K. Jain and several other counsels including Sri. Raju Ramachandran who also supported the reference to a larger bech.

In this case, in addition to the demand for revision of *Ismail Faruqui* case, the two paragraph of the judgment namely, 78 and 82 were seriously objected to by Dr. Rajeev Dhavan. In paragraph 78, the words "places of worship" of any religion having particular significance for the religion to make it an essential part of the religion stand on a different footing and have to be treated differently and more reverentially similarly in para 82 a mosque is not an essential part in the practice of religion and *namaz* by Muslims can be offered anywhere even in open. Therefore, Dr. Dhavan argues that the essential practice of a religion requires a detail examination and supported various precedents in this regard. In *Ismail Faruqui* case, neither reference to any material nor detail examination is being made before making the observations in the above mentioned paragraph. According to him, the broad test of essentiality is laid down by seven judges' bench in the *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 1954 SCR 1005 case and it cannot be cut down by later judgment of lesser strength which judgments have introduced the test of integrality. The test of integrality is interchangeable with essentiality test. Dr. Dhavan also brought attention towards the parties of the high court where reliance has been placed on *Ismail Faruqui's* case. Various grounds taken in these appeals relying on the judgment of *Ismail Faruqui* case and therefore, reconsideration of *Ismail Faruqui* case is inevitable. For reference to a larger bench has clarified that questionable aspects are not the ratio in that case. The ratio in this case was as follows:

> "It appears from various decisions rendered by this Court, referred later, that subject to the protection under Articles 25 and 26 of the Constitution, places of religious worship like mosques, churches, temples etc. can be acquired under the State's sovereign power of acquisition. Such acquisition per se does not violate either Article 25 or Article 26 of the Constitution. The decisions relating to taking over of the management have no bearing on the sovereign power of the State to acquire property (*Id* para 78).
>
> While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially (*Id* para 82).

Dr. Dhavan submits that the statement in paragraph 82 is wrong because it says that a mosque is not essential to Islam and the essential practices doctrine does not protect places of worship other than having particular significance. These observations made by the court on its *ipse dixit* without consideration of any material due to which reason the statement is unsustainable. In *Shrirur Mutt* case, supra it was held that a religion is nothing but a doctrine of beliefs.

Religion may also laid down a code of ethical rules for its followers and it might prescribe rituals and observances ceremony and modes of worship are regarded as integral part of religion. Further in para 18, the court held that the freedom protects also acts to be done in the pursuance of the religion and this is made clear by the use of expression "practice of religion" in Article 25 and, therefore, essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself. Regarding particular significance Dr. Dhavan has made an exception and according to him all religions are equal and have to be equally respected by all including the states. All mosques, all churches, all temples are equally significant to the communities practicing and professing such religions. The concept that some places are of particular significance is itself faulty.

The constitution bench held that if a particular place is of such significance for that religion that worship at such place is an essential religious practice and the extinction of such place may breach their right of Article 25. The acquisition of such place is not permissible. Dr. Dhavan has taken exception to this observation also where place of birth of Lord Rama has been held to be of particular significance. Dr. Dhavan noted that this observation was uncalled for. Since there cannot be any comparison between the two, this phrase of particular significance was used by the constitution bench only in context of the immunity from acquisition. What the court says was that if a religious place has a particular significance the acquisition of it *ipso facto* violates articles 25 and 26. Hence the said place of worship has immunity from acquisition. However, it is another matter that the place of birth of Lord Rama is referred as sacred place for Hindu community which has been pleaded throughout. Therefore, acquisition under Act 1993 having been upheld the use of expression particular significance has lost all its significance for decision of the suits and appeals. It is clear that suits which were pending in the high court were never transferred to be heard along with presidential reference and writ petition filed under article 32. Dr. Dhavan submits that *Ismail Faruqui's* judgment goes to the core of the issues in these appeals and it permeates throughout the impugned judgments in the suits. Observation concerning comparative significance of the disputed site and the observation that the mosque is not an essential part of the practice in the religion of Islam will help the Hindu parties have successfully claim that the disputed site which is allegedly the birthplace of Lord Rama is protected by article 25 and 26. He referred to various observation of the High Court in the impugned judgment to support his submission. He also pointed to various grounds taken in the appeals filed against the judgments of the High Court. In this regard, submissions made by Sri Ravi Shankar Prasad in Paras 3501 and 3502 are of significance. And similarly Justice Sudhir Agarwal also relied on the same case and the para 2723 is worth mentioning. Justice Dharamveer Sharma also took the shelter from the *Ismail Faruqui* case and para 3038 and 3039 are worth mentioning. The grounds taken in the appeal to which exception has been taken by Dr. Dhavan are:

> (i) Partition of the site would effectively extinguish the right of Hindus to worship at the site protected by Article 25 being a site which is integral and essential part of Hindu religion;
>
> (ii) The purported Muslim structure on the area was never pleaded to be an essential or integral part of the Islamic religion.

The court stated that the above grounds are yet to be looked into and considered by this court in these appeals. The court further stated that reliance on the judgment on *Ismail Faruqi* case by the high court and by the counsel for the appellants and taking grounds in these appeals on the strength of judgment of *Ismail Faruqui's* merits of the appeals which needs to be addressed in these appeals and therefore appellant contention for *Ismail Faruqui's* reconsideration is not useful. Similarly Raju Ram Chandran appealed on the ground of gravity and comprehensiveness that the case be referred to larger bench. This ground is also not accepted by the court. Even his reference to larger bench about polygamy, *nikah halala*, *nikah muta* and *nikah misiar*, the court pleaded that since these issues were not considered in *Shayara Bano and Ors.* v. *Union of India,* AIR2017SC4609 therefore, they are referred to constitutional bench and these is not applied in *Ismail Faruqui's* case. Finally the court held that the questionable observation made in *Ismail Faruqui* case as noted above were made in the context

of land acquisition. Those observation were neither relevant for deciding the suits nor relevant for deciding these appeals. The court opined that no case has been made out to refer the constitutional judgments of this court in *Ismail Faruqui's* case for reconsideration.

However, Justice S. Abdul Nazir has given the dissenting judgments and he also referred to the arguments made earlier in the majority decision. Mentioning paragraph 78 and 82 of the *Ismail Faruqui's* case he states that integral is interchangeable with essential. He referred *Shrirur Mutt's Case* and some other cases and then observed that whether a particular religious practice is an essential part or integral part of religion is a question which is to be considered by the doctrine, tenets and beliefs of the religion. The examination of what constitutes an essential practice requires detailed observation. According to him, parties have produced various texts in Islam in support of their respective contentions. However, the court concluded without examining the doctrine, tenets and beliefs of the religion and for this he referred paragraph 82 of the *Faruqui's* case. He also referred to various observations by Allahabad high court and others, who had only argued for Hindu's right. Hence it is clear that the questionable observations in *Ismail Faruqui* have certainly permeated the impugned judgment and it is affected both expressly and inherently by the questionable observations made in *Ismail Faruqui* case. As its prima facie leads a different approach regarding the application of essential or integral test which also needs to be resolved as a matter of constitutional significance. In his opinion *Ismail Faruqui* needs to be brought in the line of the authoritative pronouncements in *Srirur Mutt* and other decisions referred to paragraph 14, 18 and 20 of his judgment. He referred to Justice Khan's observation which highlights the seriousness and better understanding of the matter. Justice Nazir also mentioned *Sameena Begum* v. *Union of India & Ors.* [Writ Petition (Civil) No. 222 of 2018] which had already referred to constitutional bench. Moreover, the two judge bench of the Supreme Court has referred the matter in relation to the policy decision permitting the *Ram-Lila* and puja once in a year in public parks to a constitutional bench. Justice Nazir also referred to the three judge bench of the Supreme Court which was considering the question relating to banning the practice of female genital mutilation and at the initiative of attorney general it is referred to larger bench for authoritative pronouncement because the practice is an essential and integral practice of the religious sect. Stating that the larger bench may consider the issue in its entirety from all perspectives. Accordingly Justice Nazir was of the opinion that the matter should be placed before a larger bench. Considering the constitutional importance and significance of the issues involved the following matters relating to *Ismail Faruqi* case need to be referred to a larger bench:

1. Whether in the light of *Shirur Mutt* and other aforementioned cases, an essential practice can be decided without a detailed examination of the beliefs, tenets and practice of the faith in question?
2. Whether the test for determining the essential practice is both essentiality and integrality?
3. Does Article 25, only protect belief and practices of particular significance of a faith or all practices regarded by the faith as essential?
4. Do Articles 15, 25, 26 (read with Article 14) allow the comparative significance of faiths to be undertaken?

About one of the questionable observations in *Ismail Faruqui* case i.e 'place of particular significance', the majority judgement has not deviated from the earlier observation. Rather recent majority judgement has gone to the extent of saying that no exception can be taken to the expression '*place of particular significance*' as the exception was carved out to protect constitutional right guaranteed under Article 25 of the Constitution. In the concluding paragraph of the majority judgement, it has been stated that the questionable observations made in *Ismail Faruqui* were made in the context of land acquisition and not relevant for deciding suits and appeals. Hence there is no clarity in the recent majority judgement about the objected part of the questionable observations in *Ismail Faruqui* case.

Nowadays a trend of writing lengthy judgements has

emerged and even in the present case a lot of space has been devoted on how to read and interpret judgements and in this process the brevity is severely compromised. But a question begs an answer whether the majority judges could understand the ratio of *Ismail Faruqui* case and its repercussions.

As far as the minority judgement is concerned, Justice Nazeer's observation that *Ismail Faruqui* observations about mosque, which have been made without even examining the religious tenets and beliefs of that particular religion makes a ground to refer the case to larger bench and to examine four questions of law as he has framed above. When we see issues like triple *talaq* and others being decided by the Constitution bench on *suo moto* petitions and PILs then the above issue wherein questions of law have already been framed by Justice Nazeer, then in the light of recent trends these issues must also be examined by the Constitution bench. Being a Muslim law student, it is humbly submitted that performing *namaz* is a very essential and no excuse is permitted for its non-observance, whether a person may be at home or is travelling and whether he is healthy or ill. Therefore whatever be the condition, *namaz* must be performed but performing *namaz* in the mosque is always not possible but that doesn't diminish the importance of the mosque in Islam which has been given in the Quran as well as in other sources of Islamic law. And it must be mentioned that in normal conditions, *namaz* can only be performed in the mosque.

Furqan Ahmad

Navtej Singh Jauhar* v. *Union of India

(2018) 10 SCC1

Decided on September 6, 2018

Democracy does not mean rule by majority only. While elections based on vote shares is an essential tool to decide who will move the chariot of a democratic country, democracy based on constitutionalism is judged by the enforcement of democratic values of equality, liberty and dignity of "we the people" and not "we the majority."

These values enshrined in the preamble of the Constitution of India are not only educative or persuasive in nature but also decisive for present and future of India some time. People who display alleged deviant behaviour cannot be deprived of dignity.

The case under comment (popularly called as 377 or LGBT or homosexual judgement) reflects the decisive dominance of constitutional values over intentions of the majority. Section 377 of the Indian Penal Code, 1860 criminalised "carnal intercourse against the order of nature with any man, woman or animal" irrespective of the conduct being voluntary or involuntary. The constitutional validity of a part of this provision which made consensual sex under section 377 also penal, was challenged before the Delhi high court mainly by LGBT community in the case of *Naz Foundation* v. *Government of NCT of Delhi,* (2009 SCCOnline Del 1762).

The Division Bench led by AP Shah, J. (with S Murlidhar) declared the consensual part of section 377 as partially unconstitutional and violative of article 14, 15 and 21. The high court judgement was challenged before a Division Bench of the Supreme Court in the case of *Suresh Kumar Koushal* v. *Naz Foundation*, (2014) 1 SCC 1 which set aside the high court verdict. A review petition was also filed before the Supreme Court which was rejected. Then a curative petition was filed which was finally heard by a Constitution Bench. In a unanimous verdict, section 377 of IPC was partially declared unconstitutional for violation of article 14, 15, 19 and 21. *Suresh Kumar Koushal* was overruled and *Naz Foundation* was restored. The judgement was unanimous where Deepak Misra, CJ (with A.M. Khanwilkar, J.), RF Nariman, DY Chandrachud, Indu Malhotra, JJ. delivered a four separate opinion.

Consequently, alleged 'unnatural sex' between male to male, female to female and male to female has been decriminalized provided the conduct qualifies three elements; if it between adults; it is voluntary and if it is in private. In other words, *actus reus* of unnatural sex is recognised as criminal in three situations, (i) any sexual conduct described under section 377 between non-adults (below the age of 18 years) even if it is voluntary and consensual, [maturity rule] (ii) If such conducts are forceful, non-consensual, or

*This case has been discussed exclusively on family law perspective by the author.

involuntary; they are still penal, [harm rule] (iii) Any sexual conduct with animal is still penal even if an adult is involved in it, [lack of consent rule].

The judgement of the Supreme Court received mixed reactions. While LGBTQ community was elated, intellectuals in general and media have hailed the decision as the restoration of democratic values. Legal community is sharply divided. Many politicians are generally neutral. Most of the religious leaders and those who feel very passionate for traditions and culture are disappointed by the judgement. There is a feeling that the Supreme Court has imported the western idea of liberty and sexual autonomy in Indian jurisdiction, which is not suitable for this country. This commentator has interacted with many critics of the judgement and found that most of the criticism is because of ignorance as to natural sexual orientation. They believe that any sexual attraction between same sexes is unnatural and is product of some devils desire. They wrongly believe that same sex attraction is a disease or is something out of choice. Therefore, they rush to an incorrect inference that medical and legal measures are essential remedy. Nariman, J. rightly directed the government to give wide publicity of the judgement so that the cloud of ignorance and wrong believes be removed as early as possible.

Possible impact of the decision may be manifolds. A few hypothetical cases may be taken as illustrations.

(I) H1 and H2 are Hindu male. They want to marry. They go to a temple with friends. The *pandit* declines marriage on the ground that Hindu marriage is a sacrament. Customary and traditional Hindu law permits marriage between two opposite sex only. Moreover, section 5(iii) of the Hindu Marriage Act, 1955 states that " the *bridegroom* has completed the age of twenty one years and the *bride* the age of eighteen years at the time of the marriage." Bridegroom necessarily indicates a male and bride necessarily indicate a female. Therefore, neither custom, nor statute allows him to solemnize any marriage between same sexes. Aggrieved by such denial, H1 approaches the high court under article 226 for necessary directions or writ. H2 approaches the Supreme Court under article 32. They argue that *pandit* is duty bound to solemnize marriage. A writ of mandamus be issued. This duty of *pandit* is a mandatory public duty. A *pandit* cannot deny this public function on the ground that both parties are of same sex. The Hindu Marriage Act, 1955 does not use the word male or female. They are also not covered under prohibited degrees or *sapindas*. They also move a contempt petition against *pandit* for willful disobedience and virtual denial of *Navtej Singh Jauhar* judgement. They also challenge the constitutional validity of section 5(iii) of the Hindu Marriage Act, 1955. They request the constitutional courts to read down section 5(iii) so that bridegroom or bride covers person of same sex also. Literal or dictionary meaning will negate the judgement. Therefore, new and liberal interpretation is required to give effect of the (377) judgement.

(II) H3 and H4 are female. They apply to get their marriage contracted under Special Marriage Act, 1954. The concerned officer rejected their application referring section 4(c). According to this section, one of the necessary conditions is that "the *male* has completed the age of twenty-one years and the *female* the age of eighteen years." H3 and H4 approach the Supreme Court under article 32 of the Constitution of India. They challenge the constitutional validity of section 4(c) of Special Marriage Act, 1954. They argue that this provision goes against the Constitution Bench judgement of *Navtej Singh Jauhar* as well as *NALSA*. *NALSA* has already recognised a third category. The provision violates articles 14, 15(1), 19 (1)(a) and 21.

(III) Suppose H1 and H2 (male) gets married by *pandit* with Hindu rituals and *saptpadi*. After two month of marriage, H1 dies with self acquired properties. H2 applies for succession certificate. The authorities refuse granting a succession certificate because H2 is not female and not wife. The validity of the refusal order and related provision is challenged.

(IV) Suppose H1 and H2 (male) after getting married want to purchase a property in the name of H2. H1 and H2 claim concession in registration of sale deed. Such concession in registration is available to female members of family. Registry department refuses to grant concession because H2 is not a female. H1 and H2 challenge the validity of the refusal order and related provision.

(V) H3 and H4 are female. They want to purchase a property in a residential society. The property owner refuses to sell because the owner does not want to sell property to a homosexual. H3 and H4 approach the police or District Magistrate. The owner states that he cannot sell the property because they are homosexuals. They also approach courts under article 226 and 32 for suitable remedy.

(VI) H3 and H4 are female and are homosexual. They work in a shop. After three months, the owner discovers that H3 and H4 are homosexuals. The owner tells them to leave the job because they are homosexuals. What are the remedies available to them? Similarly, if H3 and H4 are tenant. After three months the owner asks them to vacate the flat as the room cannot be given to a homosexual. Is there any remedy available to them?

The executives and the courts will have to face similar situations for which positive steps need to be taken with liberal mind. The Parliament needs to make suitable amendments to give consequential effect to 377 judgements.

Anurag Deep

Tehseen S. Poonawala* v. *State of India

2018 (13) SCALE 323

Decided on July 17, 2018

In the instant cases social activists approached the court shaken by the increased incidents of cow-vigilantism, resulting in some cases, mob-lynching. The writ petitioners also sought declaration of section 12 of the Gujarat Animal Prevention Act, 1954; section 13 of the Maharashtra Animal Prevention Act, 1976 and section 15 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 as unconstitutional. The court, however, did not specifically deal with the constitutionality of these marked sections of various Acts. What the it did was to denounce, in very strong words, all forms of violence by self styled vigilantes, appointed through the provisions of the Acts or otherwise. Not only did the judgment authored by Dipak Misra CJ for himself and A.M. Khanwilkar and D.Y. Chandrachud JJ denounce such practice but it also subtly attacked the majoritarian choices and beliefs being thrust on the population at large. In his discourse on lynching, the Chief Justice drew inspiration from different observations of the apex court in various judgments to establish and underline the diversity of the country. The fact that this appears in a cow vigilantism case speaks for itself!

The court, describing the meaning of diversity, included within its ambit "geographical, religious, linguistic, racial and cultural differences". What needs to be emphasised in this intolerant milieu is the judgment's stress on the concept of unity in diversity. The court reminds the citizenry that "the unique features of 'unity in diversity' inculcate in the citizens the virtue of respecting the *opinions* and *choices* of others" (emphasis added). The whole discourse on diversity was premised on constitutional ethos. So, even while not directly denouncing the impugned sections, the court sent a clear message to the polity that constitutional morality must guide all law making and enforcement endeavours.

Coming down heavily on lynching, the court was categorical that it is totally unacceptable in a civilised world order; it being is a relic of a pre-legislative era. Obliquely referring to the provisions that mandate the appointment of vigilante groups without any due process, the court issued a warning when it observed: "[imposing punishment] is the role and duty of the law enforcing agencies known to law. No one else can be permitted to expropriate that role. It has to be clearly understood that self-styled vigilantes have no role in that sphere. Their only right is to inform the crime, if any, to the law enforcing agencies." The court upheld the rights and duties of citizenry and in very strong words (detestably, obnoxiously, hellishly) condemned the taking of law into one's own hands.

Underlining the deterrent role of law, the court emphasised that one of the most cherished rights of citizens in a democracy is to live with dignity and the only deterrence should be the majesty of law and not mobocracy. Mob violence must be denounced in all its forms as it is totally irrational, uncivilised and propelled by biases, hatred and prejudices. No matter how heinous or trivial the offence is - it is the court of law that must deal with it, with all its formal processes. The court alone has the authority and legitimacy to award appropriate punishment.

The counsel Sanjay Hegde had suggested various preventive, remedial and punitive measures which were meticulously drafted by the court. A heavy onus and, rightfully so, has been put on the state government as it is a law and order issue. The court in very clear terms observed that it is the duty and the responsibility of the state to curb the varied nefarious forms of mob violence and it cannot abdicate its duty. Since mob violence and subsequent lynching, many a times, have the tacit approval of the law enforcers, the court mandated a departmental enquiry in such cases which must go beyond the one prescribed under the service rules.

The court exhorted the legislature to come up with a special law dealing with offences of lynching and providing proportional punishments. In this context, it may be observed that to draft such a law, the NCRB must collect data on lynching based on caste, religion and so on and so forth to enable the legislature to formulate legislation on the issue. Perhaps the Prevention of Communal and Targeted Violence (Access to Justice and Reparation) Bill, 2011 may be reconsidered on these lines.

Jyoti Dogra Sood

Navtej Singh Jauhar* v. *Union of India*

(2018) 10 SCC1

Decided on September 6, 2018

In a Constitutional Democracy the role of a State is limited to protect and safeguard the fundamental rights and Individual freedoms of the people from arbitrary interference. At the same time it is also a well recognized principle of democracy that to maintain 'equality in freedom' the State may legitimately use coercion through legislative competence in achieving 'Common or public Good'. Speaking about the notion of 'common good' denotes that moral law regulates the actions of individuals aiming at the goodness of the Society. State as an executor of moral law is duty bound to implement good discipline for the conservation of peace and justice in a Society. At the outset, the recent decision of the apex court raises a speculation about element of 'public morality' in implementing fundamental freedoms and rights.

In the present case the Five –judge bench of the apex court by reversing its own decision, partially struck down section 377 of the Indian Penal Code that criminalizing gay sex as arbitrary and irrational.

By decriminalizing homosexuality and by protecting the fundamental rights of LGBT community, the court observed that Section 377 cannot be used as a weapon to harass the members of the LGBT community. Hon'ble Justice Dr. D.Y Chandrachud observed that 'the state had no right to control the private lives of LGBT community members and that the denial of the right to sexual orientation was the same as denying the right to privacy'. The court observed:

> "If one accepts the proposition that public places are hetero-normative, and same-sex sexual acts partially closeted, relegating 'homosexual' acts into the private sphere, would in effect reiterate the "ambient hetero-sexism of the public space." It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the Community to navigate public places on their own terms, free from state interference." (*Id* para 62, page 339).

This historic ruling addressed and settled several significant controversial constitutional issues like right to privacy of sexual minorities, gender identity, the equality rights of third genders etc. The court rejected the argument that allowing the homosexual acts will affect the 'institution of marriage' and the society will be destabilized and the nation would lose its morality and virtuousness'. Though this is a progressive decision recognized citizen's right for unbridled privacy and sexual autonomy, it has diluted several social and legal values of 'morality' as fundamental principles of law. It is to be noted that the privacy – dignity claims of the citizens for the protection of fundamental rights should not hamper the social order based on public morality which is different from 'constitutional morality'.

Arya A.Kumar

*This case has been dealt in this Newsletter exclusively on Constitutional perspective and sufficient care has been taken by the contributor to avoid repetition.

Joseph Shine* v. *Union of India

AIR 2018 SC 4898

Decided on September 27, 2018

In what is being hailed as a historic decision from the perspective of women's rights, the Supreme of India has declared section 497 of the Indian Penal Code unconstitutional. The five-judge bench overruled the earlier decision in *Sowmithri Vishnu* v. *Union of India* (1985) Suppl. SCC 137 where the provision was upheld on the touchstone of articles 14 and 15 of the Constitution. This was a much-awaited decision since the provision was an embarrassing, archaic law rooted in a deeply patriarchal morality where wives were treated as chattel and not women with sexual agency. While the court unanimously agreed on the section's unconstitutionality, the judges widely differed in their constitutional reasoning as well as the scope of rights they relied on in order to arrive at their respective decisions. This note, due to limitations of space, will only engage with the judgment delivered by Justice D.Y. Chandrachud.

Justice Chandrachud's judgment needs to be analysed in the context of his recent remarks (at a conference) that the Constitution itself is feminist. No doubt his judgment makes for delightful reading for (some) feminists, smeared as it is with ideas and sources drawn from feminist legal scholarship. It is as if feminism has finally made inroads into the Supreme Court – both in terms of language as well as reasoning. The judgment opens with the work of postcolonial feminists Ratna Kapur and Brenda Cossman in reading the law as a "site for discursive struggle" and claims that "it becomes imperative to examine the institutions and structures within which legal discourse operates" [para 3]. I will explore the extent to which the judgement has successfully and critically engaged with the foundational institutions (of marriage and family), the underlying values behind the adultery provision and feminism even while it foregrounds the rights of sexual autonomy and privacy.

The judgement addresses the central challenge to section 497 i.e. the understanding of marriage upon which it is based. Justice Chandrachud rightly points out how the section "has adopted a notion of marriage which does not regard the man and the woman as equal partners. It proceeds on the subjection of the woman to the will of her husband … [and] subordinates the woman to a position of inferiority thereby offending her dignity, which is the core of Article 21" [para 11].

Tracking the history of adultery laws, he points out how they were enacted to protect the property rights of the husband over the wife and were never about women's bodily integrity but strengthened the husband's control over his wife's sexuality. Referring to long-standing feminist work on this issue, the judge recognises that the adultery provision, based as it is on sexual stereotypes that view women as passive and devoid of sexual agency, "fails to recognize them as equally autonomous individuals in society" [para 24]. According to the judge, "[i]t is not the "common morality" of the State at any time in history, but rather constitutional morality, which must guide the law" [para 25]. Constitutional morality is not based on 19th century "antiquated social and sexual mores" of "woman's 'purity' and a man's marital 'entitlement' to her exclusive sexual possession" [para 25].

Drawing upon transnational jurisprudence, the judge proceeds to frame the issue in terms of right to privacy, sexual self-determination and autonomy. While he does not explicitly delve into the question of the state's policy of criminalisation or the 'harm' constituted by adultery, relying on the 2015 decision of the South Korean Constitutional Court, he observes that "love and sexual life were intimate concerns, and they should not be made subject to criminal law" [para 27]. He endorses the view that the legitimate state interests of protecting the institution of marriage, enforcing monogamy and promoting marital fidelity need to be balanced with the individual fundamental right of sexual self-determination and privacy. Further, the judge couches adultery within the "right to marital choice" falling into the domain of "protected private choices", even though it may be an "unpopular choice". Thus, "the privacy protections afforded to marriage must extend to all choices made within the marriage" [para 29].

This interpretive leap - from adultery law as violation of equality and dignity (based upon paternalistic values and sexual stereotypes) to adultery "as a constitutionally protected marital choice […]

protected by the freedom of association […] an action which is protected by sexual privacy" [para 29] – needs critical engagement. It appears that the judge extends his critique of the adultery provision to the very institution of marriage based as it is on monogamy and exclusivity. There is recognition of new kinds of marriages where sexual fidelity and monogamy are not the normative foundations. But we are left wondering if he is suggesting that the dominant conception and institution of marriage is itself against constitutional morality.

If this part of the judgment, which relies on sex-positive feminist reasoning - even as he falls back on MacKinnon's sex-negative position to critique family and heterosexual marriage - and foregrounds absolute sexuality rights of all women, is to be taken seriously, then the logical corollary is that marriage in its current form itself is unconstitutional. While this may be the most radical feminist move, unfortunately the judge does *not* go that far and gets caught in contradictions on account of judicial verbosity.

On the one hand, we are invited to celebrate human sexuality and "consensual intimacies" without any fetters. On the other, the judge, reiterating *K.S. Puttaswamy* v. *Union of India,* (2017) 10 SCC 1 extends privacy to the "sanctity of marriage, the liberty of procreation, the choice of a family life" [para 56]. How does one reconcile these contradictory formations? Isn't marriage (in its current form, heterosexual and monogamous) in itself an infringement of freedom of human sexuality? Aren't "consensual intimacies" encroached upon and restricted when one agrees to be part of the institution of marriage?

In suggesting that the "intimacies of marriage lie within a core zone of privacy", it appears that the judge has forgotten that marriage, *conceptually*, restricts the scope of intimacies and constrains sexual autonomy. It may be one thing to say that consensual intimacies of all kinds (within or outside marriage) should not be subject to criminal law as that would amount to coercive sexual regulation and disciplining of subjects, but it is quite another to suggest that adultery is not a crime because human sexuality is to be celebrated and marriage cannot restrict the same.

Simply put, the judicial reasoning behind the declaration of adultery as unconstitutional is unsustainable unless we also understand the judgment as simultaneously suggesting that marriage hereon must be understood in non-monogamous terms.

This rhetorical feminism of judicial political correctness may enrich law as a discursive site but does little to acknowledge the strength of the sexual laws of the Symbolic order which sustain and strengthen hetero-normative institutions. The disruption of the Symbolic first and foremost requires the recognition that constitutional morality itself is not unified, inherently progressive and without internal contradictions. It simultaneously and with equal zeal protects sexual autonomy of individuals, on the one hand, and the conservative ideologies of family, community and nation on the other. But focusing on one aspect of constitutional morality (sexual autonomy) necessarily shakes up its other aspects. Without thinking through these contradictions, we would only remain feminists in discourse and not necessarily in terms of the structures of our individual and collective desires.

Latika Vashist

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CORRIGENDUM

In the Legal Jottings published in ILI Newsletter Volume XX Issue II there was an inadvertent error wherein the name of Hon'ble Shri Justice Mohan M. Shantanagoudar's name was mentioned as Justice M. M Shantanagoudan.