ISSN - 2455-7242

ILI Newsletter

Quarterly Newsletter published by the Indian Law Institute
(Deemed University)
Accredited with 'B++' Grade by NAAC
Granted Graded Autonomy (Grade II) by UGC

Volume XXVI Issue-III

July - September, 2024

Editorial

What started as a Hamas attack on Israel in October 2023 has now spiraled into a far-reaching Middle East crisis. Israel's military response has been catastrophic-killing 42,000 Palestinians and displacing Gaza's entire population of 2.3 million people, yet the Israeli hostages have not been released. This has created both a massive humanitarian emergency and a dangerous diplomatic situation that could pull the whole region of middle east into a larger conflict. The conflict's tentacles have now spread far beyond Gaza's borders. Israel currently finds itself fighting a complex war on multiple fronts. While its main battle is against Hamas in Gaza, it's also dealing with attacks from Hezbollah in Lebanon. The situation became even more complicated when Iran launched missiles at Israel in retaliation for an attack on its embassy in Damascus. What makes this conflict particularly challenging is that Israel isn't facing traditional armies but rather a network of different armed groups that work together. These groups - Hamas, Hezbollah, and the Houthis - all receive support from Iran and are known as the "Axis of Resistance." On the other hand, Israel is being supported mainly by the United States and some European States, but none of these States has jumped into this conflict in support of Israel. Despite having superior military technology and weapons, Israel has faced some significant challenges. The surprise Hamas attack revealed holes in their intelligence gathering, and they've struggled to both free all the hostages and completely stop Hamas's military activities in Gaza. This shows how traditional military power might not be enough when fighting against these smaller, more flexible armed groups. The fact that these groups are connected and support each other, while not being official state armies, makes it much harder to find a straightforward military solution to the conflict. Thus, the regional diplomatic landscape of middle east has also undergone a seismic shift. The promising Arab-Israeli normalization process, including potential breakthrough talks with Saudi Arabia, has hit a wall.

The ongoing conflict in the Middle East, particularly in Gaza, has evolved into one of the most severe humanitarian catastrophes of the 21st century, yet the warring parties seem to have relegated human suffering to a mere statistic. The devastating human cost of the war in Gaza has pushed many countries to take action. African nations, led by South Africa, took a bold step by going to the International Court of Justice (ICJ), arguing that Israel's actions amount to genocide. On other hand, India has historically supported Palestinian rights and independence, but at the same time, it also maintains strong ties with Israel. In response to the current conflict, India has taken a careful middle path as it supports Israel's right to defend itself but strongly emphasizes that civilian lives must be protected on both sides.

The destruction extends beyond physical infrastructure to the social fabric, with family networks shattered and community support systems broken. International aid organizations face significant obstacles in reaching those in need, while the politicization of humanitarian assistance further compounds the crisis. The situation demands immediate establishment of humanitarian corridors, protection of medical facilities, and unrestricted aid access. As the conflict enters its second year, the risk of further escalation threatens not only regional stability but also global peace. The challenge now lies in transforming this crisis into an opportunity for meaningful dialogue and lasting peace. A wider regional war involving multiple state and non-state actors poses risks that the international community cannot afford to ignore.

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

Inside

Activities at the Institute.....2
Special Lectures 12
Research Publications.....12
Academic Activities 12
Visit to the Institute 13
E-Learning Courses.....13
Library 13
Forthcoming Events 13
Faculty News 13
Legal Jottings 15
Case Comments 12

SUBSCRIPTION RATES

Single Copy : Rs. 20.00

Annual : Rs. 70.00

The payment may be made by D.D./ Cheque in favour of the "Indian Law Institue, New Delhi" (For outstation cheques add Rs. 20.00 extra) and send to :

The Editor, ILI Newsletter, The Indian Law Institute, Bhagwan Dass Road, New Delhi- 110001,
Ph: 23073295, 23387526, 23386321, E-mail : ili@ili.ac.in, Website : www.ili.ac.in

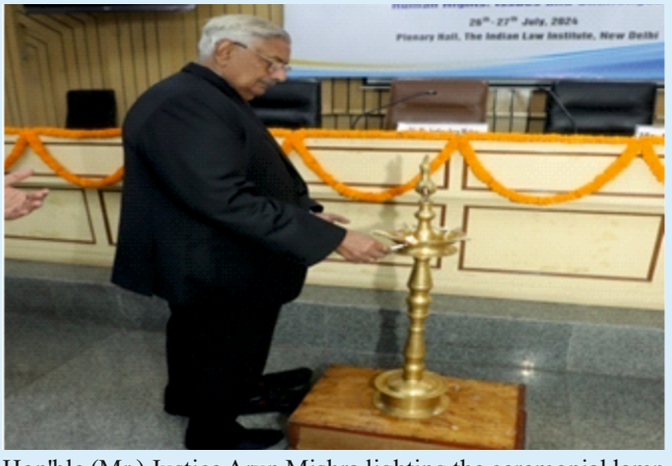
ACTIVITIES AT THE INSTITUTE

ILI- NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMMES

Two –days Training Programme for First Class Judicial Magistrates on "Human Rights: Issues and Challenges" held on July 26-27, 2024.

The Indian Law Institute, in collaboration with the National Human Rights Commission, organized a two-day training program titled "Human Rights: Issues and Challenges" for First Class Judicial Magistrates. Held at the Plenary Hall of the Indian Law Institute in New Delhi, the event aimed to enhance the understanding and enforcement of human rights within the judiciary. The Programme was inaugurated by Hon'ble (Mr.) Justice Arun Mishra, Former Judge, Supreme Court of India.

Hon'ble (Mr.) Justice Arun Mishra along with Sr. Prof. (Dr.) V.K. Ahuja, Director, ILI and Shri Shreenibas Chandra Prusty, Registrar, ILI



Hon'ble (Mr.) Justice Arun Mishra lighting the ceremonial lamp at the inaugural session of the programme

The inaugural session commenced with a welcome address by Sr. Prof. (Dr.) V.K. Ahuja, Director, the Indian Law Institute. Dr. Ahuja's speech touched upon several key issues at the intersection of human rights and intellectual property rights (IPR).

Sr. Prof. (Dr.) V.K. Ahuja felicitating Hon'ble Mr. Justice Arun Mishra in the presence of Registrar, ILI

Firstly, Dr. Ahuja discussed the *Potato Farmer* Case, which highlights the struggles of farmers against large corporations claiming patent rights over seeds and agricultural products. This case underscored the need to balance commercial interests with the human rights of farmers who rely on traditional practices and biodiversity. Sr. Prof. (Dr.) Ahuja then moved on to the *Delhi University Photocopy* Case, where the University was sued by publishers for allowing photocopying of textbooks for educational purposes. This case brought to the fore the conflict between copyright enforcement and the right to education, particularly for students from economically disadvantaged backgrounds.

Sr. Prof. (Dr.) V.K. Ahuja, Director ILI addressing the participants of the programme.

He also mentioned India's ratification of the *Marrakesh Treaty* in 2014, a landmark agreement

aimed at facilitating access to published works for persons who are blind, visually impaired, or otherwise print disabled. India was the first country to ratify this treaty, which reflects the nation's commitment to enhancing accessibility and upholding the human rights of disabled persons. In his address, Dr. Ahuja also emphasized the high cost of drugs and the impact on the poor, illustrating how patents and IPR can sometimes hinder access to essential medicines. He discussed the balance that needs to be struck between protecting commercial rights and ensuring that human rights, particularly the right to health, are not compromised. Finally, Dr. Ahuja highlighted the duty of the National Human Rights Commission (NHRC) in safeguarding human rights against such commercial encroachments. He called for a proactive approach from NHRC in cases where commercial interests conflict with human rights, advocating for policies that protect the most vulnerable populations while respecting intellectual property laws.

The Chief Guest, Hon'ble (Mr.) Justice Arun Kumar Mishra, Former Chairperson, NHRC and former Judge, the Supreme Court of India, emphasized on the independence and courage of the Indian judiciary. He highlighted landmark decisions such as the *Ratlam Municipality* Case, which set a precedent for environmental protection and victim compensation, developing an entire jurisprudence on these matters over the past forty years. He stressed about the importance of judges adopting a human-centric approach in their rulings. Lordship also narrated the judiciary's role in environmental protection, noting that survival is a mutual give-and-take with nature and discussed the enforcement of laws like the Water Act and the role of the Pollution Control Board, emphasizing the judiciary's duty to ensure these laws are followed.

Hon'ble (Mr.) Justice Arun Mishra addressing the participants of the training programme

Hon’ble Justice Mishra elaborated on the concept of equality, explaining that without equality, no rights can truly exist. He mentioned that the judiciary has a role in creating equality among the unequal through social engineering, as envisioned by the Constitution, beyond just Article 14. Quoting the Rigveda, he urged collective effort: "Let us work together." He also referenced Guru Nanak's teachings, "Manas kee jat sabai ek hee pahchan ho," emphasizing the unity of all human beings. Justice Mishra pointed out the limited reach of reservations and affirmative action, stating that despite significant financial aid from institutions like the World Bank, corruption has prevented these funds from reaching the intended beneficiaries. He called for holding corrupt officials accountable.

Lordship concluded by discussing the philosophy of universal happiness, "Sarve bhavantu sukhinah," and the principles of Sanatan Dharma and Buddhism, which emphasize non-violence and humanism. He cited examples from Indian epics to illustrate these values. Justice Mishra also addressed issues such as caste and gender injustice, the challenges in the adoption process, human trafficking, and child sexual abuse. He urged judicial officers to interpret IPR laws to benefit common people and highlighted the need for a serving attitude in the judiciary. Highlighting the deplorable conditions in prisons and juvenile homes, Justice Mishra shared the findings of Suchitra Sinha, a special rapporteur, who reported on the appalling state of juvenile homes in Jharkhand. He called for regular medical checks, counselling, and effective legal aid, condemning the current state as eyewash. He urged judicial officers to take strong action against child sexual abuse and cybercrimes, stressing the need for protection and empathy for victims.

In the first session of the training programme, Mr. Devendra Kumar Nim, Joint Secretary, National Human Rights Commission discussed the NHRC's role under the Protection of Human Rights Act, 1993, including complaint investigations, jail visits, and awareness promotion. The NHRC also organizes seminars and conferences, appoints rapporteurs and monitors for specific tasks, and invites research proposals on human rights issues. They engage in institutional visits, organize short film and photographic competitions, and issue advisories on critical issues like child sexual abuse materials.

Prof. (Dr.) Upma Gautam addressing the participants of the programme.

In the second session of the programme, Prof. (Dr.) Upma Gautam, GGSIPU, Delhi, focussed on the analysis of procedures related to complaints to magistrates. Professor Upma also discussed key cases like *Priyanka Srivastava* v. *State of Uttar Pradesh, Lalita Kumari* v. *Government of Uttar Pradesh*, and *Arnesh Kumar* v. *State of Bihar*. The session also addressed the misuse of FIRs for revenge and the increased competition among accused individuals once arrested, highlighting the need for safeguards to prevent the misuse of legal provisions.

In the third session, Dr. Arya A. Kumar, Assistant Professor (SS), ILI, took a session on "Human Rights of Vulnerable Groups." Dr. Arya began by defining human rights under Section 2(d) of the Protection of Human Rights Act, 1993, which encompasses rights related to life, liberty, equality, and dignity of the individual as guaranteed by the Constitution or embodied in International Covenants and enforceable by courts in India. She emphasized that human rights are inherently individual due to their inalienable character and also discussed the concept of group rights from a jurisprudential perspective, referencing theories from renowned philosophers such as Joseph Raz's theory of Liberal Perfectionalism, Jeremy Bentham's theory of Utilitarianism, John Rawls' distributive principle, and Ronald Dworkin's theory of distributive justice.

Dr. Arya categorized these vulnerabilities into inherent vulnerability, imposed vulnerability, and social vulnerability. Inherent vulnerabilities include those by birth, such as children and disabled individuals who face physical limitations. Imposed vulnerabilities include issues like domestic violence and victims of rape and physical violence. Social vulnerabilities involve discrimination based on caste, religion, and customary laws like sati and polygamy.

Dr. Arya provided an overview of the national and international legal frameworks designed to protect various vulnerable groups, including women, children, disabled individuals, aged persons, minorities, and LGBTQ+ communities. She specifically discussed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its scope. CEDAW was introduced with the objectives of prohibiting sex discrimination and ensuring equality, providing a comprehensive definition of discrimination against women, and outlining state obligations in public, private, and cultural spheres. She referenced several key judicial interpretations of CEDAW in India, such as *Madhu Kishore* v. *State of Bihar*, *Vishakha* v. *State of Rajasthan*, and the enactment of the PWDV Act 2005.

Dr. Arya A. Kumar, Faculty, ILI delivering the lecture

The lecture also covered the Convention on the Rights of the Child (CRC), which guarantees the rights of children at various junctures and is classified into five main areas: state responsibility, parent's responsibility, freedoms guaranteed to children, rights against exploitation, and protection for special classes of children. Additionally, Dr. Arya discussed the Convention on the Rights of Persons with Disabilities (CRPD), which promotes and protects the rights of persons with disabilities. This Convention marks a paradigm shift in attitudes towards persons with disabilities, viewing them as subjects with rights rather than objects of charity. Finally, Dr. Arya addressed the right to culture and education of minorities as outlined in Articles 29 and 30 of

International conventions. She provided a working definition of minorities and cited key Human Rights Committee interpretations of minority rights provisions.

Overall, the session was comprehensive and enlightening, providing a deep understanding of the human rights challenges faced by vulnerable groups and the legal frameworks in place to address these issues. The lecture underscored the importance of recognizing and protecting the rights of vulnerable groups to ensure equality and justice in society.

Prof. (Dr.) B.T. Kaul, Former Chairperson of the Delhi Judicial Academy (High Court of Delhi), took a session on "Criminal Justice Administration and Human Rights." He emphasized the sensitization of judges about human rights issues and discussed the shift in criminal law fundamentals from retribution to reformation. Dr. Kaul highlighted the importance of differentiating between the suddenness of a situation and premeditation in criminal acts.

He pointed out that the Constituent Assembly was very cognizant of the liberty of persons, the presumption of innocence, and the benefit of the doubt to the accused. Article 14, which embodies the basic premise of the rule of law, was discussed, along with Article 19 and the controversial topic of sedition. Article 20's protection against self-incrimination was elaborated through the *Nandani Satpathy* v. *P.L. Dani* case, where it was held that there is no right to absolute silence on non-incriminatory statements. Dr. Kaul further discussed the *Maneka Gandhi* case, which emphasized the due process of law and highlighted that the entire criminal procedure must animate from Article 21, ensuring fair investigation, fair trial, and speedy justice. He mentioned the *Azmal Kasab* case, stressing the right to legal representation and the magistrate's duty to inform the accused of this right. Other significant cases mentioned included the *Hussainara Khatun* case, which led to the insertion of Section 436A in the CrPC, addressing the rights of undertrials, and the *Rakesh Kumar* judgment on default bail. Dr. Kaul also touched upon issues of medical negligence and mob lynching in the context of new laws, expressing concerns over the increasing discretion of police and decreasing discretion of judges, which might complicate the registration of FIRs post the *Lalita Kumari* ruling.

Participants of the NHRC Training programme

Prof. (Dr.) Jyoti Dogra Sood, Professor, ILI led the session focusing on juvenile justice. She emphasized that the purpose of the training was to re-orient thinking around juvenile justice themes, ensuring that participants understand the evolving legal landscape and its implications. Dr. Sood began by discussing the necessity for a detailed analysis of the new juvenile laws. She highlighted the complexities involved in handling juvenile offenders, especially in severe crimes, referencing significant cases to illustrate these challenges.

Prof. Sood, explained the *Gurugram Murder* case, where a juvenile was accused of murdering a schoolmate. This case underscored the difficulties in balancing justice and rehabilitation for juvenile offenders, as well as the societal implications of juvenile crime. Dr. Sood noted that this case prompted a deeper examination of how juvenile offenders are perceived and treated within the legal system, raising questions about the adequacy of existing frameworks in addressing such serious offenses. Another example discussed was the *Pune Porsche crash* case, where a minor was involved in a fatal car accident. Dr. Sood used this case to emphasize the risky behaviors often exhibited by teenagers and the subsequent legal and moral responsibilities of the judiciary in addressing such incidents. She highlighted the need for the legal system to consider the developmental stages of adolescents when determining culpability and appropriate sanctions. This case brought attention to the critical need for understanding the psychological aspects of teenage behavior and the potential for reform rather than punitive measures. Dr. Sood also discussed how the home environment could influence a minor's behavior, mentioning that a violent or

dysfunctional home could lead family members to take illegal approaches to deal with legal situations, further complicating the juvenile's rehabilitation process.

Dr. Jyoti D. Sood, Professor, ILI delivering the lecture

Dr. Sood pointed out that India has ratified the Convention on the Rights of the Child, which highlights the country's commitment to protecting children's rights. She discussed how this international treaty influences national legislation and judicial practices, ensuring that the rights of juveniles are upheld. The Convention provides a comprehensive framework for the protection, development, and participation of children, emphasizing that they should be treated with dignity and respect. This ratification places a duty on the Indian legal system to align its laws and practices with international standards, focusing on the best interests of the child.

The *Nirbhaya* case, a high-profile gang rape incident, was also examined. This tragic event led to significant amendments in the Juvenile Justice Act, reflecting a shift towards stricter penalties for juveniles involved in heinous crimes. Dr. Sood highlighted how this case catalyzed a nationwide debate on the adequacy of existing juvenile laws and the need for reforms. The amendments sparked discussions on the balance between deterrence and rehabilitation, and the appropriate age for considering an individual as an adult in the legal context. The *Nirbhaya* case brought to light the public's demand for harsher punishments for juveniles involved in severe crimes, and the subsequent legal changes aimed to address these concerns while also considering the rehabilitative needs of young offenders.

Dr. Sood also touched upon the broader societal and policy implications of juvenile justice. She discussed the need for comprehensive support systems that include education, mental health services, and community-based programs to address the root causes of juvenile delinquency. These support systems should aim to reintegrate juveniles into society successfully, reducing the likelihood of reoffending. She highlighted the role of educational and vocational training programs in providing juveniles with the skills needed for a productive life post-rehabilitation. Moreover, community involvement and support are crucial in ensuring that juveniles have a positive environment to return to, which aids in their reformation and reduces the chances of recidivism. Professor Sood's session underscored the need for a balanced approach in juvenile justice, integrating reformation with accountability. She advocated for policies and judicial practices that protect the developmental needs of young offenders while ensuring justice and public safety. The comprehensive discussion provided valuable insights into the challenges and considerations in handling juvenile justice cases, aiming to equip judicial officers with the knowledge to make informed and fair decisions. Dr. Sood's emphasis on understanding the psychological and developmental aspects of juvenile behaviour, along with the societal context, provided a holistic view of juvenile justice that aligns with both national and international human rights standards.

Former Law Officer, at Tihar Jail, Mr. Sunil Gupta took a session on judiciary and prison reforms. He presented the latest prison statistics and discussed landmark judgments that have influenced prison reforms. Mr. Sunil Gupta discussed judiciary and prison reforms, referencing cases *like Sunil Batra* v. *Delhi Administration, Charles Sobhraj* v. *Superintendent, Central Jail Tihar, and Sheela Barse* v. *State of Maharashtra. ACP,* H.S Randhava covered cyber security, highlighting the National Cyber Security Policy, the National Cyber Security Coordination Center (NCCC), the Cyber Swachhta Kendra, and CERT-IN. Mr. Gupta stressed the importance of reforming prison management and improving conditions to uphold human rights.

ACP, H.S. Randhava took a session on "Cyber Security: Issues and Challenges." He began by defining cyber security as protecting data and systems from internal and external threats. ACP, Randhava provided an in-depth look at the current cyber security landscape, outlining the key challenges and strategies necessary for maintaining a secure digital environment. He discussed key initiatives by the Government of India aimed at building a secure cyberspace and performing real-time threat assessments. These initiatives include:

- National Cyber Security Policy: A comprehensive framework designed to protect public and private infrastructure from cyber threats.
- National Cyber Security Coordination Center (NCCC): This center is responsible for real-time threat assessment and incident response, ensuring that potential cyber threats are identified and mitigated promptly.

ACP Randhava highlighted the role of the Cyber Swachhta Kendra, an initiative aimed at helping users clean their systems from malware and providing technical assistance for handling security incidents. He also discussed the Indian Computer Emergency Response Team (CERT-IN), which provides 24x7 technical assistance and is instrumental in maintaining the country's cyber security posture.

A critical component of cyber security discussed was cryptography. ACP Randhava explained the importance of encryption in securing data, detailing both symmetric and asymmetric encryption methods. He stressed the necessity of adopting robust cryptographic practices to protect sensitive information from unauthorized access.

In conclusion, ACP Randhava recommended several strategies to enhance cyber security:

- Using Secure Networks: Ensuring that all network connections, especially those involving sensitive data, are secure.
- Avoiding Public Wi-Fi: Public Wi-Fi networks are often unsecured and can be easily exploited by cybercriminals.
- Updating Anti-virus Software: Regularly updating anti-virus and anti-malware software to protect against the latest threats.
- Promoting Cyber Security Awareness and Training: Educating individuals and organizations about the importance of cyber security and best practices to follow.

These strategies, he emphasized, are crucial for safeguarding against cyber threats and maintaining a secure digital environment.

Dr. Neha, from the Faculty of Law, University of Delhi, took a session on the human rights of persons with disabilities. She provided a comprehensive overview of the national and international legal frameworks designed to protect disabled individuals, emphasizing the importance of recognizing their rights and ensuring accessibility and inclusion in society. Dr. Neha began by discussing the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which India ratified in 2007. This convention marks a paradigm shift in attitudes towards persons with disabilities, viewing them as subjects with rights rather than objects of charity. She elaborated on the principles of the CRPD, which include respect for inherent dignity, non-discrimination, full and effective participation and inclusion in society, and accessibility. She then moved on to national legislation, such as the Rights of Persons with Disabilities Act, 2016. This act aims to uphold the dignity of every person with disabilities by ensuring their full and effective participation and inclusion in society.

The valedictory session commenced with a welcome address by Prof. (Dr.) Jyoti Dogra Sood, Professor at the Indian Law Institute. In her address, Prof. Sood highlighted the human rights approach consistently taken by Hon'ble (Mr.) Justice S. Ravindra Bhat, Former Judge, Supreme Court of India, throughout his career. She emphasized that Justice Bhat has delivered stellar judgments that have significantly contributed to the jurisprudence of human rights in India. Professor Sood commended Justice Bhat's commitment to ensuring that human rights are upheld in every aspect of the judicial process. She particularly noted his role in shaping a more humane and equitable legal landscape, recognizing his efforts to integrate human rights principles into mainstream judicial reasoning.

Following the welcome address, Prof. (Dr.) G.S. Bajpai, Vice Chancellor of National Law University, Delhi, delivered an insightful address. Professor Bajpai, who established the Centre for Victimology at NLU Delhi, spoke about the importance of victim participation in judicial proceedings. He advocated for making the efforts and perspectives of victims visible within the legal system, stressing that a victim-centered approach is crucial for a just and equitable judicial process. Professor Bajpai highlighted various initiatives and research projects undertaken by the Centre for Victimology to support and empower victims of crime. He shared his vision of a judicial system where victims' voices are heard and their rights are protected, thereby fostering a more inclusive approach to justice.

Snippets from valedictory session of the training programme

The valedictory address was graced by the Chief Guest, Hon'ble (Mr.) Justice S. Ravindra Bhat, Former Judge of the Supreme Court of India. Justice Bhat spoke about the new criminal laws and the logistical requirements needed for their effective implementation. He emphasized that the human rights approach should start from the very foundation of the judicial system. Justice Bhat discussed the importance of integrating human rights considerations into all aspects of criminal justice, from investigation and prosecution to trial and sentencing. He underscored the need for continuous training and capacity-building for judicial officers to ensure that human rights are consistently protected.

Justice Bhat also highlighted the challenges and opportunities presented by the new criminal laws, encouraging judicial officers to approach these changes with a focus on safeguarding human rights and ensuring justice for all. He articulated a vision for a justice system that not only punishes but also reforms and rehabilitates, stressing that the ultimate goal of any legal system should be the betterment of society. Justice Bhat called for a pragmatic approach to the new laws, ensuring that they are implemented with the necessary logistical support and that the judiciary remains vigilant in protecting human rights.

The session concluded with a vote of thanks by Mr. S.C. Prusty, Registrar of the Indian Law Institute. Mr. Prusty expressed gratitude to all the speakers and participants for their contributions to the success of the training programme. He acknowledged the support of the National Human Rights Commission and the Indian Law Institute in organizing the event. The session ended with an interactive feedback session, where participants shared their experiences and reflections on the training, emphasizing the importance of such programmes in enhancing their understanding and implementation of human rights in their judicial roles. Participants expressed their appreciation for the depth and breadth of the topics covered, highlighting how the training had equipped them with practical tools and knowledge to better serve justice.

The two-day training programme was highly enriching, providing First Class Judicial Magistrates with a comprehensive understanding of various human rights issues and challenges. The sessions facilitated an engaging platform for discussion, enhancing the participants' capacity to protect and promote human rights in their judicial roles. The interactive sessions and expert speakers contributed significantly to the success of the programme, ensuring that participants left with a deeper and more nuanced understanding of human rights in the judicial context. Throughout the programme, participants were exposed to critical issues such as the role of the NHRC, the complexities of juvenile justice, the impact of new criminal laws, and the importance of safeguarding human rights in every aspect of judicial work. The diverse range of topics and the expertise of the speakers provided a holistic view of human rights, encouraging judicial officers to adopt a more empathetic and informed approach in their professional duties. The programme emphasized the

necessity of continuous learning and adaptation to new legal frameworks and human rights standards. It reinforced the idea that the judiciary plays a pivotal role in upholding the rule of law and ensuring that human rights are respected and protected. By fostering a deeper understanding of these issues, the training programme aimed to empower judicial officers to make more informed, fair, and compassionate decisions, ultimately contributing to a more just and equitable society.

Participants of the NHRC Training programme along with distinguished invitees

Two-days Training Programme for Police Personnel on "Police and Human Rights: Issues and Challenges" held on September 21-22, 2024

The Indian Law Institute and the National Human Rights Commission jointly organised a two-days training program for Police Personnel titled "Police and Human Rights: Issues and Challenges" at the Plenary Hall of the Indian Law Institute.

Inaugural session of the NHRC Training programme

The inaugural session, along with four technical sessions, was scheduled for the first day. The event commenced with an opening address by the Director, ILI Sr. Prof. (Dr.) V.K. Ahuja. The session was graced by the presence of Hon'ble (Mr.) Justice Ujjal Bhuyan, Judge, Supreme Court of India. Also in attendance was Shri S.C. Prusty, the Registrar of the Indian Law Institute.

Sr. Prof. (Dr.) V.K. Ahuja felicitating Hon'ble (Mr.) Justice Ujjal Bhuyan in the presence of Registrar, ILI

In his address, Sr. Prof. (Dr.) V.K. Ahuja emphasized the critical importance of sensitization and accountability mechanisms within the police force. He drew attention to the State Police Accountability Commission (SPAC) in Assam as an example of such mechanisms. To provide historical context, Prof. Ahuja referenced the famous Nuremberg and Tokyo trials following World War II, which set precedents for prosecuting military officials for human rights violations. He then delved into the challenges facing internal accountability systems in police forces. Prof. Ahuja pointed out a significant flaw in these systems: the tendency for responsibility to be shifted between senior and junior officers. He explained how senior officers often pass the blame for questionable actions to their juniors, while junior officers may attribute their actions to orders from above, creating a cycle of avoided accountability.

(From L-R) Sr. Prof. (Dr.) V.K. Ahuja, Hon'ble (Mr.) Justice Ujjal Bhuyan and Shri Shreenibas C.Prusty

Hon'ble Mr. Justice Ujjal Bhuyan, judge, Supreme Court of India in his address, emphasized the crucial role of the police as the primary representatives of the state, noting that their interactions with citizens shape the public's perception of law enforcement. He stressed that handcuffing should not be considered a standard practice. His Lordship highlighted three significant challenges currently facing the police force: custodial violence, extrajudicial killings, and the demolition of properties using bulldozers. In discussing these issues, he referenced the controversial *Hyderabad rape encounter* case. Justice Bhuyan firmly stated that as enforcers of the law, police officers are not above it and must not violate it. He strongly condemned custodial deaths, asserting that such incidents should never be a source of pride for the police force and are fundamentally wrong. To conclude his remarks, Justice Bhuyan invoked a quote from Lord Denning, beginning with, "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail-its roof may shake-the wind may blow through it-the storm may enter-the rain may enter-but the King of England cannot enter-all his force dares not cross the threshold of the ruined tenement!" This quote reinforces the importance of protecting individual rights and upholding the rule of law, regardless of a person's social or economic status. The Registrar of Indian law Institute, Shri S.C. Prusty proposed vote of thanks.

Director, Registrar, ILI along with Hon'ble (Mr.) Justice Ujjal Bhuyan

The first technical Session was presided over by Mr. Devendra Kr. Nim, Joint Secretary, NHRC on Human Rights Framework: Role of NHRC in promoting and protecting the Human rights. He began by emphasizing the historical significance of human rights, tracing their evolution from ancient India to their incorporation in the modern Indian Constitution. He provided an overview of international conventions related to human rights and highlighted the crucial role of the Supreme Court of India in developing human rights jurisprudence in the country. Mr. Nim also discussed the Human Rights Act of 1993, which established the framework for human rights protection in India.

During the interactive portion of the session, police personnel in attendance raised important practical concerns. They pointed out a gap in the social support system, noting that while there are specific institutions for groups like the disabled and beggars, there is a lack of facilities for apparently healthy individuals found wandering on the streets. This observation highlighted a challenge faced by police officers who often encounter such individuals but have no appropriate place to take them for assistance.

The session concluded with a thought-provoking question about whether police officials themselves have human rights, particularly in the context of their often-excessive working hours. This query sparked a discussion on the working conditions of law enforcement officers and the need to balance their duties with their own rights and well-being. This session effectively bridged theoretical aspects of human rights with practical challenges faced by law enforcement, encouraging a nuanced understanding of human rights implementation in policing.

The second technical session, focused on Forensic Justice, Human Rights, and the Rule of Law, was led by Prof. (Dr.) Purvi Pokhariyal, Dean of the School of Law Forensic Justice & Policy Studies at the National Forensic Sciences University (NFSU). Prof. Pokhariyal highlighted the growing importance and increasing reliance on forensic science in the criminal justice system. She emphasized a key principle: while humans may be prone to deception, scientific evidence remains unbiased and reliable. Prof. Pokhariyal underscored the universal, scientific, and certain nature of forensic evidence in ensuring fair, just, and reasonable processes that uphold the rule of law. This perspective reinforces the critical role of forensic science in modern criminal investigations and judicial proceedings.

An interesting observation made by Prof. Pokhariyal was the parallel rise in both crime rates and legislative enactments, which she described as ironic. She suggested that the issue lies not in the lack of laws, but in their implementation, pointing to a gap between the creation of legislation and its effective enforcement. Prof. Pokhariyal eloquently described forensic justice as "society's quest for fairness." She used a poetic metaphor to illustrate the importance of forensic evidence, stating that "every piece of evidence is like a whisper from the past and the forensic experts are skilled listeners." This imagery effectively conveyed the delicate and crucial nature of forensic work in uncovering the truth.

Notably, she drew attention to Section 176(3) of the Bhartiya Nagrik Suraksha Sanhita, 2023, describing it as the essence of success in criminal justice administration. This reference suggests the importance of this particular provision in enhancing the effectiveness of the criminal justice system, possibly through its emphasis on forensic evidence or investigative procedures. This session effectively highlighted the intersection of forensic science, human rights, and the rule of law, emphasizing the critical role of scientific evidence in ensuring justice and fairness in the legal system.

Participants of the NHRC Training programme

The third technical session, presided over by Mr. Sudhanshu Ranjan, a senior journalist, focused on the constitutional foundations of freedom of speech and expression in India. Mr. Ranjan provided a comprehensive overview of this fundamental right, including a comparative analysis with the United States, highlighting the similarities and differences in how these two democracies approach free speech.

A key point of Mr. Ranjan's discussion was the importance of police impartiality in the face of public opinion and media influence. He emphasized that law enforcement should base their actions on evidence and legal principles rather than being swayed by popular sentiment or media narratives. To illustrate this point, Mr. Ranjan referenced the landmark *K.M. Nanavati* case, which played a significant role in the abolition of the jury system in India. This case served as a prime example of how public opinion and media coverage can potentially interfere with the judicial process. Mr. Ranjan then explored the complex relationship between media coverage and justice, presenting a balanced view of both positive and negative impacts. He discussed several high profile cases where media involvement had significant effects on the outcomes. One such example was the *Jessica Lal murder* case, where media attention helped in ultimately convicting the accused. This case demonstrated how media scrutiny can sometimes contribute positively to the pursuit of justice by keeping public attention focused on a case and potentially uncovering new evidence or witnesses.

However, the discussion also likely touched upon cases where media involvement had potentially negative effects, such as premature judgments or the creation of public pressure that could influence the legal process. This balanced approach highlighted the nuanced role of media in the criminal justice system and the need for careful consideration of its impact.

The fourth session, chaired by Mr. Amod K. Kanth, Former DGP and Chairperson of the Delhi Commission for Protection of Child Rights (DCPCR), and General Secretary of Prayas Juvenile Aid Centre Society, focused on the critical interactions between juveniles and the police. He emphasized the role of the PRAYAS organization in advocating for child rights and supporting marginalized youth. He highlighted the distinctions between regular trial procedures and those conducted by Juvenile Justice Boards, ensuring that children are treated differently under the legal framework due to their unique vulnerabilities.

Citing data, he pointed out that although children constitute nearly 40% of India's population, they are responsible for less than 1% of total crimes, a statistic that underscores the importance of addressing juvenile issues with care and understanding. He also discussed India's adoption of all the rights outlined in the United Nations Convention on the Rights of the Child (UNCRC), reflecting the country's commitment to child protection.

Further, Mr. Kanth explored key provisions under the Juvenile Justice Act, particularly Section 46, which focuses on aftercare programs for rehabilitating juvenile's post-trial. He also outlined the broader protective framework in place for children beyond the Juvenile Justice Act, such as the Probation of Offenders Act, demonstrating the multi-faceted legal and social protections that aim to safeguard the welfare of children in India.

The valedictory session was graced by the Chief Guest, Hon'ble Mr. Justice N. Kotiswar Singh, Judge, Supreme Court of India. His Lordship appreciated the Institute for organising such collaborative training programmes on Human Rights. His Lordship also distributed certificates for the participants of the training programme.

Hon'ble (Mr.) Justice N. Kotiswar Singh presenting certificates for the participants of the training programme in the presence of Director and Registrar, ILI

SPECIAL LECTURES

Prof. Rajni Abbi Proctor, University of /Delhi delivered a special lecture on the topic "Anti Ragging" on August 16,2024.

Prof. (Dr.) H. Joe F. Silva, Attorney at Law, Vice President of Commonwealth Legal Education Association (CLEA) delivered a special lecture on the topic "Future of Legal Education" on August 21,2024

Dr. Pankaj Kumar, Department for Promotion of Industry and Internal Trade, IPR Chair Professor at National Law University and Judicial Academy, Assam delivered a special lecture on the topic "Procedural Aspects of Patents, Trademarks and Industrial Design" on September 19,2024.

RESEARCH PUBLICATIONS

Released Publications

- *Journal of the Indian Law Institute* Vol. 66(2) (April-June) 2024
- *ILI Newsletter* Vol XXVI Issue II (April-June, 2024).

Forthcoming Publications

- *ILI Newsletter* Vol XXVI Issue IV (October-December, 2024).
- Book on "Indigenous Justice Delivery System in India" Editors: Sr. Prof. (Dr.) V.K.Ahuja, Director, ILI, Prof (Dr.) Anurag Deep, Professor, ILI and Mr. Avinash Kumar Paswan, Ph.D Scholar, ILI.
- Book on "Gender Justice: Contemporary Developments" Editors: Sr. Prof. (Dr.) V.K. Ahuja, Director, ILI and Dr. Arya. A. Kumar, Asst Professor, ILI (SG).

ACADEMIC ACTIVITIES

Admission for Ph.D, LL.M. and PG Diploma Course for the Academic Session 2024-25:

The admission process for LL.M. (One Year) and Post Graduate Diploma courses started on March 15, 2024 as per the schedule approved by the Academic Council. The details regarding total numbers of admission made for the Academic Session 2024-25 is as under:

Course	No. of Students admitted
Ph.D	9
LL.M.	45
Post Graduate Diploma Courses	393
Total number of students admitted	**447**

The classes for LL.M. (One Year) were commenced from August 01, 2024 and the classes for Post Graduate Diploma Courses were commenced from August 02, 2024.

VISIT TO THE INSTITUTE

- Around 19 students from Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal, visited the library and a brief introduction was given to them about the various print as well as E-resources available in the Library on August 8, 2024.

E-LEARING COURSES

Online Certificate Courses on Cyber Law and Intellectual Property Rights Law

E Learning courses of three months duration on **"Cyber Law"** (47thbatch) and **"Intellectual Property Rights and IT in the Internet Age" (**58th batch) were completed on July 26, 2024.

LIBRARY

- Library Added 27 Books on Administrative Law, Constitutional Law, Legal Research, Gender Justice, Criminal Law, Environmental Law, Cyber Law, Labour law, Legal research and reference material.
- Library Added 248 Bare Acts of Eastern Book Company on various subjects.
- Library orientation programme was conducted on August 02, 2024 which includes the Introduction about the Library, services, resources, ILI Digital Library, and Introduction of Library Staff was given by Assistant Librarian to LL.M students, 2024-25 batch. Hands- on training session of SCC online, Hein Online, Lexis Nexis, and Manupatra was organized.

FORTHCOMING EVENTS

- ILI in collaboration with NHRC will organise a Two Days Training Programme for Prison Officials on Human Rights: Issues and Challenges on November 16-17, 2024 at ILI.
- The Indian Law Institute will organise "Constitution Day" on November 25 , 2024 as part of 75th Constitution Day Celebrations.
- Asia Legal Information Network(ALIN), Korea Legislation Research Institute and Indian Law Institute will host the 20th ALIN General Meeting and International Conference on "Good Legislative Practice: Strategies to Improve the Quality of Legislation in Asia" on November 29 - December 1, 2024 at ILI.

FACULTY NEWS

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

- *Guest of Honour* at Valedictory Session of 2nd Prof. Christ of Heyns India School Moot Court Competition, 2024 at GGSIP University, New Delhi on September 29, 2024.
- *Keynote Address* at the Inaugural Session of the National Conference on Administration of Justice in India: Aims, Challenges and Alternatives at NLU, Delhi on September 25, 2024,
- *Chief Guest* and *Keynote Speaker* at the Inaugural Session of the Short Term Course on Law of UGC-Malaviya Mission Teacher Training Centre, Sardar Patel University, Vallabh Vidyanagar on September 23, 2024.

- *Address* at the Two Days' Training Programme for Police Personnel on Police and Human Rights: Issues and Challenges, organised jointly by ILI and NHRC, New Delhi on September 21-22, 2024.
- *Chief Guest* at the Valedictory Session of Rakesh Aggarwal Memorial National Debate Competition on Artificial Intelligence and Law: Power or Peril to the World, Ideal Institute of Technology and Management, Delhi on September 21, 2024.
- *Inaugural Address* at the Orientation Programme at Geeta Institute of Law, Panipat on September 20, 2024.
- *Inaugural Address* at the Orientation Programme at Manipal University, Jaipur on September 17, 2024.
- *Keynote Address* at the Inaugural Session of the National Conference on Transcending the Binaries: Exploring Transgender Rights at DNLU, Jabalpur on September 1, 2024.
- *Inaugural Address* at the 21st Orientation Programme at Integrated School of Law, Ghaziabad on August 28, 2024.
- *Guest of Honour* at Deeksharambh Induction Programme of Joint Masters/ LL.M. in IP Law and Management at National Law University, Delhi on August 16, 2024.
- *Inaugural Address* at the National Workshop on New Three Major Criminal Acts jointly organised by ILI New Delhi, GNLU Gandhinagar, and Legal Research Foundation, at Rajkot on August 10, 2024
- *Inaugural Address* at the Orientation Programme at Delhi Metropolitan Education, NOIDA on August 7, 2024.
- *Inaugural Address* at the orientation Programme at National Law University, Shimla on August 3, 2024.
- *Address* at the Two Days' Training Programme for First Class Judicial Magistrates on Human Rights: Issues and Challenges, organised jointly by ILI and NHRC, New Delhi on July 26-27, 2024.
- *Inaugural Address* at the Faculty Development Programme on Innovative Teaching Pedagogy at Bennett University, Greater NOIDA on July 22, 2024.
- *Inaugural Address* at the Orientation Programme at National Law University, Patiala on July 20, 2024.

Lectures delivered

- *Research Ethics: Definition, Principles and Advantages* at Himachal Pradesh National Law University, Shimla on September 27, 2024.
- *Mediation in Ancient India* in Faculty Development Program, Vivekananda Institute of Professional Studies, New Delhi, on August 16, 2024.
- *Innovative Teaching Methods in Higher Education* in Faculty Development Program, Kalinga University, Raipur, Chattisgarh on July 25, 2024.
- *Administrative Skills for Good Leadership* in Leadership Development Programme in Science & Technology LEADS – 2024 at Indian National Science Academy and National Centre for Good Governance, New Delhi on July 10, 2024.
- *Innovative Teaching Methods in Higher Education* in Faculty Development Program, UPES, Dehradun on July 8, 2024,

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

- Took a session on "Human Rights of Women and Children at the Two Days' Training Programme for Police Personnel on Police and Human Rights: Issues and Challenges, organised jointly by ILI and NHRC, New Delhi on September 22, 2024.
- Took a session on "Human Rights of Vulnerable groups: National and International Perspectives" at the Two Days' Training Programme for First Class Judicial Magistrates on Human Rights: Issues and Challenges, organised jointly by ILI and NHRC, New Delhi on July 27, 2024.

Maintenance obligations merely by pronouncement of Talaq

While considering the instant petition wherein the Court had to consider whether maintenance proceedings under S. 488 of CrPC can be quashed on the ground of husband's pleading that he had already divorced his wife; the court held that in order to enable a husband to escape the obligations under marriage contract including the one related to maintenance, the husband has to compulsorily plead and prove the ingredients of Talaq. Mere pronouncement of "talaq" three times or execution of divorce deed will not suffice. It was held that the Court in all such cases would give a hard look to the case projected by the husband and insist on strict proof. It is only after the husband has pleaded and proved the ingredients that such talaq would be operative and the marriage between the parties would stand dissolved thereby qualifying the husband to escape his obligations under marriage contract. Background and Contentions: The respondent had filed an application under S. 488 of CrPC for maintenance before the Judicial Magistrate in 2009 which was dismissed by the Magistrate in February 2018 stating that relationship between the parties as spouse did not exist. Aggrieved with the afore-stated order, the respondent filed a revision petition. Consequently, the Court set aside the Magistrate's order of dismissal and directed the petitioner to pay maintenance of Rs 3000 per month to the respondent. Aggrieved with the Revisional Court's order, the petitioner filed the instant petition. The petitioner contended that Revisional Court did not take note of the fact that the Magistrate passed the order after full trial and discussion of case projected by the parties and evidence adduced by them and after it was found that respondent has already been divorced. It was also stated that reconciliation efforts and reasonable cause for divorce was appropriately proved. The Petitioner also placed a copy of Talaknama thereof revealing that petitioner to put an end to the wedlock, made three pronouncements of Talaq, thereby declaring that he has divorced the respondent and relieved her out of the wedlock. According to petitioner, the Talaknama was conveyed to the respondent. Court's Assessment: Perusing the issue and the legal trajectory of the case, the Court took relied on *Mohammad Naseem Bhat* v. *Bilquees Akhter 1*, wherein a Bench of J&K and Ladakh High Court had lucidly dealt with the issues that have cropped up in the instant case. The Court pointed out that *Mohammad Naseem Bhat* (supra) clearly stated that for making divorce (Talaq) valid, it is not enough that it is pronounced in presence of two witnesses. The witnesses must be endued with justice as the purpose is to ensure that the witnesses, prompted by their sense of justice, may request and persuade the spouses on the verge of separation, to calm down, resolve their disputes and lead a peaceful marital life. The Court further stated that for a husband to escape the obligations of marriage contract including maintenance, he must compulsorily plead and prove the following- Effort was made by the representatives of husband and wife to intervene settle disputes and disagreements between the parties and that such effort for reasons not attributable to the husband did not bear any fruit He had a valid reason and genuine cause to pronounce divorce on his wife Talaq was pronounced in presence of two witnesses endued with justice Talaq was pronounced during the period of tuhr (between two menstrual cycles) without indulging in sexual intercourse with the divorcee during said tuhr. "It is only after the husband pleads and proves all the above ingredients that divorce-Talaak, would operate and marriage between the parties would stand dissolved so as to enable husband to escape obligations under the marriage contract". The Court pointed out that in the instant case petitioner placed a copy of Talaqnama which reveals that petitioner puts an end to the wedlock by three pronouncements of "Talaq". The Court also took notice of statements by 2 persons who had gone to the house of respondent intimating that the petitioner wanted to divorce her, but she did not accept the said proposal and the conversation was not successful. It was also found that efforts for reconciliation were not coming to any fruition and there had been no sufficient evidence to establish reconciliation from the side of petitioner. The Court thus found that the Revisional Court had rightly considered the rival contentions of the parties and come up with impugned judgement, setting-aside the Magistrate's order on February 2018 and directing petitioner to pay an amount of Rs.3000 per month to respondent as maintenance.

[*X* v. *Y*, 2024 SCC Online J&K 512, decided on 04-07-2024]

Whether Father Be Charged for Kidnapping His Own minor Child from mother?

While hearing the instant petition seeking to quash the FIR registered against the petitioner by Khadebazar police station, Belagavi, under Section 3631, Penal Code, 1860 for allegedly taking away his 2-year-old minor son from the house of his estranged wife, thereby committing the offences of kidnapping; the Bench, perusing the relevant provisions under Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956, pointed out that, a father is a natural guardian of a minor in the absence of any order otherwise passed by a Court of competent jurisdiction. The Court further stated that the father of a child will not come within the scope of S. 3612 of IPC, even if he takes away the child from the custody of the mother. The petitioner (father) attended the 2nd birthday of his child. On 20-08-2023, he took the child away from the house and informed his wife that he has arranged a birthday programme for his child, and he took his son so that he can seek blessings from his paternal grandparents and relatives. Hence, the mother of child being the de-facto complainant, booked the father for kidnapping punishable under Section 363 of IPC. The counsel for the petitioner contended that a father being a natural guardian of a minor, cannot be booked for kidnapping. Taking note of the facts of the instant case, the Court had to consider whether a father can be booked for the offence of kidnapping for taking away his own minor child from the custody of the mother and whether it would attract the offence under Section 363 IPC. Perusing S. 361 of IPC, the Court noted that Explanation added to S. 361 includes the words "lawful guardian" which includes any person lawfully entrusted with the care or custody of such minor or other person. However, to complete the offence, the person who takes away the minor, must fall within proposition of term 'lawful guardian'. Since the parties were governed by Hindu law, the Court took note of Section 4(2) of The Guardians and Wards Act, 1890 which defines a 'guardian' as a person having the care of the person of a minor or of his property, or of both is person and property. Furthermore, the Court took note of S. 6 of Hindu Minority and Guardianship Act, 1956, which contemplates that for a Hindu minor, the father is a natural guardian and after him, the mother. Therefore, the Court had no doubts as to the petitioner being a natural guardian to his 2-year-old son in absence of any order otherwise passed by a competent Court. It was further pointed out that the instant matter was not a case where the mother was lawfully entrusted with the care or custody of the minor by the order of competent Court. Therefore, the petitioner was found to be the natural guardian to the child. The Court stated that in the absence of any prohibition of the order of the competent Court, the petitioner cannot be booked for taking away his own minor child from the custody of the mother. Pointing out that the father of a child will not come within the ambit of S. 361, IPC, the Court said that the mother may be lawful guardian as against any other person except the father or any other person who has been appointed as a legal guardian by virtue of an order of the competent Court. So long as there is no divestment of rights of guardianship of the father, he cannot be held guilty of the offence under Section 361 IPC. The Court therefore concluded that no prima facie case was made out for the offence under Section 363 IPC against the petitioner and continuation of such prosecution amounts to abuse of process of Court. Therefore, the impugned FIR was quashed.

[*Kushagr*a v. *State of Karnataka*, 2024 SCC OnLine Kar 68, decided on 04-07-2024]

Only Parliament Can Amend SC List

In a batch of civil appeals and special leave petitions, the seven Judge Constitution Bench by a majority of 6:1 held that sub-classification of Scheduled Castes among reserved categories is permissible for granting separate quotas for more backwards within the SC categories and overruled the *E.V. Chinnaiah* v. *State of A.P.,* (2005) 1 SCC 394. However, Justice Bela M. Trivedi being the lone dissenter held that such sub-classifications within the SC/STs are impermissible, holding *EV Chinnaiah* to be a good law. It was held that when the law was settled by the Constitution Bench in *E.V. Chinnaiah* after considering all the previous judgments including *Indra Sawhney* v. *Union of India*, (1992) Supp (3) SCC 217 and after investing substantial judicial time and resources, the same should not have been doubted and referred to the

larger bench by the Three-Judge Bench in *State of Punjab* v. *Davinder Singh* (2020) 8 SCC 65 and that too without assigning any reason much less cogent reason for their disagreement disregarding the well settled doctrines of Precedents and Stare decisis. Further, it was held by Justice Trivedi that the power conferred upon the Supreme Court under Article 142 cannot be used to supplant the substantive law applicable to the case under consideration. Even with the width of its amplitude, Article 142 cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with the subject, and thereby to achieve something indirectly which cannot be achieved directly. The action of the State, though well intentioned and affirmative in nature, if violates the specific provision of the Constitution, cannot be validated by the Supreme Court in exercise of its jurisdiction under Article 142. The affirmative action and legal frameworks, though both do aim at more equitable society, they must navigate complex legal principles to ensure fairness and constitutionality. Analysis- Justice Bela M. Trivedi 1. Whether the law laid down by the five-judge Bench in *E.V. Chinnaiah* (supra) could have been referred to the larger Bench by the Bench of three judges, without recording any cogent reasons for disagreement with *E.V. Chinnaiah* more particularly when the said decision held the field for a long period of fifteen years? Justice Trivedi noted that the Three-Judge Bench *Davinder Singh* (supra) had referred the matters to the larger Bench without assigning any reason much less cogent reason as to why it could not agree with the decision in *E.V. Chinnaiah* delivered by the Constitution Bench. Justice Trivedi said that the law which was settled by the Constitution Bench and was prevalent for 15 years was sought to be doubted and unsettled by a Three-Judge Bench by passing a very cryptic and perfunctory order not supported by any reason. Referring to *Pradip Chandra Parija* v. *Pramod Chandra Patnaik*, (2002) 1 SCC 1, it was noted that while examining the propriety of the Bench of two Judges doubting the correctness of a decision of a Bench of three Judges and directly referring the matter to the Bench of five Judges, had observed that judicial discipline and propriety demands that a Bench of two Judges should follow a decision of a Bench of three Judges, but if a Bench of two Judges concludes that an earlier judgment of three Judges is so very incorrect that in no circumstances, can it be followed, the proper course for it to adopt would be to refer the matter before it to a Bench of three Judges setting out, the reasons why it could not agree with the earlier judgment. Justice Trivedi stated that "the doctrines of Precedents and *Stare decisis* are the core values of our legal system. Time and again it has been emphasized that when a decision is rendered by this Court, it acquires a reliance interest and the society organizes itself based on such legal order. When substantial judicial time and resources are spent on the References by the Constitution Benches, the same should not be further referred to the larger Bench by a smaller Bench, in a casual or cavalier manner, and without recording the reasons for disagreement." Referring to a catena of judgments on the question, Justice Trivedi said that it is clear that the doctrines of binding Precedents and Stare decisis, as also the judicial discipline and propriety, warrant that the decision of larger Bench should be followed by the smaller Bench. If the smaller bench had any doubt or disagreement with a decision of the larger bench, it could refer the same for reconsideration to the larger bench, however, after setting out the reasons and justification as to why it could not agree or follow the decision of earlier larger Bench, such disagreement also has to be based on some justifiable reasons, like where the earlier decision of larger Bench is found to be manifestly wrong or where the contextual values giving birth to the earlier view had altered substantially etc. Hence, Justice Trivedi held that in the matter at hand, the reference was made by Three-Judge Bench to the larger Bench for revalidation of the earlier decision of Constitution Bench in *E.V. Chinnaiah* without assigning any reason and in a very casual and cavalier manner, and that too after fifteen years of its attaining finality. Such reference could not and should not have been countenanced by the subsequent Five-Judge Bench for reference to the Seven-Judge Bench. Justice Trivedi opined that when a law was settled by the previous Constitution Bench in *E.V. Chinnaiah* after considering all the previous judgments including *Indra Sawhney* and after investing substantial judicial time and resources, and when the same had held the field for a substantially long period of fifteen years, the very reference by the Three-Judge Bench to the larger bench for

reconsideration of the decision in *E.V. Chinnaiah*, that too without assigning any reason was inappropriate and not in consonance with the well settled doctrines of Precedents and *Stare decisis*. 2. Whether the States should be permitted to tinker with or vary the presidential list specifying the "scheduled castes," as notified under Article 341(1) by sub-classifying or sub-dividing or re-grouping the castes under the guise of providing reservation for the weaker of the weakest? Object, Purpose and Limits of Article 341 On perusal of the text of Article 341 and Constitutional Assembly Debate around the same, Justice Trivedi said that it is clearly discernible that power of the President is limited to specify the castes or the tribes which shall, for the purposes of the Constitution, be deemed to be SCs or STs in relation to a State or a Union Territory as the case may be. Once the notification is issued under Article 341(1), it is only the Parliament which can by law, include in or exclude from the list of Scheduled Castes specified in the notification, any caste, race or tribe or part of or group within any caste, race or tribe, and the notification issued under Clause (1) could not be varied by any subsequent notification. Further, she said that the object of inserting Article 341 was to eliminate the necessity of burdening the Constitution with long list of Scheduled Castes and Scheduled Tribes. It was proposed that the President, in consultation with the Governor or Ruler of a State should have power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be SC/ STs for the purposes of the privileges which have been defined for them in the Constitution. The only limitation put was that once a notification has been issued by the President, any elimination from or any addition in the list must be made by the Parliament and not by the President. Hence, Justice Trivedi held that the Presidential List as notified under Article 341 assumes finality on the publication of the notification, and that the castes, races or tribes or parts of or groups within castes, races or tribes specified in the notification are, for the purposes of the Constitution, deemed to be the "SCs" in relation to that State or Union Territory as the case may be. It is only the Parliament by law which can include in or exclude from the list of SCs specified in the notification notified under Clause (1), any caste, race or tribe or part of or group within any caste, race or tribe. Such notification notified under Clause (1) cannot be varied even by the President by issuing any subsequent notification. Special Status of "Scheduled Castes" Justice Trivedi after referring to N.M. Thomas, said that there was no doubt that "SCs" are not a caste within the ordinary meaning of caste. It is by virtue of the notification of the President under Article 341 that the "SCs" come into being. Though, the members of the SCs are drawn from different castes, races or tribes, they attain a new Special Status by virtue of the Presidential notification. Further, she said that Article 341 clarifies that "SCs" is an amalgam of castes, races, groups, tribes, communities or parts thereof, and is a homogenous group, and that once notified by Presidential List, they acquire special status of "SCs" which cannot be varied except by the Parliament by law. State's competence to sub-classify or sub-divide or re-group the castes specified as "scheduled castes" in the presidential list for providing the reservation under Articles 15 and 16 Justice Trivedi said that in absence of any executive or legislative powers, the States are not competent to divide/ sub-divide/ sub-classify/ regroup the castes, races or tribes from amongst the "SCs" nor could they give any preferential treatment by reserving a quota for a particular caste, race, tribe out of the quota reserved for the entire SCs. However, she added that such sub-classification or sub division of castes from amongst the SCs by the State for the purpose of reservation per se may not amount to inclusion or exclusion of any caste from the Presidential List of Scheduled Castes, it would certainly amount to tinkering with or varying the notification notified under Clause (1), which is clearly prohibited under Clause (2). When all castes, races or tribes enumerated in the Presidential List are deemed to be the "SCs" for the purposes of the Constitution, any preference given to or any quota reserved for a particular caste or race or tribe out of the quota reserved for the entire class of the SCs for the government jobs by the State, would certainly deprive the other members of the SC from having the benefit of reservation to the extent the quota is reserved for such particular caste or castes. Justice Trivedi held that any such action on the part of the State would not only tantamount to discrimination in reverse and violation of Article 14 but would also tantamount to tinkering with Article 341 of the Constitution.

Further, she elaborated that if any State makes special provision of reservation by fixing quota for the entire SCs for admission to educational institutions or for the appointments on the posts in the public services as permitted under Article 15 and 16, such quota of reservation should be made available to all the members of the SCs specified in the Presidential List, as all the members of the castes, races and tribes specified in such List are deemed to be SCs for the purposes of the Constitution, and the State has no power to further sub-classify or sub-divide them for giving preferential treatment to a particular caste from the said list. She stated that under the guise of providing reservation or under the pretext of taking affirmative action for the weaker of the weakest sections of the society, the State cannot vary the Presidential List and tinker with Article 341. Such power if exercised by the State in absence of any executive or legislative power would be colourable exercise of powers. 3. Whether *E.V. Chinnaiah* is required to be revisited in view of certain observations made in Indra Sawhney concerning "other backward classes"? Justice Trivedi opined that *Indra Sawhney* had not dealt with the issue of sub-classification of the Scheduled Castes much less had dealt with the State's power to sub-classify or sub-divide or re-group the Castes specified as SCs under Article 341 of the Constitution. Further, she opined that it sought to define "backward class" in terms of social backwardness, while considering the ambit of "backward class" for the purpose of Article 16(4), but did not deal with the issue qua the SC/STs particularly in the light of Article 341 and 342; rather it categorically kept them outside the purview of consideration. Further, she said that *Jarnail Singh* v. *Lachhmi Narain Gupta*, (2018) 10 SCC 396 opinion as to non-agreement with *Ashoka Kumar Thakur* v. *Union of India,* (2008) 6 SCC 1 that the creamy layer principle is merely a principle of identification and not a principle of equality and agreed with that part of decision in *M. Nagaraj* v. *Union of India* (2006) 8 SCC 212 which held that the creamy layer test is applicable to the SC/STs in exercise of application of the basic structure test, and that "it would clearly be contrary to *Indra Sawhney* which had held that the requirement of social and educational backwardness cannot be applied to SC/ STs who inevitably fall within the expression "Backward Class of Citizens" and therefore the decision the judgment in Nagaraj would have to be declared to be bad on this ground", were self-contradictory. Hence, upon noting that the issue of sub-classification of SCs in context of Article 341 was neither raised nor argued, in *Indra Sawhney* (supra) and *Jarnail Singh* (supra), she held that it would be a fallacy to hold that the law laid down in *E.V. Chinnaiah* (supra) was not in consonance with *Indra Sawhney* (supra) and *Jarnail Singh* (supra).

[*State of Punjab* v. *Davinder Singh*, 2024 SCC Online SC 1860, Decided on: 01-08-2024]

States' Tax on Mining Retroactive from 2005

In a matter concerning the question of applicability of the judgment dated 25-07-2024 in *Mineral Area Development Authority* v. *SAIL,* 2024 SCC Online SC 1796 ('MADA') , the 8 judges, who wrote the majority view in the 9- Judge Constitution Bench verdict, directed that while the States may levy or renew demands of tax, if any, pertaining to Entries 49 and 50 of List II of the Seventh Schedule in terms of the law laid down in the decision in *MADA* (supra), the demand of tax shall not operate on transactions made prior to 1-04-2005. Earlier, on 25-07-2024, the bench of Dr. DY Chandrachud, CJI, Hrishikesh Roy, Abhay S Oka, BV Nagarathna, JB Pardiwala, Manoj Misra, Ujjal Bhuyan, Satish Chandra Sharma and Augustine George Masih JJ., in a majority of 8:1, held that royalty paid by mining operators to the Central government is not a tax and that States have the power to levy cesses on mining and mineral-use activities. Justice BV Nagarathna gave a dissenting opinion. In *India Cement Ltd.* v. *State of T.N.,* (1990) 1 SCC 12, a 7-Judge Bench held that royalty is tax. Resultantly, it was held that the State legislatures have no legislative competence to impose cess on royalty under Entries 23 and 50 of List II. Fifteen years later, a Constitution Bench in *State of W.B.* v. *Kesoram Industries Ltd.*, (2004) 10 SCC 201 held that royalty is not a tax. It was further held that the power to levy tax on mineral rights vests with the State legislatures and is subject to any limitations laid down by Parliament by law relating to mineral development. Given this divergence, reference was made to a larger Bench. *MADA* (supra) has laid down the principles for interpreting Entry 54 of List I and Entries 23 and 50 of List II. In the process, Supreme Court overruled *India Cement* (supra). After the judgment in *MADA* (supra),

the Union made a demand that the judgment should be given only prospective effect. Following that, the 9-judge bench held a hearing on this aspect on 31-07-2024 and reserved its verdict on the applicability of the 25-07-2024 judgment. Analysis and Decision: The Court reiterated that the doctrine of prospective overruling is applied when a Constitutional Court overrules a well-established precedent by declaring a new rule but limits its application to future situations. The Court while rejecting the argument that its judgment dated 25-07-2024 upholding the powers of the States to tax mineral rights should be given prospective effect only, directed that while the States may levy or renew demands of tax, if any, pertaining to Entries 49 and 50 of List II of the Seventh Schedule in terms of the law laid down in the decision in MADA (supra) the demand of tax shall not operate on transactions made prior to 1-04-2005. The Court also said the time for payment of demand for tax shall be staggered in installments over 12 years from 01-04-2026. The Court further stated that there should be no levy of interest or penalty for the demand made for the period before 25-07-2024

[*Mineral Area Development Authority* v. *Steel Authority of India*, Civil Appeal Nos. 4056-4064 of 1999, decided on 14-08-2024]

Parties in Father-Son Property Dispute Turned Criminal Case

The instant appeal challenged the decision of Bombay High Court wherein it had held that a *prima facie* case of cruelty was made out under Section 498-A, Penal Code, 1860 against the appellants and had refused to quash the FIR and charge sheet against them. The Division Bench noted in the instant case the provocation for the Complaint/FIR was essentially the property dispute between father and son and the case is yet another instance of abuse of criminal process and it would not be fair to subject the appellants to the entire criminal law process. Background: Respondent 2 (complainant) filed a complaint making multiple allegations against the appellants including demand for dowry, cruelty and threat to herself, husband and her family. An FIR was registered under Sections 498A, 323, 504, 506 read with Section 34 IPC and subsequently a charge sheet came to be filed on 30-07-2013. The appellants approached the High Court under Section 482, CrPC, however, the High Court dismissed the application finding that a prima facie case of cruelty was made out against the appellants. Counsels for the appellants argued that the allegations in the FIR are general and omnibus in nature and lack material particulars bereft of any details, rendering the complaint vague and obscure. It was pointed out that there is an existing civil dispute between the father-in-law (Appellant 3) and his son (Respondent 2's husband) and as such this FIR is an abuse of the process of criminal law. Further, Section 161, CrPC statements of witnesses are identical and are based on information from Respondent no. 2, which are vague and do not have material particulars about the date and time of the incident. Per contra, the respondents supported the impugned decision of the High Court. Court's Assessment: Perusing the complaint, the allegations and the impugned order, the Court noted that after identifying certain allegations in the complaint/FIR, the High Court concluded that there are specific allegations against each appellant. After referring to certain precedents on the scope and ambit of the power under Section 482 CrPC, the High Court again concluded that exercise of power under Section 482 for quashing an FIR/Complaint is not warranted in the facts and circumstances of the case. Beyond holding that there were specific allegations, the High Court made no other analysis. The Court reiterated that when its jurisdiction under Section 482 CrPC or Article 226 of the Constitution is invoked on the ground that the Complaint/FIR is frivolous, it is the duty of a High Court to examine the allegations with care and caution. Examining the complaint, the Court made a unique observation that Respondent 2 had chosen not to involve her husband in the criminal proceedings, particularly when all the allegations relate to demand of dowry. “It appears that the complainant and her husband have distributed amongst themselves the institution of civil and criminal proceedings against the appellants. While the husband institutes the civil suit, his wife, the complainant has chosen to initiate criminal proceedings”. The Court further noted that there was no reference to the civil proceedings in the criminal one and vice-versa. It was noted that the civil suit instituted by Respondent 2's husband concerns seeking a declaration that the property is ancestral in nature and that the father has no right to alienate or

dispose of the property. In that suit the husband also sought a declaration that he is entitled to use the trademark of the family business. It was further noted that while the husband chose to institute the civil suit on 27-02-2013, Respondent 2 filed the criminal complaint on 1-03-2013 alleging demand of dowry and threat by appellants that she and her husband will be denied a share in the property. The Court pointed out that the rights and claims in the civil suit are the very basis and provocation for filing criminal cases against the appellants. It was observed that the Complaint/FIR was replete with just one theme i.e. that the appellants are threatening the respondents that they will deny them share in the property. The Complaint/FIR was intended only to further their interest in the civil dispute. Examining the specific allegations levelled by Respondent 2, the Court noted that they were general, vague, and omnibus lacking in basic details. "The essence of the complaint is in the alleged threat to deprive the husband any share in the property with respect to which the husband has already filed the suit for declaration". Perusing the details, the Court pointed out that one important event giving a clear impression that the criminal proceedings were instituted with a mala fide intention, only to harass the appellants, was the filing of the Domestic Violence case. These allegations were examined in detail, subjected to strict scrutiny, and were rejected as being false and untenable. Furthermore, the Court observed the charge sheet simply repeated the complaint's words and the investigation did not yield anything new. Hence, with the afore-stated assessment, the Court opined that none of the ingredients of Sections 498A, 323, 504, 506 read with Section 34 IPC were made out against the appellants. Therefore, the Court set aside the impugned order of the High Court and the FIR and the charge sheet as well.

[*Kailashben Mahendrabhai Patel* V. *State of Maharashtra* 2024 SCC OnLine SC 2621, Decided on 25-09-2024]

Interim Relief Shouldn't Be Granted When High Court Remedy Exist.

In a writ petition filed by Indiabulls Housing Finance Limited ('Indiabulls') praying to lay down appropriate guidelines to be followed by all including the police officials and Judicial Magistrate to desist from initiating or directing initiation of criminal proceedings against the financial institutions, its assignees, management, officers, employees, lawful transferees and purchasers of secured assets at the behest of defaulting borrowers, so as to protect their fundamental rights inter alia guaranteed under Article 14, 19 and 21 of the Constitution of India, 1950, and also prayed for quashing the FIRs, the division bench said that when a party is relegated to the High Court to pursue its remedies, it would not be proper, in the normal course, to bind the said High Court with directions in relation to the proceedings to be impugned before such Court. Thus, when this Court refuses to entertain a matter and asks the party to approach the High Court, it would be improper to grant interim relief to such party. The Court also noted that such directions can be misconstrued by the High Courts to be observations by this Court on the merits of the matter, thereby influencing the adjudication of the case. The Court reiterated that ordinarily, this Court would be averse and opposed to entertaining miscellaneous applications in disposed of cases. However, it clarified that when the individual facts of a particular case so warrant, there can be no bar to entertaining a clarification/modification petition in a disposed of case. This would necessarily depend on the facts and circumstances of that individual case. Further, the Court noted that Rule 6 of Order LV of the Supreme Court Rules, 2013, states that nothing in the said Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Therefore, the Court concluded that if any such abuse of process is noticed after the disposal of the case or if a modification is found essential to meet the ends of justice, this Court would be justified in entertaining an application in a disposed of case and exercising such power. The Court noted that in the case on hand, the Enforcement Directorate was impleaded as a party respondent in the writ petition on 04-07-2023, by way of the final order disposing of the case. The final order was passed without putting it on notice and affording it an opportunity of hearing. Therefore, the Court concluded that the directions of this Court in the said order cannot be sustained. Moreover, the Court noted that the final order only records that the interlocutory applications and to bring on record additional facts

were allowed. Significantly, the application seeking permission to file additional documents/facts/ annexure, was alone reflected in the Record of Proceedings of that day in relation to the writ petition. In effect, the First Information Report ('FIR') and Enforcement Case Information Report ('ECIR') were not even made the subject matter of challenge in the writ petition. Further, the Court said that though this Court relegated the writ petitioners to the jurisdictional High Courts for challenging the FIRs registered against them, certain errors crept in by oversight while doing so. Concerning FIR, the Court noted that it was directed that no coercive steps should be taken in relation thereto against the financial institution and its people till final disposal of such a petition by the High Court. Thus, the Court said that once, no coercive steps were permitted in connection with the said FIR till the final disposal of the petition which was to be filed, the question of permitting the petitioners to again seek stay of proceedings in relation to the said FIR before the High Court was unnecessary. The Court emphasised that when a party is relegated to the High Court to pursue its remedies, it would not be proper, in the normal course, to bind the said High Court with directions in relation to the proceedings to be impugned before such Court. Ordinarily, this Court would leave all issues open for the party so relegated to raise and pursue before the High Court. The Court took note of *Neeharika Infrastructure Pvt. Ltd*. v. *State of Maharashtra,* 2021 SCC Online SC 315 wherein, a 3-Judge Bench laid down guidelines for exercise of power under Section 482 CrPC, cautioning that criminal proceedings ought not to be scuttled and Courts, in the usual course, should not thwart investigation into cognizable offences. The Court also noted that such directions can be misconstrued by the High Courts to be observations by this Court on the merits of the matter, thereby influencing the adjudication of the case. Thus, the Court opined that the order requires to be modified. The Court recalled the said order insofar as it pertains to ECIR. The Court permitted that the Allahabad High Court to consider the challenge thereto in the Criminal Miscellaneous Writ Petition on merits and in accordance with law, uninfluenced by any observations made in the order dated 04-07-2023. Further, the Court directed that the order dated 04-07-2023 will stand modified by substituting the words 'till final disposal of the respective petitions…' in paragraph 8 thereof with the words 'till the filing of the respective petitions'. Thus, the High Courts in which proceedings have been instituted against the FIRs would be at liberty to entertain applications for interim relief in relation thereto and consider such applications and also the main cases on their own merits and in accordance with law, uninfluenced by any observations made in the order dated 04-07-2023. The Court directed the Registry to upload and attach a corrigendum to the order dated 04-07-2023 passed in Writ Petition, stating that it stands duly modified by and to the extent indicated in this order.

[*Gagan Banga* V. *State of West Bengal*, 2024 SCC Online SC 2608, Decided on 23-09-2024.]

CASE COMMENTS

Warner bros. Entertainment inc. & ors v. *Moviesmod.bet*

CS (COMM) 738/2024
Decided on August 30, 2024

The Plaintiffs in this case include prominent global entertainment companies. They are namely, Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Netflix US, LLC, SBS Co. Ltd., SLL Joongang Co. Ltd., and CJ ENM Co. Ltd. These companies are engaged in the business of the creation, production, and distribution of motion pictures/ cinematograph films. Their works comprise sound recordings accompanied by visuals and qualify as cinematograph films under Section 2(f) of the Copyright Act, 1957. The works are entitled to protection by virtue of Section 13(1) read with Sections 13(2) and (5) of the Act. As a result, the Plaintiffs claim exclusive rights under Section 14(d) and Section 17 of the Act.

The defendants no. 1-45 are hosting and operating the respective domain names/websites often known as “infringing domains/ websites”. These infringing domains/websites host and disseminate contents including plaintiffs' copyrighted works without a license or consent.

Defendants are making more than twenty of Plaintiffs' works available to the public without their

permission. Furthermore, legal notices were sent to the defendants' infringing domains/websites, requesting the removal of infringing information. However, none of them has reacted to the aforementioned legal notices.

Further, the plaintiff's grievance is against defendant no.46 to 54 who are various Internet Service Providers "ISPs" that provide internet connectivity in India. They have control over internet access and can prevent access to infringing websites. Defendant no.55 is the Department of Telecommunications, while defendant no.56 is the Ministry of Electronics and Information Technology, both of which are part of the Government of India and oversee the country's internet environment. They have been called upon to ensure that the ISPs will follow any directives issued by this Court. Defendant no.57 has been represented as "Ashok Kumar," a generic name that encompasses all persons who may be identified in the future to be exploiting the plaintiff's content.

In this case, the Plaintiffs are requesting a temporary injunction restricting the defendants from hosting, streaming, copying, distributing, publicizing, or facilitating the same, on their websites, through the internet, or in any other way, either it is cinematograph work, content, program, that show to which the plaintiffs have a copyright. They are also requesting to block access to the websites of the defendants Nos.1-45 identified by the plaintiffs in the instant suit. The plaintiffs also argued that the defendants are blatantly facilitating copyright infringement through their websites. They contended that it was shown by the large volume of unauthorized content, the systematic and intentional nature of the infringement, and the frequent updates to the sites. Further, Plaintiff argued that the defendants are concealing their registration and contact details that make it nearly impossible to identify or contact them to stop the infringing activities.

The court observed that technology can be beneficial, however, it can quickly become harmful if misused. The court said that in this case, the defendants' unauthorized use of the plaintiffs' content on multiple websites, without any rights or permission, is clearly a bane, and requires a remedial order. The court further said that mushrooming of the defendants like the present types and that too by blatant and utter slavish activities with ulterior purpose cannot be allowed. In such cases, the court is called upon to grant an *ex parte* ad interim injunction against them, both for the present and any potential future violations.

In the present case, the court was in view that Plaintiffs face uncertainty despite having court orders in their favor. The defendants, though currently few in number have the potential to grow into a significant problem. The court relied on *Applause Entertainment Private Limited* v. *Meta Platforms Inc. and others*, wherein the Bombay High Court, while dealing with clips of the audio-visual contents of the web series, copyright whereof were held by the plaintiff therein, has granted an ex parte ad interim injunction of the same nature. Further in the case *Universal City Studios LLC and Ors.* v. *Dotmovies baby and Ors.,* the court recognized the evolving nature of copyright infringement by granting an ex parte ad interim injunction. Thus, the court was in view that defendants along with similar parties must be stopped promptly and required to fully comply with any court orders, both now and in the future.

Therefore, the court ordered in favour of plaintiffs, and ruled that the defendants' inaction on legal notices underscores the persistent nature of these rogue websites, which re-emerge as mirror or alphanumeric sites even after being blocked. They provide directories and hyperlinks to copyrighted content on external servers, enabling users to stream or download the material and facilitating copyright infringement. The court was in view that plaintiffs established a prima facie case, demonstrating a balance of convenience that warrants an ad interim ex-parte injunction, as well as a dynamic injunction against the defendants. Because without such injunction, the plaintiffs are likely to suffer irreparable harm that cannot be compensated financially. Therefore, in this case, the court has restrained Defendant Nos. 1 to 45, including their owners and affiliates, from publicly communicating the plaintiffs' copyrighted works in any manner. Further, the court ordered to block Defendant Nos. 46 to 54 (ISPs) from accessing to the infringing websites listed in Annexure A within 48 hours of receiving this order. Additionally, the court said that Defendant Nos. 55 and 56 (DoT and MeitY) must ensure ISPs comply with these directions through appropriate

communications. Therefore, the court granted a dynamic injunction to protect the plaintiffs' copyrighted works from infringement prevented any irreparable loss.

V.K. Ahuja

Mulakala Malleshwara Rao* v. *State of Telangana

2024 SCC Online SC 2285
Decided on August 29, 2024

In this significant judgment, the Supreme Court reinforced the principle that *stridhan* property given to a woman during her marriage belongs exclusively to her, and no third party, including her father, has the right to pursue its recovery without her explicit authorization. This ruling arose from an appeal challenging the Telangana High Court's refusal to quash criminal proceedings initiated against the appellants, who were the former in-laws of the complainant's daughter. The Court, quashing the proceedings, highlighted the established legal position that *stridhan* remains the sole property of the woman, emphasizing that no one else can assert authority over it unless expressly authorized by her.

The case involved a complaint lodged by the father of the woman (the complainant), alleging that her former in-laws had dishonestly misappropriated gold ornaments and other articles given as *stridhan* during her marriage in 1999. The marriage was dissolved by mutual consent in 2016 through a separation agreement, which comprehensively settled all financial and material claims. The woman later remarried in 2018. Despite these developments, the complainant lodged an FIR in 2021 under Section 406 of the Indian Penal Code (IPC) and Section 6 of the Dowry Prohibition Act, accusing the appellants of failing to return the *stridhan*. The appellants denied the allegations, contending that the FIR was baseless and aimed at harassment.

The Supreme Court carefully examined the timeline of events and noted that the complainant initiated the proceedings nearly 20 years after the marriage, five years after the divorce, and three years after his daughter's remarriage. Importantly, the daughter had not authorized her father to act on her behalf in recovering the *stridhan*. The Court observed that under Section 5 of the Power of Attorney Act, 1882, a woman may delegate such authority if she wishes, but no such delegation existed in this case. The absence of authorization rendered the complainant's locus standi invalid.

The Court also emphasized the lack of evidence to substantiate the allegations. No material was presented to demonstrate that the appellants had misappropriated or converted the *stridhan* for their use. Furthermore, the Court noted that the complainant's FIR was silent on the reasons for the significant delay in filing, a critical factor given the settled nature of the marital disputes through the separation agreement at the time of divorce. The proceedings appeared to be motivated by vindictiveness rather than genuine grievance.

Reiterating its consistent jurisprudence on the issue, the Court cited its earlier rulings, including *Rashmi Kumar v. Mahesh Kumar Bhada* (1997) and *Mala Kar v. State of Uttarakhand* (2024), to affirm that *stridhan* is the absolute property of the woman. The Court clarified that this ownership right is unequivocal and remains unaffected by marital dissolution or other familial disputes. It further observed that the purpose of criminal proceedings is to redress genuine wrongs, not to serve as instruments of harassment or vendetta.

The Supreme Court quashed the FIR and set aside the Telangana High Court's refusal to exercise its inherent powers under Section 482 CrPC. It held that the proceedings were not only unsustainable in law but also reflected a misuse of criminal law provisions. This judgment underscores the exclusive ownership of *stridhan* by women and serves as a reminder of the importance of adhering to principles of justice and equity while addressing familial disputes.

Arya A.Kumar

Edited, printed and published by Sr. Prof. (Dr.) V.K. Ahuja, Director, ILI on behalf of the Indian Law Institute, Bhagwan Dass Road, New Delhi.
Printed at M/s Sudhir Printers, New Delhi. Phone No.9810334493
Reg.No. DELENG / 200/2234 dated 26th October 2000.