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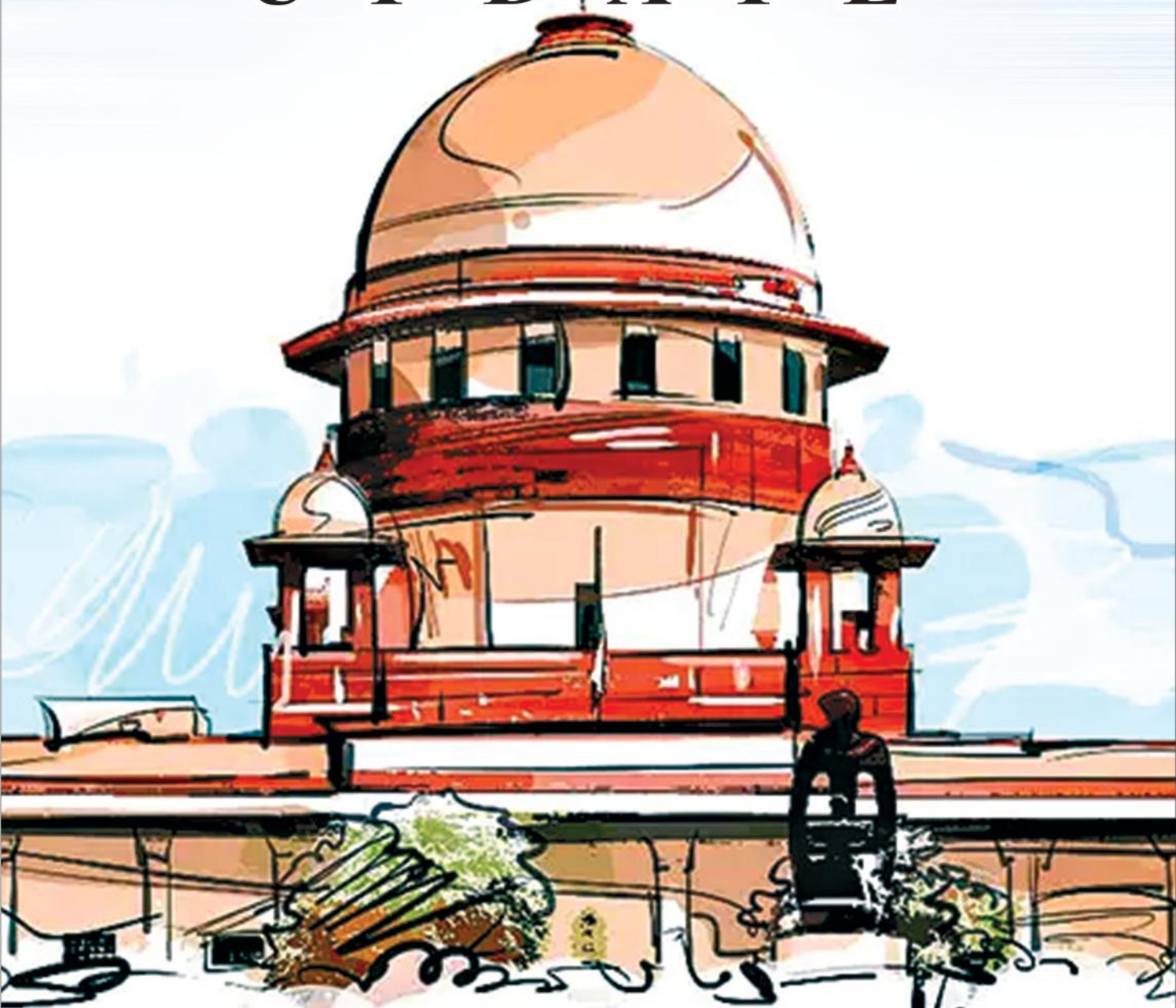
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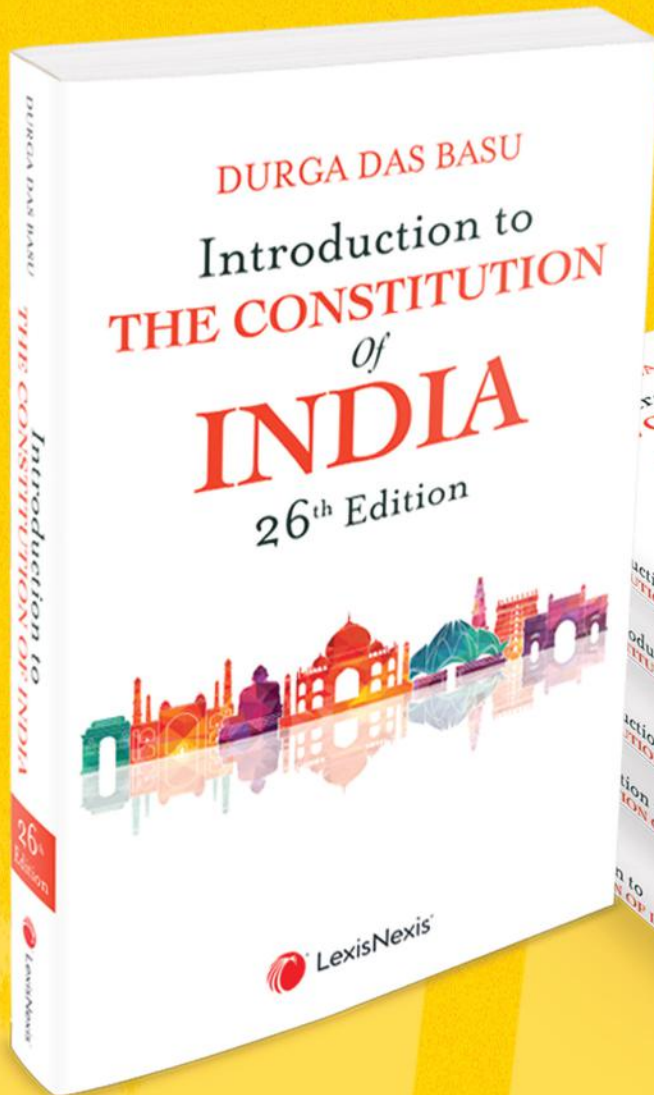
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Dear readers,

The Supreme Court is constitutionally obligated to do complete justice within the bounds of the law as laid down by the Legislature within the broader framework of the Constitution. At the same time, the apex court must also ensure that any law or executive act that is in breach of Constitutional propriety is promptly invalidated before it does any lasting harm. While the Supreme Court has nearly always deferred to the wisdom of the other two branches in matters relating to policy matters, it has had to intervene on several occasions in order to perform its own functions and duties entrusted upon it by the makers of the Constitution, attracting the charge of "judicial activism", which is just a polite description of a judiciary that is excessive in its intervention mainly in the domain of the Executive.

In the context of the Indian Supreme Court, the charge of judicial activism is not very convincing because the apex court has used its extraordinary constitutional powers to nudge a sluggish and largely inefficient Executive into action with impressive outcomes in many cases. Judicial activism, therefore, has been a way of saying that one branch of the Indian state has been performing not only its own functions but has also been prodding and pushing the other branches to measure up and perform their bounden duties. The apex court has also never hesitated in filling the legislative lacunae by framing binding guidelines wherever needed.

However, in recent times, the Supreme Court, far from being an activist court, has been under searing criticism for not hearing, let alone deciding, cases of enormous public concern urgently enough. The apex court of our time is certainly much less an "activist court" than ever before even though the description did not quite fit ever.

Manish Arora
 (Manish Arora)

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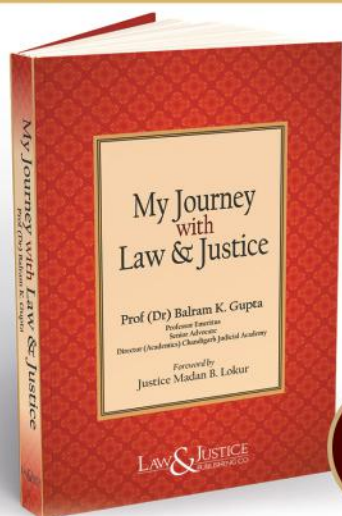
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Prof (Dr.) Balram Gupta

JUST RELEASED



My Journey with Law & Justice

Prof (Dr) Balram K. Gupta
Professor Emeritus
Senior Advocate
Director (Academics) Chandigarh Judicial Academy

Foreword by
Justice Madan B. Lokur

2022 Edition • ISBN : 978-93-90644-57-5

AUTHOR SPEAKS

"My journey has moved from Professor of Law to Senior Advocate to Judicial Educator. Legal education for 22 years, legal profession also for 22 years and judicial education for 10 years. It is a journey of continuity. Not three different innings. I have never been out of crease. Therefore, I was never stumped. In cricket, different players excel as batsmen, bowlers and fielders. Only some are three-in-one. They play their roles in continuity. Always, one at a time. From legal education to legal profession, this blending equipped me to play the role as a judicial educator. Thus, it is a meaningful utilization of each role in continuity. Coupled with this, I have been a Rotarian since the year 1977. The founder of Rotary Paul Harris was a lawyer. Many Rotary International Presidents have been lawyers, judges and legal academics. During all these years, I have connected Rotary with Judiciary. Through my writings, talks and memorial lectures. Rotary values have been part of my journey throughout. Normally, one is a professor or an advocate or a judge. Those who graduate from a lawyer to a judge, they combine both together. The experience gained as a lawyer equips him to be a judge. We also have service judges. They are shaped in the laboratory of court-rooms. I have enjoyed my long innings of almost 55 years in playing the different roles in continuity. This journey is three-in-one.

In sharing this journey of mine in the Book, I have kept one thing in mind. Every journey is filtered with roughs and toughs of life. There is no journey minus stumbling blocks. Hurdles and difficulties. I am no exception. I faced them. I encountered them. I surmounted them too. In sharing this journey, I have not touched them. This is intentional. Personal perspectives and prejudices step in. The negativity in mind takes charge of you. Therefore, I have not dealt with them. The sharing of a journey with a positive mind, it tastes better. Its flavor lingers. One enjoys reading it. With passage of time, it does not perish. It is living.

The Book has four parts. The first part covers the different roles that I played. This is autobiographical. The remaining three parts cover my experiences in the different roles that I played. These three parts are my selective writings captioned as Shaping the Judges, Leaves from their Lives and Judicial Review and the Constitution. These are essays and life sketches. The essays cover my experience of different roles. During these different decades, I met the best of minds: the academicians, lawyers and judges. They influenced me and my thinking. They helped me in chartering my journey. As an academic, I had never thought that I would ever switch over to the profession. I had thought, I would superannuate as a professor. Circumstances conspired. I accepted the challenge of the legal profession. Sailed through smoothly. Once again, it had never crossed my mind that I would ever cross over to judicial education. I was offered the Directorship of National Judicial Academy because of my mixing of academic and professional career. When I got this opportunity, my son told me, Papa, these are your harvesting years and you are running away. Justice A.K.Sikri was my Chief Justice. He told me that time comes when you have to give back to the society. Therefore, I accepted the challenge of judicial education. Judicial education is not the exclusive domain of the academicians. The first three directors of NJA were pure academicians. I was the first one with this combination. Before my term came to an end at NJA, the Executive Council of NJA decided to revisit the rules for the appointment of Director. It was felt that pure academicians are not suitable to play the role as judicial educators. Consequently, the experience as a lawyer and a judge with a strong academic base became the parameter for this responsible position. I have enjoyed recording my journey with a hope that those who would read it, would also enjoy it."

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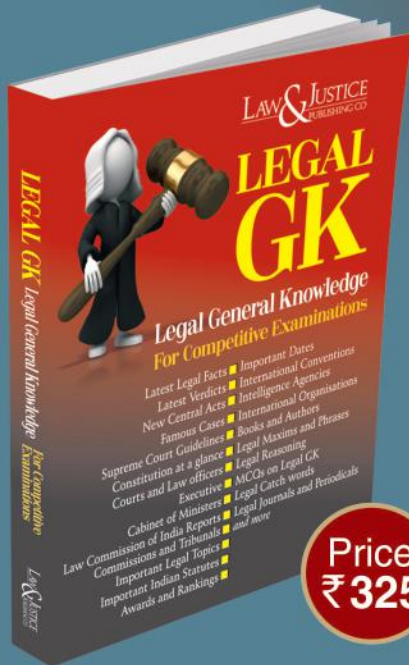
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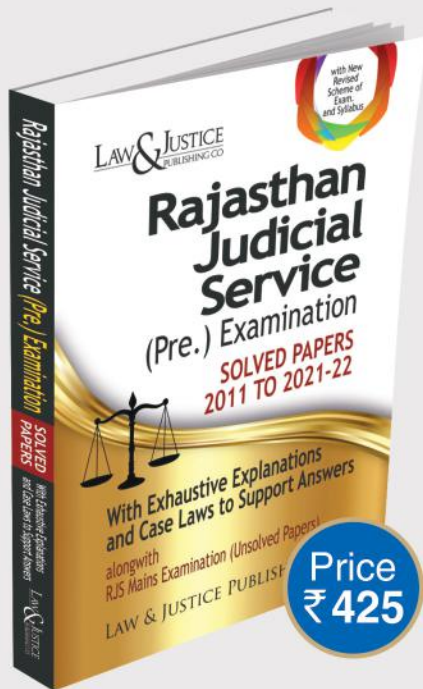


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STREET LAWYER

Weaponization of Unreason - III

In continuation of the third part, we carry on analyzing two recent real-life interactions -- one textual, the other in-person -- with three educated people to illustrate the point.



HemRaj Singh

ABC thought Islamist radical/fundamentalists the "worst of all" because, in her view, nothing could possibly be more monstrous than deploying rape squads to punish with brutal gangrape women who chose to step out of their houses without donning a hijab. She was wrong. And I write further at the risk of comparing monstrosities, which is an inherently unfair and particularly unpleasant exercise.

What could be worse is having rape squads marauding around to gangrape women not because of any choice they made but for simply being born into a family belonging to a certain race or ethnicity, a factor beyond anybody's control.

Further, one can possibly avoid sexual violence by conforming to the diktats, abjectly immoral as they might be, of the radicals and thus avoid the consequences by making a "safe" choice even though nobody has any right to force one to do so. But how could one possibly elect out of the circumstances or the family of one's birth? How could one escape the sexual violence due only and only to one's having a particular communal or ethnic identity by birth? That's nothing short of being brutalized for merely existing.

And what's worse than being gangraped is being gangraped by a person infected with HIV, and what's even worse are rape squads of HIV positive people formed for the specific purpose of gangraping women belonging to a particular community in order to infect them with HIV to make them suffer and die long-drawn, painful deaths from AIDS. That's precisely what was done during the Rwandan genocide of 1994 when Hutu extremists let out hundreds of patients suffering from AIDS out of the hospitals, formed them into "rape squads" and let them loose on Tutsi women to infect and cause a "slow, inexorable death".

Some half a million women and children were raped, sexually mutilated or killed during the gender-specific violence perpetrated by the militants belonging to the Hutu majority against the women and children belonging to the Tutsi ethnic minority group over a period of 100 days, resulting in an estimated 2,000 to 10,000 "war babies" born of forced impregnation on account of brutal rapes of Tutsi women not only by the Interahamwe militia but also by the members of the Hutu civilian population, men and women, the Rwandan military, and the Rwandan Presidential Guard in furtherance of the goal of Hutu political and military leaders to completely destroy Tutsi people.

Extensive propaganda against Tutsi women was conducted by the leaders of the Hutu majority (principally the Interahamwe) through print and electronic media, portraying Tutsi women as untrustworthy, as actively engaged in anti-Hutu activities and as "a sexually seductive 'fifth column' in league with the Hutus' enemies". The striking success of the propaganda is reflected in the active

participation of Hutu women in the exceptionally brutal sexual violence committed against Tutsi women. This was the first time that genocidal mass rape was used as a weapon by one community against another in a civil conflict.

The Hutu mass rapists were not Islamist fundamentalists although I wouldn't put such monstrosities past any radicals of any kind or stripe, for it's never about faith or belief, religious or otherwise, but only about whipping up hatred through motivated propaganda to a degree that people are prepared to act violently themselves and/or wholeheartedly condone and even celebrate brutal violence against such "others" as they perceive or are made to perceive as deserving of such brutality.

The Hutu and the Tutsi not only shared a national identity but also cultural and religious beliefs, and yet over a period of around 100 days in 1994, as many as 500,000 to 662,000 people belonging to the Tutsi minority ethnic group were killed in a squall of genocidal violence. Islamist fundamentalists, contrary to what ABC thought, are clearly "not the worst" in terms of treating women with extreme cruelty, but they are "not the worst" not because there are worse radicals around but because no radicalism or fundamentalism is better or worse than any other, for they are all equally reprehensible, and that's not a moral stand; it's a fact. That's because all forms of radicalism have the same poison of baseless, unmitigated hatred at their roots and bear the same fruit of blind violence, which takes unspeakably diabolical shapes in the hands of bloodthirsty fiends let loose on the target population by their unscrupulous masters to serve their own selfish, political, ends.

Genocidal violence is almost always preceded by largely successful propaganda against the target people, demonizing them and poisoning popular sentiments against them, thereby justifying the ensuing onslaught. It has been true of the Nazi propaganda against the Jews, the Hutu propaganda against the Tutsi, the Islamist propaganda against Kashmiri Pandits, branding them the "informants" (mukhbir) of the Indian state, leading to brutal violence against them and resulting in their 1990 exodus, and the on-going Hindutva propaganda against religious minorities in India.

It's not the Nazis or the Islamists or the Hutu or the Hindutva people per se that lie at the root of mass violence; it's the hatred cultivated by a carefully crafted and gradually escalated propaganda against the target group of people. It is the overgeneralized and vacuous view of entire communities of people as being monstrous or evil or acting against the interests of the majority that has been the never-failing fuel for genocidal violence.

...to be continued



GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

ANOTHER SCANDEL

It is my unpleasant duty to present another batch of cases to the reader from the Punjab which reveal a state of things that is utterly unbearable. It is to be wished that H. E. the Viceroy will end the growing anxiety by appointing the promised Committee of Inquiry without delay. Mr. Montagu has said from his place in the House of Commons that at least two out of the three Judges of the Punjab Special Tribunals were Judges of the High Court of three years standing. The public have been recently informed that where the members were not. High Court Judges, they were eligible for that high post. The poignancy - of the sorrow that the atrocious injustices such as I have had the painful duty of exposing have caused, is increased by the knowledge that perpetrators of these injustices are judges in whose judgments the people have been accustomed to put the utmost faith. This unevenness of temperament can only be accounted for by the supposition that the trained judicial intellect of the Judges must have suffered temporary aberration by the events of the Punjab. The desire to secure for Englishmen almost absolute immunity from physical harm from the 'natives', by inflicting exemplary punishments on some one or other, appears to have been the master passion overruling discretion, wisdom and justice. It is not possible for me to understand the judgments that have come under my notice on any other hypothesis. These reflections are caused by a perusal of the judgment and the evidence in the Hafizabad case.

During the whole course -of my practice of law, by no means inconsiderable, extending over an unbroken period of nearly twenty years, I have never come across cases in which capital punishment has been so lightly pronounced, on the flimsiest evidence taken down in a most perfunctory manner, as appears to me to have been done in the Hafizabad case.

The case has been sent to me in regard to only one of the nineteen accused tried viz. Karamchand, the nineteenth accused-a student of the Dayanand AngloVedic College. But I have no hesitation in saying that there was no evidence before the court to warrant a conviction against any of the accused for waging war. The Judges had a choice of offences for conviction. The accused were charged under Sections 121, 147, 307, 486(?), and 149 of the Indian Penal Code. Section 147 relates to rioting, carrying with it a maximum penalty of two years' imprisonment. Section 149 renders members of an unlawful' assembly liable to the same penalty as any other member thereof. Section 307 relates to attempts to murder carrying the maximum penalty of ten years. Section 486 appears to be an erroneous copy, it has no relevance to the evidence' led before the court. It was thus easy enough to convict on any of the milder sections if the Judges had so chosen. They however 'scented' war in every act of the crowd during those three or four days of April.

Whilst therefore it is clear to me, as I hope it will be clear to every impartial student of the case, that the charge of 'waging war against the King' is unsustainable, in the absence of the specific evidence against the other accused, it is difficult to form a conclusive opinion as to their cases on the minor charges. I cannot however conceal from myself or the reader the very strong suspicion that the full text of the evidence will not disclose any ground for the statement of the Judges to the effect that "the orators had incited the crowd to take immediate and vigorous steps to overthrow- the Government by raising as much opposition to it as possible." Nowhere have I seen any attempt during those days of April to 'overthrow the Government'.

But I must confine myself to the case of Karamchand. These are the full remarks in the judgment about him: "Karamchand, No. 19, was peculiarly guilty. He brought down the news of the Lahore riots. He gave a most garbled account of it. And by representing that the Lahore crowd had succeeded in beating the military, he gave the Hafizabad crowd reason to believe that their insurrection would be successful."

"We think," the Judges proceed, "that these four men deserve the extreme penalty." The three men who are bracketed together with him for capital punishment are supposed to have been among the active assailants of Lieutenant Tatam. Not so Karamchand, as is clear from the passage from the judgment just quoted.

'Let us look at the evidence against the accused.

Two of the prosecution witnesses who were on the train that carried Lieutenant Tatam have given only

identifying evidence. They are unable to say that Karamchand himself did anything at all. Prosecution witness No. 5 first identified Karamchand 18 or 20 days after the 14th April. Witness No. 6 identified him 10 or 12 days after the said date. Both the witnesses, it is admitted, were utter strangers to Karamchand. The gravamen of the charge against Karamchand is, not that he did anything on the 14th, but that he brought some news from Lahore on the 11th. This is the exclusive evidence about Karamchand given by the Head Master of the D. B. School:

"Karamchand is a student of the D. A. V. College, Lahore. I saw him on the 11th evening. He was talking about the riots of Lahore that the people are being fired upon with a machine-gun at Lahori Gate are not retreating." (I have taken the sentence exactly as it occurs in the original copy before me-M. K. Gandhi.). "He was going to say more but I stopped him. I advised him that it is not good to say such things at Hafizabad. He was my old pupil. 6 or 7 people were present. This was outside the town on a footpath. He was excited. I left on the 12th."

CROSS EXAMINATION: Accused does not belong to Hafizabad. He went away when I warned him. I had not asked him what had happened at Lahore."

Prosecution witness 27 gave evidence corroborating that of the Head Master. This is all the evidence against Karamchand. It stands out clear as daylight that Karamchand's alleged talk about the Lahore riots took place on the 11th, that he spoke outside the town on a footpath in the presence of 6 or 7 people and that he stopped as soon as his old school master advised him to do so and went away; and that he does not belong to Hafizabad, I hold that the Judges' paraphrase of the above evidence is totally unwarranted. There is nothing in all the evidence about Karamchand to show that the crowd near the Railway station on the 14th was the same as the 6 or 7 people before whom he talked outside the town 'on the 11th about the Lahore riots. One fails to see what peculiarity the Judges found in Karamchand's case.

Let me note here that the Head Master and the corroborating witness give us no information regarding Karamchand's doings or whereabouts on the 14th April. Even if, therefore, Karamchand was present on the 14th April at the station, so far as the evidence enables one to see, he was a silent spectator of the cowardly conduct of the mob. But Karamchand says he was not there. He says he went to his village on the 12th. He produced four witnesses to prove that he was in his village Udhoki on the 14th April. I venture to suggest that there is just as much probability of Karamchand and his witnesses having told the truth as there is of the two witnesses for the prosecution being mistaken about the identity of Karamchand, regard being had to the fact that they had never seen him before, that they were taken to the jail to identify him 10 or 18 days after the event and specially when they never saw Karamchand doing anything active. Add to this the fact that the prosecution witnesses were only for a few minutes in the midst of the crowd and whilst, according to the evidence of the Crown, stones were being thrown at the first class compartment. It is not justice to sentence a man to be hanged on the very inconclusive testimony as to identify Karamchand's father gives me further details to prove that the former was at his village on the 14th April. Naturally I am unable to make use of this - extraneous, though important evidence to prove his innocence. The father says in his letter that Karamchand's sentence has been commuted to 10 years' rigorous imprisonment. He is naturally not satisfied with it. I hope that His Honour the Lieutenant Governor of the Punjab will study the case personally, and if he does, I doubt not that Karamchand will be discharged. I hope too, that his co-accused who were sentenced to be hanged are at least alive so that their cases may be reviewed by the forthcoming Committee of Enquiry.

We, who are living in the Presidency, cannot but contrast the Punjab proceedings with those at present going on in Ahmedabad. Nothing that was done in Hafizabad could surpass the wicked and wanton cruelty of the mad mob at Viramgam. And yet this Tribunal, I am thankful to be able to note, has carried on the enquiry with judicial calmness, giving every opportunity to the counsel for the defence to bring every fact to light and have not found it in their hearts to impose the capital punishment on a single person in that case. So far as I know, its judgments have not provoked much hostile criticism, whereas almost every judgment of the Punjab Tribunals that has come to light has been subjected to the severest comment. Only the promised Committee of Inquiry can solve the discrepancy. Meanwhile I hope the public will demand full and unconditional discharge in cases of palpable injustice like that of poor Karamchand.

Young India, 20-8-1919

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"Personality can open doors, but only character can keep them open."

– Elmer G. Letterman

"In this world everything perishes and will perish, but ideas, ideals and dreams do not."

– Subhash Chandra Bose

"The size of your success is measured by the strength of your desire, the size of your dream; and how you handle disappointment along the way."

– Robert Kiyosaki

"We should be taught not to wait for inspiration to start a thing. Action always generates inspiration. Inspiration seldom generates action."

– Frank Tibolt

"The illiterate of the 21st century will not be those, who cannot read or write. The illiterate will be those who cannot learn, unlearn and relearn."

– George Bernard Shaw

"Do not spoil what you have by desiring what you have not, but remember that what you now have was once among the things you only hoped for."

– Epicurus

"We find no real satisfaction or happiness in life without obstacles to conquer and goals to achieve."

– Maxwell Maltz

"If we had no winters, the spring would not be so pleasant; if we did not sometimes taste of adversity, prosperity would not be so welcome."

– Anne Brad Stret

"A banker is a fellow who lends you his umbrella when the sun is shining, but wants it back the minute it begins to rain."

– Mark Twain

"Talking and eloquence are not the same; to speak, and to speak well are two things. A fool may talk, but a wise man speaks."

– Ben Johnson

"You must not lose faith in humanity. Humanity is an ocean, if a few drops of the ocean are dirty, the ocean does not become dirty."

– Mahatma Gandhi

These quotes have been sourced from the immense intellectual wealth produced by several generations of thinkers from all walks of life. These nuggets of wisdom have inspired and motivated leaders and commoners alike since time immemorial. We believe our readers would also be no less benefitted by this repository of preserved experience.

KNOW YOUR JUDGES

Hon'ble Mr. Justice Aravind Kumar



Justice Aravind Kumar was enrolled in the year 1987 as Advocate and was appearing in Civil Courts, Magistrate Courts, Appellate Tribunals for about 4 years and shifted practice to High Court. Appointed as Additional Central Government Standing Counsel at High Court of Karnataka in the year 1999. Appointed as Member of Regional Direct Taxes Advisory Committee in the year 2002. Had also been practicing on Taxation side. Appointed as Standing Counsel for Income Tax Department. Appointed as Assistant Solicitor General of India in the year 2005. Was Legal Advisor to various Statutory Corporations and Companies and had been appointed as Special Public Prosecutor for Central Bureau of Investigation. Elevated as Additional Judge, High Court of Karnataka on 26th June, 2009 and as permanent Judge on 07-12-2012.

Appointed as Chief Justice of Gujarat High Court on 13th October, 2021.

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The United Nations, whose specialized agencies were the subject of an Appendix to the 1958 edition of *Oppenheim's International Law: Peace*, has expanded beyond all recognition since its founding in 1945. This volume represents a study that is entirely new, but prepared in the way that has become so familiar over succeeding editions of Oppenheim.

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In examining the evolving structures and ever expanding work of the United Nations, this volume follows the long-held tradition of Oppenheim by presenting facts uncoloured by personal opinion, in a succinct text that also offers in the footnotes a wealth of information and ideas to be explored. It is the book that, while making all necessary reference to the Charter, the Statute of the International Court of Justice, and other legal instruments, tells of the realities of the legal issues as they arise in the day to day practice of the United Nations.

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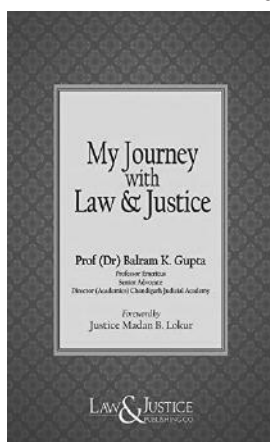
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MY JOURNEY WITH LAW & JUSTICE

by Prof (Dr.) Balram Gupta

Virtually Released on January 29, 2022

Address by Justice Surya Kant, Judge, Supreme Court of India



My brother and dear friend, Justice Dr. D.Y. Chandrachud, my old associate, a guide and a very respectable person for me in my personal life, Justice Madan B. Lokur, Chief Justice Ravi Shanker Jha, Justice Amol Rattan Singh, Professor Upendra Baxi, Prof. (Dr.) Balram Gupta, esteemed members of the Bar, Academicians, Dr. Manish Arora, representative of the publisher and other my dear friends. It is my pleasure to be virtually present among all of you for the launch of a Book that not only chronicles the journey of a seasoned legal luminary but also gives deep insights into the intricate relationship between law, human rights, judges and justice. Dr. Shruti Bedi and then Justice Lokur have very eloquently pointed out the multiple contributions made by Prof. Gupta in the field of Legal Education, as Sr. Advocate and later as a Judicial Trainer. I have closely seen Prof. Gupta playing these different roles partly as a member of the Bar and then a judge of Punjab and Haryana High Court. I can say, he is well known for his commitment to the dignity of legal profession and for his sincerity as a judicial trainer. This Book comes at a very opportune time when we have recently celebrated the

73rd Anniversary of adopting the Indian Constitution. It is time to pause and reflect on the transformative role of our Constitution, the Law and the Courts in our country. Unlike many other instruments, our Constitution is conceived as a social document going beyond the standard norms of governance. While Prof. Gupta has written in depth about the metamorphic role of our Constitution, I was particularly intrigued by the chapter on Judicial Review and the Constitution. The author has rightly distanced himself from the western debates on the role and legitimacy of Judicial Review. In our country, judicial review and activism were conceived out of necessity. It was to bring about more accountability and to ensure that government organs adhere to the boundaries of Constitutional discipline. The process of judicial review over the time has become the foremost tool to connect the people to the Constitution. This continuous endeavour has enabled the courts to develop a rich bounty of Constitutional Jurisprudence and ensure that our Constitution continues to be a living organic document. The courts have by adopting innovative mechanisms addressed various socio-economic issues, hyper technicalities like locus standi have been diluted so that public spirited individuals are allowed to represent the interest of the economically deprived citizens. Otherwise, they may either be unaware of the rights or may find it difficult to have access to courts. The other chapter which I liked in Prof. Gupta's Book is Part-B which talks about Shaping the Judges. Speaking for myself, the issue of training Judges and Judicial Officers is a problematic area. We may candidly ask

ourselves whether the objective behind setting up Judicial Academies has been optimized. An objective evaluation will make us realize, the deficiency of qualified trainers. Resultantly, the District Judiciary which is the foundational platform to deliver justice to the masses is not adequately sensitized on the value of humane approach, the plight of poor litigants and also on the expectations of the elder members of the Bar. Issues such as when and where to entertain a suit or the art of writing judgments are some of the core areas which should draw attention of our Judicial Academies. Today, fortunately Justice Madan Lokur is present with us who has been closely associated with Commonwealth Judicial Education Institute at Halifax, Canada. I believe, he can play a pivotal role in the interplay between the Institute that is CJEI, our National Judicial Academy and State Judicial Academies so that the qualitative exposure and professional ability of CJEI in shaping a Judge can help sharpen the skills of our Judicial Trainers. Furthermore, the National Judicial Academy and State Judicial Academies need to collaborate and evolve a uniform pattern of training with a focus towards the litigant public and those who are in urgent need of judicial intervention knowing the time constraint. Lastly, with this Book in my hand, I believe the author has correctly remarked that there is a dearth of biographies written by Judges and other legal luminaries that could help young lawyers in the success of their professional journey. I firmly believe that this Book will go a long way to bridge this gap.

Thank you very much, Jai Hind.

Address by Justice Ravi Shanker Jha, Chief Justice, Punjab & Haryana High Court

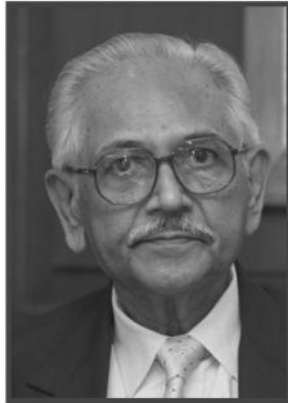
Hon'ble Justice Surya Kant, Judge, Supreme Court of India, Justice Lokur, Justice Amol Rattan Singh, Professor Emeritus Baxi Sahab, Professor Balam Gupta Ji, and all those who have today joined in this virtual Book Release Function, a very good morning to all of you. I have been here in Punjab for two years and two months plus. I have known Professor Gupta for a short time. I feel very proud and privileged today to be a part of this Book Release Function. Proud because Professor Gupta is our very own, Director (Academics) of Chandigarh Judicial Academy. His being part of us makes us extremely proud. Privileged also because I am the Patron-in-Chief of the Academy by default, fortuitously being the Chief Justice. Otherwise, I would have never had the privilege of sharing the dias with such great legal luminaries. Professor Gupta as Justice Lokur has so beautifully put it in his Foreword and Justice Singh has just told you, Professor Gupta is a wonderful person. Probably, he has achieved so much in life which would have taken two or three births to do. I mean, he is a Professor of law, Senior Advocate, a Judicial Educator and Professor Emeritus. Anybody else writing a Book would have probably written volumes and volumes about himself, his achievements, hardships, the hard work and study etc. that he had put in. Having gone through this Book, one thing that struck me as Professor Baxi put it, was the humility of Professor Gupta. He has confined, whatever he has achieved, to just one quarter part of the Book i.e. the first part which is the autobiographical part of the Book. If you would read it, you will find that it is a simple narration of facts. He has himself put it that he has not talked

anything negative in the Book. It shows tremendous humility on his part. A person who has achieved so much, could have written volumes about himself. Even when he writes a Book, he confines personal narrations to just one quarter Part of the Book. It is said *Vidya Dadati Vinayam*: Knowledge and wisdom bring humility. Very chosen few are blessed with this by God because knowledge brings arrogance. In the case of Professor Gupta, it is wonderful to see that all his hard work of nearly six decades has brought so much of humility in him. Another thing that I came across, when I met people, they all had wonderful words of praise for Professor Gupta, as a Teacher, as a Mentor, as a Guide and as a Judicial Educator. We have a living example here. Justice Singh himself in this very function saying that Professor Gupta was his mentor, the one who actually influenced him to join the profession. We are privileged to have Justice Singh as a Judge of the High Court today. What Justice Singh is saying is right, he owes it to Professor Gupta. It is said "*Ajnana Timir Andhasya Jnana Anjana Shalaakaaya Chakshurunmilitam Yena Tasmai Sri Gurave Namaha*", a Guru is one, a Teacher is one, who guides the students from darkness to the light of wisdom by opening his eyes with spiritual knowledge. If Professor Gupta has been able to do this for so many people, he truly enjoys and rightly so the position of a venerable teacher. On going through this Book, I find that perhaps one thing about which Professor Gupta is most passionate is, his role as a Judicial Educator and Part two of the Book, he has segregated, divided this topic into various heads and written Essays on them. I think the most valuable and the gist of what he actually wants

to convey as I have been able to rightly understand, that Judicial Education is all about making a good human being so that he turns into a good Judge. He has taken us through the steps, the requirements and the necessary things that are required to be done and which play a significant role in changing a law student into a Judge. The journey from the classroom to the courtroom as he himself puts it. **I think to my mind this Book is going to be a compulsory and a valuable asset to all Judicial Academies. In fact, I feel it is a kind of a handbook for all Judicial Educators because it is written by a person who has experience as a Senior Advocate, as a Professor of Law and a Judicial Educator. So, the finer nuances of judicial education have been beautifully brought out by him in his Book. It is going to be a tremendous addition and a compulsory addition for all Judicial Academies, Law Faculties as well as a necessary read for Judges and Lawyers.** Justice Lokur, in his Foreword has mentioned that he should come up with a sequel. Whether he does or not, I feel that he needs to be greatly congratulated for whatever he has already done by giving us this wonderful Book. His thoughts on so many such wonderful people that he has met throughout his career. His opinion about certain wonderful clinching judicial issues and of course, as I said, his wisdom regarding Judicial Education. I wish him all the best. I congratulate him for this work. I pray that God gives him and us the privilege of his continued contribution to Judicial Education for a hundred years. I feel privileged to be part of this function of launching and releasing this Book by Professor Gupta. Thank you so much. Jai Hind

Remembrances

Justice J.S. Verma



on his 22nd Death Anniversary
22nd April

Soli Sorabjee



on his 1st Death Anniversary
30th April

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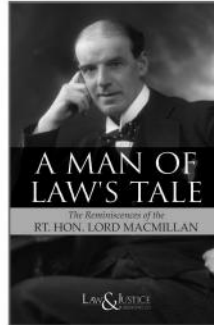
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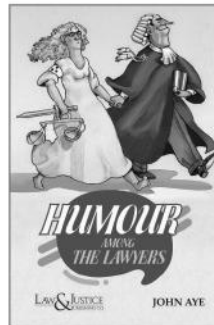
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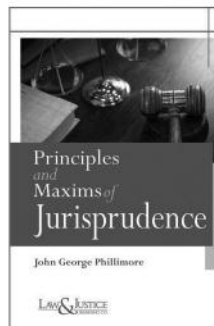
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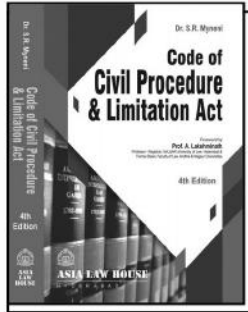
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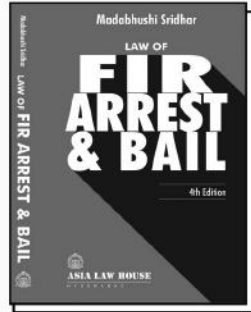
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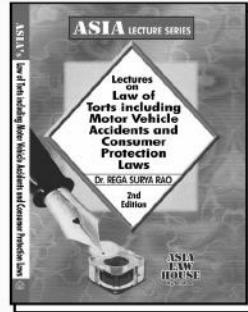
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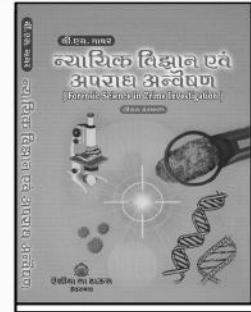
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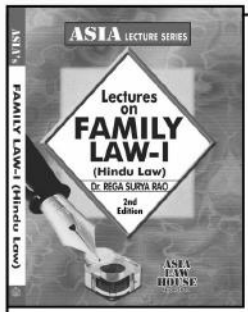
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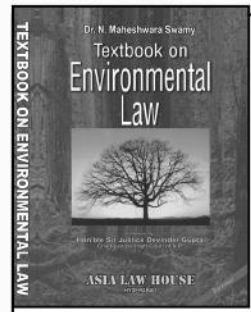
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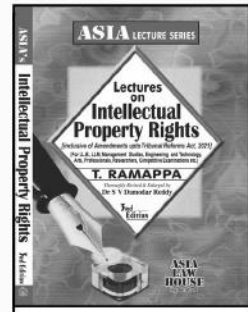
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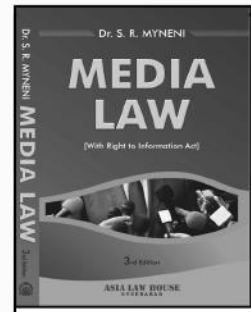
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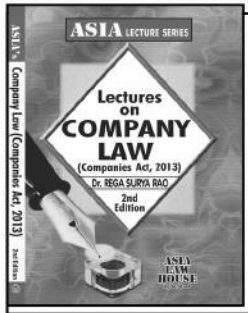
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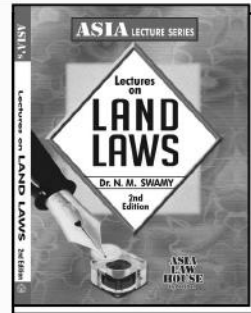
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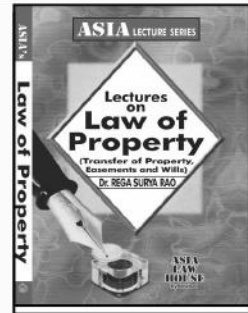
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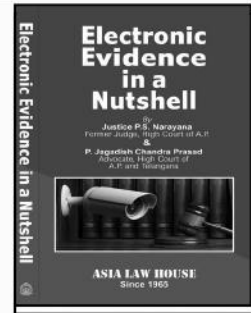
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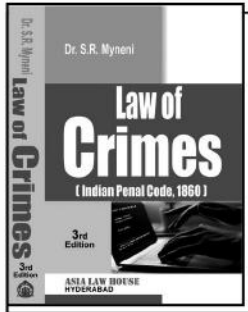
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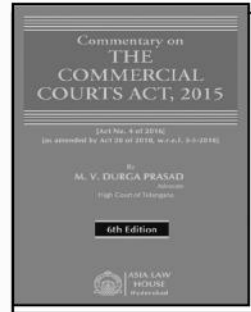
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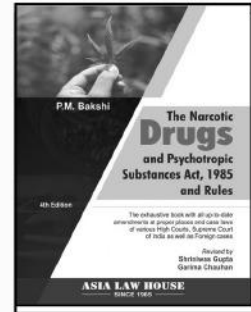
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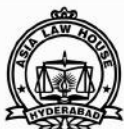


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REFUGEES: Within Borders & Beyond



Sadiya R. Khan
Advocate

Thy Lord maketh man
Man maketh Laws
Man created Refugees
From Nation to Nation
By Global Wars
By Internal Conflicts
By Racism
By Religions
Betrayed by their own
Nowhere to Go
Developed Nations indeed evolved
Openly embrace the dignity for all

Knocking Gates of Justice
Expecting unexpected
Story of Nervous Homeless Hopes
Craving Support from Political Chairs
Politics Vs Law
Since time immemorial quoted
Justice delayed is Justice denied
Thy Lord maketh man
Man maketh Laws
Man created Refugees
Refugees protected by Laws
Helter-Skelter Shelters
1951 defined REFUGEES
1967 Protocol, the Status
The Saviour "Refugee Convention"
International Declarations
African Unity. Cartagena Declaration.
"Disowned", a shallow miniscule submission
Thy Lord maketh man
Man maketh Laws
Man created Refugees
Refugees protected by Laws

Internally Displaced Persons
Kashmiri Pandits, the recent recall
That Lawlessness
Tears. Fears. Ruined Lives
Deficit with Words
No Law can feel Exile Pain
Ethnic Cleansing. Genocides
Other Religions too victimised
Brutality rotated to all
Different Religions. Similar Tragedies
Comparisons of Destructions is futile
Who suffered less, who suffered more?
Humanity died. Bullets & Guns
Spared none
Neither Female. Nor the Child

Comparison of Humanitarian Laws Globally
The treasure to measure
A Learning to Evolve. To Restructure
Systematic. Algorithmic Exodus.
Ruined Lifetime. Destroyed existence
Destroyed Clans. Cultures. Childhood
Untimely Acceleration of Lawlessness
Generations wiped off
Thy Lord maketh man
Man maketh Laws
Man created Refugees
Refugees protected by Laws

Ratifications. Implementations. Human Rights
Courts
Need of the Hour
Humanise Laws. Draft Policy for Refugees
An end to no more Conflicts internally
Ban World Wars
A New Convention
Post Covid Times. Endemic Days
A New Legal era
Uplift Humanity. End Human Sufferings
In the Years of Artificial Intelligence
Us to be recalled by the next Generation
A step towards a legal sustainable Development
This Isn't any Utopian submission
A Legal Thought. A Legal vision
Implement 21st September unto eternity
In letter and Spirit by the Globe
The International Day of Peace
"World Peace Day"
For absence of War & Violence
Not merely a day's observation

Of all the wise lines
From Past, greatest incandescent mind
The Great Vivekananda said,
"I am proud to belong to a Nation
which has sheltered the persecuted
and the refugees of all religions
and all nations of the earth."

Morals define Laws
Draft to Build Great Visions
For Thy Lord maketh man
Man maketh Laws
Man created Refugees
Refugees protected by Laws

This Poem is a humble tribute to all those who lost everything in World Wars, internal conflicts and forced exile.

LEGAL LUMINARIES

SATVIK VARMA

Satvik Varma is a Senior Advocate (QC equivalent) designated by the Full Court of the High Court of Delhi in March 2021. He joined the Bar in 1998 and his practice focuses primarily on corporate/commercial litigation, shareholder and company disputes, breach of contract and specific performance disputes, insolvency proceedings and domestic and international arbitration. He also represents various clients on Constitutional matters and from time-to-time accepts briefs relating to white collar crimes. Satvik is also regularly instructed to provide advice on corporate legal strategy in relation to mergers and acquisitions, joint ventures, foreign direct investment and private equity placements.

In the past, a client described working with Satvik as “enriching” and highly recommended his work by saying “he is able to go beyond the scope of his work and give a considered and practical opinion to resolve the matter at hand”. Another client termed Satvik as being “extremely innovative and creative” and went on to refer to him as “highly passionate and driven” towards resolving matters for his clients.

More testimonials of client experiences and of briefing advocates can be found on:

<https://satvikvarma.wordpress.com/testimonials-recommendations/>

Satvik holds a **masters of laws (LL.M.) from Harvard Law School and is admitted to practice both in India (1998) and in the State of New York (2002).**

Prior to setting up his own litigation counsel practice, Satvik was a partner at India's leading law firm, (undivided) Amarchand Mangaldas, where

he focussed on mergers & acquisitions, joint ventures, foreign direct investment, private equity placements, and cross-border technology transactions. Before Amarchand, Satvik was **Vice-President and Counsel**, in the corporate law group, at **Lehman Brothers** (2003-2005) at their headquarters in **New York**.

Satvik is a frequent speaker at various industry, business chambers, legal panels, seminars and TV debates. He writes regularly on matters of corporate governance, legislative matters, economic and trade policy and current legal affairs for most of India's leading business newspapers, magazines, and journals. **Having published over 160 articles**, Satvik released an anthology titled “Yes, I'm Opinionated – Musings of a Lawyer on Governance, Law and Policy” in November, 2017. His book received extensive advance praise from leading Indian jurists and sitting Justices and the foreword was written by two former Attorney General's for India. For his book, the **Supreme Court Bar Association awarded him a Certificate of Honour** which was presented to him by the then Chief Justice of India and the Law Minister of India.

Satvik has a keen interest in global and regional affairs and was selected as an **Asia 21 Young Leader**, by the **Asia Society** a leading American not-for-profit institution that promotes a shared future for Asia and the world across policy, arts, culture, sustainability and business. At this forum he actively engages with others from the Asia-Pacific region to discuss issues of common interest to the region. Satvik was also selected from a very large and diverse group of candidates as an **Aspen India**



Leadership Fellow and is cohort of the **Aspen Global Leadership Network**. Aspen Institute is a leading US not-for-profit that promotes nonpartisan thought leadership to address some of the worlds most complex problems and moving from ideas to impact.

As someone vested in the legal system, Satvik feels his duty to help future generation of lawyers. Towards this objective, in September 2021 he established a 20 years Endowment Award and Scholarship in the memory of Mr. Soli J. Sorabjee, former Attorney General for India, at the India's foremost law school, the Jindal Global Law School.

Satvik is **married to Jaya Asokan**, an art history major, who also holds a **masters in design from Parson School, New York**. She's currently the Fair Director of the India Art Fair, one of Asia Pacific's biggest art fairs focussed on Indian art. They have a **6 years old son, named Sumer**, who sometimes can be spotted creating his own artistic creations on daddy's law chamber floors.

Satvik is passionate about current affairs, fashion and food and will go any limits for a gastronomic experience!



Hasan Khurshid, Associate Editor
hasan.khurshid@lawyersupdate.co.in

NEED TO BALANCE JUDICIAL ACTIVISM AND RESTRAINT

“Judges are not to make the law or evolve policy but are only the interpreters of it. There is always a gap between justice and law. Merely because the law is enacted, there is no guarantee that justice will be done. There is some role to be played by judges. And if there is any, a judge has to fill up the gap. That is known as judicial activism”, said Justice D.N. Patel, the outgoing Chief Justice of Delhi High Court, while speaking at his farewell reference, on March 11, 2022.

Judicial activism and judicial restraint are opposite to each other in terms of concept and philosophy. Judicial activism deals in taking judicial decisions based on the present needs of the society beyond book laws. Whereas, judicial restraint

deals in taking decisions using the powers bestowed by the Constitutional framework.

Aristotle once said, “The generality of law falters before the specifics of life.” In the welfare state, the legislation is skeletal, leaving gaps and conferring powers on the executive to act in a way it ‘deems fit’, ‘necessary’, or ‘reasonable’, in its opinion. This factor cannot be ignored as the government entails the conferment of discretionary powers on the executive to effectuate legislative policies consisting of wide socio-economic goals. The judiciary over the years evolved rules for controlling and structuring the exercise of discretionary powers of the executive, so that it does not lead to arbitrariness

or despotic use of power. The most important of these rules are the principles of natural justice. The Supreme Court in *Airport Authority case* and *Ajay Hasija Vs. Khalid Mujib Sehravardi* laid down that every action of the State or its instrumentality or agency must be reasonable and non-arbitrary. This principle has invested the courts with immense powers to scrutinize the activities of the executive. This is a developing branch of law.

‘Juristic activism’ can manifestly be seen from Justice Mathew’s opinion in *Sukhdev Singh case*; Justice Bhagwati in *Maneka Gandhi and Shetty cases*; as well as Justice Krishna Iyer in *Nawabkhan case*. The pro-active approach of the apex court is best reflected in the development of

Social Action Litigation (SAL), for which the credit must go to Justice P.N. Bhagwati. He termed this litigation as Public Interest Litigation (PIL). The concept of PIL was devised not only for the benefit of one individual but for the benefit of a class or group. Justice Bhagwati illustrates his point with the example of construction workers. "... You cannot expect these construction workers who are just making two ends meet and who are steeped in poverty and destitution, to go to court and to enforce their rights. If someone else does not espouse their cause, they will have to go without redress and their grievance will remain unremedied." Further, Justice Krishna Iyer in *Sunil Batra-II Vs. Delhi Administration* (AIR 1980 SC 1579) opened new vistas for issuance of habeas corpus writ, when a convict wrote a letter to one of the Supreme Court judges alleging inhuman torture to a fellow convict. Justice Krishna Iyer treated this letter as a petition of habeas corpus filed on behalf of Prem Chand. Justice Krishna Iyer also ruled, "... when corruption permeates the entire fabric of the government", legality is the first casualty.



Dr. Surat Singh, Harvard and Oxford educated top-level Supreme Court lawyer and author, before giving his views questioned, "what is the proper role of Supreme Court in Indian Polity?" He then said, "Out of three wings of the government, Supreme Court is the independent branch, which acts as coordinator between legislature and the executive. Neither it should arrogate itself to the task of dominating other wings of the government nor it should subordinate itself to the other wings of the government, but it is easier said than done."

"During dark period of emergency in 1975-77, barring Hon'ble Justice H.R Khanna, judges of the Supreme Court allowed themselves to be intimidated by the government and they recovered themselves only in 1978 when expansive interpretation of fundamental rights were given in *Maneka Gandhi case* (1978) and evolved scope for Public Interest Litigation (PIL) in *S.P Gupta case* (1982) but still dominance of the government in appointment and transfer of judges remained."

"It was only in 1993, when Supreme Court of India asserted its independence from government when in *Supreme Court Advocates on Record Association case*, it held that the opinion of Chief Justice of India will have primacy in appointment and transfer of judges. Higher Judiciary attained its full freedom by 1998 when a collegium system of appointment and transfer of judges was evolved."

"In my opinion, the proper role for Supreme Court in India is neither so called judicial activism nor judicial restraint but it is, what I will call- Judicial Statesmanship-to see when it is wise to intervene and when it is not wise to intervene. In India, we have to keep in mind that democracy is an aspiration and not an achievement yet. As a professor of Constitutional law, I have noted that there are serious contradictions in Constitution itself. On the one side, Indian Constitution contains more than two hundred fifty articles, boldly lifted from Government of India Act 1935. I call it 'authoritarian / law and order maintenance part of the Constitution'. On the other hand, are the Preamble, Part III of the Constitution (fundamental rights) and Directive Principles of State Policy (Part IV), which I call 'progressive part of the Constitution'.

Given the authoritarian nature

of Indian polity and nascent state of Indian democracy, Supreme court should act as a robust and empowering umpire between the State and the citizens. Supreme Court must remember that sometimes not interfering can be as powerful as interfering. One good example from American Supreme Court is the case of Justice Holmes. Justice Holmes always interfered to protect the liberty and fundamental rights but exercised restraint when it came to economic matters, allowing leeway to government to frame policy. In India, great example is Hon'ble Justice Krishna Iyer who maintained a remarkable balance between intervening at right time and restraining when it was not prudent to intervene. Judiciary has a limited but very important role in protecting the fundamental values of the society from opportunistic politicians and **compromised bureaucrats**. While politicians worry about the next elections, judiciary should worry about the next generation", concluded Dr. Surat Singh.

Senior Advocate Mahalakshmi Pavani, President Supreme Court Women Lawyers Association said, "If the executive and legislative bodies work accurately there will be no need of judicial



intervention. The intervention only happens when there is lack of performance by the respective bodies. There are times where the judiciary has to take the situation in their hands and handle it accordingly as per the seriousness and urgency of the matter. The Doctrine of Separation of power is definitely being observed but it can be undoubtedly said that the Judiciary plays a vital role when there is conflict within the bodies itself. There has to be

an independent and unbiased agency who takes everyone out of any muddle. In any issue, the Judiciary always gives stupendous solutions because it's not only morally correct but it is legally right as well, so even if the Judiciary intervenes, it is hundred percent fit and systematic as it's done by those laws on which our whole country is functioning. It is only the failure of the bodies due to which the Judiciary has to step in."

Recent examples of judicial activism can be traced to the orders of the various high courts during the pandemic regarding Covid management and resource usage such as the supply of oxygen cylinders and distribution of essential medicines. The high courts of Delhi, Bombay, Madras Karnataka, Uttar Pradesh Uttarakhand had benches that were hearing the cases on a daily basis and passing guidelines when the executive was functioning in a haywire manner. One of the high courts went so far as to say that the executives responsible at hospitals and of the state administration should be tried for murder charges. This was an example where the judiciary set its foot in the shoes of the executive in a time of widespread crisis and panic amongst public. The Supreme Court showed inclination to form a National Covid Management Task-force for collating nationwide resources on transporting oxygen tanks in cities it was in shortage but that did not come to fruition. The court, later passed a judgment on how Covid-19 vaccinations drives would be conducted by the Union government while calling the policy arbitrary. The overstepping of courts into the sphere of the executive or legislature can be regulated for reinstating the status quo between the three wings of the State machinery.

Noted Advocate Reena Singh,



practicing in Supreme Court said, "There are multiple definitions of judicial activism. One view is that judicial activism is new jurisprudence holding that the courts can and should go beyond the applicable law to effectively deal with the maladministration, corruption, inefficiency and other ills that afflict the body polity. Some jurists consider judicial activism as mere expansive approach while interpreting constitutional law and other laws. Some consider that judicial activism is an antonym of judicial restraint. The real question however is whether judicial activism necessarily denotes going beyond textualism. The cynics, the majority of them belong to political class who used the term judicial activism in its pejorative sense and as political retort. Constitutional democracy which depicts numerous challenges and economic, political, communal and international compulsions remains safe in the hands of the judiciary."

"In AK Gopalan case reported in AIR 1950 SC 27, the SC placed a narrow interpretation of Article 21. In other words, if a person is deprived of his liberty by any statutory provisions then the question of reasonableness of law is beyond the pale of judicial review. The SC gave very literal interpretation to the words "*procedure established by law*". The justness of law was not within the province of the courts. This approach ultimately was abandoned by SC as is evident from the judgment in Maneka Gandhi case reported in AIR 1978 SC 597. The court has almost read into Article 21 the "*due process of law*" as interpreted by US Supreme Court. Its long journey from "*procedural established by*

law" to "*due process of law*".

"In the case of Keshavananda Bharti vs State of Kerala reported in AIR 1973 SC 1461, the SC reconsidered the issue and propounded the theory of basic structure. The basic structure doctrine has much wider application than the test of abridgment of fundamental rights. Even after Keshavananda Bharati case, several important judgments delivered by SC which have taken judicial activism to much higher heights."

"The critics of the judicial activism are contending that the Constitutional courts have become new legislative bodies and the guardian of constitutional democracy. This criticism is not wholly without merit. In some cases, the courts may have crossed the legitimate boundaries of separation of power. The court may have entered upon the field reserved for the executive and legislative authorities. However, the overall impact of judicial activism has resulted in the larger public interest and in protecting the rights of the marginalized sections of the society", concluded Advocate Reena Singh.

Renowned Advocate Yawer



Qazalbash, having to his credit 65 years of legal practice, said, "Balance is the cardinal rule of Nature and whosoever tries or attempts to defy this

rule surly and normally invites trouble, if not disaster. Framers of Indian Constitution had provided well defined and discussed separation of powers among different organs of the government ---Legislature, Executive, and Judiciary; and, in the normal circumstances it is not expected that one such organ of the government would encroach on the domain of

another. But judicial activism is said to be a philosophy holding that the courts should go beyond the applicable law to consider broader societal implications of its decisions. Sometimes it becomes intervention by the court's imperative when it looks on the face of an executive order taking away some kind of right provided by the Constitution. But normally the restraint is normal", concluded Qazalbash.

Dr. Ravindra Wankhedkar,



former National President of Indian Medical Association (IMA) said, "The balance between all four pillars of democracy is long lost. Everyone is trying to interfere in each other's functioning and trying to control each other, which conveys the ominous signs for a healthy democracy. Judicial activism is definitely on the rise, but often it appears selective. May be this activism is due to neglect or non-performance of the executive or at times due to overreach of judiciary. Executive now often tosses the ball in judicial court to buy time or to avoid taking unpleasant decisions or trying to wriggle out of difficult situations."

Wg Cdr S K Sharma (Retd)



said, "From time to time, the Indian Parliament has been a playground for some smart, cunning, straightforward, crude, simple 'law makers' and most times - a combo of 'all of the above'. Sometimes, when a party rules with 'full majority' and a whiff of 'we are Almighty and above board' - it tries to run amuck, even at the cost of ambushing the Constitution. It now feels that it can do anything with the people, nation and can even play around

with the 'law of the land' and go scot free. Some governments, on such occasions, feel - they are God's own men and no person matters to them - whether above them or below them.

Irrespective of the party it belongs to, such a government - tries to push its way through and bulldozes the system - reaching the brink of lawlessness. In the zest and zeal of proving its point - though sometimes, constitutionally incorrect - it pushes to the wayside, all the sane advice by its legal advisors, society, opposition, anybody."

Sharma further said, "Like Lord Krishna, then comes to the rescue of this nation - its only savior and the last bastion - the 'judiciary'. We have witnessed heroic precedence of judicial activism in the country. I am sure - a government that is in a hurry, all powerful, with a meek or negligible opposition will find it most suitable to breach the lines, in getting some of its populist agenda through. Governments have their hidden agenda and we know how 'clean' the judiciary of this country is? Everyone in the nation has aspersions - including the jurists. So, many play along with the government yet there are those 'few' - who still have their backbone right in place - stand erect and raise their voice. They rise and risk their career, earn the animosity of the government - for the good of the nation and saving the Constitution. Yes, these are the ones in judiciary - who may not go BIG places in the system, but make a mark in the history of jurisprudence and reserve a solemn place in the hearts of all law-abiding Indians. The nation salutes such brave and looks up to such jurists with awe and reverence. Hail Judiciary - Let Judicial activism prevail and keep the Constitution alive - always", concluded Wg Cdr Sharma.

On the reverse side of judicial activity, BJP's deceased leader

Arun Jaitley on September 5, 2013, said in Rajya Sabha, "There is a proposal to increase the retirement age of judges, please do it but with conditions. We are lavishly creating post-retirement benefits for them. If we don't create, they themselves create it. The view of the Supreme Court is that every member of the CIC must be a retired judge."

Arun Jaitley further said, "There is a situation where you say what should be the fees of a college. It is an accounting matter but the judicial order says that the fees of an engineering college should be decided by a retired judge. I think the temptation of continuing in a job is to keep occupying the bungalows. It is a very serious temptation. There is a danger that the desire of a post-retirement job influences the pre-retirement judgements." Again on May 11, 2016, Arun Jaitley in Rajya Sabha gave a statement that "judiciary is destroying the edifice of India's legislature step by step, brick by brick."

This trend has become more common during the Covid-19 pandemic time; where, in the result of governmental negligence and non-performance, taking suo moto actions, courts started admonishing democratically elected Central/ State governments and agencies like Election Commission, making dictatorial and derogatory observations using even *obiter dicta* remarks against them.

On April 26, 2021, the bench of Madras High Court headed by Chief Justice Sanjib Banerjee, in a terse manner told the Election Commission's counsel, "Your institution is singularly responsible for the second wave of Covid-19, and it should be booked for murder."

On June 7, 2021, SC ordered the eviction of thousands of people living in slums encroaching on forest land in Haryana's Faridabad. The court

directed Haryana government to file compliance affidavit on the next date of hearing on July 27, 21. Earlier, on February 20, 2019, Supreme Court had asked the governments of 17 states to evict an estimated one million tribal and other households living in forests after their claims of right to live in forests were rejected under the Forests Rights Act.

The SC on December 2, 2021, put the Centre on a 24 hour deadline to come out with a 'creative' and 'urgent' mechanism to control air pollution in Delhi-NCR, failing which, the court said, it may set up a task force itself since "nothing is really happening to control pollution" and "all authorities have failed."

On December 2, 2021, hours after the Supreme Court criticised the reopening of schools, as pollution level shot back up, the Delhi government ordered all educational institutes shut till further orders- a move experts said will prolong learning crisis wrought by Covid-19 while doing little for the health of children who are likely to be exposed to the same air at home also.

Currently, a bench of Delhi high court consisting Justices Rajiv Shakdher and C. Hari Shankar had been conducting marathon hearing on daily basis of a petition from NGO on so-called 'Marital Rape' since January 10, 22. Solicitor General Tushar Mehta tried his best while arguing before the court that marital rape is a sensitive socio-legal issue and needs a holistic debate on it. "... please don't treat this as a mere Constitutional validity issue. It affects human life. We are entering in a bedroom. Such a serious matter impacting the sanctity of the sacred institute of marriage just cannot be decided on the basis of the arguments of a few advocates on behalf of the petitioners." However, despite

all the good reasonings and best of SG's arguments, the court reserved its judgment on March 2, 2022. Again on March 23, 2022, Karnataka high court also took up this matter and gave an impugned ruling that man can be booked for raping wife.

Surprisingly, former CJI Deepak Mishra who had earlier passed an impugned judgment of decriminalising adultery in total disregard to rich Indian, cultural, religious and societal values with regard to the sanctity of marriage; during a press conference opposed the concept of marital rape in India saying that it is an idea borrowed from other countries. Justice Mishra said, "I don't think that marital rape should be regarded as an offence in India, because it will create absolute anarchy in families and our country is sustaining itself because of family platform which upholds family values."

At times, Justice Markandey Katju, the former judge of the Supreme Court has been critical of his own court. In November, 2016, apex court had issued contempt notice to Katju for 'intemperate' language and 'scandalising' the judiciary. Later on, Katju apologised which was accepted by CJI Ranjan Gogoi. Similarly, appearing as Expert Witness in defence of Nirav Modi before Westminster Magistrate's court in London, Justice Katju had stated that Nirav Modi will not get a fair trial in India as the Supreme Court had become "subservient to the Indian government" and was doing it's bidding.

Justice Katju's observation can be associated with the statement of SC's sitting judge Arun Mishra, who on February 22, 2020, at an event described Narendra Modi as an "internationally acclaimed visionary" and a "versatile genius." The Bombay Bar Association and Supreme

Court Bar Association passed resolutions against Justice Mishra.

Yet another SC judge MR Shah described Narendra Modi as the "most popular, loved, vibrant and visionary leader", at a virtual public function to commemorate the 60th anniversary of Gujarat high court. The Gujarat high court's Chief Justice Vikram Nath attributed Modi's popularity to his "sense of fairness and dedication towards his duties" and that PM Modi has shown his resolve to ensure "the security of the entire world." Justice Nath also praised Gujarat chief minister Vijay Rupani for "impartial leadership".

Delhi High Court on December 6, 2021, pulled-up Delhi Police for failing to install 33 CCTV cameras in Chandni Chowk and warned that it will directly call police commissioner if the work is not completed at the earliest.

On December 21, 2021, Kerala High Court dismissed a petition seeking the removal of Narendra Modi's photograph from Covid-19 vaccination certificates and imposed a fine of rupees one lakh on the petitioner terming the plea as 'frivolous'. The judge Kunhikrishnan asked the petitioner, "Why are you ashamed of our PM? (If) 100 crore people do not have any issue with this, why you?"

The Supreme Court on March 25, 22, refused to entertain a plea seeking a direction to the Centre to disclose accounts, activity and expenditure details of the PM-Cares Fund and make it open for audit by the Comptroller and Auditor General of India (CAG), and asked the petitioner to file a revision petition in Allahabad High Court.

On March 25, 2022, SC allowed persons with disabilities to apply for Indian Police Service, DANIP and Railway Protection Force jobs.

Taking suo moto cognisance of Birbhum carnage that saw 10 people burnt alive to death, division bench of Justice Prakash Srivastava and Justice Rajarshi Bhardwaj of Calcutta High Court on March 23, 2022, asked the State Government to produce the case diary/report in the case before it by 2 pm on March 24, 2022. The court also directed Central Forensic Laboratory Delhi to conduct laboratory tests.

There have been several marked difference of opinions and judgments from bench to bench. However, there's no consistency and unanimity among the benches of higher judiciary even with regard

to salutation point. Such inconsistencies and polyvocal behaviour of courts create confusion. In 2006, according to Bar Council of India (BCI) Rules, the words "My Lord" and "Your Lordship" were considered as "relics of British colonial past". Further, the September 2019 BCI resolution sought to override the Gazette Notification and revised the addressing words as "My Lord" or "Your Lordship". On February 23, 2021, former CJI Sharad Arvind Bobde was hearing a petition filed by law student Shrikant Prasad. As he addressed the bench as "Your Honour", the CJI said, "You either have the US Supreme

Court or the Magistrate court here in your mind when you call us "Your Honour". We do not want you to address us as "Your Honour".

Whereas, earlier judges of Rajasthan High Court passed a resolution advising advocates to refrain from addressing them as "My Lord" and "Your Lordship". "To honour the mandate of equality enshrined in the Constitution of India, the full court in its meeting dated 14.07.2019, had unanimously resolved to request the counsels and those who appear before the court to desist from addressing the judges as "My Lord" or "Your Lordship".

Lawyers' Wit

- A man walked into a bar with his alligator and asked the bartender, "Do you serve lawyers here?" "Sure do," replied the bartender. "Good," said the man. "Give me a beer, and I'll have a lawyer for my gator."
- A millionaire informs his attorney, "I want a stipulation in my Will that my wife is to inherit everything, but only if she remarries within six months of my death." "Why such an odd stipulation?" asked the attorney. "Because I want someone to be sorry I died!" came the reply.



"WOW! I NEVER BEFORE SAW SUCH A STRENUOUS OBJECTION."

As a lawyer and a former prosecutor, I know the limits of the power and authority of the president. I know what is legal and what is not.

Rodrigo Duterte

Labour Laws Q/A



COVERAGE OF AN EMPLOYEE

Q. Is there any prescribed period for eligibility of an employee to be covered under the Act?

No. The membership of an eligible employee under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is compulsorily from the first day of his appointment. Thus, all the eligible employees in the establishment are to be extended the benefits of the Act. It is made clear that in view of the Amendment to Para 26(2) of the Employees' Provident Fund Scheme, there is no exemption for coverage of an employee when joining an establishment as covered under the Act. The

amendment as made has also been upheld by the Supreme Court.¹

On the point about coverage of an employee from the very first day of joining a covered establishment under the Act and the Scheme, the Bombay High Court has clarified that the Government of India has the power under section 7(1) of the Employees' Provident Funds Act, to modify the Employees' Provident Fund Scheme, 1952 from time-to-time, hence coverage of an employee from the day of his joining will not be illegal.² For coverage of an establishment under the Employees' Provident Fund Act, mere reliance on the report of Enforcement Officer indicating 20 or more employees in the



H. L. Kumar
Advocate, Chief Editor,
Labour Law Reporter

establishment without positive supportive documentary material proof is not enough.³ The EPF Appellate Tribunal has rightly rejected the appeal filed by the petitioner when there were not 20 or more than 20 employees whereas as per Squad Officer of the EPF Department, more than 20 persons were found working.⁴

A Director or Managing Director is coverable under Provident Fund.⁵

References:

1. *J.P. Tobacco Products v. Union of India*, 1996 (1) LLJ 822 (SC).
2. *Kay Iron Works (P) Ltd. v. Union of India*, 2007 LLR 175 (Bom HC).
3. *Fitness Point Healthcare Pvt. Ltd. Nashik v. Union of India*, 2012 LLR 1190: 2012 (135) FLR 333 (Bom HC).
4. *Hotel Roopa, Mangalore v. Employees' Provident Fund Appellate Tribunal, New Delhi*, 2012 LLR 1238: 2012 (135) FLR 379 (Karn HC).
5. *Saheli Marbles Private Limited, Udaipur v. Assistant Provident Fund Commissioner, Udaipur*, 2015 LLR 1189 (Del HC).

Legal Thesaurus

Damdupat :

The rule of *damdupat* limits the arrears of interest recoverable at any one time by the amount of principal remaining due at that time. [*Dagdusa v. Ramchandra*, 20 Born 611].

It does not apply to a Mohammedan purchasing the interest of a Hindu debtor [*Ali Saheb v. Shabji*, 21 Born 85], nor to a Hindu assignee of a Mohammedan debtor. [Harilal v.

Nagar, 21 Born 38].

Similarly, a non-Hindu by a transfer of the debt from a Hindu cannot enforce this rule against the creditor. [*Jeewan v. Manordas*, 35 Born 199]. It applies when the debtor is a Hindu. [*Dawood v. Vallubhdas*, 18 Born 227; see also *Hansra v. Bapu Saheb*, 3 Born 131; *Ram Kanye v. Cally*, 21 Cal 840].

The rule of *damdupat* is not applicable if it is not applicable

at the time when the decree becomes final and binding. [*Lal Behary v. Thacomoney*, 23 Cal 899].

Where under the terms of a mortgage there is a liability to account the rule of *damdupat* does not apply. The Court may allow interest from the date of the suit to that of the decree after applying the rule of *damdupat* at the date of the suit. [*Dhondshet v. Ravji*, 22 Born 86]. [Section 73, **Contract Act**].

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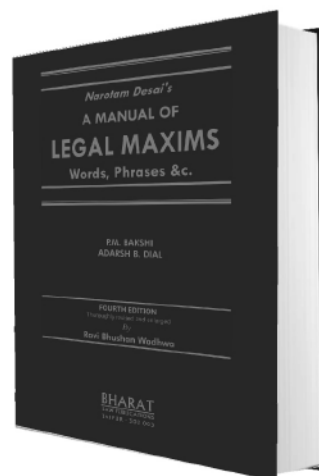
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JUDGES ARE HUMAN BEINGS

The Preamble to the Indian Constitution opens with eloquent words: **We the People of India**. It is the people of India who elect the Members of Parliament and the Political Executive. Therefore, the two wings of the democratic state are the elected bodies. The Will of the people is contained in the Constitution. Both wings are under the Constitution. They have to translate the Constitution through the legislative and executive actions and processes. How to keep the two organs of the state within the constitutional limitations? Do the Members of these organs represent the Will of the people? In the year 2009 General Election, the Congress, the majority party formed the government. 58 percent of the registered voters voted. Congress party polled 28 percent of the votes polled. Consequently, the congress party formed the government with approximately 16 percent of the registered voters. In the General Election of the year 2019, approximately 67 percent of the registered voters voted. This number is the largest ever since 1952. The BJP polled 37 percent of the votes polled. Thus, the share of the BJP party was only 25 percent of the total numbers of voters registered. This leaves nothing to doubt that even if they were the majority party yet they represented only 16 and 25 percent of the registered voters respectively. This number is miserably poor. This is the biggest fallacy of Indian democracy. The making of the Indian Constitution was a carnival of democracy. A democracy of Abraham Lincoln

(1861), government by the people, of the people and for the people. It is also the biggest challenge to Indian democracy.

The Constitution governs India. The third wing, the Judiciary is also bound by the Constitution. In fact, all the three wings of the state have to work within and in furtherance of the discipline of the Constitution. Moreover, the domain of the judiciary is to keep the other two organs of the state under the Constitution. The task is gigantic. It is certainly not easy. Nor smooth. There are many pitfalls.

We are told that Judges are not elected. It is true. It ought to be like this. The reason being, the judiciary is to keep the other two organs within the framework of the Constitution. The judiciary cannot be made to take the cover of the Will of the people. Ultimately, it is the Will of the Constitution which is to prevail. If the judiciary had been elective, there would have been head on collision. All the three organs reflect the Will of the people through the medium of the Constitution. The three wings have to speak the language of the Constitution. The fact is that the Judiciary acts as the umpire to keep the other two components within the provisions of the Constitution. Consequently the judiciary cannot be elective. The judges are to be selective and not elective. The men of law wear the robes of a judge. Coupled with this, be a good human being to be a judge. Judges are the ambassadors of the Constitution.

Who is qualified to be a judge? I am not on qualifications.



Dr. Balram K Gupta

Professor Emeritus

Sr. Advocate

Director (Academics), CJA

My concern is about the qualities of a judge. The judges are to be detached from the parties to the dispute. They are to be attached to the findings of the truth. Their sole concern is how best justice can be done. Judges deal with human disputes. Humanism must reflect in their judgments and in their conduct.

I wish to share an incident of early 1950s. A villager from the state of UP wrote post cards making allegations against a judicial magistrate. The magistrate made a complaint to the High Court. Number of notices were sent requiring the villager to appear before the High Court. He failed to appear. The non-bailable warrants were issued. The police produced the villager in court. He was asked, why did you not appear before the court earlier. His response was, he could not afford the railway fare. Now, the police had brought him to the court. The bench of two judges shared their concern. They felt that in this situation the allegations will not shake the judicial conscious. Therefore, it was felt that a warning would be sufficient. He was warned not to make such allegations in future. He was told to go back home. How should I go back when I have no money.

This was an unusual situation. The judges decided to pay the fare personally. A senior advocate present in court offered to give him a meal and to be dropped at the railway station. Such a situation brings out the humane approach of the judges. It is reflective of the mindset of the judge. It is said that one should be 'as sober as a judge'. Sobriety is a lifelong journey of a judge. CJI S.A. Bobde sat on a motor bike, Harley Davidson (worth ₹50 lacs) just to have a feel of the same on June 29, 2020. He was in Nagpur Raj Bhawan. He was without a mask and the helmet. The photograph was flashed on print, electronic /social media. The fact was that he never drove or had a ride of the same. It was projected as if he had violated the Covid norms. We must not forget that judges are also human beings. This does not mean that judges should be totally devoid of such feelings. The CJI was fond of motor bikes during his younger days. Just the feel of a motor bike gave him thrill and happiness. It was not a derogatory conduct on the part of CJI. It was not demeaning the office that he was holding. The judges are not to curb their normal self as human beings. They need to be normal. Not to do anything abnormal. At the same time, we must not forget that CJI is the *paterfamilias* of Indian Judiciary. They must not do anything which would invite criticism. No action of a judge should cross the contours of sobriety. After the advent of Indian Constitution, judges used to drive their own cars. It was only in early 1980s that the judges were provided with official cars. Still another incident. It is of late

1940s or of the year 1950. Chief Justice of Nagpur High Court, Justice Vivian Bose was driving his own car and was going to some district headquarters. While on the highway, he noticed a police jeep parked. He stopped his car. Asked the police inspector, if he needs any help in getting the car repaired. He gave a curt reply. Do it if you can. He set the fault right within minutes. Justice Bose started his car. The inspector inquired where he was going. He opened the rear door and sat on the back seat. Justice Bose drove and reached the town. The inspector was dropped at the police station. As the Chief Justice reached the Inspection Bungalow, the inspector also reached. The inspector saw the person who had driven him to the town. He realized that he is the Chief Justice. The inspector fainted. Justice Bose revived him. While leaving, Justice Bose shared with the officials what actually had happened. He instructed them not to take any action against him. Two points come to my mind. Look at the humility of the Chief Justice. Secondly, if somebody had captured his photograph while repairing the jeep or even otherwise. The next day, the news in the newspapers could appear: "Hon'ble the Chief Justice, Justice Vivian Bose repaired the jeep of the police inspector on the highway. He acted as the motor mechanic. The Chief Justice should not have done so. It did not behove the Chief Justice". This is wrong way of perceiving the Chief Justice. His response was so spontaneous. He knew how to repair the jeep. He did not hesitate to render the required help. It was reflective

of his helping nature. Moreover, he never thought that this was below his dignity. This showed, how balanced he was as a human being.

One more incident. It happened in the Supreme Court on March 13, 1968 in the court of Chief Justice of India. It was a bench of three judges including the Chief Justice, M. Hidayatullah. There was an attempt on their lives in the court. Justice A.N. Grover got two cuts on his scalp with the flick knife. He was bleeding. He was immediately put in the Chief Justice's car in the back seat. Chief Justice Hidayatullah drove the car himself. He jumped a couple of red lights. Within minutes, he was in Willington Hospital. It seems that the judges of the top court also did not have official drivers at that time. Justice Grover was saved. A question was raised. Should the Chief Justice have jumped the traffic lights? Should he have driven the car himself? The answer cannot be given without keeping the situation in mind. It was the situation which demanded and warranted this. Let us not forget that after all judges are also human beings. A human life was to be saved. The Chief Justice acted in furtherance of the same.

It is the humane element which plays a vital role in dealing with human disputes. Judges are humans. They deal with human disputes. They ought to decide with humanistic approach. Judges filter the Constitution with humanism. Realistic approach is important. Technical justice is not the best recipe. Constitutional jurisprudence must grow on the foundation of humanism.

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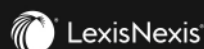
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Women in LEGAL PROFESSION

Purnima Arora LL.B (Gold Medalist), Advocate, Delhi High Court

Though even after 75 years of Independence the representation of women both at the Bar and the Bench has been meagre, we have numerous examples of women who have fought all odds to emerge as a winner in this male-dominated profession and who have made a name for themselves. This column is an ode to such fighters.

CORNELIA SORABJI India's First Female Lawyer

Cornelia Sorabji was the first woman to attend the *Bombay University*, the first woman to study law at the *Oxford University*, the first Indian to study at any British university and the first female lawyer in India and Britain.

Born in 1866 in Nasik, Maharashtra, her career path was heavily influenced by her parents, who advocated for her and her siblings - six sisters and a brother - to become leaders in education and social work. She spent her initial childhood in Belgaum and Pune. After homeschooling by her parents, and attending missionary schools, Cornelia became the first woman to get admitted to the Deccan College, Pune where she graduated with a first-class degree. In fact, her parents had encouraged all their daughters to attend the Bombay University, but their applications had been rejected every time as in those days, female applicants were not considered for admission. However, it was only their sixth daughter Cornelia, who finally broke through the barrier of entry. At Deccan College, she pursued Literature and completed a five-year course in one year. She was the top ranked student of her class. But being a female candidate, she was denied the Oxford scholarship that was usually given to the topper of the

year. However, a few prominent English women in Pune and Mumbai raised funds to send her to Oxford. Cornelia thus went to Oxford in 1889 and joined the Somerville College there. She was the first Indian national to study at any British University.

At Oxford, Cornelia took Law and in 1892 she became the first woman to pass the Bachelor of Civil Laws (BCL) examination. But again, Oxford would not grant her the degree as no woman till then was allowed to register as an advocate. After returning from Oxford, Cornelia began a long search for a legal post in India. She got involved in social work on behalf of the *Purdanashins* - women who were veiled and forbidden to communicate with the outside male world, and eventually won them the right to train as nurses. As a solicitor, she initially prepared cases for women clients in the Princely state of Kathiawar in Gujarat. She helped altogether 600 women and orphans fight legal battles, many a time charging no fees from them. She also completed an LL.B. course from Bombay University in 1897. Although it was not possible for women to become barristers until 1923, she continued to read law at the Solicitors' firms.

After Oxford began awarding degrees to women in 1920, and the London Bar agreed to allow women with Law degrees to practice in law, Cornelia



travelled to England to collect her degree and she was called to the Bar in 1922. She returned to Kolkata where she enrolled as a Barrister at the High Court. She thus became the first woman to practice law in India and in Britain.

Cornelia Sorabji was involved in many social reform activities. She was actively associated with the Bengal branch of the National Council for Women in India; The Federation of University Women; and the Bengal League of Social Service. She extensively toured Bengal, Bihar and Assam for her social work. In 1909, Cornelia was awarded the *Kaiser-i-Hind* medal for her efforts to reform the plight of women and also for her undeterred opposition to orthodox Hindu attitudes towards child marriage and widows. She gave up her practice in 1929 and devoted her

time entirely to the social work.

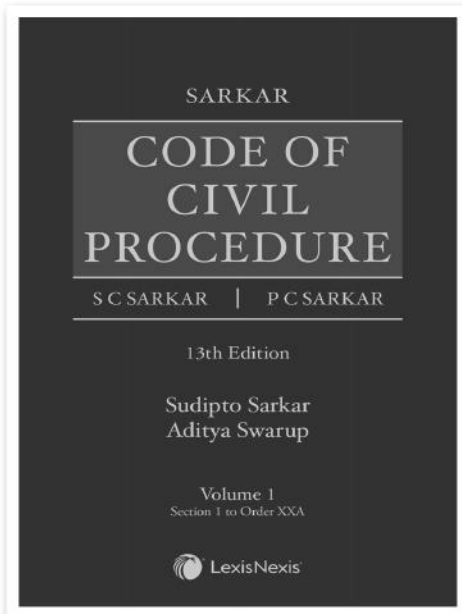
Though a nationalist initially, Cornelia Sorabji gradually became an anglophile, and towed the British line in her political leanings. She courted controversies by supporting the American writer, Katherine Mayo who in her book, *Mother India* (1927), defended British rule in India. Cornelia even opposed Mahatma Gandhi when he launched the civil disobedience movement. She toured India and the U.S.A. to propagate her political views and thus became unpopular among the nationalist leaders.

In 1931, she moved back to England and permanently settled there, visiting India during winters. She died on July 6, 1954 at the age of 88. Cornelia was unmarried.

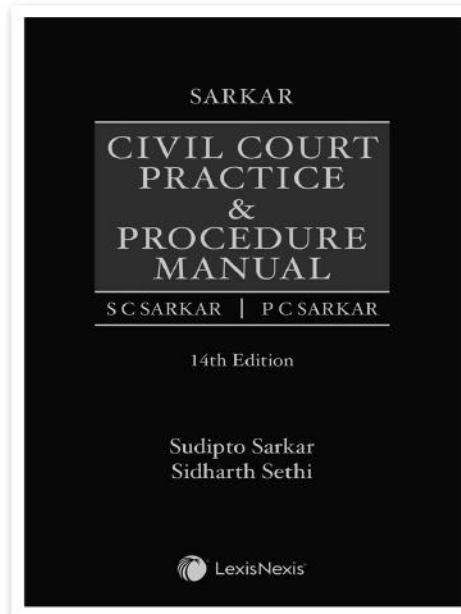
Besides being an active social worker, Cornelia was also a prolific writer. She wrote a number of books, short stories and numerous articles for journals. Her two autobiographies were: *India Calling: The Memories of Cornelia Sorabji* (1934) and *India Recalled* (1936). She also wrote a book recounting her experiences in the legal field – *Between The Twilights*.

Today, there is an attractive large portrait of Cornelia Sorabji in the prestigious National Portrait Gallery in London. A lady with numerous records, Cornelia led a life guided by her own passion and faithfully followed her heart. In 2012, a bronze bust of hers was unveiled at the Lincoln's Inn, the High Court Complex in London by the prominent lawyers of the United Kingdom as a mark of respect to the first ever lady to don the lawyer's gown in their country. A Google Doodle celebrated her 151st birthday on November 15, 2017.

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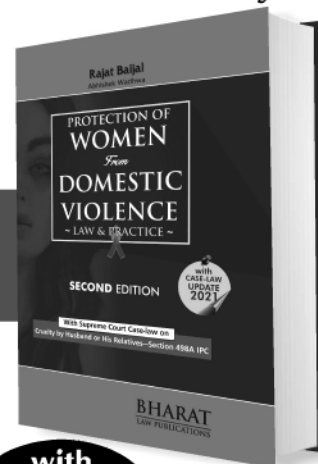
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ALLEGATIONS OF OVER DOSE OF MEDICATIONS & STANDARD PROTOCOLS OF TREATMENT

FIRST APPEAL NO. 940 OF 2015

RACHNA KHOSLA & 2 ORS. Versus DAYANAND MEDICAL COLLEGE & HOSPITAL

Decided by the Hon'ble NCDRC on 08.02.2022



Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS: A Civil Contractor, Mr. Sanchit Khosla was a healthy person except having occasional minor psychiatric problems for 7 to 8 years. On 24.01.2011, he consulted one senior psychiatrist, Dr. Rupesh Chaudhari, at Dayanand Medical College & Hospital, Ludhiana for routine check-up, who advised the patient for admission in the hospital, but the patient and his attendants were reluctant for hospitalisation, because of pressure and derogatory words used by the Opposite Party No. 2, the patient was admitted in the psychiatric ward at DMC on 01.02.2011, routine blood tests and ECG were found to be normal, it was alleged that though the condition of the patient was normal, the Opposite Party No. 2 unnecessarily started giving him heavy doses of medicines, the patient remained drowsy throughout hospitalisation which subsequently led to the death of the patient.

OBSERVATIONS: The case of the Complainant is that due to complications developed because of overdose of sedatives and anti-psychotic, the patient died. Whereas the case of the Opposite Parties is that during hospitalization, the patient was treated for the psychiatric problems as per reasonable care. The death was due to cardiac arrest but not due to complications of drugs or over dosage. The State Commission took an opinion from the Medical Board constituted at PGI, Chandigarh. The Board consists of the Specialist doctors from Department of Psychiatry,

Internal Medicine, Cardiology and Hospital Administration. The Board gave the opinion on following 3 specific points as under:-

1. Whether the protocol was observed by OPs in respect of dose given to the deceased while treating him as a patient of psychiatry.

2. If there was over dose whether the same resulted into complication resulting in the death of deceased.

3. Whether the requisite treatment was given to the patient after his condition became serious at 7 PM on 04.02.2010.

The board opined as :

"1. On the basis of the available record, it is evident that the patient (Late Shri Sanchit Khosla, 41 years old male) was suffering from a serious mental illness, most likely schizophrenia, for 11-12 years, and was admitted with frank psychotic symptoms, aggressive behaviour and behavioural disinhibition. Specific psychotropic medicines given to the patient, which include antipsychotics and sedatives as part of the treatment package, are required for treatment of such patient as per present medical standards.

2. As per the available record, patient Late Shri Sanchit Khosla was suffering from multiple medical conditions such as uncontrolled Diabetes Mellitus, Obesity, and probable Obstructive Sleep Apnea, all of which are known medical risk factors for occurrence of adverse cardiac events. Use of antipsychotics and sedatives (which was a requisite treatment

for his uncontrolled and severe psychiatric problems at the time of admission) can precipitate acute Cardio-Pulmonary events in such high-risk patients. The doses of the antipsychotics and sedatives, as recorded in the Treatment Charts provided to the Board for scrutiny, are within approved ranges for the drugs used in such conditions and hence cannot be said to constitute an "overdose" as such. On the basis of available record it is not possible for the Board to infer or comment on the question whether these doses of the medications used have resulted in complications leading to his death.

3. On the basis of available record the condition of the patient suddenly and rapidly deteriorated on 04.02.2012 from 7.00 PM onwards, and thereafter he appeared to have received reasonable care and treatment as per the existing treatment protocols."

Before the State Commission, the Complainant in her support, filed an affidavit with opinion of Dr. Vishwas Madhav Thakur, a private practicing Physician at Gurgaon that there was negligence during treatment of the patient at the Opposite Party No. 1 hospital. According to him, Dr. Rupesh Chaudhary, the senior Consultant in Psychiatry department advised a cocktail of 6 medications (2 hypnotics and 4 antipsychotics) in the casualty



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itself. The 4 Antipsychotics were Injection Serenace (Haloperidol 5 mg), Injection Clopixol 100 mg, Tab Sizopin (Clozapine) 25 mg, Tab Sizodon Plus (respirodone). The two hypnotics drugs are Inj Lorazepam 4mg and Midazolam 5 mg. According to him, the diagnosis of schizophrenia and Obstructive Sleep Apnoea were without any supportive investigations. The patient never recovered, but developed serious complications like severe respiratory depression and hypoxia of the brain and finally, expired due to Cardio-Pulmonary arrest. He further opined that the treatment adopted in OP-1 hospital and maintenance of hospital record was not as per standards. Most of the pages of the clinical notes appear a retrospective makeover of the records.

HELD: We have gone through the standard medical text books on medicine and Neurology,

Psychiatry viz. Harrison's Internal Medicine and Oxford Textbook of Neurology. We have also gone through the medical literature filed by the learned Counsel for the Appellant. In our opinion the treatment given to the patient was as per prescribed standards. It is apparent from the past medical history, that in year 2002, the patient was admitted in mental hospital at Amritsar. Again in year 2003, he was shifted to one private hospital and also in PGI Chandigarh. As per ICD-10 criteria, he was diagnosed as "Schizophrenic-Paranoid type with type II DM with severe family, personal, social and occupational dysfunction. Patient ran away from PGI during treatment. Moreover, it is pertinent to note that Dr. Thakur was not a subject expert in Neuroscience or Psychiatry. Therefore, we do not give more credence to his opinion than the opinion of Board's subject

experts at PGI, Chandigarh. *The PGI experts opined that there was no negligence and the doses of anti-psychotic and sedative drugs were within normal range, it was not an overdose. On 04.02.2012, from 7pm, suddenly the condition of the patient rapidly deteriorated and he was treated as per existing CPR protocols. Based on the forgoing discussion we do not find any negligence or deficiency in service on part of the Opposite Parties. There was no deviation from the standard of practice. The doctors treated the patient as per the clinical signs of the psychiatric disease. The prescribed dose of medicines was well within the acceptable range.* Thus, in our considered view, the patient did not suffer from the overdose of such medicine. However, during treatment, the patient suffered cardiac arrest, which caused his death.

Supreme Court Guidelines



POLLUTION CONTROL AND ENVIRONMENT PROTECTION

Ve/lore Citizens "Welfare Forum v. Union of India & Others

AIR 1996 SC 2715: (1996) 5 SCC 647: 1996 (6) SCALE 194: 1996 (5) Comp LJ 40

Dated: August 28, 1996

BENCH: Justices Kuldip Singh, Faizan Uddin and K. Venkataswami.

The Central Government shall constitute an authority under section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by retired judge of the High Court and it may have other members - preferably with expertise in the field of pollution control and environment protection - to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix),

(x) and (xii) of sub-section (2) of section 3 the Central Government shall constitute the authority before September 30, 1996.

1. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. The authority shall,

with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.

2. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amounts is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrates of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/ families.

3. The authority shall direct the closure of the industry owned/managed by a polluter

in case he evades or refused to pay the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

4. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area.

5. We impose pollution fine of Rs. 10,000 each on all the tanneries in the districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. the fine shall be paid before October 31, 1996 in the office of the Collector/District Magistrate concerned. We direct the Collectors/District Magistrates of these districts to recover the fines from the tanneries. The money shall be deposited, along with the compensation amount recovered from the polluters, under a separate head called "Environment Protection Fund" and shall be utilised for compensating the affected persons as identified by the authorities and also for restoring the damaged environment. The pollution fine is liable to be recovered as arrears of land revenue. The tanneries which fail to deposit the amount by October 31, 1996 shall be closed forthwith and shall also be liable under the Contempt of Courts Act.

6. The authority, in

consultation with expert bodies like NEERI, Central Board, Board shall frame scheme/schemes for reversing the damage caused to the ecology and environment by pollution in the State of Tamil Nadu. The scheme/schemes so framed shall be executed by the State Government under the supervision of the Central Government. The expenditure shall be met from the "Environment Protection Fund" and from other sources provided by the State Government and the Central Government.

7. We suspend the closure orders in respect of all the tanneries in the five districts of North Arcot Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. We direct all the tanneries in the above five districts to set up CETPs or Individual Pollution Control Devices on or before November

30, 1996. Those connected with CETPs shall have to install in addition the primary devices in the tanneries. All the tanneries in the above five districts shall obtain the consent of the Board to function and operate with effect from December 15, 1996. The tanneries who are refused consent or who fail to obtain the consent of the Board by December 15, 1996 shall be dosed forthwith.


8. We direct the Superintendent of Police and the Collector/District Magistrate/Deputy Commissioner of the district concerned to dose all those tanneries with immediate effect who fail to obtain the consent from the Board by the said date. Such tanneries shall not be reopened unless the authority permits them to do so. It would be open to the authority to dose such tanneries permanently or to

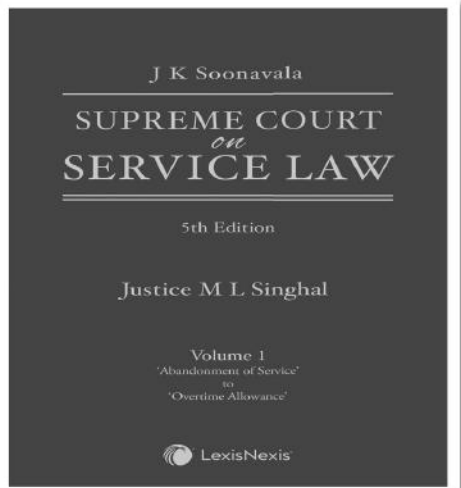
direct their relocation.

9. The Government order No. 213 dated March 30, 1989 shall be enforced forthwith. No new industry listed in Annexure-I to the Notification shall be permitted to be set up within the prohibited area. The authority shall review the cases of all the industries which are already operating in the prohibited area and it would be open to authority to direct the relocation of any of such industries.

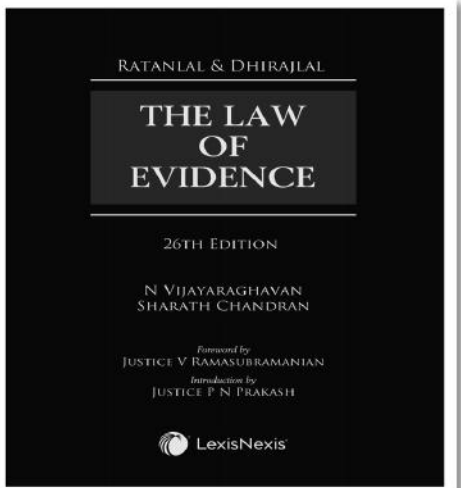
10. The standards stipulated by the Board regarding Total Dissolved Solids (TDS) and approved by the NEERI shall be operative. All the tanneries and other industries in the State of Tamil Nadu shall comply with the said standards. The quality of ambient waters has to be maintained through the standards stipulated by the Board.

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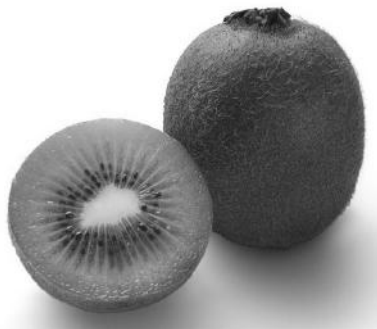
Anjaneyasana

Benefits: Anjaneyasana is every good asana for every human body. It helps in maintaining perfect body posture. It also helps instructing of your arms, shoulder, legs and hips. It also helps in faster blood circulation. Moreover, if you're including this pose in your daily activity list, you might never have to face any pain in your knees shoulder or abdomen.

Procedure: Begin the asana by coming into the Adho Mukha Svanasana. Once you are in the pose, exhale and place your right foot in front, just beside your right hand. Make sure your right knee and ankle are in one line. Gently lower the left knee, placing it on the floor, right behind your hips. Inhale, and lift your torso. Then, raise your arms above your head, such that your biceps are next to your ears, and your palms are facing each other.

Exhale. Let your hips settle down and forward, such that you feel a good stretch in the frontal region of your leg and the hip flexors. Pull your tailbone towards the ground. Extend your lower back as you engage your spine. Stretch your arms further behind so that your heart is pushed up. Look behind as you move into the mild backbend. Hold the pose for a few seconds. You can also raise the knee of the back leg off the mat to come into a full crescent pose. To release the pose, place your hands back on the mat, and move into the Adho Mukha Svanasana. Repeat the pose with your left leg forward.

Healthy Food



Kiwi

Kiwifruit is a rich source of vitamin C. Its potassium content by weight is slightly less than that of a banana. It also contains vitamins A and E. The skin is a good source of flavonoid antioxidants. The kiwifruit seed oil contains on average 62% alpha-linolenic acid, an omega-3 fatty acid. Usually a medium

size kiwifruit contains about 46 calorie, 0.3 g fats, 1 g proteins, 11 g carbohydrates, 75 mg vitamins and 2.6 g dietary fiber. Kiwifruit is often reported to have mild laxative effects, possibly because of the high level of dietary fiber. Kiwifruit also serves as a natural blood thinner. A recent study performed at the University of Oslo in Norway reveals that—similar to popular mainstream aspirin therapy—consuming two to three kiwifruit daily for 28 days significantly thins the blood, reducing the risk of clots, and lowers fat in the blood that can cause blockages.

Recipe of the Month



Mini Kiwi Upside-Down Cakes

Ingredients:

- 2 green or gold kiwi, peeled and sliced
- 1/2 cup butter
- 1/2 cup sugar
- 1 1/2 cups flour
- 2 teaspoons baking powder
- 1 egg
- 3/4 cup orange juice
- 1 cup coconut

Procedure:

Toast coconut in pan on medium until lightly golden. Butter cupcake pan and place about a 1/2 teaspoon brown sugar in bottom. Add a slice of kiwi into each compartment.

Blend butter and sugar until creamy. Add egg and mix. Next add flour and baking powder along with orange juice mix on medium until blended.

Scoop 3 Tablespoons into each area and top with some toasted coconut.

Bake at 325 degrees (for dark pan) for about 18 minutes.

Happy Holidays

Cherrapunji

High above misty valleys and foaming rivers, this is a stunning location and the year-round rain earned Cherrapunji coveted entry long ago into the Guinness Book of World Records as the wettest place on earth, the place where the rainfall can be recorded in feet rather than in millimeters.

Today, climatic changes have edged Cherrapunji out of the topmost 'wet' slot, but it still retains its pristine beauty, its unusual facets, the perpetual clouds, and the perpetual mists.... Appropriately, Cherrapunji lies in the heart of the State of Meghalaya-the abode of clouds. Amidst all the surprises of Cherrapunji, perhaps the most

abiding is the startling realization that the wettest place on earth where it rains every month also has an amazing amount of warm sunshine. When the clouds drift away, there are a series of memorable views, and one can see as far as Bangladesh. Orchids blooming a few feet away form a patch devoid of vegetation. Dense woods interspersed by rocky, cliffs furrowed by erosion.

As the months move on, the smell of decaying vegetation lessens as the showers become intermittent. New plants spring to life, and people go about their tasks with renewed energy.

The hills around Cherrapunji do not have the lush green vegetation one normally associates with wet places. An amazing variety of rare orchids, ferns, and moss convert each

pocket into a botanist's paradise. Cherrapunji produces the best quality of oranges as well as pineapples. In fact, Cherrapunji oranges are the ancestors of the famous Nagpuri oranges in the Central India. Cherrapunji is perhaps the only place in India, which has just one season: the monsoon. The rainfall varies from heavy to medium to light, but there is no month without rain. Another surprising fact about Cherrapunji is that it rains mostly at night. Day-to-day activity is not really disrupted by the rain. Cherrapunji is 58 km from Shillong, the capital of Meghalaya. A steep motorable road, almost perpetually bathed in mist as it climbs upwards on the last lap, leads up to Cherrapunji. Buses and taxis ply to Cherrapunji from Shillong.



THINK LIKE A LAWYER;
DON'T ACT LIKE ONE

SWEETEN THE DEAL SWEETEN THE OTHER

Offer something that doesn't cost you much, but that the other person values greatly. This gives him a stimulus to agree with your proposal. If the conflict is about the amount needed to settle an agreement, he might agree to pay more if he can pay in installments. If you're not in a rush, it makes no difference to you - and you get your money in the end. Make it in his interest to work toward a solution.

KILLER ON CALL

—Max Alexander

Helen Dean was one of those lucky people who had managed to grow old gracefully. At 91 she was still active in the Eastern Star order, a sister group to the Masons. She was alert, quick to laugh, and looked much younger than her years. "She didn't have a lot of wrinkles," says her niece Sharon Jones.

In late August 1993, she was enjoying a smooth recovery from colon surgery at Warren Hospital in Phillipsburg, New Jersey, when a thin, sharp-featured male nurse entered her room. The nurse told Helen's son Larry to leave; when he finished his work and Larry returned a few minutes later, Helen angrily announced, "He stuck me!"

The next day, Helen began vomiting inexplicably, delaying by several hours her discharge to a nursing home, where she was to receive physical therapy before going home. It came as a tremendous shock to her relatives when she died of heart failure that afternoon.

That night, Helen's son called the local prosecutor and told him that she'd been murdered. He had a suspect in mind. It was the male nurse who gave Helen the mysterious injection, and he knew his name—Charles Cullen.

Sharon Jones had remembered the nurse's name because Helen Dean's middle name happened to be Cullen. But not much else about Charlie Cullen stood out. An emotionally withdrawn man who could barely bring himself to converse with his own wife, Cullen had hidden in plain sight for years—blending in and getting by, despite a history of bizarre behavior.

Exactly how Cullen handled the loss of his second parent is unclear—but soon afterward he joined the Navy, serving as a technician for ballistic missiles on the Woodrow Wilson, a nuclear submarine.

But Cullen's interest in medicine took a bizarre turn one day when Leinen found Cullen manning the missile controls while wearing a surgical gown, mask and gloves. At the time, Leinen thought Cullen was just trying to be funny, but he reported the bizarre incident to his superiors anyway. Years later, Leinen, who went on to work as a facilitator with mentally ill patients at

a veteran's hospital, came to believe Cullen had been deeply troubled. "He didn't have a grasp on reality," he says. Eventually, Cullen was transferred out of sub duty, but his problems continued. Leinen heard Cullen attempted suicide a few years later, which may have led to his discharge in 1984. (Citing privacy rules, Navy officials will not confirm a suicide attempt.)

After his release, Cullen enrolled in the Mountainside Hospital School of Nursing, located just a few miles from where he grew up. He graduated in May 1987—two months after his brother James died suddenly at age 31, possibly from a drug overdose. A week later, Cullen married Adrienne Taub, a computer programmer, who has refused to speak to the press about her former husband. Shortly thereafter, Charles Cullen, RN, landed his first nursing job at Saint Barnabas Medical Center in Livingston, New Jersey.

Home was a subject that rarely came up, says Hackett.

"He never talked about his family life. I worked with him for a while before I found out that he had a wife and children." (Charlie and Adrienne's two daughters are now 16 and 12.) The male nurse certainly never shared his problems—including the breakup of his marriage.

In divorce papers filed in January 1993, Adrienne Cullen described a dysfunctional relationship in which her sullen, remote husband slept on the couch for three years and never took her out. Instead he immersed himself in his work. "He consistently works 12 to 36 hours of overtime each week," she wrote. "When I approach him about working less overtime, he implies that I am being unreasonable and selfish."

Adrienne described a 1991 trip they took to Disney World with her parents: "I was seven months pregnant. Charles never assisted me in disembarking buses or expressed any concern or compassion for the fact that I was very pregnant and on my feet all day. One night we went to a 'Wild West Show.' Charlie wandered off by himself, embarrassing me in front of my parents. When the show began, Charles began to drink beer." (The subsequent divorce order called for Cul-

len to "continue his current individual and alcohol counseling programs.")

At home, Adrienne claimed that her husband repeatedly turned the heat off in winter—and when she complained, he retaliated by cranking the thermostat to 80. While his wife and daughters roamed in their bedrooms, "He sleeps in the living room with the window open," Adrienne charged.

Cullen apparently reserved much of his anger for the family's two Yorkshire terriers. "I was awakened many nights by the screams of these dogs," Adrienne said. Cullen once zipped a misbehaving pup into a bowling bag.

He was also losing it on the road, racking up tickets and fender benders left and right. In 1989 he was pulled over for speeding. In 1990 he ran a stop sign in Phillipsburg and caused a minor accident. Less than five months later, he ran another stop sign. By the time of his arrest, his driving record showed three accidents and three speeding tickets.

The ride was getting bumpy at work too. The nursing agency through which Cullen was then working at Saint Barnabas fired him in January 1992 for undisclosed reasons, and a month later he was hired at Warren Hospital in Phillipsburg. There, shortly after Adrienne filed for divorce, Cullen became obsessed with a nurse named Michelle Tomlinson, buying her an engagement ring after just one dinner date. One morning, soon after Tomlinson got back together with her old boyfriend, she woke up to find the glass smashed out of her back door and evidence that someone had entered her Palmer Township, Pennsylvania, home during the night. Later that morning, Cullen called and admitted to the break-in.

"I wanted to check on you," he told Tomlinson. "You know, to make sure you were okay, that you did not try anything—like suicide." Tomlinson was so shaken that she pressed charges.

When police called Cullen, says Palmer Township Police Chief Bruce Fretz, "he came right in and admitted to everything." After being fingerprinted, photographed and arraigned

Cullen left and attempted suicide-ending up a patient in the same intensive-care unit where he worked at Warren Hospital. He was later admitted to Greystone Park Psychiatric Hospital in Parsippany, New Jersey.

Cullen next stepped onto a merry-go-round of short-term positions, working at eight more hospitals or nursing homes in the next nine and a half years. He favored the hard-to-fill night shift, a time when nurses are less supervised. Meanwhile, his private life continued to spiral. In 1997, during a brief period when he was unemployed after being fired for poor performance from Morristown Hospital in New Jersey, Cullen was back as a patient in Warren's emergency room, being treated for a depression-related illness that may have been another suicide attempt.

He was working the night shift at the Liberty Nursing and Rehabilitation Center in Allentown, Pennsylvania, on May 7, 1998, when an elderly patient received an unauthorized dosage of insulin and eventually died. The man, Francis Henry, had been in a car accident and appeared to be in severe pain, barely able to mouth "I love you" to his wife. The nurse in charge of Henry, Kimberly Pepe, was fired over the incident.

Kristina Toth had a bad feeling about the gaunt-looking malenurse who wheeled her 78-year-old father, Ottomar Schramm, out of Easton's emergency room. "I thought he was real cold,"

Tooth recalls. "He didn't show any emotion." In his hand was a hypodermic needle. "What's that for?" Toth asked.

"In case his heart stops," replied the nurse.

Schramm's heart did indeed stop three days later, the last day of 1998. An autopsy revealed a digoxin overdose. Schramm, a retired steelworker, had been admitted after experiencing seizures; there was no medical reason for the digoxin in his system. Although the pathologist concluded the death was accidental, Toth suspected otherwise. By then Cullen was living in a basement apartment on a tidy block in Phillipsburg. "He kept to himself," says Charles Cook, who lived two doors down. "He was a nice neighbor; in the summer he kept his yard beautiful. On weekends sometimes his kids would visit."

Next Cullen moved on to a hospital in nearby Allentown, where he was considered so odd that he was "weeded out" after 18 days, according to a hospital representative. By now he had been fired from four institutions, often under a cloud of suspicion over medication errors and unusual patient deaths. Relatives of victims, like Helen Dean's niece Sharon Jones, can't understand why investigators failed to pin any crimes on Cullen. "We know who did it, when he did it, and how," says Jones, adding that catching Cullen back in 1993 would have saved many lives.

Then, during the night of June 27, Cullen played his deadly game again-withdrawing digoxin for one of his own patients, canceling the order, and accessing the medical records of a heart-disease patient who was not his own. That patient, a Roman Catholic priest named Florian Gall, died the next morning. His body contained lethal amounts of digoxin.

At that point hospital officials could hardly ignore the situation. They alerted the New Jersey poison control center, but allowed Cullen to keep working while investigating other possibilities, including whether Han's condition could have been caused by an herbal tea she drank. Before long, Dr. Steven Marcus of poison control became convinced that someone was deliberately poisoning patients and notified the state health department.

Health officials began an investigation, but still Cullen kept working. On August 27, a patient in his ward received a nonfatal overdose of insulin, yet the hospital never reported the incident. (Somerset was later fined for that failure.) When another patient died after a suspicious drop in blood-sugar levels that could only have been caused by an insulin overdose, the hospital finally called the county prosecutor's office.

Belatedly, the hospital fired Cullen on October 31, after discovering he had falsified employment history on his job application. The prosecutor's office, meanwhile, kept up its investigation. "The hospital's computer system made it pretty easy to track him," says Somerset County prosecutor Wayne J. Forrest. "We caught him red-handed by his ID number." On December 12 they arrested Cullen as he drove away from a Somerville restaurant.

When the police pulled him

over, Cullen went quietly. As he had 10 years earlier when accused of the Pennsylvania break-in, he readily admitted to his crimes. Although initially charged on just two counts-murdering Reverend Gall and attempting to kill Han-Cullen said he had killed as many as 40 patients during the course of his career. If true, that would make him one of the worst serial killers in U.S. history.

Several lawsuits against hospitals have been filed, and bodies long buried are being exhumed. In April 2004, New Jersey Governor James McGreevey signed a law that requires health care facilities to report all serious medical errors to the state. But Cullen's mobility across state lines suggests the need for stronger federal monitoring as well.

In April 2004, Cullen pleaded guilty to killing 13 patients and attempting to kill two others in Somerset County. He also confessed to the murder of Ottomar Schramm, and charges for his crimes are still pending in other counties. In return for his plea and for agreeing to cooperate with authorities, Cullen will be spared the death penalty and will instead spend the rest of his life in prison.

Among Cullen's confessions was the 1993 murder of Helen Dean. Sharon Jones attended the plea hearing and sat less than four feet from the man who murdered her aunt. "He remembered right down to the time of day and the dosage he used," she says. One thing Cullen didn't do was make eye contact. "As he passed by in front of us, he had his head hanging down, cocked a little bit to one side," Jones remembers. "He took a quick look and then turned his head back again. He looked completely blank of emotion."

Jones says that while getting justice brings some satisfaction, it does little to take away the pain she still feels. "My aunt was like a second mother to me, and someone other than

God made the decision that she should no longer be on this earth. Why did he pick her? That's the thing you always wonder." For Helen Dean and perhaps as many as 39 others, their loved ones can only hope that someday Charles Cullen will tell them why.

Charles Cullen is currently serving a life sentence and is incarcerated at New Jersey State Prison in Trenton.

Landmark Judgments

CONSTITUTIONALITY OF SECTION 377 OF IPC

Navtej Singh Johar

v.

Union of India

2018 (10) SCALE 386: 2018

Cri LJ 4754: AIR 2018 SC 4321:

2018 (10) SCC 1

Decided on: 06-09-2018

Hon'ble Judges: R.F. Nariman, Dr. D.Y. Chandrachud, Indu Malhotra, JJ.

Facts: Petition filed for declaring section 377 of IPC to be unconstitutional, for declaring right to sexuality, right to sexual autonomy and right to choose sexual partner to be part of right to life guaranteed under Article 21 of Constitution of India. It is vigorously propounded by petitioners that sexual autonomy and right to choose partner of one's choice is inherent aspect of right to life and right to autonomy. Petitioners contend that section 377 is violative of Article 14 of Constitution as said section is vague in sense that carnal intercourse against order of nature is neither defined in the section nor in IPC or, for that matter, any other law. Petitioners also contended that section 377

violates rights of LGBT persons under Article 19(1)(c) and denies them the right to form associations.

Issue: Criminalizing "consensual acts of adults in private" falling under section 377, IPC. Whether constitutionally valid? Whether constitutional standards in penalizing consensual sexual conduct between adults of same sex fulfilled by section 377, IPC?

Held: Dipak Misra, CJI (AM Khanwikar J): Section 377, IPC subjects LGBT community to societal pariah and dereliction and is, therefore manifestly arbitrary for it has become an odious weapon for harassment of LGBT community by subjecting them to discrimination and unequal treatment. Section 377, IPC, so far as it criminalizes even consensual sexual acts between competent adults, fails to make

a distinction between non-consensual and consensual sexual acts of competent adults in private space which are neither harmful nor contagious to society. Consensual carnal intercourse among adults, be it homosexual or heterosexual in private space, does not in any way harm public decency or mortality. Therefore,

section 377, IPC in its present form violates Article 19(1)(a) of the Constitution.

An examination of section 377, IPC on the anvil of Article 19(1)(a) reveals that it amounts to an unreasonable restriction, for public decency and morality cannot be amplified beyond a rational or logical limit and cannot be accepted as reasonable grounds for curbing the fundamental rights of freedom of expression and choice of LGBT community. Section 377, IPC so far as it penalizes any consensual sexual relationship between two adults, be it homosexuals, heterosexuals or lesbians cannot be regarded as constitutional. If anyone by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of section 377 is constitutional and it shall remain a penal offence under section 377, IPC. Any act of description covered under section 377, IPC done between two individuals without consent of anyone of them would invite penal liability under section 377, IPC.

R.F. Nariman, Dr. D.Y. Chandrachud, Indu Malhotra JJ. Concurring.

On The Lighter Side

I SUE YOU!

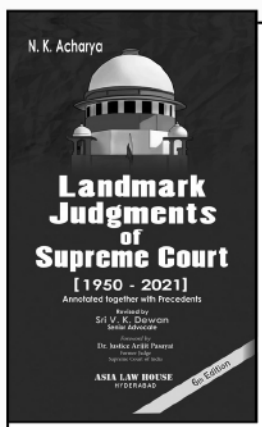
Miss Turnage was sitting in the front row of the circus enjoying the dancing horses until one stopped in front of her, lifted its tail and dumped a pile of rose manure in her lap. Everyone thought it hilarious except Miss Turnage who sued for 'embarrassment, mortification and mental pain and suffering'. (Turnage v Christy Brothers Circus, 1928)

DOG EAT DOG

When does a cow go cheap? When her owner and buyer both think she's infertile. A cow was sold for \$80 on the basis that she couldn't calve. Never had and never could, no sir. Between closing the deal and handing her over, the owner discovered happy news: she was expecting the patter of tiny hooves. That made her worth up to \$1,000. The owner refused to part with her, saying the sale was ali a mistake. The Supreme Court of Michigan agreed with him. (Sherwood v Walker, 1887)

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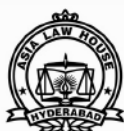
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Quick Referencer for Judicial Service

Q. *P* a minor, was allotted the role of an actress in a particular film by '*D*', a film producer. The agreement was made with her father. '*D*' subsequently allotted that role to another artist and terminated the contract with her father. Can '*P*' or her father sue '*D*'? Give reasons.

22nd Bihar Judicial Service Exam. 1986

23rd Bihar Judicial Service Exam. 1987 (Same problem is different words).

Ans: No, neither '*P*' nor her

father can sue '*D*'—*Raj Rani v. Prem Adib*, AIR 1949 Bom 215.

Reasons: Facts of this problem have been taken from the famous case of *Raj Rani v. Prem Adib* referred above. In this case **Bombay High Court** held that in this case neither Raj Rani (minor) nor her father can sue the film producer because if the relevant contract was with Raj Rani, it is void due to her minority AND if the contract was with her father even then it is void because the consideration moving from the

father is minor's promise to act in film and as the minor cannot in law promise, there was no consideration.

In view of the decision given by **Bombay High Court** in *Raj Rani v. Prem Adib* it can be said that in the given problem neither '*P*' nor her father can sue '*D*' because if, in this problem, the agreement is between '*P*' and '*D*', it is void because she is minor and if the agreement is between *P*'s father and '*D*', it is void due to absence of consideration.

Kishore Prasad

YOU MADE YOUR CASE —The Art of Persuading Judges—

Quote authorities more sparingly still.

We've said that it pays to quote directly from a case setting forth your major premise. But it doesn't pay to string along quotation after quotation for the rest of the paragraph. A remarkably large number of lawyers seem to believe that their briefs are improved if each thought is expressed in the words of a governing case. The contrary is true. After you have established your major premise, it will be your reasoning that interests the court, and this is almost always more clearly and forcefully expressed in your own words than in the stringing

together of quotations from various cases. Such a cut-and-paste approach also produces an air of artificiality, even of lack of self-assurance. You want the court to develop confidence in your reasoning—not in your ability to gopher up supporting quotations. Say what you know to be the law, and support it by citing a case that holds precisely that.

Be especially loath to use a lengthy, indented quotation.

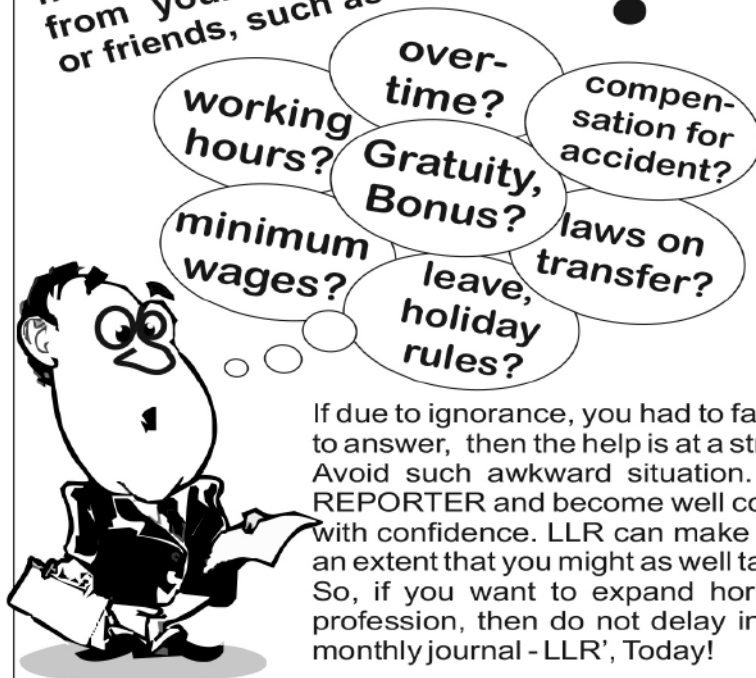
It invites skipping. In fact, many block quotes have probably never been read by anyone. So never let your point be made only in the indented quotation. State the point, and then support it with the quotation ("As Chief

Justice Marshall expressed it: ..."). This is, to be sure, iteration (yet another reason to avoid block quotes). But iteration that simultaneously buttresses with authority is sometimes effective.

If you can't weave quotations deftly into the fabric of your prose—especially the block quotations—abjure them altogether and paraphrase instead. If you ever use a series of quotations, remember that you must supply connective tissue between them—words to take the reader smoothly from one quotation to the next. Back-co-back quotations with no connectives are verboten.

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REAL LAW SCHOOL PERSONAL STATEMENTS

BE REALISTIC IN HOW YOU PORTRAY YOUR 'FORMER' SELF

I got married to a man fifteen years my senior when I was twenty years old. We had two beautiful children within two years of our wedding. When my kids turned one and two respectively, I decided to remind my husband about an agreement we'd made when we first got engaged, just as he was leaving his first marriage, and I was leaving my first year of college—that after we found a groove in our lives together, I would go back to school.

He admitted that he liked the idea of having me home with the kids, but he agreed that if we found someone we both liked and trusted to help take care of them, I should do it. My deferral period from university was coming to a close. So I immediately began my search, subsequently meeting an endless parade of absolutely suitable prospects that just weren't good enough for my babies. One thought my sister had placed in my head was, "Your kids can't yet talk, so whomever you leave them with better be above suspicion."

Of course, no one was. After weeks of searching, I debated pulling out of school. I could wait a few years until my children were older and could better indicate verbally if the babysitter was sneaking smoke breaks or serving them chocolate for lunch—or worse. Then my brother's best friend mentioned that his kids' beloved nanny was looking for a new placement. His twins were finally starting high school and her services no longer made sense for their family. My brother

contacted me. And that's how Lydia came into our lives.

Lydia was two years older than me, and our chemistry was immediate.

"We're going to co-parent the hell out of these monkeys," she told me, with a gentle Greek lilt in her perfect English and the loving ferocity I had been dreaming about. What's more, my kids loved her as much as we did. As our family evolved to encompass the compassionate and high-octane energy of our Lydia, for the first-time in my life, I felt satisfied. I fell back into academia easily. I loved my classes and was able to study when I needed to. I had always been confident in my decision to marry and start my family young, but I suddenly had a real sense that not only could I have it all, I did.

When my son began Pre-K, he was already reading thanks to Lydia, and my three-year-old daughter could write the names of everyone in our family. Lydia was worth every cent we paid her, and we paid her well.

I take full responsibility that we never consulted Lydia about her visa status, I understand that I made a choice to pay her under-the-table when she requested it. I am fully aware that these actions were illegal. But at the time, I did not know. I was entirely unaware that when she got deported—or that that even could happen, honestly, she wasn't a criminal—my husband and I would be fined amounts that nearly equaled my student loans. To top it all off, I didn't even have a degree to help

me pay off any of it, placing the financial burden squarely on the shoulders of my husband, who had absolutely no culpability in the hiring and paying of Lydia.

In the following, miserable months, my children were torn apart by the loss of Lydia. I decided that going back to school would only compound the tragedy, so I dropped out of school, my five remaining credits sitting there, not to be taken. I threw myself into being a mom and tried to repair the damage my mistake had done to my family.

Finally, my daughter was beginning first grade and my son was entering second grade. Their school offered a wonderful afterschool program. My husband and I had figured out a way to pay off those vicious fines. Lydia settled into her life in Greece, sending us letters and treats that my children treasured. We had survived the worst of it.

My husband and I talked about my loans and the possibility that now I might pursue a career. When I had been in school I was certain that career was going to be education. But now I had a different direction in mind: law. I wanted to understand the mistake I had made from the inside. From the outside, I been so childish, so-immature, so misguided. Although I was voracious in my appetite to understand the unfolding events, I was still just the dumb blond who had hired the illegal alien. I was the airhead who had never thought to ask questions. I was the spoiled second wife who

never paid taxes on the dog walker, the house cleaner or the gardener. Why would I pay them on the nanny? All these things were said about me. And they were true.

I am now ready to change that narrative. That's what I told my husband when I announced that now that the children were in a full day of school, I wanted to go back too. I was going to be a lawyer.

I reenrolled and finished the rest of my credits, focusing on subjects that would help to prepare me for the LSAT. I engaged in activities that would allow me to meet my newest goals. I built a new life, a knowing life, an aware life. And I grew stronger because of all of it.

JD MISSION REVIEW

Overall Lesson

Although your younger self may have been less wise than your current self, take care not to portray her as an utter fool.

First Impression

The first paragraph achieves key goals for a personal statement introduction it is intriguing, well written, and neither overly clever nor excessively dramatic.

Strengths

This essay's strength is the story. First, the candidate effectively covers a lot of ground—from getting married and dropping out of school, to her nanny being deported, to returning to school, and ultimately to deciding to

study law. She manages to convey a significant amount of information in just a few pages, and she does so without making me feel as though she is moving through her story too quickly or omitting important details. Second, the candidate does not appear to include any irrelevant material. Although I believe this essay could benefit from some trimming, that is simply because it is on the long side, not because any of the material is blatantly gratuitous. In other words, she does a good job of maintaining her focus and direction.

Weaknesses

In some places, the candidate's syntax lapses into being *too casual* - the phrase "To top it all off," for example. I do like that she writes in the same way she speaks, because this makes her writing read smoothly and sound authentic. But although the adage "write like you talk" is great for a first draft, the candidate needs to then edit that first draft to eliminate any overly informal phrases.

In addition, the section in which she relates her situation with Lydia to her law school aspirations could be improved. She writes, "I wanted to understand the mistake I had made from the inside." I buy this claim, but it is a narrow application of her experience to her interest in law. How did this ordeal affect her thoughts about immigration law? or about herself, as someone living in

the world without a clue as to how the law really works? or about Lydia's willful violation of the law? The candidate could go in many directions with her essay, but my point is that she should pick one and go there. She needs to extend the scope of her law interest beyond simply stating that she wanted to better understand this singular experience - as true and noble as that may be.

Finally, characterizing your former self as an idiot can be dangerous. Although we were all younger and dumber once, we typically were not as dumb as we may portray ourselves for the sake of a story. Depicting your younger self as a moron is usually not a great idea, particularly when you are trying to convince a complete stranger to admit you to his/her law school. The candidate can very effectively write about what she learned from her experience without painting her younger self as entirely foolish.

Final Assessment

I would encourage this candidate to better relate the story she shares to her subsequent interest in attending law school and becoming a lawyer. She should also carefully trim and edit the language throughout her essay, paying special attention to the section in which she discusses her reaction to her poor decisions in the past and their consequences on her life and family.

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NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

Vellore Citizens' Welfare Forum vs. Union of India, 1996 is the leading source of law for the principle of sustainable development, precautionary principle and polluter pays in India. This case formalised the application of these principles in India.

In this case, the Vellore Citizens Welfare Forum filed a Public Interest litigation under Article 32 of the Indian Constitution against the pollution created by tanneries and the other industries in the State of Tamil Nadu. The untreated effluence generated from these tanneries polluted the river water which was the main source of drinking water.

The ratio of the case was:

1. The Court held that the above-said principles are accepted as part of the Customary International Law and hence were a part of Indian law.

2. The Central and State government under Section 3(3) of the Environment (Protection) Act, 1986 have the duty to implement the 'Precautionary Principle' and the 'Polluter Pays Principle'.

3. The "Onus of proof" is on the actor who wants to change the status quo of the environment. The actor has to show that the changing of status quo is environmentally friendly.

4. These 3 principles were a part of the Indian Environmental Law.

Some of the salient principles for sustainable development according to the Brundtland report are the Precautionary Principle and Polluter Pays.

Precautionary Principle

This principle advocates that measures for preventing environmental degradation

should be implemented when there is a threat of serious or irreversible damage even though the threat lacks scientific certainty. It is based on the principle that it is better to have errors on the side of caution.

Polluter Pays Principle

The polluter pays principle states that the undertakings have to pay financial costs for preventing or remedying the damages caused to the environment by the pollution created by those undertakings.

Q.1. Statement I: Precautionary Principle and Polluter Pays principle are a part of Indian Law.

Statement II: Both these principles are principles of sustainable development.

Choose the correct.

a. Both the statements are true
b. Neither of the statements are true

c. Only Statement I is correct
d. Only statement II is correct.

Answer: a

Q.2. Reviance is a big Indian conglomerate, which runs many plants for the manufacturing daily household items. Some of these plants are on the banks of rivers and discharge the waste water to the river. However, Reviance uses best machines to treat the waste water before discharging into river. Recently, Reviance imported French machines for the treatment of waste water, the state pollution control board believes that the machines are faulty and the chemicals released after the treatment from such machines will be harmful to the water bodies and gives a notice to the Reviance industry to stop using the new machines for the treatment. Reviance says that the

threat alleged by the board lacks scientific basis and challenges the decision of the board in the court. Will they win?

a. Yes, since the French machines are deemed to be the best in the world.

b. Yes, since the Reviance industry is importing the machines to treat the waste in better way.

c. Yes, since the threat posed by the board does not have a scientific basis

d. No, since preventing environmental degradation should be implemented when there is a threat of serious or irreversible damage even though the threat lacks scientific certainty.

Answer: d

Q.3. Suppose in the above question, the courts grant the permission to the Reviance industry to use the French machines and after an year of the using of the machines, it is found that the waste released after the treatment from the said machines have polluted the waterbody to the extent that the fishes in the water body are dying. According to the passage, what will happen in this case.

a. Reviance has used all the measures to protect the environment and hence there cannot be any action on them.

b. Reviance has to pay financial costs for remedying the damages caused to the environment by the pollution created by its plants.

c. The state pollution control board will be liable for the environmental degradation

d. The Prime Minister should sanction budget to clean the water bodies.

Answer: b

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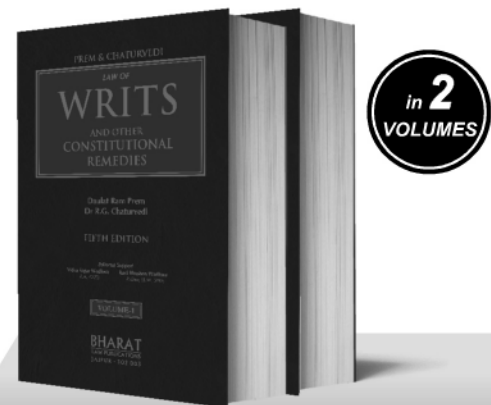
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1. Under Cr.P.C. provisions relating to prosecution of judge is provided under:

- (a) Section 196
- (b) Section 197
- (c) Section 198
- (d) Section 199

Ans. Answer is B.

2. A resides at Hyderabad, B at Calcutta and C at Delhi. A, B and C being together at Allahabad, B and C make a joint promissory note payable on demand, and deliver to A. A may sue B and C:

- (a) At Allahabad where the cause of action arises.
- (b) At Calcutta, where B resides.
- (c) At Delhi, where C resides.
- (d) All of the above.

Ans. Answer is D.

3. Section 25 empowers the Supreme Court to transfer any suit, appeal or other proceeding:

- (a) From one High Court to another High Court.
- (b) From one civil court in court in one state to another civil court in any other state.
- (c) Both (a) and (b)
- (d) Only (a)

Ans. Answer is C.

4. In which of the following cases, can C set-off the claim?

- (a) A sues C on a bill of exchange for Rs. 500, C alleges that A has wrongfully neglected to insure C's goods and he is liable to pay compensation.
- (b) A sues C on a

bill of exchange for Rs. 500. C holds a decree against A for recovery of debt of Rs. 1000

(c) A sues B and C for Rs. 1000, the debt is due to C alone by A.

(d) A and B sues C for Rs. 1000, the debt is due to C by alone.

Ans. Answer is B.

5. The Latin word 'Res Ipsa Laquitur' means:

- (a) Things speaks it's story itself.
- (b) Where there is consent there is no injury
- (c) Both (a) and (b)
- (d) None of the above

Ans. Answer is A.

6. In which of the following cases the 'Principal of common Employment' was evolved for the first time?

- (a) *Rylands v. Fletcher*
- (b) *Priestley v. Fowled*
- (c) *Ashby v. White*
- (d) *Wagon v. Mound*

Ans. Answer is B.

7. Disciplinary Committee of Bar Council is Conferred the powers of Civil Court under Code of Civil Procedure, 1908 by

- (a) Section 36 of Advocates Act, 1961
- (b) Section 42 of Advocates Act, 1961
- (c) Section 42A of Advocates Act, 1961
- (d) Section 28 of Advocates Act, 1961

Ans. Answer is B.

8. Which one of the following is a leading case on 'Injuria

Sine Damnum'?

- (a) *Rylands v. Fletcher*
- (b) *Ashby v. White*
- (c) *Donougue v. Stevenson*
- (d) All of the Above

Ans. Answer is B.

9. Which one is leading case on Strict Liability?

- (a) *Alen v. Flood*
- (b) *Rylands v. Fletcher*
- (c) *Borhil v. Young*
- (d) *Donougue v. Stevenson*

Ans. Answer is B.

10. Section 66A was invalidated by the Supreme Court of India in:

- (a) *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.
- (b) *Shreya Singhal v. Union of India*, AIR 2015 SC 1523
- (c) *Dr. Prafulla Desai v. State of Maharashtra*, AIR 2003 SC 2053.
- (d) *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600

Ans. Answer is B.

11. Environmental Impact Assessment (EIA) is mandatory under

- (a) Indian forest Act
- (b) Air Act
- (c) Wildlife Protection Act
- (d) Environment Protection Act

Ans. Answer is D.

12. When two or more person, by fighting in a public place disturb the public the public peace, they are said to commit:

- (a) A riot
- (b) An affray
- (c) An assault
- (d) None of the above

Ans. Answer is B.

LEGAL WRITING *Tips*

Keep related words together

The position of the words in a sentence is the principal means of showing their relationship. Confusion and ambiguity result when words are badly placed. The writer must, therefore, bring together the words and groups of words that are related in thought and keep apart those that are not so related.

He noticed a large stain in the rug that was right in the center.	He noticed a large stain right in the center of the rug.
You can call your mother in London and tell her all about George's taking you out to dinner for just two dollars.	For just two dollars you can call your mother in London and tell her all about George's taking you out to dinner.
New York's first commercial human-sperm bank opened Friday with semen samples from eighteen men frozen in a stainless steel tank.	New York's first commercial human-sperm bank opened Friday when semen samples were taken from eighteen men. The samples were then frozen and stored in a stainless steel tank.

In the lefthand version of the first example, the reader has no way of knowing whether the stain was in the center of the rug or the rug was in the center of the room. In the lefthand version of the second example, the reader may well wonder which cost two dollars—the phone call or the dinner. In the lefthand version of the third example, the reader's heart goes out to those eighteen poor fellows frozen in a steel tank.

The subject of a sentence and the principal verb should not, as a rule, be separated by a phrase or clause that can be transferred to the beginning.

Toni Morrison, in <i>Beloved</i> , writes about characters who have escaped from slavery but are haunted by its heritage.	In <i>Beloved</i> , Toni Morrison writes about characters who have escaped from slavery but are haunted by its heritage.
A dog, if you fail to discipline him, becomes a household pest.	Unless disciplined, a dog becomes a household pest.

Interposing a phrase or a clause, as in the lefthand examples above, interrupts the flow of the main clause. This interruption, however, is not usually bothersome when the flow is checked only by a relative clause or by an expression in apposition. Sometimes, in periodic sentences, the interruption is a deliberate device for creating suspense.

The relative pronoun should come, in most instances, immediately after its antecedent.

There was a stir in the audience that suggested disapproval.	A stir that suggested disapproval swept the audience.
He wrote three articles about his adventures in Spain, which were published in Harper's Magazine.	He published three articles in Harper's Magazine about his adventures in Spain.
This is a portrait of Benjamin Harrison, grandson of William Henry Harrison, who became President in 1889.	This is a portrait of Benjamin Harrison, who became President in 1889. He was the grandson of William Henry Harrison.

If the antecedent consists of a group of words, the relative comes at the end of the group, unless this would cause ambiguity.

The Superintendent of the Chicago Division, who No ambiguity results from the above. But

A proposal to amend the Sherman Act, which has been variously judged

leaves the reader wondering whether it is the proposal or the Act that has been variously judged. The relative clause must be moved forward, to read, "A proposal, which has been variously judged, to amend the Sherman Act. ..." Similarly

The grandson of William Henry Harrison, who	William Henry Harrison's grandson, Benjamin Harrison, who
---	---

A noun in apposition may come between antecedent and relative, because in such a combination no real ambiguity can arise.

The Duke of York, his brother, who was regarded with hostility by the Whigs

Modifiers should come, if possible, next to the words they modify. If several expressions modify the same word, they should be arranged so that no wrong relation is suggested.

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Latest SUPREME COURT Judgments

"ARTICLE 226"

On 28th March, 2022, the Supreme Court in *Vishal Ashwin Patel v. Assistant Commissioner of Income Tax (S) Circle 25(3) & Ors.*, 2022

DUTY OF HIGH COURT

The manner in which the High Court has dealt with and disposed of the writ petitions without passing any reasoned order is not appreciated. When a number of issues/grounds were raised in the writ petitions, it was the duty cast upon the court to deal with the same and thereafter, to pass a reasoned order. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the Courts to give such relief in appropriate cases and the Courts would be failing to perform their duty if relief is refused without adequate reasons.

- The High Court in exercise of powers under Article 226 of the Constitution of India was required to have independently considered whether the question of reopening of the assessment could be raised in a writ petition and if so, whether it was justified or not.

Earlier in this matter an appeal was filed before the Apex court against the order passed by the Bombay High Court, wherein writ, challenging the reopening

of the assessment/reassessment proceedings under Section 148 of the Income Tax Act was filed.

First clause of Article 226 of the Indian Constitution states that: every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

HIJAB: An Essential Religious Practice?

In March, 2022, Special Leave Petitions were filed by the All India Muslim Personal Law Board and "Samastha Kerala Jem-iyathul Ulama: An Islamic Clerics Organization" against the Karnataka High Court's judgment.

Earlier the Karnataka High Court in *Resham v. State of Karnataka*, WP No. 2347 of 2022

HIJAB is not "essential" to Islam

- On 15th March, 2022, Karnataka High Court upheld the ban on *hijab* in classrooms after holding that the wearing of headscarves by Muslim women



Anshul Jain

was not an essential religious practice of Islam.

- Wearing of hijab is not a part of Essential Religious Practice in Islamic faith and thus, it is not protected under Article 25 of the Constitution.

- Court upheld a state government order that had banned headscarves in classrooms.

- Court stated that it "deprives the constitutional rights of Muslim girls to practice Hijab along with the school uniform" and "curtails religious freedom and constitutional rights of Muslim women/girls"

- Karnataka High Court dismissed a batch of petitions filed by Muslim girls studying in pre-university colleges in Udupi seeking the right to wear hijabs in classrooms. It was held that wearing the hijab "does not make up an essential religious practice in the Islamic faith" and freedom of religion under Article 25 of the Constitution is subject to reasonable restrictions.



CONSTITUTION OF INDIA

Article 196

The Constitution of India is the fountainhead from which all our laws derive their authority and force. This is next Article in the series on constitutional provisions in order to aid our readers in understanding them.

196. Provisions as to introduction and passing of Bills.—(1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Under clause (3) of article 196 a Bill pending in the Legislature of a State will not lapse by reason

of the prorogation of the House or Houses thereof. This clause marks a complete departure from the English convention inasmuch as the prorogation of the House or Houses does not affect the business pending before the Legislature at the time of prorogation. Under this clause the pending business may be pending either in the Legislative Assembly or in the Legislative Council or may be pending the assent of the Governor. At whichever stage the pending business may stand, so long as it is pending before the Legislature of a State it shall not lapse by the prorogation of the Assembly.

Clause (4) deals with the case of a Bill which has originated in the Legislative Council and has yet to reach the Legislative assembly. It provides that in regard to such a Bill, the dissolution of the Legislative Assembly will not affect its further progress and it will not lapse despite such dissolution.

Clause (5) deals with a Bill pending in the Legislative Assembly of a State or pending in the Legislative Council. The effect of clause (5) is to provide for all cases where the principle of lapse on dissolution should apply. A Bill pending assent of the Governor or President is outside clause (5) and cannot be said to lapse on the dissolution of the Assembly.¹ Effect of clause (5) is that all cases not falling within its scope are not subject to the doctrine of lapse of pending



Dr Subhash C Kashyap

business on the dissolution of the Legislative Assembly.

Once the Bill is validly introduced, it remains pending in the Legislature even when it is referred to a Select Committee. There is, therefore, no question of the Bill being introduced again after the Select Committee has submitted its report.

If both the words “moved” and “introduced” are held to refer to the Bill, it must necessarily be held that both these words will also refer to the word “amendment”. On the fact of it, there can be no question of introducing an amendment. Amendments are moved and then, if accepted by the House, incorporated in the Bill before it is passed. There is a further indication in the Constitution itself that wherever a reference in the Constitution is made to a Bill the only step envisaged is the introduction of the Bill. There is a no reference to such a step as a Bill being moved. In articles 109, 114, 117, 198, and 207, whatever prohibition is laid down, relates to the introduction of a Bill in the Legislature. There is no reference at any stage to a Bill being moved in a House.

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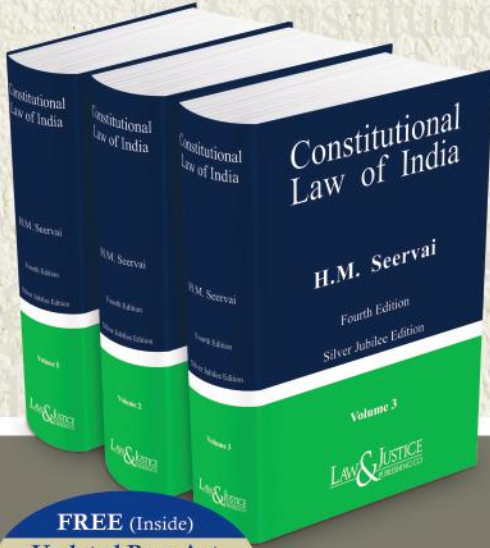
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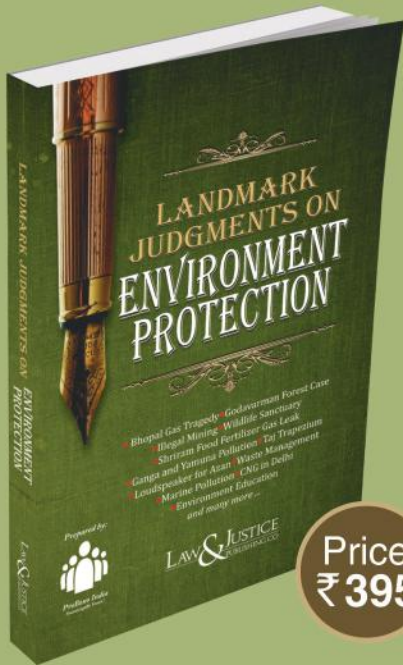


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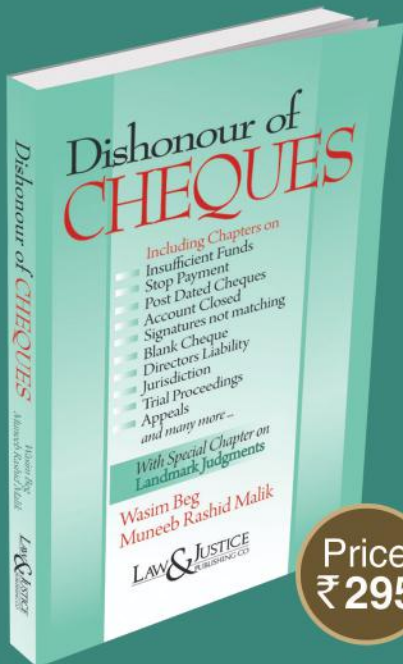
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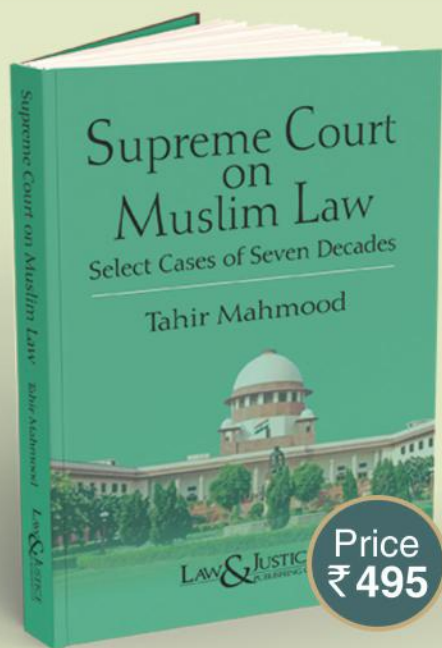
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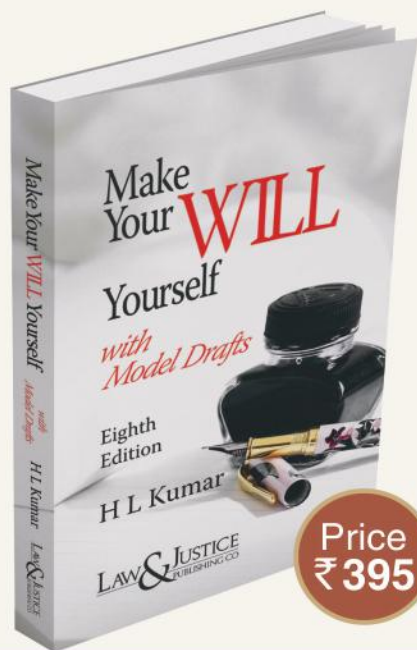


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