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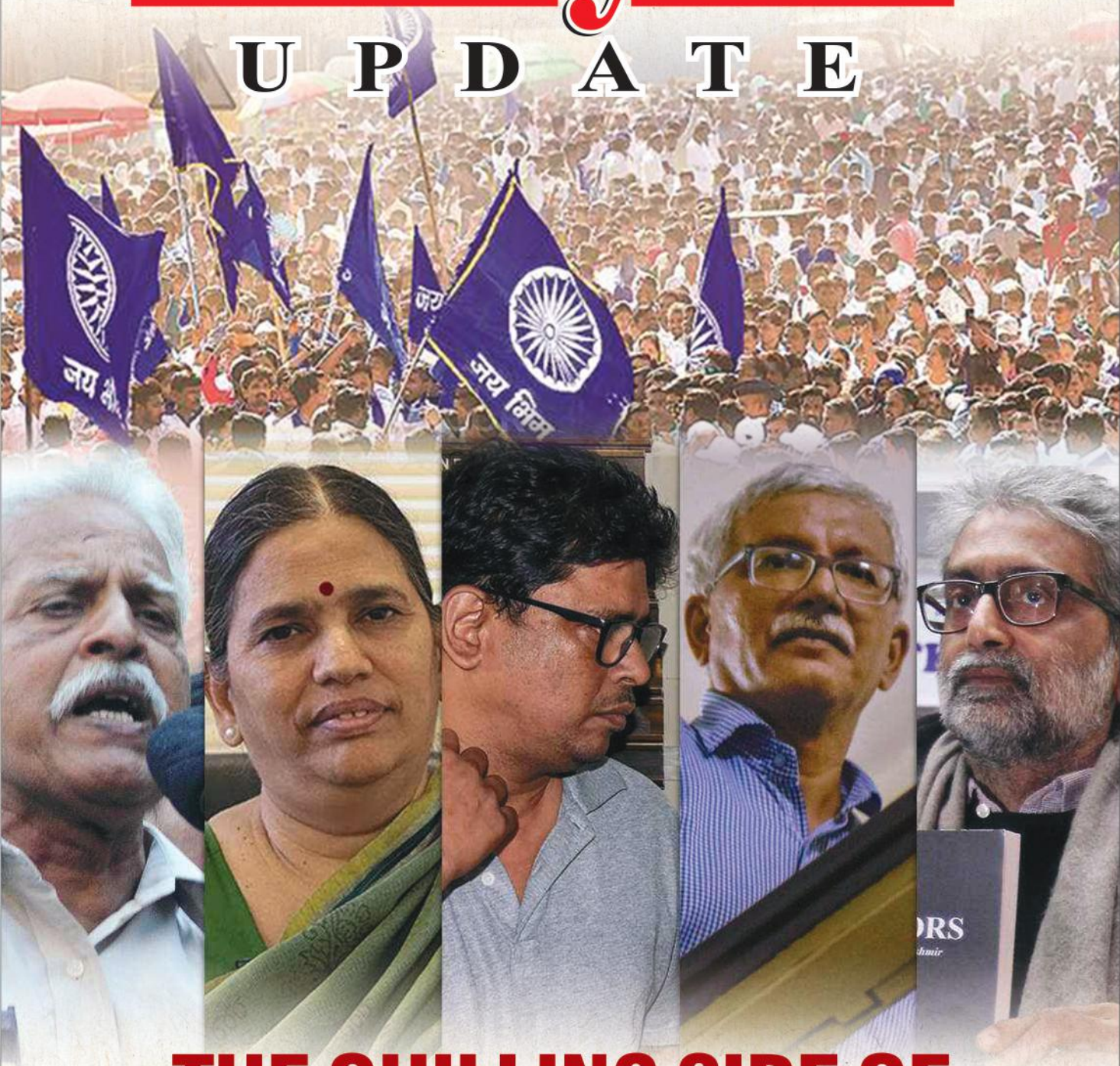
Lawyers UPDATE



THE CHILLING SIDE OF BHIMA KOREGAON CASE

DECEMBER 2021

Magazine for Legal Professionals & Students

Lawyers UPDATE

Volume XXVII Part 12

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Dear readers,

The violence on January 01, 2018 at Bhima Koregaon during the annual celebration of the 1818 Bhima Koregaon battle started with the stone-pelting on the gathering by an unruly crowd, leaving one dead and five injured. These annual celebrations have a history of being peaceful. According to the initial complaint, the mob that attacked the gathering comprised of the followers of two local leaders. The police registered the First Information Report (FIR) against the leaders who had allegedly led their followers to attack the gathering. The two political heavyweights denied the allegations.

However, the investigation into the violence against the gathering turned into an investigation of the gathering, and soon enough evidence of an elaborate Maoist conspiracy to overthrow the Central Government by violent means started appearing, and sixteen activists, intellectuals, teachers and lawyers were arrested under the stringent Unlawful Activities (Prevention) Act (UAPA) for being a part of the anti-national conspiracy. One of the most widely criticized aspects of the UAPA is that it makes bail extremely difficult as long as the investigation agency manages to present some evidence to support its prima facie case against the accused. So the bail applications of the arrestees were rejected one after the other.

In the past few months, the forensic scrutiny of the computers on which the incriminating evidence was found has raised the possibility of planting and tampering of the evidence, which is a very unsettling development with serious ramifications for the future of Indian democracy. In the absence of fearless criticism, no system of governance can hope to course-correct because without rigorous review followed by periodic rectifications, all machinery, including the government, is bound to rust and rot. And if the critics are silenced, what hope could there be for any democracy?

Manish Arora

(Manish Arora)

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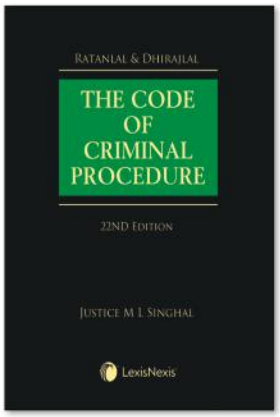

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Ratanlal & Dhirajlal

The Code of Criminal Procedure, 22/e

by Justice M L Singhal

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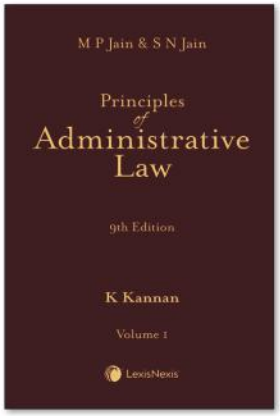

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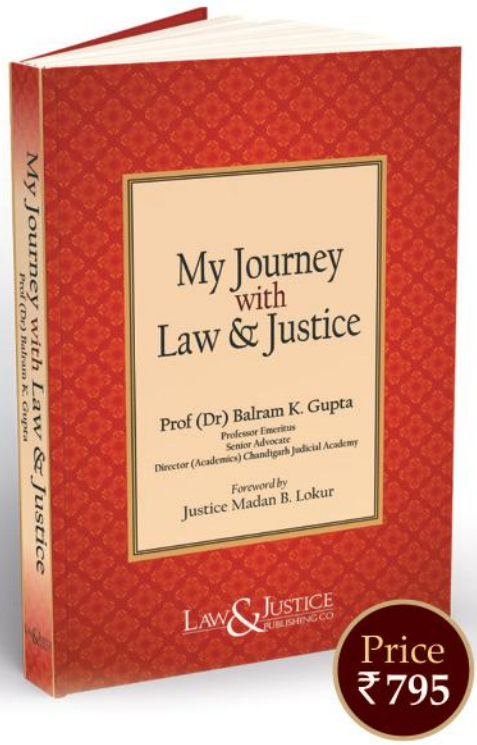

My Journey with Law & Justice

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

ABOUT THE BOOK

This rich bouquet of reminiscences, of almost six decades of life in law, straddling various periods and persons. (Dr.) Balram Gupta revisits here many forgotten legends, events, and unfoldment of law. The overlap between 'legal' and 'judicial' education is well archived and invites further refection and research. Stories about courtroom architecture stand juxtaposed with 'humour in the robes' and nuggets of mediation on 'judicial review and the constitution'. We are duly reminded of great personages on the Bench and the Bar (Justice R. S. Sarkaria and Kanhaiya Lal Misra, respectively) as well as re-introduced to some contemporary legends in law. Affectionate tribute to past students is a hallmark of a good teacher (as the tribute to Sushma Swaraj shows).

Unlike the great philosopher and psychanalyst of our times Jacques Lacan, Dr.Gupta does not believe that the author owes an ethical obligation to be difficult. Written in Biblical style (usually attributed in law to Lord Denning), the author elegantly conveys arenas of law and life, what many difficult tomes in law struggle to communicate! Here presented are an embarrassment de riches' with a light and deft touch, animated by profound meaning for future history of Indian law and jurisprudence which hold the promise of further democratizing democracy.

Upendra Baxi
Professor Emeritus

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THE FORCE BEHIND THE DAWN AND SUNRISE

Remembering

SOMA RANI ARORA

8th March 1935 - 5th December 2018

***"Aadhaara raashtra kee hon, Naaree subhaga sadaa hee"*(May great women always be the foundation of the country.) - Bhagvad Gita**

"*The most happy is he to whom God has given a good wife*." - Ali-ibn-Abi Talib

"Behind every successful man there is a woman." This holds so true for Mrs. Soma Rani Arora, wife of Mr. Madan Gopal Arora, Founder Chairman and Managing Director of Universal Group of Companies and mother of Pradeep, Sanjeev and Manish, Directors of Universal Group of companies. She had always been a pillar of strength to the Arora Family since the time Mr M G Arora started the Law bookselling business on a cycle.

Mrs. Arora was born on March 8, 1935 in Pakistan. On November 30,1957, she got married to Mr. M G Arora, at Allahabad. Soma ji proved to be an ideal model of Bhishma Pitamah's definition of 'wife', which he described to Yudhishthira, as: "She alone is wife that speaketh pleasantly."

She happened to be the representative figure of Bible's Proverb 12:4: "An excellent wife is the crown of her husband." Such a woman's worth is "far above rubies".

The positive energies of affection and the inspirational drive of Soma ji's personality had magnificent effect on the growth of the Universal Group. After the manifold success of Universal Book Traders since 1957, Universal Law Publishing Co. Pvt. Ltd was launched in the year 1995, and became the leading law publishing company in India, engaged in publishing Indian law books, Bare Acts, Foreign Reprints of legal classics etc. In the year 2004, another feather was added to the Universal's cap in the form of an education wing, namely Universal Institute of Legal Studies, now with branches across the country and spreading its wings even abroad.

Mrs. Arora had always been actively involved in various religious, social and welfare organisations. She had always considered herself fortunate to have been a student of the great hindi writer and poet, Mahadevi Verma at Allahabad.

After having travelled a long journey through the vehicle of compassion and motivation, Soma ji finally left for her heavenly abode on December 5, 2018. She is survived by her husband, three sons, grand-children and great grand-children.

Fortunate is her family who have always been blessed by her presence and have grown manifold both personally and intellectually because of her unending support and encouragement.

STREET LAWYER

Seven Feet Apart - V

When strangers meet en route in real life, the stories are usually far less dramatic.

HemRaj Singh

The problem was, they thought she was alone. The solution, I figured, was to make them think otherwise. That way they would at least think it was two against three instead of one girl against three guys, and for most such guys that's deterrent enough. So I decided to casually call out to her to check if she was fine, and damn! I didn't know her name. I hadn't asked; not even after she had asked mine. "*Arrey, seat mil gai?*" I called out, awkwardly, casting the words into the universe, broad and wide in her general direction, expecting no response. "*Haan, mil gayi. Theek hai. Khidki ke paas!*" In that order or some other, those were the words I heard in immediate response. The problem guys looked at me, shifted around a little on their feet and settled down. The stealthy mouth-to-ear whispering ceased; the smiles and giggles disappeared. Problem solved, I hoped.

"I'll get down at Aligarh. You can call her here then," said the man occupying the side lower berth in front of me. "Oh, thank you," I nodded gratefully. Aligarh came, she came over, and pulled her legs up to sit cross-legged. "I need to go to the washroom," she said, like the auspicious moment she had been waiting for to make the declaration had just arrived. "Okay," I said. "But my slippers…," she pointed at her broked footwear. I pulled my feet up, and took the shoes off. "Here." She slipped her toes -- just the toes -- into them without actually wearing them and walked all the way to the washroom on her toes. Unbelievable, I thought. It does take some creativity to wear sports shoes like stilettos.

She returned, took the shoes off and we sat cross-legged on the side lower berth, looking out in the dark through the window with patches of light, small and big, rushing past every now and then. Finally, she looked relieved and relaxed. "What's your name?" "Finally, you asked," she said and told her name. "Oh, that's Urdu for playfulness. *Chanchalta* in Hindi," "Naaice! You know! Very few people know." A few moments passed in silence. "Okay, listen. I have called my father to the station. He'll come with an extra pair of slippers. But act like we don't know each other. Like, *hum ek doosre ko nahin jaante.* Please. Family, you know." "Yeah, of course. I know. No problem. *Hum waise bhi ek doosre ko nahin jaante,*" I said as assuredly as I could manage. She smiled. And then we talked about random things. I don't recall what all, but she was easy to talk to. A few hours later, we were at Kanpur.

Her father was there on the platform, waiting with a pair of unbroken slippers. She had spotted her father from afar when the train had just entered the platform and we had immediately slipped into our roles as strangers. We got off the train one after the other without looking at each other. Complete stranger. Convincing performance. I started walking away and just out of curiosity, turned around to see where she was. She and her father were at the top of the stairs on the overhead bridge, and just then they turned out of sight. End of a weird journey, I thought smiling.

It was very early in the morning when I reached home. And slept. Apart from being weird and interesting, the journey had also been tiring. I woke up in the afternoon, and the house was full of guests, who were there to attend the recitation of *Bhagavata Puran*, which was to continue for many days, and for which I had to be the *Pareekshit* (the principal listener). So I was getting ready when the phone rang.

"Hello, *pehchaana?*" A female voice asked. "Umm… sorry. Who is this?" "*Arrey, itni jaldi bhool bhi gaye! Mujhe kaise bhool sakte ho?*" "I am really sorry. Umm." *Arrey, main bol rahi hoon.*" And she told her name after complaining some more, which is when I remembered that when I had handed her phone over to her, and she had demanded to be taken home, I had asked her to save my number just in case we got separated again. And just as I hadn't asked her name, I hadn't taken her number either. She was calling because when her father found from the news that a few people had lost their lives on the platform due to excessive overcrowding and something of a stampede, he had asked how she had managed through. She told. He said, "*Kam se kam us ladke ko phone kar ke 'thank you' to bol do jo tumhein yahaan tak leke aaya.*"

So she was calling to thank me. I assured her that there was nothing she needed to thank me for and that she had pulled and pushed herself through the crowd on her own without my help. We had just travelled together. But she insisted on thanking me for being nice in her characteristically emphatic, not-listening-to-you way. "Save my number. We'll talk again. And meet when I am back in Delhi." "Okay," I said quickly, for I had to get ready; *pandit ji* was waiting. Also, we were just two strangers who had met on a train, and the journey had ended. So regardless of her polite offer to talk and meet, I didn't think it was happening. But we did talk and did meet.

Concluded

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

SHRI DASAPPA'S CASE

He was asked by the High Court to explain his conduct, He naturally questioned the procedure as irrelevant, but described in a statement the circumstances leading to the decision for non- participation in the inquiry. This is Shri Dasappa said in the course of his statement:

"The Government appointed Justice A. R. Nageswara Iyer to carry on what wss admittedly a public. Attempts made to have the inquiry postponed with a view to arrive at an amicable settlement in the matter, were of no avail. It was then that the Mysore Congress was advised by Mahatma Gandhi to negotiate for a change in the personnel of the inquiry…. The opponent submits that the inquiry was only a departmental and there was no court constituted for the purpose. These was no legal obligation whatever on the part of Congressmen to tender evidence at the inquiry. The moral obligation would only arise in case the tribunal was satisfactory."

It is these words that provoked the ire of the Chief Justice, and in criticizing them. he has made certain statements of astounding audacity: "To make- a foul allegation against one's neighbour and to refuse either to withdraw it or substantiate it, was a conduct to which no decent-minded man who had not lost all sense of fairness would descend or advise others to descend." Again: "I understand from the respondent's statement that the aim of his political association is to get responsible government established in this State. This is a form of government which many of us would admire, and all of us, who are not judges, are at liberty to advocate. This is not an occasion on which it would be proper to discuss the advantages or disadvantages of that form of government. But I think we shall agree that that form of government can have no chance of success in any country in which there is not a general spirit of fairness throughout the country. The respondent, in this matter of deterring his followers

from withdrawing or substantiating their charges against their fellow-subjects, has shown himself devoid of that spirit of fairness: He has stated in one part of his statement that he did so at the dictates of a person outside the State. No man fit to be an advocate of this Court can submit his conscience to anyone else in that way. It is no excuse for such conduct." Again, the Chief Justice, proceeding, observed, says *The Hindu* report, that, "it was surprising that the respondent, the professed votary of truth, should have behaved in such a way. Perhaps it is because truth is so often degraded in this country into nothing more than a political catchword that the respondent has lost all appreciation of its meaning and value. It was, a sad thing indeed for anyone to have so degraded' himself and to have lowered his moral standards. It would not be fair to require other members of this honourable profession to associate in the work of the courts with a man who had allowed his morals to be so debased, nor would it be safe to allow litigants to allow their cases in his hands. In my opinion it is quite clear that the respondent has become by defect of character unfit to remain an advocate of this court."

Harijan, 13-7-1940, pp.205-206

On The Lighter Side

I SUE YOU!

Sione Olive, 26, stood trial in a San Mateo, California court for driving under the influence of kava tea. He passed a breathalyzer test and might have gone free had he not told the police about the 23 cups of kava tea he'd drunk. Kava tea is used for stress relief and 'promoting a state of relaxed unconcern'. (Associated Press, 21 August, 2001)

THIRSTING FOR JUSTICE

In 2005 student binge-drinking was becoming a problem around the University of Wisconsin-Madison, so local bars agreed to stop having special offers on Friday and Saturday nights. The students sued them, alleging a price-fixing (anti-trust) conspiracy. A Wisconsin judge threw the case out, and the bars reinstated their discounts anyway. (Associated Press, II May 2005)

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PREM & CHATURVEDI

LAW OF WRITS AND OTHER CONSTITUTIONAL REMEDIES

by

Daulat Ram Prem
Dr R.G. Chaturvedi

Editorial Support
Vidya Sagar Wadhwa

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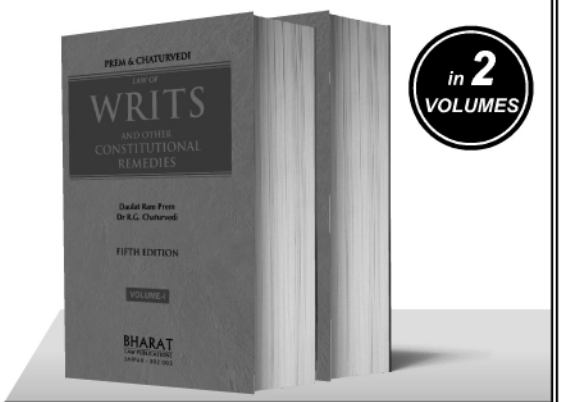

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UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"Faith is like electricity, you can't see it, but you can see the light."

– Anonymous

"Where I was born and where and how I have lived is unimportant. It is what I have done and where I have been, that should be of interest."

– Georgia O'Keeffe

"If you want to achieve success, you must fix a goal and everyday draw at least one step closer to it."

– J.P. Vasvani

"We praise a man who feels angry on the right grounds, and against the right person and also in the right manner at the moment and for the right length of time."

– Aristole

"Without faith, hope and trust, there is no promise for the future and without a promising future, life has no direction and no justification."

– Adin Sinclair

"Do not hire a man who does your work for money, but him who does it for love of it."

– Henry David Thoreau

"He who rescues another in distress is a friend. He who helps another in failure is a relation."

– Valmiki

"All intelligent thoughts have already been thought; what is necessary is only to try to think them again."

– Geothe

"Happiness is that state of consciousness which proceeds from the achievement of one's values."

– Ayn Rand

"People forget how fast you did a job, but they remember how well you did it."

– Howard Newton

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 J.K. Maheshwari

Justice J.K. Maheshwari was born on 29th June, 1961 in a small town Joura, District Morena (M.P.). His Lordship graduated in Arts in 1982 and passed LL.B. in 1985 and completed LL.M in 1991. His Lordship was enrolled as an Advocate with the State Bar Council of Madhya Pradesh on 22nd November, 1985 and practiced in Civil, Criminal, Constitutional, Service and Tax matters. His Lordship was the elected member of the M.P. State Bar Council. His Lordship was appointed as Additional Judge of the High Court of Madhya Pradesh on 25th November, 2005 and on 25th November, 2008, appointed as permanent Judge of the Hon'ble Court. His Lordship was a part of various committees, pertaining to betterment of administration of High court of Madhya Pradesh and continued his good offices till 06th October, 2019. His Lordship was transferred as Chief Justice of Andhra Pradesh High Court and assumed office on 07th October, 2019. His Lordship was the First Chief Justice of the newly established Andhra Pradesh High Court. His Lordship was transferred as the Chief Justice of the High Court of Sikkim on 06th January, 2021. His Lordship has taken oath as a Judge of the Supreme Court of India on 31th August 31, 2021.

LEGAL LUMINARIES

GOPAL SUBRAMANIUM

Born in the year 1958, in Bangalore. He completed his schooling from St. Xavier's School, Delhi, followed by a degree in law from the prestigious Campus of the Faculty of Law, University of Delhi.

Gopal Subramanium is an Indian lawyer and an international arbitrator. He served as the Solicitor General of India (2009-2011) and Additional Solicitor General of India (2005-2009). He also served as Chairman of the Bar Council of India, 2010-201. Subramanium stated his career in 1980, with Shardul S.Shroff in Delhi. During his tenure as a law officer, he was honoured with the National Law Day Award for Outstanding Jurist, presented to him in 2009 by the President of India, for his consistent professional excellence and adherence to the highest traditions of the Bar.

In 1993, he was designated a Senior Advocate (the equivalent of a Queen's Counsel in the UK) *suo motu* by the Supreme Court, one of the youngest to be designated in the Supreme Court's history.

Gopal continues to act as lead counsel in several path-breaking matters. He acted as lead counsel for Novartis AG in Novartis' challenge before the Supreme Court to a denial to grant it an Indian patent for the cancer drug '*Glivec'*.

Gopal Subramanium has also appeared in a number of landmark cases concerning the law of arbitration in India, including the BALCO case (2012), where the Supreme Court of India ruled on the applicability of Part I of the Indian Arbitration & Conciliation Act, 1996, to arbitrations held in a foreign seat, and awards arising therefrom, and Sundaram Finance (1999) (in respect of a court's powers to grant interim protection to parties pending arbitration). He has appeared in a number of matters in the Supreme Court and various High Court concerning arbitrability of disputes, appointment of arbitrators and challenge to arbitral awards including those arising out of defence contracts, EPC contracts and infrastructure contracts. In 2017, Gopal acted as lead counsel for the Petitioners in J*ustice K.S. Puttaswamy (Retd.) v. Union of India* where a nine-judge bench of the Supreme Court of India unanimously held that there was a fundamental right to privacy under the Indian Constitution. In 2013, Gopal acted as a member of a Committee to Recommend Amendments to Criminal Laws (headed by Justice J. S. Verma), which recommended much-needed amendments to various Indian laws to ensure the safety and dignity of women and young children.

Subramanium has been awarded Awarded the National Law Day Award for Outstanding Jurist by the President of India in 2009, Doctor of Law (Honoris Causa), Central University of Orissa, 'Life Time Achievement Award' by the St. Xavier's School, New Delhi, "Justice P.N Bhagwati National Award" conferred by the Capital Foundation Society

Gopal Subramanium has also assisted numerous legal scholars in their own efforts and has been recognized by them for his support and guidance. For instance, his contribution was recognized by Professor Sandra Fredman, FBA in her book *Human Rights Transformed: Positive Rights and Positive Duties (2008)* in Chapter 5 at page 124: *"This piece has been inspired and greatly assisted by Additional Solicitor General of India Gopal Subramanium ; …"*

THINK LIKE A **LAWYER;** DON'T ACT LIKE ONE

BEWARE OF OPEN ENDINGS

Reach a clear agreement about who does what, and when. Don't accept a" We'll give you a call."

STRENGTHENING THE INSTITUTION OF JUDICIARY

Dr. Balram K Gupta
Professor Emeritus
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Director (Academics), CJA

The Punjab High Court started functioning in the present building at Chandigarh on January 17, 1955. Prior to this, after partition, it functioned from 'Peterhoff' in Shimla. At the inaugural function, the first CJ of Punjab High Court, Justice A.N.Bhandari, I.C.S. expressed that we have returned from exile in the forests of the Himalayas and taken up our permanent abode in this building. From 1955, we are coming to the close 2021. It would be completing 67 years of its journey on January 16, 2022. This High Court building has grown many fold. The original building was compared with a 'mouth organ'. The first Advocate General, Mr.S.M.Sikri (later CJ of India) said that apart from its resemblance in looks, to play good music on a mouth organ is as difficult as it is to administer Justice. He added that the Bar plays all kinds of legal tunes hoping that they would appeal to lordships. The pursuit has been to find out the Truth and do Justice. I am a witness to the growth of this court since its inception. My father had shifted in 1956 from Patiala to Chandigarh. PEPSU High Court had merged with Punjab High Court.

I have referred to this with a purpose. It was on October 23, 2021 that the two wings : B & C of a building of the Aurangabad Bench of the Bombay High Court were inaugurated. On this special occasion, all the three wings of the state were duly represented. It was a happy and healthy augury for the institution of judiciary. Speaking on this occasion, the Union Law Minister, Sri Kiren Rijiju said : **I am looking forward to the harmonious relationship between the Judiciary and the Executive and the Legislature.** He added, it is the responsibility of all of us to ensure that the gap between justice and government must be reduced as much as possible. We can do it, he assured. In this process, he made a most meaningful statement :

"**Politics is always there because politics is the essence of democracy, but when it comes to the judiciary, there is no politics**. My friend Devendra Fadnavis (former Maharashtra CM in the BJP-led government) laid the foundation for this new building of the Aurangabad bench of the Bombay High Court and today, Shri Uddhav Thackeray (incumbent CM) is part of its inauguration. This is the team-work and team-spirit."

Never earlier, such a potent statement had been made by the Union Law Minister. Each organ has to play its role in furtherance of the first promise made in the Preamble to the Constitution : Justice, Social, Economic and Political. It has been rightly emphasized that it is team-work sans politics. In this stream, it was emphasized by Sri Rijiju :

"Today in the presence of CJI and all the Supreme Court judges, let me mention that when I was addressing one of these international conferences, I told the story of the leadership role the Supreme Court of India has taken to ensure the justice delivery in this pandemic. Districts courts heard 97 lakh cases while the High Courts heard 51 lakh cases. The Supreme Court emerged as the golden leader with over 96,000 virtual hearings till July 9".

The pandemic time was an emergency situation. How the Top Court played its role, it is a matter of record. How article 142 was used usefully. The High Courts and District Courts did not lag behind. Sri Rijiju is handling and managing the institution of judiciary with a positive mind. He said :

"I know very well that judges have their own challenges and difficulties but I also know that many people do not know the real life of a judge, how he manages his time, the cases and the pressure. It is very important to understand that. Once we understand the problems of the judiciary, I think we can take corrective steps to ensure that all the support systems are managed and put in place. The infrastructure becomes very important.

CJI NV Ramana proposed the establishment of the **National Judicial Infrastructure Authority of India** to the Ministry of Law & Justice. He urged the Minister of Law and Justice to expedite the process to create NJIAI with statutory backing in the upcoming winter session of the Parliament. This legislative mechanism will augment and create state-of-the-art judicial infrastructure. The CJI felt that this would be the best gift that we can think of giving to the people of our country in the 75th year of our independence. He further expressed : 'I am glad to be sharing the dias with Shri Kiren Rijiju, Hon'ble Law Minister. I will call him my young friend and I am happy that he understood the problems of the judges and

the judiciary very quickly and his enthusiasm and commitment to the cause of justice is reflected in the frequency of our meetings over the past few months through such events'. This was a clear expression of working in unison. This togetherness would strengthen the trust and confidence of the people in the institution of judiciary.

Dr. Justice DY Chandrachud, Judge, Supreme Court of India took this opportunity to focus that the **citizens are entitled to know what goes on in the court :**

"We have formulated live streaming rules so that cases can be live-streamed, the hearings before a court can be live-streamed for the rest of the country. Because I do believe that citizens are entitled to know what goes on in the courts, they are entitled to know why cases are adjourned, whether judges sit from morning to evening in deciding cases. It is the basic right of the citizens to know."

We have open court system. It is open to the people to go to the courts and watch proceedings. This openness, in fact, provides access to those who have litigation in courts. Live-streaming would open the courts to the public at large. This would help in strengthening the administration of justice. It would also help in building up the trust and confidence of the public in the institution of judiciary. Justice Chandrachud felt that the people of India have a cause and a reason to celebrate justice. He shared :

"Virtual courts have been set up across the country. 12 states and union territories including Maharashtra have a virtual court. You will be interested to note that as many as 91,000 cases involving traffic challans have been disposed off and 180 crores worth of fine has been realised from citizens who can pay fines on the online portal of the virtual courts. We provide citizen services for common citizens. The service portal which has been created by the E-committee with the Department of Justice has 75 lakh hits per day and the mobile application has 35 lakh hits per day. 3.85 lakh SMSes and emails are sent by the E-courts services to the citizens across the nation. Our website, in one year, has had 224 crore transactions."

There should be full understanding between the three organs of the state. Meeting of minds. Collective effort. Equally, the collective responsibility. If this could be achieved, it would strengthen the institution of judiciary.

Lawyers' Wit

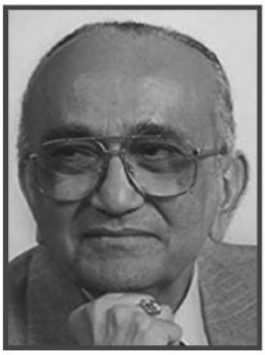
- A gang of robbers broke into a lawyer's club by mistake. The old legal lions gave them a fight for their life and their money.
  The gang was very happy to escape. "It ain't so bad," one crook noted. "We got $25 between us."
  The boss screamed: "I warned you to stay clear of lawyers... we had $100 when we broke in!"
- Q. What do you call a smiling, sober, courteous person at a Bar Association Convention?
  A. The caterer.

The main business of a lawyer is to take the romance, the mystery, the irony, the ambiguity out of everything he touches.
–Antonin Scalia

"Great news, I finally got your 'stay of execution'."

Remembrances

Justice M. Hidayatullah
on his 116th
Birth Anniversary
17th December



Justice P.N. Bhagwati
on his 100th
Birth Anniversary
21st December

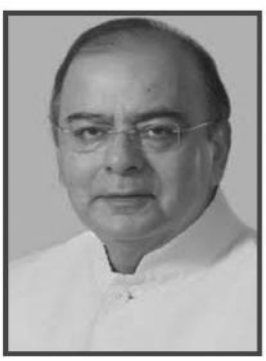
H.M. Seervai
on his 115th
Birth Anniversary
5th December

Justice A.S. Anand
on his 4th
Death Anniversary
1st December

Justice V.R. Krishna Iyer
on his 7th
Death Anniversary
4th December

D.D. Thakur
on his 92nd
Birth Anniversary
9th December

Nani Palkhivala
on his 19th
Death Anniversary
11th December



Arun Jaitley
on his 69th
Birth Anniversary
28th December

THE CHILLING SIDE OF BHIMA KOREGAON CASE

HemRaj Singh

The 83-year old Jesuit priest Stanislaus Lourduswamy or Stan Swamy, who was suffering from Parkinson's disease and other age-related conditions, died in prison on July 5, 2021, having been denied bail because the special NIA Court found that the evidence presented *prima facie* showed that Stan Swamy and others "hatched a serious conspiracy to create unrest in the entire country and to overpower the Government, politically and by using muscle power", and that he was a member of the banned organisation CPI (Maoist) and was involved in activities furthering "the objective of the organisation which is nothing but to overthrow the democracy of the nation."

Arrested on October 9, 2020, by the National Investigation Agency (NIA) under the Unlawful Activities (Prevention) Act, 1967, for allegedly being a Maoist "sympathizer", Stan Swamy was so severely ill that he could not lift a glass and had to approach the court through his lawyers and wait for nearly a month to get a straw and a sipper cup. His health kept deteriorating in prison but the NIA doggedly resisted his bail applications citing a mountain of damning evidence against the priest, most of which was from the documents and files found on his own computer, and based on which the Special Court concluded that "the collective interest of the community" outweighed "the right of personal liberty of the applicant and as such the old age and or alleged sickness of the applicant would not go in his favour, so that the discretion to release the applicant can be exercised in his favour."

The NIA court cannot be faulted because the court was basing its conclusions on the

chargesheet filed by the NIA, which says that Swamy was in constant communication with Maoist-CPI and was involved in plotting and orchestrating an armed uprising against what Swamy allegedly called the "fascist government" at the Center in his alleged letters. The plan, according to the chargesheet, was to "bring together most Dalit and Mulsim forces that are already taking shape in some parts of [the] country" and engage in an armed revolt against the government.

The Chargesheet

The chargesheet claims Swamy received money from the CPI (M) to promote Maoist activities, and the claim was supported by the documents recovered from the possession of Swamy, most of which were purported communications between Swamy and others relating to furthering, streamlining and better organizing the activities of Maoist groups with handbooks and guides to smuggle things and encrypt data for safer communications and so on.

The chargesheet further says that the documents recovered from Surendra Gadling on April 17, 2018 include letters from Sudha (Sudha Bhardwaj) to Prakash discussing Swamy's role, and in one of the letters Swamy talks about secure communication. "The most urgent one is leakage of several secret letters including those meant only for senior leaders both outside and inside. It is unclear how so. Many of them were exposed from Delhi," Swamy allegedly wrote, raising the possibility of the deleted letters' having been recovered forensically using "specialised softwares", and then there is the talk of how to get better at hiding digital footprints.

The chargesheet also mentions Swamy's worries about the arrests of certain important "urban naxals", and how the arrests in Maharashtra had weakened the "legal defence group because some of these comrades were coordinating defense of political prisoners on all India level."

There is also a letter addressed to Sunil from Sridhar written in Telugu in July 2017 in which there is talk of a programme called "Brahmanical Hindu Anti Fascist Front" to further the CPI-Maoist agenda, which led to the formation of Bhima Koregaon Shaurya Din Prerana Abhiyan, and which, in turn, brought about the Elgar Parishad conference on December 12, 2017 in Pune, which, according to the chargesheet, was responsible for the violence at Bhima Koregaon on January 1, 2018. The letters also discuss not using "anti-fascist front" in the name to avoid creating a negative impression in public.

Long story short, the letters allegedly found on the computers of Swamy and other activists, including Surendra Gadling (a lawyer) and Rona Wilson (a social worker), neatly lay down the internal workings of this urban naxal ecosystem. The letters also voice the concerns regarding the forensic discovery of internal communications, thereby conferring credibility on the process by which those credibility-conferring letters were purportedly discovered.

So all this evidence, clear and screaming, was just sitting there to be found by the NIA, like a fully baked cake. No missing links, no assumptions, no circumstantial inferences; all there in black and white -- the proverbial smoking gun. It did appear too neat and well-defined to be real, but there was no concrete reason to doubt its genuineness, and with that kind of evidence, no court was going to grant bail to someone charged under the UAPA with several crimes punishable with life imprisonment.

However, a lot in this well-rounded, gift-wrapped package of evidence raises suspicion. How is it that in a radical departure from their time-honoured ways, the "Maoists" are using real names in written communications instead of code names? Why are so many unnecessary details there in these letters? And why are the letters talking so explicitly about things such as the plot to assassinate Prime Minister Narendra Modi in a "Rajiv Gandhi-type incident" and "overthrow the government" without bothering to give a codename even to such a high profile target? And this was when they were supposedly worried about their communication being compromised. Why the letters were so neatly arranged and stored in ".docx" and ".pdf" files? And why do these letters paint a picture that so closely conforms to the narrative of an elaborate "anti-national conspiracy" with intellectuals, lawyers, activists and opposition parties doing their part to bring down the great nation? Maybe because there is indeed such a deep-rooted, elaborate conspiracy in the works; or maybe, just maybe, the picture is made to order to serve purposes other than bringing the offenders to justice.

Evidence Tampering

On March 12, 2020, *The Carvan* published a report, according to which a cyber-forensic examination carried out by *The Carvan* of Rona Wilson's computer hard disk revealed that it had an executable file infected with Win32:Trojan-Gen, a malaware that could be used to steal information from as well as plant files remotely on

the computer. Also, the ShellBag information, which could reveal when Wilson accessed the folder with the incriminating files was found deleted along with the log of all Run commands, which could help in tracking the computer usage and whether the malicious programs were run on it. The Run log is found in the Registry of the computer and requires significant software skills to be deleted without compromising the system. Since the incriminating information was still on the computer, it made no sense for Wilson to delete the files that could potentially prove his innocence while retaining the incriminating ones.

Also, the report noted, the police had not followed the standard protocol of sharing the "hash value" of the seized device with the accused at the time of the seizure, which means that it could no longer be said that the device was not tampered with after seizure, which seriously undermines the evidentiary value of the data on the device. The court can throw the evidence out on that ground alone. And this hard disk supposedly had crucial information relating to a plot to assassinate Prime Minister Modi, no less. So why was everything not done strictly by the book to ensure a swift conviction of the plotters?

Before this, on December 14, 2019, *The Carvan* had published another report after scrutinizing the computer hard drives seized from the human-rights lawyer Surendra Gadling and Rona Wilson, according to which report the files on Gadling's computer had been tampered with, and there were serious procedural violations suggesting evidence tampering.

Prior to this, on December 5, 2019, *The Wire* reported that in addition to the Israeli spyware Pegasus, there was another well-coordinated attempt at spying on "human rights defenders and journalists in India" through malaware-bearing emails, which, according to a study by the Berlin-based digital team of Amnesty International, lured the receiver into downloading a file, which instaled the intended malaware, giving "full visibility and control of your computer". In the report, *The Wire* noted that most recipients of these emails were also targeted by Pegasus, and except for one Vijayan, a professor of English at Delhi University, "every other recipient has one common link: the Bhima Koregaon trial."

The recipients included Degree Prasad Chouhan, a Dalit rights activist and People's Union for Civil Liberties (PUCL) Chhattisgarh state president, working closely with Sudha Bharadwaj, and Nihalsing Rathod, a lawyer who was an associate of Surendra Gadling, another lawyer. Both Gadling and Bhardwaj have been arrested in connection with the Bhima Koregaon case and on the computers of both incriminating evidence was found, which both say has been planted.

At the request of the defence lawyers, Arsenal Consulting, a Massachusetts-based digital forensics firm that has conducted analyses in serious cases such as the Boston Marathon bombing, forensically examined the electronic copies of the computers and email accounts belonging to Surendra Gadling and Rona Wilson delivered to it through American Bar Association and found that an unidentified cyber attacker had infiltrated the two computers and stored dozens of files in hidden folders, and these files were never accessed on the computers, indicating that the owners of the computers did not know of their existence on their hard drive. Arsenal Consulting found that Rona Wilson's computer was infiltrated on June 13, 2016 after he opened an attachment from the already compromised email of Varavara Rao, which resulted in the installation of NetWire Remote Access Trojan (RAT), a malaware that allows the attacker to have control of the computer and to monitor, upload and download data remotely. Like Wilson's computer, Gadling's computer was also infiltrated on February 29, 2016 through another trojan-carrying email. The report by Arsenal Consulting is categorical in its finding that the incriminating documents found on the computers were delivered by no means other than Netwire.

It seems that the evidence was so bang-on probably because it was carefully crafted to be, or maybe there is some other explanation. Either way, the supposedly clinching evidence is, at the very least, inadequate, and with procedural lapses added in, it would be an uphill task for the prosecution to secure a conviction.

So can the bail now be granted? Strictly speaking, no. And it would still be consistent with the law because the proviso to Section 43D (5) mandates that the accused "shall not be released on bail" if the court "on a perusal of the case diary or the report made under section 173 of the Code [Cr.P.C.]" finds that "there are reasonable grounds for believing that the accusation against such person is *prima facie* true", which means that the court can base its conclusions only on the case diary or the chargesheet, and cannot look into any evidence produced by the

defense, which is also because going into the quality of evidence would tantamount to conducting a mini-trial at the stage of bail, which is impermissible in law.

In fact, during the bail hearing of Stan Swamy, the attention of the Special Court was drawn by the defence to the abovementioned report by *The Carvan* about the infiltration of Wilson's hard disk, but the court said, "making any comments as to the evidence to be placed before the Court would amount to interference in the administration of justice", and while, referring to the article, it did say that "such act is required to be deprecated", the Court did not accede to the demand of the prosecution to initiate contempt proceedings against the author and publisher of the article. Again, the court did nothing questionable although it could refrain from commenting upon the article.

So far, no witnesses have been examined in the case and the evidence is yet to be judicially tested, but whatever has come to light has raised the disturbing possibility of evidence planting and tampering on the part of the investigation agencies in order to target the activists and lawyers who fight for the rights of the tribals.

What makes things a shade darker is that the Bhima Koregaon incident took place on January 1, 2018, and the investigation was conducted by Pune Rural Police for over two years until January 24, 2020, when the case was transferred to the centrally controlled NIA by the Central Government without the consent of the State government, three months after the State government in Maharastra changed after the October 2019 elections.

On September 13, 2021, the Union of India refused to share information regarding the spyware Pegasus with the Supreme Court, stating that "the information could not be made a matter of public debate as the same could be used by terror groups to hamper national security" despite the assurance by the Supreme Court that any information pertaining to "national security" could be excluded from the detailed affidavit, and despite the submissions on behalf of the affected journalists and human rights activists that the software was capable of taking control of the devices and storing incriminating information, which could be subsequently used to selectively implicate them in false cases. The Supreme Court was thus forced to constitute a committee of independent technical experts to look into the use of Pegasus, especially by the government agencies because the creators of Pegasus claim to sell the software only to "vetted government" clients.

The Bhima Koregaon case raises chilling questions regarding the willingness of the state to not only surveil its own citizens outside the framework of the law but also to prosecute as "terrorists" those who take upon themselves to criticize the government and stand for the downtrodden and marginalized, who cannot stand for themselves. Just because Maoist guerillas claim to be fighting for the cause of the tribals, it does not follow that everybody espousing the cause of the tribals is a Maoist guerilla or a supporter of violent uprising. The oneness of objective is not the oneness of means, and "terrorism" is by definition about violent means, the nobility or unworthiness of the objective notwithstanding.

The disturbing question, therefore, is: if you are a vocal dissenter -- activist, lawyer, journalist, intellectual -- who publicly criticizes the government, how likely are you to be prosecuted as a "terrorist" with "evidence" sufficient to keep you locked up for many, many years until the court, hopefully, exonerates you? And what effect would the possibility of such dreadful consequences have on the informed democratic debate necessary to sustain any democracy in any form? The Bhima Koregaon case is indeed a tale of conspiracy, either against or by the government. Who plotted against whom is the only question waiting to be answered.

Huge Fibroids during Hysterectomy

FIRST APPEAL NO. 117 OF 2014 K. DASHARATHAM & 2 ORS. Versus DR. HEMA RAGHU CHITNENI & 2 ORS.decided by the Hon'ble NCDRC on : 17 Nov 2021

Anoop K. Kaushal, Advocate
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FACTS: Smt. Sudhamala (since deceased, the 'patient') underwent hysterectomy operation on 12.06.2009, under spinal anesthesia by Dr. Hema Raghu Chitneni at Nitya Sai Emergency and Maternity Hospital and Opposite Party No. 2, Dr. Santosh Patil, an Anesthetist gave fitness for the surgery. It was alleged that after one hour of commencement of the operation, the Opposite Party No. 1 came out of the operation theatre and informed that the patient developed heavy bleeding and cardiac arrest, patient was shifted to Apollo Research Hospital, Karimnagar for ventilator support and better facilities, that doctors therein informed that the patient was already brain dead and in spite of ventilator support and Cardio-Pulmonary Resuscitation (CPR), the condition of patient did not improve and she died in the early morning on 13.06.2009. In the Death Certificate the cause of death was stated as "post abdominal hysterectomy leading to sudden cardio pulmonary arrest with multiple organ failure".

DEFENSE: That on 12.06.2009 at 5:30 p.m. during the operation, huge fibroids were found which were shown to the patient's husband and the doctor explained the risk of proceeding further, which the husband of patient accepted. At about 7.30 p.m., the patient suffered a cardiac arrest. Every possible step (CPR) to revive the patient was taken. For further cardiac management including ventilatory support, she was shifted to Apollo Hospital in an ambulance accompanied by the Opposite Parties Nos. 1 & 2. There was no negligence on the part of the Opposite Parties and the death of patient was due to cardiac arrest.

OBSERVATIONS: The Medical Record and the operative notes revealed us that admittedly on 12.06.2009 the patient underwent hysterectomy operation at about 5.30 pm, there was huge fibroid. Post-operatively at 7.30 p.m. the patient suffered cardiac arrest. Though, the patient was transfused 2 units of blood but the BP was not recordable, pulse was feeble. The doctors initiated CPR. The blood was continued, oxygen supply was continuous and the Dopamine dip was started. Injection Atropine and Adrenaline were given. The patient was intubated and connected to Boyle's and ventilation continued. At 8.00 p.m. the doctors noticed the patient was not responding painful stimuli. As the ventilator support facility was not available in the Opposite Party No. 3 hospital, the patient was shifted to higher center Apollo Hospital for the further cardiac management with the Ambu-bag and O2 support. At Apollo Hospital the relatives of the patient were explained about the serious condition of the patient, the doctors continued the resuscitation as per ACLS guidelines; however, the patient could not survive and declared dead at 2 a.m. on 13.06.2009.

HELD: We would like to rely upon the catena of judgments from Hon'ble Supreme Court which held that the medical practitioner cannot be held liable for medical negligence simply because the things went wrong as long as the doctors performed their duties with ordinary degree of professional skill and competence. We further note that the AP Medical Board appointed an expert Committee consisting of two doctors - Professor and Head Forensic Medicine namely, Dr. Surender Reddy, from Gandhi Hopsital, Secunderabad and Dr. M. Narayan Reddy from Osmania General Hospital, Hyderabad who in their report, dated 17.11.2009 opined that there was no negligence of the operating doctors. In the instant case we are of considered view that the doctors followed the reasonable standard of care and there was neither deviation nor deficiency in service during operation or handling the post-operative complication. Considering the entirety of the case the Complainants failed to prove their allegations of excessive anesthesia or excessive bleeding during the operation. Based on the foregoing discussion, the Complainant failed conclusively to prove that the treating doctors were negligent. We concur with the Order of the State Commission, which requires no interference. The instant First Appeal is dismissed.

The Draft`s 1946 & Thereafter : An Eternal praise!

Celebrating Samvidhan Divas/ The Constitution Day

Sadiya R. Khan
Advocate

O! My Indian Advocates
Eternal salutes to..
The Learned legal esquires
United in ethics and probity
O! Our Great Bar Constellations!
Our Law Life
Let's Scuba dive
Into our Law journeys
Toddled, walks, speeds
Unstoppable thoughts
O! The noble thinking minds
Unwinds and Winds
To each its noble journeys
Counsel Lawyer Advocate Attorney
Recall this December
A Day to remember
The Advocates Day
The third of December
The birth of an eminent lawyer
Our Hon`ble First Indian President
Dr. Rajendra Prasad
Quoted then..
"In attaining our ideals
Our means should be as pure as the end!
Metaphor to reading undiscovered ice-bergs
Poetic way or the non-rhymes
Our essence "**THE TIME"**

O! My Indian Advocates
Eternal salutes to..
The Learned legal esquires
United in ethics and probity
O! Our Great Bar Constellations!

The Throwback
Our navigating journeys
Drops maketh oceans
The Tireless Justice vowers
The Legal Czars
From snowflakes to snow clad mountains
From sand grains to barkhan*
(*crescent shape sand dune)
From Deserts to an Oasis
The Metamorphosis
The Butterfly journeys
Different shades
Some legacy privileged
Some Passionate visions
Some Struggled by Circumstances
Some Comparisons forced upon
Some Starving Surviving Sailed through
Either and all
All honoured to the Road of law
The three or five years
Burning the midnight oil
The survival of the fittest
Darwin Darwin Darwin
The Moot courts
Focussed internships
The learning times
The patience testing's
No quick bucks
The buck stops here
It's the Hare and Tortoise morals
Follow it or leave it
Born to Swim it
Made to swim
Forced to swim
The Degree..The Enrolments
The Bar Exams
The Black coats so awaited once
The white collar bands
The beautiful flowing gowns
The Meticulous Drafts
The Briefs
The Pleadings..The Arguments
The Hearings..The Adjournments
The Pass overs..End of the Bench
The rush to Libraries
The emergency case law prints to submit
And the sigh of relief
Landmark and Case laws
Outstanding Memorising minds

Endless Sheer Hard work
Epistemology of legal minds
The Great Pro Bono
The stand for underprivileged
The **Quest** for Justice
The strongest Hopes
Unfettered Courageous Bold
The mind of steel
The victorious victims then
Long Live the Bar & Bench!

O! Our different streams
Flowing in one mind
Civil & Criminal laws
Tap roots and fibrous cases
Absorbed and Engrossed
Travelling Nautical Miles
Arbitrations & Mediations
The International Protocols

Our Life`s Synonyms
Read, Think, Draft, Argue and Files
O! My Indian Advocates
Eternal salutes to..
The Learned legal esquires
United in ethics and probity
O! Our Great Bar Constellations!

JAI BHIM: THE NIGHT IS STILL AS DARK... OR DARKER

Contrary to the impression that many might carry, *Jai Bhim*, the Tamil-language legal drama starring Suriya and Lijomol Jose in the lead, is not merely about police brutality or even about the sorry state of the tribals, both of which are undoubtedly central to the plot, but it is, in large measure, also about the general oppression of the underprivileged; the widespread prejudice people carry against those unlike them; the abuse of unbridled power; and the need for state accountability to be ensured by the rule of law and public denunciation of state apathy to the plight of the citizens most in need of state assistance.

The monied and influential can work (mostly skew) the system to their advantage, which is another problem to be addressed, but the efficacy of a welfare state is best measured by the preparedness and efficiency of its key institutions to quickly respond to the needs of those who do not have the means and weight to pull the right levers, which is what the movie is fundamentally about. And since it's based on a real-life incident, which it manages to, by and large, portray accurately, focusing on the particular incident at the expense of the larger picture would be nothing short of missing the forest for the trees.

The plot and story of *Jai Bhim* revolve around the torture and murder of Rajakannu, in police custody and the struggle of his wife Sengenni to get justice for her husband with the help of a relentless activist lawyer, Chandru, in the backdrop of the atrocities against the tribals in the Tamil Nadu of the 1990s, which is not to say that the condition or the struggle of the tribals in Tamil Nadu or elsewhere has dramatically improved though there has been some betterment over the years.

The opening scene of the film shows policemen standing at the prison gates eyeing the newly released inmates -- like they were water tankers in a drought-struck area -- to "solve" the pending cases by implicating these poor and defenceless people, who might have served time for a similar false implication earlier. That sets the tone of the film.

Rajakannu, a labourer belonging to the Irular tribe (a Scheduled Tribe of Kerala, Karnataka and Tamil Nadu), is arrested under the suspicion of having stolen valuable jewellery from the house of a wealthy and well-connected *sarpanch*, who exercises his influence in the higher echelons of the police to pressure the investigation officer, Sub-Inspector (SI) Gurumurthy, into acting urgently and also recklessly to solve the case and recover the stolen jewellery. Gurumurthy resorts to extreme violence against Rajakannu and his family, resulting in Rajakannu's death.

Gurumurthy, it is very important to remember, is not motivated by hatred for any community or people, and does not try to falsely implicate Rajakannu in the matter. He genuinely believes, based on the suspicions raised by the complainant *sarpanch* and his wife, that Rajakannu has indeed committed the crime. To Gurmurthy, Rajakannu is his lead suspect in the case and he considers it his job to first find the suspect and then force the recovery of the stolen items from him. It is only under the ever-increasing pressure from his superiors and the *sarpanch* that he resorts to extreme torture to know Rajakannu's whereabouts. And when Rajakannu is found, he tortures him to make the recovery and elicit a confession to solve the case and ends up killing Rajakannu in a fit of anger and frustration.

So the movie is set in the background of innocent tribals being falsely implicated by the police, which issue the protagonist lawyer, Chandru, raises, takes to the court and wins, but Rajakannu's case is not such a case, to start with. True, the accusations against him are actually false and so the case based on such accusations would also be false, but to knowingly implicate someone in a false case is not the same as trying to obtain a confession from a suspect. The former requires fabrication of evidence, the latter the use of violence or unlawful allurement, and both are wrong, illegal and punishable, but differently. And in the context of the movie, that's a significant distinction because it changes the moral complexion of Gurumurthy's character. Being cunning and vile is different from being cruel and violent, which is how the rapist villains of *Aaj Ki Awaaz* (1984) and *Zakhmi Aurat* (1988) are differently villainous than Mogambo of *Mr. India* (1987) and Shaakaal of *Shaan* (1980).

Gurumurthy is cruel and angry and thinks that custodial torture is a perfectly legitimate tool of investigation, which is not materially different from the views of Inspector General (IG) Perumalsamy, who sees torture and violence as a means to justice (he narrates a personal incident of such "finger-crushing" justice-delivery), and he is one of the good guys. Since the tribals are poor and wield no political or financial influence, they make

an easy target and can be safely subjected to cruel and inhuman treatment with no fear of consequences.

Such institutionalized cruelty ties up with the discriminatory and sub-human treatment generally meted out to the powerless tribals and snowballs into widespread discontent and resentment against the "system", giving rise to and constantly feeding into the regional militancy, the area of which keeps expanding and shrinking periodically, corresponding to the extent of discontent.

Gurumurthy would probably treat any powerless suspect exactly the same way, but when it's a tribal, the picture changes. The failure of the rule of law with no state accountability and the mistreatment and oppression of the tribals are two connected but distinct problems demanding equally urgent redress. And while *Jai Bhim* doesn't seem to confuse or mix the two, the viewers might. The movie neatly lays down the background of tribal oppression before foregrounding Rajakannu's blood-soaked tale, but the viewers might see the systemic flaws as the villainy of an individual, and be content with the outcome of the individual case of Rajakannu rather than thinking of neutralizing its breeding ground.

In *Jai Bhim*, we see the real-life story of an activist lawyer standing up against the oppression of the tribals and seeking justice for them repeatedly, and we also see the system respond eventually with the guilty policemen prosecuted and punished to the full extent of the law. So the rule of law prevails in the end. But that was in the 1990s. Between August 2018 and October 2020, sixteen (16) people were arrested in the Bhima Koregaon Case on the suspicion of being Maoist sympathizers.

The arrestees -- also referred to as BK16 collectively -- included eminent professors, writers, teachers, human rights activists, scholars, lawyers and a now-deceased priest.

What they have in common is that, like Chandru, the real-life activist lawyer of *Jai Bhim*, they have been raising the concerns of the tribals in their own way and within their own domains. But, yes, regardless of the goodness of the cause, if one supports violence and militancy, one should be held legally answerable for it. However, if independent forensic analyses are anything to go by, there is a depressingly high probability that the evidence against BK16 was remotely planted by infiltrating their computers. So back in the 1990s, the system was responding to the critics and reformists and was course-correcting; now, it seems to be aggressively fighting them by suppressing dissent and resisting change to maintain and defend the *status quo*. Back then, the falsely implicated were the tribals; now, they are the defenders of the tribals' rights themselves. Yes, we have indeed come a long way since the 1990s. But in the wrong direction.

Jai Bhim, for its part, raises hope, which is because the outcome of that fight was largely hopeful with the guilty policemen convicted and sentenced for murder. But it was by the Fast Track Court No. 3 of the Additional District and Sessions Judge, Vrindhachalam (S.C.No.183 of 1995) and not by the High Court, as shown in the film. The decision was maintained by the Madras High Court in appeal (Criminal Appeal Nos.735 & 738 of 2004 and 668 of 2005). Although High Courts are competent courts to hold any trial, criminal or civil, they don't do it in the normal course, especially in criminal cases, to preserve the litigants' right to appeal to them against the decisions of the Sessions Courts.

And, please, It's Madras High Court, not "Chennai High Court"! To get the name of the concerned High Court wrong in a legal drama based on an actual case is a cinematic sacrilege beyond redemption. "The least you could do is get the name of the High Court right!" The ace chef of *Cheeni Kum* (2007) would have thundered in outrage, if he were a lawyer.

HEMRAJ SINGH

Prevent The Crime or Punish the Criminal?

Simran Gill
Advocate & Founder of
Su Iccha Foundation

From the beginning of humankind, time immemorial, we have witnessed humans committing crimes. The early incidents began with the hunting of animals which soon converted into killing other human beings. From then on to today, we have only seen an increase in the crimes committed by humans. They have not only increased in numbers but have expanded in their kind as well. Genocides, caste-based atrocities, religious persecutions, nuclear attacks, mob lynching are just a few crimes that weren't there at the beginning of humankind. Now we know some of the new forms of crimes such as embezzlement, piracy, money laundering, and the invention of the internet has opened a whole lot of new ways for humans to commit crimes varying from data theft, cyberstalking, hacking, harassment, cyberbullying, personal video circulation, voyeurism. It is as if humans are inventing new ways to commit crimes as time evolves and it seems the crimes are just increasing and increasing with time and they don't seem to stop.

The past few years have also seen a rapid increase in sexual offences. Humans, particularly women and transgenders are subjected to new forms of sexual offences every day. It begins right from the home, follows them in the streets, continues in schools and colleges, ends up in marital relationships and sometimes they don't even end with the death of the person.

There must be something wrong with us to see all this happening around us? There must be something wrong with what we have been doing for years that every other day there is a fight in the Parliament to make a new law to deal with the new type of crime that has emerged in the society?

What do the lawmakers do? They put together all the brains, gather the different information related to the crime, think of different ways that a crime could be committed and put all their resources in creating the stringent of punishments and least is done to prevent the crimes.

The focus on preventive measures has been negligible and punitive measures always gets all the resources. It is as if everyone is obsessed with the idea of revenge justice in society.

The sanction theory by John Austin, speaks highly for the importance of punishments in society to create a threat that can prevent people from committing crimes.

However, other theories such as 'Volksgeist' by Karl von Savigny which states that the law comes from the 'will of the people' and Roscoe Pound's interest theory have put less emphasis on sanction and more emphasis on the power and will of the people to commit and not commit crimes.

The outline of this article is based on the theories of Pound & Savigny rather than Austin.

The crimes can be divided into two categories, done consciously, committed against the individual- civil wrongs, where the victims of the crime could be indemnified by a way of compensation. For these crimes punishments such as fine and compensation and even simple imprisonment could prove to be fruitful for both the victim/ sufferer and offender. These could be economic crimes, civil wrongs, corruption, torts etc.

The other branch of crimes is socially and subconsciously driven crimes. The root cause of such crimes isn't the individuals but the social and psychological evils that are conditioned in society for years. Individuals merely are the crusaders of crime, the real offender is the social evil. They are crimes related to castes, class, race, sex, religion. Most of these crimes are just an assertion of power and superiority. The seeds of such crimes are sown from the very beginning, as early as childhood or as Freud claims even before birth as well. How we normalise racism, casteism, sexism, sexual offences, patriarchy is the reason why individual end up committing these crimes. The various research and evidence assert that punishments are less likely to prevent people from committing such crimes.

Our society on a day to day basis faces a large number of such crimes every day and punishments have contributed very less in reducing these crimes

over the period of time. And the lawmakers hardly focus on the preventive measures to tackle these crimes.

These crimes cause great damage to the victim, economically, socially and mentally. The eye for an eye practice we have been following for years does very little to indemnify the victim. The occurrence of crime shifts the whole focus on punishing the criminal and our justice system fails in giving importance to the victim. The effect of these crimes is not the same on every victim. Some suffer economically, some suffer socially, it won't be an exaggeration to say that all of them suffers emotionally and mentally. It is no intelligent guess that this one-stop solution for all, of giving punishment to the offender, for which victim has to run for trials, which is another mental trauma for them, doesn't benefit the victim/sufferer in most cases. Also, keeping in mind the acquittal rate on lack of prove.

And this leaves us with just one question? What are we trying to do?

The goal of the trial is to provide justice to the victim/sufferer and seldom does it happen in these crimes driven by class difference because their class itself become the prejudice in the judicial system.

These crimes cause mental distress to the victims/sufferer, that can have lifelong effects and hardly ever they get the right treatment to resolve their mental issues. Mostly because we all are unaware of mental health.

Interestingly, the cause of these crimes also works as a mental illness of the offender, a part of their brain, the uncontrollable urge to seek a feeling of superiority from the crime, which is induced by social conditioning & genetic built. This social conditioning becomes so strong that they lose their sense of right and wrong at times, just like happens in a mental illness and their goal remains solely to the gratification of power.

Psychological research has evidence that mental illness isn't cured by punishment and torture. It has proved that infliction of torture leads the person to do anything that would put an end to the torture, and does not give them a reasonable approach to think and correct themselves or even to tell the truth. When a person fails to correct themselves we have harsher punishments under the head of 'repeated offenders'.

It is evident that the mental problems of casteism, patriarchy, racism, will not be resolved by punishments. In fact, the sexual offences are seen to be increased after the death penalty. The rate of crimes is more in countries with the death penalty. And we know for a fact that education can and has effectively put an end to the social evils of patriarchy, casteism and it is the only solution to prevent crimes. For which the education should begin from childhood, from families, from books to schools. But this is a slow process.

So, what we are proposing here, no punishments for the offender?

I won't just end this by criticising that punishments aren't the solution.

What scares a person more than the punishment and fear of imprisonment, especially in these socially driven crimes is the label of 'mental illness'. Since these crimes are power-driven, one thing that makes a person completely powerless is to tell them that they aren't capable of thinking right.

So, yes punishments should be inflicted on the offenders, and the conviction rate should be high. But, punishments could be awarded a certificate of 'mental instability' so they can get the right psychological therapies and education. Prisons & Rehabilitation centers should work as a reform system in educating and helping them unlearn the social conditioning that leads them to these crimes. The treatment should not be specific to preventing the crime but also to resolve the criminal's mental issues of the past as well.

As it's said, no one in their right mind wants to hurt others.

Equal importance should be paid to the victims of the crime. They should not only be indemnified for their social and economic loss but for their mental loss as well. It should be on the offender to indemnify them. Until and unless they are mentally treated, there is no justice for them, there is no safe haven for them.

Send the offenders to prisons to reform them, to get the psychological treatment but not to punish them more and when they come out, they shouldn't come out as a criminal of social conditioning anymore but educators who can go back and teach their family and society the same.

And we will only have an open mind to reform our society if we will shift our focus from punishing the criminals to preventing the crimes.

The choice isn't that hard to make.

Labour Laws Q/A

CONTRACT OF APPRENTICESHIP

What are the essential ingredients of a contract of apprenticeship?

(i) No person shall be engaged as an apprentice in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(ii) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into as per clause (i)

(iii) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties provided that no such term or condition shall be inconsistent with any provision of the Apprentices Act, or any rule made thereunder.

(iv) Every contract of apprenticeship which is entered into shall be sent by the employer within such period as may be prescribed to Apprenticeship Adviser for registration.

(v) The Apprenticeship Adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act, for being engaged as apprentice to undergo training in the designated trade specified in the contract.

(vi) Where the Central Government, after consulting the Central Apprenticeship Council makes any rule varying the conditions of apprenticeship training of any category of apprentice undergoing such training, then the terms and conditions of every contract of apprenticeship relating to that category of apprentices and immediately before the making of such rule shall be deemed to have been modified accordingly.

(vii) Sub-section (4) of section 4 provides that all the Contracts of Apprenticeship entered into by Employer and Apprentice should be sent to Apprenticeship Adviser within thirty days and thereafter the details of contract of apprenticeship should also be entered on the portal-site for verification and registration.

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

HOUSE OF CARDS

by John Colapinto from Vanity Fair

on August 22, 2015, Boye Brogeland posted a provocative comment to the website Bridgewinners.com. "Very soon there will come out mind-boggling stuff," wrote the Norwegian bridge player, then age,43 and ranked 64th in the world. "It will give us a tremendous momentum to clean the game up."

A few days later, Brogeland launched his own website, Bridgecheaters.com. The home page featured a huge photo of Lotan Fisher and Ron Schwartz, a young Israeli duo who, since breaking into the international ranks in 20ll, had snapped up the game's top trophies. They appeared under the tagline "The greatest scam in the history of bridge!"

Brogeland posted examples of what he claimed to be suspiciously illogical hands played by the pair. He also laid out a pattern of alleged cheating and bad sportsmanship going as far back as 2003, when Fisher and Schwartz were in their mid-teens.

For the game of contract bridge, it was an earthquake equal to the jolt that shook international cycling when Lance Armstrong was banned from competition for doping. Fisher and Schwartz denied all wrongdoing and hired lawyers who dispatched a letter to Brogeland threatening a lawsuit and offering to settle if he paid them $1 million. In a message he denies was intended for Brogeland, Ron Fisher posted to his Facebook page: "Jealousy made you sick. Get ready for a meeting with the devil."

Brogeland lives in Flekkefjord, Norway, with his wife, Tonje, and their two young children. Having learned bridge at the age of eight from his grandparents, he fell in love with the game and turned pro at 28. In 2013, he was recruited by his current sponsor, Richie Schwartz (no relation to Ron), a Bronx-born bridge addict who made a fortune at the racetrack in the 1970s. Brogeland says Richie Schwartz pays him travel expenses and a base yearly salary of $50,000-with -big bonuses for strong showings in tournaments.

Not long after Brogeland joined Richie Schwartz's team, he learned that his employer was also hiring Fisher and Ron Schwartz, about whom he had heard misgivings from other players. Over the next two years, Brogeland and his five teammates won a string of championships.

Nevertheless, Brogeland says he was relieved when, in the summer of 2015, Fisher and Ron Schwartz were lured away by Jimmy Cayne, former CEO of the defunct investment house Bear Stearns. "When they changed teams," Brogeland says, "I didn't have to be faced with this kind of environment where you feel something is strange but you can't really tell."

Fisher, meanwhile, was enjoying his position at the top of the game, where the lives of many successful young pros resemble those of globe-hopping rock musicians. Convening nightly at a hotel bar in whatever city is holding the competition- Biarritz, Chennai, Chicago-they drink until the small hours. Charismatic and darkly handsome, Fisher posted Instagram photos of himself in well-cut suits, behind the wheel of luxury cars or partying with an array of people.

There was only one problem: the persistent rumors that he was a cheater. "But it's an unwritten rule that you do not publicly accuse anyone – even if you're sure." says Steve Weinstein, a top American player. It was a catch–22 that Fisher seemed to delight in flaunting, shrugging off questions about his suspicious play. "He had the Nietzschean superman personality." says Fred Gitelman, a professional player who has won championships worldwide.

"He just though he was in a different league."

Less than a month after Lotan Fisher and Ron Schwartz had left Richie Schwartz's team, Brogeland met the pair as opponents, in the quarter-final of the 2015 Spingold at the Hilton hotel in Chicago. Brogeland's team was the Clear underdog, but it by by the slimmest margin possible: a single point.

Or it seemed to. Fisher immediately contested the result on a technicality. After an arbitration that stretched until 1:30 a.m., the win was overturned: Brogeland's team had now lost by one point and been knocked out of the tournament.

That night, a crushed Brogeland could not sleep. He rose at 7 a.m. and opened Bridge Base Online (BBO), a website that archives tournament hands, to see exactly how he had lost. He immediately noticed something odd. Ron Schwartz had opened a

hand by playing a club lead. Yet, Schwartz's hand indicated that a heart lead was the obvious play.

Then, he says, he saw something even stranger. In one of the hands, Fisher had claimed 11 tricks. Except Fisher, as BBO showed, held the cards for just 10 tricks. Brogeland thought' it was a mistake and immediately contacted his sponsor. In any event, challenges must be raised within a half-hour of a match. The loss would stand.

Maaijke Mevius, a 45-year-old living in the Netherlands, is a physicist and an avid recreational bridge player. Galvanized by the evidence against Fisher and Schwartz, she wondered if she could spot any illegal signaling in YouTube videos. While watching Fantoni and Nunes, she grew convinced she had decoded how they were using card placement to signal to their partner whether they held any high honor cards (ace', king or queen). Mevius e-mailed the information to Brogeland.

On September 13, 2015, Bridge Winners published "The Videos Speak: Fantoni-Nunes," a damning analysis by Woolsey. In a statement from that month, the pair said, "We will not comment on allegations at this time."

On Bridge Winners, the· first reader comment in response to this news said it all: "Is this the end? Speechless now ..."

It wasn't quite the end. Brogeland soon received an anonymous e-mail tip from someone identifying himself as "No Matter." The tipster advised looking at videos of Germany's Alex Smirnov and Josef Piekarek, as well as the Polish pair Cezary Balicki and Adam Zmudzinski. In subsequent e-mails, No Matter pointed out what to watch for: signaling based on where the pair put the special bidding cards in the bidding tray that is passed between the players during the auction.

Smirnov and Piekarek, told of the discovery, admitted to the violation in a statement. Balicki and Zmudzinski denied the charges.

Still more astonishing, however, is the fact that Brogeland believes the person behind the mask of No Matter is the disgraced Lotan Fisher.

Brogeland cannot explain why Fisher would assist in the quest to root out cheaters-unless, by helping to expose others, he hoped to take the focus off himself. Fisher, in an e-mail to this writer, claims that he only aided No Matter and that his motivation was the same as Brogeland's-to clean up the game. "I love [bridge] more than Boye or anyone else," he wrote, adding, "My next step is to prove that me and Ron Schwartz didn't cheat. NEVER."

In May, Bridge Winners announced that the EBL had issued Fisher and Schwartz a five-year ban from its event's and a lifetime ban on playing as partners. The other pairs have also faced repercussions from various leagues and events.

Brogeland's actions have also had a more permanent effect on the game. In December 2015, the ACBL held one of bridge's biggest annual tournaments, the American nationals. For the first time, the ACBL had installed small video cameras and microphones at the tables to record all matches from the quarter-finals through to the finals-since no one imagines that every dishonest pair has been rooted out.

Before the end of the tournament, ACBL CEO Hartman convened the first meeting of a new anti-cheating task force including Willenken, Woolsey and Cullin who discussed means for streamlining the process of submitting complaints and investigating them:

Meanwhile, the International Bridge Press Association named Brogeland the Bridge Personality of the Year for 2015. When he arrived for his first match at the Denver nationals last autumn, he had to fight his way through the crowd that had collected outside the tournament room: "Thank you for your service," said a bearded man who had stopped Brogeland at the door of the game room.

"Well, I had to do it," Brogeland said, shaking the man's hand and trying to move off.

"You really put yourself on the line," the man persisted. Brogeland smiled. "Bridge deserves it," he said, then headed for his table.

Lotan Fisher and Ron Schwartz were expelled from the AC13L in 2016. Fulvia Fantoni and Claudio Nunes were suspended from the ACBL and the EBL and banned from playing as partners. Josef Piekarek and Alex Smirnov were suspended from the EBL and ACBL until 2020 and banned from playing together for life.
In 2017, *Cezary* Balicki and Adam Zmudzinski were prohibited, from playing in the Polish Bridge Union until further notice.

good living

"It is an attempt to relieve the mind, heart and body of not only the Lawyers who are under huge work pressure but also of all our readers, who are facing the very common and ever increasing problem of stress."

Your Body

We are suggesting some selected Yog Asanas to rejuvenate your body. Next in the series is:

Vakrasana

Benefits: It improves the function of the pancreas, which is beneficial for people with diabetes.

It regulates the secretion of digestive juices, improving digestion and combating constipation.

It massages the abdominal organs and helps reduce belly fat.

It makes the spine flexible.

It strengthens the back and helps with chronic back and shoulder pain.

It also helps support healthy adrenal glands.

Procedure: First, sit on a yoga map and stretch your legs stretched out.

Try to bend your left leg from the knees and then try to place your foot beside the right knee.

Exhale and then twist you're your waist towards the left and make sure that your spine is straight.

Then, try to place your right arm towards the left side foot, and you need to do this in a way that the outer side of the right arm touching the outer side of the left leg. Also, move your right hand beside the left foot.

Take your left arm back and try to place your palm on the floor and do this in a way that the trunk is properly twisted and straight.

Then, you need to do the same on the other side.

You can practise Vakrasana two to three times.

While practising "**Vakrasana steps**" you must exhale while you are twisting the body. Do not breathe in the rush, try to breathe peacefully and slowly, and try to maintain the pose in the last stage. And inhale when you are returning to the starting position.

Healthy Food

Green Peas

This naturally sweet legume is rich in essential vitamins, and antioxidants like vitamin K, C, folate, manganese and fibre. Few benefits of consuming green peas are:

Improves digestion: Peas contain prebiotic and fibre that is super beneficial in the digestive process. Fibre helps in the movement of food through the digestive tract. This is essential for proper digestion and elimination of toxic substances. Peas also contains phytoalexins, an antioxidant that can inhibit H.Pylori, the bacterium that causes stomach and duodenal ulcers, and stomach cancer.

Great source of iron: Peas are a great source of iron. Iron deficiency is the leading cause of anaemia. If you are iron deficient, your body can't make enough healthy oxygen-carrying red blood cells, thereby causing haemoglobin deficiency. Iron helps combat fatigue and gives you strength.

Good for eye health: Apart from high in vitamins and minerals, peas are packed with carotenoid phytonutrients, lutein and zeaxanthin, which are known to promote vision and eye health. Lutein also reduces the risk of cataracts and macular degeneration or loss of vision in old age.

Heart health: There are well-documented health benefits of green peas in the area of cardiovascular disease. Because of the strong antioxidant and anti-inflammatory properties of green peas, they protect the healthy functioning of our blood vessels.

Good for skin health: Peas are an excellent source of Vitamin C, which plays a significant role in the production of collagen. Collagen helps keep the skin firm and glowing. The antioxidants which are present in peas, such as flavonoids, catechin, epicatechin, carotenoid and alpha carotene, help prevent signs of ageing too.

Good for men's health: Peas can help increase the sperm count and motility. Peas contain a plant compound named Glycodel in — a substance that can help strengthen sperms and improves their ability to fertilize an egg.

Helps in weight loss: Weight loss always has to be a by-product of becoming healthier. Since peas

contain both high fibre and high protein, they become an ideal food for someone wanting to lose weight the right way.

Reversing diabetes: Fibre is the best ingredient for anyone who intends to reverse their diabetes. Because of the high fiber content in green peas, there have been innumerable studies showing benefits of peas in reversing and preventing diabetes.

Once we become aware of these super health benefits of green peas, we are tempted to add them in our day-to-day habits and routine. And once we inculcate healthy habits, creating good health or reversing disease becomes a natural outcome.

Recipe of the Month

Crunchy Roasted Green Peas Recipe

Ingredients:-

- 2 cup green peas, frozen
- 1 teaspoon olive oil
- 1 teaspoon garlic salt

Procedure:-

1. Preheat your oven to 375 degrees F.

2. Allow the peas to thaw, then blot them with a paper towel to get as much moisture off them as possible.

3. Place them in a bowl and add oil and garlic salt. Stir to coat evenly.

4. Spread them on a baking sheet lined with parchment paper or aluminum foil.

5. Bake in the oven for 30 minutes, then shake and stir them around to make sure they are cooking evenly.

6. You can try them at this point to see if they are crunchy enough for you. If they need more time return to the oven for increments of 15 minutes until they are nice and crunchy.

7. Let cool before serving.

Happy Holidays

Tawang

Tawang district is one of the 16 administrative districts of Arunachal Pradesh in northeastern India. Breathtaking valleys, misty rivers and stunning waterfalls in this scenic district give you the ultimate experience. ***Sela Pass*** is amongst the most frequented tourist destination in the whole of Arunachal Pradesh. It owns the credit of being the only high-altitude mountain pass in the world that is motorable. The views from Sela Pass are spectacular. The sunrays kissing the mountaintop give you a different version of the mountain. Sela Pass is rightly called the 'Heaven on earth'. ***Tawang Monastery*** is the second largest monastery in Asia and the largest in India. The amazing collection of manuscripts, books and other artifacts in the monastery increases its value multifold. ***Taktsang Gompa*** is believed to have been honoured by Guru Padmasambhava's visit during the 8th century. The thick coniferous forest and lofty mountains surrounding the monastery, which is located on the ridge of a hill, render magic to the air. ***Gorichen Peak***, is the right place for the adventurer in you. ***Shongatser Lake*** or ***Madhuri Lake*** with picturesque snow-capped mountains surrounding it offer spectacular views. ***Nuranang Waterfalls*** offers nature at its best to your eyes. The Hydel power station nearby is open for visits. ***Pankang Teng Tso Lake*** or ***Ptso Lake*** remains frozen during winter and area around the lake supports skiing. Radiant rhododendron flowers and birds in different hues provide a beautiful sight. ***Bumla Pass*** is situated 37 kms away from Tawang. The Indo-China border that lies at 16,000 ft altitude is the right place for you to assess your fitness level if you love adventure. ***Bap Teng Kang Waterfall*** is situated 82 kms away from Tawang. Set amidst lush greenery, the waterfall offers spectacular sight to nature lovers. Popularly referred to as BTK waterfall, the crystal clear water encourages you to indulge in swimming. Tawang is also famous for its carpets, shawls, chadors (wrap around skirts worn by women), hand made bags and clothing items. Other interesting items one can pick up here are Buddha statues, prayer wheels and lucky charms crafted out of wood. Tawang is also famous for porcelain and chinaware and you can pick up some beautiful piece of crockery. Other local items you can buy here are jewellery crafted out of bamboo and grass necklaces. Tawang's food is best savoured at road side eateries. The most common dishes available here are Momos and Thupka. Also famous here is the yak butter tea. While each and every spot in Tawang is alluring, the entire district envelopes you into its fold making you want to be a part of the life there.

Supreme Court Guidelines

DOWRY PROHIBITION ACT

DOWRY PROHIBITION ACT, 1961

ARREST - UNNECESSARY ARREST AND CAUSAL AND MECHANICAL DETENTION

Arnesh Kumar v. State of Bihar

(2014) 8 SCC 273: 2014 (8) SCALE 250: AIR 2014 SC 2756: 2014 Cri LJ 3707

Criminal Appeal No. 1277 of 2014

Dated: July 02, 2014

BENCH: Justices Chandramauli Kr. Prasad and Pinaki Chandra Ghose.

Court has issued following directions to prevent from unnecessary arrest and causal and mechanical detention. Directions were issued in an endeavour to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically in cases under Section 498A, I.P.C., the Court gave certain directions (however, the directions apply also to other cases where offence is punishable with imprisonment of not more than seven years) which include:

• All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A of the I.P.C. is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.;

• All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

• The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

• The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

• The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

• Notice of appearance in terms of Section 4 lA of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

• Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

• Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

• We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

• We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

YOU MADE YOUR CASE

——*The Art of Persuading Judges*——

Avoid acronyms. Use the parties' names.

Acronyms are mainly for the convenience of the writer or speaker. Don't burden your reader or listener with many of them, especially unfamiliar ones. FBI and IRS are OK, but not CPSC and FHLBB. You may be surprised how easy it is to avoid a brief of alphabet soup and from the reader's point of view (which is the only point of view that counts) it is worth the effort. If the Consumer Product Safety Commission plays a prominent role in your case, and no other agency has any part at all, call it lithe Commission," or even simply lithe agency." If the case concerns the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (117 Stat. 650), foil the drafters by refusing to call it lithe PROTECT Act"; just lithe Act" will do.

The reason for avoiding acronyms is well exemplified in a fictional passage devised by Judge Daniel Friedman:

Refer to the parties by their names rather than their status in the litigation (plaintiff respondent, etc.). There are good reasons for this. Sometimes, in reading briefs, judges will get confused about who is on the upside and who on the down-side-s-and will have to flip back to the cover to see who "Petitioner" is. Moreover, the petitioner here may have been the defendant at trial, and the respondent on the first appeal. This can make the record on appeal confusing if status-names are used in the briefing and argument at each level. Everett Jones, however, is always and everywhere, at all stage~ of the litigation, Jones.

Some mistakenly advise that you should try to personalize your client and depersonalize the opposing party by calling the former "Jones" and the latter "Defendant." This is much too cute; rather than depersonalizing the defendant, it will annoy the court and ruin the story.

Sometimes each side of the case has multiple parties, so it is impossible to use a single name. No problem. If they are all railroads, refer to them as lithe railroads"; or if all debtors, call them "the debtors." If they are a mishmash, pick the name of one of them and define that to include the entire group. For example, "The petitioners (collectively, 'Exxon') claimed below that ...."

Here, as everywhere, clarity governs all. It sometimes makes sense to use terms like "general contractor," "owner," and "subcontractor" if that will identify the cast of characters in way that makes the story more comprehensible.

THINK BEFORE YOU CLICK

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Virtual Application Of The Rule Of Law In The Governance Of Cyber Society

Today in the technological world the practical application of global law and administration of netizens around the virtual space has also became a major challenge before the state authorities. Therefore it is important to use the constitutional perspective i.e.., the rule of law which consists of a number of different strands, none of which can be universally or directly applied to the governance of virtual communities, but each of which serve to highlight potential shortcoming in private governance.

The constitutional perspective is useful in order to understand what the appropriate limits to the power of private actor. The law is shaped by the people but law shapes the behaviour of people, we need to get used to-and practice-the law is shaped by technology and technology is shaped by the law. Technology may have expanded the factual premises created by the constitutional framers, thus there can be no all pervasive, powerful and decisive technology, whether the internet or artificial intelligence, which is not subject to the rules set by democracy in law.

The fact that cyberspace is marked by less governance and poor rule of law, such as the international transmission of a large number of data drive-by attackers using key loggers on social media to other countries where cybercrime law was nascent and non-existent or not easily enforceable, is part of the internet's fascinating character. Although the severity of cybercrime has been recognized by countries around the globe and many of them have taken legislative measures to assist greybeard and offenders, not all have a legal structure to facilitate cyber criminals' prosecution.

Globally many developed and developing countries have also reviewed their respective domestic criminal legislation to avoid computer and cyber-related crimes in order to address the challenges raised by emerging forms of cybercrime and criminal profiles. The government also makes regulations ensuring that internet policies and security solutions are in place for any enterprise from a large corporation to mid-size and small ones. In view of the dynamic and rapidly changing technology, there are often new types of threats. Cyber attacks, though, are moving at a high speed that law enforcement will not capture the day in the latest pattern, then corporate individuals will begin to think twice about using social network sites and the Internet.

Legal Thesaurus

Writ - Certiorari:

A writ by which causes are removed from inferior Courts into the High Court of Justice.

"The petition before me is actually not a petition bringing up the record of any case for being quashed by a writ of *certiorari*. The petitioner, in.my opinion, can obtain effective relief without this Court actually quashing the impugned notification. As far as I can see the use of the word 'quash' in respect of such notification is not quite appropriate if the meaning to be given to that word in this connection is what it bears to the sphere of law of *certiorari*. It is sufficient for the petitioner to demonstrate before this Court that the notifications were illegal or bad in law and his rights in the disputed plots could not be relinquished or interfered with in pursuance of those notifications. The effective relief which he would get would be in the nature of *mandamus* or direction that the opposite parties shall not take any further action in pursuance of those notifications which have been found to be in law so as to effect the right and title of the petitioner in the disputed plots. Right of the petitioner would be effectively safeguarded if this Court issues a direction commanding the opposite parties not to take any further proceedings based on the impugned notifications under the Act and not to disturb the possession of the petitioner in respect of the disputed plots". **[Section 6, Land Acquisition Act, 1894].**

If the decision has been arrived at in contravention of the mandatory provision under Section 5-A that the objector should have an opportunity of being heard, it is not a valid decision in the eyes of law, and if in spite of this the authority concerned decides under Section 6(1) of the Act to acquire the land, a writ of certiorari be issued against him directing him not to take further proceedings till the objector is given an opportunity of being heard in the manner required by Section 5-A, **Land Acquisition Act,** 1894.

Disputed questions of fact cannot be decided in a petition under Article 226 of the Constitution of India.

Whether the land notified for acquisition is suitable for acquisition cannot be considered in writ jurisdiction.

It is well-settled that the writ court is loath to enter the thicket of disputed facts.

All India Judicial Service, An Unproven Solution

Ayush Sarna
Assistant Advocate General, Punjab

India is a quasi-federal state having single unified judicial system with three tier structure, i.e., Supreme Court, High Court and Subordinate courts. Current turf war is going on between top echelons of the government and the judiciary over the judicial appointments for subordinate courts by a centralised recruitment process called All India Judicial Services (AIJS).

Considering the little literature available to explain the rationale for allowing the state governments to control the power of judicial appointments to the district and subordinate judiciary till now, its better to look through the lens of group identities and increase administrative efficiency as Constitution allows states to choose judges who are best suited to judge a dispute arising in the unique socio-economic context.

The idea of AIJS was first proposed by 14th Report of Law Commission titled 'Report on Reforms on Judicial Administration' in 1958, which was shelved after some states and High Courts opposed it until in 1976 ,on the basis of Swaran Singh Committee recommendations, 42nd Constitutional amendment was brought which amended Article 312(1) wherein Rajya Sabha by passing a resolution supported by not less than 2/3rd of its members present and voting, is empowered to make laws for the creation of one or more All India services including an AIJS, common to the union and the states. Even Supreme Court in All India Judges Association vs. Union of India case (1993) directed the union government to take immediate steps for the formation of AIJS. In 2017, Supreme Court reiterated the need of the same by taking suo-moto cognizance of the issue of appointment of District Judges and mooted a 'Central Selection Mechanism'.

Before delving deeper into the intricacies of how the system like AIJS could sustain itself, we need to first understand why there is a recurring demand for the same in the first place. Law Commission Report of 1987 suggested India should have 50 Judges per million population as against 20 Judges per million now. Considering the insurmountable number of pending cases from 2.5 cr cases in 2017 to 3.5 cr presently , exacerbated by the COVID-19 induced lockdown, AIJS envisages to bridge the underlying gap in judicial vacancies by filling it routinely and automatically in an objective manner.

Various law commissions have pointed towards parochialism, regionalism and inefficiency in the recruitment process for state judicial service. The incumbent central government believes that properly framed AIJS would induct pool of talented people through all India merit-based selection system and also bring social inclusion by enabling suitable representation to marginalised sections of the society by providing quota for women,SC and ST. The proponents of this idea also believe that this will bring about bottom up approach in recruitment which would address issues like corruption and nepotism in the lower judiciary and will further strengthen the justice dispensation system in the lower levels of society.

A centralised recruitment process in the form of AIJS is seen as an affront to federalism and basic structure doctrine and also encroachment on the powers of states granted by the Constitution. It further creates dichotomy between Article 233 and Article 312 as Article 233 lays down that appointments of persons to be, and the postings and promotion of district judges in any state shall be made by the governor of the state in consultation with the High Court exercising jurisdiction in relation to such state. So the states have the apprehension that AIJS will unsurp their fundamental power to make rules and the appointment of district judges .

This idea is seen as a spectre, where an outsider who is not familiar with the customs and language of the state will hear the arguments and decide the cases. There is a apprehension as to how a person from North India can hold hearings in Southern India. This apprehension has been addressed in the recent round of meetings with the recommendation that AIJS entrance exam may be held at the zonal levels, i.e. North, south, east, west and central level so that judges are posted closer to the place they belong to. Infact even IAS and other Central service officers are serving in different states overcoming the language

barrier after being trained in local language of the state.

While language barrier has been figured out , there is incorrect diagnosis of the issues faced, for which AIJS is pitched as a solution . As AIJS brings with it the element of centralisation to counter the current recruitment procedures, it carries the underlying assumption that state governments and High Courts are not performing well in appointing judges. Whereas figures present a baseless allegation in its entirety as States across the country are performing in a fairly decent manner. Only certain jurisdiction such as those falling under Allahabad High Court and Patna High Court account for approximately 5000 vacancies while states like Maharashtra, West Bengal recorded a 2.8% and 7.8% vacancy rate and states like Gujarat, Kerala, Chhattisgarh, Assam, Rajasthan have around 10 % to 30% vacancy rates. Chandigarh has 30 out of its 30 judicial positions filled up.

Centre's case for AIJS is dented by the whopping 43% vacancies in High Court where it has a say in quickly filling vacancies. Moreover, if centralisation of services is to be considered as a one-stop solution, then reconsideration in that aspect is to be made as well, looking at the number of vacancies going vacant on yearly basis in various IAS, IPS, Indian Navy and Army recruitments. The argument that women and lesser represented caste groups would reap enormous benefits out of this unified system is also logically flawed, as considerable amount of states like Rajasthan, Kerala, Punjab, Madhya Pradesh have caste-based reservations and even additional reservation for women in their judicial entrant examination.

Regarding the allegation of inefficiency, from the studies conducted by Vidhi Centre for Legal Policy (2019) it appears that degree of efficiency in recruitment to the judicial services varies greatly among different states wherein many states have built up considerable administrative capacity.

Instead of batting for a cause that will not solve any of the major hindrances being faced by the lower judicial system, the states need to get their respective systemic issues cleaned up in order to provide for a transparent and accountable recruitment mechanisms that they are vying for. This includes restructuring the delegated authorities that hold influence in the conduct of lower judicial examinations, bringing uniformity in the yearly or regular conduct of the examination, providing grievance redressal methods to the candidates so that the citizens and aspiring judges faith in the lower judiciary can be automatically restored.

It is time to recognise that AIJS cannot be the answer to these systemic problems, especially when it is an unproven solution to the proven problems and reliance been placed on the archaic reports of the Law Commission.

REAL LAW SCHOOL PERSONAL STATEMENTS

LOSE THE MELODRAMA

My name is Min- Jae but I go by MJ. I am not trying to Americanize my Korea~ roots with this nickname. In fact, I am' deeply proud 'of them. I was born in

I was born into a one-car family that didn't use disposable diapers or paper towels, and that counted literal squares of toilet paper. My mother's bent was toward making everything as difficult as possible to throwaway. I resented it, because the effort felt too tiny, too pockmarked by the indifference of the rest of the world. The fact that I didn't use paper products meant nothing within the greater scope of existence. 165,000 new cars designed to use gas were still being produced everyday. By the time I left for college, the ideals of my parents had become deeply buried beneath the allure of ease and indulgence.

After I graduated from business school with an economics degree, I worked for three. years as a banker on Wall Street, as soulless and blood-sucking a profession as the cliche Hollywood and grassroots movements have contrived. I made money hand-over-fist in my first year alone and bought new suits when I didn't-have time to get the old ones-cleaned. I drank bourbon and snorted coke after work. I drank coke and snorted bourbon during work. The meaninglessness of every step I took stalked me like a shadow.

Then one night I woke up, twenty-four years old and already older than my grandfather. I stared into the vacuous holes in my head masquerading as eyes as sweat poured in rivulets around them. I picked up a pen, sat down and wrote out my manifesto. It was the beginning of something vast. By the time I had finished it, the day had slipped by. There were messages on my phone from my colleagues, my bosses and my mother. I didn't call any of them back. I read and re-read my manifesto. I debated mailing it to the media, my sister, Cawker, or The Times. Then I went to sleep.

The manifesto proclaimed, in part:

It's easy to get ensnared by the suggested importance of man-made constructs like wealth and pretty-things. But the truth is that the goal of all life is survival. And I see before us a violent and manufactured death. There is no nature in death by fossil fuel. There is no nature in death by garbage heap. There is no nature in death by deoxygenating our planet. There is no nature in death by war.

Nature lives in the majesty of clean rivers, full trees, minimal waste, green fuels and the potential we each have to change our own fate. I hereby dedicate my life to changing the fate of the world. If I have to murder, decree or reconfigure the laws of the land, so be it. I owe it to myself, humanity and life itself, as each of us does. I move forward with a mind that fights, that has purpose. There is no passion in my thought or deed; but rather, a mission that is clear and principled. It begins today.

I slept for a while. When I finally awoke, I felt like something-akin to lifeblood was regenerating in a modest trickle through my veins. I quit my job. I moved back to my parents' house, the one in which I had grown up. I went back into my childhood room where my brother's Star Trek posters hung next to my Raider's poster signed by Hall of Farmer, Marcus Allen. Ire-connected with a primal, formative part of myself that had been stripped over the years, layer by layer.

I began a deep and intoxicating study of the technologies already changing the world and considered how to make them the only option. "Outlaw fossil fuels," a voice whispered. The same way we protect the elephant by outlawing the sale and manufacture of ivory, let's protect the remaining stores of coal and oil.

The more I understood the rules of the world, the better I understood how to change them. I sought out legal counsel, intricately studied the path of our nation's finest environmental lawyers. I studied thousands of drop movers, men and women grasping for buckets of water of change, and only getting a single drip across the finish line.

I began to assess the best way to make bold and blanketing moves. I did not intend to be a drop mover- I wanted to open the floodgates. I realized I would have to begin again. Although my intention to change things grows ever more urgent as glaciers break off into the oceans, it now has become morbidly clear that the change must take place within institutions that are already in place. I intend to be the kind of environmental lawyer that changes things by the ocean-full.

There is no time left. I am ready to turn my manifesto into action points.

I am ready to save the world. I hope when I get into law school, your halls are teeming with people just like me: filled with purpose, ready for change,

and able to fulfill the manifold dreams of our planet.

JD MISSION REVIEW

Overall Lesson

Convey passion, but not at the expense of reason.

First Impression

The first paragraph could be a little confusing. My-initial impression from the list of behaviors presented in the first sentence (having just one car counting sheets of toilet paper, etc.) was that the candidate's family was poor, not that it was environmentally conscious. However, he could easily clarify this point by saying that his family adopted these behaviors as part of its environmentally conscious lifestyle.

Strengths

Parts of this essay contain some really nice phrasing. "The meaninglessness of every step I took stalked me like a shadow," for example, struck me as a lovely articulation of the candidate's feelings. It also provides a strong ending for that paragraph by striking the right tone, invoking a powerful visual image, and setting the stage for the candidate's life-changing decision, revealed in the next section of his personal statement.

I also believe that the candidate sincerely wants to go to law school-and for the reasons he gives later in the essay.

Weaknesses

The phrase "snorted bourbon" does not work for me. I know the candidate is trying to be clever with words, but the physical impossibility of what he is describing overshadows the wordplay. Consider also the sentence "Then one night I woke up, twenty-four-years old and already older than my grandfather," which is unquestionably poetic. However, because this is a personal statement and the rest of the information the candidate is sharing is not hyperbolic (except the part about snorting bourbon), I think he needs to temper the metaphor with reality just a bit. He still can make the same suggestion-that he had aged dramatically' for a 24-year-old - but he should adjust the metaphor to make it less literal. For example, he could say something like, "Then one night I woke up, 24 years old, with the resigned cloudiness of my grandfather." Or he could use a phrase like "hard-won fatigue" or "stale weariness" instead of resigned cloudiness" -whatever the candidate prefers, but without jarring the reader with such a sudden stylistic shift.

Along similar lines, but for a different (and perhaps obvious) reason, he needs to cut the parts where he says he snorted coke and will commit murder. Do not casually allude to your criminal behavior, past or future, in your personal statement.

Final Assessment

In addition to making the edits I suggest in the Weaknesses section, I would advise this candidate to tone down his language in a few places. For example, he should probably reconsider the term "manifesto"-it just sounds a bit too *Mein Kampf-y* to me. I also think he should remove the phrase "save the world" from the last paragraph to avoid being overly dramatic. This candidate is great at conveying passion (ironically, and a bit confusedly, since he claims to lack it), but he also needs to impart that he is a reasoned individual.

FACULTY OF LAW THE UNIVERSITY OF HONG KONG

University of Hong Kong Faculty of Law, founded in 1911, is the oldest tertiary institution in Hong Kong. The University of Hong Kong, Asia's Global University, delivers impact through internationalisation, innovation and interdisciplinarity. We bear a unique responsibility to educate and train future lawyers and judges; to sustain the common law system; and to serve the people in Hong Kong. As a Faculty, we are rooted in Hong Kong, and we must develop our core competence in common law as it is practiced in Hong Kong. Our future development must be based on that foundational understanding.

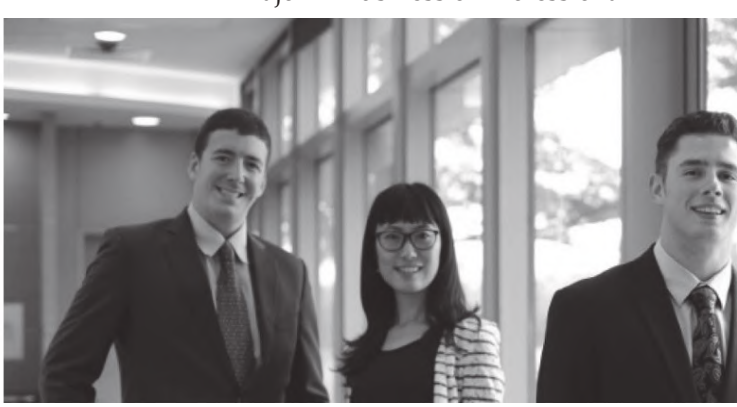
Courses

LL.B Programme

The LLB programme is designed to meet the changing demands on law graduates. It is devised by benchmarking against the law programmes offered by the best law schools in the world and has a number of features to ensure the competitiveness of our graduates. The new programme offers the possibility of specializing in a particular area of law such as commercial law, Chinese law, international trade and economic law. The programme also offers the possibility to do a minor in a non-law discipline offered in the University.

BBA (Law) & LLB

This 5-year curriculum is jointly offered by the Faculty of Law and the Faculty of Business and Economics. It is designed to prepare students for careers in the highly competitive banking, financial and business sectors as well as the legal profession, by equipping them with knowledge and skills in both disciplines. It is designed to be highly flexible to allow maximum exchange opportunities and other international experience options. The BBA (Law) and LLB offers the choice of the Business stream or the Accounting stream that allows the students to declare a major in Business or Professional



Core in Accounting respectively.

LL. M

The Master of Laws programme at the University of Hong Kong is a highly competitive course for those who already received outstanding results in their first law degree. It meets a need in various specialist areas of the law that are of importance to Hong Kong and its locality, and to offer modules which Hong Kong is perhaps uniquely placed to provide to students from both within and outside Hong Kong.

MCL

The Master of Common Law programme is specifically designed for graduates in law from non-Common law jurisdictions who wish to acquire an expertise in Common Law as it is practised in Hong Kong and in other common law jurisdictions.

J.D. Programme

The Juris Doctor (JD) is a full-time, two-year law degree that provides comprehensive and in-depth legal education to students without prior background in the law. The emphasis of the programme is not on rote learning of legal rules, but on critical appreciation and assessment of the underpinnings of these rules. The programme distinguishes itself by its small class size. JD students will be taught as a separate group of about 40 students. We believe that an intimate environment will facilitate interaction and enhance the learning experience.

Library

The University of Hong Kong Lui Che Woo Law Library is one of the subject branch libraries of the University Libraries. It provides study and research facilities for the academics, students and postgraduates of the Faculty, and other staff and students of the University. Reflecting the historical development of Hong Kong, and the Faculty's common law tradition, the Lui Che Woo Law Library has strong collections of materials from Hong Kong, the United Kingdom, and major Commonwealth jurisdictions. The Library offers a variety of study spaces on both floors to cater for different student needs. These include both Western language and Chinese law journals. Western language law journals are arranged alphabetically by title. Chinese law journals are arranged in a classified sequence. A growing number of journals are also available in electronic format.

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Quick Referencer for Judicial Service

Q. Sunil Sues Amit and Manish for Rs. 10,000. In the same suit Amit claims set off of a debt of Rs. 3,000 due to him alone by Sunil. Will Amit succeed in his claim of set off? Give reasons. *SAIL (Steel Authority of India) Law Officer Exam. 2006 (Based on memory).*

Ans: No, Amit will not succeed in his claim of set off.

Reasons: This problem is based on **Order 8, Rule 6** of Civil Procedure Code which incorporates the provisions relating to set off in a money suit.

According to Rule 6 of Order 8 one of the essential conditions for the application of rule of set off is that amount claiming to be set off must be legally recoverable by all the defendants if more than one.

In the present problem there are two defendants (more than one) namely Amit and Manish but set off is claimed by only one defendant namely Amit because there is a debt of Rs. 300 due to him alone by Sunil.

Thus, in the given problem doctrine of set off will not apply in view of provisions made in Rule 6 of Order 8 because sum of money claimed to be set off is not recoverable by both the defendants from plaintiff which is essential in case of more than one defendant.

It is notable that facts of this problem have been taken from Illustration (g) attached to Rule 6 of Order 8 which reads as follows—"'*A*' sues '*B*' and '*C*' for Rs. 1,000. '*B*' cannot set off a debt due to him alone by '*A*'".

Kishor Prasad

1. **Which one of the following courts, under Criminal Procedure Code, 1973 can try a murder case.**
   (a) Judicial Magistrate 1st class
   (b) Chief Judicial Magistrate
   (c) Court of Session
   (d) None of the above
   Ans. **Answer is C.**
2. **The authentication to be affected by the use of asymmetric crypto system and hash function is known as:**
   (a) Public key
   (b) Private key
   (c) Digital Signature
   (d) Electronic Governance
   Ans. **Answer is C.**
3. **Punishment for Cyber Terrorism under section 66F shall be punishable:**
   (a) With imprisonment which may extend to three year or with fine not exceeding two lakh rupees or with both
   (b) With imprisonment for a term which may extend to seven years and shall also be liable to fine
   (c) With imprisonment which may extend to imprisonment for life
   (d) With imprisonment of either description for a term which may extend to ten years and shall also be liable to fine
   Ans. **Answer is C.**
4. **Section 2(j) of the Industrial Disputes Act, 1947 define "Industry" means any**
   (i) Business trade, undertaking
   (ii) Manufacture or calling of employers
   (iii) Included any calling, service, employment, handicraft
   (iv) Industrial occupation of workmen
   (a) (i) and (ii)
   (b) (i), (ii) and (iii)
   (c) (iii) and (iv)
   (d) All of the above
   Ans. **Answer is D.**
5. **One of the following statements is not true, which one is that:**
   (a) A confession by one co-accused implicating other co-accused would be proved.
   (b) A confession to a police-officer cannot be proved.
   (c) A confession by a person in the custody of a police officer to any person in the presence of magistrate can be proved.
   (d) If the confession of a person leads to recovery of a thing it can be proved.
   Ans. **Answer is A.**
6. **The *Kashmira Singh* v. *State of M.P.* is a leading case on:**
   (a) Dying declaration
   (b) Admission
   (c) Confession to police officer
   (d) Confession of a co-accused
   Ans. **Answer is D.**
7. **The Consumer Protection Act, 1986 come into effect on**
   (a) 24th August, 1986
   (b) 15th April, 1986
   (c) 24th May, 1986
   (d) 24th December, 1986
   Ans. **Answer is D.**
8. **Which one of the following sections of Consumer Protection Act, 1986 defines the term 'Consumer'?**
   (a) Section 2(1)(a)
   (b) Section 2(1)(b)
   (c) Section 2(1)(c)
   (d) Section 2(1)(d)
   Ans. **Answer is D.**
9. **The principle of Law of Taxation that "No tax shall be levied or collected except by authority of law". It is contained under**
   (a) Article 265 of the Constitution
   (b) Article 300 of the Constitution
   (c) Article 19(1)(g) of the Constitution
   (d) Article 285 of the Constitution
   Ans. **Answer is A.**
10. **Under which section of Income Tax Act" income of other persons are included in assessee's total income"**
    (a) Section 56-58
    (b) Section 139-147
    (c) Section 246-262
    (d) Section 60-65
    Ans. **Answer is D.**
11. **Which one of the following sentence is correct?**
    (a) In India, consideration must follow from promise only
    (b) In India, consideration must follow only promisor or only promisee
    (c) In India, consideration must follow from promisor or any other person
    (d) In India, consideration must follow from promisee or any other person
    Ans. **Answer is D.**
12. **Assertion (A):** Collateral transactions to wagering are void.
    Reason (R): Only wagering agreements are declared void under section 30 of the Indian Contract Act.
    Codes:
    (a) (A) is true, but (R) is false.
    (b) (A) is false, but (R) is true.
    (c) Both (a) and (R) are true, but (R) is not correct explanation of (A)
    (d) Both (a) and (R) are true, and (R) is correct explanation of (A)
    Ans. **Answer is D.**

LEGAL WRITING *Tips*

Use definite, specific, concrete language

Prefer the specific to the general, the definite to the vague, the concrete to the abstract.

A period of unfavorable weather set in.	It rained every day for a week
He showed satisfaction as he took possession of his well-earned reward.	He grinned as he pocketed the coin

If those who have-studied the art of writing are in accord on anyone point, it is this: the surest way to arouse and hold the reader's attention is by being specific, definite, and concrete. The greatest writers-Homer, Dante, Shakespeare are effective largely because-they deal in particulars and report the details that matter.. Their words call up pictures. Jean Stafford, to cite a more modern author, demonstrates in her short story "In the Zoo" how prose is made vivid by the use of words that evoke images and sensations:

Daisy and I in time found asylum in a small menagerie down by the railroad tracks. It belonged to a gentle alcoholic ne'er-do-well, who did nothing all day long but drink bathtub gin in rickeys and play solitaire arid smile to himself and talk to his animals. He had. a little, stunted red vixen and a deodorized skunk; a parrot from Tahiti that spoke Parisian French, a woebegone coyote, and two capuchin monkeys, so serious and humanized, so small and sad and sweet, and so religious looking with their tonsured heads that it was impossible not to think their gibberish was really-an ordered language with a grammar that someday some philologist would understand.

Gran knew about our visits to Mr. Murphy and she did not object, for it gave her keen pleasure to excoriate him when we came home. His vice was not a matter of guesswork; it was an established fact that .he was half-seas over from dawn till midnight. “With the black Irish," said Gran, "the taste for drink is taken in with the mother's milk and is never mastered. Oh, I know all about those promises to join the temperance movement and not to touch another drop. The way to Hell is paved with good intentions."

If the experiences of Walter Mitty, of Molly Bloom, of Rabbit Angstrom have seemed for the moment real to countless readers, if in reading Faulkner we have almost the sense of inhabiting Yoknapatawpha County during the decline of the South, it is because the details used are definite, the terms concrete. It is not that every detail is given that would be impossible, as well as to no purpose but that all the Significant details are given and with such accuracy and vigor that readers, in-imagination, can project themselves into the scene.

In exposition and in argument, the writer must likewise never lose hold of the concrete; 'and 'even when dealing with general principles, the Writer must furnish particular instances of their application.

In his Philosophy of Style, Herbert Spencer gives two sentences to illustrate how the vague and general can be turned into the vivid and particular:

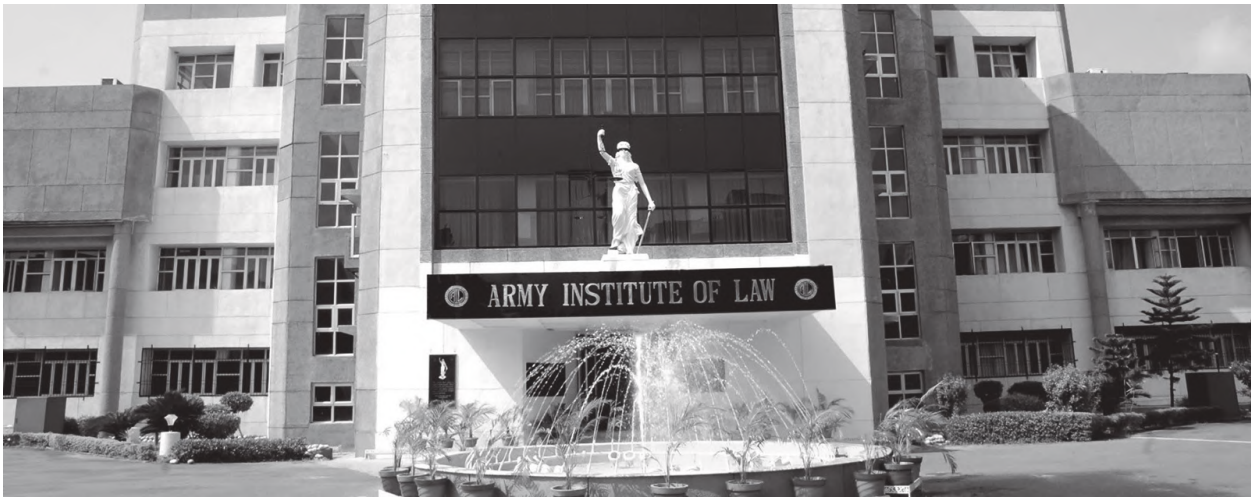
In proportion as the manners, customs, and amusements of a nation are cruel and barbarous, the regulations of its penal code will be severe.	In proportion as men delight in battles, bullfights, and combats of gladiators, will they punish by hanging, punish by hanging,

To show what happens when strong writing is deprived of its vigor, George Orwell once took a passage from the

*Excerpt from "In the Zoo" from Bad Characters by, Jean Stafford: Reprinted by the permission of Russell & Volkening as agents for the author. Copyright © 1953 by Jean Stafford. Bible and drained it of its blood. On the left, below, is Orwell's translation; on the right, the verse from Ecclesiastes (King James Version).

Objective consideration of contemporary phenomena compels the conclusion that success or failure in competitive activities exhibits no tendency to be commensurate with innate capacity, but that a considerable element of the unpredictable must inevitably be taken into account.	I returned, and saw under the sun, that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill; but time and chance but time and chance

ARMY INSTITUTE OF LAW



The Army Institute of Law was established in July 1999 by the Indian Army under the aegis of the Army Welfare Education Society at its interim location at Patiala. The Institute is affiliated to the Punjabi University, Patiala and approved by the Bar Council of India. With 'Aspire & Achieve' as its motto, the Institute has grown as a Centre of Excellence in the field of legal education. The Institute is accredited grade 'B' by the National Assessment and Accreditation Council (NAAC). The Army Institute of Law has a magnificent residential campus in an impressive architectural structure in the vicinity of Chandigarh and Punjab & Haryana High Court. It conducts a five year BA.LLB and a one year LL.M course.

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NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

According to Article 21 no person shall be deprived of his life or personal liberty except according to procedure established by law."

This fundamental right is available to every person, citizens and foreigners alike.

Article 21 provides two rights: Right to life and Right to personal liberty.

The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees. The Supreme Court of India has described this right as the 'heart of fundamental rights'. The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc. Further, it is not suspended even during the time of emergency.

The remedy for the victim, in this case, would be under Article 226 or under general law. The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning. The chief goal of Article 21 is that when the right to life or liberty of a person is taken away by the State, it should only be according to the prescribed procedure of law.

Judicial intervention has ensured that the scope of Article 21 is not narrow and restricted. It has been widening by several landmark judgements.

AK Gopalan Case (1950): Until the 1950s, Article 21 had a bit of a narrow scope. In this case, the SC held that the expression 'procedure established by law', the Constitution has embodied the British concept of personal liberty rather than the American 'due process'.

Maneka Gandhi vs. Union of India Case (1978): This case overturned the Gopalan case judgement. Here, the SC said that Articles 19 and 21 are not watertight compartments. The idea of personal liberty in Article 21 has a wide scope including many rights, some of which are embodied under Article 19, thus giving them 'additional protection'. The court also held that a law that comes under Article 21 must satisfy the requirements under Article 19 as well. That means any procedure under law for the deprivation of life or liberty of a person must not be unfair, unreasonable or arbitrary.

Francis Coralie Mullin vs. Union Territory of Delhi (1981): In this case, the court held that any procedure for the deprivation of life or liberty of a person must be reasonable, fair and just and not arbitrary, whimsical or fanciful.

Q1. Choose the correct answer:

I. There is no remedy for violation of article 21 under article 226.

II. The article 21 is not suspended during emergency.

a. Only I

b. Only II

c. Both a and b

d. None of the above

Answer: b

Q.2. Which of the following can be attributed to the above paragraph?

a. Article 19 and 21 cannot operate independently.

b. The right to life is absolute in nature.

c. The right to life is not available against the local governmental bodies.

d. Both a and b

Answer: a

Q.3. A Bangladeshi citizen was captured by police while crossing the border and was shot down immediately. Choose the correct answer?

a. The right to life is not available for a foreigner.

b. It is the duty of police to stop the illegal immigration.

c. The act of shooting Bangladeshi amounts to violation of Article 21.

d. It might be the violation of any Bangladeshi law.

Answer: c

Q.4. X, a serial rapist, who had brutally raped and killed dozens of minor girls, was caught by police. On the request of the government, police killed him in an encounter?

a. X being a serial rapist cannot get protection under article 21.

b. The request of government amounts to procedure established by law and hence there is no violation of right to life.

c. The right to life is available against the government but not against the police.

d. There is violation of article 21.

Answer: d

REASONING THE REASONS

Legal Logical Analytical REASONING

LEGAL REASONING

1. LEGAL PRINCIPLE: False imprisonment is the confinement of a person without just cause or excuse. There must be a total restraint of the person and the onus of proving reasonable cause is on the defendant.

FACTUAL SITUATION: *A* entered in *B*'s park where there was an artificial lake for the boating. *A* paid Rs.100 for entering the park and had to pay Rs.100 at the time of exit. *A* waited for 30 minutes but no boat was available. *A* came out, however, denied to pay Rs.100 for exit; *B* did not allow *A* to leave the park unless he paid Rs.100 for exit. *A* sued *B* for false imprisonment.

a) *B* is guilty of false imprisonment

b) *B* is not guilty of false imprisonment

c) *A* can lawfully refuse to pay Rs. 100 when no boat was available

d) *A* can ask for even Rs.100 given for entering the park as *B*'s services are deficient in the park and can sue *B* for false imprisonment.

2. LEGAL PRINCIPLES: In a suit for malicious prosecution, the plaintiff must prove the following essentials:

(i) That he was prosecuted by the defendant.

(ii) That the proceeding complained was terminated in favour of the present plaintiff.

(iii) That the prosecution was instituted against him without any just or reasonable cause.

(iv) That the prosecution was instituted with a malicious intention, that is, not with the mere intention of getting the law into effect, but with an intention which was wrongful in fact.

(v) That he suffered damage to his reputation or to the safety of person, or to security of his property.

FACTUAL SITUATION: *A* recovered a large sum of money from Railway Co. for personal injuries. Subsequently, Railway Co. came to know that injuries were not real and were created by doctor *B*. Railway Co. prosecuted *B* for playing fraud on the company, but *B* was acquitted. *B* sued Railway Co. for malicious prosecution.

(a) Railway Co. is guilty of malicious prosecution because it acted without reasonable cause.

(b) Railway Co. is not guilty of malicious prosecution because the Co. took reasonable care in determining the facts and honestly believed them to be true.

(c) Railway Co. is liable because it acted negligently.

(d) None of the above.

The answers are: 1. (b); 2. (b).

LOGICAL REASONING

1. A one-rupee coin is placed on a plain paper. How many coins of the same size can be placed around it so that each one touches the central and adjacent coins?

(a) 3
(b) 4
(c) 7
(d) 6

2. Steel is to Bokaro as Hosiery is to.....

(a) Madras
(b) Patna
(c) Vishakhapatnam
(d) Ludhiana

3. AFHO : GBDJ : : CHFM : ?

(a) GBIM
(b) GBLD
(c) GPLD
(d) IDBH

4. Choose the odd one out.

(a) Gallon
(b) Ton
(c) Quintal
(d) Kilogram

The answers are: 1. (d); 2. (d); 3 (d); 4. (a);

ANALYTICAL REASONING

If highways were restricted to cars and only those trucks with capacity of less than 8 tons, most of the truck traffic would be forced to run outside highways. Such a reduction in the amount of truck traffic would reduce the risk of collisions on highways.

Which of the following, if true, would most strengthen the conclusion drawn in the second sentence?

(a) Highways are experiencing overcrowded traffic mainly because of sharp increases in car traffic.

(a) Many drivers of trucks would rather buy trucks with a capacity of less than 8 tons than be excluded from highways.

(a) The number of collisions that occur near highways has reduced in recent years.

(a) Trucks that have a capacity of more than 8 tons cause a disproportionately large number of collisions on highways.

The answer is (d).

Landmark Judgments

DEBARRING MPs/STATE ASSEMBLY MEMMERS FROM PRACTICING AS ADVOCATES

Ashwini Kumar Upadhyay
v.
Union of India
(2017) 14 SCC 450: AIR 2018 SC 4633:
2018 (11) SCALE 459: 2018 (191) AIC 91
Decided on: 25-09-2018
Hon'ble Judges: Dipak Misra, A.M. Khanwilkar and Dr. D.Y. Chandrachud, JJ.

Facts: Writ of *mandamus* was sought by petitioner to debar legislators from practicing as an Advocate (during period they are MPs or State Assembly/Council Members) in spirit of Part VI of Bar Council of India Rules or, alternatively declare rule 49 of Rules *ultra-vires* the Constitution and permit all public servants to practice as an Advocate.

Issue: Whether practicing as an Advocate during period when legislators continue to be members of Parliament or State Assembly/Council can be debarred?

Held: No such prohibitions can be placed on legislators, clear by Bar Council of India. Provisions of Advocates Act, 1961 and Rules framed thereunder do not place any restrictions on legislators to practice as advocates during relevant period. Rule 49 framed by Bar Council of India has no application to elected people's representatives as they do not fall in category of full-time salaried employees of any person, firm, Government, corporation or concern. Question of granting relief to debar them from practicing as advocate cannot be countenanced, as there is no express provision to prohibit or restrict legislators from practicing as advocates during relevant period.

Latest SUPREME COURT Judgments

"Trial of 3 Accused for Dacoity"

On October 29, 2021 Supreme Court held that three accused can be tried under section 391 of the Indian Penal Code.

The decision was taken by the bench of Dr. DY Chandrachud and MR Shah in *Ganesan* v. *State*, 2021 SCC OnLine SC 1023, LL 2021 SC 614

Here in this case three accused came in trial and two were absconded. Supreme court was of the view that case where *some of the accused absconded and less than five persons came to be tried in the trial, it cannot be said that the offence under Section 391 IPC punishable under Section 395 IPC is not made out.*

> Section 391 of Indian Penal Code, when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

As per the FIR and charge sheet there were five accused against whom the complaint was made and all such the accused were charged by the trial Court for the offences under Section 395 IPC as well as 397 IPC.

What is required to be considered is the involvement and commission of the offence of robbery by five persons or more and not whether five or more persons were tried. *Once it is found on evidence that five or more persons conjointly committed the offence of robbery or attempted to commit the robbery a case would fall under Section 391 IPC and would fall within the definition of 'dacoity'.* Therefore, in the facts and circumstances, the accused can be convicted for the offence under Section 391 IPC punishable under Section 395 IPC.

"Price is an Essential Part of a sale"

On November 22, 2021 in a case the Supreme Court has held that the "Price is an Essential part of a sale"

> Section 54 of the Transfer of Property Act specifically defines the word 'sale' and provide provisions for 'sale how made'
>
> *"Sale" defined.*—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
>
> *Sale how made.*—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

Anshul Jain

> In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.
>
> Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.
>
> *Contract for sale.*—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

CONSTITUTION OF **INDIA**

Article 192

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.

***192. Decision on questions as to disqualifications of members.*—(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.**

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

The object of article 192 clearly is to leave it to the Election Commission to decide whether a member has become subject to disqualification, though the decision as such would formally be pronounced in the name of the Governor. When the Governor pronounces his decision under article 192(1), he is not required to consult his Council of Ministers; he is not even required to consider and decide the matter himself; he has merely to forward the question to the Election Commission for its opinion, and as soon as the opinion is received, 'he shall act according to such opinion'. It is the opinion of the Election Commission which is in substance decisive and it is legitimate to assume that when the complaint is received by the Governor, and he forwards it to the Election Commission, the Election Commission should proceed to try the complaint before it gives its opinion.

A sitting member gets the opportunity to put forward his objection to alleged disqualification at an enquiry which is to be held by the Election Commission before the latter forwards its opinion under article 192(2) to the Governor. When such an opportunity has been afforded by the Election Commission and the Election Commission has come to a decision on the disqualification and forwarded its opinion about it to the Governor and the Governor has acted upon that opinion and disqualified the member, there can be no more occasion for the court to question the decision, either on account of its merits or on account of the member not having been given proper opportunity to show cause if in fact the Election Commission has given the necessary opportunity.

What the first clause of article 192(1) requires is that a question should arise; how it arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. Such a question can be raised not only on the floor of the Legislative Assembly by members of the Assembly but also by an ordinary citizen or voters in the form of a complaint to the Governor. There is no assumption implied in the words "the question shall be referred for the decision of the Governor", that some other authority has first to receive the complaint and after a *prima facie* and initial investigation about it send it on or refer it to the Governor for his decision. The words only emphasise

Dr Subhash C Kashyap

that any question of the type contemplated by clause (1) shall be decided by the Governor and Governor alone and by no other authority. The decision of the said question as such cannot fall within the jurisdiction of the Courts.

When the complaint received by the Governor is forwarded by him to the Election Commission, the latter has the power and the jurisdiction to go into the matter which means that it has the authority to issue notice to the person against whom the complaint is made, calling upon him to file his statement and produce evidence in support of his case.

It cannot be held that merely because a decision had been arrived at under article 192(1), no writ petition could be filed. But to what extent in such proceeding, on being initiated, a petitioner could secure relief, would depend upon establishing the existence of the vitiating factors namely if it appears that order was passed by the Governor (i) on collateral considerations, or (ii) the rules of natural justice were not observed, or (iii) that the Governor's judgment was coloured by the advice or representation made by the Executive, or (iv) it was founded on no evidence. Further,

if a constitutional functionary, on whom power has been conferred to take a decision which has the seal of finality, wrongly interprets the constitutional provisions, then the decision so arrived at will have to be set aside by issue of a writ of *certiorari*, because it would not be a valid order in the eye of law. Hence there can be a judicial review of an order passed under article 192(1) on this ground also.

Where in the case of a Chief Minister incurring disqualification, reasonable apprehension of the Chief Election Commission being biased is expressed, apart from the legal aspect, even prudence demands that the Chief Election Commissioner should recluse himself from expressing any opinion in the matter. Therefore, the proper course to follow would be that the Chief Election Commissioner should call a meeting of the Election Commission to adjudicate on the issue of disqualification of Chief Minister on the grounds alleged by complainant. After calling the meeting he should act as the Chairman but then he may recluse himself by announcing that he would not participate in the formation of opinion. If the two Election Commissioners reach a unanimous opinion, the CEC will have the opinion communicated to the Governor. If the two Election Commissioners do not reach a unanimous decision in the matter of expressing their opinion on the issue referred to the Election Commission, it would be necessary for the Chief Election Commissioner to express his opinion on the doctrine of necessity. In the special circumstances of the case, this course of action would be the most appropriate one to follow because if the two Election Commissioners do not agree the doctrine of necessity would compel the CEC to express his views so that the majority opinion could be communicated to the Governor to enable him to take a decision in accordance therewith as required by article 192(1) of the Constitution.

Article 192 corresponds to article 103 of the Constitution in respect of disqualifications of Members of the Union Parliament.

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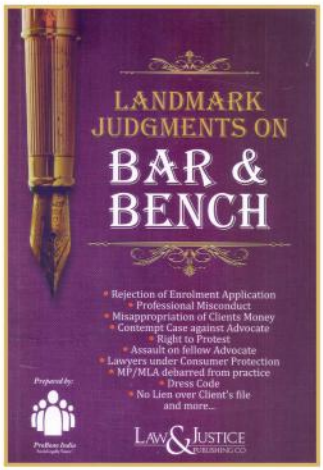

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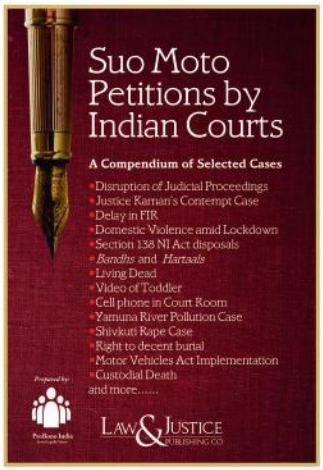

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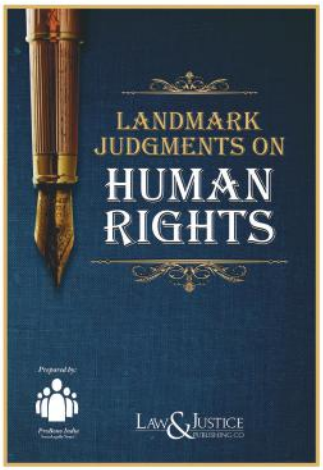

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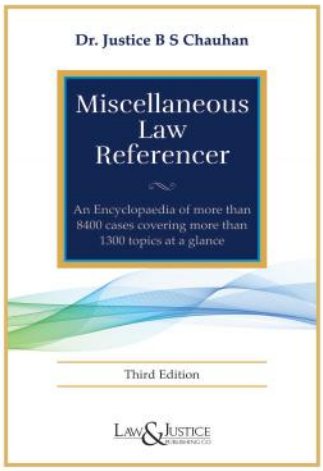

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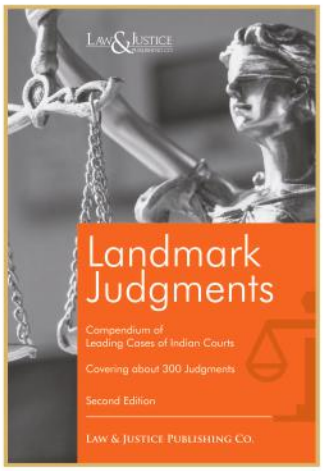

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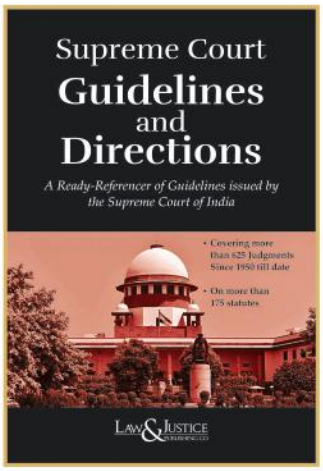

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