Vol XXVIII, Part 6 • June 2022 Pages 60 Rs. 50 per copy
Annual Subscription Rs. 600

Magazine for Legal Professionals & Students

Lawyers UPDATE

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JUNE 2022

Magazine for Legal Professionals & Students

Lawyers UPDATE

Volume XXVIII Part 6

Publishers : Universal Book Traders
80, Gokhale Market,
Opp. Tis Hazari Courts,
Delhi-110054

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Rates

Annual Subscription Rs. 600

Subscription amount should be sent either by Bank Draft in favour of 'Universal Book Traders' payable at Delhi or by cheque (payable at par). In case of outstation cheques, please add Rs. 50/- as bank collection charges.

For Online Bank Transfer :
Canara Bank
A/c No. 2009 2140 00006
NEFT/IFSC : CNRB 0002009

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Dear readers,

The talk of judicial reform and the engagement of all branches of the state in the conversation is the sign of a healthy democracy, in which all branches of the government cooperate to some extent while the Judiciary remains at loggerheads with the Executive as well as the Legislature on some matters because that is the nature of their constitutional relationship, the higher judiciary being the guardian of the constitutional rights and also the enforcer of the enacted laws.

The issue of judicial delay has been seriously debated in the recent years and several effective measures, mostly led and pressed for by the Supreme Court, have been taken to speed up the process of the delivery of justice, but a lot needs to be done yet. On the legislative front also, a few measures have been taken to remove the bottlenecks that often interfere with the speedy disposal of cases. However, the foremost reason for the delays has been the lack of proper court infrastructure and the abysmally low number of judges, especially in the lower judiciary, with large number of judicial vacancies lying unfilled.

Pressed on, again, by the Supreme Court, the state governments have started working towards filling the pending vacancies, and the Supreme Court collegium responsible for the appointment and transfer of judges in the higher judiciary has also worked hard and quick in making recommendations for the appointment of judges in the recent past. The court infrastructure across the country is also beginning to improve although the progress is a bit sluggish still. That said, there is every reason to believe that we are headed in the right direction, and result-oriented steps are being taken at all levels to improve our justice delivery mechanism at all levels.

Manish Arora

(Manish Arora)

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STREET LAWYER

Weaponization of Unreason -VI

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

HemRaj Singh

PQR and XYZ, a married couple, being lecturers at a reputed government-run degree college in Delhi, are even more educated than ABC, and for that reason perhaps I found it even more bizarre that they should be so blinded by their prejudices as to not see what doesn't stand to reason or facts in the world. Oh, and before I forget and risk being accused of distancing myself (although unreason, irrationality and prejudice are good grounds), one of the two is my distant relative and the other a distant relative by marriage to her. But they hardly stand alone in the kind of prejudice and presupposition we are about to talk about, when it comes to my extended family, which is worrisome enough, but what's even more worrisome is that they are neither bad, nor stupid; they are just failing to see what unmistakably stares right in their faces, and that makes me wonder how did we end up this way. What went wrong?

I was visiting them, and as it generally happens, that the conversation turned to the general state of the nation, and we all agreed pretty quickly that things were not going all that well and for reasons of unwise decisions by the political leadership at the center. But in a sudden and unexpected swerve, XYZ, the wife, said something to the effect that despite all things bad, the "Muslim thing/issue" was "under control", which surprised me because the expression was vague and yet the tone was such as though she expected ready understanding, as though not only the "problem" and the "effective steps" were as as plain as day, but also the need and desirability of the "measures".

Of course, the ready agreement she expected did not come. Since it was the first time I was meeting the couple, they had perhaps assumed agreement on these elementary Hindu-Muslim issues. The conversation rolled on, and she said, "*Main to kehti hoon, ye eighty percent kya, hundred percent aise hi hote hain.*" She meant "fundamentalist/orthodox/ultra-religious" by "*aise hi*", she clarified after I asked her to, and quickly added, "*Ab ye Shahrukh, Salman, Irrfan, Aamir wagairah ki baat nahin kar rahi, ye alag log hai.*"

I explained (tried to, rather) that the principal reason for orthodoxy and radicalism was poverty and lack of education, and even among Hindus, the uneducated and poor were more orthodox and way more prone to being misled by the religious radicalism preached and promoted by the religious and political leaders. XYZ and her husband, PQR, were quick to cite the example of a well-educated colleague of theirs on the teaching staff of their college, who, they said, went back to his town a while back and returned all religious; made a group of Muslims friends, started wearing the skull cap and began bad-mouthing the Hindus. Evidently, someone back home had gotten through the rational walls of the man's educated mind to ignite the latent communal passions, which also happens, sadly. But what also happens was that an uneducated, poor woman from my past (the mother of a childhood friend) was astonishingly liberal (a longish, impressive story to be told some another time), I told the couple.

XYZ insisted that the instance of their educated, Hindu-hater colleague contradicted my theory that educated Muslims were better, which was when I realized why in most of such conversations, the story of some orthodox, educated Muslim was told. Quite stupidly, I had thought they were relating their experience of an exception until XYZ pointed out that she thought she had won the argument by presenting an exception. To her and such others, the evidence of exception was evidence of contradiction and thus a disproof. I looked at her, surprised. "So you don't see the distinction between a statement about a general fact in the world and an absolute statement?" I asked. But something happened (perhaps my niece entered with tea, or called for XYZ from the kitchen because she could not find something for the tea she was making), and the conversation broke off. Clearly, XYZ did not see the distinction because else, she could not have talked of a hundred percent and then drag out an exception, for a statement about a hundred percent of something is an absolute statement and allows no exceptions whereas a general statement does admit of exceptions and is not refuted by them. For instance, to say that educated people are well-mannered is not say that no educated person lacks manners, for to say the latter you have to say it like that, or make an absolute statement beginning with "every educated person" or "hundred percent educated people" or the like.

Also, here were two educated Hindus bad-mouthing educated Muslims for bad-mouthing the Hindus, and they didn't see the irony. Besides, I have had such conversations mostly with very well-educated Hindus. So Education is neither necessary nor sufficient condition for reason to prevail, but that doesn't mean it doesn't help because education is primarily meant to cultivate reason and not just to secure better jobs even though it often does the latter way better than the former, it seems.

The other interesting thing XYZ pointed out was that people like me, who "supported Muslims", did a disservice to the Hindus and endangered the future of the Hindus in the India, and she is not alone in holding that view. I couldn't help smiling at the naivety of that remark. But let's talk about it some other time.

Concluded

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

DR. SATYAPAL'S CASE

Dr. Satyapal's statement shows what a gross injustice has been done in his case as in that of Dr. Kitchlew. They had to be absolved from any participation in the violence that occurred after their arrest. What violence there ever was in Amritsar took place after they were arrested. They were, therefore, accused of all sorts of things which they had never done, of speeches they had never made. Dr. Satyapal's clear, emphatic and courageous statement is a categorical denial of the whole string of charges against him. He shows clearly that the speeches he made were incorrectly reported by the C.I.D. officials, and that every time he spoke he preached the gospel of truth and non-violence, and unceasingly warned the people against losing their temper and going in for any excesses.

I have purposely refrained from printing a spirited letter addressed to me by Dr. Satyapal's father in which he gives his own impressions of the case. I cannot, however, resist the temptation of quoting some of the facts stated in it. For instance, he says:

"At first time it was not the intention of the Government to prosecute Drs. Kitchlew and Satyapal who had been deported on the 10th April and therefore his (tile approver's) confessional statement before the Magistrate of Amritsar did not incriminate them. But as soon as there was a change in the intention of the Government, an additional statement by way of an 'improvement' was obtained which implicated both of these gentlemen."

If this allegation is true, it is a severe reflection on the methods of prosecution and it vitiates the whole of the proceedings. Again this letter says:

"Dr. Satyapal was restricted from public speaking etc. on the 29th March. The Commissioners have sentenced him to transportation for life on the ground that he was a member of a conspiracy formed for disseminating sedition. But it is curious to the' highest degree that he did not even attend the meeting of the 30th March-not to say of his having addressed the meeting -as held by the judges, and it is the meeting in which sedition has been said to have been disseminated in pursuance of the conspiracy."

It is true that Dr. Satyapal signed the handbill convening the meeting that was, held, 011 30th March.

That was on the 28th March. But if there was any conspiracy, it became one not on the 28th but on the 30th. A platform ticket agitation carried on by Dr. Satyapal in January and February last was shamelessly brought into the trial to prejudice him, an agitation that was entirely harmless and successful, and about which Dr. Satyapal even received thanks from the station authorities.

The letter concludes:

"For your information I may mention that Dr. Satyapal offered himself for military service in 1915 and was granted a temporary commission as a lieutenant LM.S. He was posted at Aden where under very trying circumstances he worked for one year to the satisfaction of his superior officers who gave him eulogizing testimonials at the time of his departure. In 1918 he again volunteered for service but the arrangement fell through. During the influenza and malaria epidemics he did his level best in his humble way to mitigate the suffering of his fellow townsmen, and was awarded nonofficial sanads. It is indeed a befitting sequel to be convicted under section 124A after such a record of services to the Government and public both."

As I have already observed, the Lahore and Amritsar cases are not cases in which a commutation can carry any merit or give satisfaction. It is not mercy that the distinguished accused ask for. It is justice that they seek and on which public must insist. Reduction in the sentences is a blind, however unintended it may be. It must not be allowed to lull the public to sleep. There can be no contentment unless there is a complete and honourable discharge, for the leaders of Lahore and Amritsar.

Young India, 3-9-1919

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

" Man is not the creature of circumstances, circumstances are the creatures of men."

–Disraeli Vivian Grey

"In Prosperity our friends know us; in adversity we know our friends."

–John Churton Collins

" When we are no longer able to change a situation, we are challenged to change ourselves."

–Victor Frankl

"Be not afraid of life. Believe that life is worth living and your belief will help create the fact."

–William James

"Destiny is no matter of chance. It is a matter of choice. It is not a thing to be waited for, it is a thing to be achieved."

–William Jennings Bryan

"Perfection is achieved not when there is nothing more to add, but when there is nothing left to take away."

–Antoine de Saint-Exupery

"Always bear in mind that your own resolution to succeed is more important than any one thing."

–Abraham Lincoln

"Actions may not always bring happiness, but there is no happiness without action."

–Benjamin Disracli

"Many a project has failed because the man who thinks, it can't be done, imposes his opinion on the man doing it."

– J.P. Vasvani

"There is hunger for ordinary bread, and there is a hunger for love, for kindness, for thoughtfulness, and this is the great poverty that makes people suffer so much."

– Mother Teresa

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 Sudhanshu Dhulia

Hon'ble Mr. Justice Sudhanshu Dhulia was born on 10th August, 1960. Did his earlier schooling from Dehradun, Allahabad and Lucknow. Graduated in the year 1981. Completed his Masters in Modern History in the year 1983 and LL.B. in the year 1986.

Initially practiced on the Civil and Constitutional side before the High Court of Judicature at Allahabad.

Later shifted his practice to the newly created High Court of the State of Uttarakhand, at Nainital. Designated as Senior Advocate in June, 2004. Elevated as a permanent Judge of Uttarakhand High Court on 1st November, 2008. Took oath as the Chief Justice of Gauhati High Court on 10th January 2021. Elevated as Judge of the Supreme Court and assumed charge on 9th May, 2022.

UCC has to be a Nationwide Law

Tahir Mahmood *

The reported move to frame a uniform civil code in certain states is the talk of the town. A statelevel uniform civil code, however, seems to be prima facie incompatible with Article 44 of the Constitution which proclaims that the "State shall endeavour to secure for the citizens a uniform civil code *throughout the territory of India*." The all-India character and extent of the proposed code inherent in this phraseology is too conspicuous to be overlooked. Under the Constitution family and succession laws are in the concurrent jurisdiction of the Centre and the states, but a law to be equally applicable in the entire country can obviously be enacted by Parliament alone. In many cases relating to minorities the apex court has frowned on continued inaction in this regard, but the addressee of its concern has always been the central government.

In furtherance of the constitutional goal Parliament had enacted a civil marriage law in 1954, called the Special Marriage Act. Not replacing any community-specific law, it was made available to all citizens as a secular alternative. Any man and woman, whether professing the same or different religions, could go in for a civil marriage. Existing religious marriages could also be voluntarily converted into civil marriages by registration under the Act. Section 21 of the Act laid down that all couples married under its provisions and their descendants will, in regard to their properties, be governed by the religion-neutral chapter on inheritance in the Indian Succession Act of 1925. The Special Marriage Act and the Indian Succession Act together were, thus, to constitute a uniform civil code of an optional nature for all Indians alike. The law minister of the time CC Biswas had called this "first step towards a uniform civil code."

To regulate religious marriages among the Hindus, Buddhists, Jains and Sikhs a new law called the Hindu Marriage Act was enacted in 1955. A Hindu Succession Act came in force next year for the properties of those covered by the 1955 Act. Section 29 (4) of the Act clarified that "Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954." The 1954 Act and the Indian Succession Act as secular laws thus remained available to those governed by Hindu law even after the enactment of the Acts of 1955-56.

However, till this date the Special Marriage Act and the Indian Succession Act (attached to it) do not apply in the entire country – nor for that matter do the Hindu law Acts of 1955-56. When Goa, Daman and Diu were liberated from the Portuguese rule in early 1960s a Parliamentary law had provided for continued application of the archaic Portuguese Civil Code of 1867 in those territories "until amended or repealed" by a competent authority. Sixty years later that 155-year old foreign law, no more in force even in its parent country, still governs Indian citizens in these parts of India. In Puducherry -- which had been liberated even before Goa, Daman and Diu -- a sizable section of citizens called Renoncants (Indians whose ancestors had during the French rule abandoned personal law) are still governed by the 218-year old French Civil Code of 1804. Provisions are found in all central family law Acts of India specifically excluding them from their scope.

Continued application of anachronistic foreign laws to Indian citizens in certain parts of the country stares in the face of the constitutional goal of uniform civil code. Supposing that such a code can be enacted at the state-level, in the fitness of things a beginning should be made by repealing and replacing them with the central marriage and succession laws in force everywhere else in the country. Taking this rational step forthwith should pose no problem as Goa is under the rule of the party in power at the Centre and Daman, Diu and Puducherry (as union territories) are also within its jurisdiction. Enforcing central family laws in these places will be all the more logical in view of the fact that in 2019 the government did extend them to Jammu, Kashmir and Laddakh, to replace their local variants – although unlike the Portuguese and French laws they were neither of foreign origin nor antiquated.

Furthermore, the Special Marriage Act is patently discriminatory in certain matters. Its list of prohibited degrees in marriage (relatives one cannot marry) is a carbon copy of that under the Hindu Marriage Act but, unlike that Act, it does not

recognize the rule prohibiting marriages within the limits of *sapinda* relationship (covering distant cousins). So, a Hindu can freely marry a second cousin under the Act, though his religion prohibits it, but a Muslim cannot marry under it a first cousin which his religion allows and is a common practice in the community. To make things worse, under the Hindu Marriage Act the rule of prohibited degrees can be relaxed on the basis of custom but not under the Special Marriage Act in any case.

During the ignominious Emergency days the Special marriage Act was amended to provide that if both parties marrying under it were Hindu their properties would be governed -- not by the Indian Succession as originally provided -- but by the Hindu Succession Act. This retrograde step, setting the clock back by twenty-two years, has never been questioned by any court. On the contrary, the objection raised to it in the *Maneka Gandhi* case (1985) was met by a Delhi High Court judge with spirited defence.

There is nothing wrong in placing the whole nation under a single law of family rights and succession. This has, however, to be done in compliance with the constitutional guarantees for equality before law and equal protection of laws. The provision of the Special Marriage Act relating to prohibited degrees in marriage should be suitably amended; and its 1976 amendment restricting the applicability of the Indian Succession Act must be set aside. The Act, so amended, should be extended to every nook and corner of the nation. The day this is done the constitutional promise of a "uniform civil code for the citizens throughout the territory of India" will stand duly fulfilled. If such a code is to replace all personal laws of marriage and succession I will be first person in the country to support the move.

**Former Chair, National Minorities Commission & Member, Law Commission of India*

LEGAL LUMINARIES

KARUNA NUNDY

Karuna Nundy is an Indian lawyer at the Supreme Court of India and the focus of her work is on constitutional law, commercial litigation and arbitration, media law and legal policy.

She received a degree in economics from St. Stephen's College, Delhi University. After a short stint as a TV journalist she studied law at Cambridge University , where she was awarded the Emmeline Pankhurst Prize, the Amy Cohen Awards and the Becker Studentship and later pursued LL.M. from Columbia University, New York where she was awarded the prestigious Human Rights Fellowship.

Nundy worked as a lawyer in United Nations. In 2016, she represented Jeeja Ghosh in case against SpiceJet Airlines. Ms. Ghosh had cerebral palsy and had boarded a flight from Kolkata to Goa. She was asked by airline staff to disembark the flight claiming she didn't look well and they didn't want her condition to deteriorate. She was humiliated. She pursued a case against the airline in the Supreme Court and urged airlines to treat differently abled travellers. The Supreme Court ruled in her favour and ordered airline to pay Rs 10 lakh to her and for all air carriers to train their staff on needs and treatment of such passengers.

For Nundy, her career as a lawyer is a source of inspiration and a calling for her. "I can't imagine doing something else. I care about making a positive contribution to the world, and I care about remedying injustice. I really believe in the Constitution of India. It's something that motivates me, as well as international rights."

Nundy has also played a significant role in drafting the anti-rape bill after the 2012 Delhi gang rape. She has also advised and worked on policy issues for the Nepal Interim Constitution, a workshop with the Senate of Pakistan, the Government of Bhutan, and legal reform in the Maldives with the Attorney General's Office and Chief Justice of the Maldives Supreme Court.

She also moved back to India to work on social justice issues in her mother country. "I was thinking, how can this happen in my country." "I really felt the call, and I am very unashamedly patriotic. I really love this country. I'm of this land and I love the culture and people."

On her strategy on choosing cases, she selects them based legal theory and her personal passion for the cause and the case. "When a particular case comes to me, I look at a number of things," she says. "One is how much do I care. I do the care test. Caring has a large impact on how complicated and good the case is going to be. It's a good petitioner. Sometimes the ideal petitioner is whether you can find a good legal theory to win. But honestly, sometimes there's a case that doesn't have a hope in hell, but you do it anyway. That teaches you a lot about persistence and the value of resistance. You know the value of keeping something alive, even when you are against the biggest corporate governmental Nexus there is in the world."

In November 2019, she also met German Chancellor, Angela Merkel, during her 2-day visit to India. Nundy was included by an *Economic Times* jury in a list of 'Corporate India's Fastest Rising Women Leaders' which cited her as being 'famous in the corporate world for her expertise in commercial law'. In 2020, Forbes Magazine named her on their list of "Self Made Women 2020." Forbes Magazine also called her a "Mind that Matters" and Mint described her as the "Agent of Change

She is among 3 Indians on TIME's 100 Most Influential people of 2022 list.

THE MALADY OF ADJOURNMENTS

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

The case *Arjun Gopal vs Union of India* was being argued before the bench of Justice M.R.Shah in the Supreme Court on April 19, 2022. This matter pertained to ban of firecrackers. The bench felt that one of the reasons for pendency of cases was the frequent adjournment requests made by lawyers. It was reported that Justice Shah was alleged to have said: *If we don't grant time we aren't liked, but we are least concerned whether we are liked, we don't want to work according to certificate of others, as per our conscience we should work*. It was further added that every day 5-6 adjournment letters are filed on the ground of personal difficulty. We cannot ask, as to what is the personal difficulty. It is apparent that these observations of the Hon'ble Judge were prompted by his serious concern regarding frequent adjournments and heavy pendency.

This is indeed a matter of concern both for the Bar and the Bench. The Bar and the Bench are the two wheels. Both wheels must move in coordination and cooperation. Without this, the smooth operation of the justice delivery system is interrupted and dented. Therefore, this matter demands thoughtful consideration. It is a matter of common knowledge that some courts grant adjournments easily and liberally. Equally, there are some courts which do not grant adjournments so easily. I would like to share my own experience at the Bar in this context. Lawyers normally (exceptions apart) do not make requests for adjournments in those courts in which they know that the adjournment will not be granted. Consequently, the lawyers come prepared to argue the cases. It is true that the lawyers take the liberty of making the requests for adjournments rather frequently in those courts where they feel that they would be accommodated. This should not happen. Though it does happen.

It is a matter of common concern that the environment in the court should be such where in the lawyers should be able to give their very best. At the same time, the judges should also be able to extract the maximum from the lawyers. The court craft is two way traffic. There must be smooth flow of traffic on both sides. No traffic jams or hurdles. There must be a clear understanding on the part of the members of the Bar that adjournments should not be asked, for the asking. A request for an adjournment does halt the adjudication process. It is time consuming. It is also judicial time wasting. It must be avoided under all circumstances. I am conscience of the fact that adjournments are asked to delay the judicial process. This is unhealthy practice. It must be realized that if today you are making a request for adjournment, tomorrow in some other matter the opposite counsel may make a request for adjournment. Thus, the entire lawyer fraternity must realize the consequences of such practices. Such practices are denting the justice delivery system.

It should also be equally the concern of the Bench. The request for adjournment should be considered most sparingly. More so, no adjournments on the same day. The normal flow of judicial work must continue. What is genuinely bothering my mind is the observation of the Hon'ble Judge: We are least concerned, whether we are liked or not. We do not work on the basis of certificate of others. This kind of feeling should never generate with the Bar and the Bench. If some Hon'ble Members of the Bench feel this, it would certainly be counterproductive. This would disturb the atmosphere within the court. Neither the lawyer would be able to assist the court meaningfully and in a wholesome manner. Nor the judge would be comfortable. So that he could apply his judicial mind judiciously with utmost neutrality. If the judge has a feeling that he is not liked, will this feeling not shake the objectivity of his mind? Should such a feeling be allowed to creep in? Will this not disturb the balance between the Bar and the Bench? The members of the Bar would feel that they are not welcome in this court. The judges would feel that it is not their concern whether they are liked or not. This feeling itself is disturbing. It is the right of the judge to say firmly 'No' to an adjournment. This is the end of the matter. Why should the judge feel that he is not liked. More so, when the judge is uniform in declining the request. Believe me, many lawyers themselves do not like seeking adjournment. Equally, they hate when such requests are made by other lawyers. This is a disease. It is infection which spreads. In fact,

some lawyers join hands together. In this case, please do not oppose my request for adjournment. I promise, I will not oppose your request for adjournment. This is most unhealthy practice. Judges must curb such practices. They, in fact, would be liked. This approach of judges must be uniform. The lawyers will go very well prepared with the case knowing well that it will not be adjourned. No one should ever entertain a feeling that they are not liked either by the Bar or by the Bench. This would bring in positivity on both sides. This is the foundation of justice delivery system. Positive minds are most productive. Neutral minds shift negative elements of the case from positive aspects. Better quality of justice becomes possible. The goal of the lawyer is to effectively assist the court.

There is still another aspect to it. The senior counsel is busy in another court. Accordingly, a request is made to pass over or to adjourn the matter. The junior counsel making the request is asked to start with the case and the senior would join after finishing the arguments in another court. Invariably, the junior lawyer is not prepared with the case. He would say, I have no instructions to argue the matter. This again is an unfortunate situation. The junior counsel seldom gets the opportunity to argue the matter. In this process, even when he gets an opportunity, he is not prepared to avail the same. This is double jeopardy. I strongly feel that each senior counsel owes a responsibility to nurture a team of young lawyers. Once the senior allots a case to a particular lawyer of his team, it becomes his responsibility. The senior needs to ensure that the instructing counsel must be thoroughly prepared with the case. He should be so well prepared that in case, he is required to argue the matter, he must be in a position to argue the same. Normally, the instructing counsel do not work on the case because they feel that they will not get the opportunity to argue the matter. This is a negative approach. Even if the case is not to be argued by the junior counsel, still full effort must be put in. This effort is not a wasteful exercise. Firstly, if the counsel is thorough with the case, he would be able to assist the senior counsel effectively as it ought to be. Secondly, the office of the senior is a laboratory for the junior counsel. Right from the initial stage of taking the factual canvas from the client to the conference with the senior and preparing the petition becomes the duty of the junior counsel. The junior counsel even prepares the case note for the senior. Thus, the junior counsel is to be mentally prepared to argue the case in case the senior is held up in some other court. Thus, each case is a practical training for the junior counsel. The junior counsel is to work as if he is the future senior. It is a learning experience. Gradually, each case prepares you to get maturer and maturer. Many junior counsel have a different approach. They do not prepare. Also they are not thorough with the case because they believe that they are not to argue the matter. This approach is damaging. Even years and sometimes decade or decades will not result in maturing and handling the cases independently by the lawyer. Judges always encourage the young lawyers. They give them the opportunity to argue. No one is a born lawyer. The best of lawyers never missed the opportunity. Having got the opportunity, they made the best use of it. The life journeys of Nani Palkhivala, Kanhaiya Lal Misra, Ram Jethmalani and Fali S.Nariman are demonstrative of this. The young lawyers need to change their mind set. There is no substitute for diligence. In turn, the junior counsel would not be making only requests for adjournments. They, in fact, would help the system in curbing the malady of adjournments. Even the client when he sees that the junior performed so well, he would not mind in future if the junior could assist the court. Only in such situations where the senior was in actual difficulty. I would like to add a caveat. The judges in such cases would show one indulgence. If they are allowing the petition in favour, the credit would go to the junior. Additionally, it would inspire the junior counsel to strive still harder. On the other hand, in case, the petition is to be dismissed, the opportunity may be given to the senior to address the court only on the issue on which the court is not in agreement with the junior counsel. In fact, this kind of limited opportunity is already being given by the judges to the senior counsel. Such indulgence would go a long way. It would encourage the senior to depend upon the junior in case of difficulty. It would also help the junior to perform and to undertake such opportunity seriously more often. This practice would be healthy. It would also reduce the frequency of adjournments. At the end of the day, the lawyers must do their very best for their clients. At the same time, the lawyers need to realize that they owe responsibility to assist the court effectively. If the case is still lost, it is not lost because the lawyer did not perform. The clients would also realize that their lawyer had done their very best. If this be so,

the lawyers would not be losing their clients. A lawyer who has never lost the case is yet to born. In any case, if one lawyer wins, it is obvious that the other lawyer loses. Not because, the lawyer was negligent but because the case could not be allowed in his favour on merits.

Judges are humans. In case of sudden illness or death or emergency, the lawyers are always accommodated. Many a time, a request is made for adjournment on the ground of *'personal difficulty'*. Personal difficulty is both vague and wide. Therefore, adjournment on this ground should be avoided. If the senior is busy in some other court, it would be appropriate if an alternative arrangement in advance is made. In case, an adjournment is being sought well in advance and the opposite counsel has no objection, in such case/cases the adjournment may be granted. If it opposed, alternative arrangements be made.

There is need for co-ordination between the Bar and the Bench. The work load is mounting. Its management has become so difficult. Both the wheels will have to work in unison. The work culture will have to be developed. Certain parameters would be required to be laid down. The discipline will have to be followed. The basic malady is, once the lawyer gets a stay order in his favour, he does not wish to argue the matter. On some pretext or the other, he continues to seek adjournments. The opposite counsel does not oppose it. The reason being, in some other case, he too would be making the same request. The judge also gives the adjournments willingly. The daily roster is so heavy. He cannot finish unless he grants adjournments. This mutuality will have to be broken. Under all circumstances. Ultimately, it is the administration of justice which suffers. Therefore, an understanding amongst the members of the Bar will have to be inculcated. Not to seek adjournments. This understanding will have to be pursued vigorously. The judges in turn will not grant adjournment for the asking. Only and rarely in exceptional situations. If this kind of work culture is developed, it would be the best recipe. This would be possible only if both the Bar and the Bench observe the discipline. This is not impossible. In fact, it is possible. It is achievable. Of course, concerted effort will have to be made. Ultimately, the fruits of this will reach the people. It would help in building up the trust and confidence in the Bar and Bench coparcenary. This coparencary can make speedy justice possible.

Justice Vineet Saran while speaking at the farewell function on May 10, 2022 shared his thoughts about the Bar and the Bench relationship. He beautifully described that the *Bar is the Lord Krishna. It guides Arjun. Arjun is the Bench*. This in short is the essence of the relationship. The Bar guides and assists the Bench. The quality of judgment depends upon the quality of assistance. The lawyers learn the court craft. The judges also need to develop court craft. The court craft of Justice Saran was, he would show that he was angry during the hearings. In reality, he was not. The showing of anger was only to caution the lawyer. This is judge's court craft. This recipe could also be applied in managing the requests for frequent adjournments. The judge ought to show his annoyance to requests for adjournments. The Bar must realize, it is wastage of court time. They must shun the practice of adjournments.

It's time to develop best practices to curb the malady of adjournments. Frequent adjournments have impacted our justice delivery system. Not to delay justice should be part of rule of law. Therefore, healthy jurisprudence of adjournments needs to be developed and nurtured. Both the Bench and the Bar have to get together. They both must work in unison since the goal is common.

Women in LEGAL PROFESSION

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

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

FATHIMA BEEVI

India's First Woman Judge of the Supreme Court

Fathima Beevi is a name permanently etched in the Indian history as the first woman to be appointed a Judge of the Supreme Court of India. She was also the first Muslim woman in the Higher Judiciary and the first woman to become a Judge of the Supreme Court in an Asian country.

Justice M. Fathima Beevi began her journey to the Supreme Court from a small village in Kerala. She was born on 30th April, 1927, in Pathanamthitta town in the erstwhile princely state of Travancore in Kerala in the pre-Independence India. Born to Annaveetil Meera Sahib and Khadeeja Beevi, she was the eldest of eight siblings. As a young girl, Fathima was an earnest student, and her father, a government servant, encouraged both his sons and daughters equally to study well. She did her early schooling in the Catholicate High School in Pathanamthitta and passed her matriculation in 1943, going on to study Science for six years in Trivandrum.

Thereafter, she wanted to pursue her M.Sc. in Chemistry but her father wanted her to study law. At the time, Anna Chandy was the first woman judicial officer working near Travancore and her father was very impressed by Chandy's achievements. In keeping with his wishes, Fathima Beevi joined the Government Law College, Trivandrum.

An earnest and hard-working student, Fathima Beevi was one of the five girl students to enrol in her class. She also did an internship under a senior lawyer for a year. After obtaining her law degree in 1950, she gave the Bar Council of India exam and became the first woman to top the exam, and received the Bar Council gold medal, the first of her historic achievements.

Fathima Beevi enrolled as an advocate and began her career in the lower judiciary in Kollam, Kerala on 14th November, 1950. After eight years, she took the job of the *Munsiff* at the Kerala Subordinate Judicial Services. As the years went by, she remarkably rose through the ranks, serving as the Subordinate Judge of Kerala (1968-72), the Chief Judicial Magistrate (1972-74), the District & Sessions Judge (1974-80), a Judicial Member of the Income Tax Appellate Tribunal (1980-83) and a Judge of the Kerala

High Court in 1983. Finally, on 6th October, 1986, within six months of retiring from the Kerala High Court, she became the first woman to be appointed a Judge of the Supreme Court of India. The significance of this achievement is best described in her own words, 'I opened a closed door,' she said in an interview with the *Scroll*.

She is reported to always have been courteous and balanced in the Court, and made it a point to be well prepared with the case history whenever she heard a case. She was reportedly in favour of reservations for women which could possibly increase the number of women judges at the higher judiciary. To quote her, 'However, there should not be any discrimination

between candidates on [gender basis]. A woman should get equal treatment and equal consideration.'

After she retired from the Supreme Court in 1992, she was appointed as the Governor of Tamil Nadu, five years later, on 25th January, 1997 on the recommendation of DMK chief M. Karunanidhi. A major decision she took as the Governor was rejecting the mercy petitions filed by the four condemned prisoners in the Rajiv Gandhi assassination case. In 2001, she invited AIADMK General Secretary J Jayalalitha to take oath as the chief minister, a decision that was criticised because even though Jayalalitha's party had received the simple majority, Jayalalitha had been barred from contesting the elections because of her conviction in a corruption case. Justice Fathima Beevi maintained that it was not a spontaneous decision, and she had consulted the then sitting judges of the Supreme Court, including the Chief Justice of India. Jayalalitha had been acquitted and had no charges of corruption at the time when Justice Beevi appointed her. However, the Union Cabinet decided to recommend the President to recall the Governor for having failed to discharge her constitutional obligation. Justice Fatima Beevi decided to resign, thus her eventful term as the Governor of Tamil Nadu came to a controversial end in 2001.

Fathima Beevi continues to be a role model for every woman aspiring to enter the historically male-dominated space of the courtroom, and we hope to see a significant increase in women representation in the higher judiciary in the times to come.

Labour Laws Q/A

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

FACTORIES ACT, 1948
CRECHES – REQUIREMENT AND FACILITIES UNDER SECTION 48 OF THE FACTORIES ACT

(a) The creche shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably practicable it shall not be situated in close proximity to any part of the factory where obnoxious fumes, dust or other impurities are given off or in which excessively noisy processes are carried on.

(b) The building in which the creche is situated shall be soundly constructed and all the walls and roof shall be of suitable heat-resisting materials and shall be water-proof. The floor and internal walls of the creche shall be so laid or finished as to provide a smooth impervious surface.

(c) The height of the rooms in the building shall be not less than 12 feet from the floor to the lowest part of the roof and there shall be not less than 20 sq. ft. of floor area for each child to be accommodated

(d) Effective and suitable provision shall be made in every part of the creche for securing and maintaining adequate ventilation by the circulation of fresh air.

(e) The creche shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with the necessary bedding for each child, (provided that for children over two years of age it will be sufficient if suitable bedding is made available) at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children.

(f) A suitably fenced and shady open air play-ground shall be provided for the older children: Provided that the Chief Inspector may by an order in writing exempt any factory from compliance with this sub-rule if he is satisfied that there is no sufficient space available for providing such a play-ground.

WE, THE LANGUAGES!

Sadiya R. Khan
Advocate

O! Motherland
Salute Thine Languages
A Golden Babel Bird ..
Not the confused one'
The Diverse one..
The Chirping one..
Resonating different Linguistics..
Vibrant Phonetics..
From the North
To the South
From the West
To the East
Count them all
The Official 22
19,500 Dialects
A Global Enthral
Cultured anchors

Languages and Religion
Together to Bind
For the World to see
Breathing languages
Blended languages
What's in words?
Everything and All
The Power of Language
Constitutionally Bestowed
Article 344(1) & 351
We, The Languages!

What's in a language?
If I may ask?
Everything and all
Culture. History. Unity
Binds Societies
Binds Religions
Binds Communities
Binds The Nation
Look Around..
Connecting GLOBE..
Importance of Languages
Can't be Denied
Can't be Silenced
What's in words?
Everything and All
The Power of Language
Constitutionally Bestowed
Article 344(1) & 351
We, The Languages!

None is less..None is more
Languages- Our Nation`s ORE!
May I ask the importance of languages?
Builds a Nation. Develops Economy
Said One
Social Change. Education Sustainability.
Said the Second
Social Progress. Builds in Digital Age
Said the Third
Data building. Choices of Schools.
Said the Fourth
For Trades & Spades..
Said the Fifth.
Public Awareness. Social Progress..
Said the Sixth.
Can one Language over-power the other?
May I ask?
No, said One
Yes, the other.
Said the Third
"I see, the united power"
Let them breathe to speak..
Let none be isolated to knees..
Or sublime to weak..
Don't shut words..
For languages ..
Own Power. Own Identity
Respect all ..Celebrate all
The Oldest & Original
To the Recent
And less spoken too..
The Common binds
Embrace all
National.Regional..
Undiscovered Too..
And that not yet included
Languages- subset of a Nation
Law - Mightiest of All
Pens to recognise
Diversity, an asset so rare
What's in words?
Everything and All
The Power of Language
Constitutionally Bestowed
Article 344(1) & 351
We, The Languages!

Translating languages
For Legal interpretations ..
Understand Zones..
A Skill to build...
The Youth. The Nation
A Sustainable Generation
For Languages hold Ethics
Mark of Respect
Rich Cultural Legacies
Undeniable Truth
Each one in its Power
Unite to The Babel Tower

I see..
This Mystic Land
A Language Ocean
The Great Bear Constellation
Of Languages. Of Literature. Of Dialects
A quote to recall
To Ponder eternally..
The Golden Orator – Atal Bihari Vajpayee
"Ours is a multi-religious country, A ***multi-lingual country.***
We have different modes of worship, We believe in peaceful & harmonious existence."
What's in words?
Everything and All
The Power of Language
Constitutionally Bestowed
Article 344(1) & 351
We, The Languages!

The Dream of Judicial Reform

Hasan Khurshid, *Associate Editor*
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"In 2047, when the country will complete 100 years of its independence, then what kind of judicial system would we like to see in the country? How do we make our judicial system so capable that it can fulfill the aspirations of India of 2047, these questions should be our priority today…..our vision in *'Amrit Kaal'* should be of such a judicial system in which there is easy justice, speedy justice, and justice for all." This is the sweat dream of Prime Minister Narendra Modi pertaining to judicial reforms, assuming that the dream will come true by 2047.

The government has said the period between 2022 and 2047, will be marked as *Amrit Kaal* and that it will work toward achieving its stated ambition for 2047 A.D; in these 25 years. The Prime Pinister revealed this ambition on April 30, 2022, during the joint conference of chief ministers and chief justices of high courts. The annual conference which was also attended by Union Law Minister and law ministers of other states, took place after the gap of six years.

However, the ground reality of date is that Modi himself urged the chief ministers and chief justices of high courts to speed-up the delivery of justice to 3.5 lakh undertrials languishing in jails. Modi also felt it necessary as part of judicial reform to increase the use of local languages and simplification of legal process which would help the common man to understand the process.

He pointed out that all proceedings in high courts and Supreme Court are in English; whereas, he did not suggest as to which language should replace English in high courts and Supreme Court. Modi also stressed upon the need for the use of more technology and widening the mediation process to decrease the burden on judiciary.

Bringing forth his plea, Chief Justice of India N.V. Ramana in his speech raised disturbing questions about India's legislative process, executive capacity, political and bureaucratic intent. CJI's rhetorics were in reaction to repeated criticism of the judiciary on two points: huge pendency of

cases; judicial overreach.

The CJI stressed upon the point that courts don't want to be inundated with cases, but to prevent this phenomenon, other parts of the State have to work intandem. The citizens rush to courts for relief because legislators do not pass laws with care which prove to be arbitrary and the same are challenged. The executive including police, revenue department, municipal corporations and other such governmental departments do not work with fairness and rigour resulting in citizens rushing to courts for judicial review of administrative action. Today State is the biggest litigant accounting for more than 56% of the cases and such defiance by it is overloading the judiciary. If the executive do not behave with citizens in cantankerous manner, the case load will automatically dip.

The CJI said, "Decisions by the courts are often not implemented by governments for years together which lead to contempt petitions which is a new burden on the court."

The CJI also highlighted the lack of procedural fairness when it comes to arresting individuals and probing cases. The key to good governance is "abiding by law and Constitution", and if police probes are conducted in a just manner, and illegal arrests and custodial torture comes to an end, the number of cases would drastically decrease.

Criticising the misuse of PIL to settle scores, the Justice Ramana said, "the rising number of frivolous litigations is an area of concern. For example, the well-meaning concept of public interest litigation is at times turning into personal interest litigation. No doubt, PIL has served a lot of public interest. However, it is sometimes being misused to stall projects or pressurize public authorities."

The CJI further said that the political executive do not fill judicial vacancies promptly at various levels. The timely action of judicial appointments will help in speedily disposal of cases.

However, CJI is right in his approach but this does not absolve the judiciary of its own missteps, including a curious abdication when it comes to hearing crucial cases of Constitutional importance and urgency.

The CJI announced that during the joint conference of chief ministers of States and the chief justices of high courts, resolutions have been passed for the creation of National Judicial Infrastructure Authority of India (NJIAI) alongwith complementary State bodies as a special purpose vehicle for the creation of judicial infrastructure. The CJI further said that another resolution has been passed for giving an infrastructure fund to the States as a time measure.

To find out whether the NJIAI will prove to be a panacea for the suffering of litigants or it may prove to be a mirage, Lawyers Update discussed with Hon'ble Justice B.A. Khan, former Chief Justice of J & K High Court and Major General (Retd.) Nilendra Kumar, former Judge Advocate General, Indian Army, who both explained elaborately

Hon'ble **Justice B. A. Khan,** former Chief Justice J&K High Court said, "Judicial infrastructure would include all facilities needed for smooth, dignified and independent functioning of judiciary, be that court buildings, increase in number of judges proportionate to population ratio, court staff, computerization, etc and above all financial autonomy of Judiciary with an adequate budget allocation to be placed at disposal of CJI and high court CJs."

"Presently SC & HCs have to beg for sanction of furniture, stationary items, vehicles, etc. At district court level, many courts are housed in rented houses/ buildings in dingy rooms having no ambiance of any court function. These places including Tees Hazari courts are like crowded fish markets rendering any worthwhile adjudication of disputes difficult. Even jammed SC corridors are accident prone with lawyers standing for hours to wait for their turn, jostling and running in opposite directions likely to hit each other. There prevails shortage of judges, of staff, of equipment and what not. I recall days when judicial officers had to write judgments by hand due to shortage of stenographers and type writers."

"To top it all, growth of judiciary is hampered by indifferent if not hostile approach of bureaucracy and political dispensations who resent any interference in their orders and actions. They sit over the proposals put forth by judiciary and create roadblocks to defeat these. Both sides sometimes work at cross purposes in an exercise of settling of scores. To resolve issues, a joint conference of HC CJ's and State CM's is an annual ritual bearing no fruit. It is because of this, every successive CJI raises a cry for infrastructure which goes in wilderness."

Justice Khan further said, "There is nothing new in ongoing blame game between the 'Executive and Judiciary' about cases of undertrials. It is true that 3.5 lakh undertrials

are languishing in jails but for that judiciary alone cannot be blamed. Judiciary is only one of the-contributors to the situation. Besides judiciary there are other factors too like shoddy investigation, incomplete and faulty prosecution, non production of prosecution witnesses creating a vicious circle in process. Therefore while both sides are laying blame on each other, fact remains that both contribute to default situation one way or the other. The situation calls for carrying out reforms at every level of criminal justice administration with sincerity of purpose .Every time this issue is raised and debated, a demand for reform is made and then forgotten the next day."

"CJI's complaint about non-implementation of court orders is a matter of fact and a matter of concern too. When court orders go abegging, people start loosing faith in judicial system rendering a limb of the State meant to be a watchdog on executive and legislative functioning defunct.

"It has to be recognised and realised that court orders are to be respected and implemented under our Constitutional scheme. Any such implementation by the authorities is not a matter of choice or any concession. It is the Constitutional obligation of the government, a major litigant, to respect and implement court orders and to keep its functioning within constitutional limits and parameters."

"It has often been noticed that government authorities in a self righteousness or in a fit of arrogance defy and defeat court orders. The result is that there is delay in disposal of cases and peoples grievances go unresolved. The need of hour is that government authorities should shed this attitude, stop sitting on prestige and should promptly approach courts for vacation/ modification of any such orders which they consider bad, harsh or illegal."

"Another factor contributing to this situation is non assertive and casual judging. once a judge passes an order, he/She must assert to implement it. When he drags feet in implementation of an order for whatever reason, it creates more problems than it solves. So it is not a happy situation prevailing today where court orders have lost their sting and efficacy and are observed in breach shaking peoples' faith in judiciary."

About the use of regional language, Justice Khan said, "Introduction of regional court languages at district court level is a good idea. It would make easier for litigant public to know about fate of their cases. This is happening at various places even today. But for overall introduction, it would entail restructuring of legal education system involving change in curriculum, etc. Presently most of law courses are done in English and it becomes difficult for new generation lawyers to switch on to a regional court language with that background."

When asked about judicial reforms, Justice Khan replied, "This question has been ill conceived. Judicial reform is not a matter of comment. Books have been written on this. It has been a subject matter of debates, conferences and seminars for decades. How can it be capsuled in a one or two words' comment?"

About his opinion for diluting the Contempt of Court law, Jutice Khan said, "There are differing opinions on proposed changes in contempt law proceeding on premise that courts use it arbitrarily, excessively and whimsically. Practical experience shows that contempt power is used by courts sparingly and with circumspection. Any cases of misuse or excessive use of this power are only aberrations. It has to be understood that contempt power is the only weapon with courts for implementation of their orders and for safeguarding institutional integrity and independence. Contempt law has also been codified in Contempt of Courts Act. With that where is the scope for any further complaint about this."

Commenting on judicial overreach, Justice Khan said, "Judicial overreach or judicial activism is also a matter of debate. Anyone & everyone can have an opinion on this in the light of separation of powers doctrine contained in our Constitution. It goes without saying that there have been some cases of overreach in differing perceptions but Courts have done well in redressal of public grievances where the Executive and Judiciary have failed. There is huge environmental jurisprudence developed by courts over the years. If it is called overreach, so it be. As a matter of fact, what is prevailing today is the Executive overreach", concluded Justice Khan.

Major General (Retd) Nilendra Kumar, former Judge Advocate General, Indian Army said," "The CJI had called for a new body to be setup to improve the judicial infrastructure. He had forwarded a proposal to setup the National Judicial Infrastructure Authority of India (NJIAI).This body was meant to undertake management of adequate infrastructure for courts. The NJIAI was to operate

under a governing body with the CJI as its patron in-chief. It would act as a central authority in laying down the desired road map for planning-creation, development, maintenance and management of infrastructure of all the courts in India with a view to create identical structures in all 25 high courts. The CJI's view that the judiciary best understood its own needs and requirements may not be shared by all. All the same the court premises and infrastructure should appear secure, dignified and user friendly."

General Kumar further said, "Apportioning the sole blame on the judiciary for 3.5 lakh undertrials languishing under detentions is not justified. This mess and the large pendency cannot be disposed without active cooperation and joint efforts of the states. It will involve the participation by the executive, subordinate judiciary and the lawyers. Of course, the courts officials , police and prison administration etc need to cooperate. Lack of infrastructure is one of the prime impediments. Glaring deficiencies in number of judges and court staff, delivery, court rooms, furniture, IT resources and equipments adversely impact justice delivery."

"Foreign investments and transnational corporate participation would be attainable when the dispute resolution takes place with consistent and reasoned rule of law regime. The executive should be helpful and strive to perform its role as public servants. Legislatures ought to be sensitive to the needs and problems of their electorates. Public institutions including banks must perform with trust and accountability. As such, the government would do well to introspect, rather than point an accusing finger at the courts. Recourse to ADR should be promoted. All senior advocates must be obliged to work at least 10 percent cases pro-bono. Engagement of retired judges as envisaged under Art 128 of the Constitutionmust be put to practice the soonest."

"Use of regional language in the district and trial courts must be the rule. The litigants would be able to duly participate only when the language used is fully understood by them. There should be no place in the subordinate judiciary for the judges who are not fully conversant with the regional language of the area. Further, legal text should be simplified. It should be based on use of working and common words. Where is the need for court language to be akin to be in literary form and contents? Courts proceedings, legal documents, orders and judgements should all be easy to understand. If the litigant or an accused does not comprehend what has transpired in his case, would he be able to exhibit faith and trust in the administration of justice? Use of regional languages would come about only when there are adequate translators competent to fast produce the copies in other languages. This capacity would be of paramount significance to facilitate submission of appeals in high courts or before the Supreme Court."

According to General Kumar, "Judicial reforms have multiple limbs. These start with selection and appointment of judicial officers who should be exposed to regular training for upgradation. Required infrastructure by way of buildings, computers, library, typists and other personnel must be made available. Use of automation must be accorded priority. Uninterrupted IT connectivity is to be ensured. Legal education should be delivered in clinical modes. Learning outcome of all teaching sessions must strive for application and practice of the provisions taught. Candidates belonging to SC, ST, OBC and EWS category should be allowed the facility of free coaching for judiciary entrance interviews like it is provided for the UPSC civil services examinations. Online trials and video proceedings are to be regularly adopted. Legal literature must provide for high standard commentaries. Old and obsolete laws and procedures must be discarded."

With regard to judicial overreach, General Kumar said, "Judicial overreach is the natural phenomenon when the executive and legislature are reluctant to perform, with media showing indifference. It is matter of grave concern that the government is the biggest litigant and accounts for over 56 percent of the total pendency. The officials who approve filling of appeals must be taken to task for disregard of judicial orders in the first instance and being responsible also for incurring infructuous expenses to the exchequer apart from harassment to the aggrieved litigant. Rising prices, increasing corruption and growing unemployment create despondency and frustrations in the minds of common men. Absence of a strong opposition makes the ruling party adopt a 'couldn't care less' attitude. Such a state induces the courts to take note and act which a few erroneously view as judicial overreach", concluded General Kumar.

Long live fellow citizens to see the new horizon of the desired judicial reform in 2047 AD when the country will celebrate 100 years of its independence.

YOU MADE YOUR CASE
—*The Art of Persuading Judges*—

Consider putting citations in footnotes – or not.

The Garner view: I've made it something of a cause celebrates to reform the way citations are interlarded in lawyers' texts. Since 1992, I've recommended putting all bibliographic material (volume numbers and page numbers) in footnotes but avoiding putting any substantive text (complete sentences) there. Nothing should appear in a footnote that anyone should have to read-only what someone might consult for looking up a reference. Under this system of subordinating citations, readers should never be asked to look down at footnotes-there's nothing significant there because the important authorities have been named and discussed in the text ("Three years ago in Flam v. Baumgartner, this Court held that ...").

Using this system, while describing in the text the major authorities you're relying on, has several advantages: (1) visually, the important material on the page, the discussion of authorities through close reasoning, is most prominent instead of the least important information, namely, the volume and page numbers; (2) disjointed thoughts, which are rampant in briefs, are immediately exposed for what they are; (3) poor paragraphing gets exposed; (4) discussion of governing and persuasive authorities is enhanced because it can no longer be buried in parentheticals following citations; and (5) the prose more closely follows the practices of the most accomplished nonfiction writers of our day. Although this technique improves the prose, it concededly makes greater demands on the writer, who must maintain a tighter train of thought. Readers need no longer skip over long swaths of bibliographic characters in the middle of the page (a holdover of typewriting style). Meanwhile, those readers who are critically evaluating your cited authorities-your adversaries and judges-can still see what you've cited.

Whether this system will gain widespread acceptance within the profession remains to be seen. Many judges and lawyers have adopted it, and their numbers are increasing. We should measure progress in decades. It is with no small degree of sadness that I note my inability to persuade my coauthor to use this method for the improvement of judicial writing generally. One of his favorite sayings is that "whatever doesn't help hurts," and it's inconceivable that 535 U.S. 274, 276, 122 S.Ct. 1414, 1416, 152 L.Ed.2d 437, 439 helps anyone who's trying to get through a paragraph. Meanwhile, his worries about "crabby judges" have rarely if ever been borne out among the many hundreds of lawyers who years ago adopted my recommendation and continue to follow it. Quite the opposite: they report that they routinely meet with positive outcomes-in part because they write more compellingly as a result of this technique.

The Scalia view: Alas, I disapprove this novel suggestion.

You cannot make your product more readable to the careful lawyer by putting the entire citation material (case name, court, date, volume, and page) in a footnote-because the careful lawyer wants to know, while reading along, what the authority is for what you say. So, far from enabling the reader's eyes to run smoothly across a text uninterrupted by this ugly material, you would force the eyes to bounce repeatedly from text to footnote.

My coauthor's solution to this problem is to "weave" the name of the court and the case name (and the dater) into the text ("As the Supreme Court of the United States said in the 1959 case of *Schwarz v. Schwarz* ..."). I doubt that this can be done (without sounding silly) for all the citations that a brief contains. But if it can, it will surely place undue emphasis upon, and inflate the text with, details inessential to the reasoning. I will rarely want the court, name, and date of a case thrust in my face, so to speak, by inclusion in the narrative text as though it's really important. Ordinarily, such information can better be conveyed, almost subliminally, in a running citation. Lawyers are used to skipping over these signals quickly and moving on to the next sentence. If in this respect legal - writing style differs from other writing style, it is only because lawyers must evaluate statements not on the basis of whether they make sense but on the basis of whether some governing authority said so.

Of course, whatever the merits of this debate, the conclusive reason not to accept Garner's novel suggestion is that it is novel. Judges are uncomfortable with change, and it is a sure thing that some crabby judges will dislike this one. You should no more try to convert the court to citation-free text at your client's expense than you should try to convert it to colorful ties or casual-Friday attire at oral argument. Now if Garner wanted to make a really useful suggestion, he might suggest avoiding, wherever possible, the insertion of lengthy citations in the middle of a sentence. That is easy to achieve, and certain not to offend.

APPRECIATION OF EVIDENCE AND TREATMENT RECORDS

REVISION PETITION NO. 1402 OF 2012
DARYAB SINGHVersus MEDWIN HOSPITAL & ANR.
decided by the Hon'ble NCDRC, New Delhi on 13 May 2022

Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS: On 30.06.2005, the Complainant's son, Mr. Vivek Dokania, aged about 23 years, a Chartered Accountant by profession was taken to Apollo Hospital at Chennai , and examined by Dr. G. Anant Subramaniam, the General Physician, along with Dr. Sridhar, one junior doctor. On the same day various tests were performed. On 03.07.2005, the reports were shown to the GP, who diagnosed it as a case of 'PUO, high Bilirubin and deranged liver function test (LFT)'. It was alleged that the GP started treatment on his own instead of referring the patient to the liver or gastro specialists, patient did not get any relief, at 8.00 pm for acute abdominal pain, he was taken to hospital, was treated in emergency ward till 11.00 pm. On the next day i.e. 04.07.2005, the GP referred the patient to the Gastroenterologist, Dr. Radha Ram Murthy, who diagnosed it as a case of 'Hepatitis-E infection', patient was treated on OPD basis and told nothing to worry, within 4-5 days everything will be alright and advised some dietary restrictions. The doctor prescribed Duphalac 30 ml, it was alleged high dose which caused loose motions (13 times), therefore he got admitted to hospital in the next night. On 07.07.2005, the Nephrologist, Dr. M. K. Mani and the Haematologist, Dr. Bhardwaj examined the patient in general ward. The patient's blood urea was 90 mg and Creatinine was 3.6 mg. The total WBC count was 20100/cm and platelet count was reduced from 1,30,000 to 80,000. However, the patient was not shifted to CCU till his condition deteriorated. On 30.06.2005 itself, GP advised several tests, but failed to advise malaria test. Later on, Malaria tests were advised for three days i.e. 07.07.2005, 22.07.2005 and 24.07.2005; reported as negative. Such repeated testing was with intention to gain money, the hospital premise was in shabby condition and not free from mosquitoes, just after admission, in general ward, the patient was transfused two units of fresh frozen plasma (FFP) in general ward and thereafter, when the condition of the patient deteriorated due to infection, on 07.07.2005, the patient started irrelevant talks and in the night, the Complainant contacted Dr. Radha Rammurthy on her mobile, requested her to attend the patient immediately but she refused and told that she will be visiting the hospital only on next day morning at 9 a.m. On 21.07.2005 one Dr. Babu Ibraham of CCU told the elder brother of the Complainant that as the patient was fit to transfer in general ward on Friday i.e. 22.07.2005, but Dr. Ramkrishnan refused to do so. In the ward, adjacent to the bed of the Complainant's son, one very serious patient (in bed no. 43) was admitted, which was disturbing due to frequent visits of doctors and 4-5 nurses to that patient, there was no partition/ curtain between beds, thus the serious patient was visible, therefore, the Complainant's son became nervous and under fear passed motion in the bed itself, in spite of several requests, the serious patient was not shifted to other room.

DEFENSE: Opposite Parties in their reply submitted that the patient took treatment from various hospitals but did not get cure and as a last resort, he got admitted in Opposite Party No. 1 hospital. He was admitted under care of GP, Dr. Ananthasubramaniam and at the time of admission, his condition was critical. He was diagnosed as a case of Viral Hepatitis E infection. The consultants including the Residents and para medical staff were attending him on round the clock duty. The shifting of patient to ICU / CCU depends upon bed availability. As the Patient showed symptoms of Liver Failure – Disorientation and Confusion, he was shifted to the Critical Care Unit (CCU) under the care of Critical Care Group. The CCU is a specialized unit for critically ill patients and the doctors are competent to treat and monitor round a clock. It was further submitted that the hospital regularly holds the CCU staff meeting with the relatives of seriously ill patients.

Similarly, in the instant case, the Complainant / attendants were updated time to time daily. Dr. G. Ananthasubramaniam in his affidavit submitted that the patient already took treatment in different hospitals in the country. On 30.06.2005, he examined the patient in OPD, with history of fever more than 5 weeks. The blood investigations were done under Medipack Scheme revealed marginally elevated Serum Bilirubin and Liver enzymes. The patient had previously ENT problem, therefore his residual ENT disease was ruled out and then on 02.07.2005 referred to Medical Gastroenterologist. Dr. Radha Murthy. After doing viral markers studies, it was diagnosed as Hepatitis E viral infection. Duphalac is a laxative usually given to patients suffering from Viral Hepatitis and therefore, the conventional dose was prescribed. Initially on 05.07.2005, the patient was admitted in General Ward under his care as a primary consultant. On the next day, CT Scan of abdomen performed with consent. It revealed enlargement of Liver, Spleen and inflammation of Gall Bladder. The dietary instructions and care was taken by the dietician. The patient had fever and due to high incidence of Malaria in India, the blood tests for malarial parasite were advised. The patient was given 10 units FFP. Since the patient showed signs of early renal failure, opinion of Nephrologist was obtained. The patient showed early symptoms of Liver failure like slight disorientation and confusion, therefore he was shifted to ICU. Thereafter, the patient was shifted to CCU till 21.07.2005 as the kidney, liver function tests and coagulation profile were abnormal. Therefore, the patient was not transferred to the ward. The Opposite Party No. 7, Dr. N. Ramkrishnan denied that he refused to transfer the patient to the General Ward under pretext of Saturday and Sunday being holidays, also less number of doctors available in the hospital. He denied that he advised transfer on Monday i.e. 25.07.2005. It was further submitted that routinely masks are not required in the CCU, but used for the respiratory isolated patients. All these practices are according to the Hospital's infection control policy. The Complainant was not competent to comment on these aspects. The entire treatment was done with proper informed decisions. There was no negligence / wrong treatment or any intention for monetary gain. Dr. Babu Ibrahim the Consultant in Critical Care Services and sleep medicine in his affidavit stated that the care was given as per standards. The family members were updated from time to time about the condition of patient. At 9 a.m. on 27.07.2005 the poor prognosis was explained to the patient's family members, but they were in a state of non-acceptance. The patient suffered severe acute liver failure having unpredictable outcome. As per the hospital policy, at the beginning, it was clearly explained about the costs involved and available options to transfer out, if they wished. The family members of the patient expressed that financial constraints, but insisted to continue care at Apollo Hospitals.

OBSERVATIONS: This Commission vide Order dated 21.05.2019 sought an expert medical board's opinion from AIIMS. The report is reproduced as below:

"dated 21.10.2019

The medical board has studied and examined the available medical records and serial charts during the period of hospital stay. The board is of the view that as per available medical records that the diagnosis was Sub Acute Liver Failure and the patient was managed appropriately."

HELD: The Complainant has not produced any expert opinion to support his case. In our considered view, that merely because the patient did not survive after the treatment is not a sufficient ground to hold doctor of hospital for deficiency in service or medical negligence. The treatment was as per the reasonable standard of care, therefore, no fault lies with them. The doctrine of Res-ipsa loquitor is not applicable in the instant case. Even, there were no infrastructural lapses in the hospital. Therefore, no liability to be fastened on any Opposite Party. From medical literature, we have gathered information that Acute hepatic failure is characterized by hepatic encephalopathy, elevated aminotransferases (often with abnormal bilirubin and alkaline phosphatase levels), and impaired synthetic function (international normalized ratio ≥1.5). Acute hepatic failure carries a high mortality if intensive care support and liver transplantation are not available, resulting in an overall case fatality rate of 0.5 to 3 percent. Based on foregoing discussion, it is difficult to attribute medical negligence against the Opposite Parties. The Complainant failed to prove medical negligence.

The Complaint is dismissed. There shall be no Order as to costs.

THE EXPANSION OF DRONE REGULATIONS & TECHNOLOGY IN ASSISTANCE OF INVESTIGATION AGENCIES

Saksham Bhardwaj [1]

In the epoch of technology, drones have been touted as one of the best mechanisms used by investigating agencies to clamp down against unlawful activities in society. It can be coined as the best unmanned aerial vehicle, used in anticipating and preventing the occurrence of crime. In place of helicopters, drones can be used more efficiently while being cost effective as well.

According to rule 2 (i) of the Drone Rules, 2021 "Drone" means an unmanned aircraft system. In India, the drone has been categorized in accordance with rule 4 of the Drone Rules, 2021 as follows:-

(1) The unmanned aircraft system shall be categorized into the following three categories, namely:— (a) aeroplane; (b) rotorcraft; and (c) hybrid unmanned aircraft system.

(2) The aeroplane, rotorcraft and hybrid unmanned aircraft system shall be further sub-categorised as follows:— (a) remotely piloted aircraft system; (b) model remotely piloted aircraft system; and (c) autonomous unmanned aircraft system.[2]

Under the concentrated efforts of the Ministry of Civil Aviation, the Drone technology has been regulated in such a manner so that it can be adopted by purchasers after complying with certain prescribed norms and even time to time relaxations were given. In February 2022, the Ministry of Civil Aviation had done away with the necessity of drone pilot license. With an intent to make India a Global Drone Hub, the Ministry of Civil Aviation has liberalized its policy. Also, the statement was made that *"We have made the policy so liberal that the entire concentration should be more on research and development. There is no sector left where drones cannot be used. The applications are in law and order, defence, agriculture and so on. It will play an important role in war. We have come up with a liberalised policy on drones.*[3] Moreover now, the UAS Rules stands repealed since it involved cumbersome tasks in sanctioning permissions & provides less 'free to fly' green zones.[4]

In India use of the drone technology, in continuance of fact finding process, can be understood as the best manifestation of 'smart policing'.[5] Every law enforcement agency, as far as possible, must utilize drone technology in order to facilitate expeditious investigation. This modern means of technology is pretty much in aid of investigation agencies in terms of reducing the scope of unwarranted steps and thereby rules out the possibility of any mistake in the course of an investigation. The drone technology can be used **to quell down unfortunate instances like** violent protest, riots, impediments in the conduct of fair elections, efforts to bring communal disharmony etc. at the preparation stage only. Also, it can be used by police in controlling crowds, when religious congregations are taking place involving mass gathering. When the pandemic descended on us, the Police had hired drones to keep a vigil over proper implementation of Covid guidelines which helped them in

[1] Advocate, Author and Founder of the blog 'Constitutional Ethos'.
[2] https://egazette.nic.in/WriteReadData/2021/229221.pdf
[3] https://indianexpress.com/article/cities/bangalore/experts-welcome-new-drone-policy-7816994/
[4] Ibid.
[5] https://www.financialexpress.com/infrastructure/airlines-aviation/drones-enabled-smart-policing/2431371/
[6] https://theprint.in/opinion/drone-policing-during-covid-exposes-indias-need-for-data-protection-law/708714/
[7] https://www.news18.com/news/opinion/ai-drones-biometrics-how-smart-policing-can-combat-crimes-more-efficiently-4591832.html
[8] https://www.thehindu.com/news/national/use-drones-more-effectively-civil-aviation-ministry/article38157077.ece

receiving and transmitting live feeds to the police officers who are piloting drones.[6] Amongst many other uses, drones can be used for traffic regulation, surveillance, rescue operations in remote areas, crime scene analysis etc.[7] The visuals collected with the use of Drone may carry an evidentiary value and can be used as a piece of evidence in support of the prosecution case, provided it fulfills the essential ingredients of electronic evidence categorically defined under the Indian Law. Moreover, it can be used for disaster management and for investigating the scope of man-made disasters. Earlier, the Power Ministry and Ministry of Petroleum & Natural Gas suggested flying drones in the form of real time surveillance for prevention of theft etc.[8]

The benefits associated with the use of Drone should be more than hazards (if existed) associated with its use. We have a legal mechanism in place to thwart the unregulated use of drones for illegal purposes. To serve the larger societal interest in line with Article 21 of the Indian Constitution, the use of the drone has to be promoted in the support of investigation bodies. The drones are intended to be embraced in our legal system for the betterment of the human race and not in contrast to what was never contemplated by the inventor of this technology. However, there may be some issues cropped up with respect to privacy which may be kept in abeyance till it furthers public interest in keeping with restoring peace and harmony in the society. No doubt the right to privacy holds pivotal significance but it cannot be used to shield the perpetrator and preventive surveillance with the use of drones has to be in place to stop unsocial activities before they can blossom into full-fledged crime. The criminal justice system rests on the bedrock of punishing the wrong doer. This boon of science should be used for furthering ends of justice.

(Views Expressed are Personal)

Supreme Court Guidelines

FACTORIES ACT, 1948, CONDITIONS OF SERVICE: FACTORIES ACT

Parimal Chandra Raha & Others **v.**

Life Insurance Corporation of India & Others

AIR 1995 SC 1666: 1995 SCC Supp (2) 611: 1995 (2) SCALE 518: 1995 (3) SCR 34

Dated: March 29, 1995

BENCH: Justices P.B. Sawant and S.B. Majmudar.

1. Where, as under the provision of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

2. Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen become a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

3. The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have be, come a part of the service conditions of the employee". Whether the provision for canteen services has become a part of the of service conditions or not is it question of fact to be determined on the facts and circumstances in each case. Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

4. Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.

IS NAVJOT SINGH SIDHU A LAW GRADUATE ?

Official Websites of both Lok Sabha & Rajya Sabha currently showing its former member Sidhu's educational qualification as B.A.LL.B.

Sidhu in his Poll Affidavit filed during Punjab Assembly Elections in Jan, 2022 mentioned him as B.A. however in Jan, 2017 Affidavit, he showed him B.A./LL.B.

Hemant Kumar, ***Advocate***

Is Navjot Singh Sidhu, who has remained member of 14th and 15th Lok Sabha from Amritsar Parliamentary Constituency, from where he got elected as M.P. on BJP ticket thrice in a row including in a bye-election conducted in the year 2007, during the period between May, 2004 to May, 2014 followed by remaining nominated member of Council of States (Rajya Sabha) from April, 2016 to July, 2016, on which he was nominated by then President of India, Pranab Mukherjee during Modi Sarkaar-1, however he resigned within three months and thereafter remained member of previous 15th Punjab Legislative Assembly from Amritsar East seat during the period between March, 2017 to March, 2022, winning as Congress candidate, is indeed a Law Graduate ?

Sidhu, who has recently been sentenced to one year rigorous imprisonment by Supreme Court of India in over three-decades old road rage incident, lost the Assembly General Election from Amritsar East Seat earlier this year contesting as a Congress candidate for the second time in a row.

Meanwhile, an Advocate at Punjab and Haryana High Court, Hemant Kumar, told that when the other day, he checked the official website of Lok Sabha and Rajya Sabha, under the Former Members Page of both Houses, the Bio-Data of Sidhu as currently uploaded therein currently mention him as B.A.LL.B.

However, when the Advocate checked the Poll Affidavit as filed by Sidhu along with his nomination form from Amritsar East Assembly Constituency during 16th Punjab Assembly General Elections conducted earlier this year, which is currently uploaded on official website of Chief Electoral Officer, Punjab, he found that Sidhu mentioned his educational qualification therein as only B.A. from Punjabi University, Patiala in the year 1986.

Further, when Hemant further checked Sidhu's previous Election Affidavit which he filed in Jan, 2017 during General Elections to previous 15th Punjab Assembly conducted in Feb, 2017, he however mentioned him B.A./LL.B, Punjabi University, Patiala in 1986.

Meanwhile, the official booklet of then Members of 15th Punjab Vidhan Sabha as published by Punjab Vidhan Sabha Secretariat mention Sidhu's Education Qualification as only B.A.

Going a step further, when Hemant found Sidhu's one more Poll Affidavit which he filed while contesting General Elections to the 15th Lok Sabha during April-May, 2009, in that Affidavit he has mentioned the relevant year as 1984 in which he did B.A. from Govt. Mahindra College, Punjabi University, Patiala.

Amidst all this, one seriously wonders actually when Sidhu did B.A., in the year 1984, as he mentioned in his

April, 2009 Lok Sabha Poll Affidavit or in the year 1986, as he showed in Jan, 2022 Assembly Election Affidavit and furthermore, if he is indeed B.A/ LL.B. as he mentioned in his Jan, 2017 Assembly Election Affidavit, if he did LL.B. in two years from 1984 to 1986 notwithstanding the fact that LL.B has been three years course since last five decades.

THE ALMOST-PERFECT MURDER

Robert F. Howe

Donnah Winger couldn't have been in brighter spirits. The 31-year-old operating room technician was with her husband, Mark, at his Illinois Department of Nuclear Safety office to show off three-month-old Bailey, the little girl they were in the process of adopting. Mark's coworkers fussed over the baby and remarked how the popular couple now truly seemed complete. "She always wanted a family," says Donnah's stepfather, Ira Drescher, who notes that a medical condition had prevented her from having biological offspring. "This was something she had dreamt about."

Later that afternoon, shortly after the proud parents had returned to their modest brick home on Westview Drive in Springfield, Mark headed to the basement for a workout. He was jogging on his treadmill when he heard a loud thump upstairs. Alarmed, he bolted up the basement steps and, hearing his baby's cry, turned right through the bathroom and into the bedroom. Finding Bailey wailing and alone on the bed, Winger snatched up the .45 semiautomatic he had hidden in his nightstand and sped toward the dining room.

There, he witnessed a stranger kneeling over his wife, wielding fierce blows with a claw hammer. The assailant paused to glance up at Winger, and then raised the hammer to strike again. Winger took quick aim and shot him twice in the head. Frantic, he then phoned 911.

When police arrived, they found Winger bent over Donnah, who lay facedown in an inky pool of blood. An officer, who had his own camera in his car, snapped three quick images of the crime scene as medics attended to Donnah and her attacker, who both still had feeble pulses. Police then led Winger into his bedroom, where, his voice quaking, he detailed what he'd seen. When an officer informed him that a driver's license identified the intruder as Roger Harrington, Winger burst out, "That's the man!"

He explained how Donnah had met Harrington when she returned with Bailey the previous Wednesday, August 23, from a visit to her parents' house in Florida. She had booked a van to get her home from the st. Louis airport. Harrington, 27, was at the wheel. He had terrified her by speeding down the highway, describing how a menacing spirit named Dahm sometimes urged him to hurt people, and boasting about orgies staged at his trailer in rural Sangamon County.

Winger said that he was at a business conference in Chattanooga, Tennessee, when Donnah called and described her harrowing ride. He instructed her to write down what had happened, and then phoned Harrington's employer to complain. A few days later, he also personally called the driver, then on suspension, to warn him to steer clear of his family.

As Winger was wrapping up his chilling recitation, Donnah and Harrington were rushed to the hospital, where they died within the hour. Meanwhile, investigators checked out Winger's story. On the refrigerator, they found Donnah's note about her frightening drive with Harrington. Running checks on him, they established that he was a divorced high schooldropout who had previously been arrested for battery and had also had a brief stay in a mental health facility. They learned too that he'd told many people about his evil spirit Dahm-his name for a Halloween mask he kept in his trailer. Police were soon convinced the Wingers had fallen victim to a psychopath.

All the officers were in agreement, save one. Det. Doug Williamson, relatively new to homicide, was reluctant to contradict his more seasoned colleagues but was privately troubled. "Winger would turn on and off emotion rather easy, yet there were never any tears," recalls Williamson, now a sergeant with the Springfield Police. "That wasn't normal."

There was another thing. Winger claimed to have cradled Donnah's head as she lay on the dining room floor fighting off death. Yet Williamson says he noticed Winger had blood on the back of his right hand, but none on the palm. Plus it seemed strange that a loving husband would comfort his wife as she gasped for breath, and then lay her facedown, as she was found, on the gore-smeared carpet.

In early 1999, police got their break: a call from an attorney saying Deann Schultz wanted to talk. Schultz had fallen into such despair since her friend's death that she'd attempted to take her life four times. Finally, her psychiatrist persuaded her to divulge her terrible secret. The story she told began a few weeks before the slayings. Shortly after confiding in Donnah that she was unhappy with her marriage and considering going back to a former boyfriend, Schultz received a call from Winger, who said he was attracted to her. In a matter of days, they began their affair at an Illinois hotel, and later got together in Winger's red pickup truck near a local playground.

Schultz stated that shortly after she began seeing Winger, he led her to believe that they would someday be together. In one of her most telling recollections, he had said, “It would be easier if Donnah died.” And there was more. The Wingers had told Schultz and her husband about Donnah's wild ride with Harrington, so Deann said she knew exactly who Winger: was referring to the day before the murders when he said, “I need to get that van driver in my house.”

When she first came forward, Schultz spoke freely with police, but she later received immunity so her trial testimony could not be used against her. Det. Jim Graham, who spoke several times with Schultz, laments that despite all that Winger had said to her, “She didn't do anything to stop it.”

Schultz had failed to prevent the crime, but her story was all police needed to reopen the case. Investigators' first step was to retrieve the bloodied clothing that had been taken as evidence at the time of the crime and send it off to a bloodstain pattern expert. The expert reported back that he found blood spatter from Donnah on Winger's clothing, but not on Harrington’s. In addition, he observed the castoff of Donnah's blood on the dining room wall was inconsistent with Winger's description of the killing.

Police then scrutinized the crime-scene photos, which had been sealed away without ever having been looked at. They showed Harrington's body in a position completely different from what Winger had described.

Investigators reviewed the 911 tapes. Winger had placed the 911 call but hung up midway through it. “In the background, Harrington is moaning,” says State's Attorney John Schmidt. “Then suddenly, Winger says, ‘My baby's crying. I’ve got to go. I’ll call you right back,’ and click.”

In light of the 911 tape, police placed new importance on an earlier statement made by Winger's neighbor that at 4:30 p.m., about the time Winger hung up on the call, she heard what she thought was a single gunshot. Winger insisted he fired two consecutive shots at Harrington, yet police now concluded that the shots were several minutes apart, the second one aimed to silence Harrington. In fact, blood patterns on the floor suggested that Winger rolled Harrington over onto his back before firing the second bullet into the man’s forehead.

But perhaps the most persuasive bit of evidence had been in police possession from the start: the note found in Harrington's car. Winger claimed he called Harrington the morning of his wife's death to tell him to stay away from Donnah. But in new conversations with Harrington's friends, police learned, from three people who were at Harrington's trailer when the call came in, that he was summoned for a 4:30 meeting at the Winger residence-all of which Harrington wrote on a roommate's deposit slip.

It all dovetailed with an ominous call that Deann Schultz said she received early on the afternoon of the murder. It was Winger, and he asked, "Will you love me no matter what?"

Finally, prosecutors felt they had sufficient evidence to secure an indictment, and on August 23, 2001, officers took Mark Winger into custody. He was then held on $10 million bail.

During the trial, prosecutors painted an eerie picture of what they believed happened at the Wingers' home on the day of the murder. Harrington arrived as requested, unarmed, and set his mug and cigarettes down in the dining room before Winger ushered him into the kitchen, where the note Donnah had written hung on the refrigerator. Harrington may have bent over to read it, or perhaps was forced to his knees at gunpoint. Then Winger shot him once in the head. When Donnah, who had been playing with Bailey in the bedroom, burst in to see what had happened, Winger swung the hammer into her head. She collapsed facedown, and he struck her at least six more times, showering blood onto the adjacent wall.

Jurors in last spring's trial found the state's case persuasive. On June 5, 2002, Winger, now 40, was found guilty of two counts of murder. He is serving a sentence of life without parole and, still claiming innocence and insisting that he was set up by a jilted Deann Schultz, has appealed the conviction. (Bailey and his other three children reside with his wife Rebecca, who continues to stand by his side.)

One vital element in the case has yet to be solved to everyone's satisfaction: motive. Some observers believe it was the affair-that Winger feared Donnah would find out he was seeing Schultz, demand a divorce, and take away Bailey. Others think Winger was motivated by greed. After Donnah's death, he received about $200,000 in insurance and another $25,000 from the state's fund for crime victims. In the end, investigators suspect he was motivated by a combination of factors. One thing is certain, says Ira Drescher, "My family was destroyed for a long time after this. He betrayed us all.”

Mark Winger appealed his conviction, but it was upheld. Winger then tried to hire a fellow prisoner to kill Deann Schultz and a friend who did not post $1 million bail for him. He was found guilty of solicitation to commit murder in 2007 and was sentenced to an additional 35 years in prison. Winger is now serving his sentences in Menard Correctional Center in Illinois and is ineligible for parole. Rebecca Simic divorced Winger when he went to prison and is raising their three children as well as Bailey.

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:

Garbha Pindasana

Benefits: It relaxes the whole spine, especially the muscles of the lumbar spine.

Helpful for abdominal cramps and strengthens all abdominal muscles.

It cleans and tones the liver and spleen and strengthens the uterus and rectum.

It activates the first three chakras.

Garbha Pindasana is very effective in opening the hip joints even further making your lotus more comfortable.

This asana is believed to help in a spiritual union between one's mind and soul.

The abdomen remains shapely and slim due to total contraction during the posture.

The digestive system of the body improves due to the regular practice of this posture It also treats all kinds of stomach illnesses.

The yoga posture provides exercise to both the upper and the lower body of the performer.

Procedure:

Sit in Padmasana.

Insert an arm between the thigh and calf of each leg and bend the elbows under the calves.

Fold the arms upward and raise the legs.

Hold the ears, balancing the whole body on the coccyx.

The eyes may be open or closed.

Maintain the final position for as long as is comfortable.

Let go of the ears, lower the legs and slowly release the arms from the legs.

Cross the legs the other way around and repeat the pose.

This asana may also be performed lying on the back.

Safety precautions

This asana should not be practiced with problems of the hips, knees or ankles.

This asana should not be practiced if any abdominal surgery is done recently.

Healthy Food

Mango

Mango (Mangifera indica) is one of the most extensively exploited fruits for food, juice, flavour, fragrance and colour, making it a common ingredient. Its leaves are ritually used as floral decorations at weddings and religious ceremonies. It is also the national fruit of India, Pakistan and the Philippines. The flesh of a mango is peach like and juicy, with more or less numerous fibres radiating from the husk of the single large kidney-shaped seed. The flavour is pleasant and rich and high in sugars and acid. The ripe fruit varies in size and colour, and may be yellow, orange, red or green when ripe, depending on the cultivar. Mango is rich in a variety of phytochemicals and nutrients that qualify it as a model "superfruit", a term used to highlight potential health value of certain edible fruits. The fruit is high in prebiotic dietary fibre, vitamin C, polyphenols and carotenoids. Mangoes are an excellent source of vitamins C and A, both important antioxidant nutrients. Vitamin C promotes healthy immune function and collagen formation. Vitamin A is important for vision and bone growth. Mangoes are a good source of dietary fibre. Diets low in fat and high in fibre-containing grain products, fruits, and vegetables are associated with a reduced risk of some types of cancer. Mangos contain over 20 different vitamins and minerals. Mango peel and pulp contain other phytonutrients, such as the pigment antioxidants - carotenoids and polyphenols - and omega-3 and -6 polyunsaturated fatty acids. The mango triterpene, lupeo is an

effective inhibitor in laboratory models of prostate and skin cancers. So, go for the 'King of Fruits'!

Recipe of the Month

Mango Kulfi

Ingredients:

- 1/2 liter Whole milk
- 1 cup Mango pieces
- 2 tsp Cornflour
- 1/4 cup Sugar

Procedure

Heat up milk in a wide and thick bottom pan.

Bring it to boil.

Keep on stirring continuously so that the milk will reduce quickly.

Add sugar and mix well.

Continue boiling the milk for 10 minutes more.

You can decide the quantity of sugar depending on the sweetness of the mango.

Lower down the heat to medium.

Take cornflour in a bowl and add hot milk in it.

Stir well to make a thick slurry. No lumps of cornflour should be formed in it.

Add the whole slurry in the boiling milk and mix well.

Continue cooking the milk for about 4-5 minutes more.

Corn flour gives nice thickness to milk and also it prevents the formation of ice crystals in the kulfi.

When the mixture thickens up really good after about 5 minutes, turn off the gas and let the mixture cool down completely.

Transfer the mango pieces into a blender jar and blend them into a puree.

No need to use any milk or water at all while blending.

When the milk mixture cools down completely add the mango puree in it and mix well.

Grate the nutmeg powder in it and mix well.

You can add cardamom powder also for flavoring.

You can add small pieces of mango in it if you want.

If you don't want to set this in the freezer then you can have this as mango custard.

Pour the mixture into kulfi mold and close the lid.

Transfer the kulfi molds into the freezer to set for about 7-8 hours or preferably overnight.

Once kulfi is set take it out and insert an ice cream stick at the center of the kulfi.

Run a knife along the edges of kulfi and take it out of the mold.

Mango kulfi is already.

You can make 6 medium size kulfi from 1/2 liter milk & 1 cup mango pieces.

Happy Holidays

Ranthambore

Ranthambore National Park, one of the largest and the most popular national parks in North India, is one of the star attractions of wildlife tourism in Rajasthan. Located in the Sawai Madhopur district of Rajasthan, Ranthambore is located just 180 km away from Jaipur (with Jaipur International Airport being the nearest airport to it) and 110 km from Kota. The nearest railway station from Ranthambore is Sawai Madhopur. Ranthambore National Park is divided into 10 zones, out of which, zones 1-5 are best for tiger sightings.

The park counted among the perfect wildlife reserves in India, and is best described as a tiger friendly land that proudly preserves the most famous tigers in India, which are identified by the distinguished marks on their body and ruling territory. The dense vegetation creates the best conditions for the tiger to stealthily hunt for his prey, and it is the only national park in India where plenty of tiger groups consisting of the mother and cub tiger can be found.

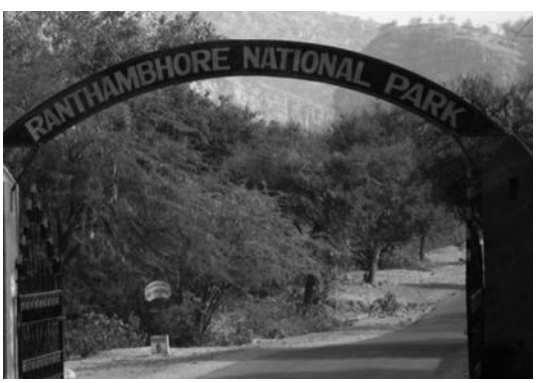
Apart from tigers, the major wild animals include leopard, nilgai, wild boar, sambar, hyena, sloth bear and chital. It is also home to wide variety of trees, plants, birds and reptiles. The reserve also has the thriving bird population of with more than 270 different species of birds.

How to Reach Ranthambore?

By Air: Jaipur being the nearest airport to reach Ranthambore is simply at 180 kms of distance from the reserve area.

By Rail: Ranthambore National Park is around 11 km away from Sawai Madhopur railway station that lies on the Delhi to Mumbai trunk route.

By Road: Ranthambore is connected by road. It is best advisable to hire a car/taxi to reach at Sawai Madhopur. The Kota-Ranthambore mega highway is only 1.5kms away.



REAL LAW SCHOOL PERSONAL STATEMENTS

START LONG, NOT SHORT

The emphasis the Chinese government has placed on reforming the legal system appears to be a step towards democracy and political progress. It is easy to hope that a reformed legal system will provide a framework in which citizens can demand their rights. However, one must ask oneself why a one-party state would allow this to happen.

I have worked with rural protesters who have given their lives in a vain pursuit of justice. Chinese workers have lost their pensions, their limbs and their livelihoods and now wait patiently in court rooms and labor bureaus for me law to make them whole again. These men and women I have met do not contest the government. They do not contest an economic system that favors me few over the many. Under a one-party state in which a handful of men decide the fates of many, people do not question the justice of the laws themselves.

Legal reform will not transform the power structure. It will not lead to democracy. Reform must be targeted at helping those that can be helped, but it cannot be the end of the struggle, and reformers in the West who want this to happen must not allow the pursuit of a better legal system to blind them to me greater changes that must be made.

JD MISSION REVIEW

Overall Lesson

Do not settle for an overly simplistic or less than fully developed thesis for your Yale 250 essay; start by being ambitious in your writing, and then cut later, if necessary.

First Impression

The candidate's first paragraph confuses me-I have to read the last sentence twice to figure out what she means by "this." I determine she means "a framework in which citizens can demand their rights," and I thereby deduce that she is suggesting that the one-party state of China is unlikely to become a democracy even though the government has said it will reform its legal system. I believe she could explain her point more clearly.

Strengths

In this essay, the candidate successfully takes the personal experiences she presented in her longer personal statement (#19) and extrapolates from them a thesis on China's legal system as a whole. This tactic works for many Yale applicants-keeping the primary personal statement more personal and then using the 250-word essay to philosophize on an idea or ideas introduced in that personal statement. But this candidate's personal statement is better written than her Yale 250 essay. Her personal statement is coherent, seamless, and easily readable, whereas this essay is somewhat clunky, academic, and, in places, hard for me to understand.

Weaknesses

What does the candidate intend the link to be between the second and third paragraphs? In the second paragraph, we are introduced to people who do not "contest" the government. In the third, we are told that reform will not be enough. I do not see a direct link between these two points. I am sure the candidate has one in mind, but she needs to express it more clearly.

In addition, I feel that her "reform is not enough" thesis is a bit sparse. I know from reading her other essay that she has a wealth of experience working with rural peasants, and through those situations, she has developed an equally rich stash of opinions based on what she observed in others and in herself For that reason, I suspect she can go further than merely saying that reform may not be sufficient. What are the greater changes that must be made? I have a feeling they are related to the people she discusses in paragraph two-possibly convincing them to challenge the government. But I do not know, and consequently, I cannot draw any hard conclusions about her points.

Final Assessment

I would encourage this candidate to clarify precisely what she wants to say about the reformation of the Chinese legal system, and I would push her to be more ambitious about conveying her true message within the allotted word limit. I recognize that the 250-word limit is extremely restrictive, but I also know that with judicious phrasing and substantial collaborative cutting, candidates can successfully say quite a bit, even in such a small amount of space. (This is true of all word limits, by the way.)

Northwestern Pritzker School of Law

Founded in 1859, the school that would become known as the Northwestern Pritzker School of Law was the first law school established in the city of Chicago. Today, Northwestern Law advances the understanding of law and produces graduates prepared to excel in a rapidly changing world.

Northwestern Pritzker School of Law is located at the eastern edge of Northwestern's 20-acre Chicago campus, in one of the city's most active and desirable neighborhoods. To the east is Lake Michigan; to the west, Chicago's premier shopping district, Michigan Avenue's "Magnificent Mile"; to the north, the elegant Gold Coast residential neighborhood. The city provides an ideal setting for the study of law, and students take advantage of the location through visits to local courts, law firms, and corporations.

Courses

JD Programs

Our primary academic program is the Juris doctor (JD) degree, which includes our joint degree programs: JD-MBA, JD-PhD, JD-LLM in Taxation, and JD-LLM in International Human Rights.

We also offer a Two-Year JD program designed for internationally educated attorneys, as well as opportunities for students to transfer or become a visiting student at Northwestern Law.

LLM

Our LLM (Master of Law) degree programs expand students' knowledge of law and legal processes and provide opportunities for them to gain expertise in a specialized field of law. To apply, students must have a JD from an ABA-accredited law school or a comparable legal degree from a university outside of the United States.

LLM in Taxation

The Tax Program's comprehensive curriculum, outstanding faculty, and small, collaborative community provides students with a solid understanding of the complexities of tax law and the specialized skills needed to practice federal, state, and international tax law successfully. Admission to the Tax Program is available to both the domestic and international law students.

LLM in International Human Rights

The LLM in International Human Rights is designed for students with JDs or law degrees from other countries who wish to undertake an in-depth study of the norms and methods of international human rights law and international criminal law and their implementation by international courts and organizations and in domestic legal systems.

Master of Science in Law

Courses are designed specifically for MSL students, with the goal of imparting practical skills and knowledge. To this end, the courses are very hands-on and often use real-world or simulated real-world situations to illustrate a concept or assess a student's understanding of that concept. Additionally, courses are designed to strengthen communication, problem-solving, quantitative, and dispute resolution abilities.

Criminal Law

This course introduces the student to substantive criminal law by reviewing the theories and rules for imposing criminal liability. The goal is to convey both a familiarity with modern criminal codes and an appreciation for the larger conceptual context in which the rules appear. The most important general doctrines are discussed, including those governing the interpretation of offense definitions, general defenses such as insanity and self defense, and doctrines imputing conduct to an actor, such as complicity and omission liability. Inchoate, and homicide offenses also are examined. Evaluation: Final examination Teaching Method: Lecture and discussion Text: Various by instructor. Check book store list Prerequisites: None Enrollment in Section 10 of this course is limited to students in the Accelerated JD Program

Library

The Pritzker Legal Research Center is the library for the Northwestern Pritzker School of Law community. With a staff that puts the needs of faculty and students first and an inspirational facility that encourages expansive intellectual inquiry, collaborative work, and dedicated study, we provide an exceptional research and learning environment.

We provide innovative patron services; implement creative uses of technology to access, manage, and communicate knowledge; and build and maintain an outstanding collection of legal and interdisciplinary research resources necessary to support an internationally renowned faculty and intellectually curious student body.

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Quick Referencer for Judicial Service

Q. *'X'* a taxi-driver, negligently reversed his taxi into a small boy who was riding a tricycle on the road and slightly injured the boy. The boy's mother heard the boy scream and looking out of an upstairs window of a house about eighty yards away saw the tricycle under the taxi but could not see the boy and being apprehensive for his safety she suffered severe nervous shock resulting in illness. She claims damages from *'X'*, the taxi driver. Discuss the chances of her success.

Civil Services (I.A.S.) Exam, 1974, 17th Bihar Judicial Service Exam, 1977.

Ans: She has no chance of success – *King* v. *Phillips,* (1953) 1 QB 429.

Reasons: Facts of the given problem have been taken from the famous case of *King* v. *Phillips.* In this case it was held that defendant (taxi driver) is not liable for nervous shock of the plaintiff. It was further held that driver made a breach of duty to the boy but he did not owe any duty of care to the mother (plaintiff) because she was wholly outside the area of reasonable apprehension. In this case, *Singleto, L.J.* observed as follows—

"The driver owed a duty to the boy, but he knew nothing of the mother; she was not on the highway, he could not have known that she was at the window, nor was there any reason why he should anticipate that she would see his cab at all."

In view of decision given in *King* v. *Phillips,* it can be said that in the given problem plaintiff cannot recover damages from the taxi driver *'X'* and she has no chance of success in the suit.

However, it is notable that in a similar case *Hambrook* v. *Stokes Bros.,* where the mother suffered nervous shock because of fear of injury to her children. It was held that the plaintiff (mother) is entitled to recover damages because for an action in case of nervous shock, a person need not be in the area of physical injury to himself, it is sufficient that he is so placed that a shock could be caused to him by his seeing or hearing something.

The view expressed in *Hambrook* v. *Stokes Bros.* appears to be more proper than the view expressed in *King* v. *Phillips* and followed by Courts in recent times.

Kishor Prasad

Lawyers' Wit

- When asked, "What is a contingent fee?" a lawyer answered, "A contingent fee to a lawyer means, if I don't win your suit, I get nothing. If I do win it, you get nothing."
- Lawyer: Judge, I wish to appeal my client's case on the basis of newly discovered evidence. Judge: And what is the nature of the new evidence? Lawyer: Judge, I discovered that my client still has $500 left.

Your attitude will go a long way in determining your success, your recognition, your reputation and your enjoyment in being a lawyer.

Joe Jamail

"I don't have a problem with bullies. I tell them my mom's a lawyer and they leave me alone."

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

IT'S NOT ABOUT THE DOG

Dr. Phil resolves a marital conflict in one of his TV shows. The issue is the couple's dog. From her point of view, the pet costs too much and his farts stink. From the husband's point of view, what she says is nonsense: she's just bitching again. This gets her even angrier. Enter Dr. Phil with the show's message: "It's not about the dog!" The real problem is that the woman feels neglected. When her husband comes home in the evening, the first thing he does is give the dog a long drawn-out cuddle, he then briefly greets his wife. Always look for the story behind the story. You'll only solve the problem, if you know what the real problem is.

On The Lighter Side

I SUE YOU!

Police raided a Scottish golf club and took away an illegal fruit machine. An anonymous verse arrived on the club notice board: 'but he who gave the game away, may he byne in hell and run the day.' Club member Mr Byrne sued the golf club for defamation: would he stoop so low as to grass to the police? The court decided he had not been defamed, as no right-thinking member of society would see the verse as an insult. (Byrne v Deane, 1937)

GOOD SPORTS

'Two, four, six, eight, we don't jump because a nail might break.' Cheerleaders in Catasauqua, Pennsylvania, fought a ban on dangerous Cheerleading stunts and won. The Colonial League had banned some of their mounts and tumbles as 'dangerous and unnecessary'. The girls protested that cheerleading was a sport, not just entertainment, and proved in court they're as tough as anybody. (Associated Press, 19 October 2001)

FACULTY OF LAW BANARAS HINDU UNIVERSITY

Faculty of Law

The Banaras Hindu University is the largest residential institution in Asia, spread across 1300 acres of land; it offers quality education all in one campus, in almost all the branches of learning. The Banaras Hindu University is spread over 4000 acres in two campuses have 4 institutes, 15 faculties, 140 teaching departments, 4 interdisciplinary schools teaches Technology, Ayurveda, Agriculture, Management, Languages, Mountaineering, Visual arts etc. The Banaras Hindu University is ranked among the best universities of India in the field of research. Today, the university is known for its state-of-art campus, environment, standard academic facilities, values and culture. In a survey conducted by India Today, BHU ranked No- 1 University in India.

Varanasi is easily accessible from all parts of the country very well connected by road, rail and air, the City offers convenient and comfortable travelling options to and from other cities of India.

Academic Programmes

Bachelor of Law LL B (Hons)

For the purpose of LL.B. (Hons) (Three Year/ Six Semester) Course admission, the Banaras Hindu University conducts Undergraduate Entrance Test (UET)

The Faculty shall have an Admission Committee for LL.B. (Hons.) undergraduate admission, constituted under the provisions of Ordinances and consisting of the Dean or his nominee and two senior-most members of the teaching staff of the Faculty. Admission shall be made in accordance with these ordinances and the rules made thereunder.

Admission cannot, however, be claimed by any candidate as a matter of right. The admission or re-admission of a candidate shall be entirely at the discretion of the Admission Committee which may refuse to admit any student without assigning any reason there for.

On his/her selection for admission to the LL.B. (Hons.) Semester I programme, the candidate shall, within the time fixed by the Dean, Faculty of Law deposit the fees prescribed for the programme. If the candidate fails to deposit fees within the stipulated time, his/her selection shall automatically stand cancelled. Such a candidate shall not be admitted to the concerned programme unless a fresh order of selection and extension of date for payment of fees is issued.

ELIGIBILITY: B.A./ B.Sc./ B.Com./Shastri (at least 10+2+3 pattern) securing a minimum of 50% marks in aggregate considering all the subjects in the three years except those subjects where only pass marks are required and which do not contribute to the total in the final (degree) mark sheet. OR any other Degree under at least 10+2+3 pattern recognized by the Bar Council of India for the purpose of admission to LL.B. Course securing a minimum of 50% marks in the aggregate considering all the subjects in the three years (aggregate being calculated as mentioned above).

Master of Law (LLM) One year

Admission to all the LL.M. One Year programme in the Faculty of Law shall be made on merit in the PET (Post-graduate Entrance Test).

The LL.M. One Year programmes shall have the status

of regular and special courses of study, respectively. A candidate seeking admission shall be required to make separate application for consideration of admission in the said programme.

There shall be an Admission Committee constituted under the provision of Ordinances and consisting of the Head of the Department and two senior members of the teaching staff of the department in station.

Admission cannot be claimed by any candidate as a matter of right. The admission or re-admission of a candidate shall be entirely at the discretion of the Admission Committee, which may refuse or admit any student without assigning any reason therefor.

On his/her selection for admission to LL.M. One Year Programme, the candidate shall, within the time fixed by the Dean, Faculty of Law deposit the tuition and other fees prescribed for the programme. If the candidate fails to deposit the fees within the stipulated time, his/her selection shall automatically stand cancelled. Such a candidate shall not be admitted to the programme unless a fresh order of selection or extension of date for payment of fees is issued by the Dean of the Law Faculty.

There is no provision for re-admission in the 1st semester of LL.M. One Year Programme (except as stated in promotion rules).

ELIGIBILITY: A candidate shall be eligible for appearing in the Post Graduate Entrance Test (PET) leading to admission to LL.M. (One Year) Degree Programme Semester I, if he or she has passed the following:

Admission to LL.M. One Year Degree Course

LL.B. or equivalent degree securing a minimum or 50 % marks in aggregate considering all the papers in Three Year: Five Year LL.B. Degree Course recognised by the Bar Council of India.

The applicant should not be more than 35 years of age on July 1st of the year of seeking admission

Doctorate in Law (Full Time) Ph D

Every student admitted to Ph.D. Programme in the Faculty of Law shall be required to pass a "Course Work" of minimum 20 credits.

The candidate can submit his/her thesis only after passing the course work. A candidate has to clear the course work in a maximum of four semesters. A candidate can take a maximum of two attempts for passing a course. If he/she does not pass within this period, his/her Ph.D. registration shall stand cancelled. There shall be no provision of supplementary examination.

The 20 credit course shall normally be spread over two semesters. Semester for Ph.D. course work shall start from the academic session July and January.

One Year Post Graduate Diploma Courses (Part- Time)

Admission to the course shall be made on merit prepared on the basis of marks obtained in the qualifying examination as per the eligibility for the course.

One Year Post Graduate Diploma Courses shall be part time regular courses. The Banaras Hindu University may confer the P.G. Diploma on such candidates who, being eligible for admission to a Diploma Course, have received regular instructions in the prescribed courses of study, passed relevant examinations being otherwise suitable by virtue of their character, and have fulfilled such other conditions as may be laid down from time to time.

Total intake - Maximum 60 students and minimum 20 students.

Library

The Law School's library occupies the whole first floor of the institution and can accomodate over a hundred students at a time. The Law School has around 80,000 books and more than 135 international and national journals. An open access system has been adopted for easy access to the available literature and other information. The library provides 24/7 e-resource access to its students on-and-off the campus. The library's collection includes judgments, reporters, manuscripts and law reviews of national and international levels. Several important reference and citation analysis sources have also been subscribed to by the University. Users may contact the librarian for any additional help required while accessing the databases. It uses URKUND as a plagiarism detection tool provided by INFLIBNET.

For further references students can access the Central Library both online and offline. Named after Sayaji Rao Gaekwad, the Central Library is one magnificent building of resources. Presently, the Banaras Hindu University Library System consists of Central Library at the apex level, 3 Institute Libraries, 8 Faculty Libraries and 25 Departmental Libraries with a total collection of over 13 lakh volumes to serve the students, faculty members, researchers and technical staff of fourteen faculties consisting of 126 subject departments of the university.

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Landmark Judgments

INFORMANT AND INVESTIGATOR NOT TO BE THE SAME PERSON

Mohan Lal v. State of Punjab

2018 (9) SCALE 663: AIR 2018 SC 3853:

2019 Cri LJ 420: 2018 (3) Crimes 218

Decided on: 16-08-2018

Hon'ble Judges: Ranjan Gogoi, R. Banumathi and Navin Sinha, JJ.

Facts: Appellant convicted under section 18 of Narcotic Drugs and Psychotropic Substances Act for recovery of opium from his bag.

Issue: Whether it will be in consonance with principles of justice, fair play and fair investigation in criminal prosecution, if informant and Investigating Officer would have to be the same person? Whether it was necessary to demonstrate prejudice by accused?

Held: Fair investigation is the foundation of fair trial, necessarily postulates that informant and investigator must not be the same person. Any possibility of bias or predetermined conclusion has to be excluded. Justice must not only be done but must appear to be done also. Recovery memo was not signed by accused and copies of documents not supplied to accused. Prosecution vitiated because of infraction of constitutional guarantee of fair investigation. In criminal prosecution, obligation is cast on Investigator not only to be fair, judicious and just during investigation, but also that investigation on the face of it must appear to be so, eschewing any conduct or impression giving rise to any real or genuine apprehension.

LEGAL WRITING *Tips*

Place the emphatic words of a sentence at the end.

The proper place in the sentence for the word or group of words that the writer desires to make most prominent is usually the end

Humanity has hardly advanced in fortitude since that time, though it has advanced in many other ways.	Since that time, humanity has advanced in many ways, but it has hardly advanced in fortitude.
This steel is principally used for making razors, because of its hardness	Because of its hardness, this steel is used principally for making razors.

The word or group of words entitled to this position of prominence is usually the logical predicate-that is, the new element in the sentence, as it is in the second example.

The effectiveness of the periodic sentence arises from the prominence it gives to the main statement.

Four centuries ago, Christopher Columbus, one of the Italian mariners whom the decline of their own republics had put at the service of the world and of adventure, seeking for Spain a westward passage to the Indies to offset the achievement of Portuguese discoverers, lighted on America.

With these hopes and in this belief I would urge you, laying aside all hindrance, thrusting away all private aims, to devote yourself unswervingly and unflinchingly to the vigorous and successful prosecution of this war.

The other prominent position in the sentence is the beginning. Any element in the sentence other than the subject becomes emphatic when placed first.

Deceit or treachery she could never forgive.

Vast and rude, fretted by the action of nearly three thousand years, the fragments of this architecture may often seem, at first Sight, like works of nature.

Home is the sailor.

A subject coming first in its sentence may be emphatic, but hardly by its position alone. In the sentence

Great kings worshiped at his shrine

the emphasis upon kings arises largely from its meaning and from the context. To receive special emphasis, the subject of a sentence must take the position of the predicate.

Through the middle of the valley flowed a winding stream.

The principle that the proper place for what is to be made most prominent is the end applies equally to the words of a sentence, to the sentences of a paragraph, and to the paragraphs of a composition.

NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

A copyright protects original literary works which are expressed in some material form. Computer programmes (software) are considered as literary works as they are expressed by way of source code and object code. The source and object code of software constitutes the literal elements of a computer programme and are protected under the Copyright. However, some appropriate non-literal elements like the overall structure of the programme are also protected under the Copyright. To put it in other words, the visual appearance of the software can also be protected though it is not a literary element per se. Nevertheless, if the source & object code contains any algorithm which is frequently used in computer programming, it is not capable of protection under copyright.

Internationally, there is a concept of "idea-expression" dichotomy. It means that copyright protection extends only to the expressions of an idea and not the idea itself, procedure, methods of operation, etc. But this dichotomy has not been recognized in Indian Law. Because protecting the expression of ideas related to the visual display of a programme can be of more importance than its expression. Such an idea, though is a non-literal part of the computer programme, can be protected as a part of the overall structure of the computer programme. Nevertheless, the basic idea and the functionality of the software are not protected by copyright law. To put it in other words, owners cannot protect the idea, concept & principle behind the software, its procedure & process, method of its operation, etc.

Q.1 Malay along with his friend started a social media platform called "Reader", where people can updates their book reading progress and check what other people are reading. After an year of the successful running of the platform, they found that there has been another platform called "Instaread", launched a few weeks ago which has a very similar interface to that of "Reader". Malay complaint them for copyright violation but the owner of Instaread defended by stating that copyright does not protect the non-literal elements of the programme. Can Malay sue Instaread?

a) Yes, since non-literal elements like the overall structure of the programme are also protected under the Copyright.

b) No, since non-literal elements like the overall structure of the programme are also protected under the Copyright.

c) Yes, since Malay and his team has worked very hard and Instaread should not reap the benefits of hard-work of Malay.

d) No, since Instaread has the is the new platform it should be given advantage over Reader.

Answer: a

Q.2. Suppose in the above passage, Instaread used an algorithm which is a very common algorithm in the social media platforms which allows the user to search for a friend and since the Reader uses same algorithm, it sues Instaread for copying algorithm. Will Reader succeed?

a) Yes, since the objective of the copyright protection is to stop people from copying.

b) No, since any algorithm which is frequently used in computer programming, is not capable of protection under copyright.

c) Yes, since Instaread is trying to copy Reader from day one.

d) No, Reader should let the other platform to come up in the market.

Answer: b

Q.3. Suppose after the launch of the Instaread, Malay says that it was his idea and therefore Instaread has copied his idea. Can Malay sue Instaread on the charge of copying his idea?

a) No, since expression are protected under copyright law.

b) Yes, since ideas are protected under copyright law.

c) Yes, since expression are protected under copyright law.

d) No, since ideas are protected under copyright law.

Answer: a

Q.4. What is the meaning of expression "idea-expression" dichotomy with reference to the above passage?

a) If the source & object code contains any algorithm which is frequently used in computer programming, it is not capable of protection under copyright.

b) It means that copyright protection extends only to the expressions of an idea and not the idea itself.

c) The source and object code of software constitutes the literal elements of a computer programme and are protected under the Copyright.

d) The meaning has not been explained in the passage.

Answer: b

1. **Hindu male can adopt a female child, if the difference of age between the two is of more than**
   (a) 15 years
   (b) 18 years
   (c) 20 years
   (d) 21 years
   Ans. **Answer is D.**
2. **Which of the following relations is not dependent under Section 21 of the Hindu Adoption and Maintenance Act, 1956?**
   (a) Grand Mother
   (b) Mother
   (c) Widow
   (d) Daughter
   Ans. **Answer is A.**
3. **A communication made to the spouse during marriage, under section 122 of the Indian Evidence Act**
   (a) Remains privileged even after dissolution of marriage
   (b) Does not remain privileged after dissolution of marriage only by divorce
   (c) Does not remain privileged after dissolution of marriage only by death
   (d) Does not remain privileged in both the case (b) and (c)
   Ans. **Answer is A.**
4. **Which section of the Indian Evidence Act provides that an accomplice is a competent witness**
   (a) Section 114 illustration (B)
   (b) Section 118
   (c) Section 133
   (d) Section 134
   Ans. **Answer is C.**
5. **Which is the subject matter of neighbouring rights pretention?**
   (a) Performance
   (b) Dramatic work
   (c) Geographical indication
   (d) New varieties and plant
   Ans. **Answer is A.**
6. **Adam Smith has enumerated cannons of taxation which are accepted universally they are:**
   (a) Equality and Certainty
   (b) Equality, convenience and Economy
   (c) Equality and Economy
   (d) Equality, Certainty, Conveni-ence and Economy.
   Ans. **Answer is D.**
7. **For the first time in India Income tax law was introduced by Sir James Wilson in the year:**
   (a) 1886
   (b) 1868
   (c) 1860
   (d) None of the Above
   Ans. **Answer is C.**
8. **Which one of the following sections of Cr. P.C. deals with compoundable offence?**
   (a) Section 319
   (b) Section 320
   (c) Section 321
   (d) Section 324
   Ans. **Answer is B.**
9. **What is the time limit under section 468 of Cr.P.C. for taking cognizance:**
   (a) One year
   (b) Two year
   (c) Three year
   (d) No limit
   Ans. **Answer is C.**
10. **Industrial relations cover the following area(s)**
    (i) Collective bargaining
    (ii) Labour legislation
    (iii) Industrial relations-training
    (iv) Trade unions
    (a) (i)
    (b) (i) and (ii)
    (c) (i), (ii) and (iii)
    (d) (i), (ii), (iii) and (iv)
    Ans. **Answer is D.**
11. **The term 'Suit of a Civil Nature' refers to:**
    (a) Private rights and obligations of a citizen.
    (b) Political, social and religious question
    (c) A suit in which principal question relates to caste or religion.
    (d) All of the above
    Ans. **Answer is A.**
12. **The rule of *res sub-judice* Implies:**
    (a) Where the same subject matter is pending is a court of law for adjudication between the same parties, the other court is barred to entertain the case so long as the first suit goes on.
    (b) Where the same subject matter is pending in a court of law for adjudication between the different parties, the other court is barred to entertain the case so long as the first suit goes on.
    (c) Where the different subject matter is pending in a court of law for adjudication between the same parties, the other court is barred to entertain the case so long as the first suit goes on.
    (d) None of the above
    Ans. **Answer is A.**

Latest SUPREME COURT Judgments

COPYRIGHT LAW

Whether offence of Infrangement of Copyright under Section 63 of the Copyright Act is a cognizable offence?

Supreme Court in *Knit Pro International* v. *State of NCT of Delhi,* 2022, held that the offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence.

BENCH of Justices M.R Shah and BV Nagarathna had observed If the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence.

Earlier in this matter the High Court of Delhi committed a grave error in holding offence under Section 63 of the Copyright Act is a non-cognizable offence.

Section 63 of Copyright Act provides that any person who knowingly infringes or abets the infringement of (a) the copyright in a work, or (b) any other right conferred by this Act except the right conferred by section 53A, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees. Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.

Anshul Jain

Legal Thesaurus

Fides, fuducia, uses:

"The Trust" said **Elizabethan lawyers**, "is the daughter of the Use." Probably it was the other way about. Though the conception of trust dates from the reign of **King Henry II**, expressed fides, fiducia, usus the word "trust" came into English only about the time of Henry III, first as a theological term and then through ecclesiastical Judges as a legal one. Trust indeed runs through all Equity, as the basis of duties enforced by *forum conscientiae*. As at present understood in English law trust, as regards trustee, is a duty arising out of legal ownership or other legal interest for the benefit of another; as regards the cestui que trust, it is beneficial interest severed from legal estate or interest, i. e., equitable ownership. **[Kelke's Equity].**

It was formerly generally assumed that trusts owed their origin to the *fidei icommissa* of the Roman law, which were supposed to have furnished the model or suggestion for the English uses. But this theory is not sustained by known historical facts and is discredited by late scholars.

CONSTITUTION OF **INDIA**

Article 198

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.

***198. Special procedure in respect of Money Bills.*—(1) A Money Bill shall not be introduced in a Legislative Council.**

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

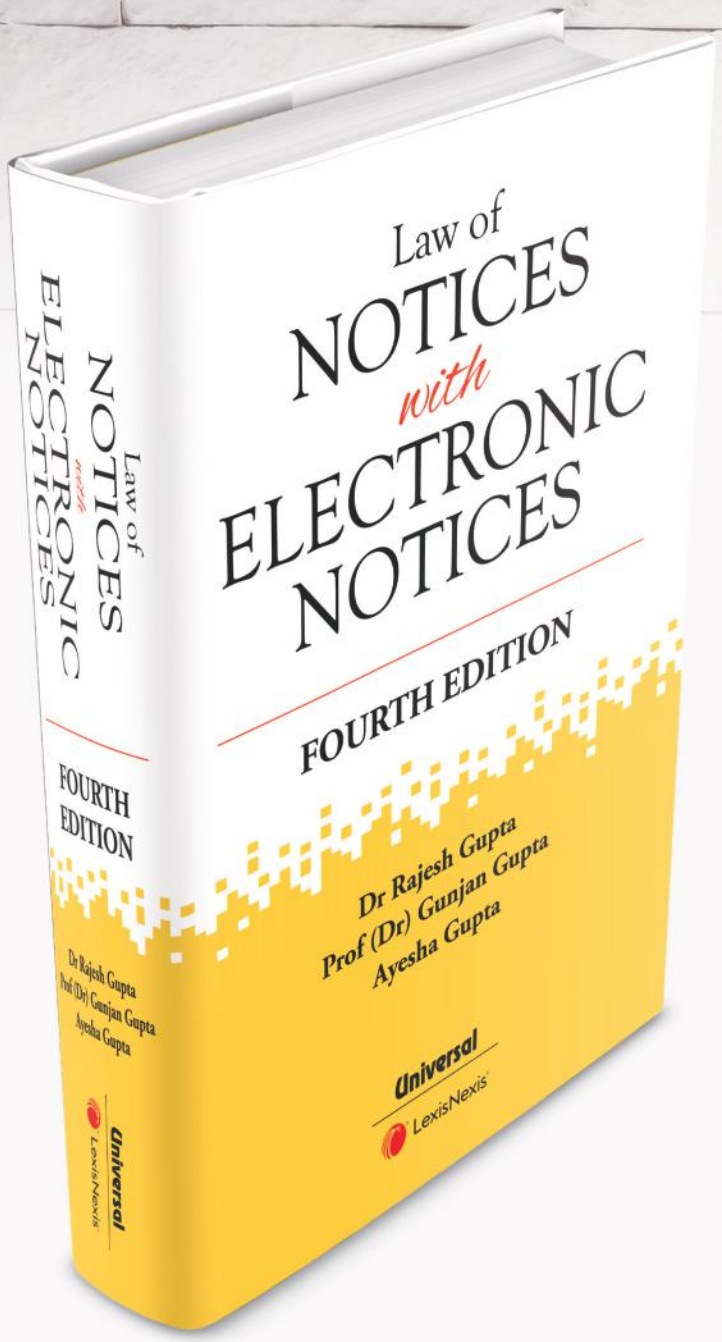
(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Article 198 lays down a special legislative procedure for enactment of Money Bills. It is similar to the procedure provided at the level of the Union Parliament. The corresponding provision is article 109 of the Constitution.

Dr Subhash C Kashyap

While ordinary (Non-Money) legislation can be initiated in either House, Money Bills can be introduced only in the Legislative Assembly and in the procedure for its passing also, place of primacy is accorded to the lower House and if any modifications suggested by the upper House are not agreed to by the lower House, or if the upper House fails to return the Bill within 14 days, the Bill is deemed to have been passed by both the Houses in the form in which it was passed by the Assembly.



Dr Rajesh Gupta

Law of Notices

With Electronic Notices, 4/e

This treatise ipso-facto is a pointer to the factum of the complexities involved in the subject of 'Law of Notices'. By what mode and means the notice is to be served; to whom the notice is to be addressed and where it is required to be served; what should be the title of the notice and so also what should be its contents; when shall we deem the notice to have been 'sent' and when do we say the same to have been 'served' are some of the questions which have been sought to be answered in the present work, for the reason that on such issues, more often than not, the legal proceedings are found to have failed.

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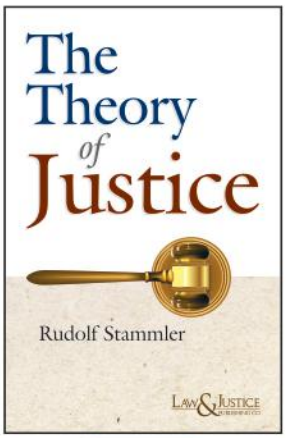

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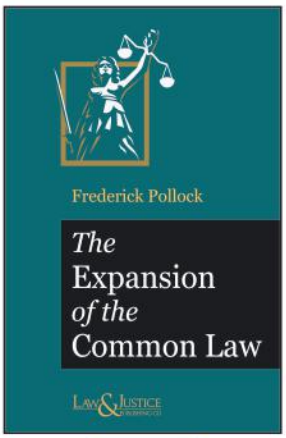

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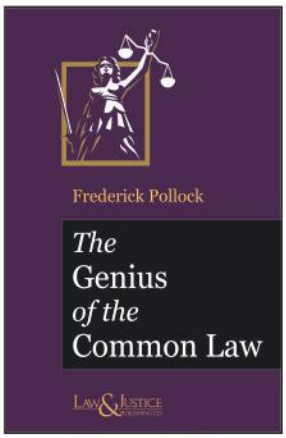

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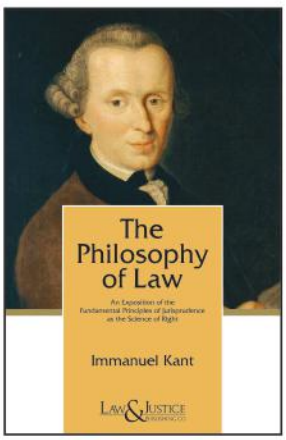

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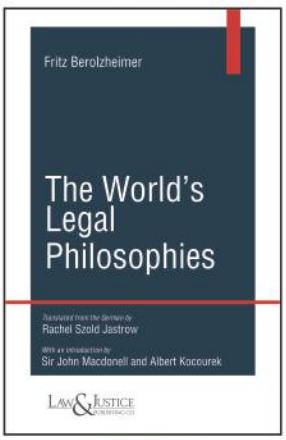

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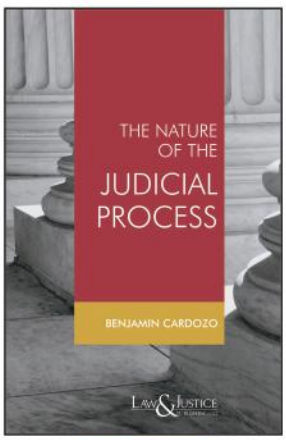

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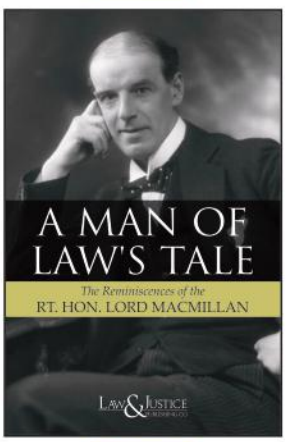

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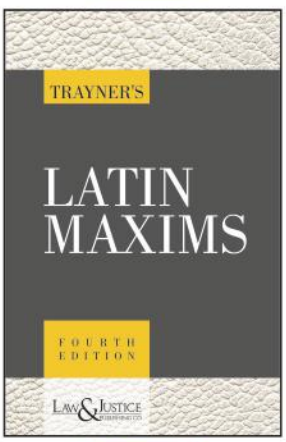

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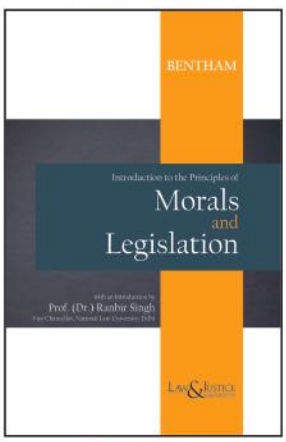

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R.N.I. No. 63084/95 (Monthly Magazine)
Date of Posting : 15-16 at D.P.S.O. DELHI-110006
Date of Publication : 12-06-2022

Postal Registration No. DL (N) - 118/2021-23
U (DN) - 89/2021-23
Licensed to post without pre-payment

ISBN : 978-93-93850-42-3

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Publisher, Printer and Editor : Manish Arora; Owner : Universal Book Traders, 80, Gokhale Market, Opp. Tis Hazari Courts, Delhi-110054.
Designed by Ideaz, New Delhi and Printed at Gay Printers, 45 Panchkuian Road, New Delhi