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Magazine for Legal Professionals & Students

Lawyers UPDATE

'RIGHT TO REPAIR' REQUIRES LEGAL SUPPORT TO PICK- UP PACE

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Lawyers UPDATE

Volume XXVIII Part 1

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Dear readers,

Having bought a product, the buyer is the absolute owner of the purchased product and must have every right to do to the product as he or she pleases, including repairing it or having it repaired by someone of his or her choice. The only limitation could be that the individual should not do to the product or with the product anything that might prejudicially affect someone else's rights.

However, the manufacturers have forever tried their level best to limit the right of the purchaser to have the product repaired in case of a malfunction. The threat of forfeiture of warranty was one way of limiting that right, and making original spare parts prohibitively expensive was another. To make money from the repair work has been, in some cases, a part of the business model itself. So Apple's change of policy to allow the right of repair to their customers is a step in the right direction. The step might also inspire other manufacturers to follow suit. This also means that on the repair side, Apple would be competing with the external repairers, now that the original spare parts would be available in the open market for anybody to use, including a better-equipped customer, who might choose to repair the device himself or herself.

This does not necessarily mean a great loss of profit to Apple, for Apple would still control the pricing of the spare parts for the open market, and it could price the spares such as to make the repair elsewhere only marginally cheaper than the repairs at an official Apple service centre. But having a choice, however limited, is still far better than having none at all. So even if not a great leap, it's still a start to build upon.

Manish Arora

(Manish Arora)

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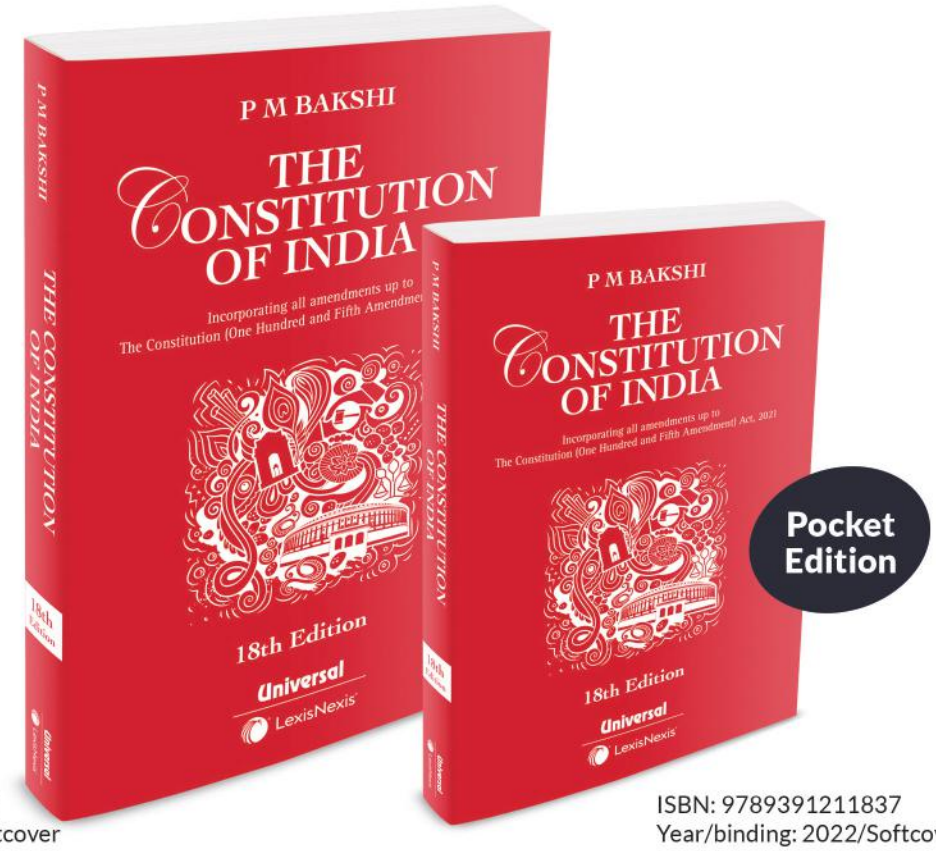

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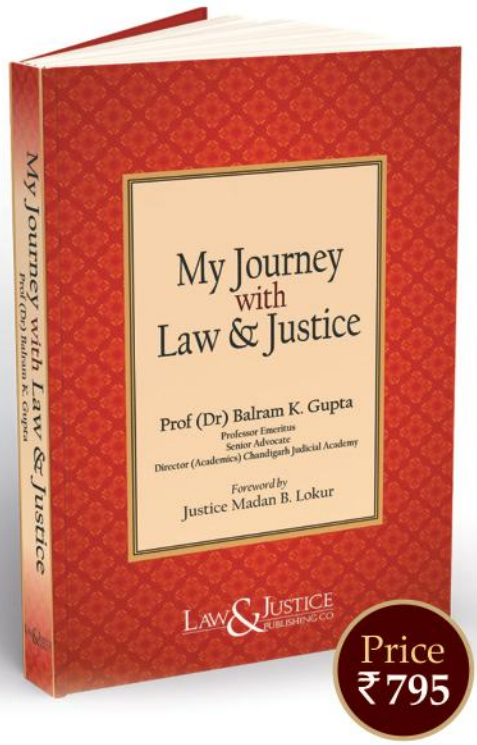

My Journey with Law & Justice

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

Foreword by
Justice Madan B. Lokur

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ABOUT THE BOOK

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

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

Upendra Baxi
Professor Emeritus

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STREET LAWYER

Weaponization of Unreason - I

When passions ride on unreason, one feels justified in holding factually and rationally questionable beliefs.

HemRaj Singh

"Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them," said David Hume, indicating the subordination of passion to reason. Hume held that reason alone could "never be a motive to any action of the will", and could "never oppose passion in the direction of the will", by which conclusions he did not mean to undermine the role of reason in generating human action but only to make it a secondary factor in informing human motivation, which, according to Hume, is driven by passion with reason making available the information necessary to act. In Hume's thesis, reason serves to pursue knowledge and establish causal relation in the service of passion, which alone determines how a human being would actually act and what goals would he or she consider worth pursuing.

Does it also mean that human beings would want to bend reason to serve the goals they consider worthy, or justify their beliefs? They can and they do, but that's not what Hume was saying. He simply meant that concluding by reasoning from dependable evidence that it's raining outside would not by itself motivate a human being to step into the rain, for which a person would need a goal he considers worth pursuing, and that's the only sense in which reason is a "slave of passions". Reason does not allow different conclusions from the same set of facts. Different conclusions from the same set of facts are conceivable only when there is a multiplicity of assumptions and the truth value of one or more assumptions is uncertain or probabilisitic. In calling reason the slave of passions, Hume certainly did not have in mind those who would pick and choose "facts" and make contrived connections to arrive at a predetermined conclusion that serves their favourite "passions", such as they might be.

While these days we come across such people in unsettling numbers, which makes the world look sharply divided and alarmingly polarized, such people have always been there, which might have led Steven Pinker to wonder why rationality "seems scarce". But since Pinker chose to seriously ponder upon and write about the apparent scarcity of rationality only in the recent times, it's possible that something in our current everyday exchanges compelled him to investigate the issue.

Can't say about Pinker, but I do find a lot in our everyday conversations that makes me wonder why people seek out facts that tend to support a position they already hold, and, at the same time, reject or downplay every fact that weakens the factual standing of their positions. It's like some of us want to hold certain beliefs as "facts" so bad that even the fact of the beliefs' being mere "beliefs" is unacceptable to us, and any demonstrable "fact" that runs counter to such "beliefs" is outrightly rejected on the grounds of the fact's being an exception (even when their assertion is absolute), or the source's being immoral or distasteful (and thus unreliable even if the reported fact remains uncontroverted). And then, there is always the never-exhausting and ever-reliable whataboutery to fall back upon, when everything else fails.

"Okay, leave that, what about this?" Leave that, why? Because it could be explained, or the "facts" militated for it failed to stand to scrutiny. And the barrage of whataboutery continues until one runs out of explanations, and the delighted fellow declares that he or she has the explanation, at last, for which one doesn't have any, and that explanation is what he or she has always believed and was talking about right from the start. Therefore, his or her belief is an indisputable "fact" proved by one's running out of explanations whereas all the explanations on all the previous occasions could not impeach the "fact" now declared indisputable.

"People hold certain beliefs because they are expressions of their moral identity, their selfhood, their deepest moral convictions as to who is good, who is evil," Steven Pinker said recently (Clubhouse, *Steven Pinker on GTS*, December 15, 2021), which is not very different from what Jonathan Haidt said a few years ago in *The Righteous Mind* (2012), wherein he noted that people arrive at their beliefs through "social intuitions" and then bring rational thoughts to the table to justify the beliefs arrived at extra-rationally, so to speak. That's *ex post facto* reasoning, or cart before the horse. But that's how it is, mostly. And this mode of thinking (or non-thinking) has been around for as long as reason has been, and we all are occasionally susceptible to it, no matter how rational we consider ourselves, for prejudices and biases have a way of finding their way even into the most well-guarded citadels of reason. But being an unsuspecting victim of unreason is very different from actively fighting everything that might expose one's prejudice.

It's perfectly fine to start from a certain belief, however outlandish, and examining it under unfavourable light to see if it holds up. In fact, it is the time-honoured scientific method, but to hold a firm conviction, and then digging up "facts" to support it is, at the very least, intellectual dishonesty. Worse, when such irrationality or unreason is deployed to serve political ends, which is when hilarious opinions can be downright dangerous. The fact that the DiCaprio starrer *Don't Look Up* (2021) looks scarily believable rather than ridiculously comic in both American and Indian political settings symptomizes at least a partial political weaponization of unreason with far-reaching real-life consequences. And that's alarming.

…to be continued

THE LAW AND THE LAWYER

M.K. Gandhi

BABU KALINATH ROY

By the courtesy of the *Young India* Syndicate, composed as it is largely of Satyagrahis, since the deportation of Mr. Horniman I have been permitted to supervise the editing of this journal. I asked for such supervision because I was anxious that nothing should appear in it that was in any way inconsistent with the general principles of Satyagraha, i.e., of truth and nonviolence to person or property. In pursuance of the plan I have hitherto also written some leading articles in the usual editorial style. But for this issue I wish to take the sole responsibility, if there be any, of writings on the case of Babu Kalinath Roy, the editor of the now defunct Tribune. Personally, I consider that even from the point of view of the authorities, there is nothing wrong or out of the way in what I am about to say. But lest they may think otherwise, it is due to the public and to the· Young India Syndicate that the authorship of this writing should be known.

With reference to the Punjab disturbances, by my complete silence over them I have allowed myself to be misunderstood by many friends and, as is now well known, I have been deprived of the co-operation, though never the friendship, of so respected and renowned a leader and co-worker as Sannyasi Swami Shri Shraddhanandaji. But I still believe that I have done well in persisting in my silence, for I had no conclusive data to go upon. No public declaration of mine could have in any way affected for the better the action of the authorities. But Babu Kalinath Roy's case materially alters the situation. In my humble opinion the case represents a manifest and cruel wrong. I have not the honour of knowing him personally. When I took up the judgment in the case, I approached it with a feeling that there. Would be at least a *prima facie* case made out against the accused on some isolated passages in his writings. But as I proceeded with it, the impression grew on me that it was a kind of special pleading in order to justify a conviction and heavy sentence. In order to check myself I took up the numbers of the Tribune referred to in the judgment and on which the serious charge against Babu Kalinath Roy under. Sec.

124 A of the Indian Penal Code was based, and a careful reading of everyone of the writings in the Tribune more than confirmed the impression produced by a perusal of the judgment and led me to think that the martial law court had allowed its judgment to be warped and clouded by the atmosphere of suspicion and distrust surrounding it. The best proof of my statement must be the judgment and the writings on which it is based. They are therefore reproduced in this issue in full. I have prefaced the judgment and the offending articles in the *Tribune* with extracts from the other numbers, showing the whole tendency and tone of the writings, from the beginning of April just after the Delhi affairs. They are not extracts torn from their context but they are representative of the issues of the Tribune published after the 30th March last. The dominant note pervading all the issues is that the agitation against the Rowlatt Legislation should be conducted with sobriety, truth and non-violence. I could. nowhere trace in them ill-will, either against Englishmen in general, or against the English Government in particular. Indeed, it would be difficult to surpass the Tribune in calmness

and self-restraint in the face of circumstances brought about by the Delhi affairs.

This is the test that the Special Tribunal put before itself for its guidance:

"You will have to consider whether this publication was or was not a cairn and temperate discussion of the events that had occurred. The people have a right to discuss any grievances that they may have to complain of, but they must not do it in a way to excite tumult.

…… You may point out to the Government their errors.

…... The question is always as to the manner. A question is made whether they (writings) show an intention to instruct by appealing to the judgment or to irritate and excite to sedition. In other words, whether they appeal to the sense of the, passions."

Judged by the standard set before the court the articles complained against do not warrant a conviction. They cannot excite tumult, when daily during a period of exceeding stress, the writer asks his readers to refrain from all violence telling them in unmistakable terms that disturbance can only damage their cause. The editor has continuously appealed to the judgment of the readers by asking them not to prejudge, but to await the results of an inquiry which he persistently asked for. The court's discussion of the passages and articles fails to convince one of the propriety

of its decision. The court has resented the use of the term "Delhi Martyrs" in the issues of the 6th and the 8th April. When you read the contents under the headings, the one has reference to prayers at the Jumma Masjid and the other to a relief and Memorial Fund. The crime in the language of the court was that "the accused chose to emphasize the memorial for martyrs and not the relief," and the court proceeds, "the inference from this is plain." The plain inference from this is that whoever put the heading felt that those who were shot down at Delhi were so dealt with, without sufficient cause. Why this should be considered seditious passes comprehension. And if such inference shows, as it undoubtedly does, that the action of the Magistrate who gave the order for firing was wrong, is the drawing of such a deduction to be punished? We are told by the court that one may point out to Government their errors. I submit that Mr. Roy justly points out the error of one of the local authorities. (Incidentally I may mention that there is not such editorial headings as "Memorial to Delhi Martyrs" referred to in the judgment.)

The next indictment consists in the editor having used the word "dupe" in connection with the action of some Honorary Magistrates and Municipal Commissioners who tried to dissuade shopkeepers from closing their shops. This is what the article describing the demonstration of the 6thApril says:

"The masses of India are no fools... That they cannot be successfully duped ought to be clear from the very ignominious failure in this very case of certain Municipal Commissioners and Honorary Magistrates and several others who went round the city trying to persuade shopkeepers to keep their shops open."

This is a bare statement of fact as the accused knew it. Then follows an examination of the other articles as to which the gravamen of the charge is the assertion of the editor that the action of the Punjab Government was both "unjust and unwarranted", and that it had "exposed itself to the severest criticisms at the bar of public opinion". Here, too, the editor has, after having reasoned to the reader, led him to the conclusion to which he himself has arrived, - a procedure held to be entirely justifiable under the test accepted by the court itself. The wrong would undoubtedly be if the editor had misstated facts. But in every case, as would appear from the articles reproduced herewith, the writer has fortified himself with what he believed to be facts, and which, so far as the judgment allows us to, see, have not been controverted.

The other two articles referred to by the court are "Delhi Tragedy" in the issue of the 9th, and "Blazing Indiscretion"; in the issue of the 10th April. The "Delhi Tragedy" is a dispassionate review of the tragedy of the 30th March, and ends with an exhortation to the Government of India to appoint a public inquiry.

"Blazing Indiscretion" is undoubtedly an indictment against Sir Michael O'Dwyer about, his speech before the Punjab Legislative Council. The speech, analysed in the article in question, certainly contains more than one "blazing indiscretion". The truth of the matter is that the wrong man was in the wrong box; the right man to have been in the box of the accused should certainly have been Sir Michael O'Dwyer. Had he not made inflammatory and irritative speeches, had he not belittled leaders, had he not in a most cruel manner flouted public opinion and had he not arrested Drs. Kitchlew and Satyapal, the history of the last two months would have been differently written. My purpose, now is not to prove Sir Michael O'Dwyer's guilt, but it is to prove Babu Kalinath Roy's complete innocence, and to show that he has suffered a grievous wrong in the name of British justice, and I do not hesitate to ask Englishman as I ask my countrymen to join me in the prayer for Babu Kalinath Roy's immediate release. As Mr. Norton had shown, 'and quite recently Sir P. S. Shivaswamy Aiyer, a Martial Law Tribunal was never contemplated to be one for the trial of cases involving delicate interpretations of difficult sections of ordinary enactments. Such tribunals are properly designed only for summary justice being meted out to men who are caught red-handed in acts of rebellion or crimes which mean, if left unchecked, complete disruption of society.

One thing more remains to be considered. Why should this case be singled out for special treatment when it is highly likely that an independent and impartial committee is likely to be appointed to overhaul the Martial Law administration in the Punjab and so revise the sentences passed by the Martial Law Court? My answer is that Mr. Roy's case does not admit

of any doubt about it. It is capable of being immediately considered by the Government and if the articles on which the charge against Mr. Roy was based do not amount to sedition - as I hold they do not - he should be immediately set free. Moreover time is an important consideration in this case, for Mr, Roy, as Mr. Andrews has pointed out, has a very delicate constitution.

Young India 11-6-191.9

AN INEQUITABLE SURROGACY LAW

Anil Malhotra*

On November 4, 2015, surrogacy for foreign nationals in India had been banned pursuant to a mandate issued by the Ministry of Home Affairs. On December 1, 2021, the Parliament of India, Lok Sabha House of people passed by a voice vote the Assisted Reproductive Technology (Regulation) Bill, 2021, (ART Bill 2021) after a detailed discussion among all parties in the Lok Sabha House. This Bill seeks to regulate and supervise assisted reproductive technology clinics and banks, prevent misuse of the technology, and promote ethical practice of the services. On 8 December 2021, both the ART Bills 2021 and Surrogacy Regulation Bill, 2020, with amendments were passed by the Rajya Sabha i.e. upper House of Parliament. They now, await the consent of the President of India, whereupon after notification in the gazette of India, they will become Acts of Parliament. The Surrogacy (Regulation) Bill, 2019 (now 2020), though amended, has now proposed that surrogacy shall be available only to infertile Indian married couples and single widowed/divorced women, but all other categories of persons including single men, foreign nationals and foreign couples have been excluded.

Anomalous and inconsistent as it may seem, in the matter of inter-country adoptions, the Ministry of Women and Child Development, has a diametrically opposite policy. It statutorily propagates inter-country adoptions from India for foreigners. JJA 2015,allows a Court to give a child in adoption to foreign parents irrespective of the marital status of a person. The JJA 2015, also authorises State Governments, to recognise one or more of its institutions as specialised adoption agencies for placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified by CARA. The latest guidelines governing adoption of children notified on January 4, 2017, known as the Adoption Regulations, 2017 have streamlined inter-country adoption procedures, thereby permitting single parent adoptions with the exception of barring single male persons from adopting a girl child.

Commercial surrogacy in vogue for foreigners for the past over ten years, has been shut down overnight even though the ART Bill 2014 (now 2019/2020/2021), was then open for public comment till November 15, 2014. However, much has changed since then, and now Surrogacy for foreigners is completely banned, even though the Surrogacy (Regulation) Bill, 2019 (now 2020), has still not been finally tabled before or approved by the Parliament. Tripartite constitutional fundamental rights of stakeholders stand violated in the process. Commissioning foreign parents as persons enjoy the protection of the equality of law and the right to life under Articles 14 and 21 of the Constitution, which cannot be taken away except according to the procedures established by law. The right to reproductive autonomy and parenthood, as a part of right to life of a foreign person, cannot be circumvented by an executive Order, especially when Parliament by law already permits parenthood by inter-country adoptions from India by foreigners. The Surrogacy (Regulation) Bill, 2019 (now 2020),proposes to completely ban surrogacy for foreigners in India except PIOs/OCIs. Even medical professionals, can no longer practice surrogacy for foreign parents, thereby imposing an unreasonable restriction. Surrogate mothers too may claim deprivation of a right of livelihood. All these diverse rights have been curtailed in an undemocratic fashion.

The ART Bill 2021, proposes a complete ban on commercial surrogacy, restricting ethical altruistic surrogacy to legally wedded infertile Indian married couples. The husband must be between 26 to 55 years of age and the wife must be between 23 to 50 years of age. A certificate of proven infertility/expert medical reports of either spouse or of the intending couple from a District Medical Board is mandatory. Overseas Indians, foreigners, unmarried couples, single parents, live-in partners, and gay couples are barred from commissioning surrogacy. Only limited women in the category of close family relatives are allowed to be surrogates. The

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surrogate cannot be an NRI or a foreigner. The close relative can only be a surrogate mother once in a lifetime. Indian couples with biological or adopted children are prohibited to undertake surrogacy. In the process of surrogacy, only medical expenses will be allowed to be paid and no other funds can be given or spent. Commercial surrogacy, among other offences, will entail imprisonment for a term of at least ten years and a fine extending to rupees ten lakhs. Compensated gamete donation has also been banned. All surrogacy clinics will require mandatory registration under the new law. National and State Surrogacy Boards shall advise, review, monitor and oversee implementation of the new law. Hence, there is a complete clampdown on surrogacy.

The possible Government logic banning foreign surrogacy to prevent its misuse, seems counterproductive. Rich Indian commissioning parents can still exploit vulnerable surrogate mothers through watertight contracts. Barometers of domestic altruistic surrogacy, will be a vent for corruption and exploitation, sweeping the business of surrogacy into unethical hands in an underground abusive trade of black market. The ends will defeat the means. Commercial surrogacy may still flourish without abandon.

Permitting limited conditional surrogacy to married Indian couples and disqualifying other persons on the basis of nationality, marital status, sexual orientation or age, does not appear to qualify the test of equality or of being a reasonable classification, satisfying the object sought to be achieved. Further, the right to life, enshrines the right of reproductive autonomy, inclusive of the right to procreation and parenthood, which is not within the domain of the State. It is for the person and not the State to decide modes of parenthood. It is the prerogative of person(s) to have children born naturally or by surrogacy in which the State, constitutionally, cannot interfere. Moreover, infertility cannot be compulsory to undertake surrogacy. A certificate of "proven infertility" or expert medical reports, are a gross invasion of the right of privacy which is part of right to life under Article 21 of the Constitution. Democratically, all perspectives must be considered before opinions are voiced, conclusions are drawn, and decisions are taken or announced. The view of the Government cannot be super imposed over the will of the people.

The 2018 judgment of the Supreme Court in *Shafin Jahan (AIR 2018 SC 1933),* recognises the right to choose one's life partner as an important facet of the right to life holding that social approval of intimate personal decisions should not be the basis for recognising them. A nine Judge Bench of the Supreme Court in *K.S. Puttaswamy,(2019 (1) SCC 1)* held that a promise of a right of privacy is embedded in Article 21 of the Constitution. In *Navtej Johar (AIR 2018 SC 4321),* Section 377 of the Indian Penal Code, 1860 which criminalised consensual homosexual relationships was read down and declared unconstitutional. The Supreme Court liberalizes equality and equal protection of laws whilst the Legislature restricts it

The rational approach would be to control and coordinate by a selective screening process of checks and balances. A similar parallel exists in matters of adoptions. CARA, a statutory body under the JJA 2015, functions smoothly to regulate all adoption matters. A regulated, defined, and effective procedural mechanism rules out all possible unapproved adoptions. Law steps in to check, but not to bar eligible persons from adopting children. Hence, a similar balanced approach in matters of surrogacy requires serious introspection. Surrogacy in vogue for over a decade cannot be stamped out of existence by law. Its practice ought to be regulated and coordinated, without offending equality of law and equal protection of laws to persons and not only citizens in a democratic society.

However, with the fast-paced advancement of medical science, and evolution of understanding of society on what it means to have a family, the ART and surrogacy law is being enacted in the opposite direction. Despite the development of various ART procedures and demand for surrogacy, most of this benefit remains outside the purview of legally binding regulatory frameworks in India. At this crucial juncture of the intersection of medical science and the law, interests of various stakeholders need to reconcile. The commissioning couples irrespective of marital status, nationality, or religion, besides the donors, surrogates, the medical fraternity, and the society, often find themselves at par, but at variance and in conflict with law. The consideration of the overall society as a stakeholder is critical, and this is why an appropriate regulatory law needs to be put in place. It is in this perspective that the role of regulatory frameworks becomes imperative. Hence, it is for the Government to make a restrictive and regulatory law and not banish surrogacy. Thus, there can be no dictatorship in surrogacy.

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"A Man's life is like a well, not like a snake. It should be measured by its depth, and not by its length."

– Austin O'malley, Keystones of Thought

"Astrology is like a weather report; it tells you what conditions you are likely to face in the future. If the weatherman says it's probably going to rain, you bring an umbrella. If you follow that advice, you won't get wet."

– Lee Goldberg, Mr. Monk and the Blue Flu

"Suffering is part of the human condition and it comes to us all. The key is how we react to it, either turning away from God in anger and bitterness or growing closer to HIM in trust and confidence."

– Billy Graham, Just, As I am

" The people who succeed the most are the people who have failed the most, because they are the people who have tried the most."

– Anonymous

" The dreamer is one who can only find his way by moonlight, and his punishment is what he sees the dawn before the rest of the world."

– Oscar Wilde

"Educated people change themselves according to the situation. But the experienced people change the situation according to them."

– Anonymous

"Never break four things in our life – Trust, Relation, Promise & Heart; because when they break, they don't make noise, but pains a lot."

– Charles Dickens

"Keep away from people who try to belittle your ambitions. Small people always do that ,but the really great make you feel that you, too, can become great."

– Mark Twain

" Our mind is the greatest cheater in this world, it makes thousands of different excuses to go by its own way.".

– Buddha

"It is pretty hard to tell what does bring happiness; poverty and wealth have both failed."

– Kin Hubbard

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 C.T. Ravikumar

Justice C.T. Ravikumar was born on 6th January, 1960 in Peermadu, Kerala. He Graduated in Zoology from Bishop Moore College, Mavelikara and obtained an LL.B degree from Government Law College, Calicut. He enrolled as an Advocate with the Bar Council of Kerala on 12th July, 1986, commenced his practice at Mavelikara Courts, and later shifted to Kerala High Court. From 1996 to 2001, served as Government Pleader and 2006 appointed as Senior Government Pleader and later appointed as Special Government Pleader in the High Court of Kerala. He was appointed as Additional Judge of the High Court of Kerala on 05th January 2009 and a permanent judge on 15th December, 2010. In High Court of Kerala served as President of Kerala Judicial Academy and as Executive Chairman of Kerala State Legal Service Authority. Took oath as a judge, Supreme Court of India on 31st August, 2021

THE JUDICIAL DISCIPLINE OF A JUDGE

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

Late Sh.A.P.J. Abdul Kalam, the President of India visited the Supreme Court of India. He spent an hour interacting with the judges. While parting, he gave his message: You are 26 (now 34) Role Models of Judiciary for this nation. The people look up to you for removal of injustice. You must come up to their expectations. You must have a vision to do your best. Thus, every judge is a role model of the court to which he belongs.

The time of a judge is public time. The judge is its trustee. You must sit in the court on time. Also leave the court at the appointed time. The people present in the court should be able to set their watches. Punctuality, in fact, is part of the personality of a judge. The old timers tell us that the judges used to sit dot on time. Not even a minute late. Times have changed. The discipline of punctuality is no more the same. Most judges adhere to this discipline of punctuality. Some abrasions qua punctuality are there. The same must be avoided under all circumstances. The former Chief Justice of India**, late M.Hidayatullah once said: One who does not believe in punctuality of time does not have faith in the Rule of Law.** Punctuality reflects self discipline. More so, in the case of judges at all levels. Justice B.N.Srikrishna, a former Judge of Supreme Court of India shares that when he became a judge of the Bombay High Court, the then Chief Justice of Bombay High Court, Justice P.D.Desai told him that the least a judge can do is to sit dot at the scheduled time in court. This is what he precisely did throughout his judicial journey. Former CJI, Justice Y.K.Sabharwal stressed upon the importance of punctuality**:** the need for punctuality and regularity is not only to have full control over the work but also to have a moral authority to check indiscipline amongst those who are expected to play a role in the functioning of the court, including the court staff, members of the bar, the litigants and the witnesses. Still another former Chief Justice of India, Justice R.C.Lahoti has cautioned the judges that if you cross the limit of 10 dot, it does not matter whether you sit late by 5 minutes or by 10 minutes. You are late in any case. Judges must always make an effort to be on time. My own experience at the Bar tells me that those who follow the discipline of time are always liked and appreciated by the Bar. It is understandable that occasionally the circumstances may conspire that it may render it impossible to be on time. In such a situation, the judge must inform so that the lawyers and the litigants may not wait. This too is part of judicial discipline. I am fully conscious of the fact that judges across the board are hard pressed for time. They not only work during the court hours. They continue to work even at home. They are humans. There are human limitations. Therefore, the time management is most important for judges. Time management is integral part of judicial discipline.

A judge has no personal life. He is a judge 24X7. He is in court from 10AM to 5PM. He continues to be a judge from 5PM to 10AM. The crown of a judge is not taken off even when he is sleeping. He is known as a judge. Whether in court or at home or outside. A judge always follows the disciplined life. He is watched every moment. In court or outside. His behavior and even the body language in court speak of the judge. A judge is bound by the code of conduct throughout. The court of the judge is his laboratory. It is learning and lifelong experience. A judge must have a hobby. May I suggest the reading of Autobiographies, Biographies and Reminiscences! Let me list some of them: 1. My Own Boswell : Memories of M.Hidayatullah, 2. My Life : Law and Other Things Motilal C. Setalvad, 3. Roses in December : M.C.Chagla, 4. The Family Story : Lord Denning, 5. To the Best of My Memory : P.B.Gajendragadkar, 6. Before Memory Fades : Fali S. Nariman, 7. Nani Palkhivala - The Courtroom Genius : Soli Sorabjee; Arvind P. Datar, 8. Of Life and Me : J.L.Gupta, 9. M.K.Gandhi's : The Law and the Lawyers : Maj. Gen. (Prof.) Nilendra Kumar; Neha Chaturvedi, 10. Legends in Law : V. Sudhesh Pai (Portraying 42 Life Journeys of Lawyers and Judges), 11. Legal Eagles : Indu Bhan (Top 7 Indian Lawyers), 12. Courting Politics : Shweta Bansal (9 Top Political Lawyers), 13. My Journey with Law and Justice : Professor (Dr) Balram K Gupta. This list is not exhaustive. Some more can be added in future. These are a great learning. They share their experiences. They are a store house of life experiences of best of minds. Relaxing and Entertaining. They provide enjoyment. Above all, they provide an adult dose of Judicial Discipline.

Women Rights...Woman Rise

Sadiya R. Khan
Advocate

I am not Second to Male
I am not a Lock of Yale
I am not a Subsidy
I am not a Tragedy
I am not a birth-giving machine
I am not Weak
I am not Thrashing entity
I am not Perennial Verbal tease
I am not an Object for Appease
I am not an Abusing Patent
I am Phoenix Woman
I Raise & Rise from Ashes
I build. I stand. I conquer
From Strength to Destiny.
I am, The Woman
Hon`ble eternal anchor for Progeny

Rise against Physical abuse
Rise against Mental Abuse
Voice that Silent torture

Allow last tear visibility
Before you wipe to mute it
Before bearing the pain again
The Constitution stands by you
Believe in Law and Justice
Believe in Protection guaranteed
Read. Orient. Spread Awareness
Learn. Serve. Lead
Women Rights for Women Rise
I am the Phoenix Woman
I Raise & Rise from ashes
I build. I stand. I conquer
From Strength to Destiny.
I am, The Woman
Hon`ble eternal anchor for Progeny

Rise against Name Shame
Rise against Brutal battering
Rise against the Molesters
Rise against Sexual Assaults
Law shall grant you strength
Rise against Chess Feudal
Rise against Domestic violence
Fight for your Constitutional Rights
No more casual approach
Voice against Dowry deaths
Voice against silent Child Marriage
Voice against Flesh trade
Voice against Eve Tease
Voice against wrongful confinement
Voice against Acid attacks
Voice against vulgarity Jibes
Voice against Disowning ease
I am the Phoenix Woman
I Raise & Rise from ashes
I build. I stand. I conquer
From Strength to Destiny.
I am, The Woman
Hon`ble eternal anchor for Progeny

O! Thou the Powerful
Delivering speeches seasoned mockery on Rape
The Shameless disgraceful
Uncouth metaphors in Assembly of Hon
Jibing on Women Modesty
Invisible words of today
Chivalry. Decency. Honesty
Observe and Absorb
The Silent battles
Do Count
One Gender Equality
Visible. Invisible. Blindfolded
Two Political Upstream
Us Vs Them
Three Personal Traumas
Wept. Threat. Swept. Left
Four Societal Root Tethers
Fibrous. Tap. Xylem. Phloem
Five Legal Snail Ace
With Remedies slow paced
Challenges drowning Women Rights
Constitutionally binded to Victory
Losses bestowed by Feudal minds

What is the hurry to set her Marital age?
We Reply. We Welcome
The Hitch is about
Prioritise dire needs
Need to Implement first
Selected Guarantees and Freedoms
Count them along
Guarantee her Freedom to Safety
Guarantee her Freedom to Reason
Guarantee her Freedom to Disassociate
Guarantee her Freedom to Opine against Feudal
Guarantee her right from Birth of Girl child
Live Life and not mere Reside

I am the Phoenix Woman
I Raise & Rise from ashes
I build. I stand. I conquer
From Strength to Destiny.
I am, The Woman
Hon`ble eternal anchor for Progeny
She is labelled FEMINISTS
O! Nomenclatures
To segregate within Feminine
In Hurry and her to Worry
This is against Nature
Read the LAW and Comprehend
This Barbed wired Society
Recognise Women Power
Eschatology belongs to Women
The Global Tornado
Me Too Movement
Covering Continents
And many Graves
Sexual Assaults.
Molestation. Harassments. Testaments
Shut up else Face repercussions
This isn't a Civilised World
Voice it Loud
Let it Sprout. Let it be an Oak
The testing times of Feminine
We are one World
Not a whirl

CENTRAL GOVT FRAMES RULES FOR REVISING PECUNIARY JURISDICTION OF CONSUMER PANELS

Hemant Kumar, ***Advocate***
Punjab & Haryana High Court, Chandigarh

On 31 December 2021, the Department of Consumer Affairs under Union Ministry of Consumer Affairs, Food and Public Distribution notified the Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 vide issuance of a Gazette Notification under relevant provisions/sections of Consumer Protection Act, 2019. The ibid Rules have come into effect with immediate effect.

It has been over and a half year since Consumer Protection Act, 2019 as enacted by Parliament in August, 2019 got enforced/ implemented across the country with effect from 20th July 2020 and 24th July 2020 vide issuance of two separate Central Government Gazette Notifications.

As per existing provisions of prevalent Consumer Protection Act, 2019, District Consumer Disputes Redressal Commissions, known as District Commissions, have jurisdiction to entertain complaints where value of the goods or services paid as consideration does not exceed one crore rupees. State Consumer Disputes Redressal Commissions, known as State Commissions have jurisdiction to entertain complaints where value of the goods or services paid as consideration exceeds 1 crore rupees but does not exceed 10 crore rupees. National Consumer Disputes Redressal Commission, known as National Commission has jurisdiction to entertain complaints where value of goods or services paid as consideration exceeds 10 crore rupees.

However, with issuance of notification of hereinbefore mentioned 2021 Rules as notified with effect from 31 Dec 2021, the pecuniary jurisdiction, of the Consumer Panels has been revised. Henceforth, District Commissions shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration does not exceed 50 lakh rupees.

State Commissions shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration exceeds 50 lakh rupees but does not exceed 2 crore rupees. National Commission shall have jurisdiction to entertain complaints where value of the goods or services paid as consideration exceeds 2 crore rupees.

Now the question arises that if the Central Government can do so means revise the pecuniary jurisdiction of Consumer Panels without Parliament making appropriate amendments in the Consumer Protection Act, 2019. The answer is affirmative since the relevant sections in the Act authorize the Central Government to do so by exercising power conferred under Section(s) 34, 47 and 58 along with Section 101 which pertains to power of Central Government to make Rules.

However, the moot but significant point is that sub-clause (ii) of clause (a) of sub-section (1) of section 47 of the Act stipulates that the State Commission shall also have jurisdiction to entertain complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees. Thus on one hand, the pecuniary jurisdiction of State Commissions would be maximum 2 crore rupees in one aspect and maximum 10 crore rupees in another aspect.

Similarly, sub-clause (ii) of clause (a) of sub-section (1) of section 58 of the Act, 2019 stipulates that the National Commission shall have jurisdiction to entertain complaints against unfair contracts where the value of the goods or services paid as consideration exceeds rupees ten crore. Thus, like State Commissions, the National Commission too shall have pecuniary jurisdiction of above 2 crore rupees in one aspect but above 10 crore rupees in another aspect.

Ideally, the pecuniary jurisdiction of State Commissions ought to be one and same with respect to entertaining complaints both under sub-clause (i) and (ii) of clause (a) of sub-section (1) of section 47 and correspondingly pecuniary jurisdiction of National Commission ought to be also one and same with respect to entertaining complaints both under sub-clause (i) and (ii) of clause (a) of sub-section (1) of section 58 of Consumer Protection Act, 2019.

Furthermore, although Jammu and Kashmir Reorganization Act, 2019 as enacted by Parliament and enforced with effect from 31 October 2019 via its Fifth Schedule also amended the erstwhile Consumer Protection Act, 1986 by omitting the words "except the State of Jammu and Kashmir" thus making Consumer Protection Act, 1986 applicable to J&K with effect from 31 Oct, 2019 but the fact is that with enforcement of new Consumer Protection Act, 2019, the erstwhile Consumer Protection Act, 1986 has got repealed consequently. Even the J&K Consumer Protection Act, 1987 has got repealed. The new and now prevalent Consumer Protection Act, 2019 is not applicable to State of J&K since Section 1(2) of ibid 2019 Act excludes its applicability to J&K. Although since 31 October, 2019 J&K is no more a State but rather a Union Territory along with UT of Ladakh, so even if Consumer Protection Act, 2019 is not applicable to State of J&K as on date, it would not ipso facto mean that it would not also be applicable to UT of J&K. Be that as it may, this ambiguity too remains to be resolved at the earliest for once and all.

LEGAL LUMINARIES

SANJIV SEN

Born on 21st December, 1967 in an illustrious legal family.

Grandson of Sukumar Sen, ICS, First Chief Election Commissioner of Independent India, who conducted the first two General Elections in the country. He was awarded the Padma Bhushan by the Government of India for his exemplary contribution of creating the infrastructure for conducting free, fair and smooth elections which is one of the fundamental bedrocks of Independent India and symbol of our democracy. After the success in our country, he was invited by the Govts of Sudan and Egypt to oversee the election and create infrastructure in these countries.

His granduncle Asoke Kumar Sen, Formerly, Union Law Minister (and communications, steel and mines) and Senior Advocate, Hon'ble Supreme Court of India and MP (Lok Sabha and Rajya Sabha) for more than 4 decades. He is acknowledged as one of the greatest lawyers the country has produced till date.

His granduncle Justice Alok C. Gupta, was the Former Judge, Hon'ble Supreme Court of India.

Sanjiv did his Bachelor's Degree in Commerce (Hons.) in 1989 from St. Xavier's College, University of Calcutta.

He earned Degree in Law (LLB) received in 1992 from the Faculty of Law, University of Delhi.

Sanjiv Is enrolled with the Bar Council of Delhi since August 1992.

Was designated as a Senior Advocate by the Hon'ble Supreme Court of India in February, 2014.

Has worked in the Chambers of Late Mr. Asoke Sen, Senior Advocate in the Hon'ble Supreme Court of India. Was the main Junior Counsel of the erstwhile M/s. J.B. Dadachanji and Company in the Supreme Court of India. Has in the past handled and appeared in a wide variety of important cases in the Hon'ble Supreme Court, Hon'ble Delhi High Court, other High Courts and Tribunals such as NCLT, NCLAT, NGT, NCDRC etc.

Has handled a wide variety of cases in the Hon'ble Supreme Court of India and a large number of these cases have been reported in the leading law journals throughout the years.

Has been in the Senior Arguing Panel of the Central Government under Attorney General Soli Sorabjee between 1998 and 2004 and has been representing various ministries/ departments of the Central Government in the Hon'ble Supreme Court, during that period and closely assisted Attorney General Soli Sorabjee in important matters.

Appointed Standing Counsel for the Municipal Corporation of Delhi, since 2003 in the Hon'ble Supreme Court of India and till 2014, for 11 years. Has handled a large volume of matters of great public importance successfully including several Public Interest Litigations, Pollution and Environmental matters relating to Delhi, the Sealing/ Master Plan Delhi related matters, Demolition/ Illegal construction related matters, Uphaar tragedy matters, Shifting of industries to designated areas matters, Misuse of Parks and Green area in Delhi matters, Construction of the first modern abattoir/ slaughter house in Delhi matter which was monitored by the Hon'ble Supreme Court of India, Ridge/ Green area matters, Service matters, Contractual disputes, Tender matters, etc., etc. Appears in notable and important matters for the MCDs in the Supreme Court and Delhi High Court.

Regularly appears for Public Sectors like Air India, NTPC etc in important matters.Was also Counsel for the New Delhi Municipal Council (NDMC) in the Hon'ble Supreme Court of India. Has represented the NDMC in several matters of public importance

Is representing and has appeared in several matters relating to the Jaipur Royal Family in disputes relating to the legacy of late Maharaja Sawai Man Singh of Jaipur and Late Rajmata Gayatri Devi of Jaipur in the Hon'ble Supreme Court of India, Hon'ble High Court of Delhi, National Company Law Tribunal and NCLAT.

Has also represented the Kashmir Royal Family in constitutional and other matters on behalf of Late Maharaja Hari Singh of Kashmir and Dr. Karan Singh of Kashmir and other Royal Families.

Labour Laws Q/A

CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

RELATIONSHIP OF EMPLOYER AND EMPLOYEE – FACTORS FOR DETERMINATION

What are the main factors for determining relationship of employer and employee?

Whether a particular relationship being employer and employees engaged through the contractor is genuine or camouflage is essentially a question of fact to be determined on the basis of features of relationship hence to be adjudicated by the Industrial Tribunal and neither by the Administrative Tribunal nor by the High Court. In determining the relationship of employer and employee 'control' is one of the important tests but is not to be taken as sole test.[1]

The Karnataka High Court[2] has given the tests to be applied for determining the existence of master and servant relationship are as to when it can be termed as a sham contract.

Who pays?

For whose benefit the workmen work?

Under whose supervision?

Whether disciplinary action can be taken?

If so, by whom?

Has the employer the right to reject the end product?

Even though the workers through the contractor have been working for many years but the Apex Court, in a catena of cases, has held that this would not be conclusive factor determining nature of relationship between the parties as held by Bombay High Court. It was further clarified that merely because a register is maintained by the principal employer for the purpose of attendance of workers of the contractor, that by itself cannot be a factor which would disclose the complete control by the company over these workmen hence no fault can be found with the Award of the Tribunal holding that the principal employer did not exercise any control or supervision.[3]

Well-recognised tests, for ascertaining as to whether the workman is employee of the principal employer or the contractor. Also 'whether the principal employer (i) pays the salary instead of the contractor, (ii) controls and supervises the work of the employee, and (iii) regulates the employment of the employee'.[4]

Wages/salary payment, control and supervision are the main deciding tests if the workmen are of contractor's employees or of principal employer's employees. Hence, mere control and supervision of the contractor's employees by the principal employer will not make them employees of the principal employer because when the contract is for supply of labour, necessarily the labour will work under the control and supervision of the principal employer.[5] Mere non-registration under the Contract Labour (Regulation and Abolition) Act, 1970 by the principal employer and contractor would not create relationship of employer-employee between principal employer and contractor's labourers.[6] When the relationship of employer-employee is missing, the provisions of Contract Labour (Regulation and Abolition) Act, 1970 would not apply.[7]

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

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'RIGHT TO REPAIR' REQUIRES LEGAL SUPPORT TO PICK- UP PACE

Hasan Khurshid, *Associate Editor*
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Recently, electronic giant, Apple announced that it would begin selling the parts, tools and instructions for customers to repair their own iPhones. The iPhone maker is announcing 'Self-Service-Repair', in which knowledgeable customers can complete their own repairs with access to original parts, tools, and manuals. This is important even if you don't have an Apple device since the move opens doors for other companies to do the same.

What is the right to repair?

The right to repair electronic devices such as smartphones and computers, refers to the concept of allowing end-users or consumers as well as businesses to repair electronic devices they own or service without restrictions imposed by manufacturers. The idea behind the concept is to render electronics easier and cheaper to repair with the aim of prolonging the lifecycle of e-devices and also reducing waste stream caused by broken or unused devices. In the recent time, due to complex way of designing and software locks, electronics have become more difficult to fix. As such, 'right to repair' is right to fix or set right the fault in anything you own or get it fixed or repaired by someone who can do it, instead of taking the device for repair to the company which sold it to you.

Two reasons why it matters

(1) The first reason is to promote right to repair is that the manufacturing companies, especially technical firms tend to overprice replacement parts to consumers for product and to encourage them to buy a new gadget rather than to fix their old ones. Consumers given no choice are compelled to buy a new part. It is estimated that more than half of the population of the western world has one or more used or broken electronic devices at home that are not repaired due to unaffordable repair cost. The right to repair movement tries to address these issues by proposing legislation obligating manufacturers to allow access to spare parts and repair tools at fair market prices and design devices in a manner that allows easy repair with the

objective of preferring repair over replacement.

(2) The second reason is that such a practice adopted by manufacturers not only hits the wallet of the consumer but also creates environment issues since mountains of e-waste have become a big environment challenge before the nations, India being no exception.

What the digital repair movement wants?

(a) The digital repair movement wants to publicly make information available about manuals, software update and schematics.

(b) It aims to make original tools and parts of the device available for individual sale.

(c) It permits the user of the device to unlock or modify the software of a device.

(d) As a long term objective, the manufacturer will allow the designs for repairs.

Countries that have taken some action

The Federal Trade Commission of United States has recently announced that it would ramp up action against tech companies who are making it difficult for users to repair devices. This has led some tech companies falling in line.

Microsoft for example has agreed to expand its repair options and incorporate repairability into their design. The British government introduced 'Right to Repair' law that went into effect on July 1,2021. The rules pertaining to right-to-repair have been introduced to legally bind manufacturers to make spare parts available to users but the order is restricted to electrical appliances and not for the entire e-gadgets. The law gave companies a two-year grace period to come into compliance. In Europe, similar laws have been made mandating appliances repairable up to 10 years. the trend of making one's repairs to devices spread from east into Western Europe in 2010s. In July 2017, the European Parliament approved that member states should pass laws that give consumers the right to repair their electronics.

In India, it is estimated that 3.23 million metric tonnes per year e-waste is generated, making it the third largest dumping country globally. Despite this fact, India has no legislation that gives consumers right to repair. Some consumers avail the services of intrepid repair shops but that is not the way out.

The background: The right to repair concept has generally come from the United States. The earliest known published reference using the phrase comes from the auto-industry dating back to 2003, followed by subsequent efforts by US Congress to pass legislation. The automotive industry , Massachusetts passed the United States' first Motor Vehicle Owners' Right to Repair Act in 2012, according to which it became mandatory for automobile manufacturers to sell the same service materials and diagnostics directly to consumers or to independent mechanics, similar to fashion they provide exclusively to their dealers.

In the year 2013, the Digital Rights to Repair Coalition, also known as The Repair Association was officially founded, using website: repair.org, in New Jersey. The aim of the coalition was to support the aftermarket for technology products by way of voicing for repair-friendly laws, standards, regulations and policies. It's members are engaged in repairs, resale, refurbishment, reconfiguration and recycling regardless of industry.

Members of the Coalition Advisory Board (https://www.repair.org/aboutus) include industry experts in repair, cyber-security, copyright law, medicine, agriculture, international trade, consumer rights, contracts, e-waste, eco-design standards, software engineering and legislative advocacy.

Dr Surat Singh, Harvard and Oxford educated Supreme Court and international lawyer, welcoming the move by world famous Apple phones of supplying parts for repairs, said, " The greatest challenge by these big multinational companies is how to ensure fair treatment to customers. These companies are so big that they dictate their own rules. They enjoy the monopoly in their given products. If the spare parts are not available, one cannot enjoy the product to its fullest capacity. So the right to repair is the right which can be demanded by consumers to be provided to them as and when needed. There should be a right to repair. It is the right that a free market should provide that is why antitrust laws are available in countries like the USA and Competition Laws are there in India. In fact ,if a company insists on getting the repair done at their own workshops only ,it will amount to unfair trade practice and tying arrangements. Unfair trade practises and tying arrangements are not permitted under Competition Laws. In fact, Competition Commission of India (CCI) passed an order imposing heavy cost on big companies for their unfair trade practises of compelling consumers to get their repairs

done only from those companies' workshops and from nowhere else. Such practises are not fair to the customers and are prohibited in law."

"It matters a lot whether you have a right to repair or not. For example, if I can get my Mercedes repaired in Mercedes workshop as they are charging 2,00,000 rupees for a part, whereas the same part of Mercedes can be made available for 50,000 rupees in the open market and I can get it fixed by paying 5,000 to a mechanic. As a consumer, why should I be compelled to shell out 2,00,000 rupees?", questioned Dr Surat Singh.

The learned lawyer further said, "As I said before, in modern capitalist society, big multinational companies like Apple, Google, Tesla, Coca Cola, Facebook, Microsoft enjoy much more power than many States. In the 18th century the danger to individual freedom was from kings, today the danger to individual freedom and fundamental right to fairness come more from multinational companies. The task of law is to empower individuals and institutions against overarching from any powerful challengers, whether they are kings or companies. If the company has the right to earn profit, individuals have the right to fair treatment . 'Right to Repair' is a part of that fundamental right of fair treatment.

Wing Commander S. K. Sharma, a high profile retired officer from Indian Air Force and an Author said, "In fact, 'Right to Repair' campaign is to give every consumer and small business access to the parts, tools and service information they need to repair products so that we can keep things in use and reduce waste. It will allow a customer to repair his instrument, on his own. What the manufacturing companies are apprehending is: If we give customers the right to repair, then they will replace genuine parts with fake ones and try to find shortcuts by getting cheaper products - which can be dangerous especially in the likes of Tesla motors who brought this technology after an intensive research. For customers on the other hand, it is also important to get companies to actually create products that can be repaired so that even a third-party, an independent repair shop can accomplish the task at much reduced cost for the buyer."

Sharma further said, "It matters because you own the product and should be allowed to repair it. You own the product and have paid for it. Besides, this right is environment friendly. People can continue using the products that they bought for longer usage, and not have to throw them away just because a part goes bad. On the other side, millions of people can buy cheaper products from others, get them repaired and use them, instead of the product getting thrown away, creating unnecessary urban e-waste."

Giving the legal maintainability on 'right to repair' Sharma said, "The government should legislate the issue as it will give more independence and control to the consumer as there is reservation from manufacturers who want to remain in control of the products they manufacture, and compel people to buy more products with greater frequency."

Wing Commander Sharma, giving brief background of the concept matter said, "On November 17, 2021, Apple announced 'Self-Service-Repair', which will allow customers access to Apple genuine parts and tools. This programme was supposed to start in early 2022 and will be available first to i-phone 12 and 13 followed by Mac computers featuring M1 chips. It is a great start as it saves the environment and has the potential to pull millions of people out of the throw-away economy. People can refurbish and use old phones. The fact that Apple has started it is great. Apple is one of the world's biggest consumer facing companies. However, Apple's repair programme is restrictive, covers very few parts and devices - battery screen and camera. But it is a start and should have a ripple effect across the tech world."

"There are two sides to the right to repair. Companies' argument against right to repair - People should be safe - is also a perfectly reasonable argument to make. Also, as technology gets better, its getting more integrated and less repairable. But the right to repair is a step in the right direction as it is consumer-friendly, and this is the direction in which more companies should move", Sharma concluded.

Neeleshwar Pavani, an erudite Supreme Court lawyer, feels, "Apple is the biggest tech-giant in the world, its consumer base has increased manifold ever since it launched its iPhones a little over a decade and a half earlier and has been the prime preference of people for its simple user-friendly interface. The company has acquired a reputation for innovation and novelty, which is one of the reasons for its unparalleled success in the tech-industry. It has over time used

its brand name for creating a monopoly over its contemporary tech companies and has with each years' growing success increased the prices of its phones along with trimming down the period of warranty, almost stopped giving accessories such as chargers and earphones and despite having started manufacturing iPhones in India has not slashed its market price."

"The 'Right to Repair' which was lately announced by the tech-giant is therefore pivotal in this front which allows users to repair their own devices after getting replacement parts from a service centres. The right to repair one's own iPhone could be seen as a message from the company that the phone itself is highly user-friendly and simple to manage to the extent that any person with rudimentary know-how of the mechanics of a phone can set it right without going to an Apple Service Centre. They intend to make it possible by providing a manual categorizing different parts of the phone which will serve as a guide to the user."

"Apple's Right to Repair is of no consequence to India at this point of time as the company is considering to kickstart the programme first in the United States in the first quarter of 2022. It would be premature to say that this facility would be extended to India and its base of i-phone users since the manufacturing by the company in India (Chennai) has begun in full force only in September 2020 and India still imports Apple products from abroad which in other words means that the production capacity is lesser than the demand in the Indian market. India is still far from having this facility of self-repairing one's devices."

Pavani further said, "There would be no problem for this policy to be legally maintainable subject to Apple drastically changing the terms and conditions of the use of iPhones.

"My view of this new policy is that it projects to be a good endeavour by making the option available to its customers to self-repair their phone and spend extra money for the services of a technician. In my view, this is also a policy that many people won't be utilizing or following when their phones give them trouble due to reasons of not being adept with technology and for saving more time. It is a smart move on Apple's part to demonstrate that they are not solely a profit-driven organization that charges money for the smallest of changes and it also would disclaim any liability if a person who repairs their product unsuccessfully, which would leave the consumer with the only option of either getting it fixed from the service centre or buy a new phone", concluded Pavani.

Despite the announcement of this programme, Apple recommends that most customers should still visit a professional repair provider and those certified technicians who use genuine Apple parts are the "safest and most reliable way to get a repair". Self Service Repair will be available in the US in early 2022, and will eventually be expanding to more countries later in the year.

YOU MADE YOUR CASE

—The Art of Persuading Judges—

Don't overuse italics; don't use bold type except in headings; don't use underlining at all.

Italicize to emphasize, but do it sparingly. Remember that when too much is emphasized, nothing is. Constant italicizing gives your brief the tone of an adolescent diary, which is not what you should be striving for.

Whenever possible, replace your italics with the device that provides the usual means of emphasis in written English: word order. In phrasing sentences, try to put the punch word at the end. Instead of writing "She held a knife in her hand," write "What she held in her hand was a knife." The latter formulation gives equivalent prominence to the desired word but sounds less excited. But when the only means of making your thought clear is to italicize a word or phrase; do it.

Some-brief-writers ill-advisedly use boldface type within normal text. The result is visually repulsive. Reserve boldface for headings.

As for underlining, it's a crude throwback: that's what writers used in typewriting-when italics weren't possible. Nobody using a computer in the 21st century should be underlining text. To the extent that The Bluebook suggests otherwise, it should be revised.

Trial of Consumer Complaint & Criminal Proceedings

FIRST APPEAL NO. 1263 OF 2018 RATNA GHOSH versus DR. P.K. AGARWAL & ORS. Decided by the Hon'ble NCDRC on: 24th December, 2021

Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS:

(i) Dr. P. K. Agarwal, (OP-1) moved a Miscellaneous Application M.A. No. 245 of 2012 before the State Commission seeking stay of the proceedings before it on the ground that a criminal proceeding on the same charges was also initiated by the Complainant in CR No. 528 of 2011, same was still pending.

(ii) On 13.02.2013 the State Commission allowed the M.A. No. 245 of 2012 and stayed all proceedings before it till disposal of criminal proceedings bearing CR No. 528 of 2011.

(iii) Thereafter before the State Commission the Complainant filed an IA No. 365 of 2017 on 20.11.2017 for vacation of stay granted vide Order 13.02.2013, it was dismissed on 08.02.2018.

OBSERVATIONS:

We have perused the Application for Condonation of Delay in filing the IA No. 365 of 2017. The relevant para is reproduced as below:

"3. That the Impugned Order in MA No. 245 of 2017 dated 13.02.2013 the Petitioner was under the impression that the Criminal proceedings will conclude very soon and therefore she decided to wait for the decision in the criminal proceedings, However, even after 5 years there is no conclusion in the criminal proceedings and the Civil proceedings also remained stayed. Therefore the applicant decide to file IA No. 365/2017. However the said IA No. 365/2017 was also dismissed on 08.02.2018.

4. That the Petitioner is a women and have difficulties in arranging for money and other things needed for filing revision petition before this Hon'ble Commission and it has resulted in some delay in filing the present Revision Petition. The Petitioner was not advised to challenge the Order of the State Commission dated 13.02.2013 immediately after passing of the aforesaid order."

HELD: ***In the case of alleged medical negligence, the simultaneous criminal proceeding is no bar to the initiation, continuation and adjudication in the Complaints filed under the Consumer Protection Act, 1986 more so, when the standard of proof in proceedings under the Act, and Criminal proceedings is entirely different.*** We would like to put reliance on the decisions of the Hon'ble Supreme Court in Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash & Ors. (2013) 7 SCC 622, wherein the question of simultaneous prosecution of the criminal proceedings with civil suit, came up for consideration. Relying on the observations of the Constitution Bench of the Supreme Court in M.S. Sheriff Vs. State of Madras AIR 1954 SCC 397, the Court held that no hard and fast rule could be laid down in this regard. Nonetheless the possibility of conflicting decisions in the civil and criminal courts is not a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, which is not even the case of the Opposite Party here. This is the case of alleged medical negligence and in our considered view fair opportunity to be given to both the sides for holistic adjudication. The aggrieved Consumer has right to seek legal remedy initiate proceedings before Civil and Criminal Courts including Consumer Courts and Professional Regulatory Bodies(PRB). As a matter of fact, having regard to the object and intent of the Act, summary trial of Consumer Complaint has to be given precedence over other cases, be it civil or criminal in nature. The question of double jeopardy, self-incrimination or the binding effect of the findings in summary proceedings under the Act, does not arise on facts, at hand. It is pertinent that, neither the rigors of the Evidence Act 1872, nor of the Criminal Procedure Code, 1908 are attracted in the proceedings under the Act, which provides for an alternative system of consumer justice by summary trial. We are, therefore, of the view that the trial in criminal cases against the Opposite Party, is no ground for stay of proceedings before the Consumer Fora. Without touching to the merits of this case, the orders of the State Commission dated 13.02.2013 in MA No. 245 of 2012 and Order dated 08.02.2018 in IA No. 365 of 2017 are set aside. The instant Appeal is allowed. The Parties are directed to appear before the State Commission on 03.02.2022 for further proceedings. Considering that the Complaint was filed in 2010, we are now in 2022, we request the State Commission to decide this matter expeditiously preferably within six months from today.

HOW WE TRAPPED CAPONE

Frank J. Wilson
Former chief, U.S. Service,
As told to Howard Whitman

When my wife and I left Baltimore for Chicago in 1928, all I said was, "Judith, I'n1 after a fellow named Curly Brown." If I'd told her that Curly Brown was an alias of Scarface Al Capone, she'd have turned the car around then and there and made me take up some respectable trade like piano tuning. My assignment was to find clear proof of income-tax evasion by Capone. In previous years he had filed no tax return or had reported insignificant income.

Art Madden, our Chicago agent-in-charge, told me that hanging an income-tax rap on Alphonse Capone would be as easy as hanging a foreclosure sign on the moon. The Grand Panjandrum of the checkered suits and diamond belts had Cook County in the palm of his hand. He did all his business anonymously, through front men. To discourage meddlers, his production department was turning out fifty corpses a year.

For a base of operations the government gave me and my three assistants an overgrown closet in the old Post Office Building, with a cracked glass at the door, no windows, a double flat-topped desk and peeling walls. I spent months in fruitless investigation through banks, credit agencies and newspaper files.

I prowled the crummy streets of Cicero but could get no clue to show that a dollar from the big gambling places, the horse parlors, the brothels or bootleg joints ever reached Scarface Al Capone. Jake Lingle, a Chicago Tribune reporter, had been seen with Capone in Chicago and Miami and, from the tips I got, he wasn't just writing interviews. So I saw the Tribune boss, Robert R. McCormick, and told him Jake Lingle's help would be appreciated by the United States government. "I'll get word to Lingle to go all the way with you," said the colonel. Lingle was assassinated next day in a subway, right in the busiest part of the city.

One night, in a desperate mood, I decided to check over all the data which my three assistants and I had piled up. By one o'clock in the morning I was bleary-eyed, and while gathering up my papers I accidentally bumped into our filing cabinet. It clicked shut. I couldn't find the key anywhere. Now where'll I put this stuff? I wondered. Just outside, in a neighboring storeroom, I found an old filing cabinet full of dusty envelopes. I can lay this old junk on the table, I thought to myself. I'll put my own stuff in overnight.

In the back of the cabinet was a heavy package tied in brown paper. Just out of curiosity I snipped the string and found three ledgers, one a "special column cashbook." My eye leaped over the column headings: "Bird cage," "21," "Craps," "Faro," "Roulette," "Horse bets." Here was the diary of a large operation, with a take from $20,000 to $30,000 a day. Net profits were for only eighteen months (the books were dated 1925-26) were over half a million dollars.

"Who could have run a mill that size?" I asked myself. The answer hit me like a baseball bat: only three people-Frankie Lake, Terry Druggan or Al Capone! But I had already cleaned up the Druggan-Lake case. Two from three leaves one.

Scarface must have found out that we were closing in. On the inside of the gang I had planted one of the best undercover men I have ever known, Eddie O'Hare. One afternoon word reached me that Eddie wanted to see me at once. When we met, he was red-faced and excited. "You've got to move out of your hotel, Frank. The big fellow has brought in four killers from New York to get you. They know where they keep your automobile and what time you come in and go out. You've got to get out this afternoon!"

"Thanks for tipping me off, Eddie," I replied. So I phoned Judith I had a surprise for her-we were moving to the Palmer House, where she had once said she'd like to live. I left word at my hotel we were going to Kansas and drove to the Union

Station-but right on through and around to Palmer. Judith was completely confused and I hoped AI's torpedoes were, too.

Later Eddie met me with another report: "The big fellow's offering $25,000 reward to anybody who bumps you off!" When the story broke in the papers that Capone had put a price on my head, Judith took it with amazing calm. She simply said, "We're going straight home to Baltimore!" I finally won her over by promising she could be with me as much as possible. Women always think they're bulletproof.

Meanwhile I was working on the handwriting in the ledgers of The Ship. I think we must have collected handwriting samples of every hoodlum in Chicago-from voting registers, savings accounts, police courts. The painful process of elimination finally left me with a character named Lou Shumway, whose writing on a bank deposit slip was a dead twin to that in the ledgers. I heard from a tipster that Shumway was in Miami, probably working at Hialeah or the dog tracks. All I had to go on was a description: "Shumway is a perfect little gentleman, refined, slight, harmless-not a racetrack sport at all."

In February 1931, I stood by

the rail at Hialeah looking at the man I had been stalking for nearly three years. Scarface Al Capone sat in a box with a jeweled moll on either: side of him, smoking a long cigar, greeting a parade of fawning sycophants who came to shake his hand. I looked upon his pudgy olive face, his thick pursed lips, the rolls of fat descending from his chin-and the scar, like a heavy pencil line across his cheek. When a country constable wants a man, I thought, he just walks up and says, “You’re pinched.” Here I was, with the whole U.S. government behind me, as powerless as a canary.

Two nights later, I spotted the “perfect little gentleman” my tipster had described, working at a dog track. I tailed him home, and picked him up next morning as he was having breakfast with this wife. He turned pale green. When I got him to the Federal Building, I said cold-turkey: “I am investigating the income-tax liability of one Alphonse Capone.”

Gentleman Lou turned greener yet, but he pulled himself together and said, “Oh, you're mistaken. I don't know Al Capone."

I put my hand on his shoulder. “Lou,” I said, "you have only two choices: If you refuse to play ball with me, I will send a deputy marshal to look for you at the track, ask for you by name and Serve a summons on you. You get the point, Lou. As soon as the gang knows the government has located you, they will probably decide to bump you off so you can't testify.

“If you don't like that idea, Lou, come clean. Tell the truth about these ledgers. You were bookkeeper at The Ship. You can identify every entry in these books-and you can tell who your boss was. I'll guarantee to keep it secret until the day of the trial that you are playing ball with me. Y01J will be guarded day and night, and I'll guarantee that

Mrs. Shumway will not become a widow." Lou quivered like a harp string but finally gave in. I spirited him out of Miami and hid him in California.

Next morning I went with U.S. Attorney George E.Q Johnson to the chambers of Federal Judge James H. Wilkerson, who was to sit in the Capone trial. The judge was reassuring somehow he seemed like a match for Scarface AI. Sure enough, the ten names Eddie had given me tallied with the judge's list. But the judge didn't seem ruffled. He said calmly, "Bring your case into court as planned, gentlemen. Leave the rest to me.”

Judge Wilkerson called his bailiff to the bench. He said in crisp, low tones, “Judge Edwards has another trial commencing today. Go to his courtroom and bring me his panel of jurors.

Take my entire panel to Judge Edwards." The switch was so smooth, so simple. Capone's face clouded with the black despair of a gambler who had made his final raise-and lost.

The trial marched-on. My gems, Gentleman Lou Shumway and the bug-bedeviled Ries, stood their ground on the witness stand, though Capone and Phil D’Andrea were staring holes through them the entire time. I kept my eyes on D’Andrea. When he got up to stretch during a recess I could have sworn I saw a bulge in his right hip pocket. But no, I thought, there wasn't a crumb in the world who would dare to bring a gun into federal court. I saw him stretch again. I had the boys send in word that a reporter wanted to see him. I followed him out of the courtroom. Nels Tesem and Jay Sullivan, my colleagues, led him down the corridor. As we passed Judge Wilkerson's chamber I shoved him inside. “Give' me that gun!” I snapped. D’Andrea handed it over. “Give me those bullets!” He ladled out a handful of ammunition.

Judge Wilkerson interrupted the trial to cite D’Andrea for contempt and send him away for six months. Capone growled, “I don't care what happens to D'Andrea. He's a damn fool. I don't care if he gets ten years.” Al was cracking.

The trial wound up in mid-October. As the jury returned I felt sure we had won. “Centlemen,” intoned Judge Wilkerson, “what is your verdict?”

"Guilty!" The courtroom broke up like a circus after the last performance. Reporters ran out of court. Lawyers ran. Mobsters ran. Everybody seemed to be running but Scarface Al Capone. He slumped forward as if a blackjack had hit him.

When I got home, Judith cried, “You did it! I knew you were going to do it all the time!” Then she sighed. “Now can we go back to Baltimore?"

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:

Vrikshasana

Benefits: Joints of the legs, knees and ankles become flexible;

Loosens the pelvis;

Tones up the leg muscles and strengthens the arches, tendons and ligaments in the feet;

Numbness and rheumatic pain in the legs will be alleviated;

Neuromuscular coordination can be gained.

Procedure:

Stand erect. Keep the feet together and the knees straight with arms on the respective sides. Without bending the left knee, lift the right foot and grasp the ankle with the right hand. Fold the right leg double at the knee-joint. Without losing your balance, place the right heel at the top of the left thigh, using both hands. The right sole must press the inside of the left thigh with the toes pointing downwards. The folded leg must be at right angle to the other leg and both thighs must be in alignment. Balance yourself on the left leg. Join the palms and fingers and touch the middle of the chest. Fingers should point upwards. Keeping your hands together, raise them slowly a little above your head. Keep the arms slightly bent. Stretch up and stand erect. Keep your balance. Look straight ahead and be relaxed. Lower the hands slowly to the middle of the chest again. Return to the starting position, lowering your right leg. Practice reversing the legs.

Caution: People who have high blood pressure must not raise their arms over their head while doing the tree pose.

Healthy Food

Pomelo

Pomelo (*Citrus maxima* or *Citrus grandis*) is usually pale green to yellow when ripe, with sweet white (or, more rarely, pink or red) flesh and very thick albedo (rind pith). It is the largest citrus fruit. The rind of pomelo contains a high amount of bioflavonoid which stops cancer cells from spreading in breast cancer patients by ridding the body of excess estrogen. The juice of pomelo is beneficial in the digestive system. Pomelo has pectin which is effective in reducing the accumulation of arterial deposits. The high content of vitamin C helps to strengthen and maintain the elasticity of arteries. Pomelo can aid in the weight loss process, because the fat burning enzyme in pomelo can help to absorb and reduce the starch and sugar in the body. Pomelo can even help in cases of fatigue, diabetes, fever, insomnia, sore throat, stomach and pancreatic cancer.

Recipe of the Month

Pomelo Salad

Ingredients:-

- 2 tablespoons juice from about 2 limes, plus more to taste
- 2 tablespoons palm or brown sugar, plus more to taste
- 1 medium clove garlic, minced
- 2 teaspoons soy sauce
- 1 small red Thai bird chili, finely sliced (optional)
- Thai-style dried crushed red pepper, or red pepper flakes, to taste, plus 3 to 4 whole dried red chilies, if desired
- 1 pomelo, segments removed and cut into 1-inch

pieces

• 1 jicama bulb, peeled and cut into 1/2- by 1/2- by 2-inch batons

• 2 cups shredded napa cabbage

• 1 cup picked mung bean sprouts

• 1/4 cup crushed roasted peanuts

• 1/2 cups roughly chopped fresh cilantro leaves and tender stems

• 2 tablespoons store-bought or homemade Thai-style fried shallots

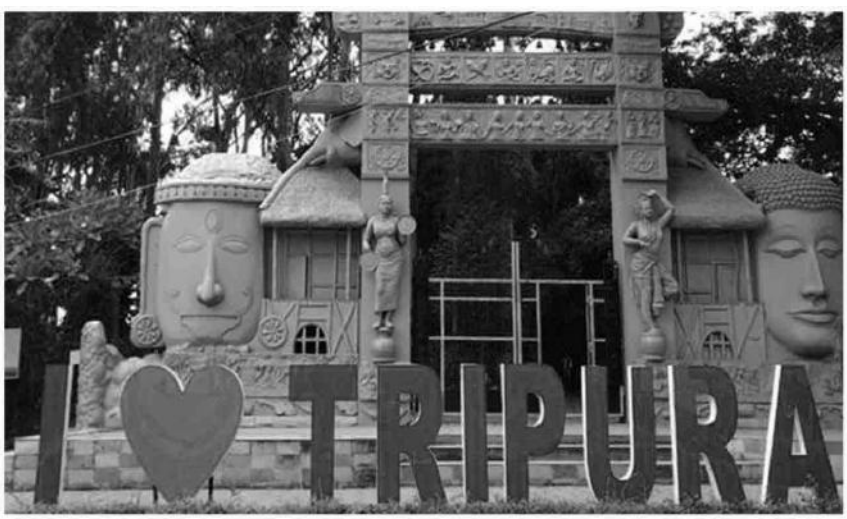
Procedure:-

Combine lime juice, sugar, garlic, soy sauce, fresh chili (if using), 1 teaspoon dried chili, and whole dried chilies (if using) in a large bowl and whisk until sugar is completely dissolved. Add pomelo, jicama, cabbage, sprouts, peanuts, and cilantro. Toss to combine, then season with more chili, lime juice, and sugar if desired. Transfer to a serving platter, sprinkle with shallots, and serve.

Happy Holidays

Tripura

Tripura is a State in North-East India. Nestled in the remote northeast hills of India, bordering Assam and Mizoram, Tripura is one of the most romantic places. Tripura is replete with a host of enchanting tourist attractions. **Ujjayanta Palace** is one of the prime attractions in Tripura. The palace is the royal residence of the Manikya Kings of Tripura, featuring massive Mughal style gardens, splendorous tile floor, lofty ceilings and aesthetic doors of curved wood. In the grounds of the palace, there are two temples - **Umanneshwar** and **Jagganath** - both of which are in somber ochre colour. The city is also home to State Museum, Tribal Museum, a number of temples and Buddhist sites. Another major place of attraction is the **Kunjaban Palace** that is located at a distance of 1 km from the Ujjayanta Palace on a picturesque hillock. The exquisite southern part of the Palace is open to the public and has been named as Rabindra Kanan. Located about 55 km from Agartala is **Neermahal**, the water palace, which is arguably Tripura's most important tourist destination. It is a summer resort built in the middle of a lake named Rudrasagar. **Deotamura** is a salubrious spot on the banks of River Gomati, renowned for its rock-cut images. The images of all major Hindu deities like Shiva, Ganesh, Vishnu, Kartikeya, Mahishasur Mardini Durga and other gods and goddesses are skillfully carved out of stone. The massive images on the vertical rocks are exceptionally grand. There are about 37 rock cut images located on the hill and boat travel is available for tourists to visit the place and partake in the scenic view of the hill and its sculptures. **Pilak** is indeed a place of attraction for its archaeological remains of 8th and 9th centuries AD. Located at a distance of 100 km from Agartala, Pilak seems a combination of shrines of Hindu and Buddhist faiths. **Unakoti** is widely known for its rare stone and rock cut images of the 7th - 9th century AD. The place is rich with many rock-cut sculptures and quite a few made out of sandstone. Green vegetation all around further enhances the aesthetic value of the place. **Sepahijala Wildlife Sanctuary** is a vast forestland, rich in various flora and fauna. One can spot the rare breeds of spectacled monkeys, deer and as many as 150 species of birds. The romantic lake, **Kamala Sagar** is abundantly popular with the picnickers while the **Kali Temple** atop the hillock, that draws streams of devotees, dates back to the 17th Century. **Jampui Hill** in Tripura is the highest hill range of Tripura - situated at an altitude of 3000 ft. above sea level. Various view points in the **Jampui Hill range** provide awe-inspiring views of the valley. The sunrise and sunset from different points on the Jampui Hills is an optic feast that no one should miss. Tripura boasts of various species of migratory birds that are noticed during the winter and it has rich reservoir of natural and cultured fish. The natural beauty, the pleasant weather, the rich flora and fauna, orchids and orange gardens, grand architecture and rich cultural heritage makes it an ideal destination for the visitors.



Supreme Court Guidelines

DRUGS AND COSMETICS ACT, 1940

DRUGS AND COSMETICS ACT, 1940

STORAGE OF SEIZED NARCOTICS

Union of India **v.** Mohan/al and Others

(2016) 3 sec 379: 2016 (1) SCALE 646: 2016 (159) AIC 87: JT 2016 (1) SC 596

Criminal Appeal No. 652 of 2012

Dated: January 28, 2016

BENCH: Justices T.S. Thakur and Kurian Joseph.

Guidelines were issued on the disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyance.

Disposal of Narcotic Drugs and Psychotropic and controlled Substances and Conveyances shall be carried out in the following manner till such time the Government prescribes a different procedure for the same:

Cases where the trial is concluded and proceedings in appeal/revision have all concluded finally: In cases that stood finally concluded at the trial, appeal, revision and further appeals, if any, before 29th May, 1989 the continued storage of drugs and Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is of no consequence not only because of the considerable lapse of time since the conclusion of the proceedings but also because the process of certification and disposal after verification and testing may be an idle formality. We say so because even if upon verification and further testing of the seized contraband in such already concluded cases it is found that the same is either replaced, stolen or pilferaged, it will be difficult if not impossible to fix the responsibility for such theft, replacement or pilferage at this distant point in time. That apart, the storage facility available with the States, in whatever satisfactory or unsatisfactory conditions the same exist, are reported to be over-flowing with seized contraband goods. It would, therefore, be just and proper to direct that the Drugs Disposal Committees of the States and the Central agencies shall take stock of all such seized contrabands and take steps for their disposal without any further verification, testing or sampling whatsoever. The concerned heads of the Department shall personally supervise the process of destruction of drugs so identified for disposal. To the extent the seized Drugs and Narcotic Substances continue to choke the storage facilities and tempt the unscrupulous to indulge in pilferage and theft for sale or circulation in the market, the disposal of the stocks will reduce the hazards that go with their continued storage and availability in the market.

Drugs that are seized after May, 1989 and where the trial and appeal and revision have also been finally disposed of: In this category of cases while the seizure may have taken place after the introduction of Section 52A in the Statute book the non-disposal of the drugs over a long period of time would also make it difficult to identify individuals who are responsible for pilferage, theft, replacement or such other mischief in connection with such seized contraband. The requirement of para 5.5 of standing order No. 1/89 for such drugs to be disposed of after getting the same tested will also be an exercise in futility and impractical at this distant point in time. Since the trials stand concluded and so also the proceedings in appeal, Revision etc. insistence upon sending the sample from such drugs for testing before the same are disposed of will be a fruitless exercise which can be dispensed with having regard to the totality of the circumstances and the conditions prevalent in the maalkhanas and the so called godowns and storage facilities. The DDCs shall accordingly take stock of all such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances in relation to which the trial of the accused persons has finally concluded and the proceedings have attained finality at all levels in the judicial hierarchy. The DDCs shall then take steps to have such stock also destroyed under the direct supervision of the head of the Department concerned.

Cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme

Court: In such cases the heads of the Department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16thJanuary, 2015 before the Drugs Disposal Committees concerned and steps for disposal of such Narcotic Drugs and Psychotropic and controlled Substances and Conveyances taken without any further loss of time.

Guidelines regarding seizure and storage of Seized drugs:

1. No sooner the seizure of any Narcotic Drugs and Psychotropic and Controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order.

2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1/89 to ensure proper security against theft, pilferage or replacement of the seized drugs.

3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

4. Disposal of the seized drugs currently lying in the police maalkhans and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading 'disposal of drugs'.

RIGHT TO BE FORGOTTEN

The legal notion of the right to be forgotten is evolving in India and it falls under the category of the right to privacy. Recent events and court submissions have sparked a long-overdue conversation on the subject

Lokendra Malik and **Balram**

"But each day brings its petty dust, our soon-chok'd souls to fill. And we forget because we must, and not because we will. These lines were written way back in 1852 by Matthew Arnold in his famous poem *'Absence'*. Forgetting is part of the human psyche. The declaration of privacy as a fundamental right by the nine-judge Constitution bench of the Supreme Court in the case of *K. S. Puttuswamy v. Union of India* was the onset of privacy jurisprudence in India which is still evolving. The court at that time had said, "The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution".

The right to be forgotten is not a novel concept in Europe. In Switzerland, courts had repeatedly extended the right to be forgotten to those sentenced for criminal offences, as a part of what the Swiss call 'rights of the personality' under the Swiss Civil Code. Over time, an offender's interest in being forgotten and society's interest in rehabilitation take precedence.

Recently, a submission of the Central Government in the Delhi High Court suggested that the legal notion of the right to be forgotten is evolving in India and it falls under the category of the right to privacy. A petition was filed by two international businessmen seeking an order of right to be forgotten, as well as the removal of a judgement and a news article related to their arrest in a conspiracy and forgery case in 2002. This was met with a response from the Ministry of Electronics and Information Technology in the High Court, wherein it submitted that, "It is for the platforms to consider the requests of the petitioner and remove such judgments or orders. The Ministry neither plays a significant role nor its presence is required in the matter. The petitioner seeks removal of court order-related information available online. This Hon'ble Court may directly issue directions if any to the concerned respondents other than Union."

Nonetheless, the sensitivity of the personal data and information cannot be established directly by the individual concerned; rather, the Data Protection Authority will monitor this (DPA). This implies that, while the proposed bill contains provisions allowing a data principal to request the deletion of his or her data, such requests are subject to authorization by the DPA's Adjudicating Officer. While evaluating the data principal's request, this officer will need to consider the sensitivity of the personal data, the scope of disclosure, the degree of access requested to be restricted, the data principal's role in public life, and the type of the disclosure. This bill has not seen the light of the day and it remains pending in Parliament.

The verdict of the Court of Justice of the European Union in *Google Inc. v. González* was a progression from earlier view on right to be forgotten and its connection with right to privacy. In 2011, Mr. González filed a complaint with the Spanish Data Protection Agency against *La Vanguardia Ediciones*, the publisher of a daily newspaper with a large circulation in Spain, alleging that a Google search for his name returned links to two pages of *La Vanguardia's* newspaper from January and March 1998. Those 13-year-old papers related to a real estate auction to recoup González's social security debts. He requested the Agency for an order compelling the newspaper publisher to remove or amend the disputed pages, as well as an order compelling Google Spain or Google Inc. to delete or conceal personal data belonging to him from search results.

The court stated that search engines exacerbate the invasion of a person's privacy by making the material *"ubiquitous"*. The potentially severe interferences with an individual's rights were not justified only on the basis of the search engine operator's "economic interest". Most significantly, the court found that even processing accurate data that is legal at the time may become incompatible with the law with time. This will be the case if the data are "inadequate, irrelevant, or excessive in regard to the processing purposes... not kept up to date, or... retained for longer than necessary" in light of the purposes for which they were gathered or processed. The most engrossing finding of the court which has been followed closely is that privacy rights entrenched

*The writer(s) are Advocate, Supreme Court of India and Final Year Law Student, Symbiosis Law School Noida respectively.

in the European Charter should generally take precedence over not just the economic interests of the search engine's operator, but also, on occasion, the public interest.

Notably, some Indian courts have also applied this principle in their judgement(s). The High Court of Orissa in the case of *Subhranshu Rout v. State of Odisha*, provided an in-depth assessment of an individual's right to be forgotten in any context. In the relevant case, the High Court was deciding a bail application, where the petitioner, who was indicted in the FIR, had released certain unpleasant photos of the complainant on Facebook against her permission. The Court expressed concern that, while the Act provides for criminal penalties for such offences, the rights of the victim, particularly her right to privacy, which is inextricably related to her right to have those offending images erased, have been left unanswered. The High Court relying on the dictum of the EU Court held that the petitioner's right to privacy had been violated. The court also emphasised the importance of enacting suitable legislation to give remedies in these instances and remarked that adjudicating on practical constraints and technological intricacies is problematic as a result of this void.

The High Court of Delhi again addressed the question of an individual's right to privacy and right to be forgotten, as well as the general public's right to transparency of judicial records, in *Jorawer Singh Mundy v. Union of India*. The petitioner contended that he is an American citizen of Indian ancestry who manages stocks and real estate portfolios, among other things. When he visited India in 2009, he was charged under the Narcotics Drugs and Psychotropic Substances Act. However, the trial court acquitted him of all allegations which was upheld by the Delhi High Court. When the petitioner returned to the United States, he encountered significant obstacles in his professional life as a result of the fact that the High Court's appeal judgement was publicly available on Google for any prospective employer to view in order to conduct background checks prior to hiring him.

Justice Pratibha M. Singh, relying on the Orissa High Court's decision in *Subhranshu Rout v. State of Odisha*, found that the petitioner was *prima facie* entitled to some interim protection. The Court also discussed the right to be forgotten in light of cases decided in the European Union. The right to be forgotten is incorporated into the General Data Protection Regulation (GDPR), which regulates the collection, processing, and deletion of personal data.

It is interesting to see that there is no precedent on the other side of the Atlantic where right to be forgotten can be wielded as a sword, removing publicly accessible information from the Internet. However, the alluring, almost lyrical, concept of a right to be forgotten has periodically appeared in both US and Canadian law. In 1971, Reader's Digest published an article about a Mr. Briscoe, documenting his 11-year-old criminal conviction. The California Supreme Court determined that naming individuals in allegations of historical wrongdoing served no purpose: where "a man has reverted to that legitimate and unexciting existence" enjoyed by others, there is no longer a need to "satisfy the public's curiosity". However, in *Gates v. Discovery Communications Inc.*, the California Supreme Court reversed *Briscoe*, finding it incompatible with its own recent rulings addressing the relationship between the right to privacy and the right to free expression and a free press. *Briscoe's* early promise was snuffed out, and his revival appears exceedingly improbable.

In Canada, the right to be forgotten may well become part of common law, just like the Ontario Court of Appeal determined in *Jones v. Tsige* that a common law right of action exists for "intrusion upon seclusion". Canadian law and legal reasoning sometimes resemble European rather than American patterns of thought. Indeed, the concept of the right to be forgotten existed in Canadian legal thought even before the European court's judgement. This can be seen in various orders of the privacy commissioner of British Columbia where references to the right to be forgotten is made in support of his judgements.

The concept of privacy and the straightforward right to be forgotten trace back millennia: privacy has doctrinal foundations that date all the way back to the Old Testament. Friedrich Nietzsche famously contended that, "Without forgetting it is quite impossible to live at all".

González's name will always be associated with the right to be forgotten, a principle he helped to entrench in law. Google now returns over 40,000 results for his name. Perhaps, when he threw down the gauntlet, he certainly recognised and embraced the irony of his predicament. But more interesting is the fact that this has sparked a long-overdue conversation across the judicial spectrum, one that will undoubtedly continue as we settle remaining debates.

Don't Look Up: A Warning To Be Heeded

Barring a few exceptions, Americans have been the saviours of the world in Hollywood flicks until now, until *Don't Look Up*. Spoiler Alert: if you don't like spoilers, read no further.

Two astronomers — Dr. Randall Mindy (Leonardo DiCaprio) and Kate Dibiasky (Jennifer Lawrence) — discover that a comet between five and ten kilometers wide is hurtling towards the earth with a 99.78% probability of hitting the planet full and square, causing a certain extinction of life on the planet in about six months from the date of the discovery. The astronomers, understandably alarmed, bring the bad news to the notice of everybody in a position to do something about it, including the President of the United States. And what does the President do after making the scientists wait for many hours despite knowing fully well the kind of literally end-of-the-world news they were carrying? "Sit tight and assess," the President says. The son of the Trump-like President rejoices in the fact that the probability of 99.78% was 0.22% short of absolute certainty, meaning a near-certainty, not being a certainty, somehow was good enough news for him.

The film is meant to be a satire, and it hardly feels like one except in short snatches, and even there, things don't seem all that implausible, given that so many things we thought impossible have actually happened and with surprising (or startling) ease, both there in America and here in India. So we are left with the feeling that if those many impossible things could come to happen, why couldn't a few more such?

The President chooses to sit tight and asses in the face of the doomsday news because it's politically inexpedient to act at that point of time, and when she finds herself in a tough political spot, she decides to offer a "presidential apology" to the astronomers and decides to throw everything they have at the problem because, in the changed circumstances, it is politically useful to divert the attention of the public to a bigger crisis than the muck-storm that suddenly hits the presidency.

But the President wants to make a grand show of it to convince the American people of their own greatness, and the greatness of the "political leadership" that made American Great Again, or — in a different country — wake an ancient civilization to make the world take note of its greatness, past and present. All because of the towering leader — the bold, strong mover of things, shaker and destroyer of evil like some mythical god.

At one point, a frustrated Dr. Randall Mindy goes ballistic, asking if we couldn't even agree on the simple fact that a giant comet "the size of Mount Everest" was hurtling towards the earth, even after having seen the comet through a telescope and having taken pictures of it, "how do we even talk to each other?!" "What the hell happened to us?!" He screams. Exactly. What happened to us? How did we get to a point where indubitable truth could be convincingly denied, and a majority of people (or at least a majority of the general majority) would find it believable, a large bunch of them well-educated and otherwise reasonably intelligent, which is not only way more surprising than anything else, but is also the most baffling problem because if education and ready availability of information at one's fingertips fail to engender critical thinking and people continue to be led by propagandist conspiracy theories, where can one find hope?

And that's the point of the movie. If we make the truth subject to political convenience,

it is bound to result in our spiraling uncontrollably into the vortex of unmitigated disaster, which might literally bring about the end of the world in a certain political climate with a certain kind of people holding the reins, and such people, as shown in the film, look so much like the people who currently control the political apex, and the popular tendencies, as we see in the film, seem disturbingly similar to those we see around us these days. The only saving grace is the absence of a comet headed for impact. But if there was one, would we respond any differently from the apathetic fashion in which the political and corporate leadership responds in the film. Maybe, maybe not. But I shudder to think that there is an undeniably "maybe".

American media, both print and electronic, certainly doesn't appear to be as docile and flippant as shown in the film, and the other nations — particularly Russia, China and India — would not completely fail to present a viable solution in a crisis like that, even if American leadership finds itself hamstrung by such "compelling" political considerations that could only be described as selfish, shallow and callous. The problem is, while India has the same mindless polarization weakening its democratic framework that plagues the American polity, the other two — Russia and China — may not be completely free of some form of the same or similar rot.

But if they are not, and we end up looking towards them for the protection of the planet, what would it say about the world's largest democracy on the one hand, and the world's most successful and powerful democracy on the other? That, left in the hands of the advocates of rational, collective choices and champions of human freedoms, the world is doomed? That democracies of the world need to be saved from themselves just because people are incapable of reason and are a little too prone to fall for political manipulation and conspiracy theories?

And, yes, there is a Planetary Defence Coordination Office, and there indeed is the Interagency Working Group (IWG) for Detecting and Mitigating the Impact of Earth-bound Near-Earth Objects (DAMIEN), but would they matter if TV anchors casually question scientific evidence like they were talking of another celebrity fling?

Don't Look Up thrashes climate change deniers, the flat-earthers, the anti-vaxxers, and other such fantastical conspiracy theorists, the planet-killer comet being a metaphor for any disaster brought about by irrational, bias-driven denial of facts. The film sounds a warning not just against the random and baseless questioning of hard scientific evidence, but also against turning away from the facts when they do not conform to one's preconceived notions, for it can only result in a complete disaster? That's what happens in the film. The planet gets destroyed because the political leadership manages to hoodwink people into questioning the very existence of an in-coming comet until it's too late. The slogan is "Don't Look Up!", like not looking up could make the comet disappear magically, but that's what we are being told to do — don't ask questions; just sit tight and let the supreme leader lead you to collective nirvana. That's not happening, of course, but shhh… don't ask; speak for the leader, if speak you must, else it might be found in the national interest to silence you.

HEMRAJ SINGH

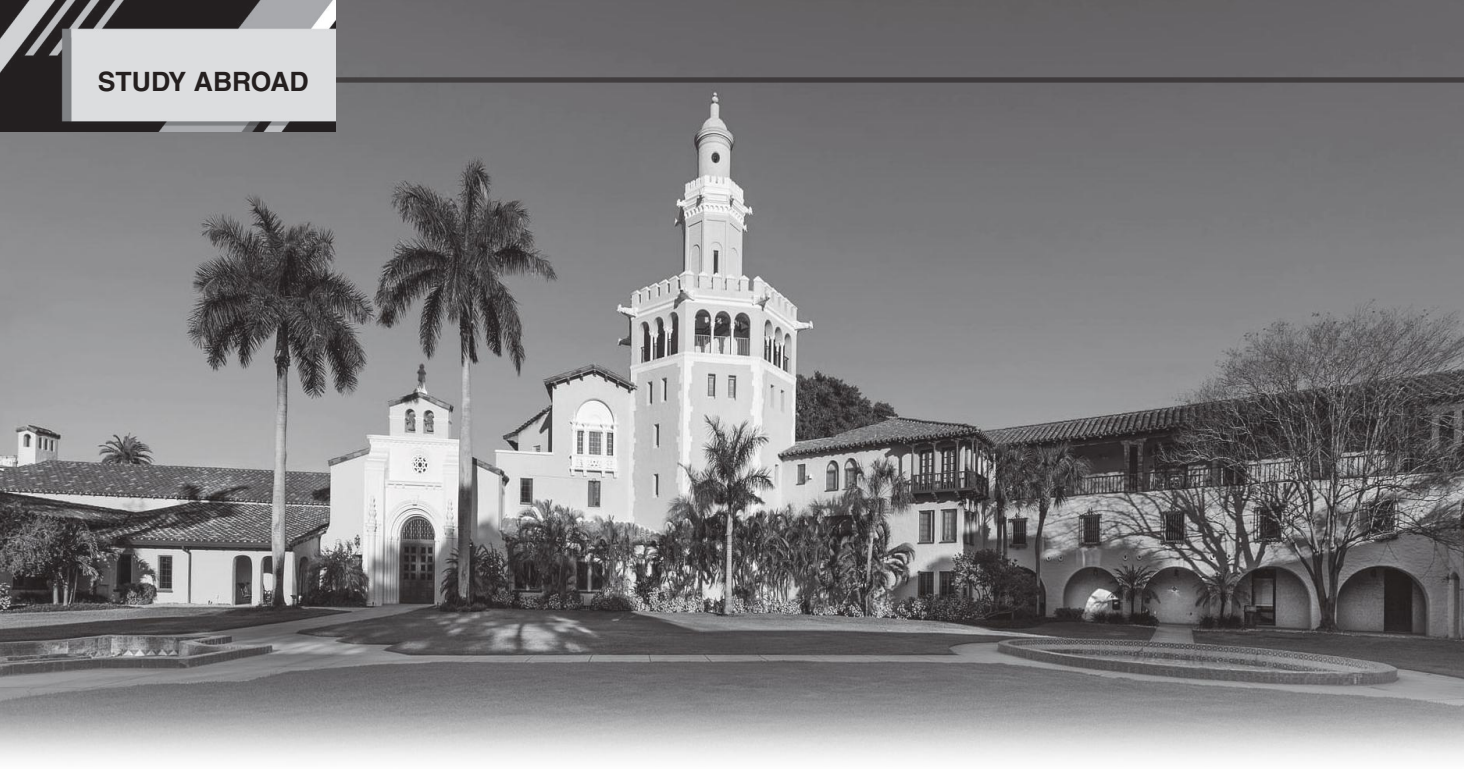
On The Lighter Side

I SUE YOU!

Drink had been consumed. Mr Lane was chatting in the street when his neighbour, Mrs. Holloway, yelled from a window, 'You bloody lot!' Mr Lane wittily replied, 'Shut up, you monkey-faced tart', at which point her husband offered to 'see the plaintiff on his own'. Mr Lane got his retaliation in first by punching Holloway's shoulder, then Holloway gave him a thump in the eye requiring 19 stitches. Lane sued for assault and battery and won. UK brawlers must accept the risk of proportionate blows, but not 'savagery out of all proportion'. (Lane v Holloway, 1968)

EVERYBODY NEEDS GOOD…

There should be music everywhere, except next door. In 1893, the music lessons next door were driving the defendant up the wall. To get his own back, he started blowing whistles and hammering on tin trays. The music teacher won an injunction to shut him up. (Christie v Davey, 1893)



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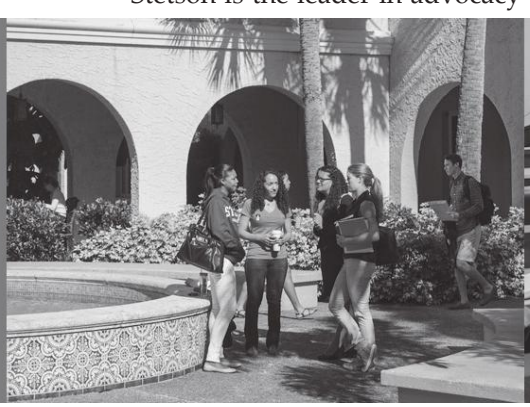

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CONTACT

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

Quick Referencer for Judicial Service

Q. What remedy is available to the plaintiff whose suit has been dismissed for default of his appearance or for default of appearance of both the parties?

U.P. Higher Judicial Service (Additional District Judge) Exam. 1996

U.P. Higher Judicial Service/ A.D.J. (Special Recruitment for Schedule Castes) Exam. 1996

West Bengal Judicial Service Exam. 1999

21st Bihar Judicial Service Exam. 1984 (similar question).

U.P. Judicial Service Exam. 1991 (similar question).

Haryana Judicial Service Exams. 1995 (II)—Similar question and 2003 (similar question).

Ans: Remedy to plaintiff in first case is to file an application to set aside the order, in the same court—Order 9, Rule 9 and remedy to the plaintiff in second case is either filing a fresh suit or application for setting aside the order of dismissal in the same court—**Order 9, Rule 4.**

Reasons: Order 9, Rule 9 of C.P.C. provides that when suit is dismissed for default of appearance of plaintiff, he may apply for setting aside the order of dismissal in the same court which dismissed the suit. The same provision also provides that the plaintiff cannot bring a fresh suit in respect of same cause of action.

The second case of the question is governed by Rule 4 of Order 9 and in case of dismissal of suit because of non-appearance of both the parties, the plaintiff may either apply for setting aside the order of dismissal in the same court *or* may bring a fresh suit.

Thus, it can be said that when plaintiff does not appear and suit is dismissed, the remedy available to him is to apply for setting aside the order of dismissal and if neither party appears and suit is dismissed, the remedy available to plaintiff is either to apply for setting aside the order of dismissal or to bring a fresh suit.

REASONING THE REASONS

Legal Logical Analytical REASONING

LEGAL REASONING

1. LEGAL PRINCIPLES:

(i) Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it.

(ii) A person is liable if he can reasonably foresee that his acts would be likely to injure his neighbour.

(iii) The foreseeability of the type of damage is a pre-requisite of liability in actions of nuisance.

FACTUAL SITUATION: ABC Ltd. operated a sugar refinery on the bank of the river Ravi. They had a jetty from which raw sugar would be offloaded from barges and refined sugar would be taken. The sugar would be taken by larger vessels and then transferred to smaller barges to enable them to get through the shallow waters. As part of development ABC Ltd. wished to construct a new jetty and dredge the water to accommodate the larger vessels. At the same time the State was constructing new ferry terminals. The design of the ferry terminals was such that that it caused siltation of the channels. After using the channels for a short while, ABC's larger vessels were no longer able to use them. Further dredging at the cost of Rs. 7,50,000 was required to make the channel and jetties usable by the vessels. ABC Ltd. brought an action in nuisance to recover the cost of the extra dredging. **Is the State liable?**

(a) The loss caused by the construction of new ferry terminals did not amount to a private nuisance at law since they did not possess any private rights which enabled them to insist on any particular depth of water.

(b) The loss caused by the construction of new ferry terminals amounted to a private nuisance at law since they did possess right to use the water at a particular depth.

(c) No, it cannot constitute private nuisance but the claimants can claim damages for loss suffered by them.

(d) Yes, the State's conduct was unreasonable in building the new terminals without thinking of all the consequences it will have on the rights of other parties.

2. LEGAL PRINCIPLE: The tort of negligent misstatement is defined as an inaccurate statement made honestly but carelessly usually in the form of advice given by a party with special skill/knowledge to a party that doesn't possess this skill or knowledge.

FACTUAL SITUATION: *X* and *Y* Co. were advertising agents placing contracts on behalf of a client on credit terms. *X* and *Y* Co. would be personally liable should the client default. To protect themselves, the *X* and *Y* asked their bankers to obtain a credit reference from *K* and *L*, the client's bankers. The reference (given both orally and then in writing) was given gratis and was favourable, but also contained an exclusion clause to the effect that the information was given 'without responsibility on the part of this Bank or its officials'. *X* and *Y* relied upon this reference and subsequently suffered financial loss when the client went into liquidation, *X* and *Y* sued *K* and *L* Co. for negligence, claiming that the information was given negligently and was misleading. K and L argued there was no duty of care owed regarding the statements.

(a) The *K* and *L*'s disclaimer was not valid to protect them from liability and *X* and *Y*'s claim will not fail.

(b) X and *Y* has a duty to obtain the necessary information themselves without relying upon the other party.

(c) It was reasonable for *K* and *L* to have known that the information that they had given would likely have been relied upon for entering into a contract of some sort. That would give rise to a special relationship of trust, in which *K* and *L* would have to take sufficient care in giving advice to avoid negligence liability. However, on the facts, the disclaimer is sufficient to discharge any duty created by *K* and *L*'s actions.

(d) It was reasonable for *K* and *L* to have known that the information that they had given would likely have been relied upon for entering into a contract of some sort. That would give rise to a special relationship of trust, in which *K* and *L* would have to take sufficient care in giving advice to avoid liability. Hence, they are liable for negligent misstatement.

The answers are: 1. (a); 2. (c).

LOGICAL REASONING

Directions (Qs. 1 – 5): Read the following information carefully and answer the questions given below.

B, D, P, M, F, H, K and W are eight friends who have completed their MBA programme with specialization - Marketing, Personnel, Operations, Systems and Finance. Three of them have passed with dual specialization. Operations and Systems were not offered as dual specialization with any of the remaining three specializations. P has passed

with Marketing and Finance and earns the least. B has passed with Operations and earns more than F, D and K. W has passed with Personnel and earns less than only M who has passed with a dual specialization. B is third from the top when they are arranged in descending order of earnings. D earns more than K but less than F. No two of them have same earnings. K, who earns more than H, has passed with Marketing whereas H has passed with dual specialization of Personnel and Finance. None of the three is having the same set of dual specialization. Two of them are having Systems specialization.

1. Which of the following pairs has the Systems specialization?

(a) BF
(b) BM
(c) FH
(d) Data inadequate

2. Who among them earns more than F?

(a) Only M and B
(b) Only M, W and D
(c) Only M and W
(d) Only W, B and D

3. Who among them earns more than only P?

(a) Only H
(b) Only M
(c) Only W
(d) Data inadequate

4. Which of the following specializations is opted for most among them as either single or one of the dual specializations?

(a) Marketing
(b) Personnel
(c) Systems
(d) Finance

5. Which of the following dual specializations is applicable to M?

(a) Personnel, Marketing
(b) Marketing, Finance
(c) Personnel, Finance
(d) Data inadequate

The answers are: 1. (a); 2. (b); 3. (a); 4. (d); 5. (a).

ANALYTICAL REASONING

Offshore oil-drilling operations involve an unavoidable risk of an oil spill, but importing oil on tankers presently involves an even greater such risk per barrel of oil. So, if we are to lessen the risk of an oil spill without reducing our oil usage, we must invest more in offshore operations and import less oil on tankers.

Which of the following, if true, seriously weakens the argument above?

(a) Importing oil on tankers is currently less expensive than drilling for it offshore.

(b) Tankers can easily be redesigned so that their use entails less risk of an oil spill.

(c) The impact of offshore operations on the environment can be reduced by careful management.

(d) Oil spills caused by tankers have generally been more serious than those caused by offshore operations.

The answer is (b).

Landmark Judgments

DISQUALIFICATION TO CONTEST ELECTIONS OF CANDIDATE WITH CRIMINAL CHARGES

Public Interest Foundation v. Union of India

AIR 2018 SC 4550: 2018 (11) SCALE 414:

2019 (3) SCC 224: 2018 DNJ 1182

Decided on: 25-09-2018

Hon'ble Judges: Rohinton Fali Nariman, Dipak Misra, A.M. Khanwilkar, Dr. D.Y. Chandrachud and Indu Malhotra, JJ.

Facts: Pledge to uphold constitutional principles by constitutional functionaries charges with responsibility to' ensure that political framework does not tainted with evil of corruption. Despite heavy mandate prescribed by our Constitution, steady increase in level of criminalization is seen creeping into Indian polity. This unsettlingly increasing trend of criminalization of politics, witnessed by our country, tends to disrupt constitutional ethos and strikes at the very root of our democratic form of Government by making our citizen suffer.

Issue: Whether beyond Article l02 (a) to (d) and law made by Parliament under Article l02 (e), disqualification for membership can be laid down by Court?

Held: Parliament must make law to ensure that into political stream persons facing serious criminal cases do not enter. It is imperative that persons who enter public, life and participate in law making should be above any kind of serious criminal allegation. False cases foisted on prospective candidates can be addressed by Parliament through appropriate legislation. To cleanse polluted stream of politics substantial efforts to be undertaken by prohibiting people with criminal antecedents so that they do not conceive of idea of entering into politics.

RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

The Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006. The University was accredited with 'A' Grade by National Assessment and Accreditation Council (NAAC) in 2015. RGNUL, Punjab was granted autonomy under UGC Regulations, Clause 5 Dimensions of Autonomy for Category-II Universities in April 2018. The Ministry of Human Resource Development, Government of India, ranked RGNUL the first amongst the cleanest Higher Educational Institutions, Swachh Campus (2019) in the category of Government Residential Universities.

Courses

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We offer B.A.LL.B. (Hons.) Five-Year Integrated Programme where under Social Sciences subjects like Economics, English, History, Political Science and Sociology are taught as major and minor subjects alongwith Law subjects in the first three years of study. From third year on wards, the curriculum comprises of Law subjects and one major subject. All subjects are compulsory in the first three years of study. However, in the fourth and fifth year, students are offered specializations in four streams, viz., Business Law, Criminal Law, Constitutional Law and International Law. The successful students are awarded Honours Degree with specialization.

RGNUL follows the Semester System. The teaching methodology includes extensive and intensive class room teaching with emphasis on participative learning. The Courses include assignments, seminars and project work. The thrust of the course is not just on learning but also professional training.

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The candidate must have passed 10+2 examination of the Punjab School Education Board or its equivalent with minimum 45% marks in the aggregate (40% marks for SC/ST)

The age of the candidate must not be more than 20 years in case of General and 22 years in case of the SC/ST and PWD Candidates as

LL.M. ONE YEAR

We offer one-year LL.M. Post Graduation Course with specialization in Business Law, Constitutional Law, Criminal Law and International Law. (Specialization will be offered subject to the condition of minimum five students opting the same)

ELIGIBILITY:- The Admission shall be based exclusively on the merit of the Common Law Admission Test (CLAT). The candidate must have passed the LL.B./B.L. Degree examination from Rajiv Gandhi National University of Law or any other University whose degrees are recognized by this University, with minimum 55% marks (50% marks for SC/ST) shall be eligible for admission to the course.

PG DIPLOMA IN PRISON ADMINISTRATION ONE YEAR

Rajiv Gandhi National University of Law, Punjab in association with Punjab Jail Training School announces PG Diploma in Prison Administration. Applications

are invited for PG Diploma for the Academic Year 2021-2022. Eligibility, total seats and other details of the programme are as under:

ELIGIBILITY:- The eligibility for admission to Diploma Course shall be Graduate Degree in any stream with not less than 50% marks (45% in case of SC/ ST/PWD Categories) from the recognized University.

Total Seats: 75

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The air conditioned university library is an example of excellence as regard to library services and collection. This fully computerized Wi-Fi library has on its shelves more than 39, 000 volumes which include a comprehensive array of legal resources in both print and electronic formats. In addition to 109 periodicals, library's prized collection includes online version of 'Lexis Nexis India and Academics', Manupatra, Westlaw India, SCC Online, Hein Online, LII of India, Jstor, Taxmann and many more. American Journal of International Law, Harvard Law Review, International Legal Materials, The Digest, Encyclopedia of Forms and Precedents, American Jurisprudence, Cox's Criminal Cases, Halsbury's Law of England, Words and Phrases, "The Law Reports" are available in also print form. Library has implemented Radio Frequency Identification (RFID) technology which facilitates auto issue and return of books. A very prestigious project of scanning of rare books is in pipeline with sophisticated scanner Bookeye-4. State of the art three storeyed building is indeed architectural marvel. Two fully air-conditioned reading halls, fully equipped moot court room, conference room, spacious lobby on first floor is unique sample of ambience of library collection and furniture.

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LEGAL WRITING *Tips*

Omit needless words.

Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary-sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all sentences short, or avoid all detail and treat subjects only in outline, but that every word tell.

Many expressions in common use violate this principle.

the question as to whether there is no doubt but that used for fuel purposes he is a man who in a hasty manner this is a subject that Her story is a strange one. the reason why is that	whether (the question whether) no doubt (doubtless) used for fuel he hastily this subject Her story is strange. because

The fact that is an especially debilitating expression. It should be revised out of every sentence in which it occurs.

owing to the fact that in spite of the fact that call your attention to the fact that	since (because) though (although) remind you (notify you)
I was unaware of the fact that the fact that he had, not succeeded	I was unaware that (did not know) his failure
the fact that I had arrived	my arrival

See also the words case, character, nature in Chapter IV. Who is, which was, and the like are often superfluous.

His cousin, who is a member of the same firm	His cousin, a member of the same firm
Trafalgar, which was battle Nelson's last battle	Trafalgar, Nelson's last

As the active voice is more concise than the passive, and a positive statement more concise than a negative one, many of the examples given under Rules 14 and 15 illustrate this rule as well.

A common way to fall into wordiness is to present a single complex idea, step by step, in a series of sentences that might to advantage be combined into one.

Macbeth was very ambitious. This led him to wish to become king of Scotland. The witches told him that this wish of his would come true. The king of Scotland at this time was Duncan. Encouraged by his wife, Macbeth murdered Duncan. He was thus enabled to succeed Duncan as king. (51 words)	Encouraged by his wife, Macbeth achieved his ambition and realized the prediction of the witches by murdering Duncan and becoming king of Scotland in his place. (26 words)

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

REFUSE UNDER-PAYMENT

People who feel they are not paid enough won't work as happily - or as well - as those who feel they're being justly compensated. Payment is a form of appreciation, a measure of respect. Your client might feel self-satisfied when paying you less than you're worth, but he will pay extra in the form of resentment and a possible conflict. Make sure you're paid what you're worth.

NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them.

Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process, there has been a discrimination."

In Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: "Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities."

In State of Haryana & Ors v. Ram Kumar Mannthis Court observed: "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

Q 1. Choose the correct answer:

i. Article 14 promotes positive equality.

ii. Article 14 creates positive discrimination.

(a) Only I

(b) Only II

(c) Both a and b

(d) None of the above

Answer: a

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

(a) The concept of negative equality under Article 14 is ultra vires.

(b) The negative equality cannot be enforced before the High Court but before the Supreme Court.

(c) The negative equality can be enforced if injustice has been caused to an individual.

(d) Both a and b

Answer: a

Q 3. A is a very bright and deserving student who wants a job very badly to sustain his family. He comes to know about a government official, B, who gives recommendation for job after taking money and has done so quite a few times. Later, A asked B for recommendation but B refused. Now A has filed petition before the Supreme Court of India enforces his right?

(a) If B can give recommendation for others then he should also help A because he is deserving candidate.

(b) The court should ask B to make recommendation for A to enforce the right of equality.

(c) The court should ask the government to give job to A to enforce the right to equality.

(d) The court cannot ask either B or the government to recommend for or give job to A because the Article 14 does not promote negative equality.

Answer: d

Latest SUPREME COURT Judgments

Supreme Court Judges in *Attorney General for India* v. *Satish*, 2021 SCC OnLine SC 1076, Justice U.U Lalit, justice S Ravindra Bhat and justice Bela M Trivedi set aside the Bombay High Court's ruling in *'skin to skin'* case. Earlier in this matter the Bombay High court ruled that; No direct physical contact i.e., skin to skin with sexual intent without penetration would not amount to 'sexual assault'. Having pressed the breast of the victim, having attempted to remove her salwar and pressing her mouth, had committed gross error in holding that the act of pressing of breast of the child aged 12 years in absence of any specific details as to whether the top was removed or whether he inserted his hands inside the top and pressed her breast, would not fall in the definition of sexual assault. It was said that skin to skin contact is necessary for the offence of sexual assault under POCSO Act.

The Object of enacting the POCSO Act is to protect the children from sexual abuse.

Words to NOTE

- Skin to Skin

- Sexual assault

Interpretation given to section 7 of the POCSO Act by the Supreme Court

The interpretation of Section 7 at the instance of the High Court on the premise of the principle of *"ejusdem generis"* is also thoroughly misconceived. It may be noted that the principle of *"ejusdem generis"* should be applied only as an aid to the construction of the statute. It should not be applied where it would defeat the very legislative intent.

The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialized or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" under Section 7.

Object of enacting the POCSO Act is to protect the children from sexual abuse: Restricting the interpretation of the word's "touch" or "physical contact" to "skin to skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. "Skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the Legislature.

The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case

Anshul Jain

touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin to skin" contact with the child.

The first part of section 7 of the POCSO Act is concerned, it thereof exhausts a class of act of sexual assault using specific words, and the other part uses the general act beyond the class denoted by the specific words. In other words, whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, would be committing an offence of "sexual assault". Similarly, whoever does any other act with sexual intent which involves physical contact

without penetration, would also be committing the offence of "sexual assault" under Section 7 of the POCSO Act.

Bisecting Section 7 into two parts:

From the bare reading of Section 7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the Section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration. Since the bone of contention is raised by Ld. Senior Advocate, Mr. Luthra with regard to the words "Touch", and "Physical Contact" used in the said section, it would be beneficial first to refer to the dictionary meaning of the said words.

The first part of Section 7 of the POCSO Act, which pertains to the act of touching the private parts of the child, may not require 'skin to skin contact', he however submitted that so far as, the second part i.e. " the other act with sexual intent which involves physical contact without penetration" is concerned, 'the skin to skin contact' is required to be proved by the prosecution.

Mr. Dave submitted that the first part thereof pertains to the act of touching with sexual intent the vagina, penis, anus or breast of the child or making the child touch the said organs of such person or any other person, and the second part pertains to 'any other act' with sexual intent which involves physical contact without penetration.

As per Section 7 of the POCSO Act, Sexual assault means.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Lawyers' Wit

- Two lawyers met at a cocktail party late one night. "How's business?" asked the first. "Rotten," replied the other. "Yesterday, I chased an ambulance for twenty miles. When I finally caught up to it, there were already two other lawyers hanging on to the bumper."
- Q. What do lawyers use as contraceptives?
  A. Their personalities.

There is no better way of exercising the imagination than the study of law. No poet ever interpreted nature as freely as a lawyer interprets the truth.

-Jean Giraudoux

"If you help a criminal before the crime, you're an accomplice. If you help afterwards, you're a Lawyer."

CONSTITUTION OF **INDIA**

Article 193

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.

***193. Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.*—If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.**

A member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words "sitting and voting" in article 193 of the Constitution imply the summoning of the House under article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting. An elected member incurs the penalty for contravening article 193 of the Constitution only when he sits and votes at such a meeting of the House. It is another matter that he enjoys all the privileges, salaries and allowances of a member including the right to function as an elector for a seat in Rajya Sabha, without first taking the oath/affirmation and his seat in the House.[1]

Article 193 only places a restriction on the power and privilege of State Legislatures to punish a person sitting or voting in the Legislature unauthorisedly. It cannot be read as exhaustive of all the penal powers of the State Legislatures.[2]

Dr Subhash C Kashyap

Where a person is disqualified for membership but gets elected to the Assembly and no election petition is filed, his election can be declared void on a writ petition filed in the High Court under article 226 and he is also liable under article 193 to pay a penalty of Rs. 500 per day for sitting or voting in the House while knowing fully well that he is disqualified.[3]

The corresponding provision with regard to members of the Houses of the Union Parliament is article 104 of the Constitution.

Legal Thesaurus

Ad idem:

If there is a conditional application for shares and an unconditional allotment, there is no contract. The parties are not ad idem. "The allotment must be an acceptance of the application according to its terms, "[(1866) 1 Ch App 567; (1868}3 Ch App 633; Palmer, Vol. 1, 52]. Where an application for shares is subject to a condition precedent, the condition must be performed to create a liability to take them. [(1868) 3 Ch App 633, where the condition was held to be waived); Hals. Vol. 5, p. 145; (1927) 108 Ind Cas 192 (Lahore); (1927) 107 Ind Cas 492 (Lahore)]. Where however, the application is subject to a condition subsequent, the liability arise although the condition is never complied with [(1867)2 CH App 511].

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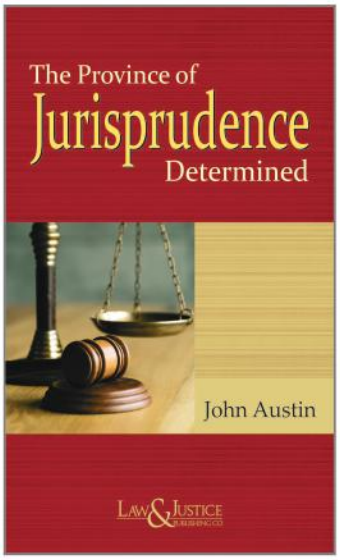

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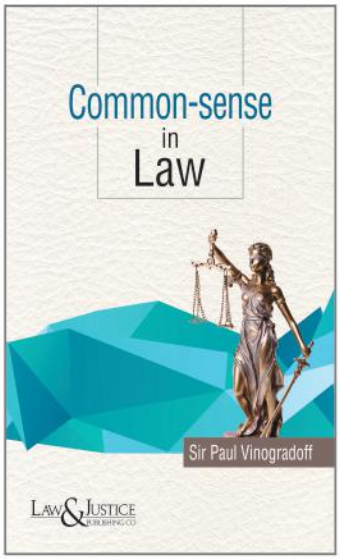

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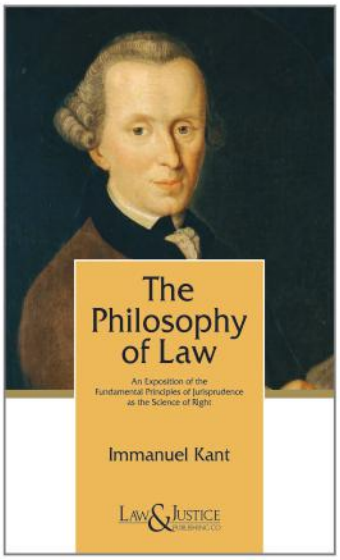

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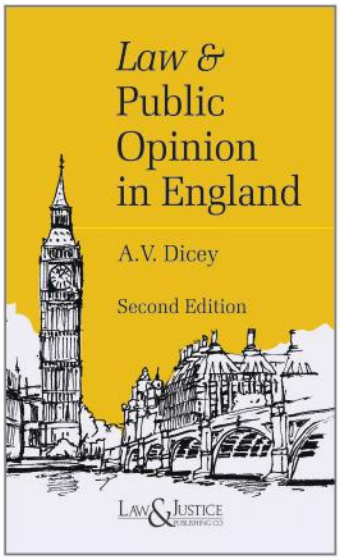

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