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Magazine for Legal Professionals & Students

# Lawyers UPDATE

## PENSIONERS LIKE PARASITES LIVE ON TAX-PAYERS' BLOOD

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Dear readers,

The issue of pension keeps coming up for discussion every now and then principally because it is generally viewed as an unnecessary burden on the exchequer, and since the total financial burden of all the pensions taken together is quite heavy, the critical glance is cast at the people who are seen as earning substantial amounts of money and amassing a great deal of wealth by apparently questionable means and still being eligible for pension. The members of the state legislature and the Parliament are one such group of people.

The criticism of pension to the lawmakers is centered around and draws force from two fundamental determinants of the eligibility: need and entitlement. People tend to believe that the lawmakers are inexplicably wealthy and do not really need any more money, and the entitlement part is not so much a legal issue as it is a moral one, for over the years the politicians have come to be seen as generally corrupt and selfish manipulators of public sentiments, which makes them look morally ineligible to draw lifelong pensions and other facilities they are legally entitled to at the expense of the taxpayers.

It's not the case that only the lawmakers or the holders of political offices get a pension; all government servants do, including policemen, bureaucrats, members of the armed forces and so on. But only the politicians are singled out in respect of the pension because they are not truly perceived as rendering public service, which is not only discouraging to those who might want to contribute to the public cause through active political engagement but is also a tacit acceptance of corruption as source of earning for the political class. Such cynical outlook on politicians needs to change before we could legitimately expect any good of them.

Manish Arora

(Manish Arora)

## INSIDE

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# STREET LAWYER

## Saving Religion from the "Religious" - II

*Religion, on account of mindless adherence to religious beliefs, stands threatened more by the radical followers than by anybody or anything else.*

**HemRaj Singh**

Religion, having principally philosophical, social and ethical sides, is a multipurpose tool, and can be used to serve either or all of the three ends. Like all tools, however, the side that is most used gets sharped the best, and the religion ends up being perceived and characterized, if not necessarily defined, in terms of its dominant side shaped by such persistent usage, which is the reason why the religions that have been used to serve political ends for large spans of their histories tend to be more rigid and orthodox with serious and often cruel enforcement mechanisms. But this has more to do with the "religious" in the narrow sense of the word than religions themselves. All religions can be read to preach both peace and war, violence and non-violence. Whether war and violence or peace and non-violence end up being the face of a religion at a given point in time depends largely upon the challenges it has faced in the recent and distant pasts and the nature of forces it has had to battle.

Religions that have had to operate beyond the well-defined geographical boundaries tend to have rigid symbols, and cultural quirks, denoting their religious identities simply because the visible markers have an identifying function and do not have a purely cultural, religious or spiritual relevance. These markers are supposed to unite people and promote social cohesion, but what can unite can just as well divide in a different setting. Besides, people tend to join forces way more passionately in response to an actual or perceived threat of annihilation as a group rather than to work towards peaceful, constructive goals, which very well explains why leaders who exhort people to action in the name of religion also paint a bleak picture of the disastrous consequences of "inaction" at the hands of the "other". "They" are out to get "us", so let's get "them" before they get "us". The "they" and "us" are far more difficult to define and identify than it seems, but they come in handy when people have to be hastily bunched together for collective condemnation by whipping up crude hatred driven by an urge to shift blame for all the ills to somebody one already dislikes for one reason or the other, or for the simple reason of being different and not subscribing to the exact same values.

In my experience, communal prejudice blinds people so completely that they readily declare invalid (not a "true" Hindu/Muslim/Christian/Dalit/*Savarna*/*X*) anybody who doesn't share their flaming hatred for the "other" even if the person in question belongs to the same class or community they are identifying themselves with for the purpose of the discourse/debate/*chai-pe-charcha*.

Hinduism is a religion like no other; so much so that it's hard to even call it a "religion" in the regular sense of the term, for if Hinduism is a religion, other religions are not in the same sense and vice-versa. The uniqueness of Hinduism is rooted in its origin principally as a body of thought rather than a reform movement to correct the ills of society, which is how most organized religions in the world started out. It's the oldest living religion in the world for the simple reason that the reform movements seeking to change its bad practices sprang from within, and were first resisted, then grudgingly allowed and then absorbed as part of Hinduism itself, which self-corrective approach sustained Hinduism for so long.

Hinduism, therefore, has always had a very strong tradition of dissent and criticism, which one can easily spot even in the mythological texts of the Hindus with little effort. Hindu gods have regularly come under severe criticism at the hands of their mortal followers as well as of other gods of the Hindu pantheon within the Hindu mythological framework, which is why we have the stories of gods being cursed and punished for their misdeeds by Hindu ascetics, and in many cases by the higher and mightier gods.

Religions tend to create a certainsocial order and a way of life, which becomes part of the general culture within the geographical regions they dominate. And the powerful people who come to be in control of things resist anything threatening the *status quo* because they have a personal stake in keeping things as they are, for their worldly power and influence flow from the existing order. The same holds true for Hinduism, too. So it's not like the reformers or dissenters were not opposed or resisted by the conservative Hindus in the name of religion and tradition, and it's also not the case that all Hindus are or have been progressive and hugely welcoming of change and reform. Far from it. But the deeply ingrained tradition of tolerance for critical thought and unpopular opinions lent Hinduism an unusual resilience against rigid and cruel orthodoxy and also made it a lot more accommodating of reformative backlashes, even the ones that sought to change it fundamentally and shook it right to its very roots. Hinduism has been stronger and lasting for its flexibility, adaptability and openness to the correctives even though it has regerettably remained rigid in some key respects.

Those who advice and implore the Hindus to try and preserve the self-preserving "liberal" features of Hinduism are really trying to save the religion and its followers from the inescapably corrosive consequences of religious radicalism that seems to be gaining ground of late.

***Concluded***

# GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

## GUJARATIMAL'S CASE

Gujaratimal is a lad eighteen years old, paving received no more than middle school education. At the age of sixteen he got himself appointed as a dresser in the Military Department. After working for about a year in Multan Cantonment, he went to Egypt and spent one year there, also on service. He subsequently returned to the Punjab taking one month's leave. He reached Madhranwala, his native village, five miles from Hafizabad, on the 8th April. He remained at his village getting his shop repaired. But "to our astonishment some policemen came there on the 16th with warrants issued against him, and prosecuted him accordingly, leaving us in utter amazement, for we could not understand what the matter was." Thus writes the seventy years old father of Gujaratimal.

This is not one of those cases in which a stranger can arrive at a firm decision merely on reading the evidence, which was reproduced in the last issue of Young India. It will be remembered that the case of Gujaratimal is one out of nineteen tried together. I had occasion to analyse the judgment in the case in connection with that of Karamchand, and all I have said about that judgment naturally applies in this case, as in that of the lad Karamchand. But upon reading the evidence it is not possible to come to a positive conclusion that the defence of alibi was completely established. The whole of the evidence, as the reader must have observed, has been taken in such a scrappy manrier that one is unable to know what has been omitted. It is also clear from the evidence that the prosecution witnesses are mostly policemen or connected with the police, and that the accused were not arrested red-handed, but most of them were arrested sometime after the affair. Certainly Gujaratimal, who is said to have been the principal speaker and one of the assailants, was not arrested redhanded, but two days after the date of the alleged assault. Gujaratimal was sentenced to be hanged. His sentence was subsequently commuted to cransportation, and still more subsequently, according to what his father has heard, to seven years' rigorous imprisonment. It is a serious matter to sentence a lad of eighteen years, who denies his guilt, who denies having been present at the scene itself and who has only lately rendered service to the Crown, to be hanged on the strength of the very questionable evidence of identification by witnesses of no standing.

To these observations I would add a summary of the facts supplied by the father of Gujaratimal, and respectfully submit that if the facts supplied by the father be true he is entitled to complete discharge without further investigation. And even without those the whole case requires a thorough investigation. The father says, "On the 23rd May, i.e. five weeks after the event, the Deputy Commissioner of the District ordered all the residents to assemble in one place to be identified by the prosecution witnesses, and Lieutenant Tatam." Gujaratimal was also among the crowd. Now comes the most material part of the father's statement. "At this occasion none of the prosecution witnesses Nos. 3, 4, 7, 8, 9, 15, 16, 18, 19, who afterwards gave evidence against him could identify him, nor even Lieutenant Tatam." If this is true, Gujaratimal has certainly been wrongly convicted. And what shall we say of the value of the identification evidence when we read such a shocking deposition as this of prosecution witness No. 13: "Mr. Tatam identified Karam Sing, Jiwan Kishen, Mulchand. Mr. Tatam even pointed me out as one of the assailants, and when the Deputy Commissioner said that I was 'I'ehsildar, Mr. Tatam said that the man he remembered was fatter than." If this is true - and the prosecution surely cannot question its truth-this is a circumstance which must raise gravest doubts about the value of the identification evidence led by the prosecution. The father adds that the prosecution witness No. 3 says that Gujaratimal delivered an oration at the station, whereas P.W. No. 16 says that it was Gian Singh who delivered it. This discrepancy can be proved from the recorded evidence. Again the father says, prosecution witness No. 15 who could not identify Gujaratimal on the 3rd May says at the trial that Gujaratimal carried a flag, etc. The father has submitted already several petitions to the authorities. He is a man of poor circumstances. The accused is an insignificant lad. In my opinion, therefore, the case becomes all the stronger for a searching inquiry. His. Excellency the Viceroy was pleased to say in his speech "for those cases which have come before the Government of India, I have no hesitation in claiming that they received the most careful consideration, and that orders were passed with the greatest possible despatch." The letter before me says that the father has petitioned His Excellency also. It is not impertinent to inquire what was the result of the "most careful consideration" given to the most damaging statements made in the father's petition. If his statements were considered to be worthless, he was and still is entitled to know on what ground the decision was based.

*Young India, 13-9-1919*

# UNIVERSAL LAWS OF SUCCESS

## [Thoughts for Sharing]

**Compiled by:**
**Pradeep Arora**

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

*– Antoine de Saint-Exupery*

*" Work - like you don't need money, love - like you have never been hurt, and dance - like no one is watching."*

*– Anonymous*

*" The greatest discovery of all times is that a person can change his future by merely changing his attitude."*

*– Oprah Winfrey*

*" We cannot always build the future of our youth, but we can built our youth for the future. "*

*– Franklin Delano Roosevelt*

*" 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*

*" Always be nice to those younger than you, because they are the ones who will be writing about you."*

*– Cyril Connolly*

*" True luck consists not in holding the best of the cards at the table; luckiest is he who knows just when to rise and go home."*

*– John Hay*

*" Success in business requires training, discipline and hard work. But if you are not frightened by these things, the opportunities are just great as today as they ever were. "*

*– David Rockefeller*

*" A bone to the dog is not charity, Charity is the bone shared with the dog, when you are just as hungry as the dog."*

*– Jack London*

*" Personal happiness lies in knowing that life is not a checklist of acquisition or achievement; your qualifications are not your life. "*

*– J.K. Rowling*

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

# KNOW YOUR JUDGES

# Hon'ble Mr. Justice J.B. Pardiwala

Hon'ble Mr. Justice J.B. Pardiwala was born on 12th August, 1965 at Mumbai. Graduated from J.P. Arts College, Valsad in the year 1985. Obtained Law Degree from K.M. Law College, Valsad in the year 1988 and Sanad on 18th November,1988.

Born in the family of Lawyers. Hails from native town known as Valsad in South Gujarat. Great Grandfather Shri Navrojji Bhikhaji Pardiwala started practice in the year 1894 at Valsad. Grandfather Shri Cawasji Navrojji Pardiwala joined the Bar at Valsad in 1929 and practiced upto 1958. Father Shri Burjor Cawasji Pardiwala joined Bar at Valsad in 1955 and also remained as the Speaker of 7th Gujarat Legislative Assembly for period commencing from December, 1989 to March, 1990.

Started practice at Valsad from January, 1989. Shifted to Gujarat High Court, Ahmedabad in September, 1990. Practised in all branches of Law.

Remained Member of the Bar Council of Gujarat from 1994 to 2000. Was also appointed as Nominated Member of the Disciplinary Committee of Bar Council of India. Worked as Honorary Co-Editor of Gujarat Law Herald, a publication of the Bar Council of Gujarat.

Worked as Member, Gujarat High Court Legal Services Authority. Was appointed as Standing Counsel for the High Court of Gujarat and its subordinate Courts since 2002 and continued as such till elevation to the Bench.

Elevated as an Additional Judge, High Court of Gujarat on 17th February, 2011 and confirmed as permanent Judge on 28th January, 2013.

Elevated as Judge, Supreme Court of India on 9th May, 2022.

# Women in LEGAL PROFESSION

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

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

## JUSTICE INDU MALHOTRA

**India's First Woman Judge appointed to the Supreme Court from the Bar**

Justice Indu Malhotra was the first woman judge to be appointed to the Supreme Court Bench directly from the Bar, joining the ranks of six other women who had been appointed as Supreme Court judges in India since Independence. She served as a judge in the Supreme Court for close to three years from April 2018 to March 2021.

Born in Bangalore, Malhotra did her schooling in Delhi and her BA from Lady Shri Ram College in New Delhi. She enrolled in the Bar Council of Delhi in 1983, and qualified as an Advocate-on-Record in the Supreme Court in 1988. From 1991 to 1996, she was appointed as the standing council for Haryana in the apex court. In 2007, she became the second woman to be designated as a Senior Advocate by the Supreme Court.

In her short tenure as a Supreme Court Judge, Justice Malhotra was on the Constitution Benches dealing with far-reaching issues of constitutional importance such as entry of women into Kerala's Sabarimala temple; the validity of Section 377, IPC (same-sex relationship); as well as examining allegations of sexual harassment against the then Chief Justice of India, Justice Ranjan Gogoi.

In the Section 377 – criminalisation of same-sex relationships – case, Justice Malhotra, in union with the other judges on the Bench, held that it was unconstitutional to the extent that it criminalised consensual sexual acts of adults in private. She, in fact, went a step ahead and said 'history owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries'.

Justice Malhotra, however, took a lone dissenting stand in the Sabarimala case by refusing to lift the restriction on women between the ages of 10 to 50 years from entering the temple. "Notions of rationality cannot be invoked in matters of religion," she observed. The only woman on the Bench, Malhotra said, "issues of deep religious sentiments should not ordinarily be interfered by the court. The Sabarimala shrine and the deity is protected by Article 25 of the Constitution of India and the religious practices cannot be solely tested on the basis of Article 14."

Justice Malhotra was on the three-member committee probing the sexual harassment allegations against the then Chief Justice of India, Ranjan Gogoi. However, the in-house committee found no substance in the allegations contained in the complaint.

After her retirement, the Delhi and District Cricket Association (DDCA) appointed Justice Indu Malhotra as the Ombudsman cum Ethics Officer, on September 16, 2021.

# The Renaissance Judge: Dr. Justice Sangita Dhingra Sehgal

By **Hasan Khurshid**

There's an old adage, "necessity is the mother of invention", but for Dr. Justice Sangita Dhingra Sehgal, innovation is the mother of excellence. Justice Sehgal took over the charge as President- Delhi State Consumer Dispute Redressal Commission (DSCDRC), in June, 2020.

The Commission has under it's jurisdiction 10 district forums.

The Consumer Protection Act, 2019, was enacted on August 9, 2019, with a view to modernise and further strengthen the consumer protection legislation. The Act provides for establishment of a three tier quasi- judicial machinery, called the consumer commission at the district level, state level commission and the national commission.

At the time Justice Sehgal took over the charge of the commission at A block, Vikas Bhawan, IP Estate, New Delhi, the premises were in a shabby, dingi and dilapidated shape. After sometime of her resuming the charge, she tried to relocate the premises elsewhere such as MSO building which was earlier occupied by Delhi Police. Since there was no availability of a better place, Justice Sehgal brought about a physical change in the existing space.

First of all she motivated her staff by enhancing their zeal for bringing about the desired change; then she passed directions for cleaning and renovation drive. She convinced her personnel that for effective working, a congenial and tidy atmosphere is paramount. This strategy yielded results and in not much time, the dilapidated look got converted to almost state-of-the -art office space.

Earlier there was no proper space in the commission office for keeping the record in proper manner. As such, the first priority for Justice Sehgal was to streamline the 'record room' for properly and scientifically maintaining the filing system and the aim was ultimately accomplished. Today all the records of the commission are safely placed.

Court rooms have come up with better looks of overall ambiance.

Section 46 (2) of the Act stipulates that the officers and employees of the state commission shall discharge their functions under the general superintendence of the President of the state commission. As such, the general superintendence entails administrative supervision and control over the personnel by President. Whereas, in so far as Delhi Commission is concerned, the Commissioner of Food and Supplies happens to be the Head of the Department. As a matter of fact, for all practical reasons, the administrative control of personnel of the commission may be managed more efficiently if the state commission is delegated with the authority of the Head of Department. This system is already prevalent in other state commissions.

The commission has been disposing off cases in a fast manner. Between January 1, 22 to May 31, 22, the number of institution of cases were 186, disposal of cases were 331, cases pending as on May 31, 22, were 7005. Judgements passed by President's bench since June, 2020 to June 2022, are 681.

# LEGAL LUMINARIES

## SUNILA AWASTHI

**Passionate, Courageous and Exceptional Lawyer of 21st Century**

Women have played an important part in the development of the legal profession. Female lawyers continue to battle for justice and pave the way for women in the field, whether it's defending clients in court, representing companies, or delivering significant judgements.

Several female lawyers have made significant contributions to the legal profession. These outstanding female lawyers not only do an excellent job, but they also make a difference in people's lives. **Sunila Awasthi** is one of the most well-known of these.

She is a **Senior Partner** at India's top law firm, **AZB & Partners**. She is passionate about the rapidly growing field of gender-related workplace challenges.

Her firm, AZB & Partners, was formed in 2004 with the goal of providing clients with credible, practical, and full-service advice across all industries. It has offices in Mumbai, Delhi/NCR, Bangalore, and Pune.

Sunila's experience includes advising on a wide range of commercial contracts as well as general advisory, with a focus on e-commerce, information technology, data privacy, and employment laws.

After qualifying as a lawyer from the Faculty of Law, Delhi University, in 1992, Sunila joined Ajay Bahl & Co. This was the time of economic liberalization and the advent of foreign investment in India.

Despite not having computers or the internet, they were exciting times with so much to learn and create! Physical books were the only option with no online resources to help with research.

After working for seven years, Sunila took a break to do LLM from the University of Queensland, Brisbane, Australia in 2000. After returning to India, she briefly joined J. Sagar & Associates. However, by 2003, she returned to Ajay Bahl & Co. which became AZB & Partners in 2004.

Sunila summarizes the reasons for being in the same firm for so long as "the excellent work culture, ample opportunities to prove yourself, freedom to handle client relationships, work delivery and team management, but above everything else, the leadership of Ajay Bahl."

When Sunila joined, the firm had 6 lawyers and today, she heads a team of 20 plus lawyers consisting of partners, counsels, senior associates, and associates. "It has been like growing up with the firm, like a second family!"

*Excertps from the write up by insightssuccess*

# *On The Lighter Side*

## I SUE YOU!

Somebody had already pranged Mr Abraham's Rolls when the defendant managed to hit it again, on the same spot. The court held that the second driver did not need to pay for the respray, as the car already needed one. (Performance Cars v Abraham, 1962)

## LOOK BOTH WAYS BEFORE SUING

A woman sued a driver who ran his car over her legs while she was sunbathing. Where? In a hotel car park. (Letang v Cooper, 1965)

# An Education .. As I Hope..

**Sadiya R. Khan**
*Advocate*

**O! How I Hope**
Slowly yet Surely
**For Children. Youth. Hungry**
A Nation there..
Standing so Powerful
In its Control and Shine
**Educated Gently**
**Free and Compulsory**
Combination so rare
**To Transform into..**
**A Sustainable Reality**
**There still remains**
Door to Door campaign
Umpteen legal awareness
For Education metaphor to Rain
**To Reach. To Preach. To Read**
To Darkest Deserted Street
To be Trained. To be Rhymed
To be an Oasis- Well timed
Education not a Clandestine
**It's a Hope…We build**
**To Learn. To Serve. To Lead**
Education is not limited
To Certificates. To Uniforms.
It defines hidden pearls..
**Nourishing minds**
Sustainable Talents
Sustainable Outreach
**Each one.. Build one**
For Knowledge breathes
**Education and Knowledge**
**Are Siamese Twins**
**Praised by Wise..**
**Mocked by Fools..**
O ! How I Hope
Those Famous Goals
**SDGs to MDGs..**
And then I wonder
Man-made differences
**Of Paper. Of Life Roads**
Burning midnight oil
Old text books spread
I see ..
**On a Street vendors cart..**
Studying Street light.. yet Dark
**With every penny saved**
**Bought a pencil..smiled again**
Washing household utensils
Brooming households
Innumerable such ..unaddressed
**Poverty. Slavery. Labour**
Darwin`s Real Winners
Not Cosy Philosophers. Or Millionaires
The Real Metaphors – Struggling hands
**O ! How I Hope for..**
We haven't walked
A road yet..
To keep a check..
Is every little mind
Reading well in time?
**O ! How I hope**
**We Raise .. The thinking standards**
**Not Education Fees..**
Then why - The Great Divide?
The Social settings
The Sense of belongings
The Constant struggle
Economically Weaker Sections
Yet deprived to own
Their legal Right!!!
**Why not simply implement**
**The Rules. The Laws. The Rights**
**Why create a hindrance?**
To Knowledge. To School.

**O! The Builders of Knowledge**
How I hope
Thou Understand
This is not a race
To chase off ..some
And own few pompous many
Its Educational embrace for all
The Knowledge grace of all
The Rural
The Urban
Why thou so Proud?
Of the pronunciations
The flawless Grammars
For Essence of Education
Not limited to a language
Many dialects to define Knowledge
So many Thinkathons
No Sustainable solutions

**School is a Must**
**To be a part of any age too..**
**Yet remains a Privilege for..**
**The Poor. The Hungry. The street owned**
**Make it simple. To make it Real.**
**Politics Confuses Knowledge**
**Knowledge needs no Politics**
**Politics Kneads Knowledge**
**For Bare Foot. For High shoes**
**For Street Teas. For High Teas**
**For Rural. For Uber Urbans. For Classy Cars**

**Let the mental uniform be uniform**
**Let the mind benches enlighten**
Let every Chair...
**Be an illuminating honour**
And the Struggle for school
Yet continues...
**Societally. Culturally. Financially**
And flip the story ..
Many casually skip school
Coining a term "cool"
Think.Think. Think
What if we coin
**Right to School**
Irrespective of..
**Religion. Class. Caste. Cash. Cars**
Let every voice Rhyme
Let no Child labour
Let not any feel deprived
For School
A thought. To be defined further
**To be chiselled. Scaffolded. Pedagogic**

O! The Great Nation`s
May you always Rise
Let School be compulsory
And Free…
**"Free" for the knowledge seeker…**
**Free from every extra extravaganza**
**Free from any societal struggle**
**Free from any extra hidden cost**
**Free from miscellaneous expenses**
**Free from comparison**
**Free from any Divide**
**Free from inequal approaches**
**And Plough that peculiar struggle**
**To Reach .. Dreams**
**Big dreams. High hopes. Starving Sacrifices**
Achievable with pauses
Then Applauses
Different Tongues
Attempt to Make
Hard work sublime
Quoting many up streamed
This isn't unique?
To recall a struggling past
Is to build a sustainable future to last
Last and not last
The Legal Morals..
If you find any struggle...
Motivate. Illuminate. Guide
**Elevate the Child**
**Inspire. Build. Support**
**School is a Dream ..**
Yet for many
Journey to Education
**Stands empty without School...**
A Dream deprived still
**Right to School!!**

# Bail in Social-economic Offences- Position in Courts

**Prateek Som**

"The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process". – Justice V.R. Krishna Iyer in *Gudikanti Narasimhulu vs. Public Prosecutor* case (1977)

The Law Lexicon defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation. What is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court". The Criminal Procedure Code, 1973, does not define bail, although the terms bailable offence and non-bailable offence have been defined in section 2(a) Cr.P.C. as follows: "Bailable offence means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence". Further, ss. 436 to 450 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the Cr.P.C. Thus, it is the discretion of the court to put a monetary cap on the bond.

The law the that governs socio-economic offences is a mixture of different laws to a great extent, and is, loaded with procedural postponements and means of escape. A considerable lot of the wrongdoers have used the irregularity of the bail framework in India to prompt the court to award bail in support of themselves prior to leaving the country. These provisos permitted tax evaders and loan debtors to prevaricate the law and delay, or inconclusively hold off, the seizure of their assets against their debts. Socio-economic offences or the white-collar crimes are conceived out of sheer covetousness, ravenousness, or whim and are smooth and non-violent in character. The shortfall of terribleness, power or viciousness gives the overall population a feeling that these violations are of lesser gravity as compared to the other societal crimes like murder or assault. It isn't hard to comprehend regarding why socio-economic and white-collar offences are not seen in a similar gravity by an individual when contrasted with the governing law which entails rigorous punishment.


The Supreme Court highlighted the difference between the perception of the society toward traditional crimes and economic offences in the case of *State of Gujrat v. Mohanlal Jitamalji Porwal and Anr.*, as: "The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

In 2011, The Hon'ble Supreme Court in *Sanjay Chandra vs CBI* also opined that: "The grant or

refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required".

The Delhi High Court in the case of *Sunil Dahiya vs State (Govt Of Nct Of Delhi)* while rejecting the bail application stated that: "The grant of regular bail in a case involving cheating, criminal breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only in the progress of the case, but also on the trust of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice."

The arguments presented by Sunil Dahiya's counsel relied on the order of the Supreme Court in the case of *Sanjay Chandra v. Central Bureau of Investigation* that 'the right to automatic bail under section 436 stems from the fundamental right of personal liberty as enshrined under Article 21 of the constitution'. The court however rejected this view by highlighting a difference between traditional offences and economic and other offences against the state. The court promulgated that even an individual's liberty can be curtailed (reasonably) if it is pertinent to the court that such liberty will come at the expense of the larger interest of the society.

# PENSIONERS LIKE PARASITES LIVE ON TAX-PAYERS' BLOOD

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The lexicon meaning of 'parasite' among others, "is a person who lives at others' expense, making no adequate contribution in return." The parable of government pensioners, MPs, MLAs, more particularly the family pensioners, is undoubtedly of parasites, who are nourishing on the blood of the tax-payers.

As per the 2018-19, Annual Report, compiled by the Department of Expenditure (Ministry of Finance) on pay and allowances of the civilian Central Government employees, the total expenditure incurred on salaries and pension of Central Government employees in that financial year was 2.08 lakh crore. This is estimated to be 7% more than the figures of the previous year.

It is to point out that unlike public sector enterprises like banks, the Central and state governments do not have any pension corpus fund. As such, this heavy burden is maintained through revenue expenditure. On the contrary, public-sector banks maintain a proper pension fund which is accumulated from monthly contributions by banks. Any short fall is made good out of yearly profit of the banks.

Welfare state is a political system that is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for citizens unable to avail themselves of the minimal provisions of a good life. Social security, federally mandated unemployment insurance programs, and welfare payments to people unable to work are all examples of the welfare state.

According to Merriam Webster, welfare state is a social system, in which a government is responsible for the economic and social welfare for its citizens and has policies to provide free healthcare, money for people without jobs, etc.

Otto Von Bismarch, the powerful German Chancellor had developed the first modern state in 1880s. William Beveridge, a social economist saw full employment as the pivot of the social welfare program. In his pamphlet, "Full Employment in a Free Society", published in 1944, he had expressed as how this goal might be gained.

According to Article 13(2), "The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Article 16(1) says, "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state."

Directive Principles of State Policy given in part IV of the Constitution of India have been regarded as soul of the Constitution as India is a welfare state. They provide for guidance to interpretation of fundamental rights of citizens as also statutory rights; Charu Khurana vs. Union of India, AIR 2015 SC 839.

Directive Principles of the State Policy lay down the fundamental principles for the governance of the country, and through these principles, the State is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; K.T. Plantation Pvt. Ltd vs. State of Karnataka. AIR 2011 SC 3430: (2011) 9 SCC1.

According to Census 2011, less than 22% of Indians lived under the global poverty line. In 2011 Census, 72% of the population was classified as rural and 28% as urban. According to an estimate, about 5-10% of total India's population will be in government service (states and central taken together).

According to the ILO's World Employment Social Outlook Report, the unemployment rate in India has been in the 3.4% to 3.6% range over the UPA-government led 2009-2014 and the NDA-government led 2014-2019 periods.

The number of unemployed persons in India decreased to 44.85 million in 2016, from 48.26 million in 2014. Unemployed persons in India averaged 30.6 million from 1971 until 2016, reaching an all-time high of 48.20 million in 2014 and a record low of 5.10 million in 1971.

The government has been receiving a lot of criticism for high unemployment rates amid slowing economic growth. The National Statistical Office (NSO), a wing of the Ministry of Statistics and Program Implementation, in its quarterly bulletin of Periodic Labour Force Survey, ending December, 2018, and brought out in May, 2019, showed that urban employment rate dropped to the lowest level in four quarters at 9.3% during January-March, 2019. It stated that urban employment rate was 9.9% in April-June, 2018, 9.7% in July-September, 2018 and 9.9% in October-December, 2018.

According to Centre for Monitoring Indian Economy (CMIE) data, India's unemployment rate remained high for the month of November, 2019, at 7.48% amid lowest labour participation rate of just 42.37%. The unemployment rate fell close to 1% in November to 7.48% from 8.45% in October, 2019.

It is a matter of great concern that on one side, government has miserably failed to act as 'welfare state' for a large majority of citizens, by not providing employment opportunities to well-qualified young people; whereas, on the other hand, it has been acting as 'welfare state' for almost 10% of citizens, who are either government employees or politicians by giving them handsome pay packages and lifelong retirement benefits, not only to them but to their families after their death.

According to a government notification, the families of government employees dying after serving less than seven years will get enhanced pension with the Centre amending rules. Earlier, the government employee was required to have rendered at least seven years of service in case of death so that the family could get the enhanced family pension at 50% of the last pay drawn.

"Whereof a government servant who died within 10 years before the 1st day of October, 2019, without completing, continuous service of seven years, his family shall be eligible for family pension at enhanced rates in accordance with sub-rule (3) with effect from the 1st day of October, 2019, subject to fulfilment of other conditions for grant of family pension," said the Notification. President Ram Nath Kovind approved the amendment to the Central Civil Services (Pension) Rules, 1972.

The family pension under Rule 54 of the CCS (Pension) 1972, is in the nature of a welfare scheme framed to provide relief to the widowed spouse and children of a diseased employee or pensioner. When a government employee dies while in service, the members of his family are eligible to get the benefits of Encashment of leave, special provident fund-cum-gratuity, GPF balance, TA to go to native place, advance to meet funeral expenses, transport expenses to take the dead body of the official to the native place, lump sum payment under employees family security fund, relief under house building advance, educational allowance to children, compassionate ground appointments to dependents, DCR gratuity, family pension, dearness allowance, medical allowance, pongal gift, etc.

The Supreme Court of India

propounded the doctrine of no work no pay in Ramachandran Vs. Indian Bank, 1979 I LLN 179, in these words, "The principle to be followed is 'no work no pay' and in order to earn his wages an employee will have to work." As such, there is no moral or legal ground for consideration of family pension in the country. Such a practice is anti-social, illegal, unethical and unconstitutional.

The politicians are playing the political games blindfoldly misusing tax payers' money on pensioners. The Rajasthan Government has recently decided to move back to the old scheme for its employees. For this purpose, the government has made a budget proposal for the same. The central and state government employees had been getting the benefit of defined pension. Whereas, the government unveiled a new pension scheme in 2004 which was applicable to government employees who had joined the service with effect from 1st January, 2004.

The old scheme was linked to the last pay drawn by the employee including the dearness allowance revision, ensuring the 50% pension amount calculated at the last pay drawn as basic pension. Whereas, in the new pension scheme of 2004, employees' contribution of 10% of pay plus employers' contribution of 14% of pay was to be invested; thereby pension had become incumbent upon the corpus. As such, there was no assured pension based on the last pay drawn. The new pension scheme had limited the government's commitment of monthly contribution up to 16% only.

The Rajasthan government's move for reverting the old scheme shall force upon the central and other state governments to adopt the similar scheme which will cost heavily on exchequer.

Professor of Law, **Dr. Khan Noor Ephroz** said, "The

lawmakers have made a law for themselves for granting life-time pension to politicians in India who have served even a single tenure of five years which is a gross violation of Article 14 and is a drain on the public exchequer. Whereas, a government servant has to put a minimum period of 20 years in active service to be eligible for pension. In armed forces, one has to risk his life to protect the country by rendering 20 years of service to be eligible for pension which is 50% of their pay on retirement."

Dr. Khan quoted a recent judgement of Supreme Court which said no pension to the government servant who resigns. On December 5, 2019, the court ruled that an employee becomes ineligible for pension under the Central Civil Services Pension Rules, when he resigns because he forfeits his past service. The apex court while deciding the case of Ghanshyam Chand Sharma, an employee of BSES Yamuna Power Limited, made a distinction between voluntary retirement and resignation which impacts pensionary benefits under Rules. An employee who has completed 20 years of service can voluntarily retire from service, which will enable him to avail pensionary benefits.

Giving his views, **Advocate Jamal Usmani**

said, "Politicians hold their political position in airconditioned offices/legislative assemblies/ Parliament and are protected by the armed security provided round the clock at the cost of public funds, receive full pension on retirement till death, after serving just for one term of five years. And what service do they provide to people is well known; they exhibit the extreme cantankerous behaviour in the House, wasting the most precious time of Parliament, at times without business. A lot many of them are involved in scams worth crores of rupees. However, their deeds are generally exposed when they are out of power and the ruling party out of vengeance get them arrested by agencies like Enforcement Directorate (ED) or CBI etc. Earlier former Haryana chief minister Om Prakash Chautala; former Bihar chief minister Lalu Yadav have been arrested, prosecuted and sentenced for involvement in scams. Presently, among others, Congress party chief, Sonia Gandhi, her son Rahul Gandhi; former J&K chief minister Farooq Abdullah; Delhi's health minister Satyender Jain; Bengal industry minister Partha Chatterjee's close aide Arpita Mukherjee, etc; are being grilled by ED. LG Delhi V.K. Saxena has recently recommended CBI inquiry against Delhi CM Kejriwal government's excise policy. How come, is it justified to bestow on the gift of pension after extracting the amount from peoples' hard-earned money to these corrupt politicians", questioned Jamal.

Giving his views learned

**Advocate Naveen Kumar Jaggi** said, "These pension schemes have put on intensive pressure on taxpayers. This also pressurizes an increase in taxation for the middle-class people whose hard-earned money is utilised to provide for a life of luxury to such people."

Advocate Jaggi further said, "Many rich businessmen, sport persons, film actors, get elected as MP/MLA through backdoor route. They hardly attend any parliamentary session but avail all the benefits that their post offers. This pension amount comes from the money earned by hard work of middle class. Moreover, in respect of a government employee, if he dies, there is a scheme that the same work or some other work will be given to his adult family member on compassionate ground without assessing his suitability and capability for that job. It is a complete violation of equal rights of the citizens. In case the government is determined to give pension to retired government employees, it should be a time-bound for one or two years. However, the phenomenon of granting life-long pension, family pension and pension to lawmakers is most sinister and disastrous policy, in a country which is behaving as 'welfare state' for 10% of its citizens and abrogating the rights of rest of the 90% people, who despite being qualified enough are jobless."

An NGO 'Lok Prahari' had some time back approached the Supreme Court claiming that pension and other perks being given to Members of Parliament even after demitting office were contrary to Article 14 of the Constitution. The petition had raised several questions including how the MPs could themselves determine their salaries and perks. It also said that Parliament had no power to provide for pensionary benefits to lawmakers without making any law.

However, Attorney General K.K. Venugopal told the apex court that the entitlement of former Members of Parliament (MPs) to get pension and other benefits was "justified" as their dignity has to be maintained even after they complete their tenure as parliamentarians.

Whereas, on April 16, 2018, the bench of Justice J. Chelameswar and Sanjay Kishan Kaul, dismissed the petition and ruled that it is not justifiable issue and matter in challenge, "Is in the orbit of the wisdom of Parliament in choosing/ changing the legislative policy".

During the arguments, S.N. Shukla, general secretary of the petitioner NGO 'Lok Prahari' referred to a report and claimed that 82% of the MPs were 'crorepati' and taxpayers cannot be burdened with paying pension to former MPs and their family members. To this, the bench said, "Let the taxpayers vote them out. Let them do it. We cannot stop them. You are making grand statements. Should we go into the data of how many bureaucrats are 'crorepatis'? Should we go into it? It is not permissible for us to go into this kind of debate."

Supreme Court is the last resort for redressing arbitrary and discriminatory actions of the executive and the legislature. Whereas, in a situation where court declines to interfere and remove the arbitrariness, the only way is to compel the government to scrap the provisions of life-time pension to politicians to save the hard-earned money of tax payers. It is heartening to see the awakening of conscience of a young ruling party's Member of Parliament Varun Gandhi who had recently in a tweet asked, "Can we, the MLAs/MPs give up our pension to ensure that Agniveers get a pension."

Noted **Advocate Yawar Qazalbash** said, "Provision of pension has been given under the Central Pension Rules that a person is eligible to obtain pension only after putting in at least twenty years in respective department. However, the elected politicians claim their eligibility on the ground that they had been in 'social service'. There are a lot number of persons who remain in social service in each society but all of them could not get pensions, unless they are elected to some kind of Legislative Houses. Thus, the claim makes it discretionary. The provisions of handsome amount of pension for a class-based citizens viz. government employees and lawmakers is undoubtedly discrimination among the citizens of India which is an unjustified drain on gullible taxpayers. The most critical and highly objectionable part is the 'family pension'. A family member of a deceased government employee or lawmaker has no legal or ethical right or locus-standi to draw an amount from government coffers, for which he never contributed his service. As such, from the principle of reasonableness, he/ she had never been the member of that service organization from which he is deriving monetary benefits without contribution of work. It is an 'unfair gain' for the beneficiary and 'unfair loss' to taxpayers.

**Vasudeva Rao, IPS** (Retd.), former Special Commissioner of Delhi Police said, "This is absolutely scandalous. The morals of legislators have reached the nadir. And increasing the pension in proportion to their length of their tenure is even more outrageous. They should be the last persons to siphon off tax-payers' money thus for own ends. Almost 90% of legislators have unconscionable amounts of wealth already. This is nothing but gross abuse of

Constitution. Citizens themselves should become far more vocal by all means in opposing all such nefarious moves. This is the true antidote to their wicked ways. The only exception can perhaps be giving something on a minimal scale for prime minister and chief ministers as they are CEOs of government. This too should be subject to their income-ceiling."

**Senior Advocate Mahalakshmi Pavani,** President-Supreme Court Women Lawyers Association said, "This issue has been a contested point for a vast section of society that feels MPs and MLAs post retirement should not be getting a pension because it is after all an extraneous expense which only puts a heavy load on the tax-paying population. I feel differently about this issue. I believe that people who enter politics should already be accomplished in some or the other sphere of life and in principle there should be no pension at all for MPs and MLAs. However, I understand that this thought is largely utopian. So realistically, I believe that a former member of Lok Sabha should be entitled to a monthly pension for the simple reason that she or he is a direct elected representative of its people and that a person who has held a seat in Lok Sabha is directly looked up to by people from her or his constituency as a problem solver or a go to man for all big and sundry issues. In that way, he is still performing a public duty despite not holding the office of an MP/MLA."

Mahalakshmi further said, "Whereas Rajya Sabha/ Upper House ex-members don't require a pension because they are indirectly elected by the people and presumably don't have a direct interface with the people in the regular course of things. Therefore, in my view it is just and valid to allocate pensions to MPs and MLAs from the House of people or the lower House."

# Lawyers' Wit

- Two lawyers went into a diner and ordered two drinks. Then they produced sandwiches from their briefcases and started to eat.
  The owner became quite concerned and marched over and told them, "You can't eat your own sandwiches in here!"
  The lawyers looked at each other, shrugged their shoulders and then exchanged sandwiches.
- A man asks his Solicitor: 'If I give you £400, will you answer two questions for me?'
  The solicitor replies: 'Absolutely! What's the second question?'

Everybody has a right to be defended, and every lawyer has a duty to defend people accused. And my office is to defend him, to discuss the accusation point by point, as I think this is a normal step in a democracy.

Jacques Verges


"RECONCILIATION? ARE YOU CRAZY? THINK ABOUT ALL YOUR PAIN AND SUFFERING! THINK ABOUT MY RETAINER!"

# Why No Distinguished Jurist Judge

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

Indian Constitution is as old as 1950 (72 years). Article 124 (3) (c) provides for appointment of a **distinguished jurist** as Judge Supreme Court of India. The Constitution is silent about who is a distinguished jurist. One of the options which the Constitution envisages for appointment to the Supreme Court is of a distinguished jurist. The Mount Everest was scaled in the year 1953. In 72 years, no jurist has been able to reach the summit court. This does not mean that India has not produced any distinguished jurist. Who can miss the rich contributions of Professors Upendra Baxi, N.R. Madhava Menon and P.K.Tripathi? It is interesting to share Prof. Baxi's story. He was at Duke University (1985-86). He received an invitation from Buffalo University for a seminar. He was addressed as Judge Baxi. He inquired, why judge Baxi ? Prof. Baxi was told that Justice P.N.Bhagwati (CJI) had said that Prof. Baxi would soon be a judge of the Supreme Court. Justices Chinnapa Reddy and D.A.Desai used to call him as brother Baxi. Prof. Baxi has produced many judges of the Supreme Court and High Courts. He is a judge of judges. But he could not be a judge himself.

Originally, the draft Constitution did not contain the category of a distinguished jurist. It was added to the draft Constitution through an amendment proposed by late H.V.Kamath. The choice for the Supreme Court judges was limited to the Judges of the High Courts and the lawyers of the High Courts/Supreme Court. The reasoning offered by Kamath was that the object of this little amendment was to open a wider field of choice for the President in the matter of appointment of judges to the Supreme Court. He reasoned that the Constituent Assembly (CA) will realize that it was desirable to have men/ women who are possessed of outstanding legal and juristic learning. He made it clear that this amendment was based on the provision relating to the qualifications for Judges of the International Court of Justice at the Hague. In the CA Debates, a reference was made to the appointment of Felix Frankfurter, a Professor at Harvard Law School by President Roosevelt as an Associate Judge of the American Supreme Court in 1939. In the recorded history, Frankfurter's judgments/opinions made him one of the most respected and the greatest judge of all times. The clause relating to the distinguished jurist became the part of the original Constitution of India. It is meaningful to refer to the suggestion made by M.A.Ayyangar that in the first composition of the Indian Supreme Court, out of seven judges, one must be a jurist of great reputation. The strength of the Supreme Court judges has risen to 34. No jurist has so far found a berth in the top court. It would not be correct to say that they have no role to play. Sound academic minds are the backbone of constitutional jurisprudence. Equally, academic lawyers have richly contributed to the growth of criminal jurisprudence as also in other domains of law. The fact is that every field of law has been filtered by academic minds. The law journals nationally and internationally will bear testimony to this.

The general feeling is that academic minds are not practical minds. They are theoretical. Speaking personally, after having spent 21 years in the academic field (including the exposure in the best of global institutions), I switched over to the legal profession at the age of 45-46 years. My fields were Constitutional and Administrative Law. Each case involved the application of law to different factual canvases. Duly supported by the law laid down by the apex court and the High Courts by way of precedents. I had the added advantage of academic depth and the comparative position in different jurisdictions. After having been at the Bar for 10 years, I came to be designated as Senior Advocate by the Punjab & Haryana High Court. Having been at the Bar for equal number of years (21), I was appointed in early 2013 by the Chief Justice of India as Director, National Judicial Academy, India. I was told that I was a blend of Academics and Legal Professional. Even otherwise, in 1969, when I started my academic career, I was given to teach Administrative Law. There was no book exclusively on administrative law. I worked, wrote research papers and taught. I did my doctoral thesis on Ombudsman. I participated and contributed research papers in national and international seminars and conferences.

Administrative law has basically grown as judge made law. Over the decades, it has grown and matured. In fact, administrative law is integral to every branch of law. I have enjoyed growing with a growing subject. From early 1991, I have practiced administrative law. We have matured together. The period from 1969 to 2022 belongs to administrative law. It has been a satisfying innings to have contributed to administrative law. Therefore, I was tipped for this position. After completing my term at NJA, I wanted to return to the Bar. I was asked to take over as Director (Academics), Chandigarh Judicial Academy in late 2015. I have been looking after CJA ever since. My last almost a decade has been dedicated to judicial education. I have the satisfaction of being both, Professor Emeritus and Senior Advocate. Dr.Rajeev Dhavan, Senior Advocate was born in 1946. He had a hugely contributory academic career for two decades. He taught, authored a good number of books and published extensively in national and international journals. He was honorary professor at Indian Law Institute. He had a penetrating academic mind. He joined the Bar later and was designated as senior advocate in 1994 at the Supreme Court. He has made colossal contribution. Late Sh.P.P.Rao was lecturer at the Faculty of Law, Delhi University from 1961 to 1967. It was in July, 1967 that he joined the Bar. He had joined the Chamber of late Sh.N.C.Chatterjee, Senior Advocate and a Parliamentarian. He was designated as Senior Advocate by the Supreme Court in 1976. He made rich contribution particularly to the growth of Constitutional Jurisprudence. He was included as a jurist on the panel for selection of Lokpal. He was no more on September 13, 2017. These are some examples who branched off to the legal profession after having been in the academic field for good long time. The Panjab University Law Faculty had a good long standing tradition. Some practicing lawyers used to be invited as visiting/part-time faculty. They would continue to teach for good number of years while practicing at the same time. In due course of time, most of them were elevated as judges of the High Court. Some even reached the Supreme Court. Ultimately, they became Chief Justice of India, Dr.A.S.Anand, M.M.Punchhi and Jagdish Singh Khehar. Justices Kuldip Singh and H.S.Bedi retired as judges of the Supreme Court.

Article 217 (2) deals with, who are qualified to be appointed as judges of High Courts. Sub-Clause (c) was added by the 42nd Constitutional Amendment (1976). It specifically made provision for appointment of a distinguished jurist to the High Courts. It was a meaningful addition. It was deemed appropriate to add this clause so that jurists could be appointed to different High Courts. They could be picked up between the age of 45-50 years. By this age, good fertile academic minds are able to make contribution to the development of jurisprudence. Critical and analytical minds grow. After having been appointed as judge of the High Court in the category of jurist, one could spend 8 to 10 years before he could be considered to be appointed as judge of the Supreme Court under this category. The academic experience as also experience as a judge of the High Court would blend this jurist to play a wholesome role in the top court. I firmly believe that it was a welcome addition. Unfortunately and for reasons not known, this addition was omitted in the 44th Amendment (1978). Its constitutional life was short lived. It does not seem that the Parliamentarians applied their mind while omitting the addition. The framers of the Constitution had foresight. The same foresight was expected of the Parliamentarians. In CA, it was argued if we are making a provision for the Supreme Court, why no such provision for the High Court judges. This gap was filled after 26 years. In any case, it deserved to be given a fair trial. I have no reasons to believe, if the provision had been used constructively, some jurists would have reached the summit court through the route of High Courts. The experience shows that if one decides to move from the academic to the professional arena before reaching the age of 45-48, one could look forward to a contributory role at the High Court level as a jurist.

It was before the advent of Indian Constitution, we had judges in the High Court belonging to Indian Civil Service (ICS). They belonged to Civil Service. They were imparted strenuous training before they were deputed for different postings. Each one of them had to study different branches of law. They all used to serve on the executive side for some years before some being deputed to the judicial side. The Government of India Act, 1935 laid down the qualifications for High Court Judges. One of the sources was those who belonged to ICS. But they must have a minimum 3 years experience as District & Sessions Judges. After the Constitution, ICS High Court Judges continued till their

superannuation. The first four Chief Justice of Punjab High Court were ICS Judges: Eric Weston, A.N.Bhandari, G.D.Khosla and Donald Falshaw. Two ICS judges were elevated to Punjab High Court S.S.Dulat and S.B.Capoor. There was stiff opposition against ICS High Court Judges being elevated as judges of the Supreme Court. In spite of their brilliance, they could not make it to the apex court. There is one exception, Justice K.N.Wanchoo from Rajasthan High Court. He was elevated on August 11, 1958. He became Chief Justice of India on April 11, 1967. He retired as CJI on February 24, 1968. It is strange. ICS judges could be Chief Justices and Justices of good long standing of High Courts. Yet, they were not to be elevated to the Supreme Court. It is historical fact that they were eminent people. No one ever complained against ICS Judges about their integrity, fairness and sense of justice. Their judgments were precise and concise. They were men of law and letters.

May I say, it is never too late. The provision regarding jurist needs to be added at the High Court level. It must be given a trial. It would prove to be enriching the constitutional jurisprudence. Jurists will find their place in different High Courts. Gradually, we would also have a jurist judge of the Supreme Court. It is not healthy to kill a constitutional provision like this. If academic minds (even when they join the Bar late in years) can prove to be eminent senior advocates, why not good and great judges? I pause for an answer.

# "Correlation of Comorbidities and Complications for Fixation of Liability"

**FIRST APPEAL NO. 1205 OF 2016**
C. VIJAYAKUMAR & 3 ORS.Versus AMRITHA INSTITITE OF MEDICAL SCIENCE & ANR. Decided by the Hon'ble NCDRC on 19.07.2022

**Anoop K. Kaushal, Advocate**
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**FACTS** : Ms. Laxmi Anil the wife of Mr. Anil Kumar, was undergoing treatment for renal failure from 15.07.2004 at Government Medical College Thiruvananthapuram. She was also diagnosed as suffering from pericardial effusion, therefore the patient was discharged and on 13.09.2004, got admitted in Amrita Institute of Medical Sciences and Research Centre At the time of admission, she disclosed complete medical history to the doctors along with previous treatment records. She was advised for dialysis for renal complaint and suggested kidney transplantation at a later stage. From 14.09.2004, the patient underwent continuous dialysis for a period of 20 days and was discharged on 05.10.2004 and advised to continue the dialysis as on OPD basis. But on 13.10.2004, she again got admitted to the Opposite Party No. 1 – Hospital with aggravated symptoms and she was treated as an inpatient till 20.10.2004 and was discharged again with a direction to continue her dialysis as an outpatient. The treating doctors informed the relative of the patient that the patient was suffering from Tuberculosis (TB) and the treatment for TB also started along with her dialysis. She was advised to take treatment of TB for at least 6 months. The Hospital also intimated the relatives to get ready for patient's kidney transplantation. In the meantime, the kidney of the patient's mother was found suitable for transplantation and thereafter, on 18.01.2005, kidney transplantation was performed and the patient was discharged on 27.01.2005. The further treatment for TB was continued for a period of 4 months and it was completed on 12.05.2005. In the month of June, 2005, the patient went to Dubai and there, she was advised periodical follow-up with Dr. Poulose P. Thomas, a Nephrologist attached to Beihoul Specialty Hospital, Dubai. However, she lost her appetite and started to have irritation in the stomach after taking solid foods and her condition became worse. Therefore, she returned to Thiruvananthapuram on 08.07.2006 and got admitted to KIMS Hospital on 10.07.2006. It was alleged that the doctor started treatment without any test and discharged her on 16.07.2006. But, again she was admitted in the Opposite Party No. 1 Hospital on 18.07.2006, due to difficulty in breathing and she was shifted to ICU on ventilator. However, during treatment, she expired on 14.08.2006. The hospital informed the relatives that the cause of death was due to sepsis. Being aggrieved by the gross negligence of the treating doctors and unfair trade practices at Opposite Party No. 1 Hospital, the Complainants filed the Consumer Complaint before the State Commission, Kerala seeking compensation of Rs. 1 Crore.

**DEFENSE :** That the patient was Type-I diabetes mellitus (DM) since the age of 9 years. She had renal problems and also pericardial effusion. The pericardial effusion in such cases occurs due to TB. The effusion usually disappears after intensive dialysis sessions. The patient responded anti-TB treatment. She was on maintenance dialysis and underwent kidney transplant on 18.01.2005. She was on immune-suppressive medicines. The patient was advised the proper combination of TB medicines and the doses were adjusted appropriately according to kidney function tests. Appropriate dosages of TB medicines before and after kidney transplantation were given. As the patient expressed her desire to go to Dubai, therefore, the Hospital gave consent, but she was advised for periodical check-up without fail. She was also advised to take consultation with Dr. Poulose P. Thomas, the Nephrologist in Dubai. In the cases of sepsis, the organs like lungs, kidney, liver and brain are affected and ICU support was the accepted therapy. The

Opposite Party No. 1 denied the wrong combination of drug and wrong doses for TB was given. The doses of TB medicine were adjusted according to her kidney functions. The said treatment was decided by the team of highly qualified Nephrologist, Transplant Surgeon and the Anesthetist. After renal transplantation, for about five months, there was no complaint and the best possible treatment was given to the patient. Hence, there was no negligence or shortcoming during the treatment.

**OBSERVATIONS :** The patient suffered from two different diseases one chronic renal failure and the second pericardial effusion. The pericardial effusion may be due to kidney failure and/or Tuberculosis. If it was renal failure, then the effusion disappears after intensive dialysis, but if it was due to Tuberculosis, the effusion will not reduce. The patient responded well to the TB treatment. Therefore, the allegation about delay in starting treatment for TB is not sustainable. The medical record clearly shows that from 03.07.2004, the patient was taking anti Koch's (TB) treatment (ATT) with four drugs namely RIFA, INH, PZA, ETB. The patient was admitted at AIMS on 13.09.2004 for pre-transplant evaluation and discharge on 05.10.2004. The discharge summary (discussion) is reproduced as below:

*"Mrs. Lakshmi was admitted for pre transplant evaluation and initiation of hemodialysis. She was initiated on hemodialysis on 14.09.2014 through a right internal jugular catheter. She was given pack red blood cell transfusion under Azoran cover. She was cleared from Urology, Gastroenterology, Ophthalmology, ENT, Dental and OBG units for rental transplantation. Echocardiogram showed pericardial effusion and she was given intensive daily-hemodialysis for two weeks. Ophthalmologist evaluated her and was found to have non-proliferative diabetic retinopathy. She is being discharged with advice to continue hemodialysis as an outpatient."*On 13.10.2004, the patient was again admitted in AIMS Hospital for Pericardiocentesis and was discharged on 20.10.2004. The discussion in the discharge summary is revealed as below:

*"Ms. Lekshmi was admitted for pericardiocentesis as pericardial effusion persisted inspite of intensive daily dialysis for two weeks. The procedure was done on 13.10 2004. Fluid aspirated was hemorrhagic. Post procedure echocardiogram showed mild pericardial effusion (16 mm posterior to LV) which is loculated. Blood sugar was controlled with adjusting dose of insulin, she had diminished vision (R) eye, which was evaluated by ophthalmologist and was found to have Vitreous and preretinal hemorrhage due to diabetic retinopathy. She is being discharged with advice to continue regular hemodialysis."*Thereafter, on 15.01.2005, she was admitted for renal transplant under the Consultant, Dr. Unni at AIMS Hospital and the renal transplant was performed on 18.01.2005. She was discharged on 27.01.2005. She was advised to continue the immunosuppressant – Syp. Cyclosporine, Tab. steroid – Wysolone and two drugs for TB namely Tab. INH 200 mg, Ethambutol 400 mg. The antibiotic Oflox 200 mg (BD) was also added.

**HELD :** We have gone through the medical literature on renal disorders and transplant. In our view, the treatment adopted by the doctors at Opposite Party No. 1 Hospital was as per the standard practice. For the pericardial effusion, heavy dialysis was performed. The tuberculosis was suspected and therefore, the anti-tuberculosis regime was prescribed by the Nephrologist was correct. Before renal transplant, the four drug regime was given for two months and thereafter, the patient was kept on two drugs for TB during post-transplant period. The drugs were given for four months, which is as per the standard of practice. There was no adverse effect due to anti TB medicine on the transplanted kidney. Admittedly, the patient was DM Type-I since childhood and undergoing treatment for renal failure in Medical College, Tiruvananthapuram. On 15.07.2004, the X-ray chest revealed pericardial effusion. She was advised to take to a higher center and got discharged from Medical College and admitted in the Opposite Party No. 1 Hospital on 13.09.2004. It was diagnosed as end stage kidney disease and she was on maintenance dialysis and planned for kidney transplantation. The pericardial effusion was due to kidney failure and more possibility of Tuberculosis, but despite repeated dialysis, pericardial effusion did not subside. After the treatment with ATT, the pericardial effusion subsided and after renal transplant, the patient was advised to take ATT with two drugs (INH & ETB). After renal transplant, immune-suppressant medicines to be taken and such patients

are more prone of developing infections. Her condition was stable and she was permitted to go Dubai, called in January, 2006 and till then, she was suggested to consult Dr. Poulose P. Thomas at Dubai for follow-up. But she came back on 10.07.2006. On return from Dubai, she developed fever and continuous watery diarrhea, dysuria, therefore, on 16.07.2006, she was admitted in emergency in KIMS, Cochin. The blood investigation showed leukocytosis (24600/cmm), severe acidosis. The blood and urine was sent for culture and sensitivity and she was started on Fortum (ceftazidime) and Tab. Flagyl with a provisional diagnosis of Clostridium difficile and Pyelonephritis. There was history of multiple infections in the past three months and she was suffering from loose motions for past one month. Her sugar was uncontrolled. She was given IV fluids and antibiotics based on Culture reports. She was discharged from KIMS and admitted in AIMS for further treatment, but during the course of treatment she expired on 14.08.2006 due to septicemia. In our considered view, by any stretch of imagination was no co-relation between the tuberculosis, renal transplant and septicemia. The death was neither due to Tuberculosis nor by renal transplantation. It is pertinent to note that it was a successful kidney transplantation, as it is evident from record that the transplanted kidney functioned well till 16.07.2006 for about 1 ½ years.

We do not find any negligence from the doctors at the Opposite Party No. 1 Hospital. They performed their duties as per the reasonable standards. There was no deficiency during treatment of TB or renal disease. To conclude, we affirm the reasoned Order of the State Commission. There is no merit in the instant Appeal. The same stands dismissed.

# *Quick Referencer for* Judicial Service

**Q. 1.** *'X'* **a taxi-driver, negligently reversed his taxi into a small boy who was riding a tricycle on the road and slightly injured the boy. The boy's mother heard the boy scream and looking out of an upstairs window of a house about eighty yards away saw the tricycle under the taxi but could not see the boy and being apprehensive for his safety she suffered severe nervous shock resulting in illness. She claims damages from** *'X'*, **the taxi driver. Discuss the chances of her success.**

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

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

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

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

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

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

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

*Kishor Prasad*

# Supreme Court Guidelines

## GENERAL CLAUSES ACT, 1897

**CONSTITUTIONAL VALIDITY**

**Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India**

(2009) 2 SCC 1: JT 2008 (13) SC 207: 2009 (1) RCR (Criminal) 263:

2009 (4) GLR 3054

***Dated:*** October 21, 2008

***BENCH:*** Justices K.G. Balakrishnan, R.V. Raveendran and Dalveer Bhandari.

The following well-settled principles have to be kept in view while examining the constitutional validity.

(a) Parliament has the exclusive competence to legislate on terrorism and terrorist and disruptive activities which threaten the security, integrity and sovereignty of the country, as they fall under Entry 1 of List I of the Seventh Schedule to the Constitution. Alternatively, they would fall under the residuary power conferred on Parliament under article 248 read with Entry 97 of List I of Seventh Schedule [Vide *Kartar Singh* v. *State of Punjab,* (1994) 3 SCC 569].

(b) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been a clear transgression of the constitutional principles. [Vide *State of Jammu and Kashmir* v. *Triloki Nath Kosha,* (1974) 1 SCC 19]

(c) A law made by the Parliament can be struck down by courts on two grounds and two grounds alone: (1) lack of legislative competence; and (2) violation of fundamental rights guaranteed under Part-III of the Constitution or any other constitutional provision. There is no third ground. [Vide *State of Andhra Pradesh* v. *McDowell and amp; Co.,* (1996) 3 SCC 709].

(d) The power and competence of Parliament to make laws in regard to the subjects covered by the legislative fields committed to it, carries with it the power to repeal laws on those subjects. The power of the Parliament to repeal a law is co-extensive with the power to enact such a law. (See Justice G.P. Singh's Principles of Statutory Interpretation, 11th Edn., p. 633)

(e) The Legislature may prescribe special procedure to meet special situations and to meet special objectives so long as they are not arbitrary or discriminatory. *[Kathi Raning*

*Rawat* v. *State of Saurashtra,* 1952 SCR 435 and *In Re: The Special Courts Bill, 1978,*

(1979) 1 sec 380J.

(f) If any Central Act, is repealed, without making any provision for savings, the provisions contained in section 6 of General Clauses Act, 1897 will apply. But where the Repealing Act, itself contains specific provisions in regard to savings, the express or special provision in the Repealing Act, will apply. Section 6 of General Clauses Act makes it clear that it will not apply, when a different intention appears in theRepealing Statute. Where the provision relating to savings is excluded, the repeal will have the effect of complete obliteration of the statute. [Vide *State of Orissa* v. *MA. Tullock and amp; Co.,* 1964 (4) SCR 461; *Nar Bahadur Bhandari* v. *State of Sikkim,*

(I998) 5 SCC 39 and *Southern Petrochemicals Industries Co. Ltd* v. *Electricity Inspector,*

(2007) 5 sec 447J.

# "BETH'S BEEN KIDNAPPED!"

Donald Robinson

On Thanksgiving weekend in 1976, 23-year-old Elizabeth (Beth) Ferringer was visiting her parents, Susan and Don Meyer, at their isolated home near State College, Pennsylvania. Because of his job, Beth's husband Michael had returned home early to Brookville, 81 miles away, and so he was not there when, on Sunday evening, Beth's harsh ordeal began.

Nor was her father. That evening, after a pleasant family dinner, Don Meyer had kissed his wife and daughter good night, and left for the Autoport, a motel-restaurant he owned in town. At 11:10 p.m., Susan Meyer was chatting on the telephone. Suddenly, the line went dead and the lights went out.

As the two women groped their way to the master bedroom for a kerosene lamp, there was a sound of shattering glass, then footsteps. Terrified, Beth and her mother pushed a chair against the bedroom door. Abruptly, the door was kicked in. A brawny man wearing a monster mask stood in the splintered entrance holding a pistol. Another masked gunman loomed behind him.

The men moved quickly. Forcing Susan Meyer to lie face down on the floor, they tied her hands behind her back with nylon rope. "Don't call the police," they warned as they led Beth away, "or you'll never see your daughter alive again."

The kidnappers pulled a pillowcase over Beth's head, then forced her into the back of her mother's Oldsmobile and drove off.

Soon after she heard the kidnappers leave, Susan Meyer managed to wriggle out of her bonds. She jumped into Beth's car and drove madly to the home of her nearest neighbor, nearly a half mile away. At 12:15 a.m. Don Meyer was told he had an urgent call from his wife.

"Beth's been kidnapped!" Susan sobbed. "They said they'll kill her if you call the police."

Meyer was stunned. He paced the floor, weighing alternatives. Then he decided there was only one thing to do.

At 2:25 a.m., Meyer's office phone rang. A male voice said in falsetto, "Do exactly what I say, or you'll never see your daughter alive again."

"What do you want?" Meyer asked.

"One hundred and fifty thousand dollars," the caller declared.

"Let me talk to Beth," Meyer begged. "Impossible," the caller snapped, and hung up.

The call was traced to a phone booth on the outskirts of town.

An armed surveillance team was sent to watch the booth.

But the only person to use it was a city policeman making a routine call to headquarters. Meanwhile, other FBI agents were converging on State College from their offices in Philadelphia, Harrisburg, Williamsport, Allentown and Scranton.

At 12:45 p.m., the voice on the phone asked, "Do you have the money?"

"It took too long getting the CB," Don Meyer replied. "As soon as we're finished with this call, I'll go to the bank. Let me speak to Beth."

"No," the voice said. "I'll call you at 4 p.m."

The trap traced the call to another pay phone at the HUB.

Welch now made one of the most crucial decisions of the case. He gambled that the kidnappers would make their next call from the HUB as well, and drew his plans accordingly.

While Meyer drove to the Peoples National Bank to put up his house and business as security for a $150,000 loan, Welch selected ten agents who could pass as students or young instructors. Special Agent Dave Richter was in charge of the squad. Tall and blond, he looked ten years younger than his 33 years.

Singly and in pairs, the, casually attired FBI men sauntered over to the HUB, where eight phone booths stood near the front entrance. Richter sent agents into the first, third, sixth and seventh booths. An agent would be in the next booth no matter which one the kidnapper chose.

Shortly after 4 p.m., a stocky man strode into the HUB and went straight into the vacant booth next to Richter. As the agent pretended to make his own call, his heart jumped.

The man in the next booth was speaking in a falsetto voice. "Go to the parking lot of the Bald Eagle Restaurant in Milesburg," the man instructed (Milesburg is 13 miles north of State College). "Turn on your overhead light and switch your CB to Channel 7."

Richter excitedly phoned the command post. "I have the guy. He's speaking to Don Meyer now. I'm going to tail him."

The man hung up, then walked casually to a brown latemodel Pontiac in the HUB parking lot. By bizarre coincidence, it was parked next to Richter's car.

The Pontiac was registered to the Two Wheels Cycle Shop in State College. "Hold on!" exclaimed Ernest Neil, a local FBI man. "That's Gary Young's place." Gary R. Young, the 33-yearold owner of the motorcycle shop, and his 23-year-old brother, Kent, who worked for him, were not unknown to the police:

they were awaiting sentencing

on a recent conviction of aggravated assault and recklessly endangering another person.

The safe course for Welch would have been to pick up Gary Young and hope that he talked. But Beth Ferringer's life was in danger. Welch decided to go through with the ransom payoff and hope that Gary would lead them to his captive.\

At 6:30 p.m., Don Meyer returned to the Autoport. Suddenly, everything seemed to collapse. Gary Young telephoned in a wild rage. He'd spotted the plane. "You blew it! You got airplane surveillance on us," he screamed.

"What the hell are you talking about?" Meyer yelled back.

"There isn't any plane. You have the money. Please, tell me where Beth is!"

Gary subsided. "I'll call you in an hour," he said.

The kidnappers didn't call in an hour. Nor in two hours.

"Please, God," Meyer prayed. "Let them call."

The Young brothers drove back to the motorcycle shop, stayed a while and drove out again. By 9 p.m., the FBI plane had been airborne more than four hours. It landed at 9:15 p.m., with two-tenths of a gallon of gas left in the tank.

Before they came down, Creasy signaled the auto-surveillance squad to resume the tail by flashing his lights-lights that Gary Young spotted. Panicked, Young phoned the airport. By sheer good luck, Creasy answered. When Young demanded to know if any policeman were flying, he answered, "Nope, just a student pilot with an instructor."

"But this plane kept turning its lights on and off," Young insisted.

Creasy reacted coolly: "The student probably grabbed the wrong buttons in the dark. Happens all the time."

Young fell for it. At 10 p.m. he telephoned the Autoport and told Don where to find Beth. "Take a hacksaw with you," he said.

Gary Young was driving alone when FBI agents forced his car off the road and, guns drawn, arrested him. Five other agents hit Kent's apartment, and seized him in his bedroom. The next morning FBI agents found the ransom money hidden in an olive-drab laundry bag under six inches of insulation in Gary Young's attic.

To the FBI's deep regret, the kidnappers could not be prosecuted under federal law-which provides for life imprisonment-since neither brother crossed state lines in the commission of the crime. Both Youngs were sentenced to terms in the Pennsylvania State Correctional Institution. Gary received a ten- to twenty-year sentence, Kent eight to twenty years.

*Gary Young was released on parole in 1990 after serving thirteen years of his ten- to twenty-year sentence. Kent Young was released on parole in 1983 after serving six years of an eight- to twenty-year sentence.*

# Reflections from International Law Association's 80th Biennial Conference from Ankit Malhotra, ILA Young Scholar*

**Ankit Malhotra***

The 80th Biennial Conference of the International Law Association in Lisbon broke the burgeoning virginity of foreign travel and in-person events for many. Personally speaking, it was a delightful occasion to interact with 'legal eagles' who have been deeply inspiring and supportive of my undertakings. One such undertaking was conceived on November 18, 2020. This was during the peak and dim months of the pandemic, I co-founded the Jindal Society of International Law. The Society functions as a student arm of the Centre for the Study of United Nations expertly chartered by Professor (Dr.) Vesselin Popovski. The inaugural address was delivered by the Herbert and Rose Rubin Professor of International Law, Jose Enrique Alvarez of New York University, along with the Vice-Chancellor of O.P. Jindal Global University, Professor (Dr.) C. Raj Kumar, Faculty Coordinator Professor (Dr.) Vesselin Popovski and Dean of Office of International Affairs and Global Initiatives, Prof (Dr.) Mohan Kumar. The Society is an initiative to provide a platform to young international law enthusiasts and increase student interaction with the subject matter of International Law through its various initiatives. Rather than being primarily research-driven, we intend to offer a host of experiences that contribute toward skill-building, thereby increasing the knowledge database available to students. This Society is an attempt to bridge the lacuna by streamlining resources and inculcating an overall interest in the vast expanses of International Law.

Truly, one is deeply grateful to the Association. The thought, vision, duty to care and diligence of the organisers was par excellence. For future events, the bar has been set as high as the Himalayan mountain range. Quite daring and unsurmountable. To steer this report towards more meaningful avenues, as was directed by the extremely helpful, Ms Claire Martin, I would like to utilize the rest of the report on substantive aspects. Namely, my reflections on the Panels and Committees I attended.

Titled appropriate, International Law: Our Common Good, the themes of the session focused their attention on aspirations and opportunities to research and re-imagine the development of law in response to defining challenges of current generations such as climate change, and global pandemics, and the use of force. Through collaborative efforts of institution building, I observed, that partnerships and common themes emerged targeted towards codification and progressive development of international law. At the Conference, one became acutely aware of the importance of

nurturing a deep understanding of international law. To this end, was able to reimagine skills honed by my formative strands and inferences developed in India, as my understanding of the law is rooted in the practices of developing States. My passion for international law was reinforced however I acknowledged the vitality of being clear-eyed about its nature which can strengthen the rules on which international cooperation is based and help to promote a just and peaceful system of international relations. Towards, international laws as a common good, one must guarantee intellectual rigour, competence, and commitment.

In the Young Scholars Panel discussion, the focus by myself and Anil Malhotra was paid on International Family Law in our paper and Presentation entitled, "Complicity and Conflict of Laws in International Family Law- Indian Perspective". A brief abstract is reproduced from the Paper.

Under Article 40 of the Draft Constitution, 1948, had endeavoured to promote "international peace and security by the prescription of open, just, and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organized people with one another". Similarly, in 1984, Hari Vishnu Kamath added, "India with her ancient cultural and spiritual heritage and her tradition - a centuries-old tradition of non-aggression – is best qualified to enhance respect for international law and treaty obligations." Thus, India has played and continues to play a pivotal role in developing international legal principles. It is also important to note that India enshrines complicity to international law, under the Indian Constitution's Directive Principles of State Policy under Article 51. Under the same Article, India shall endeavour to promote international peace and security, maintain just and honourable relations between nations, and foster respect for international law and treaty obligations in the dealings of nations, besides encouraging the settlement of international disputes by arbitration. Article 253 of the Indian Constitution empowers the Indian Parliament to make domestic laws for implementing treaties, agreements or conventions signed with countries, as also to give effect to any decision made at international conferences. Present remedies under Indian Constitution, require invoking Habeas Corpus extraordinary writ jurisdiction of High Courts or Supreme Court. Bitter disputed custody battles requiring conventional evidence proof relegates parties to remedies in the Guardians and Wards Act, 1890. Natural parents then seek rights of custody, access, visitation, and guardianship. Impasse soars. Inadvertently, converse realism dawns.

Child removal is now a two-way street Children permanently residing in India, removed to alien jurisdictions, cannot legally be directed to return to India. Child custody litigations are commenced concurrently in different jurisdictions. Families get split across continents. In India, such children face lengthy Court proceedings without relief. Mirror orders safeguard the rights of children, and the movement of transnational families was settled by Supreme Courtbut the judgment was recalled on October 7, 2021, for noncompliance. Mirror orders are protective measures evolved by Courts in different countries. They respect orders for benefit of child rights to ensure the return to the country of habitual residence. Such orders if accepted to be implemented by foreign Courts are said to be mirrored. International Family Law requires one Court deciding, to avoid conflicting judgments on custody rights of the same children in different jurisdictions. This principle is called the comity of Courts. It engages my interests. Mirror orders protect children's movement across countries. This ensures that litigating parents are legally bound across conflicting jurisdictions. I advocate that India cannot be criticized as a haven for removed children.

It has found some form of legal recognition only in a restricted number of treaties and other instruments for a restricted number of state parties supporting them. This is also true for space law, even if one considers the qualification of radio frequencies and satellite positions in the geostationary orbit as 'limited natural resources which should be distributed equitably, as laid down in the Convention of the International Telecommunication Union, in one way or another, as an expression of that principle. The opening of outer space territories and resources to the possibility of commercial ventures also raised new questions concerning the activities of states and private entities in outer space. The Common Benefit Principle of the 1967 Outer Space Treaty in combination with its no appropriation clause in Article 2 left open certain questions

concerning sovereignty and property rights concerning permanent space stations, lunar stations, and astral and lunar mineral resources. The CHP was offered as a complementary principle that would fill these legal gaps by defining the nature and use status of outer space and its resources; clarifying the rights and obligations of states and private entities concerning these resources, and providing regulatory guidelines that would reduce the monetary risks of commercial space ventures.

'Need I apologize for my choice of subject? Some may say it belongs to the realm of exotics of law. Some may ask: Why deal with issues so remote when there are so many much closer to us still awaiting a solution? Why reach so far?' With these words, the late Judge Manfred Lachs introduced his 1964 lecture at the Hague Academy of International Law on the topic 'The International Law of Outer Space'. In its initial formative phase, space law has developed in anticipation of outer space activities at a time when such activities were still rather limited in practice. Significant progress was achieved since the two major powers, the United States and the Soviet Union, were at the time actively engaged in outer space activities, while most other states failed to perceive that any of their substantial interests would be affected in this connection shortly. While the major space powers seek to retain their monopoly positions and technological edge as much as possible, this has now clearly changed. Increasing numbers of states have become directly or indirectly involved in outer space or consider that their political and economic interests require the taking of a position. Conflict of interest, especially between industrialized and developing countries, has made achieving a consensus in the law-making process increasingly difficult. One peculiar highlight of this process has been the 1976 Bogota Declaration by eight equatorial countries claiming sovereign rights to segments of the geostationary orbit 36,000 km above their territory, which was met with rejection by the international community. Equatorial countries subsequently began abandoning this untenable position. One of the major treaty instruments was prepared based on the consensus method (instead of majority decision-making) to ensure the participation of the space powers. As a result, reinforces the common heritage of mankind in letter and spirit.

*The author is a law graduate from Jindal Global University and was selected to attend the ILA Conference at Lisbon as an ILA scholar on an all-expenses paid assignment.

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

## TOUCH HIM

Scientists at the University of Minnesota conducted two experiments. In the first one of the researchers left a coin in a telephone booth and then hid nearby. When he saw that someone had found his coin, he walked up to them and asked: "Did you happen to find my coin?" One quarter of the people gave him back his coin. In the second experiment, the set-up was the same, except that the researcher first touched the elbow of the people before asking them whether they had found his coin. As many as three-quarters of these participants returned the coin. A slight physical touch establishes a bond - and a bond does wonders for negotiations.

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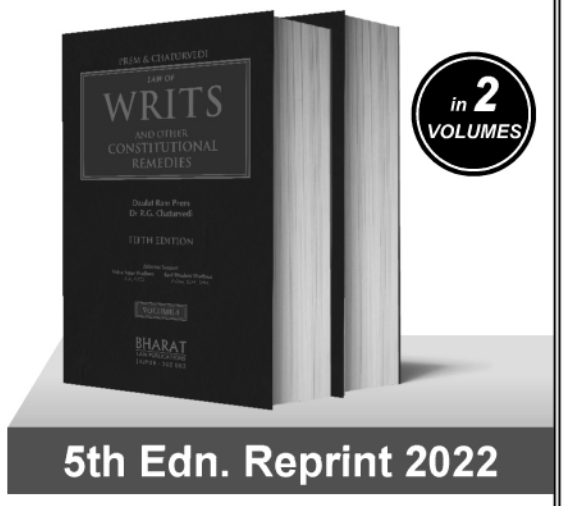


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**9th EDITION REPRINT 2022**
**with UPDATE**

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# Labour Laws Q/A

**PAYMENT OF BONUS ACT**

**ELIGIBILITY FOR BONUS**

***Whether an employee who is not a 'workman' under the Industrial Disputes Act will be entitled to Bonus?***

The Payment of Bonus Act, indicates that the following categories of persons will be entitled to bonus:

(a) skilled or unskilled or manual labour,

(b) managerial staff,

(c) supervisory staff,

(d) administrative staff,

(e) technical staff, and

(f) clerical staff.

An employee who has been engaged on hire or reward on terms which are either express or implied, and

(i)his salary does not exceed Rs. 21000 *per mensem* is entitled to bonus, but he must have worked for at least 30 working days in a year;

(ii) who is not an apprentice.

Every person who falls within the definition of the term 'employee' under section 2(13) of the Payment of Bonus Act, will be entitled to bonus under the Payment of Bonus Act, even if he is not a 'workman' under the definition of section 2(s) of the Industrial Disputes Act, 1947. The legislative validity of section 2(13) has been upheld by the Kerala High Court.[1] A daily wage employee will be covered under section 2(13) of the Payment of Bonus Act, 1965 and entitled to claim bonus when he has worked for 30 days in an accounting year.[2]

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

Every employee shall be entitled to be paid bonus by his employer in an accounting year, in accordance with the provisions of the Payment of Bonus Act, 1965 provided he has worked in the establishment for not less than thirty working days in that year, irrespective of his being daily wager, casual or temporary or permanent, weekly paid or monthly paid.[3]

References:

1. *Malabar Tiles Works* v. *Union of India*, 1976 (II) LLJ 816: AIR 1968 Ker 143.
2. *Sumitra Devi* v. *H.P.S.E.B.*, 2010 (I) LLJ 199 (HP HC).
3. *The H.P. State Forest Corporation Ltd.* v. *Mohan Singh*, 2014 LLR 474: 2014 (141) FLR 863 (HP HC).

# Legal Thesaurus

**Hemo debat case index propria casual-Audi alter am partem :**

Rules of natural justice require that a party against whom an allegation is being inquired into should be given a hearing. It was said that the right to the hearing included a right to cross-examine. The right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being inquired into *[State of Jammu and Kashmir v. Bakshi Ghulam Mohammad; AIR 1967 SC 122].*

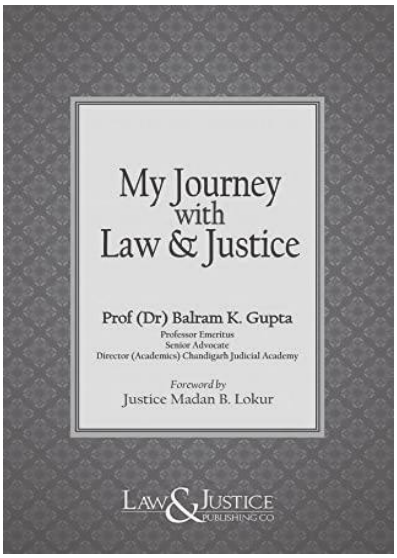
The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely,-

(1) no one shall be judge in his own case (*hemo debat case index propria casual*), and

(2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*).

# MY JOURNEY WITH LAW & JUSTICE

*by Prof (Dr.) Balram Gupta*




Excerpts from the Book Review of **My Journey with Law & Justice** by Maj. Gen. Raj Mehta published in **Geopolitics** (Vol. XIII, Issue-II, July 2022).

1. A positive end to great reading is the applicability of this landmark, superbly crafted, well produced book for not just those in the law and justice professions but also for students aspiring to reach great heights in these disciplines. Not to be left behind, the uniformed fraternity across regular military forces, central police and paramilitary forces in India and abroad also need to have this book in their must read/ use listings.

2. He has consciously made his book narration infectiously driven by positivity and values. Grey shades exist everywhere in life. They must however be set aside; not reflected in a book imparting high values in words, deeds and positivity.

3. The Armed Forces would gain from reading/experiencing this Book. …… Anyone with a basic understanding of armed forces functioning- the world's third largest at 1.4 million, will see the intimate connect between what Mentor Dr Gupta focused on and what army officers do to mould their subordinates across ranks to live and when needed, die for sustaining the ethic of Naam, Namak, Nishan (honour, integrity, flag); the word 'flag' being an apt synonym for constitution. Soldiers respect their officers as Mai-Baap.. Surely Dr Gupta's students in law class/ NJA and later CJA view him in a similar mode.

4. Readers may note that integrity is a core military DNA expected from the highest ranked General to the lowest rank of Sepoy. Nothing less is acceptable including in death. The reviewer is thus entitled to review it fearlessly and dispassionately. Not just as compulsive and necessary reading "by everyone connected with law" as Justice JS Khehar opines but also because uniformed forces need this depth of understanding.

5. Many of the pithy deductions Dr Gupta draws whether quoted from Socrates; Master of the Rolls, Lord Alfred Denning or from India's legal and judicial greats handpicked by him for highlighting their attributes directly apply to the military. These are reasons enough for examining this rare genre of book that reads like "serious fun". The last word in this context is from Justice Lokur. He suggests that reader's keen to learn from such greats would agree with Sir Issac Newton's pithy response to peer praise of his scientific genius: "If I have seen further, it is by standing on the shoulders of giants".

6. Essentially in shaping judges, Dr. Gupta has taken up the challenge of converting judicial academy classrooms into courtrooms, making them laboratories that shape judges. Value addition in terms of compassion, humanism, humility, integrity, honesty, hard work, professional merit, boldness and elegance in conduct is ensured. Judges thus develop as engines of justice. His 15 well considered and visionary articles drive home these attributes with apt examples. Also covered is judicial stress and practical ways of reducing it.

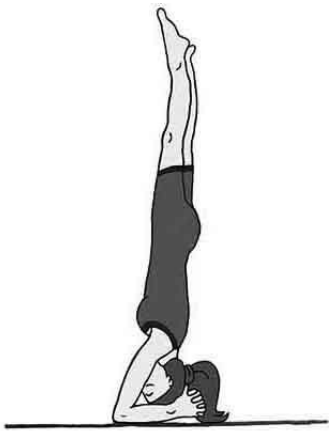
7. His momentous journey which is lined with ace brilliance and integrity; His passionate involvement and investment in shaping the judges; His writings about some judicial greats in the profession; thereby leaves from their lives shared by him to ignite young judicial minds in their search for truth without which justice is impossible. The last part is about judicial review and the constitution. He opines that periodic judicial review by brilliant minds has made the constitution a "living entity".

# 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:



### *Shirsasana or Headstand*

**Benefits:** The yoga Headstand position is referred to as the 'king of asanas' due to its wonderful benefits to the body and the mind. Some of the benefits are:

- Stimulating the functioning of the pineal, hypothalamus, and pituitary glands. This helps in better functioning and co-ordination of all the endocrine glands.
- Improving the body's ability to maintain homeostasis by stimulation of the nervous system
- Providing conditioning to the brain, eyes, and ears due to safely increased blood pressure
- Improving memory and concentration
- Helping to manage mental fatigue, depression, and anxiety
- Improving the functioning of the central nervous system
- Improving the body's capability to regulate blood pressure by stimulation of the so-called baroreceptors
- Giving rest to the heart by reversing blood pressure temporarily
- Improving body posture by activating the core
- Strengthening of muscles of the back, shoulders, and arms
- Improving blood and lymph circulation throughout the entire body
- Improving digestion and elimination functions.

**Procedure:**

Sit on the knees and hold the elbows to measure the ideal distance.

Then bring the arms to the ground right under the shoulders.

Keeping the elbows there, bring the hands closer and interlock the fingers so that your arms form a triangle. Do not let your elbows open out.

Place the head on the ground with the back of the head in the cupped hands.

Curl your toes, straighten your knees, hips to the sky.

Start walking towards your shoulders.

Bring the right knee in your chest and then bring another knee towards the chest. This will make your spine straight.

As you inhale, raise your legs to the sky. Straighten your legs upward while keeping your feet slightly in front of you.

Bring your focus on a steady point preferably at eye level.

Take easy relaxed breaths and hold the posture as long as comfortable.

**Duration of Hold**

Beginners: 30 seconds–1 minute

Intermediate: 1–3 minutes

Advanced: 3–6 minutes

## *Healthy Food*

### *Lima Beans*

Lima beans are sometimes called butter beans because of their rich, buttery taste. They have a flat, greenish or whitish, oval-shaped appearance and are easily found in almost any grocery store. While many of us may have avoided eating lima beans as children, they are a smart food to add to your meals at any age. Lima beans are rich in nutrients, budget-friendly, and easy to prepare.

*Lima Bean Nutrition Facts*:- One cup of boiled and drained lima beans, without salt (170g), provides 209 calories, 11.6g of protein, 40.1g of carbohydrates, and 0.5g of fat. Lima beans are an excellent source of vitamin C, fiber, and iron. The following nutrition information is provided by the USDA.

There is about 1 gram of fat in a cup of lima beans, making them a naturally low-fat food. Additionally, most of that small

amount of fat is polyunsaturated fat, which is considered "good fat" by health experts.

*Protein:-* Each serving of lima beans provides nearly 11 grams of protein—slightly more than other types of beans. Lima beans, however, are not a complete protein. Complete proteins provide all of the essential amino acids that the body cannot make and therefore must be consumed in the diet. Eating foods from various protein sources each day will allow you to get all the amino acids you need.

*Vitamins and Minerals:-* Vitamins in lima beans include folate (34 micrograms, or about 4% of the daily value). You also benefit from thiamin and smaller amounts of several B vitamins, along with vitamins K and E.

Minerals in lima beans include manganese, potassium, copper, magnesium, phosphorus, and iron. Lima beans have more iron than several other types of beans, including kidney beans, chickpeas, and soybeans.2 Lima beans also contain small amounts of zinc, selenium, and calcium.

*Calories:-* One cup of boiled lima beans provides 209 calories, 76% of which come from carbs, 22% from protein, and 2% from fat.

## Recipe of the Month

### *Lima Beans with Sautéed Onions*

**Ingredients:**

- 2 Cups lima beans
- 1 Onion, diced
- 2 Tablespoons olive oil
- Handful of fresh dill
- Salt and pepper to taste

**Procedure :** Cook the lima beans in boiling salted water until they are tender then drain. Sauté the onion in one tablespoon of the olive oil until translucent. Add the sautéed onion to the cooked lima beans along with the remaining tablespoon of olive oil and chopped dill. Season and serve warm. Makes about four servings.

## Happy Holidays

### *Landour*

Landour is about 984 ft above Mussoorie and it lies on the east-west ridge connecting its western end to Mussoorie. Being built by the British Indian Army Landour has more of a European touch to it rather than that of Mussoorie. Landour is a perfect weekend getaway for the ones who want to escape from the hustle and bustle of the city life and spend some quality time in the midst of the towering Deodar. Himalayan Oak, chirr pine, blue pine, West Himalayan fir, rhododendron and other Himalayan Trees. Landour is very famous for its colonial style architecture and high altitude points that give the travelers a delightful view of the Himalayas of Uttarakhand. There are a number of places in and around Landour where you can stay and enjoy the various activities that will make your stay in the hills a pleasant and rejuvenating one.

**Wildlife in Landour, Mussoorie**

When you travel to Landour you will be completely captivated with the extremely gorgeous wildlife that the place has to offer. You will not only find the town enriched with a beautiful ecosystem but also with a diversified wildlife. Landour has an approximate of over 350 species that are both endemic and migratory species from Tibet, Central Asia and Siberia. You will find a number of pheasants and raptors dominantly. Animals like leopards, jackals, barking deer, goral and sloth bear are also spotted here. You will also find a Small Mammals in Landour such as yellow-throated martens, civets, Himalayan weasels etc.

**Places to vist in & Around Landour**

- **Landour Bazar**
- ***Lal Tibba***
- ***Char Dukan***
- ***Rokeeby Manor***
- ***Landour Bakehouse***
- ***Nag Tibba***
- ***st Paul's Church***
- ***Kellog's Memorial Church***
- ***Schools and Colleges***

**How to reach Landour Mussoorie**

Landour is about 7.5 km from main Library Bus stand of Mussoorie. You can hire a taxi or rick-saw to reach Landour


# REAL LAW SCHOOL PERSONAL STATEMENTS

## EXPAND YOUR SCOPE BEYOND YOUR CHILDHOOD

My parents got divorced when I was in pre-kindergarten, and then my father got divorced again when I was in second grade. My mother went through her second divorce when I was a freshman in college, at the same time as my dad was going through his third. Both of them are in new relationships now (with people whom my brother and I call their future ex-husband and ex-wife, respectively). So you could say I have a pretty solid understanding of divorce.

Perhaps it is for this reason that I did what I did my freshman year of high school.

There was this girl Jane who, truthfully, was pretty unintelligent-when she spoke, her observations fell just short of the mark. No one really liked her, and Jane was often the entertainment, the one to tease, the one at whom we could laugh because she never seemed to understand that we were laughing at her. I wouldn't call us bullies, because I don't believe Jane ever felt she was bullied. I believe she saw us as her friends.

Jane lived next door to my good friend Mary, who told me one day that Jane's parents were in the middle of a messy divorce-a topic about which I, of course, knew quite a lot. One afternoon, Jane's parents had had an enormous blowout on the driveway in front of the house one day. She heard them screaming and Jane's mom was crying.

The next day, Jane didn't show up at school. Then she missed several more days in a row. When she finally came back, she cut the last three periods and then skipped three more days. This went on for several weeks before Jane and her parents were called in to meet with the school's administration.

Later that day she stayed in school but she was even more quiet than usual. When I asked her if she was okay, she told me that she was pretty sure she was going to be expelled. I asked her where she was going everyday and she replied, "I walk to school, but then sometimes I just keep walking."

I asked her if together we could go to the vice principal, Mr. Wagner, because I had a few things to say on Jane's behalf. She agreed and we went to the administration wing. Mr. Wagner saw us right away. I told him that Jane was in the middle of an incredibly difficult time. I told him that she was practically raising her little brother and herself since her parents were so distracted. Jane cried which backed up my story up. Pretty soon I could tell Mr. Wagner was on our side. He promised he'd talk to the rest of the administration. Sure enough, the next day Jane told me they were going to let her stay.

The next year Jane left our school because she and her mother moved. But I always felt so good about meeting with Mr. Wagner and confidently pleading Jane's case. It made me feel like it was my calling-speaking for those who could not speak for themselves.

It runs in my blood, I think. My aunt is a lawyer and so is my father and my grandmother. There are a lot of Janes in the world who need their side supported by someone with a strong voice. I will do everything in my power to use my voice to speak for those whose voices aren't quite as strong. It is a gift I look forward to using, if you will give me the chance to use it.

**JD MISSION REVIEW**

**Overall Lesson**

If you write about your childhood in your personal statement, you must find a way to tie it to your adulthood.

**First Impression**

I am hooked by the first paragraph-the candidate's story rings true, is a bit heartbreaking, and is concisely written. The language is well suited to the content.

**Strengths**

The climax of the story is good. She speaks to the vice principal on Jane's behalf. The candidate's story choice is also good, because it involves a clear connection to law and advocacy.

**Weaknesses**

The beginning of the third paragraph-"There was this girl

Jane who, truthfully, was pretty unintelligent-when she spoke, her observations fell just short of the mark"-is, quite simply, unacceptable. Although this essay does a pretty good job of conveying the candidate's capacity for empathy, this sentence is problematic not only because the arrogance is unbecoming, but also her choice to include this remark suggests a lacking in her critical thinking ability. The candidate must offer a more nuanced description of Jane, and if she cannot, she should refrain from describing Jane at all.

The candidate should eliminate the following sentence for the same reason-it likewise comes across as callous and manipulative-"Jane cried which backed up my story up." Until I read that line, I had had no inkling that she might have been embellishing her story about Jane's situation.

Finally, claiming to be from a family of lawyers tends to be effective only if you use the fact to make a more interesting point than just that you should probably be one, too. The candidate could use the end of the essay to delve more deeply into what she believes and wants professionally as the adult she is now. She could return to the topic of her parents' multiple divorces or perhaps discuss certain ideas about the law and justice that she has learned in school something to incorporate more of who she is today into the essay's conclusion, which is currently based entirely on something that happened to her eight years earlier.

**Final Assessment**

I believe this essay could be richer and deeper in places and sound more intelligent overall. The candidate has the bones of something here, but as is, this essay will not get her accepted into any great schools. Without additional analysis and a more nuanced discussion of what she believes being an advocate means, the essay actually makes the candidate Sound a1ittle immature. I found myself forgetting that she is a college graduate. To effectively convince the admissions committee that she is ready for law school and capable of being a lawyer, she needs to show that she is prepared for what lies ahead.

# Tulane University Law School, Louisiana

The 12th oldest law school in the United States, Tulane University Law School was established in 1847, 13 years after the University of which it is a vital part. From its founding, Tulane has offered its students the opportunity to study both of the world's great legal systems–the common law system upon which English and US law is based, and the civil law system governing most of the rest of the world. Its curricular strengths include international and comparative law, maritime law, and environmental law. It offers five certificates of specialization in: European Legal Studies, Civil Law, Maritime Law, Environmental Law, and Sports Law. It offers seven different live-client clinics: criminal defense, civil litigation, juvenile litigation, environmental law, domestic violence, mediation, and legislative and administrative advocacy. Its business and corporate course offerings are strong, as is its intellectual property law curriculum. Tulane Law School was the first in the country to require pro bono legal work as a condition of graduation.

## Courses

**Juris Doctor**

Tulane's Juris Doctor (JD) program is designed to prepare students for practice by combining academic studies with real-world experiences. Candidates for the Juris Doctor degree must spend six full-time semesters in academic residence and complete 88 semester hours at the Law School with at least a 2.0 or C average. All candidates must successfully complete:

**Joint Degree Programs**

The Law School participates in joint degree programs with several schools and individual departments across campus. Joint degree candidates may complete two degrees in less time than it would take to complete them sequentially because each school accepts some work completed at the other toward its degree requirements.

**Master of Laws**

Candidates for the Master of Laws degree must complete 24 semester hours of coursework. Full-time students are expected to complete the LLM in two semesters (one academic year). LLM students must also write at least one paper in connection with a seminar in their field of interest or in connection with a directed research project.

Tulane University
LAW SCHOOL

LLM Students who received a JD or LLB (or equivalent) from a school located outside of the United States must enroll in a three-week summer orientation course, Introduction to US Law. International students must also complete and pass a legal research and writing course.

**Doctor of Juridical Science Program**

The Doctor of Juridical Science (SJD) program is a small and selective program for students who wish to make an original, significant contribution to legal scholarship.

An applicant for the SJD program must hold an LL.M. degree or its equivalent either from Tulane University or other accredited American universities or foreign universities which the Graduate Affairs Committee (the faculty admissions committee) has ascertained have good standing among the higher education community in the home country.

Online Master of Jurisprudence

Tulane University Law School is proud to offer Master of Jurisprudence degrees and professional certificates across four crucial areas of legal expertise, delivered online and backed by the sterling reputation of an institution at the forefront of legal education. Develop the comprehensive legal knowledge to excel in HR in the online Master of Jurisprudence in Labor & Employment Law (MJ-LEL) program, master complex and evolving regulatory frameworks in the online MJ in Energy Law program or MJ in Environmental Law program, learn the intricacies of Title IX regulations in one of our eight six-week online certificate courses, or combine multiple certificates to earn a Title IX specialization certification.

**Law Library**

The Law Library is located on floors three through six of Weinmann Hall. The collection of more than 684,000 volumes and volume equivalents includes standard Anglo-American legal materials and substantial collections of foreign, international, and comparative law. The Law Library's collection is especially rich in civil law material and houses one of the finest collections on maritime and admiralty law in the world.

The Law Library is also home to the world-renowned Judge John Minor Wisdom Collection containing his judicial papers and personal library accumulated during his forty years on the US 5th Circuit Court of Appeals. Students, faculty and scholars from all over the world come to the Law Library and the Wisdom Collection to conduct research and engage in legal scholarship. Additionally, the Law Library contains a large US government documents collection.

**CONTACT**

**Tulane University Law School**
John Giffen Weinmann Hall
6329 Freret Street
New Orleans, LA 70118
www.law.tulane.edu



1. **The provision relating Plea bargaining is not applicable in following offence.**
   (a) Socio-economic offence
   (b) Offence against women
   (c) Both (a) and (b)
   (d) None of the above
   Ans. **Answer is C.**
2. **When two or more persons agree to do an illegal act or an act which is not illegal by illegal means such an agreement is designated as:**
   (a) Abetment by conspiracy
   (b) Abetment by Aid
   (c) Criminal conspiracy
   (d) Abetment
   Ans. **Answer is C.**
3. **The provisions regarding sedition are given:**
   (a) Under section 124 of the I.P.C.
   (b) Under section 124A of the I.P.C.
   (c) Under section 121A of the I.P.C.
   (d) Under section 130 of the I.P.C.
   Ans. **Answer is B.**
4. **A suit may be dismissed under Order IX**
   **(i) Where the summons is not served upon the defendant in consequence of the plaintiffs failure to pay costs for service of summons (Rule 2).**
   **(ii) Where neither the plaintiff nor the defendant appears (Rule 3).**
   **(iii) Where plaintiff, after summons returned unserved, fail for 7 days to apply for fresh summons (Rule 5)**
   **(iv) Where on the date fixed for hearing in a suit only defendant appears and he does not admit the plaintiffs claim. (Rule 8)**
   **Codes:**
   (a) III and III.
   (b) I, III and IV.
   (c) II, III and IV.
   (d) None of the above.
   Ans. **Answer is D.**
5. **The *Ex-officio* Chairman of the Council of State is?**
   (a) The President
   (b) Speaker, Lok Sabha
   (c) Vice-President
   (d) None of the above
   Ans. **Answer is C.**
6. **Right to property in India is**
   (a) Fundamental Right
   (b) Constitutional Right
   (c) Statutory Right
   (d) Legal Right
   Ans. **Answer is B.**
7. **Which of the following writs means to produce the body of a person?**
   (a) *Certiorari*
   (b) *Quo warranto*
   (c) Prohibition
   (d) *Habeas Corpus*
   Ans. **Answer is D.**
8. **Delegated legislation was declared constitutional in?**
   (a) *Berubari* case
   (b) *Re Delhi Laws Act* case
   (c) *Keshavanand Bharti* case
   (d) *Maneka Gandhi* case
   Ans. **Answer is B.**
9. **A Prospectus which does not include complete particulars of the quantum or price of the securities included therein in known as:**
   (a) shelf Prospectus
   (b) memorandum
   (c) Red Herring Prospectus
   (d) Issuing house
   Ans. **Answer is C.**
10. **When there is no profit in one year or the profit of a company is not enough to pay the fixed dividend on preference shares, the arrears of dividend are to be carried forward and paid before a dividend is paid on the ordinary shares. This is called:**
    (a) Participating preference shares
    (b) cumulative preference shares
    (c) Non-cumulative preference shares
    (d) Non-Participating preference shares
    Ans. **Answer is B.**
11. **"Industrial dispute" means any dispute or difference between**
    **(i) Employers and employers**
    **(ii) Employers and workmen**
    **(iii) Workmen and workmen**
    **(iv) Master and worker**
    (a) (i) and (ii)
    (b) (iv)
    (c) (i), (ii), (iii) and (iv)
    (d) (i), (ii) and (iii)
    Ans. **Answer is D.**
12. **Who among the following cannot transfer an immovable property?**
    (a) Hindu widow
    (b) Muslim widow
    (c) Natural guardian of a minor.
    (d) Karta or manager of joint Hindu family
    Ans. **Answer is C.**

# The National Law Institute University, Bhopal


The National Law Institute University (NLIU) has been established by Act No. 41 of 1997 of the Madhya Pradesh Legislature to fill the gap and providing most modern legal education through multidisciplinary teaching and training of newer skills needed for the profession. The University launched its first academic programme in 1998 and teaching for five year B.A. LL.B. (Hons.). course commenced from September 1 of that year. The National Law Institute University has been successful in instilling a sense of broad perspective along with scholastic and reflexive capabilities bearing in mind larger national and humanitarian goals in its students.

## Courses

**B.A. LL.B. (Hons.)**

B.A.LL.B (Hons.) course is five academic years and maximum duration is seven academic years. There are two semesters in an academic year. Continuous examination and evaluation are integral part of continuous learning process. Our examination and evaluation scheme is designed to achieve three objectives. First to test the subject knowledge and its application through problem based written examination. Second to assess the research skills of the students, the students are required to write a research paper in every subject in the form of project. Third to evaluate the presentation skills of the students, the students are required to make a presentation of their projects and take Viva-Voce Examination.

**LL.M.**

LL.M. course is one academic year and maximum duration is three academic years.There are two semesters in an academic year. Specialization is offered in the areas of:*Intellectual Property & Business Law, Constitutional and Administrative Law, Human Rights and Criminal Law.* Area of specialization is offered subject to the availability of faculty and at least five students opting for it. Scheme of examination and evaluation for LL.M. course is the same as of B.A.LL.B.(Hons.) course. In the final semester a student has to submit a dissertation and take an open defense Viva-Voce Examination.

**Ph.D.**

The Ph.D. course is of two years' duration. Admission to Ph.D. programme is through an entrance test conducted by the University.

## Library

The National Law Institute University's Library is situated at the heart of campus in Gyanmandir, an important element in furthering academic and research excellence. Over the past couple of years, it has continued to develop collections in emerging academic areas, providing access to authoritative electronic resources vital for scholarship and research. The library is using state of the art technology to capture treasures from its collections and showcase these to the academic community.

## Contact

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# NEW CLAT PATTERN

## PASSAGE BASED MCQS – LEGAL REASONING

According to Oppenheim, International Law is a "Law of Nations or it is the name for the body of customary law and conventional rules which are considered to be binding by civilized States in their intercourse with each other." It is the name of a body of rules which according to their usual definitions regulate the conduct of states in their intercourse with each other.

**Sources of International Law**

Treaties- These are contracts between countries; promises between States are exchanged, finalized in writing, and signed. States may debate the interpretation or implementation of a treaty, but the written provisions of a treaty are binding.

Customary International Law- When states respect certain rules consistently in their international and internal relations, with legal intentions, these practices become accepted by the international community as applicable rules of Customary International Law.

There are two criteria for identifying a rule as part of Customary International Law: state practice (usus) and legal nature of that practice (opinion-uris)

a. State practice (usus) - Customary law is confirmed through the behaviour of states (objective criteria), manifested through their official statements and actions.

b. Legal nature of practice (Opino Juris) is the expressed opinion of states, individually or collectively, that their actions have a legal and not a mere policy basis.

**Jus Cogens**

Jus cogens status is reserved for the most fundamental rules of international law, which are recognised and accepted by the international community as rules of which no exceptions are allowed. All states are obliged to adhere to jus cogens rules at all times, regardless of the circumstances, and these rules cannot be superseded by international agreements or treaties.

Principles of jurisdiction

- States can also claim jurisdiction based upon the nationality principle by extending jurisdiction over their nationals even when they are outside the territory. For example, civil law countries extend their criminal law to cover their nationals.
- Almost all States claim jurisdiction under the protective principle, under which a State asserts jurisdiction over acts committed outside their territory that are prejudicial to its security, such as treason, espionage, and certain economic and immigration offences.
- The high seas and outer space are outside the territorial jurisdiction of any State. The general principle of jurisdiction in these common areas is that ships, aircraft and spacecraft are subject to the jurisdiction of the "flag State", or State of registration. The general principle is that ships on the high seas are subject to the exclusive jurisdiction of the flag State, and cannot be boarded without its express consent. The most notable exception is piracy. All States have a right to board pirate ships on the high seas without the consent of the flag State.

**Q.1. Choose the correct answer:**

I. Customary International Law can determine the international practices adopted by states.

II. Only treaties can be made against the Jus Cogens.

a) Only I

b) Only II

c) Both a and b

d) None of the above

**Answer: a**

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

a) Treaties are governed by the Indian Contract Act or any other regulation, made by any other country, governing the contract.

b) Trade relations between India and China are governed by International Law.

c) Opino Juris is essential to enter into treaty.

d) None of the above

**Answer- b**

**Q.3. X, a Chinese ship, bearing the of Pakistani flag voluntarily hit Indian ship in Indian territory and then escaped into the high seas. During its hit, the ship killed four Indian Navy officers. Determine which country will have jurisdiction over ship in High Seas ?**

a) Since Indian soldiers were killed, India will have jurisdiction on the basis of nationality principle.

b) China will have jurisdiction.

c) India will have jurisdiction because incident happened in Indian territory.

d) Pakistan will have jurisdiction.

**Answer: d**

# Latest SUPREME COURT Judgments

## TERMINATION OF PREGNANCY OF AN UNMARRIED WOMAN: RIGHT TO A SAFE ABORTION

Supreme Court in *X* v. *Health and Family Welfare Department*, 2022, has held that *"woman cannot be denied the right to a safe abortion only on the ground of her being unmarried."* Three-Judge Bench of Justices DY Chandrachud, Surya Kant and AS Bopanna made a ruling.

**BACKGROUND**

Earlier in this matter Delhi High Court had denied interim relief to the woman by holding that since she is an unmarried woman whose pregnancy arose out of a consensual relationship however not covered under the Medical Termination of Pregnancy Act 1971.

The Women, petitioner in a matter was in a consensual relationship which failed. Later in July 2022, her test reports revealed a single intrauterine pregnancy of a term of 22 weeks. Further the petitioner decided to terminate the pregnancy with reasons that she has not been able to nurture the child as in the absence of a source of livelihood and has a responsibility of her family.

## A WOMAN HAS A SACROSANCT RIGHT TO BODILY INTEGRITY

**A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution.**

Supreme Court clearly disagreed with such view of the High Court and holds that denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. It was also observed that her case is covered under the Medical Termination of Pregnancy Act 1971.

High Court has taken an *unduly restrictive view of the provisions unduly restrictive view of the provisions,* observed by the SC.

**RIGHT TO BAIL**

Supreme Court in *Satendar Kumar Antil* v. *CBI*, 2022, issued directions for the investigating agencies and also for the courts.

**Directions:**

(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in ***Arnesh Kumar v. State of Bihar,*** **(2014) 8 SCC 273.** Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

**Anshul Jain**

(c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. **Any non-compliance would entitle the accused for grant of bail**.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict

compliance of the mandate laid down in the judgment of this court in ***Siddharth v. State of U.P.,*** **(2021) 1 SCC 676**.

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in ***Bhim Singh v. Union of India,*** **(2015) 13 SCC 605,** followed by appropriate orders.

(k) **Bail applications ought to be disposed of within a period of two weeks** except if the provisions mandate otherwise, with the exception being an intervening application**. Applications for anticipatory bail are expected to be disposed of within a period of six weeks** with the exception of any intervening application.

*(l)* All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.

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# CONSTITUTION OF **INDIA**

## Article 200

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.

***200. Assent to Bills.*—When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:**

**Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:**

**Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.**

Article 200 is analogous to article 111 dealing with assent to Bills passed by Houses of Union Parliament.

When a Bill is presented to the Governor for his assent, the options before him are:

(a) to assent to the Bill, whereat it becomes law,

(b) to withheld assent (except when it is a Money Bill) whereat the Bill falls,

(c) to return the Bill to the Assembly with a message for consideration,

(d) to reserve the Bill for consideration of the President. For example, in case of a Bill derogatory to the powers of the High Court, it is obligatory for the Governor to reserve it for the consideration of the President.

The Constitution does not lay down any time limit within which the Governor should take a decision on the Bill presented to him. The Constitution Commission (2002) has recommended that there should be a time-limit – say a period of six months – within which the Governor should take a decision whether to grant assent or to reserve a Bill for consideration of the President.

It is clear from the debates in the Constituent Assembly as also from the language of article 200 as finally adopted as part of the Constitution that even in matters like giving or withholding assent

**Dr Subhash C Kashyap**

to Bills passed by the House(s) of the State Legislature or reserving them for the consideration of the President, the Governor, in principle, shall be normally guided by the aid and advice of the Council of Ministers. It was pointed out by the Drafting Committee in its notes that there may be occasions when the Governor may have to withhold assent to a Bill on the advice of the Council of Ministers. Also, the words "in his discretion" were specifically deleted from the proviso to the draft article. However, the fact remains that the scheme of the Constitution as it exists leaves an area of discretion for the Governor inasmuch as article 163 (Council of Ministers to aid and advise the Council of Ministers) unlike article 74 of the Constitution (Council of Ministers to aid and advise the President) specifically mentions that there may be exceptions in which the Governor may be "required to exercise his functions or any of them in his discretion" and "if any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion,

the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion."

The Sarkaria Commission identified the following situations where the Governor could act in his discretion in the matter of assent to Bills:

(i) where some provisions of the Bill are unconstitutional,

(ii) where the subject matter of the Bill is beyond the legislative competence of the State Legislature,

(iii) where the provisions of the Bill are derogatory to the scheme of the Constitution and endanger sovereignty, unity and integrity of the nation, or

(iv) where provisions of the Bill clearly violate fundamental rights or transgress any constitutional limitations.

The Sarkaria Commission made detailed recommendations in the matter, some of which could be summed up as follows:

(i) In dealing with a State Bill presented to him under article 200, the Governor should not act contrary to the advice of his Council of Ministers merely because, personally, he does not like the policy embodied in the Bill.

(ii) Bill should be reserved only if required for specific purposes such as

(a) to save a Bill on a concurrent list subject from being invalidated on the ground of repugnancy to the provisions of law made by Parliament or an existing law *vide* article 254(2) or

(b) a Bill imposing restrictions on trade or commerce, in respect of which previous sanction of the President had not been obtained, *vide* article 304(b) read with article 255.

(iii) When a Bill passed by the State Legislature is presented to the Governor with the advice of the Council of Ministers that it be reserved for the consideration of the President, then the Governor should do so forthwith. If, in exceptional circumstances, the Governor thinks it necessary to adopt, in the exercise of his discretion, any other course open to him under article 200, he should do so within a period not exceeding one month.

# Landmark Judgments

**FURTHER NOTICE FOR THE APPOINTMENT oF AN ARBITRATOR**

Golden Chariot Recreations Pvt. Ltd.

v.

Mukesh Panika &- Anr.

2018 (7) AD (Del) 106: 2018 (253) DLT 219: 2019 (3) RAJ 500

**Decided on:** 23-07-2018

***Hon'ble Judge:*** Vibhu Bakhru, J., High Court of Delhi.

***Facts***: Petition was filed by the petitioner for the appointment of an independent arbitrator under section 11 of 1996 Act to adjudicate the disputes between the parties on behalf of an arbitration clause as contained in the Supplementary Deed of Partnership. Petitioner is a partner in a firm named Integration 2020 Developers wherein he owns a 50% stake in the Firm and its assets and remaining 50% stake is hold by M/s. Furthering Arts Private Limited. Petitioner claims that original Partnership Deed dated 29-11-1994 was entered into between Mr. Georges Mailhot and Ms. Bina K. Ramani and was modified by the partners on 23-07-2005. It was also claimed that Firm duly registered was amended and the name of the Firm was changed from Integration 2020 to Integration 2020 Developers. Accordingly the dispute had been arisen between the parties and petition was filed under section 9 (Interim measures, etc. by Court) of the Act of 1996.

***Issue:*** Notice for the appointment of an Arbitrator, whether the procedure prescribed in section 11 of the Act is mandatory?

***Held:*** Issues were raised by the Petitioner, invoked the arbitration clause.

However, respondent denied that they had entered into a Partnership Deed or that any arbitration agreement existed between the parties. Disputes were crystallized accordingly at that stage. Therefore there was no requirement for the petitioner to Issue a fresh nonce for resolution of the said disputes. Court stated that it was completely open for the petitioner to file an application for appointment of an arbitrator at that stage. Another application was filed by the petitioner after three years after this Court had disposed of the petitioner's petition under section 9 of Act. The present application stands barred under the provisions of Limitation Act, 1963. It was also stated that issuance of notice of request under section 11 IS mandatory for filing an application.

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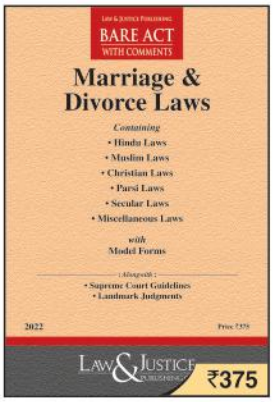


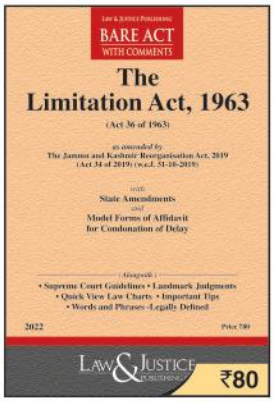


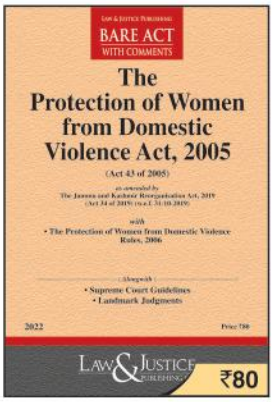


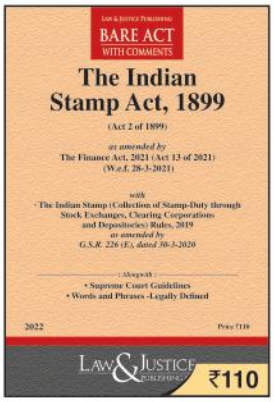


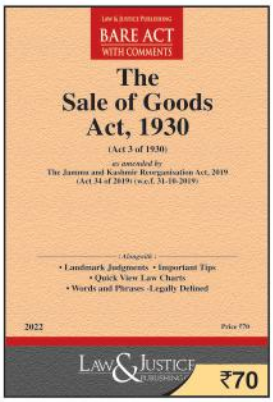


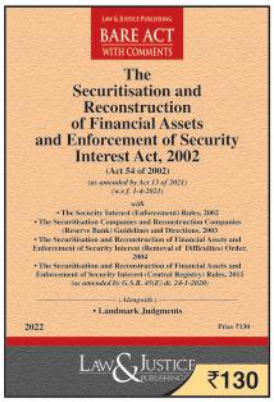


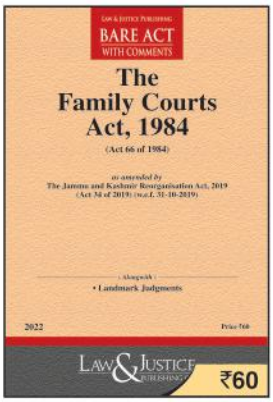


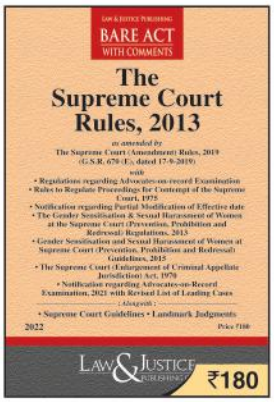


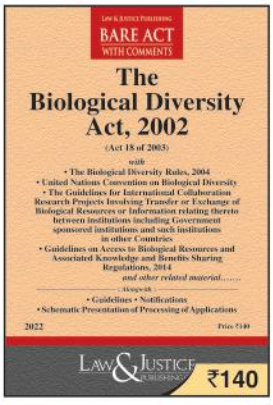


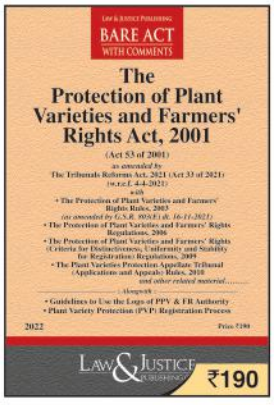


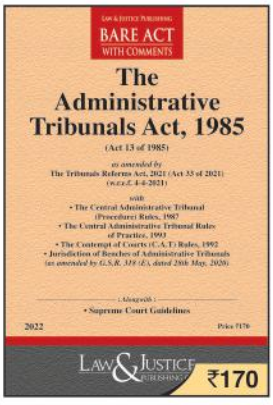



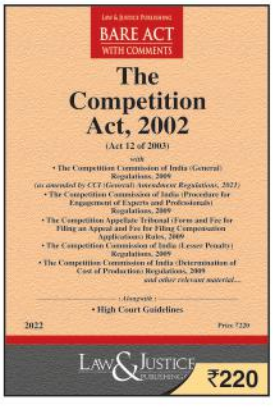


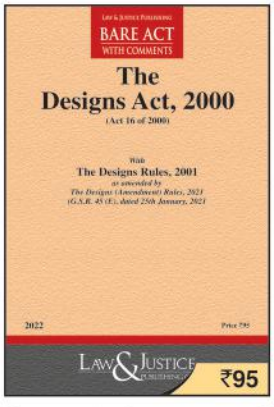


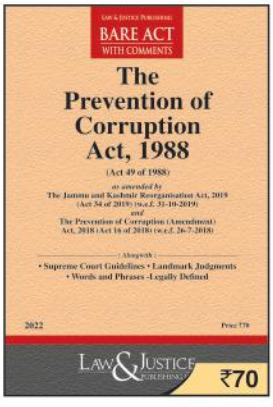


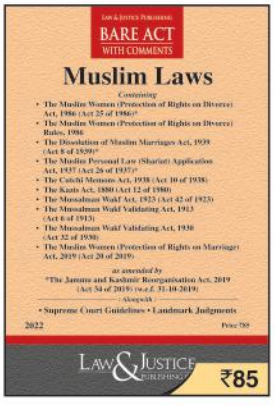


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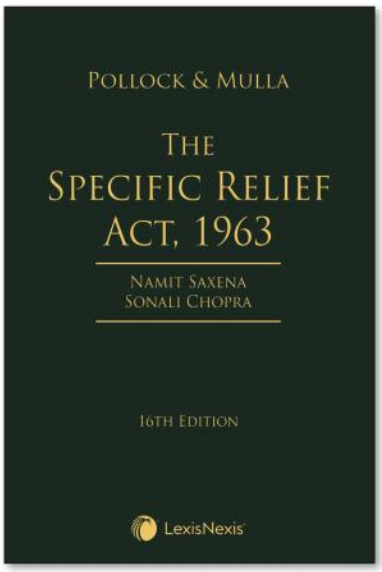


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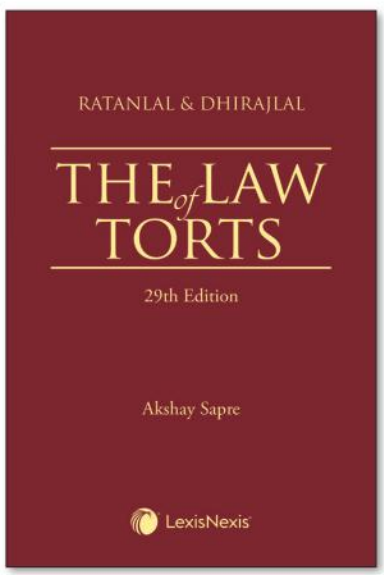


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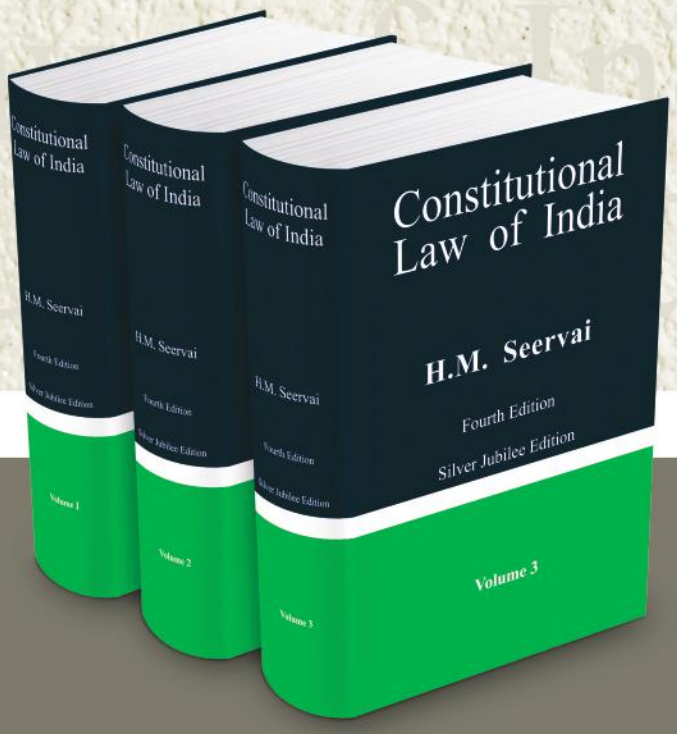


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