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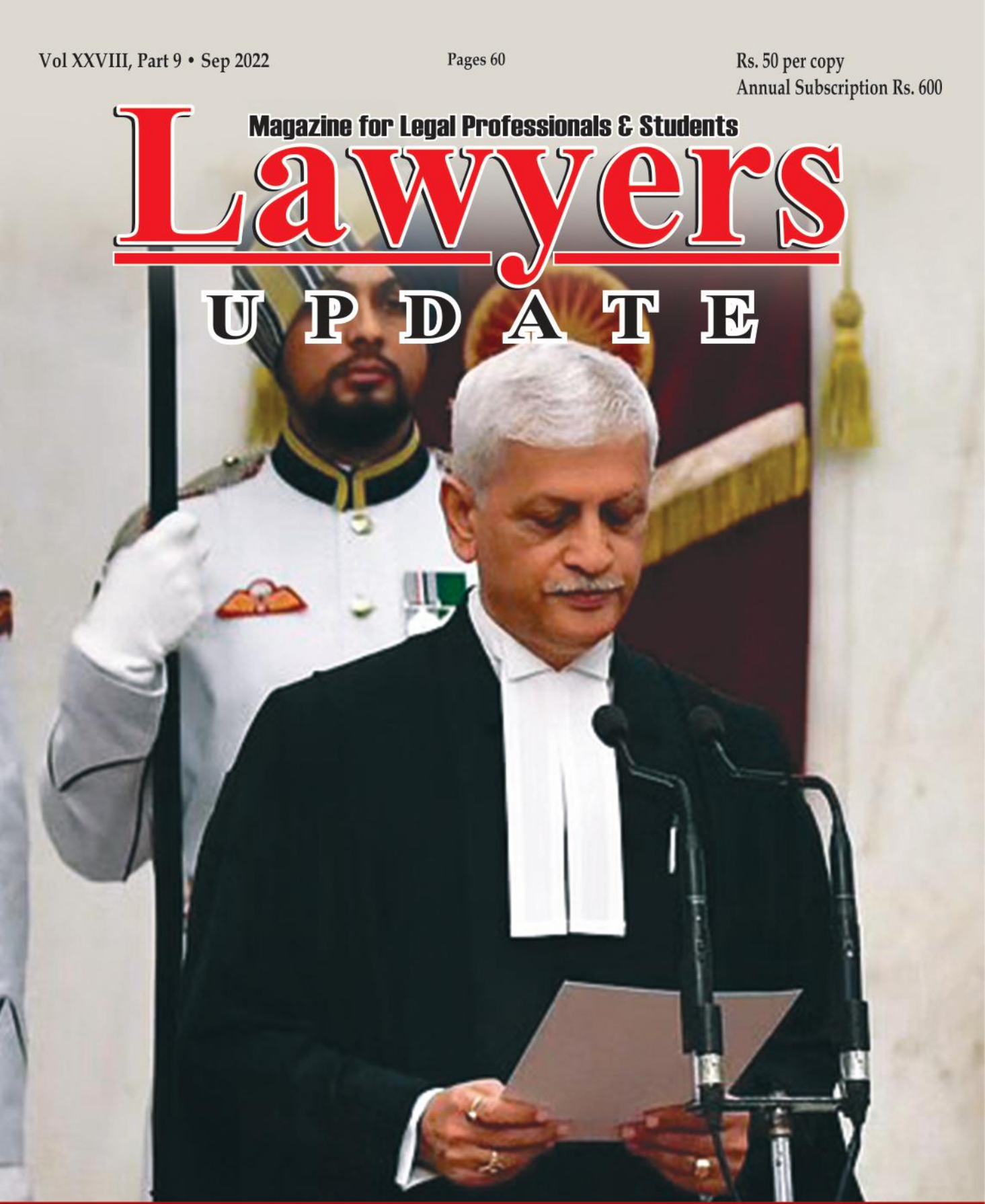
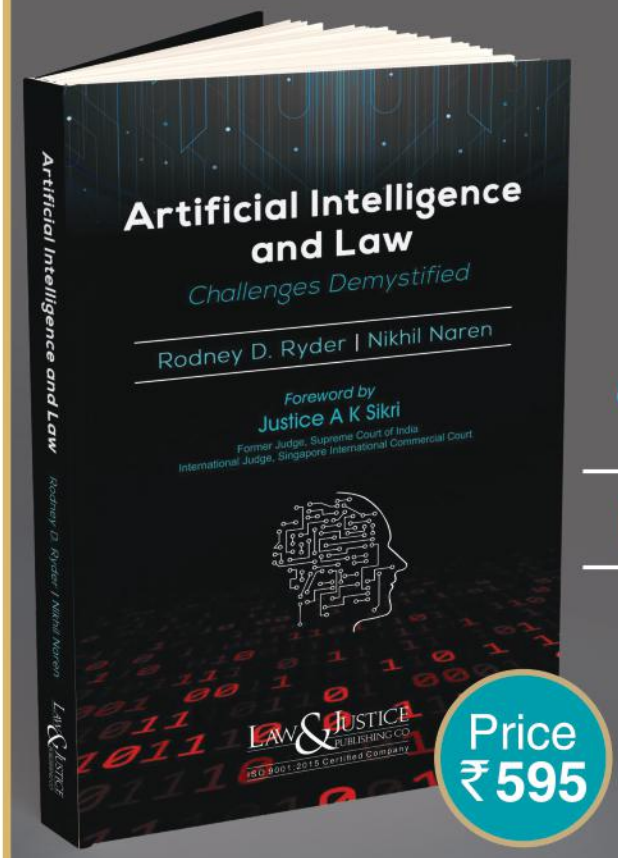
Lawyers UPDATE



JUSTICE UDAY UMESH LALIT BECOMES THE 49TH CHIEF JUSTICE OF INDIA



Artificial Intelligence and Law

Challenges Demystified

Rodney D. Ryder | Nikhil Naren

Foreword by

Justice A K Sikri

Former Judge, Supreme Court of India
International Judge,
Singapore International Commercial Court

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Artificial Intelligence and Law: Challenges Demystified endeavours to unfold and put forth an understanding of artificial intelligence for lay persons and practitioners. This book will also be relevant for key decision makers, scientists, business leaders, and policy makers!

The growth of technology is the fundamental catalyst in fuelling Industrial Revolution 4.0, and AI, without a doubt is a key actor that is helping to make an enormous progress across wealth of sectors. In addition to automation and becoming a quick problem-solver, algorithms are influencing our daily lives in ways which we ourselves are unaware of. Our thoughts and decisions behind which restaurant to get food from, which political party to cast vote to, who do we make friends with, what do we shop, etc., are in some way or the other a result of systems backed by artificial intelligence.

This book not only uncovers different facets of artificial intelligence, but also its interaction with different sectors, to ignite a thought process in the mind of the readers. Maybe it is time to rethink about regulating artificial intelligence and decide whether we would like to move forward with a euphoric approach of managing emerging technologies, or coming up with hard laws is the need of the hour.

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Dear readers,

Deprivation of personal liberty in any form and for any length of time without just cause is not only unconstitutional but is also utterly unconscionable, and the Indian Supreme Court has time and again said and reiterated over and over again that "bail is the rule, jail exception". However, the message did not seem to have duly percolated from the apex court to the lower courts. That's the reason why the Supreme Court has had to reiterate the same basic proposition so many times.

However, to say that the Supreme Court itself has been consistent in prizing personal liberty as much as the constitution warrants would not be entirely correct because there have been many, many occasions on which the apex court itself did not seem as rigorous as it should have been in upholding the individual right to freedom and personal liberty. And that's even if we leave aside the infamous *ADM Jabalpur case,* wherein the Supreme Court had held Article 21 to be of no consequeuce during the emergency. The judgment, of course, was rendered ineffective by a Constitutional Amendment and was, many years later, specifically overruled in *Justice Puttaswamy* case.

The principle that bail must be denied only for compelling reasons is based on the cardinal principle of the presumption of innocence, which forms the cornerstone of criminal jurisprudence. Of late, seized of the instances of statutory reversal of the principle of presumed innocence, the Supreme Court doesn't seem to have done enough to provide sufficient safeguards to protect the nnocent. The extraordinary judicial faith in the fairness and independence of the investigation agencies is inconsistent with the role envisaged for the judiciary under the Constitution.

Manish Arora

(Manish Arora)

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JUSTICE UDAY UMESH LALIT BECOMES THE 49TH CHIEF JUSTICE OF INDIA

By Hasan Khurshid

"The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing."

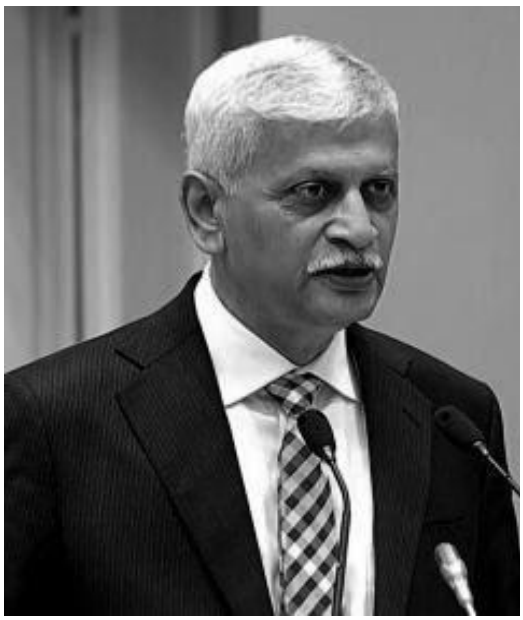
- Caroline Kennedy

According to Justice V R Krishna Iyer, the judges who do not pronounce judgment in time commit turpitude. He notes with a sense of sorrow, "It has become the trend these days, for the highest to the lowest courts, judges after the arguments are closed take months and years to pronounce judgements even in interlocutory matters- a sin which can not be forgiven, a practice which must be forbidden, a wrong which calls for censure or worse."

Let's hope that we enjoy the breeze of enhanced judicial ethics comprising: independence of judiciary, impartiality, integrity, propriety and equality with the arrival of Hon'ble Justice Uday Umesh Lalit (UU Lalit), the 49th Chief Justice of India.

Justice U U Lalit was born to family of Mr. U R Lalit, a former additional judge of the Bombay High Court's Nagpur bench. Justice Lalit joined the Bar in June 1983. He practised in the High Court of Bombay from 1983 to 1985. He started practising in the Supreme Court of India in 1986. From 1986 to 1992, Justice Lalit worked with former Attorney General for India, Soli Sorabjee. On April 29, 2004, he was designated as senior advocate of the Supreme Court of India.

Press Trust of India (PTI) in one of its reports of August, 2014, stated that as advocate, he enjoyed high reputation for his traits like patience, sober demeanour, preparation and thoroughness of the case. The same report said that advocate Lalit appeared in several high profile criminal cases representing politicians to film actors including the Tulsi Ram Prajapati case.



He was appointed as special public prosecuter in 2011, in the 2G spectrum case by the Supreme Court's bench of justices GS Singhvi and AK Ganguly in the interest of a fair trial in the case. However, the Centre had opposed Lalit's appointment on technical grounds. Appearing before the court, additional solicitor general Raval representing Enforcement Directorate had said that appointment of special public prosecutor was the 'prerogative' of the government. The bench said," We are of the view that the expression 'prerogative' cannot be used in the context of a statutory provision. Under our Constitutional and statutory framework, there is nothing known as prerogative." The court was exercising its power under Article 136 read with Article 142 of the Constitution. The court also said, "We are unable to accept the contention of the Union of India, and we hold that in the interest of a fair prosecution of the case, appointment of UU Lalit is eminently suitable. We, therefore, order that UU Lalit shall be appointed special public prosecutor by the government to conduct the prosecution in this case, on behalf of CBI and the Enforcement Directorate."

Justice Lalit assumed the charge of Supreme Court judge on August 13, 2014. In 2017, he was part of the five judge bench in triple talaq case, in which the court delivered the verdict banning the practice.

On January 10, 2019, Justice Lalit recused himself from a five judge bench constituted to hear the Ayodhya dispute case. Senior advocate Rajeev Dhawan appearing for a Muslim party brought to the knowledge of the court that Justice Lalit as lawyer had appeared for former Uttar Pradesh chief minister Kalyan Singh in a connected matter in the year 1997.

On August 10, 2022, President of India Draupadi Murmu appointed him as 49th Chief Justice of India, to assume charge on August 27, 2022. He will retire on November 8, 2022.

STREET LAWYER

The Socio-Cultural Foundations of Indian Secularism - I

Why do I keep preaching secularism to the Hindus only? Let me explain.

HemRaj Singh

In this column as well as elsewhere, whenever I have talked about the politically engineered and maintained Hindu-Muslim divide in India, I have spoken of watching out for the preconceived notions, personal prejudices and cognitive biases interfering with one's judgment of a class or a community of people as though it were a homogenous lot with undesirable traits and tendencies genetically hardwired into them, making them deserving of hate and revulsion.

I have had most of these discussions with the Hindus, and much of the advice in my writing has also been to the Hindus, and the reasons for that, even though various, are pretty simple and straightforward. One, there have been more occasions for that. Two, in the past few years, every other Hindu I have come across seemed to think of himself or herself as a victim of minority appeasement supposedly practiced by the past governments, and has displayed open hostility against Muslims in general for that reason.

They would come up with all kinds of imaginary problems the nation is facing due to the past "appeasement" of Muslims, which, they would note with a giant relief, are now being addressed and are on their way out. Examined even perfunctorily, the "facts" they cite fall, failing to hold up even to a cursory google search, being plain lies circulated through social media to stoke and inflame preexisting prejudices, which are lapped up and recirculated with lot of passion and without application of mind. These lies take our attention off the real problems and we start blaming the "other" for all our ills instead of addressing the real cause of the problems, perpetuating the problem and adding unfounded hatred and resentment to the already complicated mix.

The scale of the problem is large because the majority community is the target of the propaganda. And it is in the very nature of propagandist communication to mix facts and lies in a dangerous concoction to give it the colour and flavour most suitable to the divisive politics that best serves the chosen political purpose at the given time.

You might have heard some version of the following, like I have several times, from the educated, uneducated, highly educated and semi-educated alike: "In India, Muslims practice Islam, Christians practice Christianity, Jews practice Judaism and Hindus practice secularism."

The tone of the speaker is always critical and disparaging, belittling and caustic, as though it proved how stupid Hindus were, having been led by the likes of Jawaharlal Nehru and other "liberals" ("libtards" and "sickulars", as they are disparagingly called). And a lot of Hindus would probably hang their heads in shame and look regretful, as though the statement made any sense at all, or as though it were really "sick" to be secular or "retarded" (sincere apologies to those suffering from the actual condition) to be a "liberal".

The statement, any and every version of it, is deeply and very obviously flawed at multiple levels, to put it charitably. There are several unfounded assumptions working here. One, Muslims rigid practiioners of Islam, or, to put it differently, all Muslims are more or less fundamentalists. Two, Muslims are not secular, or there are no or very few moderate/secular Muslims. Three, Christians rigidly practice Christianity; four, there are no secular/moderate Christians. Five, all Hindus are secular and moderate; and six, there are no Hindu fundamentalists supportive of Hindu orthodoxy, meaning there are no Hindu support to aggressive "Hindutva".

All of those assumptions are wrong, some way too far from the truth to merit even casual consideration. Muslims might seem a bit more orthodox and rigid in their approach to their faith, attributable in part to the lack of education and poverty. However, as I have pointed out earlier, while lack of education and poverty might be major factors influencing religious orthodoxy and radicalism, it does not automatically follow that none of the educated and well-to-do will have orthodox or fundamentalist tendencies.

That said, my concern has not been Muslim orthodoxy anywhere as much as the Hindu radicalization under the tactfully revitalized and aggressively pursued political ideology of *Hindutva* in the past few years. The ideology is not new, but its political dividends had always been few and far between until recently.

Often people say that India is secular only because the Hindus are secular. Well, yes, how could a nation be secular unless its overwhelming religious majority was secular? But those who say that mean it as an indictment of the Hindus rather than as well-deserved praise for their liberal and inclusive outlook towards people of other faits as well as where faith stands vis-a-vis the polity. "But 'they' are not secular!", the *Hindutva* people retort rather passionately in most cases; "they" meaning Muslims. Actually, Indian Muslims, having lived amid the liberal Hindu majority and steeped in the pervasive liberal culture, are way more liberal and secular than the Muslims, say, of Pakistan or Saudi Arabia, which is evidenced in the fact that the persistent and sustained attempts to radicalize Indian Muslims in large numbers have largely failed except in Kashmir, for which the reasons have to be found in the complicated politics of Jammu and Kashmir together with cross-border meddling.

But, for the sake of argument, let's assume that Muslims are not secular, not a single one of them; while all Hindus are, every single one of them. So what should be the proper response of the Hindus to this position? Should they maintain and preserve their secularism or should they fashion themselves on radical lines after the Muslims they do not like and regularly criticize for their "radical fundamentalism"?

…to be continued

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

LABH SINGH

"No mere reduction of sentence, it is most humbly submitted, can be a consolation to Your Excellency's memorialist or in an adequate measure will right the wrong that has been done him or meet the ends of justice."

This is an extract from the latest petition of Mr. Labh Singh, Bar-at-Law. I am sure this petition will not fail to evoke from the reader both sympathy and admiration; sympathy because of the wrong that has been done him and admiration because the jail has not broken the spirit of the young Barrister. He asks for no mercy, he pleads for justice, if he can secure it. But in spite of H.E. The Viceroy's remarks to the contrary, the spirit of justice is moving so slow and there seems

to be such a disinclination even in the high quarters to do real justice that one almost despairs of getting it. Look at Sir Edward Maclagan's speech in reply to the Hon. Pandit Malaviyaji's resolution for the appointment of a Commission. He recalls the warning of the Viceroy against the temptation "to minimize the events of last April". "I do not think," His Honour proceeds, "that even while the disorders were in progress, people outside the Punjab fully realized the extreme gravity of the situation." He adds, "Had it not been for the rapidity with which the disturbances were made, had they been allowed to proceed but a little further than they did, the lives and property of all classes of people would have been in the most imminent danger." This is merely begging the question and anticipating the verdict of the Committee of Enquiry. Regarding the sentences, His Honour again begs the question by saying that the findings of the Special Courts should be accepted, because "they represent the unanimous conclusions, in each case, of three experienced officers". But the unanimity and experience are beside the point when behind them lies a temporary aberration of the intellect. His Honour, however, attempts to silence his critics by saying, "Although I have examined many cases, I have not found one in which I felt justified in impugning the substantial correctness of the findings of the court." In the face of this emphatic opinion I despair of securing or expecting justice either for Mr. Labh Singh or for any of the great Punjab leaders, who lire at present adorning the Punjab jails. I do however feel tempted to say with due deference to the Lieut.

Governor of the Punjab that if he has not found a Hi angle case for challenging the correctness of the findings of the Special Courts, of all the many cases that have come before the public, it has not been my good fortune to find many judgments to inspire confidence in their correctness. Let me illustrate my point by taking this very case of Mr. Labh Singh. He is not a man of straw. This is the full text of the Judges' remarks in his case:

"Labh Singh, accused 4, took an active part in the inception of the agitation against the Rowlatt Act and was present at meeting of the 12th and 13th. On the latter date, he is said to have at first opposed the commission of acts of violence, but finally agreed. He was seen in several places with the mob on the 14th but appear to have rendered assistance to the authorities on that date. We find him guilty under Section 121, 1. P. C."

The whole of this judgment, the reader will find reproduced in the issue of Young India of July 30th. I ask where is, in the above remarks, anything but good, said even by the Judges about Mr. Labh Singh, except the expression "but finally agreed"? On the Judges' own showing there was nothing indictable in the acts prior to the 12th April. The whole of the conviction is based upon the uncorroborated testimony of an approver, notwithstanding the fact that there was incontestible evidence to show that he "endeavoured to render assistance to the authorities" (I am quoting the Judges' words) after the supposed approval by him of acts of violence. But in order to accept the approvers' testimony the court says at the end of the judgment, "Labh Singh evidently repented of his action." Let the reader remember that this is the same judgment in which poor Jagannath was sentenced in the face of a clearly established alibi, and even before replies to the interrogatories issued by the Commissioner had been received. No wonder Mr. Labh Singh says, "the order of the Lieut. Governor, it is humbly submitted, goes only to confirm and perpetuate what is a great and serious miscarriage of justice." It is admitted that beyond signing the notice for the 5th April. Mr. Labh Singh neither convened nor addressed a public meeting

"at Gujaranwalla or elsewhere at any time within 12 to 15 months preceding the occurrence of the 14th April." Mr. Labh Singh further says, "The court proceeded to the judgment with inordinate haste and without waiting for the answers to the interrogatories issued to some of the witnesses' for the defence."

I do not wish to burden these notes with more quotations from the very able an convincing statements of Mr. Labh Singh and his two petitions, but I. would ask every lover of India and every public man to carefully 'study" these documents together with' the judgment in the case. I think that we owe a very plain duty to Mr. Labh Singh and his co-prisoners. According to Sir Edward. Maclagan they are all clearly guilty. According to the evidence before the public, they are all clearly innocent. We may not allow young men of brilliant ability and moral worth to have 'their careers blasted for life by our indifference. Posterity will judge us by our ability to secure justice in the cases such as I have had the painful duty of placing before the public. For me, Justice for the individual, be he the humblest, is everything. All else comes after. And I hope' that the public' will take the same view. If the convictions stand, it will not be because we are unable to secure justice but because we are unwilling and incompetent, for' I feel that even the Government of India and the Punjab Government will find it hard to withstand a unanimously expressed public opinion based on facts and couched in the language of moderation.

Young India, 18-9-1919

Lawyers' Wit

- Q: What's the difference between a lawyer and a herd of buffalo?
  A: The lawyer charges more.
- After years of hard work, Angie took her first vacation on a luxury cruise ship. While sitting in a deck chair, she recognized a former school classmate, a long-lost friend from her old hometown.
  She crossed the deck and shook hands with her friend and said: "Hello, Angela. I haven't seen you in years. What are you doing these days?"
  "I'm a lawyer," whispered Angela. "But don't tell my mother. She still thinks I'm a prostitute."

God works wonders now and then; Behold a lawyer, an honest man.
Benjamin Franklin

"Don't judge my client by the covers of the books he reads."

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"To avoid situations in which you might make mistakes may be the biggest mistake of all."

– Peter McWilliams

"Life is a school and experience is our teacher. But the fees we have to pay are quite high."

– J.P. Vaswani

"The big secret in life is that there is no big secret. Whatever your goal. You can get there if you are willing to work."

–Oprah Winfrey

"You never know what is enough, unless you know what is more than enough."

– William Blake

"There are two ways of meeting difficulties; you alter the difficulties or you alter yourself to meet them."

– Phyllis Bottome

"Don't judge a man by his opinions, but by what his opinions have made of him."

– Friedrich Nietzsche

"When business is good it pays to advertise; when business is bad you have got to advertise."

– Anonymous

"Man's happiness in life is the result of man's own efforts and is neither the gift of God nor a spontaneous natural product."

– Clin Tu-hsiu

"We must accept finite disappointment, but never loose infinite hope."

– Martin Luther King Jr.

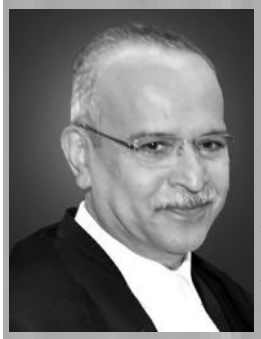
"I can't give you a sure-fire formula for success, but I can give you a formula for failure: Try to please everybody all the times."

– Herbert Bayard Swope

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 Satish Chandra Sharma



Hon'ble Mr. Justice Satish Chandra Sharma was born on 30th November, 1961 at Bhopal, Madhya Pradesh. Father, Dr. B. N. Sharma, apart from being known as a well established agriculturalist, was also a renowned professor of Jabalpur University and subsequently the Vice Chancellor of Barkatullah University, Bhopal. Mother Smt. Shanti Sharma was a Principal in Maharani Lakshmibai Higher Secondary School and also worked as District Education Officer at Jabalpur before retirement. Started schooling from Christ Church Boys Higher Secondary School and passed 10th standard and 12th standard from Central School, Jabalpur. Enrolled as a student of Bachelor of Science in 1979 at Dr. Hari Singh Gour University, Sagar. Secured degree of Bachelor of Science in the year 1981 with distinction in three subjects.

Awarded National Merit Scholarship for Post Graduate Studies. Enrolled as a student of law in Dr. Hari Singh Gour University, Sagar in 1981. Graduated on top of the class and obtained LL.B. degree in 1984 with three university Gold Medals. Enrolled as an advocate on 1st September, 1984. Practiced in Constitutional, Service, Civil and Criminal matters before the High Court of Madhya Pradesh at Jabalpur. Was appointed Additional Central Government Counsel on 28th May, 1993 and was appointed senior panel counsel by Government of India on 28th June, 2004. In 2003, he was designated as a Senior Advocate by the High Court of Madhya Pradesh at the young age of 42, being one of the youngest senior advocates of Madhya Pradesh High Court.

Elevated as an Additional Judge of Madhya Pradesh High Court on 18th January, 2008. Appointed as a Permanent Judge on 15th January, 2010. Justice S.C. Sharma is an avid reader and is also known for his contributions to various Universities. He is associated with National Law universities. He is also on the Advisory Board of National Law Institute University, Bhopal and India International University of Legal Education and Research, Goa and has published numerous research articles and papers.

Transferred to Karnataka High Court as Judge on 31st December, 2020 and took oath on 4th January, 2021. He was later appointed as Acting Chief Justice of Karnataka High Court on 31st August, 2021. He was elevated as Chief Justice of Telangana High Court on 11th October, 2021 and transferred to Delhi High Court as Chief Justice and took oath of office on 28th June, 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 SUJATA VASANT MANOHAR

First Woman Chief Justice of the Bombay High Court

Justice Sujata Vasant Manohar was the first lady to be elevated as a Judge on the Bench of the Bombay High Court. She also became the first woman Chief Justice of the Bombay High Court when she took oath to the office of the Chief Justice on 15th January, 1994.

Born on 28th August, 1934, Justice Manohar was educated at Anandilal Podar High School, Bombay; Elphinstone College, Bombay; Lady Margaret Hall, Oxford, U.K.; and Lincoln's Inn, London. She had a brilliant academic career and enrolled as an Advocate on 14th February, 1958 at Bombay. She was called to the Bar from the Lincon's Inn and practised in the Bombay High Court on the Original Side. She was appointed an Assistant Government Pleader, City Civil Court, Bombay during 1970-71. She was then appointed as Additional Judge of the Bombay High Court and later as permanent Judge.

Justice Manohar was appointed as the Chief Justice of the Bombay High Court with effect from 5-1-1994. She was then transferred as the Chief Justice of the Kerala High Court with effect from 21-4-1994.

On 8th November, 1994, she was elevated as the Judge of the Supreme Court of India and she retired on 28th August, 1999.

Justice Manohar comes from a distinguished legal family. Her father, Late Mr. K.T. Desai, was the Chief Justice of the Gujarat High Court. She was one of the two High Court Judges from India selected to participate in the course on Patent Trial held at Beijing under WIPO and U.N. auspices in December1986.

She was also invited as one of the five women judges from all over the world to constitute a Tribunal for recording evidence and giving findings at the World Women's Congress for a Healthy Planet held at Miami, U.S.A. in November 1991. She was a signatory to the Declaration of Miami.

Justice Manohar was one of the three delegates selected by the Government of India to participate in the International Conference of Law, Social Development and Social Welfare held at West Berlin in 1988 under auspices of the International Council of Social Work. She also worked on the Special Group of Family Law and was the First Chairperson of the Board of Visitors, Judicial Officers Training Institute at Nagpur. She was also the Chairperson of the Committee of Judges set up by the Bombay High Court to establish Family Courts in Maharashtra.

She added yet another first to her name when she became the first Indian woman judge and jurist to be awarded the Ruth Bader Ginsburg Medal of Honour in 2021.

TOP LAW FIRM LUMINARIES

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[Advocates and Legal Consultants]

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Rodney D. Ryder, the Founding Partner of Scriboard® , is an acclaimed author and acknowledged expert on technology, new media and intellectual property laws. He is presently Advisor to the Ministry of Communications and Information Technology, Government of India on the implementation of the Information Technology Act, 2000. Rodney D. Ryder has been ranked as a leading Information Technology and Intellectual Property lawyer by Asia Law and Practice and listed as a leading Regulatory Communications lawyer by Who'sWho Legal, United Kingdom. He counsels a wide range of clients from start-ups to the Fortune 100 and represents them in litigation regarding technology law, data security, compliance with law enforcement and intellectual property strategy. He is on the Board and Advisor to leading companies. He is regularly interviewed and widely quoted by Indian and International media on technology, intellectual property and new media laws.

Rodney D. Ryder

Scriboard® is one of the few firms in India, with an established Data Protection, Privacy and Corporate Compliance Practice. The firm advises clients around the world on data privacy law in the context of the issues that arise in online business, data mining and data processing. Technology, Government of India. In addition to corporate compliance advisory services, the firm also conducts training programmes on Data Privacy and Corporate Compliance.

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The Sexually Harassed & Beyond

Sadiya R. Khan
Advocate

From Laws to By-laws
From Speeches to Debates
From Sexually harassed to Rape
Patriarchal. Feudal. Male Egos
From Suppression to Money Power
From Blooming Girls to victimisation
Vicious Circle Unsolved mystery
Justice Delayed. Justice Denied
O! The Blind Folded Sword Lady
The Pride of Scale
Grant Justice
She is not the weak
She is not for weeps
For Article 21 Speaks
Right to Life
Not unknown to any
The Decency. The Dignity. The Right.

From Laws to By-laws
From Speeches to Debates
From Molestation to Stalking
All quiet and no Loud
For the Joy of few Wicked minds
Suffering Ought to persist
Against Women. To Women
For Power and Only Power
Misused. Abused. Tributaries branched
Hungry for illegal. Greed for Immoral Traffics. Child Sexual Offences.
Non- Maintenance. Domestic Violence
The Cob Web. Uncleaned
Delicate Silent Weaves
Justice Delayed. Justice Denied
O! The Blind Folded Sword Lady
The Pride of Scale
Grant Justice
For Section 354D IPC
Protection against Stalking
Tyranny
Creepy Monitor. Mute Follow.
Creepy Chase
Silently done. Tormenting Women
All is watched. All is Known.
Deterrent punishment. A Master Stroke

From Laws to By-laws
From Speeches to Debates
From Immoral Traffics to Bonded Lifetime
Selling humans for own greed
Quick Money. Thinking King destinies
Ashamed is Humanity
What for the Laws?
What for the Punishments?
What for the hue and cry?
Traumatic left, the forced and bonded
There is not a single lie
Truth pinches
Who cares they say
For victims created are poor
Vicious Circle Unsolved mystery
Justice Delayed. Justice Denied
O! The Blind Folded Sword Lady
The Pride of Scale
Grant Justice to the unknown trapped
Somewhere in some remote street
Access to Justice, in need of velocity
Nowhere to go. No one to listen
Unearth many such agonies

From Laws to By-laws
From Speeches to Debates
From Daily Wage workers to Domestic workers
A need to implement the law
Minimum wages aren't given
Negotiations. Persuasiveness. An agree.
The need for morsel.
Washing utensils. Digging mud
An agree below minimum wages
Why aren't honoured with settled rights?
Article 14 strongly speaks
It`s since years through
Equality before law
Aren`t they Nation`s Pearl?
Justice Delayed. Justice Denied
O! The Blind Folded Sword Lady
The Pride of Scale
Grant Justice
Destitute. Pushing destiny.
Wrinkled hands

From Laws to By-laws
From Speeches to Debates
Implement not the Flaws
Loopholes. Potholes. Empty Souls
What law means to man?
What law means to woman?
Interpretations cannot be divided
Neither implements
Crease not on Surface
Unearth the hidden
Ice berg tip to Deep Coral reefs
Surprised Human atrocities
Of which one Gender
A continuous victim
What to wear?
What not to wear?
Judging Women on choices
Blaming for own nonsense
Changing sea tides
To suit the greed
Of Pride and Prejudice
O! The Blind Folded Sword Lady
The Pride of Scale
Grant Justice
Choices. Prodigy. Equality
Each, An emblem Of Liberty

"Bail is the Rule, Jail the Exception"

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"Bail is the rule, jail the exception" is the canon of criminal jurisprudence which was laid down by the Supreme Court of India in its landmark judgment of State of Rajasthan Vs Balchand alias Baliay, in the year 1978. Justice Vaidyanathapuram Rama Krishna Iyer (V R Kishna Iyer), who has many avant-garde verdicts to his credit, precisely held in the foregoing case that, "The basic rule may perhaps be tersely put as bail, not jail."

In law, under the Criminal Procedure Code, 1973 (Cr PC), there are certain provisions given that provide statutory rights to the detained person or person who is apprehending detention. Among such rights, one right is 'Bail'.

The Bench of the Supreme Court of India comprising justices Sanjay Kishan Kaul and MM Sundresh on July 11, 2022, while hearing the matter in Satender Kumar Antil Vs. Central Bureau of Investigation & Another, lamented that jails in the country are flooded with undertrial prisoners since a large number of arrests are made by police as a matter of routine and then the Courts end up dealing with the bail applications in a "negative sense".

The Court regretted how the criminal Courts may have turned the consideration of a bail plea into a punitive process in the wake of abysmal low conviction rates. "It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense." On preservation of 'right to liberty', the Court said, "Liberty as embedded in the Code has to be preserved, protected and enforced by the criminal Courts. Any conscious failure by them would constitute an affront to liberty".

The reluctance of Courts in granting bail has come in handy for investigating agencies pushing to keep people in jail. On issues surrounding arrest and grant of bail, the top Court coming down heavily on police said that India should never become a 'Police State'. It recommended that where police act like vestiges of the colonial era, the Union government should frame a new law to smoothen bail process and to facilitate the grant of bail and usher in objectivity in the criminal justice system to ward off unnecessary arrests,

especially in cases where the maximum punishment under the alleged offence is up to seven years in jail.

"We call on the government to consider an Act meant for granting bail. Our belief is for the reason that the Code as it exists today is a continuation of the pre-independence era." The Bench also issued a slew of directions for investigating agencies and subordinate Courts on arrests and disposal of bail applications, while seeking compliance reports in four months. The proposed bail law that provides adequate safeguards can therefore be a step in the right direction but the real problem is the mindset of the lower Courts that are set against granting bail."

There have been several judgments of the apex Court wherein it stressed the distinction between power to make arrests and the need to do so. The Court has emphatically pointed out that the police and investigation agencies may have the authority to arrest someone but it cannot do so routinely and without sufficient cause and reason, as in the opinion of the Hon'ble Court, an arrest marks the end of an individual's personal liberty; hence, such an action must be procedurally and substantially be compliant with laws of the land.

However, this is not the first time that the Supreme Court has underlined the importance of granting bail in recent past to address the phenomenon of unreasonable and illegal arrests. The top Court in Arnesh Kumar Vs State of Bihar (2014), had directed all States to instruct all police officers that before undertaking an arrest especially in cases where the offence is punishable with imprisonment for a term less than seven years, they must satisfy themselves about the necessity to arrest based on parameters laid down in Section 41 of the Criminal Procedure Code, which prescribe twin conditions that there is reason to believe or suspect that accused has committed an offence and there is necessity for an arrest. The Supreme Court earlier on several occasions has reiterated the 'triple test principle', which says that an accused can be granted bail if he is not at flight risk, liable to temper with evidence or influence the witnesses.

In Joginder Kumar Vs State of UP (1994), the apex Court considered the dynamics of misuse of police power of arrest and opined, "No arrest can be made just because it is lawful for the police officer to do so. The existence of the power of arrest is one thing, the justification for the existence of it is quite another..... No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and Bonafide of a complaint and a reasonable belief both as a person's complicity and need to effect arrest. Denying a person his liberty is a serious matter."

In D K Basu Vs State of West Bengal (1996), Supreme Court stressed upon the power of arrest, interrogation and detention must be guided by Constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen. In this judgement, the Court laid down elaborate guidelines to be followed by police officers at the time of making arrests.

In Arnesh Kumar Vs State of Bihar (2014), Supreme Court held, " In pith and core, the police officer before arrest must put a question to himself, why arrest? What object will it achieve? It is only after these questions are addressed, the power of arrest needs to be satisfied."

The Court added that the law mandates the police officer to record reasons behind making arrests. In this case the Court had also ruled that a magistrate is duty bound to release an accused if the police fails to show compliance with the requirements under Section 41 Cr PC besides ensuring all Constitutional rights of the accused person.

In Sanjay Chandra Vs CBI (2012), Supreme Court held, "In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will temper with the witnesses if left at liberty, save in the most extraordinary circumstances."

Senior Advocate Mahalakshmi Pavani, President-Supreme Court Women Lawyers Association viewed, "Courts have transitioned in their approach from the case of 1978 where Justice Krishna Iyer famously opined that 'Bail is the Rule and Jail is the Exception'. The main primary reason for that is that a lot of special statutes have been enacted since 1978 which provide for special mechanisms of trial, bail, mode and manner of investigation. These special enactments take away powers from ordinary Courts of criminal jurisdiction and assign them to tribunals and other bodies as a substitute to sessions Court. The approach of Courts has certainly changed in so far as application of the special enactment and a balance has to be drawn to not grant bail to people who have committed nefarious large scale economic offences. But even the mushrooming of new laws doesn't cloud the vision of the Court so as to apply the bland cold text of the law and not grant bail. Bail even today is granted on a case to case basis.

Mahalakshmi further said, "Again on July 11, 2022, the Supreme Court Bench of justices Sanjay Kishan Kaul and MM Sundresh, duly acknowledged that judicial conservatism has

added to the investigating agencies' misadventures of weaponizing the process as a punishment and India should never become a 'Police State'. I do agree that the investigative agencies are very liberal in wielding their over widened powers of arrest and causing unnecessary harassment. Most of the times these agencies are being dictated to by their political bosses and are basically vengeance seeking tools of political masters.

Justices Kaul and Sundresh have in previous instances also very clearly stated that the exercise of powers given to them is an abuse of law. I agree with their Lordships' observation and believe that in drastic cases the power of contempt should be used, however sparingly in deserving cases to mitigate the problem of a victim who is being projected as an accused".

Mahalakshmi observed that, "Strictly speaking I don't think our criminal law mechanism has become so strong that an accused in a heinous case can roam around freely while the investigating agencies, i.e., the police, carry on their job covertly. I feel that before even envisaging this reform, it is important that the governments- both Central and States implement the judgment of Prakash Singh V. Union of India which at great length and detail underscored the importance of having a separate investigating agency from regular crimes, other than the police. The judgment really delineated and spells out why the functioning of the police should be only law enforcement and safekeeping and why have investigative agencies as separate bodies would actually bolster the cause of justice and speed up the motion of the criminal law and would expedite trials across the country to a large extent despite the shortage of judges in the lower judiciary. If our governments decide to establish a new force of officials that's only job would be to look into ordinary criminal matters and investigate and file reports before the Courts, the grievance underlying this question would be automatically addressed", concluded Mahalakshmi.

Dr. Surat Singh, Harvard and Oxford educated top level Supreme Court Lawyer is of the opinion that "Hon'ble Justice Krishna Iyer has rightly enunciated a sound proposition of criminal jurisprudence when he declared that 'bail is the rule and jail is the exception'. The reason is simple that our judicial legal system is so slow in finding the truth. Why an innocent person should suffer for a long time until a strong prima facie case after proper investigation is made out? We must remember that Indian police manual and police rules were made in colonial period where the sole aim of the law was crowd control. Please look at the fact that during entire British rule in India, never more than 3,00,000 British people ever came. This figure includes missionaries, merchants, Army personnel and administrators, but the population of India was more than 33 crores even at the time (including Pakistan, Bangladesh). So there was one English man for 1100 Indians. Therefore, the legal system was not geared to provide fair process of law but to control the crowd. Unfortunately, the same system continued with only minor changes. We talk about fundamental rights of life and liberty guaranteed under the Constitution but reality is that out of 393 Articles of the Constitution, more than 50 percent provisions have been borrowed from the Government of India Act 1935.Even the fundamental rights are ignored at trial Court level and only Criminal Procedure Code which is merely recommendatory, suggestive procedure, rules the Court proceedings. The lower police officer appointed as investigation officer has been given too much coercive power without sufficient meaningful control and guidance. Supreme Court has rightly pointed out in the recent case namely Satendra kumar Antil Vs Central Bureau of Investigation & Another, decided on July 11 ,2022 that the judicial conservatism has added to the investigating agencies' 'misadventures of weaponizing the process as a punishment and India should never become a 'Police State'. While interpreting any law, we must keep in mind that laws are made for the benefit of human beings and not the other way round. If human purposes are not subserved by law, it is the law which must be changed. But unfortunately, we are continuing the British legacy in law, education and governance mindlessly."

Dr. Surat Singh further said, "Indian criminal law was shaped by Lord Macaulay but Macaulay never entertained good opinions about the ability of Indians as is evident from his famous 'Education Minutes of 1835 ' which I read in original at Oxford. Macaulay was himself a graduate of Cambridge University. Both Oxford and Cambridge teach independence of mind and full self-expression. Macaulay aimed at producing merely a class of interpreters between English rulers on one hand and millions of native ruled. I wonder where is sound common sense of Indians? Both America and India benefited from British common law, but while India mindlessly imitated British laws, America critically assimilated British laws and substantially improved upon them. When will India be independent in mind and spirit? We are celebrating the 75th anniversary of Indian independence. Our true freedom would be when Indians will enjoy rights of life and liberty, not in books but in real life. When a police officer will be considered

a friend and facilitator in execution of rule of law and not be a terrifying and exploitative figure? When a police officer will be committed to find the truth first and punishment afterwards? When will persuasion come before coercion? Under such circumstances, registration of FIR first and investigation later will be a thing of the past and we would be celebrating our 75th anniversary of independence from British and their oppressive laws and procedures in real sense of the term and officers of law will perform their duties without affection or ill will, without fear, favour and prejudice. We need to put in proper structure of government and legal system to achieve salutary objectives mentioned in the Preamble of the Constitution," concluded Dr. Singh.

Whatever may be the golden rules of the Hon'ble Supreme Court of India, the fact remains that the Court has been acting as a toothless tiger as despite several rulings, there has been no visible change in the attitude of the lower Courts, government as well as the police. The rhetorics of Court are on one side and the ground realities are on the other side. To cite a few examples, 84-year-old social activist Stan Swamy died in judicial custody in Mumbai jail on July 5, 2021, in the Bhima-Koregaon Maoist links case. His bail plea pending since April, 2021, was opposed by NIA.

AltNews co-founder and fact-finding journalist Mohammed Zubair recently arrested in three separate cases of similar nature relating to his old tweets has been in jail on charges of invoking communal hatred, though the maximum punishment in the cases is not above seven years.

In another matter, on May 15, 2022, Marathi actor Ketaki Chitale was arrested on charges of sharing objectionable post about NCP chief Sharad Pawar. She remained in jail for more than one month. "The statistics show that more than 1000 innocent children are living in prisons alongwith their mothers... there is a grave danger of their being inherited not only with poverty but with crime as well," said the Bench asking the trial Courts to deal with their cases with sensitivity.

Courts must come down heavily on police as in January, 2022, Delhi High Court sentenced a sub. inspector of Delhi Police to one day's imprisonment for not giving a notice to a man under section 41A Cr Pc before arresting him. The Court said, "arrest and inccarceration destroys a person and collaterally affects many other innocent relatives."

As such, there is an urgent need for holistic reforms including that of political reform, police reform as well as the judicial reform for the renaissance of healthy society.

THE COURT CRAFT OF JUDGES

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

It was during the month of May, 2022, two judges of the top court retired. The Supreme Court Bar Association on both occasions organized farewell events. It was on May 9, 2022 that **Justice Vineet Saran** was given a warm send off. Justice Saran, while responding said, the court craft was necessary not only for the lawyers. Equally, for the judges also. He was happy to share his own court craft. He would sometimes appear to be angry during the hearings. In reality, he would not be. May I say, this was a meaningful court craft. I asked myself, why should a judge appear to be angry? Many a time, a judge does not like, how the lawyer was conducting his case. May be, the judge feels that he was wasting the time of the court. May be that he was repeating or digressing. How to stop the lawyer? If you politely tell him, it may not make any difference. In such a situation, a judge is required to show his annoyance. Not anger. This is court craft. It would achieve the desired result. Shakespeare has said, he is a fool who cannot get angry. He is wise who will not. The lawyer must not think that he can take the judge for a ride. The annoyance of the judge in such a situation is desirable. Also understandable. This would be a good recipe. It does not amount to losing temper. Also not disturbing the cordial environment of the court. It is only to make the lawyer realize that he must assist the court appropriately. The lawyer may also feel that he knows that the judge is actually not angry. Why take note of the annoyance of the judge? This attitude of the lawyer would make the judge really angry. Therefore, this must be avoided under all circumstances. Let us understand, the court craft is a two way traffic.

The second event took place on May 20, 2022 to bid farewell to **Justice L.Nageswara Rao**. He was the 7th lawyer who was directly appointed to the Supreme Court on May 13, 2016. During this event, senior advocate, Mr.Pardeep Rai revealed that Justice Rao has starred as a policeman in a Hindi film: Kanoon Apna Apna alongwith Sanjay Dutt and Anupam Kher among others. While speaking on this occasion, Justice Rao shared that he was in theatre in college. His cousin was a director. Accordingly, he got a short role in a movie. That was all. He never wanted to become an actor. Lawyers act in court. He added: Judges also do. Whenever there is heat between the lawyers, judges try to bring truce. He went on to say: 'acting is part of the profession'. This is also court craft. The task of a judge is difficult. He is to find the Truth and do complete justice. My experience at the Bar tells me, it is not all that easy to read the mind of the judge. While arguing, I felt that the judge was totally against me. He was countering every argument of mine. In-spite of my best effort to be persuasive. Rational and reasoned. When the counsel on the other side started arguing, equally the judge was countering him tooth and nail. In fact, I so felt that the judge was only acting when I was arguing. Ultimately, my petition was allowed. This was real court craft on the part of the judge. The judge must be able to extract the best from both the lawyers. This too, without unfolding his mind till the end. So that ultimately, the truth prevails. Justice is done. If in the beginning of the case itself, the judge gives his mind, he would fail to get the best possible assistance from the Bar. Resultantly, it is understandable and desirable if some 'acting' is done by the judge. This is real court craft.

Justice M.C.Chagla was elevated as a judge of Bombay High Court on August 4, 1941. He became the first Indian Chief Justice of Bombay High Court on August 15, 1947. He resigned as Chief Justice in September, 1958 to take over as India's Ambassador to Washington. Justice Chagla was quick in perception. Broad in vision. Fresh in approach. He was unique. He would never read petitions beforehand. He never liked the idea of forming impression/opinion about the cases. He was a blend of courtesy and speed. His court craft was, he would allow the advocate to complete his arguments without interruption. He would rephrase the arguments in words better than the counsel. He would ask, if that was the point that he was making. This would leave no scope for repetition. No further elaboration. Extremely courteous. Equally, firm. On completion of arguments, he would dictate the judgment in the open court. Even in the most complex cases. In his 17 years of judicial journey in Bombay High Court, he reserved judgment only in two cases. There was difference of opinion. The judgment was reserved only to bring unanimity in their opinion. He was such a fine mix of court craft. With his court craft, he made huge contribution. He expired on February 9, 1981. But

he continues to live. His court was a temple of justice for the litigant. An academy of judicial education for judges.

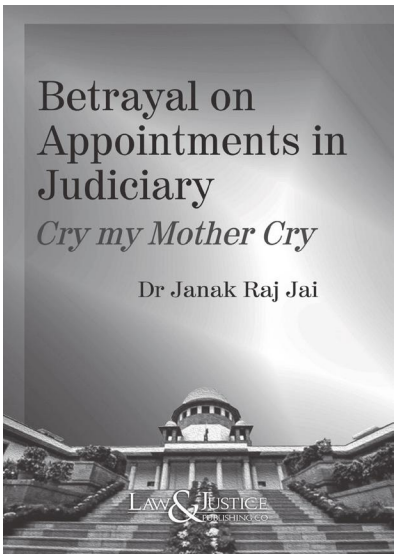
Justice S.S.Sandhawalia was a judge of Punjab & Haryana High Court from 1968 to 1977 and Chief Justice from 1978 to 1983. Thereafter, he remained Chief Justice of Patna High Court from 1983 to 1987. What a beautiful judicial journey spreading over almost two decades. When I joined the Bar, I was told he was a most polished and cultured judge. Graceful too. Even when he dismissed the petition (which he did more often), he would not let you feel. A smile on his face, he would say, I wish I could accept your argument. May be that you would be able to persuade me in your next matter. I assure you, you have done your very best. Sorry. Resultantly, you would come out of the court as if nothing had happened. You may have lost a case involving high stakes. This was his court craft. I joined the Bar in early 1991. I never had the opportunity of appearing before him. I wanted to experience Sandhawalia flavor. After retirement, he became President of Haryana Consumer Commission. I got the opportunity. I argued before him. I was heard without interruption. I was told, Dr.Gupta, we used to hear you in Panjab University. What a pleasure to have you before us. Of course, with a smile on his face. His insignia. I thought, my matter was going to be dismissed. It was allowed. I bowed and came out. It was a pleasant experience. What court craft! Very few can imbibe the same. Coupled with this, he would write his judgments beautifully. The lucidity of his language. Reading the same, one enjoyed Sandhawalia language too. Such judges with such court craft are rare.

The court craft and the court management go together. A judge must be able to extract the maximum from the members of the Bar. This helps both ways. Good assistance from the Bar means good judgments from the Bench. The court craft of judges is something extra. In fact, court craft is the creativity of a judge. Courtesy and Patience are integral to court craft. Courteous demeanor should be part of personality of a judge. Sobriety in behavior is the hallmark of a judge. It is essential for sustaining public confidence in the institution of judiciary. The court craft is a gift of a judge. From senior judges to younger judges. May I also say, it begins from the Trial Court. Moves upwards. It is judicial creativity.

Betrayal on Appointments in Judiciary

Cry My Mother Cry

By Dr. Janak Raj Jai



'Betrayal on Appointments in Judiciary, *CRY MY MOTHER CRY'* (First edition 2022). By Dr. Janak Raj Jai: Law & Justice Publishing Co. Delhi, India (ISBN- 978-93-90644-64-3) Price - ₹395/

- Mr. Amit Raj Agrawal

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The present scholarly works of Dr. Janak Raj Jai, a notable academician and eminent practicing advocate of the Supreme Court of India authoritatively captures the significant constitutional derelictions on the part of the constitutional functionaries for their vested reasons best known to them in the matter of evolution of appointments, transfer and suppression of judges and the role of the executive in judicial appointments and how it affected the independence of judiciary is discussed and highlighted at length and present a convincing readings based on the wisdom and scholarly views of the renowned justices of India, senior advocates, eminent academicians and legal stalwarts and luminaries on various issues including the systematic assimilations of historical facts, figures, letters, reports, articles and notable judicial delineations of the apex court of India.

The meticulous work of Dr. Janak Raj Jai begins with the foreword remarks of Justice Kailash Gambhir (Senior Advocate and former judge , High Court of Delhi), where relevance of preset scholarly work is assessed in the context of 74 years of country's independence *vis-à-vis* the judicial independence. Justice Gambhir in his foreword remarks while assessing the assiduous and painstaking contents of the present work of Dr Jai scrupulously scrutinize each of the chapters in his own wisdom and appreciated the conscientious efforts of Dr. Jai in criticizing the abuse of power by the Government of India through in-depth analysis of historical facts on the subject of appointment, suppression, reversion and transfer of judges.

The present scholarly work painstakingly authored by Dr. Janak Raj Jai enveloped in conscientious contents of eight chapters including tempestuous assimilation of editorial and articles of the national newspapers, notable judicial delineations of the Supreme Court of India and the profound views of many eminent legal stalwarts and luminaries.

Dr. Janak Raj Jai, an eminent academician and ace practicing lawyer at the Supreme Court of India in his present work titled '*Betrayal on Appointments in Judiciary, CRY MY MOTHER CRY'* offers a comprehensive analysis of the subject of judicial appointments, suppression, reversion and transfer of the judge of the constitutional courts with the aid of interpretative assimilations of historical events facts and judicial delineations of renowned jurists of the country. The analysis offered by the learned author in his present work is clear, unambiguous and based on reasons and substance with a clear and clean message intended to safeguard the Constitution of India and the trust and confidence of the common man of the country in the legal system which demands transparency and good governance.

The wisdom of the author is omnipresent and ubiquitous in each and every paragraph of the meticulous contents of the present work and he succeeds in disclosing the facts of executive tyranny and arbitrary interference by the central executive in the matter of judicial appointments.

The meticulous contents of the present work is informative, analytical and thought provoking based on all major historical facts , juristic writings including bold criticism.

I'm sure the present work enables the prospective readers in deconstructing the values of the Indian Constitution and the genesis of the Indian Judicial system particularly in reference to the working of the central executive and the apex judicial body of the Country, i.e. the Supreme Court of India.

LONG STANDING DIABETES, HYPERTENSION & STROKE

CC 46/2006
DEEPAK GUPTA Versus
INDRAPRASTHA APOLLO HOSPITALS DELHI
Decided by the Hon'ble NCDRC on 23.08.2022

Anoop K. Kaushal, Advocate
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FACTS: Mr. Avinash Chandra Gupta, about 74 yearswas suffering from headache, dizziness. He was examined by the Opposite Party No. 2 Dr. Jawahar Dar (Neurosurgeon) at Indraprastha Apollo Hospital, and on 08.03.2004 MRI was conducted, was diagnosed as 'Pituitary Gland Tumor'. The patient was operated on 17.03.2004 and discharged from the Hospital on 20.03.2004. At the time of discharge, the pain killer tablet 'Voveron' 50mg twice a day for two weeks was advised and the patient was called for follow-up on 26.03.2004, it was alleged that tablet 'Voveron' was prescribed without taking patient's past history GI bleed or Malena, on 02.04.2004, the patient fainted because of blood in the Stool, severe GI Bleed and malena, he became anemic - hemoglobin was low as 6.2 g%. He was readmitted in the morning on 03.04.2004. Dr. Broor-Gastroenterologist the Opposite Party No. 3 conducted various diagnostic tests including Upper GI endoscopy, Colonoscopy, Capsule endocscopy, CT abdomen, pelvis and mesenteric angiography. Further Isotope study and MRCP were done, but all test results were normal. The cause of lower GI bleed remained obscure and undiagnosed in the Opposite Party No. 1 Hospital for 16 days and transfused 28 units of blood/plasma. The bleeding was stopped and the patient was discharged on 19.04.2004. It was alleged that the special test for Hepatitis C was conducted and it reported on 17.04.2004 as RNA-Hepatitis C positive. The Liver Functioning Test (LFT) was severely deranged (SGOT/ SGPT and Bilirubin were high). However, the OPs never disclosed it to the Patient and/or his family, but soon after discharge, Dr. Broor about Hepatitis C Positive. Thus it was alleged that the patient contracted Hepatitis C infection from the hospital. After few days on 28.04.2004, the patient's BP dropped. On the next day he felt giddy and passed black stool again in the evening. Therefore for 3rd time, in the night the patient was admitted to the Hospital in ICU. One unit of blood was transfused and various tests were conducted but there was no evidence of active GI bleed. After stoppage of blood on 3.5.2004 he was shifted from ICU to the room. But prior to discharge he suffered stroke and right lip palsy, it was due to alleged lack of monitoring the vital parameters. Again he was shifted to ICU and after 3 days he was discharged on 7.5.2004 along with one brief summary. Thereafter the patient took treatment from different hospitals. On 2.3.2005 he was admitted in Ashlok Hospital, thereafter on 19.03.2006 in Umkal Hospital at Gurgaon. On investigations revealed sepsis, raised liver enzymes further renal impairment. Subsequently at the end the Patient developed deep yellow discoloration of the body and he was managed on lines of Hepatic Encephalopathy, sepsis and multi organ failure. However, he suffered a cardiac arrest and died on 11.04.2006 in the night.

OBSERVATIONS AND CONCLUSION:

The Complainants main grouse was that the patient developed life threatening Hepatitis C infection in the hospital leading to hepatic encephalopathy and death. It is evident from the medical record that the viral markers were negative, whereas the positive report of HCV-RNA was received on the day of discharge. Thereafter further evaluation of patient was advised. During that period of 2 months, the patient was admitted three times and treated as per symptoms of malena. Despite all investigations, the cause of malena remained undetected. It is pertinent to note that the patient previously took treatment at GB Pant Hospital and the report dated 05.07.2000 revealed the patient was suffering from malena, but the cause was not traceable. The upper GI endoscopy did not reveal any source of bleed. The full length colonoscopy showed dark colored blood up to caecum with few diverticula in sigmoid and descending colon. However, there was no active bleed. The RBC tagged scan was done and found normal. On 03.05.2004, the patient developed right hemiparesis with right 7th supra

nuclear palsy, but the CT Scan did not reveal any intracranial bleed. The Neurologist, Dr. Mukul Verma opined that it was due to cerebral thrombosis. Therefore, Tablet Chlopidogrel was started after explaining risk of GI bleed to the patient's son. The Carotid Doppler showed 48% stenosis of left internal carotid artery with ulcerated plaque. After supportive treatment, there was improvement in the speech and power of the right limb. There was no fresh GI bleed. The patient was accepting orally and passing stool normally. The interferon therapy for acute hepatitis was not decided as the patient was on anti-platelet drugs. Before discharge, the risks and benefits were discussed in detail with the patient's son. It is pertinent to note that the patient was regularly taking insulin injections and underwent dental treatment on few occasions. Therefore, in our view Hepatitis C infection in short period cannot be attributed to the blood transfusion. As per medical literature, the average incubation period of Hepatitis C is about 6 weeks whereas in the instant case, the blood was transfused 2 weeks back. It is pertinent to note that the patient or attendants did not give any past history of bleeding. They concealed the fact from the treating doctors at the Opposite Party Hospital. The Opposite Party No. 2 stated before Delhi Medical Council that "the patient did not give any past history of GI bleed, and there was no apparent reason for him to inquire about the same and as such, when the patient was discharged he was prescribed Voveron". Moreover, after 7.05.2004 the patient took treatment in different hospitals and he died in Umkal Hospital on 11.04.2006 i.e. almost about 2 years after the discharge from OP Hospital.

HELD: *It is known that elderly patients with long-standing diabetes mellitus and hypertension are substantially at higher risk and can develop stroke at any time. In the present case the stroke was possibly because of thrombosis. Patient was investigated which showed 48% narrowing of Left Internal carotid artery with presence of ulcerated plaque which corroborates the cause for stroke and neurological Palsy. From MRI and CT-Scan, minute lacunar infarcts in the brain were seen.* Therefore, we do not accept the allegation that patient developed stroke due to lack of proper monitoring patient's blood pressure and vital parameters. The Delhi Medical Council after going through the entire record of the case, examining the witnesses came to a conclusion on 05.08.2008 that no medical negligence could be attributed to the doctors of Indraprastha Apollo Hospital in the treatment administered to the deceased. The Complainant appealed against the DMC order to the Medical Council of India (MCI). The Ethics Committee of MCI upheld the decision of DMC. It was held that;

"In view of the aforesaid, it is submitted that the entire allegations made by the Complainants against the treating Consultants and the Opposite Party Hospital are incorrect and only an afterthought with sole motive to harass the Opposite Party Hospital and to extract undue monetary benefits from them. There was no negligence and deficiency in providing service on the part of the Opposite Party Hospital and its Consultants and that the claim of the Complainants is not maintainable and is liable to be dismissed."

Opposite Party 3 - Dr. S.L. Broor was a Gastroenterologist working in Apollo Hospital and he had attended the patient 1st time on 04/04/2004. The patient did not submit any record of G. B. Pant hospital, PSRJ and Quest diagnostic center, USA. Therefore, the allegation that Voveron was prescribed despite having knowledge of Malena/GI bleed does hold any ground. The Gastro Entrologist - Opposite Party No. 3 had no role to play with respect to the first admission or prescribing Voveron to the patient. In fact that the patient's Hepatitis C infection was confirmed by PCR test conducted on 17.04.2004. It revealed RNA- HCV positive which was about 15 days of hospitalization. However, the incubation period for HCV is up to 8 weeks. In the instant case, in our view possibility of patient catching HCV infection from the regular injections of Insulin cannot be ruled out. Admittedly the patient was having NIDDM for last more than 15 years and / or from the treatment taken for dental problems. It is pertinent to note that the Opposite Party Hospital investigated the patient thoroughly and treated as per the standards. Despite every effort, the patient could not be cured; it shall be borne in mind that **"No cure is not necessarily the negligence".** It is pertinent to note that the patient was elderly, having several co-morbidities. The death of the patient occurred almost one year after the discharge from the Opposite Party Hospital and during that period, he took treatment from different hospitals. Therefore, the cause of death and negligence cannot be attributed to the Opposite Party Hospital and the treating doctors

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

Supreme Court Guidelines

GUARDIANS AND WARDS ACT, 1890

GUARDIAN APPOINTMENT FOR A PATIENT LYING IN 'COMATOSE STATE'

Shobha Gopalakrishnan and Others v. State of Kera/a and Others

2019 (2) RCR (Civil) 422: 2019 (1) ILR (Ker) 669: 2019 (1) KLT 801:

2019 (2) KLJ 549

WP (C) No. 37278 and 37062 of 2018

Dated: February 20, 2019

BENCH: Justices P.R. Ramachandra Menon and N. Anil Kumar.

Kerala High Court: Guidelines to deal with the procedure for appointment of Guardian to a patient lying in *'comatose state.'* Earlier to these Direction stated below, there were no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state'.

High Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

• Petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

• The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

• A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

• The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

• The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/ such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in *'comatose stat/*

• The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

• If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/ Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

• The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/ interference of this Court.

• The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

COLLARED!

By Simon Bouda

Sitting in her bedroom in her parents' spacious Sydney,

Australia, home, Maddie Pulver contemplated the task ahead-studying. It was August 3, 2011, and high school exams were coming up. Like her classmates, she was hitting the books.

It was 2:30 p.m., a Wednesday, and the l8-year-old was alone in the house. Maddie's mother was out shopping, and her father, the CEO of a global software company, was at work; her two younger brothers were at school, and her older brother was on vacation. From her bedroom desk, Maddie could gaze out across Sydney Harbor, but this was a time for concentration, not daydreaming.

Suddenly, Maddie heard a noise behind her. She turned to find a man standing in her bedroom doorway wearing a rainbow-colored balaclava. He was armed with an aluminum baseball bat and wore a small black backpack. The intruder had entered the multimillion-dollar home through the unlocked front door.

"I am not going to hurt you," he declared.

Maddie leaped from her chair and backed away, toward her bed. "What do you want?" she demanded.

Placing his baseball bat and backpack on the bed, the man simply warned, "No one needs to get hurt."

He opened the backpack and removed a black metal box the size of a small laptop. Holding it against Maddie's throat, he secured it around her neck with a bicycle lock. He then placed a loop of purple string over her head. Attached to it were a USB flash drive and a plastic sleeve with a document inside. A label with a typed e-mail address. dirkstruan1840@gmail.com, was stuck to the box around her neck.

Brian Douglas Wells was a pizza deliveryman duped by a gang in 2003 in Pennsylvania. They put a collar time bomb around his neck and ordered him to rob a bank. Wells did as he was told, but when he was leaving the bank, police turned up. The bomb went off with catastrophic consequences.

But Maddie Pulver had no idea what a "Brian Douglas Wells event" was. She was also unaware that Dirk Struan-the name used for the e-mail address-was the main character in James Clavell's novel *Tai-Pan.*

Struan was the "Tai-Pan"-the leader-a wealthy, violent, and shrewd head of a trading company in China who was hell-bent on destroying his rivals.

The Australian police had never seen a case like this before. Arriving: soon after 2:45 p.m., officers immediately sealed off the street and set up roadblocks to divert traffic, curious neighbors, and the media.

Inside the house, they found Maddie sobbing. To take the weight off her neck, she was holding the box with her hands. Police had kept her parents at a mobile command post out on the street, so Constable Karen Lowden took on the task of trying to comfort the terrified teen. She asked about the upcoming exams, Maddie's art studies, her hobbies ... anything to keep their minds off the horrible predicament while bomb squad technicians determined what sort of explosive they were dealing with. Portable X-ray equipment showed that the box was filled with mechanical and electrical components. But police couldn't be sure if there were explosives or not.

Meanwhile, the police decided to respond to the extortionist and carefully crafted a short, simple reply, which Maddie's father would send. At around 6 p.m., he e-mailed the address attached to the black metal box: "Hi, my name is Bill. I am the father of the girl you strapped the device to. What do you want me to do next?"

Almost immediately after being handed the note, police contacted Google's head office in the United States to determine if the Gmail account had been accessed. The Internet giant scanned its database records and told detectives that the account, dirkstruan1840@gmail.com, had been created on May 30 from an Internet server linked to Chicago's O'Hare Airport.

That night, Google's data revealed the e-mail account had been logged on to three times that afternoon-twice from a computer at a library a few hours north of Sydney and a third time from a nearby video store.

Because Google could tell the detectives the precise times someone had used the account, police were able to view the library'S parking lot security video and pinpoint the arrival of a possible suspect and the car he was driving, a metallic gold

Range Rover. Although the license plates were illegible, detectives had an image of the man who'd gotten out of the SUV and entered the library.

Maddie had told police her attacker wasn't young. She had noticed gray chest hair as he reached around her to attach

the collar box. Through the eyeholes in his balaclava, she'd seen wrinkles. She'd guessed he was between 55 and 60. The man in the video fit the description and wore a collared shirt and trousers similar to what Maddie remembered.

Then, by checking motor vehicle records, they systematically checked the registration details of each possible Range Rover with driver's license photos of their owners. Within 48 hours of getting hold of the library footage, they had a name- Paul Douglas Peters.

With that name, detectives were able to follow a money trail, providing more links to the crime. Peters's bank records showed that he'd made purchases at a clothing and sporting goods store in the weeks before Maddie was attacked. Footage from the shopping center showed him buying a baseball bat and a rainbow-colored balaclava.

Twelve days after the attack on Maddie, on August 15 an

FBI team stormed the Kentucky home of Peters's ex-wife, where they found Peters. There on a table was a James Clavell novel- Tai-Pan.

Detective Sergeant Andrew Marks flew from Australia to Louisville to question Peters. In a room at FBI headquarters, he chipped away at the suspect.

Marks: "Is there anything you want to tell me about the extortion, the kidnapping, and the bomb placed around young Madeleine Pulver's neck on the third of August?"

Peters: "No."

Marks: "Are you responsible?" Peters: "No."

Marks: "Do you know anything about an e-mail address with that name, Dirk Struan?"

Peters: "Yes."

Marks: "What can you tell me about that?"

Peters: "I had a ... or had set up an e-mail address with ...

Dirk Struan."

Marks then asked about the USB flash drive that had been attached to the collar bomb. Forensic examination had unearthed three deleted files. One' was a Word file that was a letter of demand in the same terms as the saved file and the hard-copy document in the plastic sleeve placed around Maddie's neck. The analysis of the Word file revealed that it had been created on a computer identified as "Paul P."

Peters was unable to explain why or how the document had been on a "Paul P" computer. He claimed it was "a horrible, horrible coincidence."

During questioning, Peters talked about a James M. Cox Trust, claiming he had $12 million tied up in it. Another of the three deleted files on the USB drive contained a letter of demand addressed specifically to the trustee of the trust.

It indicated that perhaps Maddie wasn't the intended target of the extortion plan, that the masked intruder had meant to target a neighbor who was a beneficiary of the trust. Marks handed Peters a copy of the deleted document.

Marks: "Have you seen that note before?" Peters: "I have no comment."

Forensic psychiatrists agreed that Peters did suffer depression and overused alcohol after the collapse of his business and his divorce. One said he had a bipolar disorder.

But the judge wasn't convinced.

"The weight of evidence establishes beyond reasonable doubt that the offender set into action a plan to extort money," Judge Peter Zahra said. "There are limitations to which the extent of the terror experienced by the victim can be humanly understood."

A year after his arrest, Peters was sentenced to 13 years and six months in prison.

Outside the court, Maddie faced the media.

"I am pleased with today's outcome and that I can now look to a future without Paul Peters's name being linked to mine," Maddie said. "For me, it was never about the sentencing but to know he will not reoffend, and it was good to hear the judge acknowledge the trauma he's put my family and me through."

It's a saga her mother, Belinda, sums up best: "We've realized what's important in life. We don't worry about the small things now."

Labour Laws Q/A

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

PAYMENT OF GRATUITY ACT, 1972
'CONTINUOUS SERVICE' – MEANING OF

Q. What is meant by 'continuous service' under the Act?

The term 'continuous service' has been controversial ever since the Payment of Gratuity Act, came into force in 1972. In one case, the Supreme Court interpreted the term which led to the amendment of the definition by the Amended Act, 25 of 1984 whereby a separate section 2A defining continuous service was added. Again by an Amending Act 22 of 1987, the amendment was made in the definition. In order to determine as to what continuous service means, it is imperative to reproduce section 2A of the Act.

In one case, the High Court has clarified that the gratuity becomes payable as per section 4 upon rendering continuous service and for not less than 5 years. Continuous service has been defined in section 2A of the Act. The petitioner has filed Annexure 3A which is a discharge notice dated 6-8-1977. Consequently, respondent No. 1 having not worked between the period 6-8-1977 till the date of his re-employment w.e.f. 9-7-1979, the said period as well as the previous period of employment cannot be included while calculating the gratuity under section 4 of the Act inasmuch as the said period would not be treated to be in continuous service as contemplated by section 2A of the Act. The court has referred to the case of *Dungerbhai Maghanbhai* v. *Arbude Mills Ltd.,* 1997 (III) LLJ (Supp) 1286, wherein the Gujarat High Court has held that suspension from employment removes the master and servant relationship and that subsequent re-employment after 2 or 3 years would not entitle the workman for claiming service rendered prior to re-employment as continuous service. Hence, service rendered by the workman prior to 9-7-1979 cannot be taken into consideration for calculating gratuity.[1] In one case, it has been held that break in services due to absence will not deprive gratuity to workers.[2] Mere unauthorized absence will not be the break in service for disentitlement of gratuity.[3]

By sub-section 1 of section 2A of the Act, continuous service means uninterrupted service including interruption, on account of sickness, accident, leave, absence from duty without leave etc., as long as the absence is not treated as a break in service, by a specific order. Sub-section 2 specifically deems continuous service within any period of one year, not coming within the meaning of clause (1), to be continuous service, if in the preceding period of 12 calendar months, the workman has worked for 240 days. Hence by deeming provision, the Act provides for the service in any 12 months of a five year period to be treated as continuous service, if the employee has more than 240 days of service.[4]

References:
1. *Hindalco Industries Ltd.* v. *Shiv Narayan Singh,* 2008 LLR 1116 (SN) (All HC): 2007 (III) LLJ 897 (All HC).
2. *Bangalore Metropolitan Transport Corporation, Central Office, Bangalore* v. *Dy. Labour Commissioner and Appellate Authority under the P.G. Act, Bangalore,* 2009 LLR 861 (Kant HC).
3. *P.B.M. Polytex Ltd.* v. *Union of India,* 2012 LLR 1093 (Guj HC).
4. *Sreeja* v. *Regional Joint Labour Commissioner*, 2015 LLR 826: 2015 (146) FLR 1075 (Ker HC).

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

FORM VS. CONTENT

If you're in a conflict and you want to make something perfectly clear, then the manner in which you do it – the form you use – is essential. The wrong from will transmit the wrong message. You lose, Mumbling, delays, typos, unreadable letters, bad grammar, mistaken references to fact, using smileys or microscopic fonts: they can be ground for not taking you seriously or even for dismissing you. A nice example is illustrated by this photograph. It's of Ms. Verdonk, the Dutch Politician. She's standing on a briefcase to give the impression that she's taller than she really is (not the first politician to have a height complex). Whatever Ms. Verdonk may say, she certainly won't be given the benefit of the doubt.

Remembrances

Justice M. Hidaytullah

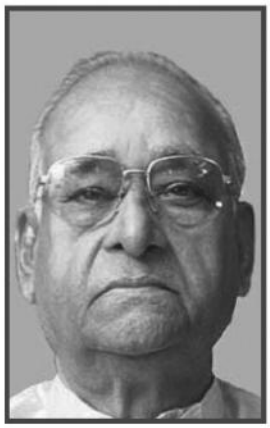
on his 30th
Death Anniversary
18th September

Ram Jethmalani

on his 3rd Death
Anniversary
8th September
and
on his 99th Birth
Anniversary
14th September

Justice M.C. Chagla

on his 122nd Birth
Anniversary
30th September



P.P. Rao

on his 5th
Death Anniversary
11th September

Mool Chand Sharma

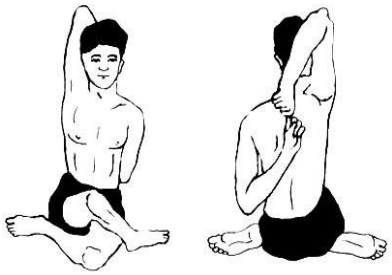
on his 2nd
Death Anniversary
7th September

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:



Gomukhasana – Cow Face Pose

Benefits: These are some amazing benefits of Gomukhasana.

This asana helps to flex the back, making it more elastic.

It helps to cure stiff shoulders and also helps reduce backaches.

Practicing the Gomukhasana also aids in the treatment of sciatica.

It enhances the working of the kidneys, thereby helping those suffering from diabetes.It also works the chest muscles and helps in treating sexual ailments.

Practicing this asana regularly can reduce stress and anxiety.

Procedure: Sit erect on the ground with your legs stretched out in front of you. Now gently bend your left leg, and place it under your right buttock.

Fold your right leg and place it over your left thigh. Place both your knees close together as they are stacked one on top of the other. Gently fold your left arm and place it behind your back.

Take your right arm over your right shoulder, and stretch it as much as you can until it reaches your left hand. With practice, you will be able to not just reach, but also catch your left hand. Keep the trunk erect, expand your chest, and lean slightly back. Hold this pose for as long as you are comfortable, as you breathe slowly and deeply. Concentrate on your breathing.

Healthy Food

Custard Apple

The custard-apple is one fruit that packs in all health benefits. Custard apple contains anti-oxidants like Vitamin C, which helps to fight free radicals in the body. It is also high in potassium and magnesium that protects the heart from cardiac disease. It also controls the blood pressure. Custard apple contains Vitamin A, which keeps the skin and hair healthy. This fruit is also known to be great for eyes, and cures indigestion problems. It is important to include this fruit in the diet, as the copper content helps to cure constipation, and helps to treat diarrhoea and dysentery. It is also good for a person suffering from anaemia, as the fruit is high in calorie. Custard apple contains natural sugar, and hence make great nutritious snacks and even desserts.

Recipe of the Month

Custard Apple Kalakand Recipe

Ingredients:

- Milk – 2 litre
- Lemon juice – 2 tsp
- Sugar – 1\2 cup (powdered)
- Custard apple – 1 cup
- Pistachios – 8-10 (slivered)

Procedure :

- Divide the milk in two pan.
- Heat one pan till the milk has reduced to half.
- Bring the milk in the other pan to a boil.
- When the milk comes to a boil, simmer the heat.
- Add lemon juice to the milk.
- The milk will curdle.
- Switch off the gas and drain the milk in a cotton cloth.
- Bring the sides of the cloth together and drain all the whey from the paneer.
- Run the cloth under fresh water to remove any trace of lemon from it.

• Add this paneer in the other pan when the milk has reduced to half.

• Cook till the mixture starts to leave the sides of the pan.

• Add sugar and custard apple and cook for another 2-3 minutes.

• Add cardamom powder.

• Grease a plate with ghee.

• Pour the mixture in the greased plate and spread evenly.

• Garnish with pistachio slivers.

• Let the kalakand set.

• When set, cut into small pieces.

Happy Holidays

Auli

Located in the cradle of snow-capped mountains, Auli is a place too good to be put in words. The adventure destination of Auli lies towards the north of the state of Uttarakhand in Chamoli district and forms a part of the Garhwal mountain range. Auli is 16 km away from Joshimath at height of 2895m. The place is known for skiing more than anything else. Auli is the kind of place where pleasure and adventure, wild beauty and slopes of snow field, nature's beauty in its best form comes alive. The deodar and oak forests cover the slopes and reduce the velocity of the chilly winds to the minimum. **Dayara Bugyal** in the local language means "high altitude meadow". The panoramic view of the Himalayas from here is breathtaking. **Mundali** is situated 129 km from Dehradun *via* Chakrata. Mundali offers a mind blowing view of the snow coated Himalayas. **Munsyari** is nestled amidst spectacular Kumaon Himalayas at a height of 1645 m; **Pithoragarh** is often called 'Miniature Kashmir'. **Asan Barrage Water Sports Resort** is only 43 km from Dehradun-Chandigarh Shimla highway. **Nanaksagar Matta** in Udhamsingh Nagar of Uttarakhand Hills is a place ideal for water sports. **Bidhauli** is a quite picturesque wilderness destination, some 20km off Dehradun on the Paunta Sahib road. **Joshimath**, just 16 kilometers away is a beautiful place with ancient temples which date back to 8th century. **Bageshwar - Sunderdhunga - Pindari - Kafni Glacier Trek** at the confluence of the rivers Gomti and Saryu, is 36 kms from Kausani. **Gurso Bugyal** is just three kilometres from Auli. Gurso is a huge beautiful meadow spread out and blessed with picture like beauty by nature. **Kwani Bugyal,** twelve kilometres from Gurso, is another beautiful meadow. The place is at a height of 3350 meters and is quite popular with trekkers. **Chattrakund** is a sweet water lake. The nature at its full bloom here gives a feeling of an awe inspiring time, which cannot be wiped out from our wildest dreams.

Legal Thesaurus

Ignorantia juris non excusat :

Ignorance of law is no excuse, more so when the respondent was a law graduate.

[Board of Directors, Himachal Pradesh Transport Corporation v. K. C. Rahi, (2008) 11 SCC 502].

In the instant case, the appellants claimed that both the parties were ignorant of the dismissal of the appeals. The Supreme Court observed that it was difficult to accept their plea inasmuch as the judgments must have been pronounced in an open court and their counsel must have gathered the knowledge thereof. In any case, they could not be heard taking shelter behind their own convenient ignorance.

[Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology, (2004) 2 SCC 783].

Cornell University signs Agreement with O.P. Jindal Global University to Build Global Hub in India

Cornell University and O.P. Jindal Global University have signed a Memorandum of Agreement (MoA), which will enable both the universities to build substantive partnerships and collaborations across all of its schools and programmes. JGU has been working with Cornell as one of the centres for Cornell Global Hubs in India based on its valuable and long-standing partnership with Cornell in the field of Law, which is now expanding to other areas of mutual expertise and interest.

In 2022, Cornell University launched Cornell Global Hubs. Based in strategic locations worldwide, Global Hubs connect all of Cornell with strong international peer institutions and their communities, countries, and regions. Hubs are broad-reaching partnerships that combine research, learning, and engagement and bring together faculty, students, alumni, businesses, and the public and private sector. Hubs partnerships are based on reciprocity. Faculty and students across the Global Hubs join a vibrant network of transnational research and educational opportunities, partnering with Cornell and other Hubs locations.

Cornell Global Hubs connect the entire university with strong international peer institutions and their communities, countries, and regions. No two Hubs are identical, but all share Cornell's academic distinction, educational verve, and civic responsibility—under the umbrella of One Cornell. Global Hubs create more diverse, long-term opportunities and support for students and faculty to study, research, teach, and engage around the world by providing institutional connections in key locations. Hubs coordinate Cornell's presence in these places, bringing students and faculty together with partners, prospective students, and alumni. Each Global Hub is unique, but all are grounded in partnerships with strong local universities and based on the principle of mutual benefit and exchange. Cornell is working with Hubs partners to develop hands-on projects that promote study and expand the range of academic experiences at home and abroad.

On the occasion of this historical signing of the agreement between Cornell and JGU, **Professor Dr. C. Raj Kumar, Founding Vice Chancellor of O.P. Jindal Global University**, highlighted that, *"JGU and Cornell have been working closely through its existing meaningful cooperation in the field of Law for over a decade benefitting students and faculty members through unique and valuable international programmes and intellectual engagements including dual degree programmes, student exchanges, joint research, joint seminars and conferences. The new reimagined and expanded collaboration at the University-level between Cornell and JGU has immense potential to provide an outstanding platform for students and faculty members of both institutions across all domains of mutual expertise to have a holistic experience of intercultural learning guided by the best global practices of higher education and research. This will enable the faculty members and students of both the universities to engage and interact with each other through various institutional partnerships."*

"Hubs build the kind of strong, long-term international relationships that create understanding and meaningful change," said **Professor (Dr.) Wendy Wolford, Vice provost for International Affairs and Robert A. and Ruth E. Polson Professor of Global Development, Cornell University,** *"and we're excited to have O. P. Jindal Global University as a Global Hubs partner."*

An associate professor in the **Cornell School of Industrial and Labor Relations, Professor (Dr.) Sarah Besky** is a cultural anthropologist specializing in labor and capitalism in the Himalayas. As faculty lead for **Cornell's India Global Hub**, she looks forward to developing the Cornell-JGU partnership.

"Cornell's partnership with JGU opens up new pathways for student mobility including coursework, internships, and research opportunities in the greater Delhi region. This partnership, and the work of Cornell Global Hubs, will further the institution's efforts towards promoting greater inclusion and internationalization. We look forward to welcoming JGU students to Cornell's campus very soon," said **Dr. Besky**.

REAL LAW SCHOOL PERSONAL STATEMENTS

DO NOT SUGGEST THAT YOU NEED TO CHANGE

My father was wrongly convicted of first-degree murder when I was four years old. It sounds dramatic, I know, but it is the foundational trauma that would forever alter the course of my life, leading me through the darkness of despair to the light of the law in my quest to make sense of personal tragedy.

As a young man growing up without a paternal figure, I found myself falling into many of the traps that have claimed countless others from broken homes. There was little supervision or overt guidance in my family. My older sister left home at sixteen, when I was but twelve, and my mother was preoccupied with enormous tasks-namely making ends meet while fighting her own depression and soldiering on with my father's defense despite her meager economic resources. The latter seemed an especially losing battle-appeals were promised but either never materialized or led nowhere. Lawyers either made promises they couldn't deliver or refused to represent my father despite a friend-of-a-friend-of-an-ex-coworker's-uncle assuring my mother that "this was the one" who could rectify injustice, and pro bono at that.

Once I hit adolescence, I was done losing this war and sought only escape of an ironically self-destructive kind. Whether chugging the beers we had procured from older siblings or pitying adults outside the 7/11, committing acts of petty theft and artless vandalism, or engaging in increasingly dangerous "dares" that left us gasping with exhilaration after cheating death or dismemberment, it was clear that my friends and I were up to no good.

Despite my nascent nihilism and flirtations with self-destruction, I managed to maintain good grades in school. School was another escape of sorts, and I found comfort in delving deep into abstract subjects that seemed to have nothing to do with my damaged life. I excelled at advanced math, chemistry and molecular biology and the most arcane aspects of American history. Because of this, I was able to obtain a full scholarship to SUNY-Purchase, which I attended for lack of anything better to do.

Two more events occurred in the spring of my freshman year that would forever change the course of my life: my father committed suicide in prison and I transferred out of Classical Liberalism and into Intro to Criminal Law. The former led to the latter. I cannot adequately describe the decimating despair, nor the guilt-inducing tinge of sweet relief that the war was over, even if we had lost, and my family could finally rest. After her own suicide attempt, my mother went into treatment and began to put the pieces of her life together. My sister returned to help. I felt the need to do something, anything to contribute to my family's healing and, perhapsmisguidedly, chose to abandon my path of academic escape and instead confront my fears. It was one of the best decisions I ever made.

I became hooked on the law and its powers of salvation, at least for future clients and myself, if not for my own father. In his memory, I swore that I would do everything I could to make sure our justice system works for everyone, regardless of social status, income, or any of the other factors that unfortunately relegate some to a lower tier of representation. Whether I will be a public defender, working within an NGO or in private practice taking on ample pro bono cases, I do not know, but my passion for equal justice under the law is the clearest part of my life. I want desperately to acquire the tools and position needed to help the most vulnerable, and have dedicated myself completely to this task. I need to do my best to right the wrongs of our beautiful, if imperfect legal system. After years of avoidance of the real world, I need to take responsibility and grow into the man I want to be, a lawyer who would make my father proud.

JD MISSION REVIEW

Overall Lesson

Your theme should not be that you need to change.

First Impression

Wow. Okay… I am with you.

Strengths

The writing is quite good in places. I particularly love the phrase "my nascent nihilism and flirtations with self-destruction."

The applicant is knowledgeable enough to use uncommon words correctly, which is-unfortunately for society but fortunately for him-rare.

Weaknesses

The candidate's syntax is occasionally off, by which I mean forced or confusing. For example, the sentence "My older sister had left home at sixteen, when I was but twelve" would read more naturally without the "but." He should simply say, "My older sister left home at sixteen, when I was twelve."

And I found this sentence confusing: "Whether chugging the beers we had procured from older siblings or pitying adults outside the 7/11, committing acts of petty theft and artless vandalism ...." I was originally unsure whether he was pitying the adults or the adults were pitying him. I now realize he means the latter, but the sentence structure suggests the former. (To correct this, he could add "from" before "pitying adults.")

Finally, although I think his "old self versus new self" theme can work, it will only work if the shift has already taken place-not if it is taking place as he is writing. Suggesting that attending law school is a prerequisite to a critical per-spective shift, as he does in his last sentence, is too precarious: "After years of avoidance of the real world, I need to take responsibility and grow into the man I want to be, a lawyer who would make my father proud." In this instance, the applicant is basically selling himself on the promise that he will change.

What if someone said to you on a first date, "Listen, I'm a mess. I am really not a great person, but I'm ready to change." Would you want to date that person?

The good news is that this candidate does not have to lie. He has already changed. He changed when he decided to alter his trajectory. And judging by how he writes and what he shares, he is in many ways *already* the person he says he wants to become. His issue is a stylistic matter, not a personal one.

Final Assessment

This essay is very close to being excellent. With a little language cleanup and some trimming and revising wherever he suggests he still avoids responsibility, this statement can become a powerful piece of his application.

University of Kansas School of Law

University of Kansas was founded in 1878. KU Law has been open to all qualified applicants, regardless of gender, race or ethnicity. We are proud of this history, and we remain committed to providing access to a legal education for men and women of all religions, ethnicities and physical abilities. KU Law takes pride in its ability to offer a world-class legal education at a reasonable rate of tuition. Our students graduate with an average debt burden far below the amounts found at other law schools. Affordability means choice for our graduates, who can choose to start their careers serving the public, clerking for the judicial system, or pursuing entrepreneurial opportunities in law.

Programs

Juris Doctor

The Juris Doctor program at KU Law prepares students to be outstanding members of the legal profession, well educated in the law, with a commitment to public service and professional achievement. A rigorous and engaging curriculum challenges students to solve problems thoughtfully and analytically. Required courses lay a solid foundation in the general principles of law and its practice in a changing legal environment, while a broad array of upper-level offerings empower students to tailor an education to fit their unique interests. KU Law students develop their expertise in the classroom and in the field, perfecting legal analysis and writing, developing professional skills, and then putting their knowledge to work on real cases through one of the most extensive clinical and externship programs in the nation.

Joint Degrees

KU Law offers 11 degree programs in which students may simultaneously pursue a Juris Doctor and a graduate degree from a dozen other professional schools and departments at the University of Kansas. The programs allow students to condense the length of study that would be required if they were working toward the degrees separately. Students must apply separately to the law school and the companion graduate program.

KU THE UNIVERSITY OF KANSAS
School of Law

LL.M. in American Legal Studies

The LL.M. in American Legal Studies provides students who already hold a law degree with an introduction to the breadth of American law. Students who complete the LL.M. are ready for the further study of law in the United States, select bar examinations, and the practice of law internationally. KU Law offers one of the most affordable international LL.M. programs in the United States. Candidates must hold a basic law degree (LL.B. or equivalent) from an accredited foreign college or university, or a J.D. from an accredited American law school.

Doctor of Juridical Science (S.J.D.)

The School of Law is one of the few law schools in the United States to offer a Doctor of Juridical Science (S.J.D.), the terminal degree in law. The S.J.D. program is designed for students interested in deep legal research and writing, and a career as a legal scholar or a senior public official. Candidates must hold a basic law degree (LL.B.) and a master's (LL.M.) or a J.D. from an ABA-accredited law school; show an accomplished academic record; and compose an original, thoughtful dissertation proposal that introduces the research topic the candidate intends to pursue, explains its importance and presents an initial argument that the candidate plans to develop as an S.J.D. candidate.

JD/MBA (Business Law)

The objective of this program is to combine into four years of study the three-year J.D. program offered by the School of Law and the two-year MBA program offered by the School of Business. This program is designed to offer the student an opportunity to train in the convergent fields of law and business management, particularly those intending to engage in corporate law practice, or to enter business using law training as background.

Wheat Law Library

Wheat Law Library is an integral part of the University of Kansas School of Law. The library serves the law school and university community in legal and interdisciplinary scholarly pursuits. The law library provides access to legal information for legal professionals and the general public.

Through services including reference questions and teaching, the library supports the study, teaching and research needs of the KU Law community.

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YOU MADE YOUR CASE
—The Art of Persuading Judges—

Appreciate the importance of oral argument, and know your objectives.

Many lawyers view oral argument as just a formality, especially in courts that make a practice of reading the briefs in advance. Sure, it gives counsel a chance to show off before the client. But as far as affecting the outcome is concerned, what can 20 minutes or half an hour of oral argument add to what the judge has already learned from reading a few hundred pages of briefs, underlining significant passages and annotating the margins?

This skepticism has proved false in every study of judicial behavior we know. Does oral argument change a well-prepared judge's mind? Rarely. What often happens, though, is that the judge is undecided at the time of oral argument (the case is a close one), and oral argument makes the difference. It makes the difference because it provides information and perspective that the briefs don't and can't contain.

A brief is logical and sequential. If it contains five points, they will often be addressed in some logical order, not necessarily in the order of their importance. The amount of space devoted to each point, moreover, has more to do with its complexity than its strength. Someone who has read your brief therefore-and especially someone who has read it some days ago-may have a distorted impression of your case. The reader may think that point # 1, which it takes a third of your brief to explain, is the most significant aspect of your argument, whereas in fact point #3, which covers half as many pages, is really your trump card. Oral argument can put things in perspective: "Your Honors, we have four points to our brief all of which we think merit your attention. But the heart of our argument is point #3, on issue preclusion, and I'll turn to that now."

Oral argument also provides information that the brief can't contain. Most obviously, it gives the appellee an opportunity to reply to responses and new points contained in the appellant's reply brief. At least as important, it provides both sides the opportunity to answer questions that have arisen in the judges' minds. The most obvious of these should have been anticipated and answered in the briefing, but repetition of the answer to a persistent doubter can be helpful. And the judges are bound to have in mind questions unanticipated by the briefs-either because the answer is too obvious or because the question is too subtle. Oral argument is the time to lay these judicial doubts to rest. And finally, the quality of oral argument can convey to the court that the brief already submitted is the product of a highly capable and trustworthy attorney, intimately familiar with the facts and the law of the case.

In descending order of importance, your objectives in oral argument are these:

1. To answer any questions and satisfy any doubts that have arisen in the judges' minds.

2. If you're counsel for the appellee, to answer new and telling points raised in the appellant's reply brief Oral argument is your only chance.

3. To call to the judges' minds and reinforce the substantive points made in your brief

4. To demonstrate to the court, by the substance and manner of your presentation, that you are trustworthy, open, and forthright.

5. To demonstrate to the court, by the substance and manner of your presentation, that you have thought long and hard about this case and are familiar with all its details.

6. To demonstrate to the court, mostly by the manner of your presentation, that you are likable and not mean-spirited.

NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

What is "Doctrine of Privity"?: To begin with it is very necessary to understand what this doctrine actually speaks about. In layman's language the "*Doctrine of Privity*" can be worded so as to mean that a contract cannot confer rights or impose those obligations arising under it, on any person except the parties to it. However, whenever there are third party beneficiaries in a contract, it may become necessary to determine as to, who, in the eyes of the law should be liable or should be protected in event of inexorable breaches that may occur from time to time. From here arises the whole debate about the significance, practical hassles and debates created by this doctrine.

The decision in *Tweddle v Atkinson* was based on two grounds, firstly the third party was not privy to the contract and secondly, the consideration did not flow from the third party claiming under the contact. The two principles of privity and consideration have become tangled but are still distinct. Even though under Indian Contract Act, the definition of consideration is wider than in English law and the consideration can very well be given by a non-contracting party, yet the common law principle of Doctrine of Privity is generally accepted in India.

Concept of 'Beneficiary" as an exception to the Doctrine of Privity: The application of Doctrine of Privity has been appreciated by the Indian courts with the well –recognized exceptions like beneficiaries of a trust, family arrangement and marriage settlements, tort, collateral contracts, creation of charge or covenants running with land. The aforementioned are more or less the well- accepted and settled exceptions to the Doctrine of Privity. However these are not exhaustive and from time to time, number of exceptions against the Doctrine of Privity has been evolved and recognized by Indian judiciary and more than often quoted exception is that a person for whose benefit the contract is entered into can certainly sue as it is "beneficiary" in the contract.

Who essentially is a "Beneficiary"? There is no clear definition of the term "beneficiary" given under the Indian Contract Act. However analyzing the treatment of Indian Judiciary to such cases, it becomes clear that the intent is not to capture any person who draws any benefit out of the contract or is affected by a breach by any party but only those persons who are specifically intended to be beneficiary under the contract or for whose benefit the contract is entered into. Any indefinite or unidentified person should not be considered as a "beneficiary" for this purpose. In other words, distinction needs to be made between the "*intended beneficiary*" and "*incidental beneficiary*". The category which falls under the accepted exception is "intended beneficiary".

Q.1. Choose the correct answer:

I. Privity of contract is a common law principle.

II. As per privity of contract, rights can be conferred but obligations cannot be imposed on third party.

a) Only I

b) Only II

c) Both I and II

d) None of the above

Answer: a

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

a) In India, consideration can be given by third party.

b) Incidental beneficiary, being a third party, can enforce the contract.

c) Third party beneficiary can get the benefits out of the contract but not sue to enforce the contract.

d) Both a and b

Answer: a

Q.3. The government entered into contract with an organization to build a factory on private land to be bought from Z. Z wants to enforce the contract because he will get benefits if the contract goes well. Decide the most suitable answer?

a) Z cannot enforce the contract because consideration has not been moved by him.

b) Z cannot enforce the contract because he stranger to the contract between the government and the organization.

c) Z can enforce the contract because he is beneficiary to the contract.

d) Z cannot enforce the contract because he is mere an incidental beneficiary.

Answer: d

Quick Referencer for Judicial Service

Q. The plaintiff was employed as a workman by the defendants for the purpose of cutting a rock. Stones were being taken by the crane from one side to the other and every time the crane passed over him. The plaintiff and his master both knew that there was danger of falling stone pieces on him at any moment. Inspite of the fact, the plaintiff consented to do the work. One day, to the negligence of other workman a stone fell from the crane and injured the plaintiff. The employers were negligent in not warning the plaintiff regarding the impending danger although the master had instructed the crane driver to give such warning every time when the crane will pass through over his head. Plaintiff sues the master/ defendant for damages. Master pleads *"Volenti non fit injuria".* **Will master succeed in his plea of '***Volenti non fit injuria'.* **Give reasons and also refer case law.**

Ans: No, master (defendant) will not succeed in his plea of *'Volenti non fit injuria'* – *Smith* v. *Baker,* (1891) AC 325 (HL).

Reasons: One of the important maxims of law of torts is '*Volenti non fit injuria*'. The maxim means harm suffered with consent is no harm and therefore not actionable.

In order to apply the maxim *Volenti non fit injuria* following two conditions must be satisfied:—

(1) Plaintiff had knowledge of the risk (harm)

(2) He gave the consent to suffer harm.

Facts of this problem are similar to the famous case of *Smith* v. *Baker.* In this case House of Lords held that the plea of defendant (Master) of '*Volenti non fit injuria*' is not maintainable. In this case although plaintiff had knowledge of the harm but he did consent to it. The maxim is *Volenti non fit injuria* and not the *'Scienti non fit injuria'.* Moreover, defendant was negligent in this case and doctrine of '*Volenti non fit injuria*' does not apply in case of negligence of defendant.

In view of the decision given in the famous case of *Smith* v. *Baker,* it can be said that in the given problem the defendant will not succeed in his plea of '*Volenti non fit injuria'* because the defendant was negligent and the relevant maxim does not apply in case of negligence of defendant and mere knowledge of harm does not amount to consent as the maxim is '*Volenti non fit injuria*' not the '*Scienti non fit injuria'.*

Kishor Prasad

LEGAL WRITING *Tips*

Misused Words and Expressions

Being. Not appropriate after regard ... as.

He is regarded as being the best dancer in the club.	He is regarded as the best dancer in the club.

But. Unnecessary after *doubt* and *help.*

I have no doubt but that He could not help but see that	I have no doubt that He could not help seeing that

The too-frequent use of but as a conjunction leads to the fault discussed under Rule 18. A loose sentence formed with but can usually be converted into a periodic sentence formed with *although.*

Particularly awkward is one but closely following another, thus making a contrast to a contrast, or a reservation to a reservation. This is easily corrected by rearrangement.

Our country had vast resources but seemed almost wholly unprepared for war. But within a year it had created an army of four million.	Our country seemed almost wholly unprepared for war, but it had vast resources. Within a year it had created an army of four million.

Landmark Judgments

MOB LYNCHING - PREVENTIVE MEASURES
Tehseen s. Poonawalla
v.
Union of India
AIR 2018 SC 3354: 2018 (9) SCALE 4:
2018 (9) SCC 501: 2018 (4) Civil LJ 657
Decided on: 17-07-2018
Hon'ble Judges: Dipak Misra, CJI, A.M. Khanwilkar and D.Y. Chandrachud, JJ.

Facts: WP under Article 32 preferred by petitioner, social activist for commanding Respondent No. 3 to 8, states to take immediate and necessary action against cow protection groups indulging in violence; and further to issue a writ or direction to remove violent contents from social media uploaded and hosted by said groups. Also declare section 12 of Gujarat Animal Prevention Act, 1954, section 13 of Maharashtra Animal Prevention Act, 1976 and section 15 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 as unconstitutional.

Issue: Issuance of Preventive measures to control mob violence or mob lynching. Held: Guidelines: Preventive Measures.

The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching.

(i) The Nodal Officer, so designated shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under section 129 of, Cr.P.C.

The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police of the States that lynching and mob violence of any kind shall invite serious consequence under the law.

The police shall cause to register FIR under section 153A of, IPC and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.

Remedial Measures

If it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/or other provisions of law.

Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.

The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of section 357 A of Cr.P.C. within one month from the date of this judgement.

The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day to day basis.

The victimfs) or the next kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

Punitive Measures

States are directed to take disciplinary action against the concerned officials if it is found that:

(i) such official{s) did not prevent the incident, despite having prior knowledge of it, or

(ii) where the incident has already occurred, such official{s) did not promptly apprehend and institute criminal proceedings against the culprits.

Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions in order to prevent and/ or investigate and/ or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/ or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules.

1. **The doctrine of *'lis pendens'* was explained in the leading case of:**
   (a) *Bellamy* v. *Sabine*
   (b) *Cooper* v. *Cooper*
   (c) *Streatified* v. *Streafield*
   (d) *Tulk* v. *Moxbay*
   Ans. **Answer is A.**
2. ***X* strike *'A'*. *'A'* is by this provocation excited to violent range, *'Y'* a bystander intending to take advantage of *'A's* rage and to cause him kill *X* gives a revolver into *'A's* hand for that purpose. *'A'* kills *'X'* with the revolver:**
   (a) *A* is liable for committing murder and *Y* is liable for abetting murder.
   (b) *A* is liable for committing culpable homicide and *Y* is not liable.
   (c) *A* is liable for committing culpable homicide and *Y* is liable for abetting culpable homicide not amounting to murder.
   (d) *A* is not liable and *Y* is liable for abetting murder.
   Ans. **Answer is A.**
3. **Right to free Legal Aid was recognised as a fundamental right under Act 21 of Indian Constitution in the Case of**
   (a) *Hussaainara Khatoon* v. *Home Secretary, State of Bihar,* AIR 1979 SC 1360
   (b) *M.H. Hoskot* v. *State of Maharashtra,* AIR 1978 SC 1548
   (c) *Madhu Mehta* v. *Union of India,* (1989) 4 SC 1548
   (d) *Rudal Shah* v. *State of Bihar,* (1983) 45 SC 14
   Ans. **Answer is B.**
4. **In Which Country was the concept of PIL Originated**
   (a) United Kingdom
   (b) United State of America
   (c) India
   (d) Australia
   Ans. **Answer is B.**
5. **A question suggesting the answers which the person putting it wishes or expects to receive is called**
   (a) Indecent Questions
   (b) Leading Questions
   (c) Improper Questions
   (d) Proper Questions
   Ans. **Answer is B.**
6. **Option of puberty is a ground of divorce under Hindu Marriage Act, 1955 for**
   (b) Only Wife
   (c) Both Husband and Wife
   (d) None of the Above
   Ans. **Answer is B.**
7. **Which section of the Hindu Marriage Act, 1955 provides that a child from a void marriage would be legitimate?**
   (a) Section 11
   (b) Section 13(a)
   (c) Section 12
   (d) Section 16
   Ans. **Answer is D.**
8. **Which of the following appears to contribute to global cooling rather than global warming**
   (a) Nitrous Oxide
   (b) Aerosols
   (c) Methane
   (d) CFC
   Ans. **Answer is B.**
9. ***A* and *B* agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of fencing, may be caused without foul play and if *A*, while playing fairly, hurts *B*. *A* commits no offence. The provision are given under:**
   (a) Section 87
   (b) Section 85
   (c) Section 86
   (d) Section 88
   Ans. **Answer is A.**
10. **The provision of the right of private defence are given:**
    (a) Under section 96-108 of the Indian Penal Code
    (b) Under section 94-106 of the Indian Penal Code
    (c) Under section 96-106 of the Indian Penal Code
    (d) Under section 95-106 of the Indian Penal Code
    Ans. **Answer is C.**
11. **The parties which cannot be compelled to perform specific performances of contract are provided in which section of Specific Relief Act:**
    (a) 27
    (b) 28
    (c) 29
    (d) 30
    Ans. **Answer is B.**
12. **What kind of property is transferable?**
    (a) Pension
    (b) Public office
    (c) Right to re-entry
    (d) Any kind of property if not prohibited by law.
    Ans. **Answer is D.**

DR. RAM MANOHAR LOHIYA NATIONAL LAW UNIVERSITY

Dr.Ram Manohar Lohiya National Law University, was established by an Act of Govt. of Uttar Pradesh in 2005, U.P. Act No.28 of 2005 and came into being on 4th of January 2006 to meet up the new challenges in legal field and to strengthen the vision that was given by the establishment of first National Law School of the country.

The Objectives of the University:

To advance and disseminate learning and knowledge of law and legal processes and their role in national development;

To develop in the student and research scholar a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, Judicial and other legal services, legislation, law reforms in the existing laws and the like;

To organize lectures, seminars, symposia and conferences, to promote legal knowledge and to make law and legal process efficient instrument of social development;

Courses

The University currently offers **B.A. LL.B. (Hons.)** (Five years integrated programme), **LL.M.** (One year programme), **Ph.D**. and such other programme in accordance to such syllabus for each of the above courses as approved by the Executive Council on the recommendation of the Academic Council. The number of seats in each course shall be such as may be fixed from time to time by the Academic Council on the recommendation of the Director.

Admissions

Admission to the B.A. LL.B. (Hons.) (five years integrated programme) first year and LL.M. first year shall be made on the basis of Common Law Admission Test(CLAT).

Eligibility:-

B.A. LL.B. (HONS.) Programme

The admission shall be based on the performance in the Common Law Admission Test. however, to qualify for admission, the candidate must have passed the Higher Secondary School Examination (10+2) or an examination equivalent thereof, securing in aggregate not less than 45% (40% in case of SC/ST candidates of U.P.) of the total marks. Must not have completed 20 years(22 years in case of SC/ST candidates of U.P.) of age as on 1st July. The Candidates, who have appeared in the qualifying examination and awaiting for their results, may also write the Admission Test but their admission shall be subject to the fulfilment of the requirements in (a) and (b) above at the time of admission.

LL.M. Programme

The admission shall be based on the performance in the Common Law Admission Test. However, to qualify for admission, the candidate must have passed LL.B. Degree or an equivalent Degree from a recognized University with at least 50% marks or equivalent grade. Candidates who have appeared in the five years LL.B./ three years LL.B. Degree exam and awaiting their results may also write the Admission Test but their admission shall be subject to the fulfillment of the above conditions.

Library

"Madhu Limaye Library" is known for its quality and valuable collections on legal and allied subjects to support the students, research scholars and faculty members. It was named after a very renowned socialist leader Sh. Madhu Limaye ji. The fully automated smart library system makes it the state of the art library. The learning environment and the blend of

core print and electronic research resources make it the world-class law library. The library is a two floor centrally air-conditioned independent building with Wi-Fi environment. The national and international electronic learning resources may be accessed 24x7 from any corner of the university and even from outside the campus through remote access service. The library has its own 'Digital Lab' having 45 high-end all-in-one desktop computers for electronic and online research. The scanning, printing and photocopying facility is also available along with digital lab. The Lab for differently-abled is also been established in the library to facilitate such students. The plagiarism check service is centrally available in the library to promote research and academic scholarship. The advanced video-conferencing facility is made available in the library to conduct online lectures and academic communication around the globe. Web 2.0 enabled Web-OPAC of the Library is the gateway of information search and access to millions of information contents.

Reservation

Reservation in admission to various courses for the members of Schedule Castes, Schedule Tribes and Other Backward Classes of the State of Uttar Pradesh and other categories shall be provided in accordance to the rules of U.P. State Government. Horizontal reservation shall be admissible to persons with disability and dependents of freedom fighters as per Government rules. Provided that if sufficient number of eligible candidates to the concerned reserved seats are not available, the unfilled seats shall be filled by the General category candidates on the basis of their merit/score in Admission Test.

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Latest SUPREME COURT Judgments

CBSE: A STATUTORY BODY?

CBSE itself is not a statutory body nor the regulations framed by it, has any statutory force

On 24th August 2022, the Supreme Court in *St. Mary's Educational Institute* v. *Rajendra Prasad Bhargava,* stated that the "CBSE is only a society registered under the Societies Registration Act, 1860" and the school affiliated to it is not a creature of the statute and hence not a statutory body.

After the following discussions it was stated that……

- *Firstly,* the CBSE itself is not a statutory body nor the regulations framed by it has any statutory force.

- *Secondly,* the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

The following societies may be registered under the Societies Registration Act, 1860— Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

"JUDGMENT WRITING: A LAYERED EXERCISE"

Supreme Court in *State Bank of India* v. *Ajay Kumar Sood*, discussed the variations of judgment writing. Court also issued following directions/ guidelines for the judges in courts.

"Purpose of judicial writing"

The very purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language. **EASY-TO-UNDERSTAND the Issues and the Facts:** The judge must write to provide an easy-to-understand analysis of the issues of law and fact which arise for decision. Judgments are primarily meant for those whose cases are decided by judges. **PRECEDENTS:** Judgments of the High Courts and the Supreme Court also serve as precedents to guide future benches. A judgment must make sense to those whose lives and affairs are affected by the outcome of the case.

"Judgment is written primarily for the parties in a forensic contest"

LEVEL I: 'Scrutiny' is first and foremost by the person for whom the decision is meant – the conflicting parties before the court. **LEVEL II:** Reasons furnish the basis for challenging a judicial outcome in a higher forum. The validity of the decision is tested by the underlying content and reasons. Judicial outcomes taken singularly or in combination have an impact upon human lives. Hence, a judgment is amenable to wider critique and scrutiny, going beyond the immediate contest in a courtroom. Citizens, researchers and journalists continuously evaluate the work of courts as public institutions committed to governance under law. This is why 'Judgment writing' is a critical instrument in fostering the rule of law and in curbing rule by the law.

Anshul Jain

"Judgment writing is a layered exercise"

LAYER I: A judgment addresses the concerns and arguments of parties to a forensic contest.

LAYERS II: A judgment addresses stake-holders beyond

the conflict. It speaks to those in society who are impacted by the discourse.

LAYERS III: In the layered formulation of analysis, a judgment speaks to the present and to the future. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. If a judgment does not measure up, it can be critiqued and criticized.

Behind the layers of reason is the vision of the adjudicator over the values which a just society must embody and defend. In a constitutional framework, these values have to be grounded in the Constitution. The reasons which a judge furnishes provide a window - an insight - into the work of the court in espousing these values as an integral element of the judicial function.

Numbered Paragraph: Judgments must carry paragraphs numbers as it allows for ease of reference and enhances the structure, improving the readability and accessibility of the judgments. A Table of Contents in a longer version assists access to the reader.

Accessibility: Judgments must ***accessible*** to persons from all sections of society, especially persons with disability needs emphasis. Judicial institutions must ensure that the judgments and orders being published by them do not carry improperly placed ***watermarks*** as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them.

Courts and tribunals must also ensure that the ***version*** of the judgments and orders uploaded is accessible and signed using digital signatures. It must not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The ***practice*** must be eradicated from the litigation process as it tends to make documents as well as the process inaccessible for an entire gamut of citizens.

The Method of "IRAC"

Method of IRAC i.e., *'Issue, Rule, Application and Conclusion'* are easily identifiable. The method of 'IRAC' generally followed for analyzing cases and structuring submissions can also benefit judgments when it is complemented by recording the facts and submissions.

Court deals with multiple ***issues*** in a case, identifying these issues clearly helps structure the judgment and provides clarity for the reader on the specific issue of law being decided in a particular segment of a judgment. ***Rule*** refers to the portion of the judgment which distils the submissions of counsel on the applicable law and doctrine for the issue identified. This rule is applied to the facts of the case in which the issue has arisen. The analysis recording the reasoning of a court forms the ***Application*** section.

Court must summarize and lay out the ***Conclusion*** on the basis of its determination of the application of the rule to the issue along with the decision vis-à-vis the specific facts.

CONSTITUTION OF **INDIA**

Article 201

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.

***201. Bills reserved for consideration.*—When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:**
Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as it mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Article 201 provides for what may happen to a Bill which is reserved by the Governor for the consideration of the President. The President may

(i) assent to the Bill and the Bill becomes law,

(ii) withhold assent in which case, the Bill falls,

(iii) ask the Governor to return the Bill—if it is not a Money Bill—to the House(s) of Legislature with suggestions for amendment.

If the Bill is again passed with or without amendments, it is presented to the President for assent. The President is not bound to give assent. Also, there is no time-limit indicated for the President giving his assent. The Constitution Commission (2002) has recommended that

(i) There should be a time-limit, say of three months, within which the President should take a decision whether to accord his assent or to direct the Governor to return it to the State Legislature or to seek the opinion of the Supreme Court regarding the constitutionality of the Act under article 143.

(ii) When a Bill is sent for the President's assent, it would be appropriate to draw the attention of the President to all the articles of the Constitution, which refer to the need for the assent of the President to avoid any doubts in court proceedings. Suitable amendment should be made in the Constitution so that the assent given by the President should avail for all purposes of relevant articles of the Constitution.

The Sarkaria Commission has recommended that

(i) A Bill reserved for consideration of the President should be disposed of by the President within a period of 4 months. If it is considered necessary to seek clarification from the State Government or to return the Bill for consideration by the State Legislature under the proviso to article 201, this should be done within two months. Any communication for seeking clarification should be self-contained and seeking clarification piecemeal should be avoided. On receipt of the clarification on the reconsidered Bill from the State under the proviso to article 201, the matter should be disposed of by the President within 4 months.

Dr Subhash C Kashyap

(ii) The President should not withhold assent only on the consideration of policy differences on matters relating, in pith and substance, to the State list, except on grounds of patent unconstitutionality.

(iii) President's assent should not ordinarily be withheld on the ground that the Union is contemplating a comprehensive law in future on the same subject.

(iv) If a State Bill reserved for the consideration of the President clearly tends to subvert the constitutional system by reason of its unduly excessive and indiscriminate abridging effect on Fundamental Rights or otherwise, then, consistently with its duty under article 355 to ensure that the government of every State is carried on in accordance with the provisions of the Constitution, the Union Government may advise the President to withhold assent to the Bill.

(v) To the extent feasible, the reasons for withholding assent should be communicated to the State Government

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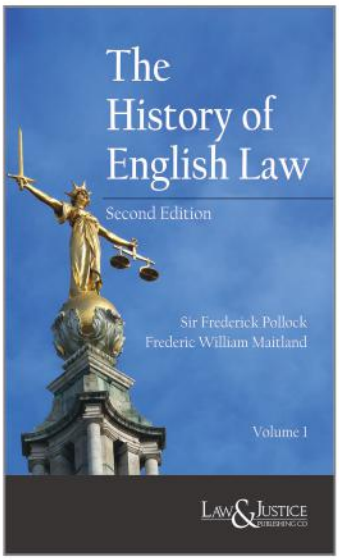

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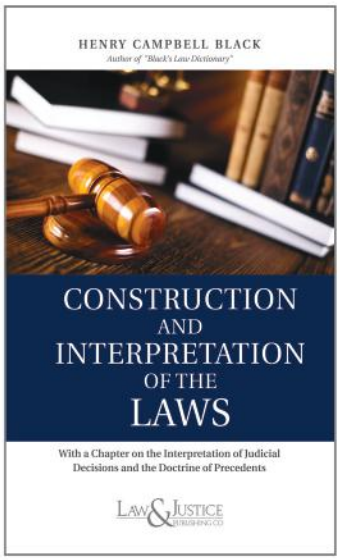

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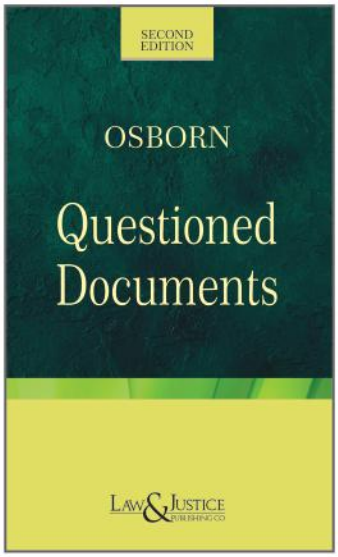

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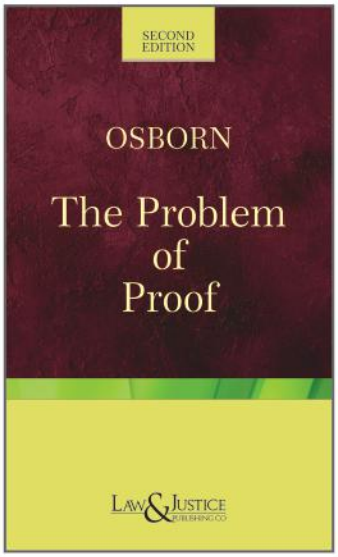

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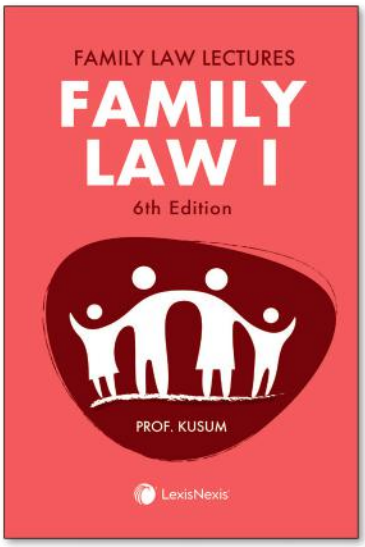

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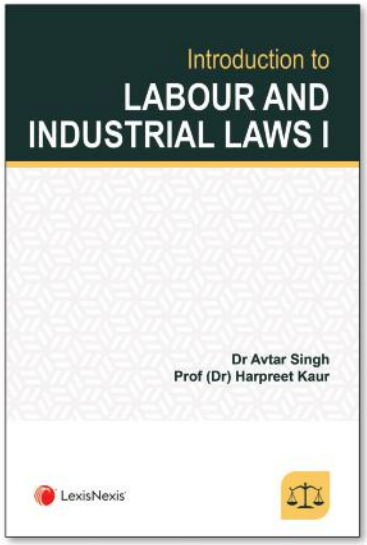

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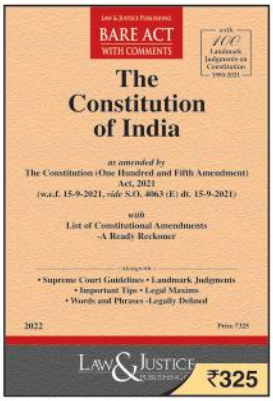

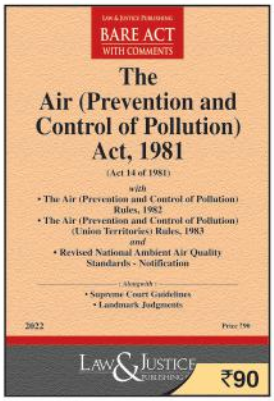

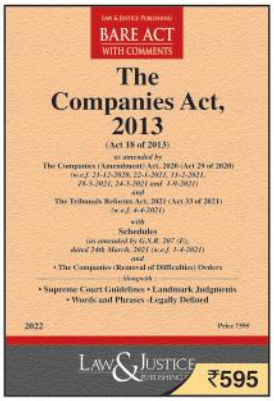

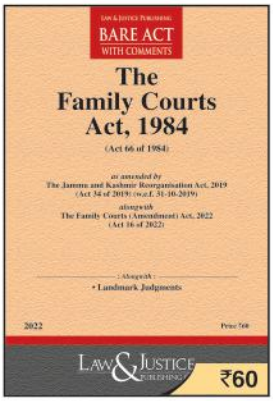

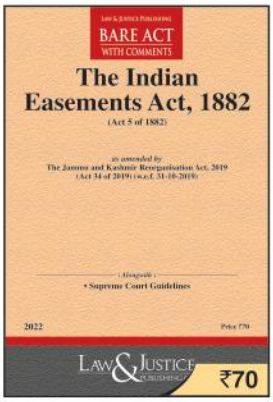

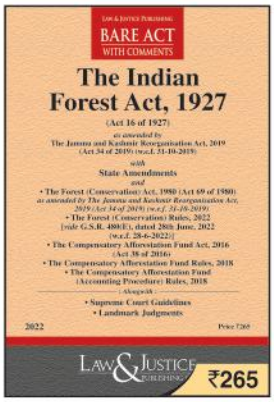

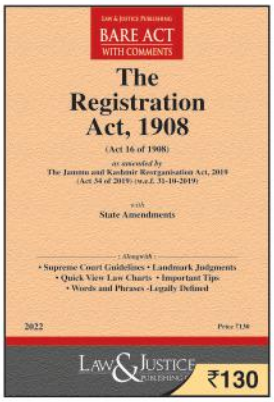

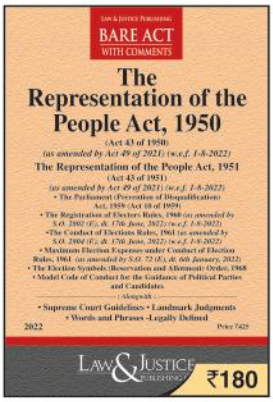

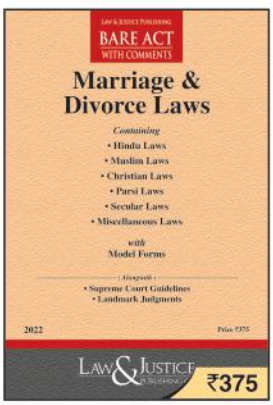

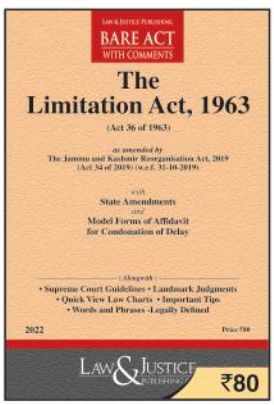

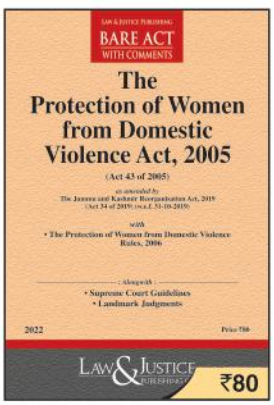

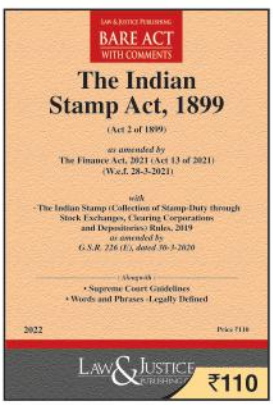

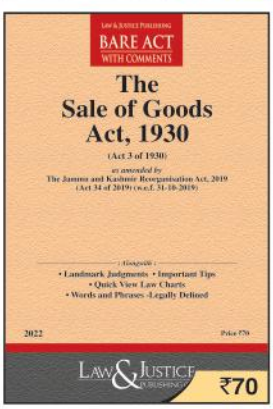

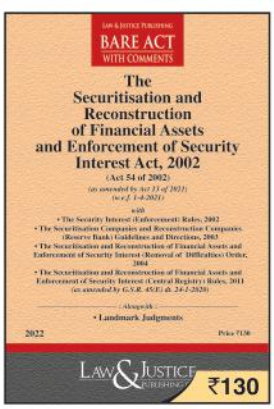

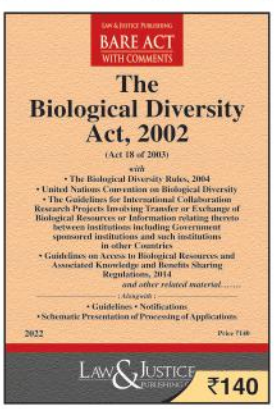

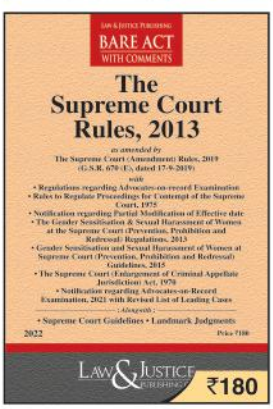

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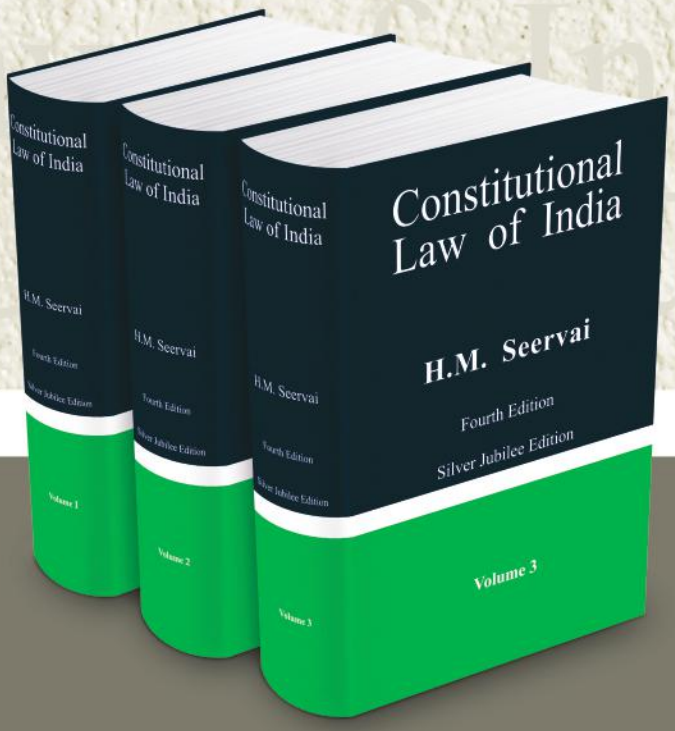

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