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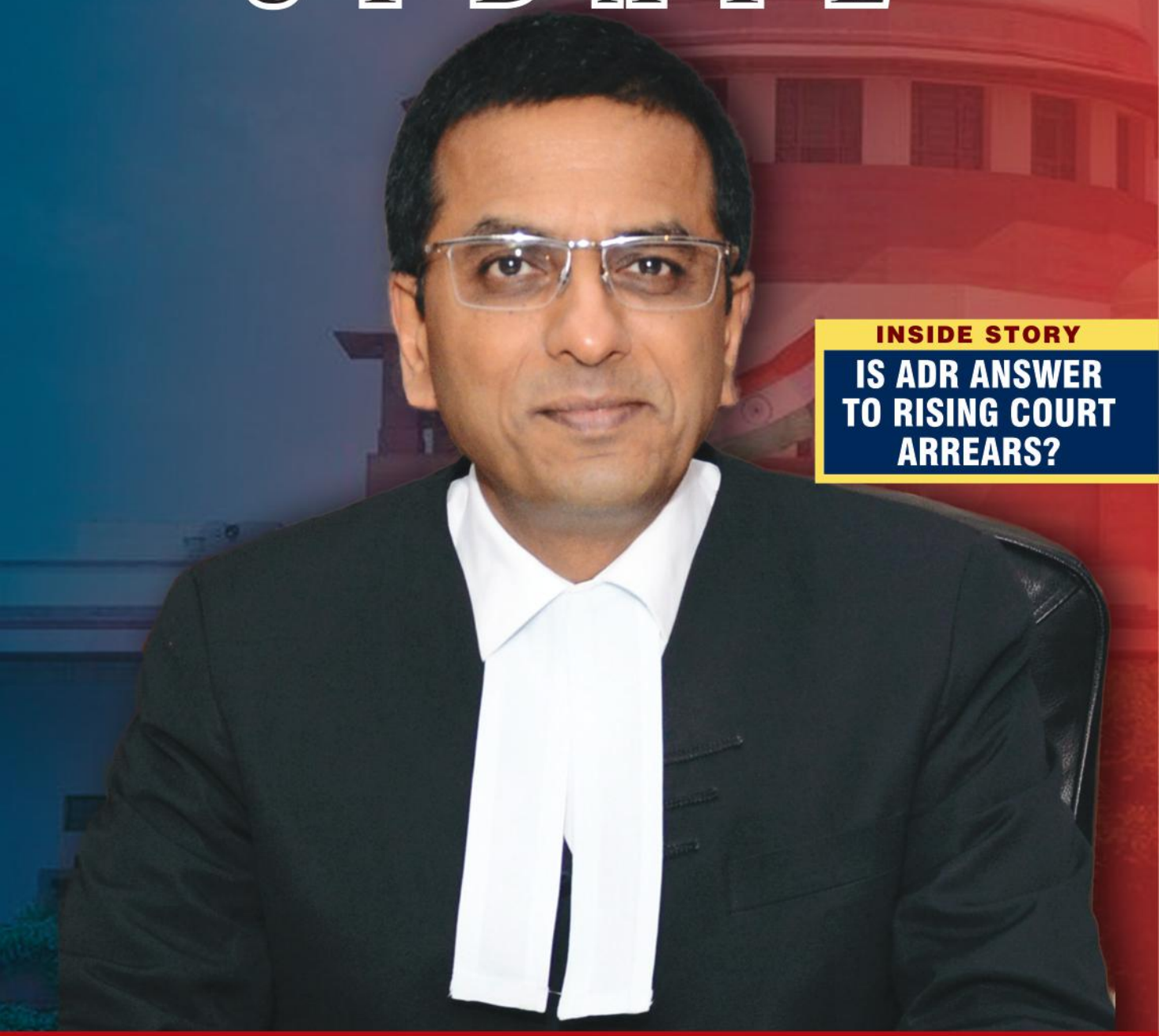
Lawyers UPDATE



INSIDE STORY

IS ADR ANSWER TO RISING COURT ARREARS?

The Judge of Women Empowerment
JUSTICE DHANANJAYA YASHWANT CHANDRACHUD

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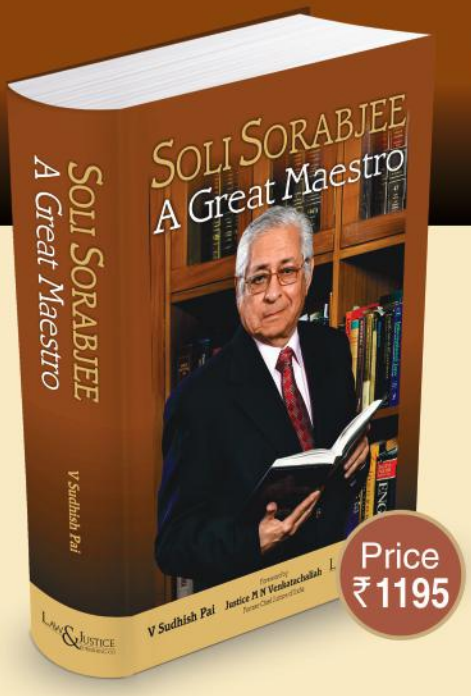

by

V Sudhish Pai

released on 31st, October 2022

by

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Chief Justice of India

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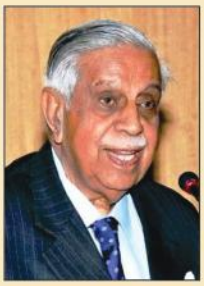

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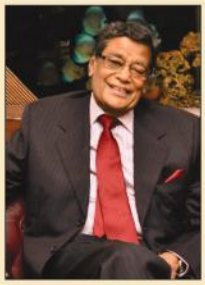

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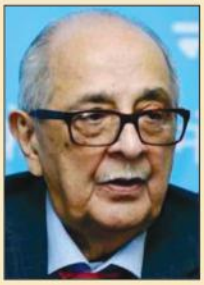

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Dear readers,

Alternative Dispute Resolution/Redress (ADR) has emerged as an invaluable alternative legal remedy for a speedy resolution of disputes, particularly in the commercial arena involving colossal sums of money and a time-consuming adjudicatory process to be necessarily followed on account of the legal and factual complications that corporate disputes invariably involve. And if the corporations locked in the legal battle happen to be multinational giants fighting over mergers and acquisitions, the matter gets even more complicated, requiring the legal proceedings to carry on for hours on each date of hearing stretching over many months.

Regular courts could better spend as much time deciding a ton of regular cases and administering justice to a lot of people, which aspect becomes even more significant in view of the fact that India has a very poor judge-to-population ratio with about 21 judges per million people. Furthermore, the courts are not completely out of the picture in arbitration because the award can be challenged before a court of competent jurisdiction on limited grounds. So ADR as a mode of adjudication is the best of both worlds as far as practicable. The other arm of the ADR is conciliation through mediation, which is aimed at mediating the dispute between the parties for them to reach an amicable settlement, which saves time, trouble and money for both parties. In many cases, it works and thus reduces the number of pending cases before the courts preemptively.

While there might still be a few creases here and there that need to be ironed out, the ADR mechanism on the whole has worked out well in India and the law relating to the ADR is also fairly settled even though it continues to evolve.

Manish Arora

(Manish Arora)

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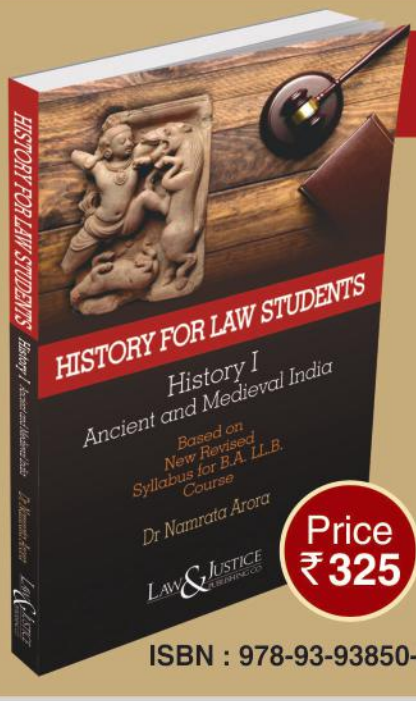

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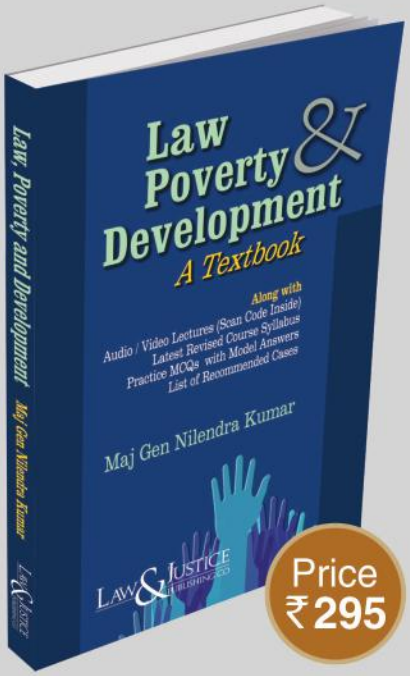

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THE JUDGE OF WOMEN EMPOWERMENT
Dr. Justice Dhananjaya Yashwant Chandrachud

by **Hasan Khurshid**

"It's tremendously satisfying to be a judge when you can deliver a judgement making women equal contributors in growth and safety of the nation", said, Dr. Justice Dhananjaya Yashwant Chandrachud, on March 3, 2021, citing his February, 2020, verdict that gave permanent commission to women in the armed forces.

"I can very well remember authoring this judgement and delivering it just before the lockdown, when I can see 365 women officers granted permanent commission and there are more officers who are going to get it exactly after a year of this judgement, there is a great satisfaction for a judge", said Justice Chandrachud.

Again on November 12, 2021, the Bench of Supreme Court headed by Justice Chandrachud spared the Army of contempt proceedings after the Army changed its position on denying permanent commission to 72 women short service commissioned officers, agreeing to grant it to all women who have qualified on merit and had no disciplinary or vigilance clearance pending against them.

The ministry of defence submitted an affidavit stating that out of 36 women officers who had filed contempt petitions in the top court, 21 have been granted permanent commission upon review and letters in this regard were issued to them on October 29, 21. The case of one officer was under consideration, three were found medically unfit, while there were serious objections against 11 others.

Again on October 15, 22, speaking at the convocation of the National Law University, Delhi, Justice Chandrachud emphasised that feminist approach should be imbibed while dealing with law. He added that it is going to be a great challenge to covert the potential of women into transformational change for the Indian society.

Justice D.Y. Chandrachud who has been appointed as the 50th Chief Justice of India, will take oath on November 9, 2022. "In exercise of the power conferred by the Constitution of India, Hon'ble President of India appointed Dr. Justice Dhananjaya Yashwant Chandrachud, judge Supreme Court as the Chief Justice of India with effect from 9th November, 22"' the law minister tweeted.

Justice D.Y. Chandrachud is the son of former CJI Justice Y.V. Chandrachud, who held the post of CJI from 1978 to 1985.

Justice D.Y. Chandrachud has been associated with a plethora of landmark judgements that greatly enriched the judicial landscape of India. He also chairs SC committees that oversee the e-court project and other digital initiatives like virtual hearings and more recent the live streaming of court proceedings.

By delivering justice in the Supreme Court for over six years with his sound acumen, jurisprudence insight and decision making abilities on contentious issues, Dr. Justice D.Y. Chandrachud commands respect from Bar and rest of tbe legal fraternity.

STREET LAWYER

The Socio-Cultural Foundations of Indian Secularism - III

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

HemRaj Singh

Since Hindus form an overwhelming majority in India, the responsibility of keeping India secular rests on the shoulders of the Hindus because, as I pointed out earlier, India cannot and could not have stayed secular, had the Hindu majority not been by and large secular with an inclusive outlook towards the people belonging to other communities. So the answer to the oft-repeated question as to why only Hindus have to be secular is pretty simple: because for India to be secular, the majority of the majority community has to be secular, which, at least so far, has continued to be the case despite persistent efforts to change it for no reason other than, well, "vote bank politics", which people on both sides of the Indian secularism debate (and of the political divide over the issue) rightly accuse each other of.

In the earlier part of this series, I directed the attention of the readers to the utter futility of being a "Hindu nation" and to there being no problem that is associated with or stems from our being a secular nation. But there is not only no reason for us to turn non-secular or a "Hindu nation", but also there is a serious potential of both long-term and short-term harm to the socio-political fabric undergirding Indian polity.

What perhaps most people do not realize is that being secular is not just about not discriminating between classes of people based on their faith, but is also about not making distinctions on the basis of anything that is both rational (as opposed to ideological, religious or cultural) as well as purposive in the sense that a distinction cannot be made only for making a distinction but must be for an actual purpose and must be geared towards a real-world objective to be achieved. Secularism is, therefore, also about equality and fairness. The spirit of secularism is, to put it differently, about not making arbitrary classifications fueled by prejudices rather than facts and reason.

It follows that not being secular means not being fair and making arbitrary distinctions and classifications, which can only result in the erosion of the moral authority of the state. And after a certain threshold is breached, the government would be viewed as oppressive and evil, thereby justifying a civil overthrow of the government by constitutional means. If the government acts to seal off the possibility of constitutional challenged, or such challenges are not satisfactorily decided by the superior courts, the stability of the nation would stand threatened by a potential civil war.

So those who think that secularism is a dispensable luxury we have been indulging in are hugely mistaken, for if we push the idea of a non-secular India to its logical conclusion, it results in an oppressive and essentially non-egalitarian, majoritarian state that exists and works for only one class of people at the cost of other classes with the other classes relegated to a second-class status. Do we want to turn into such a regressive nation? I don't see which political leader, in their right mind, would be able to even talk about building a nation where all classes of people save one have a secondary existence.

People, both politicians and others, do talk about bringing about a *Hindu Rashtra*, but they most likely do not think about what would it be like to have such a nation. Would we have *Manusmriti* as the governing principle? Would some religious texts from the long-bygone era be the basis of our laws? Would we have a bunch of priests tell us the best way to interpret religious principles in the right cultural context of the Hindus? Would these priests then have the final authority to declare whether or not a law is consistent with the supreme religious law as gleaned by them from the holy scriptures? What does this picture look like? Doesn't it sound like a Hindu Iran with a Hindu cleric pontificating on a loudspeaker from the top of a sprawling mansion, dictating terms of governance to the elected government of the day? I don't think Indian citizens or even Indian politicians, including the *Hindutva* hardliners, would want Indian polity to take that shape because it's the worst deal for all parties concerned. But that's the only deal we'll get if we allow too much political space to religious bigotry.

The *Ram Rajya* people keep talking about was about the king doing everything in his power to ensure the welfare of the citizens, which is the same thing as the welfare state; and keeping the will of the people over and above everything, including his personal interests and also, arguably, his own sense of justice (banishing Sita was not just to Lord Rama's mind), which is direct democracy. And it did not matter what class the citizen came from for his/her opinion to matter. That's equality among all classes in practice, which is conceptually the same as secularism.

Indian Hindus have always been culturally democratic and secular even though their practice of equality does leave a lot to be desired. So a truly *Hindu Rashtra* would still not be the one where people impose their will and their faith on others. Being a Hindu means being liberal, secular and democratic. That's how deep the roots of Indian democracy and secularism go. They don't flow from the Indian Constitution but are merely recognized and enforced by it. And it's hard to see why we need to change any of it.

Concluded

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

HOW NOT TO DO IT?

At the very earnest request of Mayadevi, 16 years old wife of Kesar Mal, I reproduce elsewhere her picturesque petition?" praying for the release of her

* This statement is not included in this book.

** This petition is not included in this book.

Young husband, 21 years old. The case presented seems to me to be unanswerable but a good cause has been spoiled by a bad advocate. Though the petition is that of Mayadevi, it is quite clear that it is the handiwork of a draftsman who has written in a fit of rage against what he has, undoubtedly and with good cause, believed to be a monstrous injustice. But anger is short madness and noblest causes have been damaged by advocates affected with temporary lunacy. The petition is overlaid with useless adjectives and declamations. Whilst it has been a pleasure to me to dissect the many businesslike petitions that have come from that land of sorrow, in the present instance I have been obliged to labour through violent language to what I consider to be a right conclusion. I do not happen to know the draftsman of the petition. Mayadevi, who has sent a covering letter equally violently worded, gives me no information about the draftsman. But I do wish as a practised draftsman to warn writers of petition, whether they be pleaders or otherwise, to think of the cause they may be espousing for the time being. I assure them that a bare statement of facts embellished with adjectives is far more eloquent and effective than a narrative glowing with exuberant language.

Petition writers must understand that they address busy men, not necessarily sympathetic, sometimes prejudiced, and almost invariably prone to sustain the decisions of their subordinates. In the case of the Punjab they approach a Viceroy and a Lieutenant-Governor who have preconceived ideas. Petitions have to be read and analysed by public workers and journalists who have none too much time at their disposal. I know to my cost how difficult it is for me to do full justice to the value of the papers that pour in upon me week to week from the Punjab. I make a present of my valuable experience to young patriots who wish to try the art of advocating public cause by writing petitions or otherwise. I had the privilege of serving under the late Mr. Gokhale and for a time under the G. O. M.* of India. Both told me that if I wanted to be heard I must be brief, I must write to the point and adhere to facts, and never travel beyond the cause under notice, and I must be most sparing in my adjectives. And if some success has attended my effort it is due to my acceptance of the golden advice given to me by the two illustrious deceased. With this preface and warning I proceed to the analysis of the case of young Kesar Mal.

I am anxious that the excellent case of young Kesar Mal might not be overlooked by reason of bad draftsmanship of the petition. The wonder to me is that so many petitions have been written with marked ability and amazing self-restraint. But when a badly drawn document comes their way it is the business of public workers to sift the grain from the chaff and present the former to the public.

Let it be remembered that this is one of the Hafizabad cases arising out of the tumult that took place at Hafizabad station during which Lieut. Tatam is alleged to have been the object of the mischievous attention of the crowd that had gathered at that station. Kesar Mal was sentenced to be hanged, the sentence being subsequently commuted to ten years' imprisonment. The wife's petition says, "It is justice which Your Excellency's petitioner most humbly seeks and on justice Your Excellency's petitioner insists." And on that account she asks for the release of her young husband. The grounds as can be collected from the petition are:

* Grand Old Man, i.e. Dadabhai .Naoroji.

(1) The prosecution evidence is inconsistent with itself.

(2) The charge against Kesar Mal is that he was trying to snatch Lieut. Tatam's child from him, but according to the petition, the police produced Kesar Mal a dozen times before the Lieutenant, but Mr. Tatam would as many times nod his head meaning positive and complete nay and added each time, "none tried to snatch the child from me!"

(3) Lieut. Tatam did not identify Kesar Mal even as one of the men concerned in assaulting him.

(4) Identification parade was held sometime after the occurrence.

(5) Lieut. Tatam is reported to have said, "Your Deputy Commissioner Lieut. Col. O'Brien is a very strong man and he has unnecessarily compelled me to make too much of the case."

(6) The petition charges the police with having given colour to the proceedings which they did not deserve.

(7) The prosecution witnesses were nearly all

Government servants, i.e., chaprasis, moharrirs, railway staff, police staff, and also pedlars, confectioners etc. who are alleged to have been made to give evidence.

(8) Prosecution witnesses against Kesar Mal were either prejudiced or themselves feared "implications" or expected favours.

(9) Lieut. Tatam himself had nothing against Kesar Mal. Bashir Haiyat stated, "Only Kesar Mal was wounded by the glass of the window." Haveli Ram identified Kesar Mal, but the Commission remarked about him, "demeanour bad - not to be trusted". Similar was the case with Wadhawa Mal. Kishan Dayal was another prosecution witness who is stated to have perjured himself and given evidence flatly in contradiction of Lieut. Tatam's. Kishan Dayal appears to have been a boon companion of Kesar Mal and yet is said to have stated to the court that he did not know Kesar Mal before. Chapter and verse are given in the petition to prove Kishan Dayal's intimacy with Kesar Mal. Kisan Dayal is stated to have yielded to police influence and, it is said, he is now sorry "for his wrong and cruel statement".

(10) The defence evidence was entirely ignored although the defence witnesses were impartial men of position.

(11) Young Kesar Mal belongs to a family which rendered services to the Government.

If these allegations are true, it is clear that Kesar Mal has been wrongly convicted and is entitled to be discharged. Cases like this prove the great need there is for an impartial Commission to investigate them. Sir William Vincent has sprung a surprise upon the community by stating that two judges would be appointed to investigate such cases and report upon them to the Government. One would have thought that Lord Hunter's Committee would be able to do this work. But I take it that the public would be satisfied with this separate committee, provided that the judges to be appointed are strong, independent and able men. Sir William Vincent might have been more communicative than he was. He evidently does not realize the pain and the torture under which the relatives of men who, in their opinion, are wrongly convicted, are passing their days.

Remembrances

Justice V.R. Krishna Iyer

on his 86th
Birth Anniversary
1st November

Justice R.C. Lahoti

on his 82nd
Birth Anniversary
1st November

M.C. Setalvad

on his 138th
Birth Anniversary
12th November

L.M. Singhvi

on his 91st
Birth Anniversary
9th November

Justice A.S. Anand

on his 86th
Birth Anniversary
1st November

T.R. Andhyarujina

on his 89th
Birth Anniversary
17th November

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"Reputation is what men and women think of us. Character is what God and angles know of us."

–Thomas Paine

"Don't place your mistakes on your head, their weight may crush you. Instead, place them under your feet and use them as a platform to view your horizons."

– Anonymous

"People who want to stay in business should learn how to cope with change."

–Barbara Morgensten

"The activist is not the man who says that the river is dirty. The activist is the man who cleans up the river."

– Ross Perot

"Success does not have many rules. But we can learn a great deal from failure."

– Anonymous

"It is not the hours you put in your work that counts. It is the work you put in the hours."

–Sam Ewing

"It's not that some people have will-power and some don't. It's that some people are ready to change and others are not.."

–James Gordon

"God gives us always strength enough, and sense enough, for everything He wants us to do."

– John Ruskin

"Worrying is like a rocking chair; it gives you something to do, but gets you nowhere."

– Van Wilder

"Sow discipline, you reap a habit. Sow a habit, you reap a character. Sow a character, you reap a destiny."

– Anonymous

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 Amjad Ahtesham Sayed

Justice Amjad Ahtesham Sayed was born on 21st January, 1961, he obtained a Bachelors in law from Bombay University in the year 1984. He was on the Panel of Central Government, Bombay High Court (Senior Counsel Group-I). He was also an Assistant Government Pleader, Bombay High Court, Original Side. He has appeared in Public Interest Litigation matters relating to mangroves, garbage dumping, free/ concessional medical treatment for poor in charitable hospitals, bio medical waste, malnutrition, amongst others on behalf of Union of India/State Government. He was on the panel of several Public Undertakings and has also appeared in Arbitrations on their behalf. He was also a Notary Public, Government of India. He is a keen sports enthusiast.

Hon'ble Mr. Justice Amjad Ahtesham Sayed was administered the oath of office of the Chief Justice of High Court of Himachal Pradesh on 23rd June, 2022, on his lordship's elevation from High Court of Bombay.

THE BEAUTY OF LANGUAGE

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

Language constitutes the most important part of any writing. Including legal writings**:** Petitions, Judgments, Books, Essays, Autobiographies, Biographies and many more. The style of writing is equally important. Short sentences couched in simple language are so impactful. Each word counts. Earnest Hemingway has been described as the economist of words. So much can be packed in short sentences. They convey much more than long recitals. This is the beauty of spare sentences. The Shakespearian recipe has a special flavor**:** Brevity is the soul of wit. Abraham Lincoln was an American lawyer. He was the 16th President of United States. He was known for eloquence. Precision also. The Gettysburg Address was delivered in 1861. It contained less than 300 words. The famous words echo even after more than 160 years: Democracy means – Government of the people, by the people, for the people. My research led me to some interesting meanings: **Hug** – A roundabout way of expressing affection. **Modern Literature** – Neurotic, exotic, tommy-rotic. **Alcohol**: A liquid good for preserving almost everything except 'secrets'. **Genius**: one who can do almost anything except to make a living. **Law Suit** – Generally, a matter of expense and suspense. A small school going boy was asked to write an essay on the game of cricket. He wrote – Rain. No game. The economy of words is a skillful game. Not everyone's cup of tea.

In my early years when I was in school my father used to write for me. I used to memorize and speak. Gradually, I started writing myself. For writing, I required fuel. Therefore, I would read different books. This process continued in college. It was polished during my university days. This habit continued when I joined the faculty of Panjab University in 1969. My talks and research articles were integral to my teaching. Therefore, I developed my writing skills.

I was at the London School of Economics (LSE) in 1978 (34 years old). I met Lord Denning in his Chambers. I had more than one-hour interaction with him. It was tape recorded. I developed fancy for Lord Denning. The way he would speak. The way he would write. I returned to India. I got engaged in the process of completing my doctoral thesis. Immediately, it was not possible to change over to the writing style of Denning. The writing style becomes a part of daily wear. It is difficult to change.

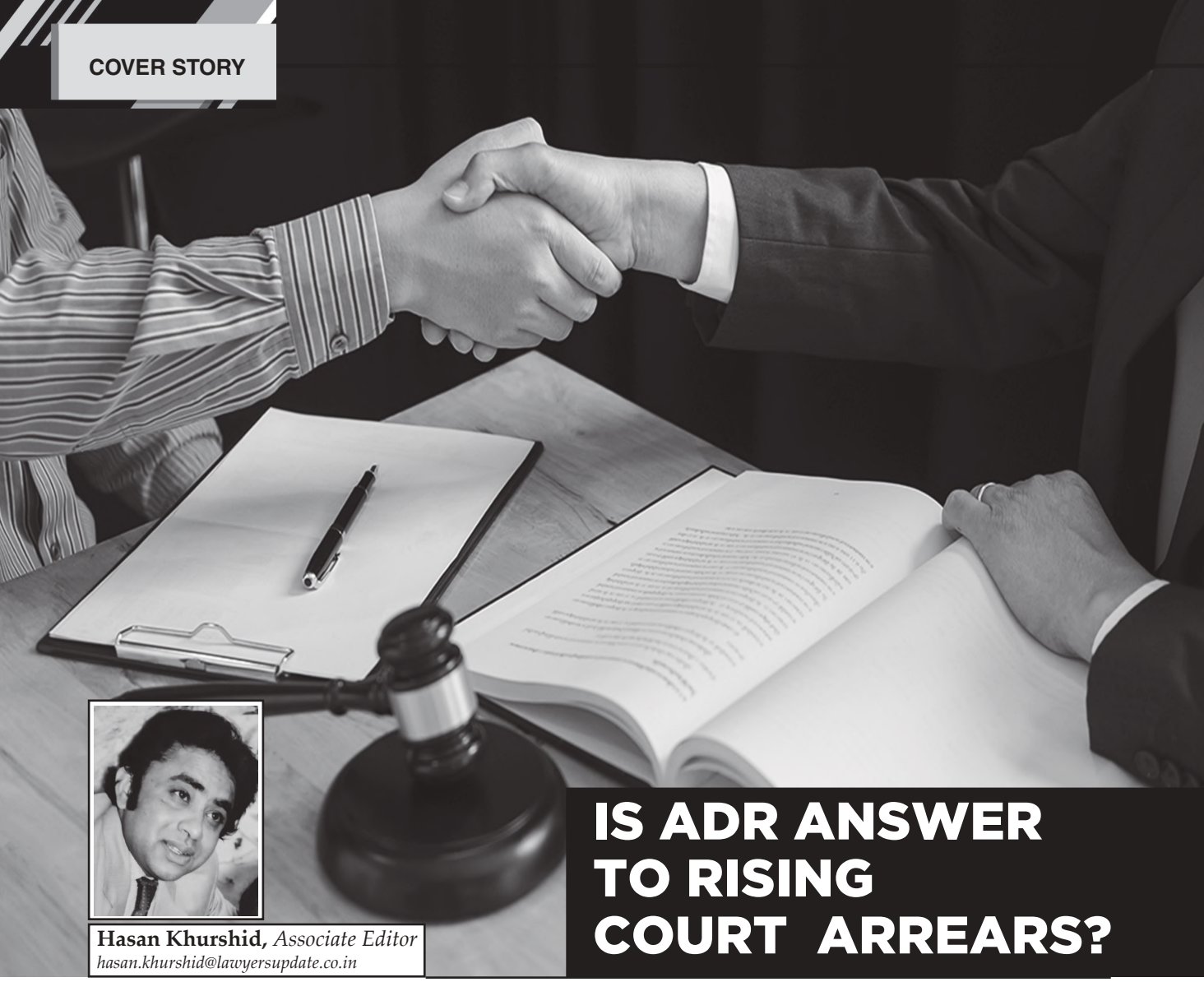
Denning style of writing was infectious. The more I read his judgments and writings, the more I enjoyed. I would read him for relaxation. His writings were stress busters. His writings nurtured happy minds. In 1980, Denning was 81. He wrote six books at the age of 80 and plus. Every summer, he would finish a book. What a productive mind. Sharing his experiences of his life journey. Lord Denning was the ultimate wordsmith. The master of writing short sentences. He was a judge for 38 years. A long innings. He knitted his judgments weaving his own patterns. He conducted the *Profumo Inquiry*. Completed the work in three months. Submitted the report. It was the best seller. Because of the writing style. The report came to be used by a Britisher as a passport for entry to Canada.

I was keen to develop Denning style of writing. I wrote a piece on him in 1984. I made an attempt to copy his style of writing. Let me share, what I wrote about his style: *Lord Denning style of writing was his own. He communicated effectively. In short sentences. Sometimes two words. Sometimes only one. But most appropriate. Befitting the occasion.* I started writing my research papers in short sentences. I joined the legal profession in early 1991. I would draft my petitions in

short sentences. It took me years and decades. I gradually graduated in his style of writing. I used to contribute my pieces every month in the monthly e-Newsletter of Chandigarh Judicial Academy. My grandson, Gurmehar joined Doon School, Dheradun in 2017 in class 8th. He was in Chandigarh during his summer vacations in 2019. I gave him two pieces that I had written. He read them. The very next day. He asked, Nannu, why do you write in short sentences. Simple in words. My response was, why do ask me this? He smiled and said: I enjoyed reading them. I told him, you got the answer. Writings must be engrossing. Entertaining also.

I wrote my autobiography cum essays based upon my experiences: My Journey with Law & Justice. All in flowing style. Prof. Upendra Baxi in his blurb on the jacket of the Book wrote: *Written in Biblical style (usually attributed in law to Lord Denning), the author elegantly conveys arenas of law and life, what many difficult tomes in law struggle to communicate*. Justice Dr. D.Y.Chandrachud, Chief Justice of India designate while releasing the Book on January 29, 2022 said: *His autobiographical account written in short and comprehensible sentences in Lord Denning style would help law students, lawyers and judges to navigate through their career choices, given that the author has such a wide range of experiences of his own…..I think every page of this Book embodies his quest for learning, his love for literature and his passion for erudition which are the scholarly attributes which make the personhood of Dr.Balram Gupta as we know him so closely*. Mr. Anil Malhotra, Advocate and Author while reviewing the Book gave the caption "Compilation of Indian Lord Denning's Writings". He describes, Dr.Gupta *writes in short and crisp sentences. A rarity in law.*

This is a dream coming true. When I met Lord Denning 44 years back, I never thought that my writings would be equated with his writing style. It is so satisfying. A lifetime achievement. Imagine, how language and the writing style can make such a difference. With sincere effort, one can achieve anything. I owe all this to the gift of language.



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IS ADR ANSWER TO RISING COURT ARREARS?

There's an old proverb, " Going to law is losing a cow for the sake of a cat."

Judge Moses H. Grossman shows the way out by saying, "Four out of five potential litigants will settle their disputes the day they come together, if you put the idea of arbitration, into their heads."

Alternative Dispute Resolution (ADR) refers to different ways people can resolve disputes without a trial. Common ADR processes include: Arbitration, Conciliation, Mediation, and Negotiation.

Lok Adalats comprise of informal setting which facilitates negotiations in the presence of a judicial officer; wherein, cases are dispensed without undue emphases on legal technicalities. The order of the Lok Adalat is final and binding on the parties and is not appealable in a court of law.

Replying to the debate on the Arbitration and Conciliation (Amendment) Bill, 2021, Union law minister Ravi Shankar Prasad told the Lok Sabha on February 12, 2021, that India will become a major hub for international and domestic arbitration. Prasad further said that India's ranking has substantially improved in terms of contracts and country has some of the best judges and legal brains who are respected internationally. Prasad added that under the law, which allows ample opportunities to create India as an arbitration hub, India will welcome foreign arbitrators.

Senior Advocate KTS Tulsi, however, in respect of the domestic situation pertaining to the present rising of court cases, revealed that total pending criminal cases during 2015 were 1,55,12,982; till 2018 it reached to 3 crore 53 L (86% in subordinate courts; 13.8% before HCs; 02% before SC); between 2006 and April, 2018 pendency increased by 36% in high courts and 7% of subordinate courts.

More than 1,00,000 of rape case's are pending; more than 1,70,000 of murder cases are pending; more than 4,60,000 cases of Section 498A, relating to mental cruelty, dowry demand, etc; are pending.

In all there are 14 types of Tribunals. More than 1,00,000 cases- are pending before various tribunals. (24,133 cases are pending as on June 30- with Railway Claims Tribunal; 22,786 cases are pending with Armed Forces Tribunal; 2087 cases till 31.8.22 are pending with NGT; Income-tax Appellate Tribunal had 91,643 pending cases as on 1.1.18; National Consumer Disputes Redressal Commission- 23051; 21,089 cases are pending with NCLT benches; Securities Appellate Tribunal- 697 cases)

Disposal Rate: Central Administrative Tribunal (CAT) achieved a disposal rate of around 91 per cent in past five years; The disposal rate of cases in the National Green Tribunal is higher than the filing rate- 36700 cases; 5392 case's were disposed by ITAT from April-August 2020; National Consumer Disputes Redressal Commission- 83.98%; NCLT- 75%).

Learned Senior Advocate Tulsi further informed, "ADR is experimenting in various forms: Mediation; Arbitration (national arbitration; international commercial arbitration; investor-state arbitration); Conciliation; Negotiation.

Nobody has tried to bring Plea Bargaining in the realm of ADR. The concept of Plea Bargaining gained its constitutional validity in the US in the case of Brady v. U. S. However, to manage the pending cases in Indian - Malimath Committee Report, the Committee in the report recommended Plea Bargaining to be introduced in the Indian criminal justice system. ADR mechanisms came in force into the criminal justice system by way of the Criminal Law (Amendment) Act, 2005.

As per NCRB total number of cognizable criminal cases pending till 2015, were 1,55,12,982; total crimes registered in 2016- 20,97,000. Total pending cases are 3 crore 53 lakh (more than 50% are criminal in nature).

"Plea Bargaining is provided in the Statute itself: Sections 265A to 265L, Chapter XXIA of the Criminal Procedure Code deal with Plea Bargaining. When Plea Bargaining is provided in the Statue itself, then why are the courts confining ADR to civil cases only," wonders Tulsi.

"Courts in India believe that it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial. The judge may also be likely to deflect from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty, which may frustrate the social objective and lower the standards of justice."

"In 2015, only 4,816 cases out of 10,502,256 cases pending for trial under the general penal law went for plea bargaining, i.e. 0.045%."

"In 2016, it was about 4,887 cases out of 11,107,472, bringing it down to 0.043%."

"In 2018, the cases saw an absolute decrease and only 20,062 out of 12,106,309, went for plea bargaining, with a mere 0.16%."

"For defendants without financial means, the inability to compensate the victims is a reason for not following it."

"The rate of acquittal in criminal cases is so low that the accused wants to take his chances in trial, rather than face conviction on lesser charges or lesser punishment on admitting his guilt."

"The social stigma and the reduced chances of rehabilitation after undergoing conviction and then a jail term is the outcome."

"The delay in trial and chances to getting bail both during the trial and in appeal after conviction are so high that the accused wants to take his chances to be out on bail rather than take a lesser sentence," concluded Tulsi.

Senior Advocate Mahalakshmi Pavani, President-Supreme Court Women Lawyers Association said, "Alternative Dispute Resolution (ADR) has now become the buzzword of the legal fraternity. However, the discussion is far more than academic and altruistic. There is without a doubt one of the most efficient systems of dispute resolution, however, the current system of ADR in the country today, too is faced with the vices of the litigious mechanisms of dispute resolution. In conventional court proceedings blame is put on one of the parties which is often detrimental to the relationship of the parties. The final decision of the court is imposed on both the parties and it can be undesirable because one party always loses

On the contrary in mediation parties alone are responsible for their own decision and can choose to not accept the final settlement brought about by this process. This helps parties to come to a solution peacefully and amicably. Even if the relationship between the parties was compromised due to existing issues it can be restored by the process of mediation as it upholds the interests of both parties. There are no fixed and rigid proceedings in alternate dispute resolution and mediation is the most flexible of all these methods making it the most

desirable one. It is a party-centric and neutral procedure. Parties can withdraw from the procedure of mediation at any stage without stating any explanation. All the information and evidence presented during mediation is kept confidential thus outside parties do not have access to the mediation proceedings. Data given to the mediator cannot be used for any other purpose besides helping the mediator to reach an appropriate resolution. This ensures that nobody's public image gets tarnished in the process.

ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved. Section 89 of the Civil Procedure Code, 1908 which empowers the court in matters where it appears to exist as a component of a settlement that would be acceptable to both parties, the court shall articulate the terms of a possible settlement and refer the same for mediation for which procedure may be prescribed by the court itself."

Mahalakshmi further said, "Arbitration across the globe is envisaged as an alternative dispute resolution mechanism that removes the inefficiencies of traditional court-based litigation, and is cheaper. However, the perception that arbitration is more reasonable in terms of the cost may no longer be correct. In Union of India v. Singh Builders Syndicate, the Supreme Court dealt with the issue of indiscriminately high arbitrator fees. It opined that the same was a significant roadblock to the growth of arbitration in India."

"This was followed by the Law Commission of India's 246th Report, which proposed a host of amendments to the cost regime under the Arbitration Act. Amongst other things, the Law Commission proposed the insertion of a model fee schedule which was later incorporated in the Arbitration Act as 'Fourth Schedule' by way of the 2015 amendment."

"Further, Section 11(4) of the Arbitration Act empowers the high courts with the discretion to frame rules concerning the fixation of arbitral fees based on the model fee structure carried under the Fourth Schedule. Some judgments suggest that the model fee under the Fourth Schedule is a suggestive and derivable provision of law.In the 2015 amendment, Section 31A was also inserted in the Arbitration Act, which granted the discretion of determining costs payable by parties to the court or arbitral tribunal."

"In determining the costs, the court or arbitral tribunal is to look into factors including, but not limited to, the conduct of parties; whether the party succeeded partly in the matter; whether a party was delaying disposal of arbitral proceedings by filing frivolous counterclaims; and whether a reasonable offer to settle was made and refused by either party."

"While the introduction of Section 31A provided a much-needed structure to India's cost regime, it leaves the court and arbitral tribunal with an absolute jurisdiction to fix the cost of the proceedings. This is true, at least in the case of ad hoc arbitrations where more often than not, there are no formal procedural rules governing the arbitral proceedings."

"There is a need to introduce a uniform fee regime for arbitrations with a special focus on PSUs. In Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust, the Supreme Court discussed the issue of complaints raised about the costs of arbitration in India and how arbitration was being forced onto parties against the principle of party autonomy."

"The Supreme Court observed that the remedy for the healthy development of arbitration in India is to disclose the fee structure before the appointment of arbitrators to ensure that a party not willing to bear such expenses could express its unwillingness."

"Perhaps another remedy is to mirror the institutional arbitration model of fixing costs. The High Courts of India should also formulate the rules for the cost regime in a joint exercise and calibrate the fee which suits the socio-economic conditions of the regions covered by the High Court's jurisdiction. Such methods would allow arbitration to be a preferred mode of resolving disputes amongst entities, including PSUs and allowing the Indian arbitral regime to flourish further in India."

When asked about the way out of tackling the problem of a large number of undertrials languishing in jails, Mahalakshmi said, "The problems of undertrial prisoners in India are the result of a collective state failure. These are people who are stigmatised; their pleas are seldom heard, their voices often suppressed, and their lives are spent in dark, overcrowded prisons for not the crime they have committed but because the justice delivery system is languid and lethargic. The organisations like the National Legal Services Authority, whose purpose is to provide free legal services and help people, have failed to provide large-scale relief to the undertrials. Arnesh Kumar vs. State of Bihar judgement of 2014 states: "The power to authorise

detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution.

Our experience tells us that it is not exercised with the seriousness it deserves. In many cases, detention is authorised in a routine, casual and cavalier manner. Before a Magistrate authorises detention under Section 167, CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied."

"The judgement emphasised that the investigative agencies must comply with the mandate of Section 41 and 41A of the CrPC. The new person who gets into jail gets dominated and harassed. There is gang rivalry. We try to keep undertrials in separate wards, but even then, there are many human rights violations that take place in our jails. Section 436-A of CrPC speaks about the provisions in which an undertrial can be released. When a prisoner could end up getting imprisonment of up to 7 years under a section, he can be released within three and a half years but usually, what happens is that the undertrial has to pay some amount and also give surety but because he is from a poor background he cannot do both."

"Sometimes we approach NGOs and get the surety or other formalities done, but the numbers of undertrials are more. We need more NGOs, well-meaning individuals and the system to come forward and provide relief to undertrials who need help."

"In response to address the nightmarish situation of arrears, Mahalakshmi said, "Appeals from the high court now go to the Supreme Court. There are two methods: one, the high court itself grants a certificate of fitness to appeal to the Supreme Court. Nobody follows that anymore. Instead, they use the second method, which is to file a petition for special leave to appeal to the Supreme Court under Article 136 of the Constitution. This is supposed to be for cases of general public importance."

"As the provision indicates, it is not to be used to admit all and sundry cases. But that is what it has become. Routinely and every day, the Supreme Court is the repository of hundreds of Special Leave Petitions (SLPs) challenging all kinds of orders from bails to interlocutory orders to final orders across the entire litigative range."

"In the lower judiciary, judges to focus on judgments rather than grant adjournments, which is administrative work which can easily be done by a junior registrar. Penalise adjournment culture to deter it and use incentives and disincentives to tackle all large-volume types of cases that take advantage of the delay in the court. Online cases in the wake of the COVID-19 pandemic have opened up new vistas for the administration of justice. Cases are clogging the courts."

"There are a few types of cases which are present in large numbers, such as cheque-bouncing cases and landlord-tenant cases. In most of these, the defendant takes advantage of the delay in the courts. The remedy is to apply the simple law of economics in creating incentives and disincentives, principally the latter. Formulate the rule that if the defendant loses the cheque-bouncing case, he will have to pay the plaintiff interest at or above the bank rate for lending. And then see how quickly three-fourths of these cases vanish from the board."

"Judges would do well to promote mediation; lawyers would do well to become mediators and represent parties in mediation, doing both professionally; and litigants would be sensible to try mediation before litigation or arbitration. The Supreme Court should be reserved for constitutional cases and cases of general public importance sitting in larger Benches, not functioning as a combination of an appellate and constitutional court with truncated benches as it is now", concluded Mahalakshmi.

Hon'ble Justice B.A. Khan, former Chief Justice J&K High Court, expressing his apprehensions with regard to foreign arbitrations said," In my view, India will not become the hub of foreign arbitrators anytime soon. The reason is not far to seek. Firstly, there's no physical infrastructure like any global standard Arbiter Centre as in Singapoore or America or any Arbitration institutions which can attract foreign arbitrators and make them comfortable. Nor there's any suitable conducive environment which can facilitate their arbitration and earn timely execution of their awards."

"CJI Justice Gogoi's expression is not tuned to support the arbitration process. The statement made by Union law minister in this regard can only be seen as his political statement or a pious wish for the present unless things change dramatically laying red carpet for foreign arbitrators in thee days to come."

Justice Khan also pointed out, " It is a matter of common knowledge by now that India is lagging far behind on the issue of delay in the enforcement of arbitral awards which is said

to be a critical factor in keeping away foreign investors adversely affecting opportunities of foreign investment in the country. In fact bringing in arbitration, the enactment of Arbitration & Conciliation Act on UNCITRAI model following opening of global economy was reason to attract foreign investment and to assure the world business community of country's effective dispute resolution mechanism to resolve international commercial disputes speedily. But this could not happen due to variety of factors more particularly because of excessive and undue interference by country's court system in the arbitration process in disregard of Non-Interference Rule as mandated by Arbitration Act."

"Resultantly, arbitration ceased to be a cost effective and minimum time consuming alternate dispute redressal mechanism discouraging and disappointing its seekers."

"Now the current scenario is that arbitration process has become a duplicate traditional court process errasing the distinction between arbitration and civil suit. Adjournments and extensions in time are sought and granted at the drop of hat violating time stipulations under the Act. Even innocuous interim orders passed by the arbitrators are challenged n courts even through writ petitions."

"What is notable and even surprising is that even high courts and Supreme Court are entertaining such pleas leaving arbitrations to languishing at their stations. The situation is no better post award which is first challenged under Section 34, objections on the limited ground of award bring contrary to public policy. Even this ground has so over-stretched through varying interpretation through different Benches of Supreme Court bringing in all under the sky within it's purview reflecting on the finality of award and it's binding nature."

"An arbitration award which was designed to be binding on the parties is like any court decision now which can be tossed from court to court with no end result. What is worse is that Section 34 objections proceedings are treated as a civil suit by the courts triggering fresh time schedules in some cases. This is followed by appeals / petitions questioning reaction of objections under Section 34 or otherwise preventing the award to see the light of the day", concluded Justice Khan.

BANNED BOOKS

THE DECAMERON

Giovanni Boccaccio 1370s

Giovanni Boccaccio's *The Decameron* is set in 1348, the year the Black Death arrived in Florence. It features 10 young men and women who have fled Florence for a villa in the nearby hills. Over1 0 days, they amuse themselves by telling each other 100 stories.

Written in the Tuscan vernacular, the tales were immensely popular, but their content, which was often irreverent, and frequently bawdy, upset Church authorities. On February 7, 1497, a Dominican preacher called Girolamo Savonarola publicly burned *The Decameron* along with other "sinful" books and artworks, an event remembered as the Bonfire of the Vanities. Around 60 years later, Pope Paul IV listed *The Decameron* on the Roman Catholic Church's *Index Librorum Prohibitorum* (Index of Forbidden Books; see page 161) of 1559, condemning the depiction of religious figures engaging in sexual acts.

"Nothing is so indecent that it cannot be said to another person if the proper words are used to convey it."

Giovanni Boccaccio

Although The Decameron was officially banned in 1564, copies continued to circulate, so the Church looked for ways to remove the offensive passages. A revised version that replaced the religious characters with other members of society but preserved the sexual references was authorized by Pope Gregory XIII in 1573, but nine years later, Pope Sixtus V ordered the removal of all sexual activity and innuendos from the book. Although this version was published. it did not satisfy Sixtus and remained on the Index.

Complaints regarding the "immoral" nature of The Decameron resurfaced in the US in the late 19th century, when public libraries called for a ban of the "indecent" text. Although the US Supreme Court ruled in 1894 that classic texts like The Decameron were not considered obscene, various states banned it, and booksellers who owned or sold the text faced harassment and prosecution

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 GYAN SUDHA MISRA

Justice Gyan Sudha Misra was born in an illustrious family of Lawyers and Judges on 28th April, 1949. Having drawn inspiration from her late father, Shri Satish Chandra Misra, who retired as the Chief Justice of the Patna High Court and her late brother, Shri Shilesh Chandra Misra, who was a distinguished Senior Advocate, she joined the legal profession after obtaining her Graduate Degree in Law and her Post Graduate Degree in Political Science from the Patna University.

After 14 years of successful tenure as a Judge of the Rajasthan High Court, Justice Misra was elevated as the Chief Justice of the Jharkhand High Court at Ranchi on 13th July, 2008. As the Chief Justice, while hearing PIL matters, Justice Misra passed large number of prominent and effective orders, which resulted in initiation of probe by the Enforcement Directorate against eminent persons involving huge financial implications. In one of the PIL matters while relying upon the judgment of the Supreme Court in the case of *St. Mary's School, New Delhi* v. *Election Commission of India*, the Bench presided by Justice Misra ruled that School Building and School Buses would not be utilized during elections on any working day as it upsets the routine studies and also hinders the school's administrative work. Treating a letter from Tapasi Choudhary to be a PIL relating to sensitive matter of mysterious death of her daughter Mousami Choudhary, a Trainee Airhostess of AHA Airhostess Training Institute, Jamshedpur at Hotel Sonnet, Jamshedpur, Justice Misra sitting in a Division Bench with Justice D.K. Sinha directed for CBI probe into the matter and for filing charge-sheet.

Justice Misra was elevated as a Judge of the Supreme Court of India on 30th April, 2010. She made a mark in the Supreme Court of India too by passing several landmarks and notable judgments including judgments on conflict of interest in the Srinivasan-BCCI matter, the landmark euthanasia judgment in the Aruna Shaunbaug matter, and the Delhi Uphaar fire tragedy dissenting judgment holding the management liable for colossal loss of human lives and directing them to pay heavy compensation to be used for social causes like building trauma center. She retired on 27th April, 2014.

While functioning as a Judge, Justice Misra, through her judgments and orders, always demonstrated that she is a strong believer of the principle that social justice, which is one of the objectives of the Indian Constitution, certainly helps in bringing about a just society by removing imbalances in the social, educational economic and political life of the people and protecting the rights of the weak, aged, destitute, women, children and other underprivileged persons of the state.

OPEN PETITION TO UNION LAW MINISTER

Anil Malhotra*

Union Law Minister, Kiren Rijiju in a PTI statement declared yesterday, *"we have decided to remove all obsolete, archaic laws from the statute, as unnecessary laws are a burden to a common man. We have decided to revoke more than 1500 laws in the winter session of the Parliament. I am ready to introduce many more repealment Acts."* A welcome needed step ushering axing colonial outmoded unnecessary laws. But what of antique family laws needing amendments urgently. Nothing forthcoming.

Hindu Minority and Guardianship Act, 1956 (HMGA), declares that natural guardian of a Hindu minor boy or unmarried girl shall be father and mother, provided that custody of a minor who has not completed 5 years of age, shall be with mother. HMGA does not contain any independent, legal or procedural mechanism for deciding custody rights or declaring Court appointed guardians. Reference to word "Court" in HMGA, shifts a parent or any other person seeking appointment as a "guardian" to seek relief under a 132 year old colonial law i.e. the Guardian and Wards Act, 1890 (GWA). Parents are forced to seek exclusive temporary and permanent custody of their biological offspring as single guardians. Sad, but true. Child custody issues between parents are to be determined under GWA, upon a natural parent wanting to be declared as an exclusive guardian to his own natural born child. Joint or shared parenting is not an option. Antique laws rule the roost. Colonial vestiges prevail.

India is a signatory to United Nations Convention on Rights of Child (UNCRC). Consequently, definition of "best interest of child" has been implanted from UNCRC in Juvenile Justice (Care and Protection of Children) Act, 2015 to mean *"the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social wellbeing and physical, emotional and intellectual development"*. Axiomatically, Courts in India, are duty bound to ensure true import of this meaning to full expression. Supreme Court in 2019 in a child centric approach held that "best interest of child", "cannot remain love and care of mother as primary care giver of an infant few years old." Glass ceiling of gender preference was shattered to provide neutrality to parents. Presumption of maternal custody as sound child welfare policy is now rebuttable. In 2022, Supreme Court held child welfare get precedence if custody of a small child with mother is to be disturbed, as such orders are not passed for protecting rights of parents.

Law Commission of India report in 2015, on Reforms in Guardianship and Custody Laws in India, recommended joint custody and shared parenting, whilst disagreeing with single custody parents. Exhaustive recommendations were made to suggest amendments in HMGA and GWA for joint custody and guidelines for custody, child support and visitation arrangements. Report 263 of Law Commission of India on, Protection of Children (Inter-Country Removal and Attention) Bill, 2016, recommended a draft Bill for protecting the best interest of children relating to custody as per UNCRC. Report of Justice Bindal Committee, of which author was a member, submitted to Government in 2018 also suggested that best interest of children is of paramount importance in matters relating to child custody in view of UNCRC. Alas, these reports gather dust and rot in Government archives. Stalemate results in ugly custody disputes. Supreme Court in 2017, highlighted the concept of Parental Alienation Syndrome, and held that "a child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation." Pathetically, alienated children polarised irreversibly by single

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custody laws, do not even want to speak or see non custodial parents.

Antique GWA aids custodial parents to deny visitation rights to non-custodial parents with impunity resulting in catastrophic consequences. Joint custody and shared parenting are alien concepts. Family Courts offer little aid to mollify grievances. Supreme Court in 2020 has permitted children to travel outside India during pandemic times, holding a father can very well take care of welfare and safety of minor. General guidelines as practice directions are dire need of hour as law is in a slumber. Joint parenting with equal rights is a viable option. Family Courts free to devise their own procedure, independent of technicalities of law, can formulate out of box methods and insist children be shared by father and mother. Being caught up in conventional single parent custody traps is ancient, outmoded and archaic. It ruins children and turns parents into mental wrecks. Antiquity must go. Law Minister must take public notice.

Supreme Court judgements shall be binding on all courts. In absence of a clear codified law on inter-parental child removal issues, much needed clearer path of innovative solutions by Family Courts guides litigants and Courts. Children are not chattels to be possessed by one parent. Change is needed. Prophecy of Wordsworth resounds, reverberates and echoes, resonating that the "child is the father of man." Law must heed.

Supreme Court Guidelines

HINDU MARRIAGE ACT, 1955

COMPULSORY REGISTRATION OF MARRIAGES

Smt. Seema v. Ashwani Kumar

(2006) 2 sec 578: AIR 2006 SC 1158: 2006 (2) ICC 475: 2006 (1) KLT 791

Transfer Petition (Civil) 291 of 2005

Dated: February 14, 2006

BENCH: Justices Arijit Pasayat and S.H. Kapadia.

Issue: Directions were given to the States and the Union Territories in the matter of framing necessary statutes regarding compulsory registration of marriages.

Court directed the States and the Central Government to take the following steps:

(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a periodof one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force.

(ii) The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. Needless to add that the object of the said rules shall be to carry out the directions of this court.

(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.

(iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.

Relevant cases: *Seema* v. *Ashwani Kumar,* 2008 (1) SCC 180) and *Smt. Seema* v. *Ashwani Kumar,* 2006 (2) SCC 578.

LEGALITY OF ABORTION IN INDIA, USA, UK AND OTHER COUNTRIES

Saloni Bung
and A. Manoranjitha Reddy

Abortion Laws and Position in India

Currently, the abortion law in India is regulated by the Medical Termination of Pregnancy Act, 1971, which was recently amended in the Year 2021[1]. Prior to the enactment of the Medical Termination of Pregnancy Act **(MTP Act),** 1971 abortion was considered an 'offence' or a 'crime' under the Indian Penal Code 1860, Section 312 and 313. The MTP Act, 1971 was enacted in the year 1971 in order to avoid unwanted pregnancies, as women were opting unsafe practices and were getting the abortions done from unskilled practitioners. The act of abortion was decriminalized after this Act came into force considering the suggestion given by the Shantilal Shah Committee in the year 1966. The 1971 Act inferred the right of abortion to women up to 20 weeks under the circumstances.

The MTP Act of 1971 was briefly amended in 2002 to increase access for women in private places by allowing the district level committee to approve a private place for offering MTP services[2]. Later on, the Act was amended in the year 2021 and allowed the abortion up to 24 weeks in cases of women under specified conditions[3]. As per the amendment, if there are "substantial foetal abnormalities" diagnosed by a medical board, then there won't be any upper limit for abortion[4].

In a landmark judgment of **X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, 2022 SCC OnLine SC 1321,** a three-judge bench of Supreme Court overruled the Delhi High Court judgment[5] and observed that excluding unmarried women from the MTP rules is unconstitutional, in as much as unmarried women are also entitled to seek abortion of pregnancy at the term of 20-24 weeks which arises out of a consensual relationship. The objective of Section 3(2) (b) of the MTP Act is to allow the woman to undergo abortion after 20-24 weeks. Excluding unmarried woman will be violative of Article 14 of the constitution[6]. The court also made it clear that the term "woman" includes all the persons who requires abortion including cisgender women. While elaborating the judgment, the court further held that notwithstanding exception 2 under section 375 of IPC, the meaning of sexual assault or rape includes a husband's sexual assault or rape for the purpose of Rule 3B(a) of MTP Act. Thus, the meaning of "rape" includes "marital rape" solely for the purpose of MTP Act and Rules. The court has held that a woman need not prove the commission of rape or sexual assault to seek termination of pregnancy under the MTP Act[7].

Abortion Laws and Position in the United States of America

Roe vs Wade, 410 U.S. 113, a 1973 lawsuit led to the Supreme Court making a ruling on abortion rights. Roe, an unmarried pregnant woman had filed a suit on behalf of herself & others and challenged the Texas Abortion laws. The abortion was illegal in Texas unless it was done to save mothers live. Getting the abortion or attempting to abort was a crime. The Supreme Court in this case has held that the constitution provides a fundamental right to privacy under the ***Due Process Clause of the Fourteenth Amendment,*** and this right protects a person's right to choose whether to have an abortion or not. The Apex Court ruled in her favor in a ratio of 7:2 and abortion was legalized in United States of America.

Subsequently, in another landmark case of **Planned Parenthood of Southeastern Pa. v. Casey, (1992), 505 U.S. 833,** the Supreme court revisited the ***Roe vs. Wade*** case and upheld a pregnant person right to choose abortion. The judgment of ***Roe vs Wade*** was reaffirmed with a majority of 5:4 but the court rejected the viability test which was laid down in ***Roe vs Wade,*** and instead held that the right to abortion stemmed from liberty under the ***14th Amendment Due Process Clause***[8]**.**

However, in a recent judgment of **Dobbs vs Jackson's Women's Health Organization, 597 U.S. (2022)**[9]**,** the ruling of **Roe vs Wade** and ***Planned Parenthood of Southeastern Pa. v. Casey*** were overturned and the constitutional right to abortion was revoked by the Supreme court. This case pertains to the State of Mississippi where the State banned abortion after 15 weeks of pregnancy which is much before the fetal viability (which is generally at 24 weeks). The lower court issued a restraining order and held that

abortions must not be banned pre-viability. In the year 2019, a three-judge bench of the Court of Appeals in the USA upheld the judgment of ***Roe vs Wade.*** The Mississippi State assailed the order before the Supreme Court and urged the Court to overturn the law laid down in ***Roe*** and ***Casey.*** The Supreme Court with a majority of 5:4 overruled the case of ***Roe*** and ***Casey*** on 24th June 2022 and held that the ***Fourteenth Amendment*** does not mention the 'Right to abortion'.

Abortion Laws and Position in the United Kingdom

Abortion in Great Britain was allowed through the Abortion Act of 1967. However, abortion was recently legalized in Northern Ireland with the introduction of Abortion (Northern Ireland) (No.2) Regulations 2020

In England, abortion is permissible for up to 24-weeks, if they are approved by 2 doctors. Abortion was legalized after the introduction of Abortion Act 1967 which allowed the termination of pregnancy up to 28 weeks. The period was reduced to 24 weeks in the year 1990. Abortion in England is allowed only under few circumstances[10].

Recently, The Abortion (Amendment) Regulations 2022 which came into force on 30th August, 2022 in England and Wales laid out the provisions for permitting early termination of pregnancy at the patients home itself[11]. This regulation allows women in the first 10 weeks of pregnancy (9 weeks and 6 days) to continue access pills for early abortion through a teleconsultation and for both pills to be taken at home[12].

Conclusion

Indian Courts have time and again recognized women's exclusive right to abortion and allowed the women to abort her child even after they have crossed the time frame prescribed in the MTP Act, by prioritizing the health and safety of the woman. Indian abortion laws are progressive but its effective implementation and granting access to safe abortion has long way to go. While the laws around abortion in India and UK are going in a progressive direction, US has taken a step aback with the recent judgement of US Supreme Court[13].

[1]The Medical Termination of Pregnancy (Amendment) Act, 2021, https://egazette.nic.in/WriteReadData/2021/226130.pdf
[2]https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-amendment-2002#:~:text=(1)%20This%20Act%20may%20be,in%20the%20Official%20Gazette%2C%20appoint.&text=(i)%20In%20clause%20
[3]http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20(Amendment)%20Act%2C2021.pdf
[4]http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20(Amendment)%20Act%2C2021.pdf
[5]MS. X v. The Principal Secretary Health and Family Welfare Department, Government of India (2022 LiveLaw (Del) 660)
[6]https://www.livelaw.in/top-stories/all-women-entitled-to-safe-legal-abortion-distinction-between-married-unmarried-women-unconstitutional-supreme-court-210548
[7]https://www.scconline.com/blog/post/2022/09/30/sexual-assault-rape-under-medical-termination-of-pregnancy-laws-includes-marital-rape-constituionality-of-section-375-ipc-not-gone-into-supreme-court-abortion-legal-research-updates-news/
[8]https://www.lexisnexis.com/community/casebrief/p/casebrief-planned-parenthood-v-casey
[9]https://supreme.justia.com/cases/federal/us/597/19-1392/
[10]https://www.bbc.com/news/health-19856314
[11]https://www.legislation.gov.uk/uksi/2022/811/made/data.pdf
[12]https://www.gov.uk/government/news/at-home-early-medical-abortions-made-permanent-in-england-and-wales
[13]Dobbs vs Jackson's Women's Health Organization, 597 U.S. (2022)

Legal Thesaurus

Lex loci contractus:

It is the lex loci contractus that determines the validity of a contract made in a foreign state. Thus a pronote or bond being executed in the Puducotta territory, and no pronote or bond being according to the law of that State, operative for the purpose of creating any legal rights unless it is registered, a suit in British India cannot be supported as an action on the document. [Palaniappa v. Periakanuppan, 117 Mad 262]. The personal incapacity of an individual to contract depends on the law of the place where the contracting party is domiciled. If by the law of this place he is incapable of entering into a contract, any so-called contract entered into by him is invalid, even outside the limits within which the law of his domicile extends. [Lachmi Narain v. Fateh Bahadur, 25 All 195; In re, Cooke's Trust, (1887) 56 LJ Ch 637]. **[Indian Contract Act].**

REVISION PETITION FOR ENHANCEMENT OF DISTRICT COMMISSION AWARD

REVISION PETITION NO. 2622 OF 2011
BINITA SINGH..Versus ADMINISTRATOR, KURJEE HOLY FAMILY HOSPITALDecided by the Hon'ble NCDRC on 30 September, 2022

Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS: Complainant delivered a male baby through Caesarean Operation on 24.08.2005. After the discharge on 01.09.2005, she was complaining about pain in swelling in abdomen, it was alleged due to a foreign body left in the abdomen after the Caesarean operation. Ultrasound was done on 23.09.2005, wherein some foreign body (i.e. Tetra Sponge) was found and she was operated again at Shayog Hospital. Being aggrieved the Complainant filed the Consumer Complaint before the District Forum, Patna The District Forum partly allowed the Complaint with following observation:

"Perused the records and heard both the parties. From the perusal of the record it transpires that the foreign body had really been lost inside the operating area by the operating surgeon of the opposite party which caused distinction and formation of lump. This has been admitted by the opposite party. The subsequent operation done at Sahyog hospital by Dr S.K Banerjee, consultant surgeon has clearly has clearly revealed the extraction of this foreign body which was a Tetra Sponge and which was also show in the Ultrasonography report of P.K Imagine before operation. Though the Ultrasonography report simply mentioned the presence of the foreign body which could be diagnosed and extracted after the second operation. This doctor Banerjee has given a certificate in this regard and has also explained that Tetra Sponge is a large size sponge, made of multilayer gauze and used to soak blood and pack the loops of intestine during operation of the abdomen. The Hon'ble National Commission in the case law referred to above has clearly found such non removal of gauze left behind under surgery evident from C.T Scan report was a clear cut case of medical negligence. The opposite party in this case is definitely guilty of serious deficiency as well as medical negligence as the Tetra Gauge was actually left behind after the first operation which was removed after the second operation by another surgeon. The averment of the opposite party that this Tetra Gauge was not histopathological tested does not and cannot give any relief to this opposite. So this is a clear cut case covered under the principle of Res IPSA Loquitor and no opinion of the expert is required in the instant case and the medical negligence on the part of the opposite party is proved beyond doubt. Under the fact and circumstances of this case we direct this opposite party to refund Rs 16,43 7=00,which was taken for operation of the complainant at the time of operation. This opposite party is further ordered to pay Rs 18,050=00 which was paid by the complainant for her second operation at Shayog Hospital. The opposite party is further ordered to pay compensation of Rs 50,000=00 for causing unnecessary physical, financial and mental agony to this complainant addition to the cost of two operation mentioned above. All these payments along with cost of Rs 5,000=00 must be paid within a period of two months from the date of receipt of this Order failing which the same shall be realized through due process of law. Being aggrieved by the quantum of compensation, the Complainant filed an Appeal before the State Commission. The Appeal was partly allowed and the Order of District Forum was modified with the following observation:-

"6. Here, the admitted position is that the learned District Forum has overlooked the incurred expensed regarding purchase of medicine form the outside of the hospital, pathological test and ultrasound, which are not included in the bill of Kurju Hospital for Rs.22,000/- and expenses incurred in proper nutrients during the period of treatment and recovery of the patient and infant baby and other expenses at Rs.20,000/- . The learned counsel for the Respondent has referred to decision in their written notes of arguments but we are not going to decide the case on merit in view of the fact that the Respondent Kurji Hospital has accepted the verdict and has not challenged. So, only thing, which is to be considered here as to the adequacy of the compensation awarded to the Complainant".

Dissatisfied by the Order of the State Commission, for further enhancement of Compensation the Complainant again filed the revision petition.

HELD: The medical record of Sahyog Hospital revealed that the Complainant and her husband approached Dr S.K

Banerjee of Sahyog Hospital Patna for her abdominal pain after the Caesarean operation. The Ultrasound performed at P.K. Imagine Ultrasound Centre revealed a foreign body with mild reaction around adhered omental and bowel loop. Dr S. K. Banerjee performed the operation and removed large size "Tetra Sponge" from the petitioner's abdomen. It is pertinent to note that admittedly the Complainant was operated again. After the removal of the alleged foreign body (tetra sponge) by Dr. S. K. Banejee, it was not sent for Histopathology examination for final diagnosis. However, on careful perusal of the operative notes, the operating Surgeon recorded about the multiple adhesions of intestinal loops and purulent material. Thus, in my view it was the foreign body reaction, which cannot rule out possibility of tetra sponge as revealed by the Surgeon. ***The State Commission was justified while awarding the enhanced compensation to the Complainant, which, in my view, does not deserve for further enhancement. The award was just and proper to the sufferings of the Complainant.*** The two fora below have given concurrent findings of facts. I do not find prima facie any jurisdictional, error illegality or material irregularity in the Orders passed by the fora below warranting any interference in the revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. I would like to rely upon the precedents of the Hon'ble Supreme Court in the cases viz '**Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd** 2011 11 SCC 269 and '**Sunil Kumar Maity vs. State Bank of India & Anr.** Civil Appeal No. 432 / 2022 Order dated 21.01.2022..

Based on the afore discussion, I do not find any merit in the present Revision Petition and the same is dismissed. The parties shall bear their own costs.

Labouring Hands…Bonded Whirls!

Sadiya R. Khan
Advocate

Wherever it's another world
None desire to learn
The Bonded Whirls
Hidden Realities
21st Era`s Tragedy
Toiling for Morsels yet
Labour.Labour. Labour
Migrant. Migrant. Migrant
So far from Daffodils
So far from Jack and Jill
So far from twinkle stars
Speak Justice and Law?
O! Dear Laws…
Re-read the implemented flaws
Painful souls soles soils
Justice sores. Loud roars. Sweat Ores.
Law until its fought
For Labour Rights. Human Rise
Rich knew nothing
Bragging. Counting. Controlling
Middle lost in burdens
Poor remains poor
No cure. Crippled for sure
Clutches of Poverty
Not liberated by any
Eternal slavery continues
As I see sunrise…
And I see sun set…
Miniscule legal horizons...
Labouring hands
Never at rest
Shifts and Burdens
Migrants are urgent
Overseas is hell
No legal checks
In Miseries they dwell
Overseas Migrant?
Dear Labourers?
None wrote so?
Stuffed rooms a human slavery
Sleep. Bathe. Cook. Eat
Within few square feets
Six to seven labouring hands
Congested breaths. Humanity Unrest.
Any Saviour Theories?
Call Darwin. Call Darwin. Call Darwin
International Labour Reforms
Conventions never speak this
Why for Global laws?
Nothing for the crawls?
Call it modern slavery
Worst forms of all
Hidden under Great trajectories
Labour Remorse. Labour Remote.
Labour Reforms
Bonded and left **Versus** Left and bonded
A hidden test
Laws . Laws . Laws
Dignity promised to all
Why a labourers sweat orphaned?
Why labourer unfated?
Why labourer tested?
Why labourer devoid of pure dignity?
Why labourer not kindly embraced?
Why labouring hands weep?
Cruelty is weak
Wisdom at times cheat
Has a labourer wronged?
For he is poor and thou strong?
This disparity
Is man-made like laws
Pay for work is no charity
It's a sweat earned
Not of the rich
Of the poor.
Equal pay for equal work
Let kindness be blended with law
Globally said heal the world
And labour whirls?
Pain. Agony. Torn clothes
Justice Doors. Justice doors. Justice doors.
By-laws on labour?
Destinies child or Wraths child?
Calling all the Nations
Have a heart that melts
Abolish slavery on ground
For they own no fortune spells?
No Legal help
Not born to be crippled?
Own dignity as you do
Own Life as you breathe
The Powerful Nations
Can only measure your power
How you treat labourers
And not befool
Nothing for Laborer's Progeny?
Why Sustainably Owning...
Generational Poverty?
Calling for Goals
From SDGs to MDGs….
Build a dignified life
For labourers. Of Labourers
Great is Artificial intelligence
Not to Replace…Poor labourers
If ever .. disastrous replacement furore
To labourers who own
Nothing but morsels ..exchanged for sweat
Intra Nation. Migrant. Overseas
All is a Labouring Whirl Web.

PROSECUTION SANCTION- A LEGAL MANDATE & ROLE OF PRIVATE COMPLAINTS

Saksham Bhardwaj[1]

The concept of the prosecution sanction was embraced in order to confer protection to the govt. employees acting in good faith in the discharge of their official duties. It is a prerequisite for an investigation agency in certain offences, to get prior approval of the appropriate government, for initiating probe or for enabling court to take cognizance. The policy behind the concept of prosecution sanction is to thwart practice of raising vexatious claims against the public servant. The immunity is extended to the employee in order to ensure that they will discharge their functions hassle-free and without being able to succumb to external pressures. Also the scope of annoyance which may be caused to the public servant will be nullified. If the conduct of the public servant found suspicious (backed by sufficient evidence), the sanction can be asked from an appropriate government in order to set justice delivery system into motion. The appropriate government must be furnished with all the relevant records in order to enable itself to decide whether the facts emerging from the material supplied are satisfactory to grant prosecution sanction against the alleged public servant. Also, the government should not hold back response in absence of plausible reasons for granting prosecution sanction for an indefinite period. The grant of the prosecution sanction by the competent authority is merely an administrative function and not a quasi-judicial act and the time limit fixed for deciding the grant of prosecution sanction in affirmative or negative should be limited to 3 months, as finds mentioned in **Vineet Narain v. Union of India (1998) SC.**[2] However, the identical time limit with further extension up to one month has now been incorporated through an amendment in section 19 of the Prevention of Corruption Act, 1988.

Under various provisions ensuing from different legislations, the mandate of seeking prosecution sanction flows. Section 197 of the Code of Criminal Procedure, 1973 provides for prosecution of Judges and Public Servants. *"The intention behind Section 197 Cr.P.C is to prevent public servants from being unnecessarily harassed. The Section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act which constitutes the offence, is the official duty of the public servant concerned. Such an interpretation would involve a contradiction in terms, because* ***an offence can never be an official duty.*** *The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty."*[3] This clarifies that the nature of the act will determine the application of the section to a particular case. Further, in **Bhagwan Prasad Srivastava v. N.P. Mishra** (1970) Supreme Court has held that *"the object and purpose underlying Section 197 Cr.P.C. to afford protection to public servant against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty".*

Section 17A of the Prevention of Corruption Act, 1988 provides for the condition precedent of seeking government approval before initiating enquiry, inquiry & investigation (w.r.t. decision taken in the course of discharge of official function) along with the limits drawn to take the decision. By mere reading of this provision, it can be prima face said that the mandate of seeking prior sanction will melt down if the allegations are criminal in nature as also observed by Kerala High Court.[4]

SCOPE OF PRIVATE COMPLAINT

The demand by the private person seeking prosecution sanction, against the public servant, is long drawn and apparently in oppose to an old convention where such sanction from the government can be sought only by an investigation agency. This demand needs to be checked in keeping with the judicial decisions and development taking under relevant provisions of an Act like Prevention of Corruption Act, 1988. The origin of this concept can trace back its roots from **Subrimanian Swamy v. Dr. Manmohan Singh** wherein it was held that *"The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the*

rule of law." Also it was held that *"There is no provision either in the 1988 Act or the Code of Criminal Procedure, 1973 (CrPc) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence."* Seemingly, this decision might have triggered the govt. in 2018 to amend the Prevention of Corruption Act, 1988. Now the amended section 19 of the Prevention of Corruption Act, 1988 provides for previous sanction as a necessity for prosecution of public servant. Proviso 2 appended to this section talks about *"person other than a police officer or an officer of an investigation agency or other law enforcement authority"* who can make a request for prosecution sanction. It implies now even the private person can go ahead for procuring prosecution sanction w.r.t. the conduct of public servant from appropriate government. *"In the case of a private complaint, two pre-conditions are insisted upon for making a request for prosecution sanction. The first condition is that a private complaint should have been filed in a competent Court and the second condition is that the Court has not dismissed the compliant under Section 203 and has directed the complainant to obtain prosecution sanction. In the case of a private complaint, it has now become the responsibility of the Court to direct the complainant to obtain prosecution sanction."*[5] Ostensibly, it means that the Court can entertain a complaint directly from an individual even when the prosecution sanction is not available immediately and appears to be forthcoming.

Recently, the investigation angle in reference to section 17A was discussed wherein it was decided by the Karnataka High Court in **Abraham T.J v. B.S. Yediyurappa (2022)** that *"The bar for enquiry, inquiry or investigation under Section 17A of the Prevention of Corruption Act, 1988, without previous approval is only a fetter on the power of the police authorities. Wherever the court itself is in seisin of a private complaint and proceeds to order for investigation by the authorities pursuant to order under Section 156(3) of Cr.P.C., such a bar under Section 17A of the P.C. Act would not be an embargo on the court's power,"* the Karnataka High Court had said.[6] However, the Supreme Court has stayed the said Karnataka High Court order which had proceeded on the basis of private complaint against an accused. The court will be testing the contentions at length and accordingly will be able to oscillate in favor of one party.

In conclusion, the purposive interpretation of the concept of prosecution sanction needs to be done in each and every case unfolding different set of facts. Apparently, there is no strait jacket formula for granting sanction. Rather application of mind needs to be done in order to ascertain the veracity of the complaint and to check whether the case has been made out. As far private complaint is concerned, it is a welcome move since the person can directly approach the court against the alleged corrupt public servant and can seek adequate remedy. This will ensure that the Court will now have an active role in hearing the plight of private complainant who is acting with an intention to unveil the Corruption behind the closed doors. So far it is understandable that the room for entertaining private complainant has broaden. As a rule of caution, the prosecution sanction should not be granted to private person as well without analyzing the documents supplied in support of his/her claim. The tool of prosecution sanction should be used for furthering ends of justice in line with of Constitutional ethos.

(Views expressed are personal.)

[1]Advocate, Author and Constitutional Blog Writer.
[2]https://www.livelaw.in/all-you-need-to-know-about-prosecution-sanction-part-iii/
[3]https://www.livelaw.in/need-know-prosecution-sanction-part-ii/
[4]https://www.livelaw.in/news-updates/kerala-high-court-sanction-section-17a-prevention-of-corruption-act-vigilance-probe-ex-vacb-officer-193619.
[5]https://www.livelaw.in/an-overview-on-the-prevention-of-corruption-amendment-act-16-of-2018-part-ii/
[6]https://www.livelaw.in/news-updates/karnataka-high-court-yediyurappa-vijayendra-order-set-aside-restored-private-complaint-prevention-of-corruption-act-208731

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

Master the preferred pronunciations of English words, legal terms, and proper names.

Like Eliza Doolittle in My Fair Lady, you'll be thought either sophisticated or simple-minded, knowledgeable or ignorant, not just by what you say but also by how you say it. Besides avoiding dialect (ain't), informalisms (yeah), and common illiteracies (misusing infer for imply, saying "nucuius' for nucleus, or pronouncing athlete and realtor as though they, were three-syllable words), ensure that your pronunciation of proper names, legal terminology, and even everyday English words is orthodox. The lawyer who refers to Chief. Justice Taney as /**tay**-nee! instead of the correct / **taw**-nee/, who mentions the rule oflenity as if it were /**Ieen**-i-tee/, or who invokes the maxim /no-site-tur eh soh-keys / (noscitur a sociis is pronounced /**nos**-i-ter ay [or ah] **soh**-shee-is/] will never be mistaken for an expert.

So how does one learn "preferred" pronunciations? And by whom are they preferred? Fair questions both.

Many words have more than one pronunciation. Sometimes the variants are equally acceptable (for example, aunt can be either I anti or I ahnt/). But more often (in often, the -t- is preferably silent) one pronunciation typifies educated speech and the other uneducated speech. Naturally, being a professional with an advanced degree-unless your persona is that of a folksy, down-home lawyer-you'll do better to stay within the mainstream of standard pronunciation. Hence "preferred" means "preferred by well-educated people:"

When in doubt, consult a good, current desktop dictionary. Better yet, consult a resource such as Charles Harrington Elster's Big Book of Beastly

Mispronunciations (2d ed. 2006). There you'll find excellent, engaging essays on the best ways to say all the most troublesome words in the language. Be prepared to learn that you've been mispro- nouncing comptroller, coupon, err, flaccid, heinous, and schism all these years. Elster has been the pronunciation editor of Black's Law Dictionary since the seventh edition of1999, so you can find authoritative, easy-to-follow pronunciations of distinctively legal terms in the current editions of that work.

Pronunciation can be a tricky matter. For one thing, there are regional variations. Voir dire is pronounced /vwahr deer/ almost universally, but it's /vohr dyer! in Texas and surrounding states. A Texas lawyer would be foolish to appear in a Texas courtroom and pronounce the phrase like some newly arrived outlander. And what's a visiting lawyer who's been admitted in Texas pro hac vice (/proh hahk vee-chay/ or Iproh hak veye-seez") to do? Probably the best course, if you're linguistically flexible enough, is to use the local pronunciation in that proceeding, offensive as it may be to your ear. Otherwise, you'll reinforce the unhelpful fact that you're an out-of towner.

And what's a Texas lawyer to do in a proceeding elsewhere? Again, if you're nimble, you'll probably adopt the standard pronunciation /vwahr deer/. Otherwise, you may come off as a rube. But if you have a strong regional accent for all your words, you might sound funny pronouncing only /vwahr deer! like Webster. Use your judgment.

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

KNOW YOUR EGO

Your ego is your self-image. But it's an image that often clashes with reality. Egos often get in the way of negotiations. Does your self-image say you're intelligent? Or the prince of negotiators? Or that you're always right (except when you think you're wrong)? Then you have a problem if these qualities are not confirmed – or actually disproved – in the real world, around the negotiations table. Your reaction will then be to try to rescue your age. But the conflict has nothing to do with your ego. Deal with it when you get home. Take a good look at your ego. Get it on fit reality. And if this isn't possible, make sure your ego doesn't obstruct your path to an agreement.

THE SEARCHER

By Joe Rhodes

The girl in the photo had wide eyes and a princess smile, blond hair, a strand of plastic pearls dangling from her neck. James Spring felt a pang in his heart the moment he saw her on his computer screen. She looked so happy and innocent, so much like his own daughter, Addie, who was tucked in upstairs. When he saw the picture and read what had happened to six-year-old Viana and her infant sister, Faith, he knew what he had to do.

His 40th birthday, on April 29, was just a few weeks away, and Spring was looking to keep a promise to himself. He'd been restless the past few months, distracted by the fear that he'd settled a little too easily into middle age. He was successful and proud of the life he had built: the marketing job in San Diego, the spacious house in the La Mesa suburbs, the loving wife, the two wonderful kids-three-year-old Addie and eight-month-old Caden. But it didn't feel like enough.

If he hadn't met Kellie, the woman he married six years ago, he'd probably still be coming up against shady characters. But she convinced him-made an ultimatum of it, actually-that if he was going to be her husband and the father of her chiildren, he couldn't go dashing into any more war zones. He fed his need for adventure by scuba diving and racing his motcorcycle in the Baja 500. And then, his birthday approaching, he started talking about doing something that would make him feel better about himself.

"Maybe there will be an earthquake and I can dig people out of the rubble," he told Kellie. "Or a helicopter will go down and they'll need people to search." She tried to ignore him, hoping he'd forget about his quest and just have a party in the backyard. But he wouldn't let it go. "I told her, 'I just want to do something that's going to help somebody else.' "

The house in Soquel, California, where Gene and Ellern Pauly have lived for 32 years is overflowing with photos of their family: the five children they raised together, the foster kids they took in, the grandkids, including Viana and Faith.

Most of the photos of their daughter Michele, Viama and Faith's mother, were taken during her high school years, when everyone called her the golden child. A cheerleader, at ballet and tap dancer, the president of Students Against Drunk Driving, she was the pretty one, the popular one, the daughter every parent hoped to have. She graduated from Aptos High School in 1988, spent six months with a performance group in Japan, and earned a dance education degree from Western Kentucky University.

Ellen Pauly, 63, still doesn't understand what happened to that Michele. She doesn't recognize the woman her daughter, now 39, has become: a meth user, a thief, a con artist, possibly an accessory to murder. "I still love my daughter," she says, "but she's not the Michele we raised. Whether that Michele can ever come back again, it's hard to tell. I'm not counting on it."

Ellen is convinced that she might not have seen much of Viana if Michele hadn't been broke in 2004. But Michele needed help taking care of her then-three-year-old daughter, so she moved into her parents' house and told them she'd left Carelli. She got a job. Things looked promising.

And they were-until a few weeks later, when Carelli showed up and took Michele and Viana away. The couple fell into the same patterns as before and soon racked up convictions for drug possession and arrests for petty theft and credit card fraud. The final straw for the Paulys came in December 2006, when police burst into a motel room in nearby Capitola to arrest Carelli and Michele. Meth was scattered on the nightstand; Viana, age four, was found hiding under the bed. Gene and Ellen Pauly petitioned for custody of their granddaughter and won. But over the Paulys' objections, a judge granted Carelli and Michele the right to unsupervised visits. Viana often spent weekends with her parents and their new baby, Faith, born in October 2007 with Down syndrome.

At the start of one of those weekends, in January 2008, Ellen noticed that something didn't seem right. Michele appeared more scattered than usual as she scooped up her daughter's overnight bag and went off into the rainy afternoon. Ellen had a bad feeling-but no way of knowing it would be ten weeks before she would see Viana again.

Hoskins's sister, Ureena, reported him missing, but the authorities didn't do much more than file a report. Three weeks later, she went to San Francisco and started investigating on her own. She was the one who found the neighbor and persuaded the police-finally, on January 24-to interview Carelli. He denied the fight with Hoskins, but the police brought in cadaver dogs, who

seemed to indicate there was a body in Carelli's van. Carelli at first gave authorities permission to search it but then, according to police, changed his mind and demanded his keys back. They impounded it instead and, amazingly, let him go. Eight days passed before police searched the van and found Hoskins's body inside. By then, Carelli and Michele had fled to Mexico, the children in tow.

Kellie Spring cried when her husband first told her what he was going to do. But when she saw Viana's picture, she agreed, reluctantly, that yes, he had to go. She asked him only to wait a couple of days before leaving. He needed a plan. He needed supplies. Mostly, he needed to give her a chance to accept what he was about to do.

Spring agreed to wait-and started working the phones. At first he assumed there would be an official search party to join, but after calling law-enforcement officials, it became clear that no one in Mexico was looking for the fugitives or the children. If he went, he'd be on his own.

Next he contacted the Pauly family. Missing-children cases draw attention from all kinds of characters, so he knew he might be seen as some kind of crackpot. Indeed, when he talked to Rob Doubleday, Viana's uncle and the family's spokesman, they'd just heard from self-proclaimed psychics, sure they knew where the children were. Doubleday thanked Spring for his interest but doubted he could help.

Spring made it clear he was going to try anyway. The next day, he had 2,500 posters printed up in Spanish, with secuestrada ("kidnapped") in bold letters across the top. He included photos of Viana, Faith, Michele, and Carelli, along with a shot of a white 1996 Mercury Mystique, the las:t car they'd been seen in.

He packed a flare gun, a machete, and all the food he thought he might need. And then, early Sunday morning, 36 hours after his initial Internet search, as Kellie wattched with Addie at her side and Caden in her arms, James Spring drove away.

He never doubted he would find the girls. He'd lived in Baja for four years in his 20s. "I know the whole 1,059 miles of it," he says. "I know every place to look, even the ones the Mexican police don't know about."

He had the cops check it out, but it wasn't Carelli's car. If the police, skeptical of the American with the posters and the staple gun, had doubted his veracity before, they were really questioning it now. He couldn't afford to cry wolf. "I'm sorry," he told the officers. And then he moved on.

On Monday morning, he headed farther south, to the small village of Santa Marie. A gas station attendant said yes, he'd seen the couple within the past three weeks. An off-duty cop confirmed the sighting. Spring was already closing in. "I can't tell you why, but I woke up that day feeling great," he says. "I felt like something was going to happen."

At a gas station in EI Rosario, 36 miles south of San Quintin, he began taping up a poster when an attendant said to him in Spanish, "I have seen this woman."

"When?" Spring asked.

"Three days ago," the man said. "She was asking about a cheap place to eat." Spring walked 100 yards to a motel he knew to be popular with Americans. Sure enough, two men at the front desk told him, the couple had rented a shack a few doors away. Michele was giving dance lessons to local kids to earn a few pesos. "I could feel the goose bumps forming," Spring says. Carelli and Michele were his.

He drove to the police station, a small cinder-block building on the town square, asked for the comandante, and informed him that he had a suspected murderer in his village. The comandante requested help from the state attorney general's office, the Baja equivalent of the Texas Rangers, but they wouldn't get to EI Rosario before dusk. Until then, Spring and the comandante would have to wait and hope.

Spring kept the Pauly family informed and told Kellie he was safe. He spoke briefly to a U.S. marshal in San Francisco. "This is a tiny village," Spring warned. "Carelli is going to find out I'm here. And when he learns that, he'll leave. And I have him. He's here. Now."

As the sun began to set, Mexican authorities swarmed the house where Carelli, Michele, and the kids were staying. Spring was ordered to remain at the police station during the actual arrest. "I was pacing the whole time, literally doing laps around the station," he says. The officers-"big guys in five unmarked trucks, with big mustaches, black leather jackets, and AK-17 rifles," according to Spring-made the arrest. Spring listened on the police radio. "I hear the guy kind of giving a play-by-play at the dispatcher desk," he remembers. " 'Okay, they're at the house. One of the cars is circling around.

They got 'em!'"

The officers returned to the station five minutes later, Carelli shackled in the back of one pickup truck, Michele and the kids in another. "They pull right up in front of me on this little patio area and yank Carelli out of the truck," Spring recalls. "He looks at me, and you can just see that whatever he had alive in him

is gone, He sees a white face and he knows the jig is up."

Gene Pauly was waiting on the U.S. side of the border. He hugged his granddaughters, Viana yelling, "Grandpa, Grandpa!" He did not speak to Carelli orto his' daughter-or even look at them-as they were turned over to federal marshalsand escorted back to San Francisco, where Carelli awaits trial for murder and Michele for accessory to murder for helping him avoid capture. Both also face child abduction charges.

The family decided that caring for a traumatized six-year-old and an infant with special needs was too much for the Paulys. So Rob Doubleday and his wife, Sherry, Michele's sister, took custody of Faith.

The Pauly family has invited Spring to visit the girls in Soquel whenever he wants. They'd like to thank him in person. He appreciates the gesture but has so far declined. "I feel like I've done my bit," Spring says. "In my mind, this was; always about the kids. I was never looking for attention or praise. I just wanted to do the right thing."

The Pauly home features new photos of the children, together and happy. Faith is alert and healthy, and although Viana remembers her ordeal and misses her parents, she's full of smiles and hugs most of the time. "That little girl," Gene Pauly says as he watches her skip across the living-room floor. "Ten weeks without her was just too long."

Richard Carelli pleaded guilty to involuntary manslaughter in the San Francisco death of his roommate in 2011 and was sentenced to six years in prison. As part of the plea deal, charges against Michele Pinkerton for being an accessory to the crime were dropped. Pinkerton pleaded guilty to child abduction and passing a bad check in 2010 and was sentenced to three years in prison. Carelli and Pinkerton have served their sentences and are no longer incarcerated.

Lawyers' Wit

- Q: Do you know how copper wire was invented?
  A: Two lawyers were fighting over a penny.
- Q: Why don't lawyers play hide-and-seek?
  A: Nobody will look for them.
- A couple of friends meet after a long time:
  "I divorced my wife." One says.
  "Really? How did you do it?"
  "We hired a lawyer who helped divide the assets and stuff."
  "What about the kids?"
  "Well,...we've decided that whoever got more money would also take the kids."
  "That sounds fair. And who got them?
  "The lawyer."

"I READ THE JUDGE YOUR TV CREDITS, BUT YOU'RE NOT A BIG ENOUGH CELEBRITY HE COULD LET OFF!"

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

Jean Giraudoux

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:

Trikonasana

Benefits: It strengthens the knees, ankles, legs, chest, and arms.

It completely stretches and opens up the groins, hips, hamstrings, and calves and also the chest, spine, and shoulders.

It increases both physical and mental stability.

It improves digestion and stimulates all the abdominal organs.

It helps reduce back pain and sciatica. It also serves as a therapy for flat feet, osteoporosis, neck pain, and infertility.

It reduces stress and cures anxiety.

Procedure: Stand upright and place your legs about three and a half to four feet apart. Make sure your right foot is placed outside at 90 degrees and the left foot is placed in at 15 degrees. Align the center of your right heel with the center of the arch of the left foot. You need to remember that your feet are pressing the ground, and the weight of your body is balanced equally on both feet. Take a deep breath, and as you exhale, bend your body to the right from below your hips, ensuring your waist is straight. Lift your left hand up and let your right hand touch the ground. Both your arms should form a straight line. Depending on the level of comfort, rest your right hand on your shin, ankle, or outside the right foot on the floor. No matter where you place your hand, make sure you do not distort the sides of your waist. Quickly check on your left arm. It should be stretched out towards the ceiling and in line with the top of your shoulder. Let your head sit in a neutral position or turn it to the left, with your gaze set on your left palm.

Your body should be bent sideways, and not backward or forward. Your chest and pelvis should be wide open. Stretch to the fullest, and focus on stabilizing your body. Take deep, long breaths. With every exhalation, try and relax your body more. Inhale and come up. Drop your arms to your side and straighten your feet. Repeat the same using the left leg.

Healthy Food

Dill leaves

Dill leaves, known as suva bhaji in Hindi (shepu in Marathi) is a green, leafy vegetable that is loaded with various nutrients like calcium, magnesium, ironand flavonoids. Commonly used in soups, salads, pickles and other dishes, this leafy vegetable has a unique taste and a distinct flavour. Dill leaves are low in calories and high in nutrients, which have been widely used since ancient times for its amazing medicinal properties. Here are 7 reasons you should include dill leaves in your diet:

Protects from infections

Polyacetylenes, compounds present in dill leaves, which are known to exert anti-bacterial and anti-inflammatory activity. In ancient times, dill seeds were applied on wounds to prevent infections. Monoterpenes and flavonoids present in these leaves inhibit microbial growth and protect the body from free radicals, thereby preventing many health complications.

Helpsin digestion

Apart from being used as an appetizer, dill leaves are known to stimulate peristaltic motion (passage of food) of the intestine which in turn improves functioning of the digestive system. Many research studies have shown that the seed extracts of dill exertsprotectiveeffect on the gastric mucosa (stomach lining). This herb is also widely used as an effective herbal remedy for heartburn.

Lowers blood sugar levels

Dill leaves contain an essential oil known as Eugenol, which has far-reaching therapeutic use in treating various diseases. Several research studies have proved that this herb lowers blood sugar levels and insulin resistance in people suffering from diabetes.

Induces sleep

The presence of flavonoids and B-complex vitamins in dill leaves make it a perfect natural remedy for insomnia. This leafy vegetable exerts a calming effect on the brain and the body by activating the secretion of various hormones and enzymes responsible for a good night s sleep.

Maintains hormonal balance

Being loaded with flavonoids and other essential nutrients, dill leaves are known to stimulate secretion of hormones which play a key role in regulating menstrual cycle. Research studies have proved that increased intake of dill leaves increases blood levels of progesterone hormone thereby stabilizing irregular periods and acting as an anti-infertility agent.

Exerts heart-protective effect

Dill leaves are known to act as a powerful cardio-protective agent, due to their ability to lower blood cholesterol levels in the body. This natural herb not only reduces blood levels of LDL (Low density lipoprotein bad cholesterol) and triglycerides but also improves HDL (high density lipoprotein good cholesterol) levels in the body.

Prevents osteoporosis

Being one of the best plant sources of calcium, dill leaves not only prevent bone loss but also strengthen bones. Regular consumption of these leaves (as a part of diet) prevents osteoporosis caused due to calcium deficiency.

Recipe of the Month

Oats And Dill Leaves Paratha Recipe

Ingredients:-

Butter - 1-2 teaspoons.

- Dill leaves (chopped) - 1 bunch.
- Green chillies (chopped) - 1 number.
- Cumin powder - 1 pinch.
- Coriander powder - 1 pinch.
- Salt - to taste.
- Onions (chopped) - 1/2 cup.
- Oats - 1 tablespoon.
- Wheat flour - 1 cup.
- Oil - 1-2 tea spoon.
- Water - 1 cup.
- Butter - 1 tablespoon.
- Lime juice - 1 tablespoon

Procedure:-

- Heat butter in a pan, add dill leaves, green chillies, cumin powder, coriander powder, salt, onions and saute it, cook for 2-3 minutes.
- Add oats and mix nicely, transfer into a bowl and make round balls and keep aside.
- Make paratha dough of wheat flour, little salt, oil by mixing it with water.
- Divide dough into portions and make small flat round shape and stuff the dill leaves ball mixture and seal edges.
- Roll the stuffed dough into paratha and place it on hot tawa.
- Cook paratha on both sides using oil and butter.
- Now oats and dill leaves paratha is ready to serve.

Happy Holidays

Pachmarhi

There is surely a plethora of places to visit in Pachmarhi and the long-awaited list of the off-the-beaten trails in Pachmarhi is what you are leafing through right now. Pachmarhi is gorgeously rich in its geography, history and epical events it has witnessed. Another name for Pachmarhi is "Queen of Satpura," and this pretty hill station is situated in the heart of India at around 1100 meters above sea level. The hill station is embellished by dangling roots and soaring tree branches which make the best home for a range of flora and fauna in the region.

It holds a mythological significance in the Indian history where it is believed to be the abode of Pandavas during their exile. The Pandav Caves are stated as evidential proof of the belief. Pachmarhi tourist places comprise of numerous caves, waterfalls, hilltops, temples and wildlife reserves which can contribute a wonderful itinerary for exploring this quaint hill station of Madhya Pradesh.

Pachmarhi was always there on the Indian land but was discovered in the year 1857 by Captain James Forsyth. You will even find corroboration of the stone age in the form of paintings and cave drawings depicting the era. The hilltop temples housing natural Shiva Lingam and other epical traces can make a wonderful experience. The wondrous ridges and rifts, clefts and scarps found in the hills of Satpura range are true marvels of nature.

If you are in the Hoshangabad district of Madhya Pradesh or planning to be and seeking for a list of Pachmarhi places to visit, then you must scroll down this assemblage. The climate is mostly temperate and mild that makes Pachmarhi a suitable getaway throughout the year.

Pachmarhi was the summer capital of British in Madhya Pradesh and is now an Army cantonment area. This small town encompasses pristine waterfalls, meandering rivers, densely covered National parks, ancient caves and historic monuments which can make a memorable escapade.

Labour Laws Q/A

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

IMMUNITY OF UNION LEADER FROM PUNISHMENT

Q. Whether a union leader can claim immunity from punishment because of his association with the union?

A union leader cannot claim immunity from punishment for breaking discipline any more than any other worker. Where a union secretary absented from duty without permission and without application which amounted to gross violation of discipline entailing dismissal from service and if such a worker is dismissed by his employer, the Supreme Court has held that the industrial tribunal should not order his re-instatement since a union leader could not claim immunity to break discipline.[1] The Madras High Court has also held that an office bearer of a trade union leader cannot claim immunity from a misconduct.[2] In another case, the Supreme Court has held that dismissal of an office-bearer of the union, guilty of distribution of pamphlets will not be interfered.[3] The Supreme Court further held that even when an employee is a union leader, he will not have immunity from misconduct since he is also bound to maintain discipline.[4] Also, dismissal of a turner-cum-fitter who was Secretary of the union, as upheld by the labour court and industrial court, will not be interfered when he has humiliated his superiors to sweep the premises with broom otherwise they will be beaten by him.[5] Even though the trade union is entitled to immunity from civil suit to be filed by the employer but at the same time it is not open to the union or its members to indulge in violence and cause obstruction to the willing workers to come in or go out and movement of material hence once the union resorts to such activities, the immunity will not be available and the suit, as filed by the employer, will not be barred by the said provisions.[6]

An office-bearer of the Trade Union has no privilege for misconducts. Hence keeping in view the gravity of charges about slowing down and not adhering to the norms of production, the punishment of dismissal as imposed has rightly been confirmed by the Labour Court and the High Court upheld its findings.[7]

References:

1. *Burn & Co.* v. *Their Workmen*, AIR 1959 SC 529: 15 FJR 338: 1959 (I) LLJ 450.
2. Also see *M.H. Devendrappa* v. *Karnataka SSID Cop,* 1988 Lab IC 1319 (Kant HC): AIR 1998 SC 1064: 1998 AIR SCW 850.
3. *Dharampal (Dead) through Legal Heirs* v. *National Engineering Industries Ltd.*, 2001 LLR 837 (SC).
4. *Usha Breco Mazdoor Sangh* v. *Management of M/s. Usha Breco Ltd.*, 2008 LLR 619 (SC): AIR 2009 SC (Supp) 994.
5. *Luthfuddin* v. *Asiatic Oxygen and Acetylene Company Limited*, 2008 LLR 1009 (Bom HC).
6. *Avtec Limited, Power Products Division Poonapally, Hosur* v. *Superintendent of Police, Krishnagiri District,* 2009 LLR 62 (Mad HC).
7. *M. Selvaraj* v. *The Presiding Officer, Principal Labour Court, Chennai*, 2014 LLR 972: 2014-III LLR 184: 2014-III LLN 186 (Mad HC).

REAL LAW SCHOOL PERSONAL STATEMENTS

AVOID IMPLYING THAT LAW SCHOOL IS YOUR LAST RESORT

You might be wondering what a guy like me is doing even applying to law school. After all, I spent the last twenty years of my life criss-crossing the highways and byways of these United States in a beat-up van, playing rock 'n roll music to drunk people in bars-the seedier, the better. You might think that I am the type of guy that would need the assistance of a lawyer, not the other way around. But the fact of the matter is that it was that very beat up van, on that very winding road, leaving yet another seedy bar, that was the location in which I first realized something very important.

Allow me to set the scene: I was quickly driving along the Pacific Coast Highway about two years ago, on a beautiful summer's night. My band and I had just played The Bucket outside of sunny San Francisco, and were going to LA where we could crash out before playing at a club called The Smell. "This is the life," I thought to myself sincerely on that beautiful night as I drove. It was one of my favorite drives, but nonetheless, I found myself distracted. Events had transpired that had made me unable to just kick back and drive smoothly and calmly through the dark night. This was because I was feeling angry. Very angry, in point of fact.

When I first graduated from Berklee College of Music, it was the 1990s.

The 90s might as well be a different planet from today, so far as the music industry is concerned. Things were not generally fair to musicians, but there was a lot more money floating around to throw at them. Many musicians would find themselves suddenly on major labels with serious contracts, making expensive music videos and having their album distributed all ove~ the country, even internationally. Nevertheless, most of these bands would leave the roller coaster ride with no money to show for it, but at least they had a good time. You cannot put a price tag on the stories we have.

Unfortunately, that joyride would come to an end soon after I graduated and became a professional musician, so I didn't get to enjoy the perks for very long. Soon, I was just another guitar player trying to make ends meet, except now there were a hundred other guys just like me, and not enough money to go around. However, dreams aren't rational, so we all kept scrambling for the crumbs of the shrinking pie. This led to many of us signing on to contracts that were just completely unfair.

Unsurprisingly, that was the reason why I was so angry on that highway.

My friend Tony's band had just headlined the show my band and myself had played back in the day. Tony is a bit younger than me, however he is a very accomplished player and songwriter. The audience went crazy for him, and his band should have been about to break big. But the thing that I knew, the thing that the audience did not know, was that they were stuck in a bad contract. All the heartbreaking tales of loneliness that had just practically brought tears to all their eyes were tied up in an album that their label had made dear they had no intention to release. The reasons were both stupid and typical, wrong beats per minute for radio, too depressing, no single. Nonetheless, they played their hearts out to the crowd, making them love these new songs that they would decidedly never be able to purchase. The situation was inspiring to me. However, it was also unfair.

I thought of my own circumstance: yes, I loved music more than anything in the entire universe. I loved listening to it, I loved playing it, I even loved driving in a busted van all night in order to be able to do so. But I was barely breaking even. had no savings, despite wanting to start a family with my girlfriend for years. The sad fact was that the music industry was ruining music for me, ruining the thing that I most loved.

It was then that I had a thought, which became an obsession, which is still burning within me as I type these words. To save the thing that saved my life I needed to make it a labor of love, not commerce. Music should be something I do because I want to, not because I need to be on the road forty-five weeks out of the year just to keep myself fed. Instead, as a profession, I would look to the

law. I would become a lawyer so I could make certain that guys like Tony didn't sign such terrible contracts and protect my fellow musicians forever more. And, with that inspiration, hopefully I have perhaps finally found a professional home.

JD MISSION REVIEW

Overall Lesson

Never resort to "X did not work out, so law is the next best choice".

First Impression

The applicant needs to ditch the entire first paragraph. One should never, ever begin an application essay by apologizing for oneself or by telling the admissions reader what he/she is thinking.

Strengths

The candidate's writing is vivid and compelling. His descriptions of scenes enable me to visualize them, and I like what I see. He is a good storyteller, and that can be a useful quality for a lawyer.

The arc of his essay can also work. The candidate is hoping to become a lawyer because after witnessing firsthand the legal challenges musicians face, he wants to help them. But the essay needs substantial revision.

Weaknesses

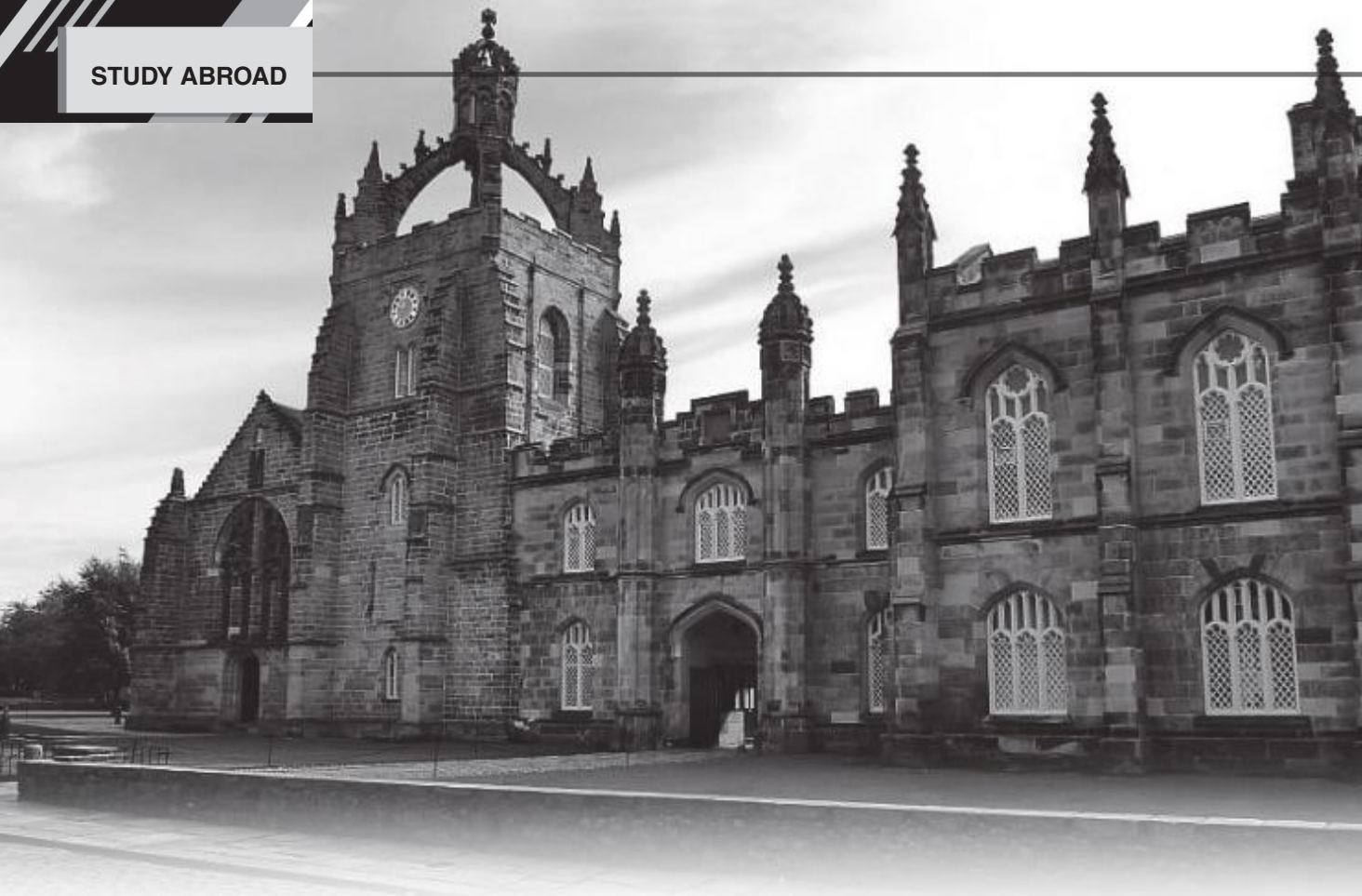
The applicant occasionally uses high-brow language that seems unnatural for him and ends up sounding awkward (e.g., "in point of fact," "events had transpired," "the location in which"). Although I actually like his conversational style, the essay needs fine-tuning in places where the tone becomes slightly too conversational (e.g., "crash out," "You cannot put a price tag on the stories we have").

He also needs to eliminate the implication that he is pursuing a legal career because he has become disillusioned with music. "Law by default" is never a good angle for a prospective law student-and it can be a somewhat dangerous one at that. The difference between the message he is sending in his current essay and the one 1 think he is actually trying to make is small but significant: because the music industry has been disillusioning for him, he wants to pursue law so he can help make the industry better for other artists.

Finally, for a similar reason, his last sentence does not work. It is too passive and implies that he is applying to law school because he has no idea what else to do.

Final Assessment

The first fix is simple: he should begin with "I was driving along the Pacific Coast Highway ...." He can still share how he spent the past 20 years in the music business, but those details do not belong in the opening paragraph. He (perhaps with someone else's help) also needs to make the essay's tone slightly more formal and less chatty. Finally, he must remove the suggestion that he is applying to law school because he is struggling to figure out what comes next in his life (and/or wants a mortgage).



SCHOOL OF LAW UNIVERSITY OF ABERDEEN

Welcome to the School of Law at the University of Aberdeen, one of the four "ancient" universities of Scotland, with law being taught here since 1495.

The School of Law offers an extensive range of both undergraduate and postgraduate programmes of study. We pride ourselves on delivering high quality, engaging and academically challenging programmes. Our learning environment is one of support and personal development leading to well-rounded and highly employable graduates. The School of Law offers a wide variety of LLB degrees. This includes the LLB with English Law, a degree which satisfies the accreditation criteria of both the English and Scots authorities. We also offer LLB degrees which provide students with the opportunity for a year studying abroad and we offer an accelerated degree for graduates. A varied Graduate programme is offered including taught Masters degrees, research degrees and the Diploma in Professional Legal Practice. There is an annual Summer School run with Baltimore and Maryland Universities, USA.

The School of Law has around

50 academic staff, 900 LLB undergraduates, 345 taught postgraduate students made up of: 200 LLM, 80 Diploma in Professional and Legal Practice and 65 postgraduate research students.

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LL.B.

We offer an LLB and LLB (hons) as well as a variety of combined undergraduate law degrees. Our Law With English Law Degree programmes are qualifying in all four constituent nations of the UK (Scotland, England, Wales and Northern Ireland). Please note that further professional practise qualifications together with 'on the job' practical experience are required in each country to achieve qualified solicitor status.

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This programme allows you the flexibility to study many disciplines of interest without the restriction of one specialised degree. Create a bespoke programme tailored by you to meet your personal academic needs and career aspirations.

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1. **Uttering of words with deliberate intention to wound religious sentiments will be dealt with**
   (a) Section 298 of IPC
   (b) Section 296 IPC
   (c) Section 297
   (d) None of the above
   Ans. **Answer is A.**
2. **Under Section 320(1), Cr.P.C for criminal intimidation, with section of IPC is applicable**
   (a) 503
   (b) 504
   (c) 505
   (d) 506
   Ans. **Answer is D.**
3. **Which of the following is an innovative form of Alternative Dispute Resolution mechanism**
   (a) Bar Council of India
   (b) Election Commission
   (c) Comptroller and Auditor General
   (d) Lok Adalat
   Ans. **Answer is D.**
4. **Which of the following is not a legal guardian of the property of Muslim minor**
   (a) Father
   (b) Brother
   (c) The executor appointed by father
   (d) Grandfather
   Ans. **Answer is B.**
5. **Who is garnishee**
   (a) A third party who is instructed by way of legal notice to surrender money to settle a debt or claim
   (b) A borrower arrested for defaulting
   (c) A person who cannot repay a bank loan
   (d) A person who mortgaged his farm land
   Ans. **Answer is A.**
6. **Under section 18 of the Land Acquisition Act, 1894 which of the following officers is empowered to refer the matter to the court**
   (a) The Tahsildar
   (b) The Sub-Collector
   (c) The Deputy Collector
   (d) The Collector
   Ans. **Answer is D.**
7. **For Specific Performance of a contract suit is to be instituted in**
   (a) 3 years
   (b) 3 months
   (c) 6 months
   (d) No specific time limit unless mentioned in the contract
   Ans. **Answer is A.**
8. **Permanent Account Number (PAN) is defined under**
   (a) Wealth Tax
   (b) GST
   (c) Income Tax Act, 1961
   (d) Finance Act, 1992
   Ans. **Answer is C.**
9. **A marriage with a woman before completion of her iddat is.....**
   (a) Irregular
   (b) Void
   (c) Voidable
   (d) None of these
   Ans. **Answer is A.**
10. **Section 10 of the CPC provides for**
    (a) Stay of the suit
    (b) Summoning witness
    (c) Examination of witness\
    (d) Sentencing the judgement
    Ans. **Answer is A.**
11. **Who is prevented from being testified under section 118 of Indian Evidence Act**
    (a) A lunatic who cannot understand the questions put to him
    (b) Extreme old age person who cannot give rational answer to the questions
    (c) A tender age person who cannot give rational answer to the questions
    (d) All the above
    Ans. **Answer is D.**
12. **Supreme Court decided in *S.R. Bommai* v. *Union of India***
    (a) Relating to the President Rule in state
    (b) Relating to the illegal detention
    (c) Relating to the right to clean environment
    (d) None of the above
    Ans. **Answer is A.**

LEGAL WRITING *Tips*

MISUSED WORDS AND EXPRESSIONS

Data. Like strata, phenomena, and media, data is a plural and is best used with a plural verb. The word, however, is slowly gaining acceptance as a singular.

The data is misleading.

These data are misleading.

Different than. Here logic supports established usage: one thing differs *from another, hence, different from. Or, other than, unlike.*

Disinterested. Means "impartial." Do not confuse it with uninterested, which means "not interested in."

Let a disinterested person judge our dispute. (an impartial person)

This man is obviously uninterested in our dispute. (couldn't care less)

Divided into. Not to be misused for composed of The line iTs sometimes difficult to draw; doubtless plays are divided into acts, but poems are composed of stanzas. An apple, halved, is divided into sections, but an apple is composed of seeds, flesh, and skin.

Due to. Loosely used for through, because of, or owing to, in adverbial phrases.

He lost the first game due to carelessness.

He lost the first game because of carelessness.

In correct use, synonymous with attributable to: "The accident was due to bad weather"; "losses due to preventable fires."

Landmark Judgments

PEOPLE SUFFERING FROM VARICOSE VEINS: UNFIT 'TO JOIN ARMY

Naveen Kumar v. Union of India.
WP. (C) 2513 of 2018
Decided on: 15-05-2018
Hon'ble Judges: Hima Kohli and Pratibha Rani, JJ.,
High Court of Delhi

Facts: Combined recruitment written examination for the post of constable in CAPF, NIA and Special Security Force in 2015 cleared by man. He was asked to appear for physical test and medical examination for selection in CRPF. On 3 counts he was declared medically unfit on 23-5-2016, i.e., he has varicose veins, tremors and tachycardia. Plea had been operated for varicose veins at hospital in Rohtak and declared fit for recruitment to post of Constable (GD) in CAPFS by CMO of General hospital. He applied for review medical examination on 27-8-2016 after undergoing correctional surgery. Being declared fit he claimed that review medical board declared him unfit without even examining him and later cleared him of tremor and tachycardia, but declared unfit due to varicose veins and operated upon on his left leg.

Issue: People suffering from varicose veins are unfit to join the Army.

Held: Medical board and Review medical board decision declaring man to be unfit cannot be faulted and did not require intervention. Bench said that ramifications of operated cases of varicose veins are that it leads to impairment of blood circulation and individuals who have been operated upon for condition, have predisposition of developing such a problem in other vessels. Study has revealed that patients with varicose veins have pain, heaviness of legs, inability to walk or stand for long hours, itching and leg cramps at night.

Quick Referencer for Judicial Service

Q. Is an order of dismissal of suit for default a decree? Give reasons for your answer.

U.P. Higher Judicial Service (Additional District Judge) Special Recruitment for Scheduled castes Exam. 1996.
17 Bihar Judicial Service Exam. 1977
West Bengal Judicial Service Exam. 2004
State Bank LAW OFFICER EXAM. 1998 (Based on memory).

Ans: No, order of dismissal of suit for default is not a decree—**Section 2(2)** of C.P.C. and *Munikrishana* v. *Ramaswami*, AIR 1969 M 389.

Reasons: This question is based on **Section 2(2)** of C.P.C. which gives the definition of the term 'Decree'. The relevant part of **Section 2(2)** on which this question is based provides that a decree does not include an order of dismissal for default.

Further in above referred case of *Munikrishna* v. *Ramaswami*, the Madras High Court held that an order dismissing the suit for default is an order and not a decree in view of the provisions made in **Section 2(2)** of C.P.C.

From the above discussions it is clear that an order of dismissal of suit for default is not a decree.

Note: When the plaintiff does not appear in the court and the suit is dismissed, it is known as dismissal of the suit for default.

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Damodaram Sanjivayya National Law University is committed to design and deliver legal education, promote academic achievement and excellence in legal research. With growing importance for quality legal education, various national law schools acquired lot of importance. To meet the requirements of students of this State, the Government of Andhra Pradesh decided to establish a new Law University and as per the decision of the Council of Ministers meeting held on 30-06-2008 the Governor of Andhra Pradesh promulgated the Andhra Pradesh University of Law Ordinance, 2008 on 8th July 2008. Subsequently the cabinet on 04-08-2008 approved Andhra Pradesh University of Law Bill, 2008, replacing the Ordinance and this Bill was passed by the State Legislature on 28th August 2008 and became an Act after the same was assented to by the Governor on 23rd September 2008. Thus, the A.P. University of Law came into existence with Visakhapatnam as the main campus and two branches at Kadapa and Nizamabad. Further, the Andhra Pradesh University of Law's name was changed to "Damodaran Sanjivayya National Law University" by the Andhra Pradesh University of Law (Amendment) Act, 2012 (Act No. 15 of 2012), which was published in the Andhra Pradesh Gazette Extraordinary on 14th May 2012.

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Latest SUPREME COURT Judgments

"TWO FINGER TEST: AN INCORRECT ASSUMPTION"

Anshul Jain

Supreme Court in *State of Jharkhand vs. Shailendra Kumar Rai @ Pandav Rai,* 2022, Cr.A. 1441 of 2022 held that……

Conducting the 'two-finger test' in rape cases will be held guilty of misconduct.

Two-Finger Test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth - a woman's sexual history is wholly immaterial while adjudicating whether the accused raped her.

Two-finger Test has no scientific basis and neither proves nor disproves allegations of rape. It instead re-victimizes and re-traumatizes women who may have been sexually assaulted, and is an affront to their dignity.

Two-finger Test is conducted to determine whether she was habituated to sexual intercourse. Earlier in 2013 in the case of *Lillu* v. *State of Haryana,* it was held that "two-finger test" violates the right to privacy, integrity, and dignity.

Directions:

The Union Government as well as the State Governments was directed to:

a. Ensure that the guidelines formulated by the Ministry of Health and Family Welfare are circulated to all government and private hospitals;

b. Conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape; and

c. Review the curriculum in medical schools with a view to ensuring that the "two-finger test" or per vaginum examination is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape.

Any person who conducts the "two-finger test" or per vaginum examination (while examining a person alleged to have been subjected to a sexual assault) in contravention of the directions of this Court shall be guilty of misconduct.

NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

New CLAT Pattern

In a case the Court has convicted the appellant on the basis of the confession of the appellant and the confession statement of the two other co-accused.

Similar situation arose in the case of Ananta Dixit v. The State and the Orissa High Court was considering a similar case under Section 30 of the Evidence Act.

The appellant, in this case, was absconding. The question for consideration was whether a confession of one of the accused persons who was tried earlier, is admissible in evidence against the appellant. The Court held that the confession of the co-accused was not admissible in evidence against the present appellant. The Court held:

"As recorded by the learned trial Judge, the accused Narendra Bahera, whose confessional statement had been relied upon, had been tried earlier and not jointly with the appellant and the co-accused person Baina Das. A confession of the accused may be admissible and used not only against him but also against a coaccused person tried jointly with him for the same offence. Section 30 applies to a case in which the confession is made by the accused at the same time with the accused person against whom the confession is used. The confession of an accused tried previously would be rendered inadmissible. Therefore, apart from the evidentiary value of the confession of a co-accused person, the confession of Narendra Behera was not to be admitted under Section 30 of the Evidence Act against the present appellant and the co-accused Baina Das."

The court in complete agreement with the view of the High Court. Held that since the trial of the other two accused persons was separate, their confession statements are not admissible in evidence and the same cannot be taken as evidence against the appellant.

Q1. According to the author, if the co-accused had given his/her confessional statement in Ananta Dixit v. The State, together with the accused, whether the same was admissible in the court?

(i) Yes, since this confession is made according to procedure established by law.

(ii) No, since the Evidence Act does not allow it.

(iii) Yes, since the court has interpreted that such confession in same trial is admissible, otherwise it is not admissible.

(iv) No, since the co-accused is equally put to accusation and the statement could have been made with malafide intent to get leniency of court.

Ans-III

Q2. Based on the information given in the passage, suppose X and Y were accused in the same case of robbery in a bank but, X having also committed the offence of grievous injury on the bank's security guard in a separate case confessed that Y and Z were his accomplice during the robbery. Decide whether the confession against Y and/or Z shall be admissible and to what extent.

(i) Only against Y since only Y is accused in both the trials.

(ii) Only against Z since his name comes under the non-joinder of parties.

(iii) Only against X since his confession so far as Y and Z are concerned cannot be admitted when they're in a different trial

(iv) None of X, Y and Z since this confession names parties that are not party to the trial.

Ans- III

Q3. Assuming that there is another provision in the Criminal Procedure Code, which overrides the provisions of the Indian Evidence Act, provides that a confession made against the co-accused in a different suit shall be admissible if the non-admissibility of such confession shall do grave injustice to either of the parties. However the decision of whether there shall be grave injustice or not is a question for the court to decide. Based on the new set of information alongwith the facts given in question 2 decide the admissibility of the confession if the bank that was robbed claims for grave injustice to itself if the X's confession is not admitted.

(i) The confession is admissible since it is a matter of grave injustice to the bank.

(ii) The confession is admissible provided the court considers it a matter that can cause grave injustice.

(iii) The confession is admissible because the Criminal Procedure Code has an overriding effect on the Indian Evidence Act.

(iv) The confession is not admissible because confession made in a different trial by the co-accused is not admissible.

Ans- II

CONSTITUTION OF **INDIA**

Article 203

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.

***203. Procedure in Legislature with respect to estimates.*—(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.**

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

The procedure in the State Legislatures in regard to the estimates and demands for grants is very similar to that at the level of Union Parliament. The corresponding article is 113 of the Constitution

Where the Ministry or the executive Government of a State formulates a particular policy in furtherance of which they want to start a trade or business, a specific legislation legislating such trade activities before they could be embarked upon is not always necessary. If the trade or business involves expenditure of funds, it is certainly required that Parliament should authorise such expenditure either directly or under provisions of a statute.

What is generally done in such a case is that the sums required for carrying on the business are entered in the annual financial statement which the Ministry has to lay before the House or Houses of Legislature in respect of every financial year under article 212 of the Constitution. So much of the estimates as relate to expenditure other than those charged on the Consolidated Fund are submitted in the form of demands for grants to the Legislature and the Legislature has the power to assent or refuse to assent to any such demand or assent to a demand subject to reduction of the amount.

Dr Subhash C Kashyap

The only requirements of article 203 are that every demand shall be recommended by the Governor and that it shall then be put separately to the vote of the Assembly. The article refers to "demands" only and makes no reference whatsoever to the separate items constituting the demands, or to the purpose for which each item is required.

The Governor under article 203(3) must act on the advice of the Council of Ministers.

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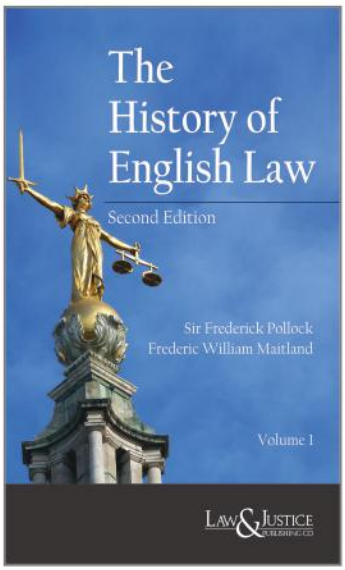

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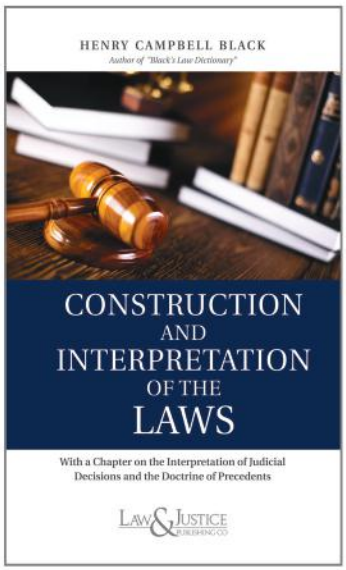

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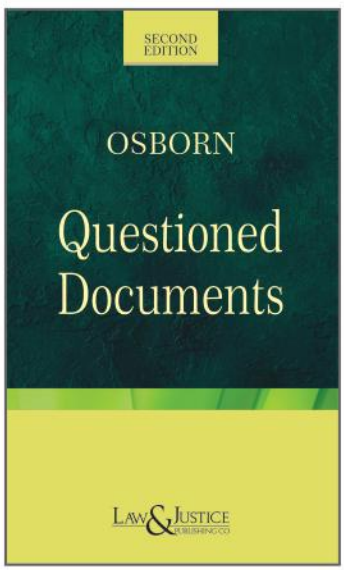

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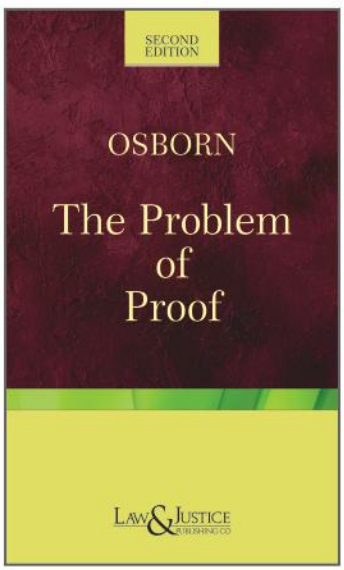

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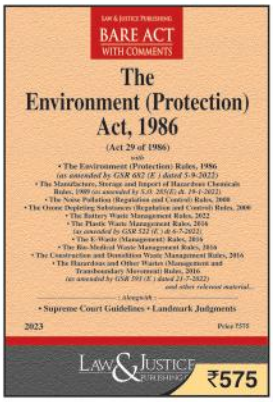

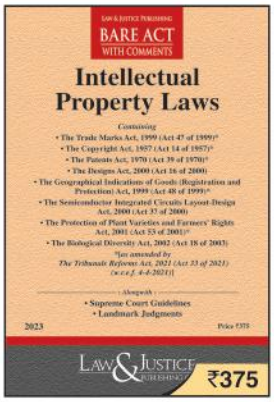

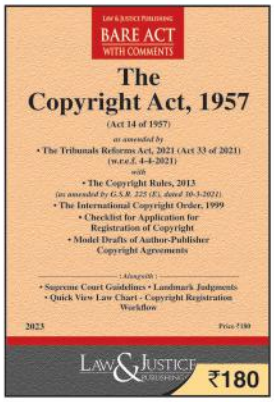

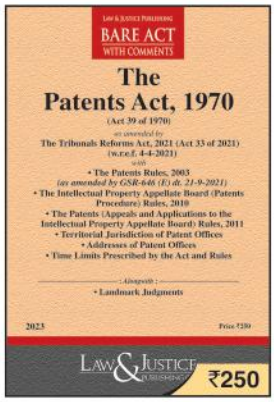

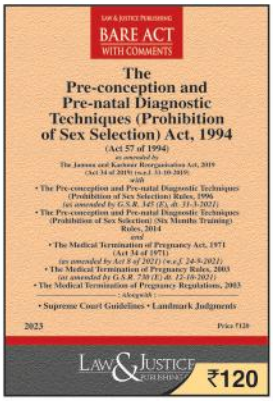

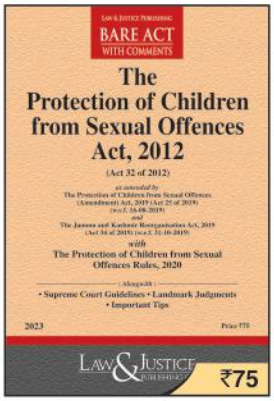

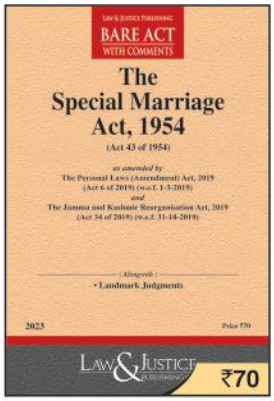

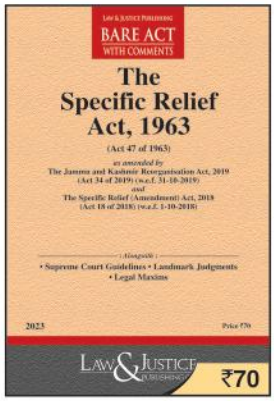

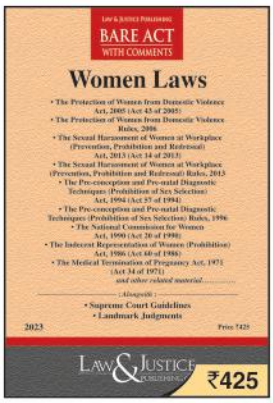

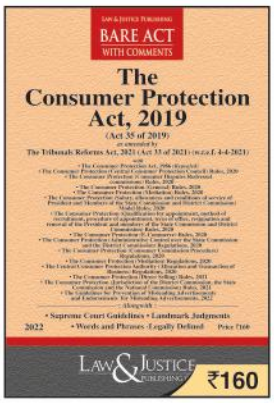

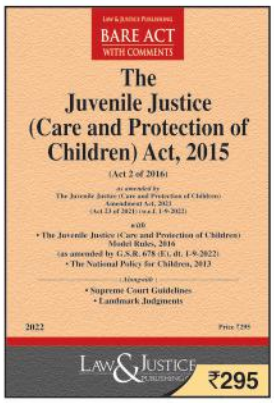

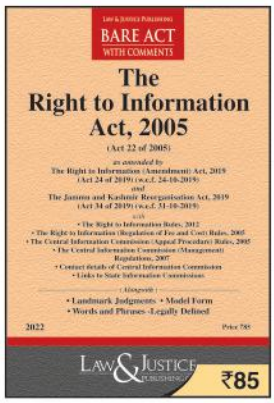

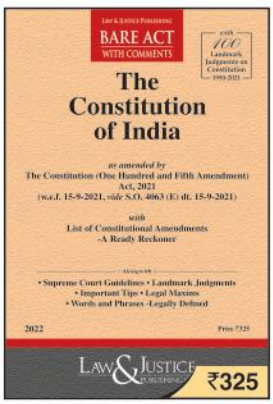

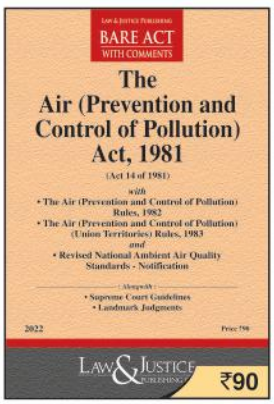

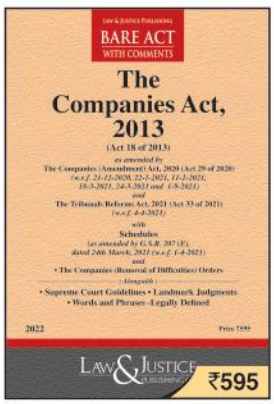

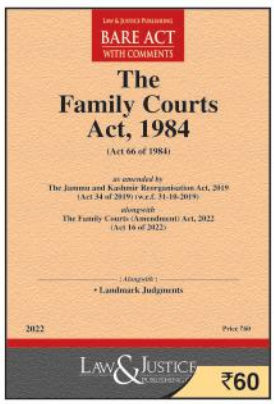

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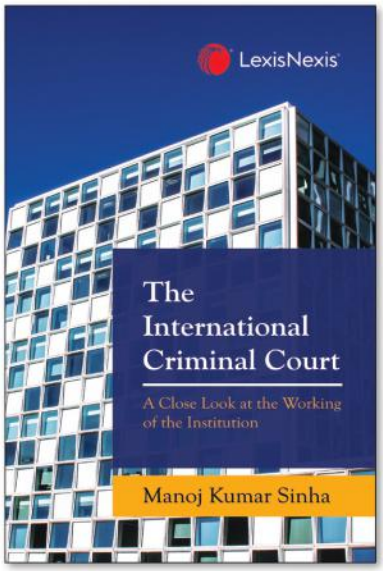

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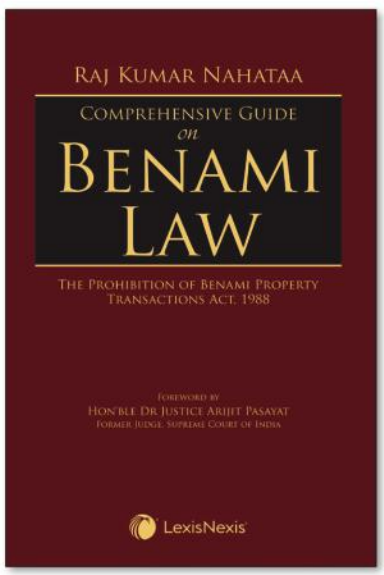

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