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Lawyers UPDATE

ARE JUDICIAL REFORMS PARAMOUNT?

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Dear readers,

An independent judiciary is indispensable for any democracy to continue being a genuine democracy anywhere in the world, including India. And the Judiciary in India has done everything in its powers to see to it that its independence at any level was not compromised. However, a strong and determined Executive with the electoral backing of the people has always posed a substantial threat to judicial independence, and while the independence of our Judiciary might still be intact, the strain is unmistakably visible.

It has been pointed out by senior members of the bar as well as by retired Supreme Court and High Court judges that the superior judiciary, particularly the Supreme Court of India, has not been doing enough to defend the rights of the people against the excesses of the state. There have been questions about the Supreme Court's abdicating its responsibility to defend the Constitution and the civil liberties enshrined therein by not delivering the judgments in crucial cases involving substantial questions of constitutional law quickly enough. Some of the significant cases with far-reaching constitutional implications are still awaiting their day before the apex court.

It has been pointed out time and again by several constitutional experts that the longer the Supreme Court takes to deliver its verdict in some of these cases, the greater the possibility of the ruling going in favour of maintaining the status quo, regardless of what the law, justice or the constitution might demand. So by not deciding some of these cases quickly enough, the Supreme Court might have in fact decided them by conscious inaction, which raises disturbing questions about judicial independence. Let's hope the Supreme Court asserts its independence as emphatically as it is supposed to and as it did in the past.

Manish Arora

(Manish Arora)

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STREET LAWYER

The Socio-Cultural Foundations of Indian Secularism - II

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

HemRaj Singh

Why should the Hindus want to emulate what they are never tired of criticizing Muslims for? How would Hindu orthodoxy and fundamentalism be any better than the Islamist versions of them? Would "*Hindutva* Terrorism" sound any better than "Islamist Terrorism"? The Hindu radicalism, which is an aggressive pursuit of the very political *Hindutva* project, is a "reaction", some would say. Alright. So if "they" succeed in making you react to become more like "them" in terms of what you had always hated in and about "them", whose victory is it? If your "enemy" turns you into what in the "enemy" formed the very basis of your fight against the "enemy", the very thing you have been fighting against, who wins? If you are forced to turn into a "monster" to win the war against the "monster", the "monster" wins despite losing because the monstrosity, the very thing that made it the "monster", survives in you, refreshed and reinvigorated. But that's largely a moral argument, you might think. Let's view it from a more "practical" standpoint.

If Hindus do not want to be "secular" any longer, by which one could mean only one thing — the complete dominance and subjugation of religious minorities with a hegemonic and oppressive dominance of social, economic and political space by the Hindus — would that solve any problem we are currently facing as a nation and would it make the nation better and its people better off? It's not hard to see the answer, but for those who might readily want to say that in those circumstances India would be better off at least for Hindu Indians because India would then be a nation of the Hindus and for the Hindus, which is also the dreamy vision that has been sold by the propagators and supporters of *Hindutva*.

How would India as a "Hindu nation" do better than India as a nation for all Indians? How can a nation with a divided society with the monopoly of one religious community and the relegation of other communities to second-class status do better as a nation than India as a united nation with a single national identity? Can the suppression of large sections of people aid the development and prosperity of a nation? Has it ever worked anywhere for any length of time? The very conception of a nation carries with it the notion of "nationality", which is the national identity of a citizen and having one class of citizens lord over other classes of citizens is contrary to the very idea of national citizenship, or even a nation, for that matter. And such an approach, practically speaking, can only cause simmering resentment among large sections of people, which can, if left unattended for too long, can spark a civil war. So pursuing *Hindutva* with the objective of turning India into a Hindu nation can have no happy consequences by any stretch of imagination. But an even more important question is, why do we have to? What exactly is the problem that India as a "Hindu nation" would solve? What is this poisonous potion a remedy to?

The fact is that we do not have a problem that is connected to our being a secular nation or can be solved by our turning into a "Hindu nation". On the contrary, we have done very well as a secular, democratic republic, which has, if anything, enhanced our international reputation as a truly inclusive democracy despite such diversity of cultures, religions and languages as is seen nowhere else in the world. As a democracy, we have been a wonder that few thought possible at the time of our independence. Yes, we did falter at times, but we quickly course-corrected, maintaining our credential as a constitutional democracy throughout.

Problems such as extremism and Islamist terrorism have little to do with Indian secularism *per se*, for we have had all kinds of extremism, stemming from different socio-political situations in different parts of the country, including North East, Punjab and Kashmir. Yes, there have been communal riots, too. Again, those too have been due to inadept handling of political situations. And on each of those occasions, the failure as well as the complicity of the state machinery has been fairly evident. Those were the instances when we as a nation momentarily veered from our secular character. But in the large span of seventy-five years, such instances — even though avoidable in many cases — have been few and far between, and do not define India as a nation, much less undermine our secularism.

However, the current push for turning India into a "Hindu nation" by the adherents of *Hindutva*, having yielded rich political dividends, is definitely making a dent in our credentials as an inclusive nation. Of course, we can ignore what the international community says or things about us so long as we are sure we are on the right path forward. Are we?

The only complaint that I have repeatedly heard is "Muslim appeasement" by the government for "vote bank politics". Truth be told, this is a meaningless rant, for there is no such thing as "appeasement politics" because politics is nothing but "appeasement". How is "Muslim appeasement" or "minority appeasement" any better than "Hindu appeasement" or "majority appeasement"? It can just as well be "Dalit appeasement", or "Yadav appeasement", or even "feminist appeasement" or "women appeasement", or any other "appeasement", depending upon what serves the politics of the day best. So "appeasement" as a political tool itself is not a problem as long as it does not involve a deliberate suppression of another community or class of people.

…to be continued

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

MORE PUNJAB TRAGEDIES

It is my misfortune to have to present two more cases from the land of sorrow to the readers of Young India. I call Punjab the land of sorrow, because I find on the one hand a series of cases in which, if the records of cases are to be believed, a manifest injustice has been done, and on the other, an apparent determination on the part of the Punjab Government not to undo the wrong. For as I have already said in these columns, a mere reduction of sentences without admission of at least an error of judgment is no comfort to the men who protest their innocence or to the people at large who believe in their innocence and wish to see justice done. I must confess that I am uninterested in reduction of sentences if the prisoners are guilty and it is a crime to keep them in duress if they are innocent. The reader will see the petitions* on behalf of Mr. Gurudayal Singh and Dr. Mahomed Bashir. Both are high-spirited men - one a Sikh of culture, and other a Mohamedan doctor having before him a life full of promise. If they have waged war, if they have incited to murder, there can be no question of remission of the sentences passed against them. Therefore, the fact that Dr. Bashir's sentence of death has been commuted, whilst it must be a matter of some feeble consolation to Mrs. Bashir, can be none to Dr. Bashir or to the public.

Let us glance at Mr. Gurudayal Singh's case. His

*These petitions are not included in this book. brother has sent me a long letter asking me even to publish it. As the main facts are contained in the petition, I refrain from publishing the letter for fear of tiring the reader, but I will make use of such statements from it as may be necessary to demonstrate the enormity of the injustice done in the case. "He only attended," says the brother, "the constitutional and the orderly meeting of the 6th April. He was on the 14th and 15th confined to bed. The local sub-assistant surgeon (Government employee) attended on him, gave his prescription, which I am sending to you in original along with the papers." I have seen this prescription. "Seriously sick with appendicitis, my brother could not join the so-called unruly mob in breaking the. glass panes of the Tahsil windows." As regards. prosecution witnesses against my brother I have only to add that my brother was not informed of the names of such persons. He knew them by seeing them in the court .... My brother was, as a matter of fact, not informed of the charge against him except through the mouth of the prosecution witnesses."

I hold that if this statement is correct, it is enough to ensure Mr. Gurudayal Singh's discharge. No accused could thus be taken by surprise and expected where and when to plead. Surely he was entitled to see the charge, and not gather it through the prosecution witnesses. The letter in my possession then analyses the antecedents of the witnesses for the prosecution and shows the animus they had against the accused. Naturally the public cannot be expected to judge the credibility of witnesses upon ex parte statements made by or on behalf ·of the accused, but these statements show, if they are true, that an immense amount of perjury must have taken place on the part of the prosecution witnesses. I admit that this case is not as clearly established on behalf of the prisoners as many others I have examined, for I have not the whole of the ' papers for presentation to' the public. Bat assuming the truth of the statements made authentically on behalf of the prisoner, it is clear that the case required looking into.

Dr. Mahomed Bashir's is another such case. The pathetic petition by his wife and Dr. Bashir's statement itself before the court, which sentenced him to death, if true, show that the court's judgment had been completely warped. Dr. Bashir mayor may not have lied, but the court had most decidedly nothing before it to warrant the remark that the defence evidence was worthless; for, Dr. Bashir, as will be seen from the statement published in another column, * categorically denied many of the statements and facts imputed to him. I do not intend to burden this criticism with any extracts from the very brief and business-like statement presented to the court by Dr. Bashir, but I would commend it to the careful attention of the reader. He cannot help the conclusion that the statement deserved a better fate than a contemptuous dismissal from the court.

Young India, 24-9-1919

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"In times of great stress or adversity, it's always best to keep bury, to plow your anger and your energy into something positive."

– Lee Lacocca

"The richest man is not he, who has the most, but he who needs the least."

– Anonymous

"People grow through experience, if they meet life honestly and courageously. This is how character is built."

–Eleanor Roosevelt

"Mistakes are always forgivable, if one has the courage to admit them."

– Bruce Lee

"I have learnt silence from the talkative, toleration from the intolerant, and kindness from the unkind, yet strange, I am ungrateful to these teachers."

– Kahlil Gibran

"Pleasure in jobs puts perfection in the work."

–Aristotle

"Positive attitude may not solve all your problems, but it will annoy enough people to make it worth the effort."

– Herm Albright

" The face is the mirror of the mind, and eyes without speaking confess the secret of the heart."

– Saint Jerome

" The secret of a good life is to have the right loyalties and hold them in the right scale of values."

– Norman Thomas

" Never interrupt your enemy when he is making a mistake."

– Napoleon Bonaparte

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 R.M. Chhaya

Hon'ble Mr. Justice R. M. Chhaya was born on 12th January, 1961 at Veraval, District Junagadh. Passed B.Com Examination from M.S. University, Vadodara in the year 1981. Did Law at Sir L.A. Shah College from Gujarat University and passed out Third L.L.B. (Special) Examination in the year 1984. Was enrolled as an Advocate with Bar Council of Gujarat in the year 1984. Joined the offices of M/s.Y.J.Trivedi, Trade Mark Attorney and Purnanand and Company Government Solicitors. Was appointed as Assistant Government Pleader and Additional Public Prosecutor in the High Court of Gujarat in 1991 and worked till March 1995. Thereafter, joined office of Senior Advocate Shri N.D. Nanavaty and worked with him till 1998. Was empanelled advocate for Ahmedabad Municipal Corporation, Rajkot Municipal Corporation, Bhavnagar Municipal Corporation, Gujarat Industrial Development Corporation, Ahmedabad Municipal Transport Services, Ahmedabad Urban Development Authority and Bhuj Urban Development Authority. Was appointed as an Additional Counsel for the Department of Income Tax for two years in the year 2001. Was appointed as an Additional Central Government Counsel in July 2004 and thereafter appointed as Senior Counsel for the Union of India since 2008. Was also appointed as Senior Counsel for the Central Excise and Customs Department in the High Court of Gujarat. Appeared in various constitutional matters as well as town planning and land acquisition matters.

His Lordship was elevated as an Additional Judge, High Court of Gujarat on 17th February, 2011 and confirmed as permanent Judge on 28th January, 2013. Took oath as the Chief Justice of Gauhati High Court on 23th June, 2022.

Linguistic Artistry in Court Judgments

Tahir Mahmood *

"The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language" -- recently wrote Dhananjay Chandrachud, J of the Supreme Court of India, adding that judicial decisions "must make sense to those whose lives and affairs are affected by the outcome of the case" [*Indian Express*, 25 August]. He was disposing of an appeal against a Himachal Pradesh High Court judgment about which he remarked that even he "found it difficult to navigate through the maze of incomprehensive language" and that "A litigant for whom the judgment is primarily meant would be placed in an even more difficult position."

In the leading case of *Ajit Mohan vs NCR Legislative Assembly* decided in July last year another brilliant judge of the court Sanjay Kishan Kaul had said more or less the same things about counsels' written submissions in appeals. Such submissions do serve as feeders for extraneous stuff in court judgments which incorporate long abstracts from them. This practice makes the judges' work easier but leaves the litigants in a lurch, sometimes leading to frivolous litigation which, in the words of the new Chief Justice U. U. Lalit, puts "additional burden on an already burdened judiciary."

Some learned judges have been known for their typical oratorical skills expressed through the use of deeply philosophical or literary expressions in their judgments. The most well-known name for this phenomenon has been of the late VR Krishna Iyer. The opening paragraph of his judgment in the *Fuzlunbi* case (1980) begins with the words "Twixt Tweeldedum and Tweeldedee" [characters in an old nursery rhyme] and talks of "*karuna* and *samata* (compassion and equality) of the law." An Australian judge Michael Kirby said about him: "The power of his oratory is likened to the hypnotic capacity of music to capture the attention of the cobra transfixing us by the majesty of language and the manifest sincerity of his ideas." And, an Indian judge Yatindra Singh wrote that "Many a time Justice Iyer's contribution to jurisprudence has been lost due to his language." Trying to imitate Krishna Iyer's inimitable style some judges of our times make their judgments awfully irritating.

Victorian English beyond the law students' intellect is not the only phenomenon impairing court judgments. Shakespeare had said in his *Tragedy of Hamlet* "brevity is the soul of wit" but the observation eminently applies also to court judgments. This sine qua non for an effective dispensation of justice is often overlooked by the judges. There is an inexplicable flair of stuffing judgments with obiter dicta, unnecessary and sometimes irrelevant, which makes them unduly long and even unintelligible. Judgments are written as if the writer-judge has to prepare a doctoral or post-doctoral thesis on the legal issue involved in the case. Higher courts of the country which, under our constitutional and judicial system, have to provide precedents to be followed by the lower judiciary often seek precedents for their decisions in foreign judgments by copying longish extracts from them. Further, cases that should be decided exclusively on the authority of the Indian Constitution and law are sometimes decided with reference to sacred religious texts.

In the recent *Shayera Bano* case on triple talaq (2017) learned CJI of the time wrote about 300 pages to reach an indefensible conclusion that the abominable practice was covered by the constitutionally protected fundamental rights of the citizens. Yet, contrary to this misbelief, he chose to stifle that "right" by issuing an impracticable order of "injuncting Muslim husbands from pronouncing *talaq-e-bidat* as a means for severing their matrimonial relationship." Two other learned judges on the *Shayera Bano* Bench rightly dissented from his belief in the supposed constitutional cover for the anachronistic practice but the final order, based on their views – "the practice of *talaq-e-biddat*, triple talaq, is set aside" also left much to be desired in respect of its meaning and implications.

Some learned judges of the country's higher courts have innovated a new style of writing judgments with a lavish use of Urdu poetry which non-Urdu speaking lawyers and litigants hardly understand. In a PIL relating to the plight of an Indian prisoner in a Pakistan jail, Markande Katju, J of the Supreme Court concluded his judgment with Faiz Ahmad Faiz's famous couplet beginning with the words "Qafas udaas hai yaro saba se kuchh tou kaho" (prison is sad friends say something to the breeze). In another appeal, relating to police excesses, Katju alluded to another line of the great poet "Baney hain ahl-e-hawas muddayi bhi munsif bhi; kise vakil karen kis se munsifi chahen" (gluttonous are both the petitioners and the arbiters, who to seek advice from, where

to look for justice). An income tax appeal filed by a noted lawyer was dismissed by a Delhi High Court judge Rajiv Shakdhar citing a couplet of the great Ghalib "Dil-e-nadaan tujhey huwa kya hai; aakhir iss dard ki dawa kya hai" (what has happened to you O foolish heart, what after all is the cure for this pain). I wonder whether the litigants in any of these cases would have understood what the judges wanted to convey through poetry and what purpose of justice this judicial flair for Urdu poetry would have served.

The exhortation of Dhananjay Chandrachud, J about the pressing need for simplicity and meaningfulness in court judgments has not come a moment too soon. I can only say three cheers for the learned judge who I have known since his student days in Delhi University where I taught law for three long decades. Last year, hearing as a vacation judge an urgent bail appeal he had so alerted the custodians of State authority: "If the State targets individuals they must realize that the apex court is there to protect them." A great promise indeed, rejuvenating confidence in the court's capacity to safeguard people's human and constitutional rights, The nation will look forward to the next Chief Justice of the court for much more important and long-awaited redresses than his timely reprimand about linguistic idiosyncrasies in court judgments.

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

LEGAL WRITING *Tips*

MISUSED WORDS AND EXPRESSIONS

Can. Means "am (is, are) able." Not to be used as a substitute for may.

Care less. The dismissive "1 couldn't care less" is often used with the shortened "not" mistakenly (and mysteriously) omitted: "1 could care less." The error destroys the meaning of the sentence and is careless indeed.

Case. Often unnecessary.

In many cases, the rooms lacked air conditioning.	Many of the rooms lacked air conditioning.
It has rarely been the case that any mistake has been made.	Few mistakes have been made.

Certainly. Used indiscriminately by some speakers, much as others use very, in an attempt to intensify any and every statement. A mannerism of this kind, bad in speech, is even worse in writing.

Character. Often simply redundant, used from a mere habit of wordiness

Claim (verb). With object-noun, means "lay claim to."

May be used with a dependent clause if this sense is clear- It intended: "She claimed that she was the sole heir." (But even here claimed to be would be better.) Not to be used as a substitute for declare, maintain, or charge

He claimed he knew how.	He declared he knew how.

Clever. Note that the word means one thing when applied to people, another when applied to horses. A clever horse is a good-natured one, not an ingenious one

Compare. To compare to is to point out or imply resemblances between objects regarded as essentially of a different order; to compare with is mainly to point out differences between objects regarded as essentially of the same order. Thus, life has been compared to a pilgrimage, to a drama, to a battle; Congress may be compared with the British Parliament. Paris has been compared to ancient Athens; it may be compared with modern London.

Comprise. Literally, "embrace": A zoo comprises mammals, reptiles, and birds (because it "embraces," or "includes," them). But animals do not comprise ("embrace") a zoo-they constitute a zoo.

Consider. Not followed by as when it means "believe to be"

I consider him as competent	I consider him competent

When considered means "examined" or "discussed," it is followed by as:

The lecturer considered Eisenhower first as soldier and second as administrator.

Contact. As a transitive verb, the word is vague and self-important. Do not contact people; get in touch with them, look them up, phone them, find them, or meet them

Cope. An intransitive verb used with with. In formal writing, one doesn't "cope," one "copes with" something or somebody

I knew they'd cope. (jocular)	I knew they would cope with the situation

Currently. In the sense of now with a verb in the present tense, currently is usually redundant; emphasis is better achieved through a more precise reference to time.

We are currently reviewing your application.	We are at this moment reviewing your application.

R Venkataramani – Attorney General for India

"Softspoken" and "patient" but also assertive and a "true jurist"— these are just some of the characteristics that lawyers ascribe to senior advocate R. Venkataramani, the Attorney General for India.

The President of India appointed Venkataramani as the Modi government's top law officer for three years with effect from 1st October 2022. Aged 72, the senior counsel has acceded to the post when the senior advocate K.K. Venugopal, retired as AG. His appointment comes days after senior advocate Mukul Rohatgi withdrew his consent to take over the position from Venugopal.

Having spent more than four decades in the Supreme Court, Venkataramani has argued cases ranging from constitutional issues to taxation. But litigation has not stopped him from pursuing his other interests, such as teaching and writing.

Venkataramani is attached to several law colleges where he takes classes, mostly during court breaks. When the top court shuts down for summer vacation, Venkataramani spends a lot of his time at these institutes teaching budding lawyers. His juniors say he rarely goes on long vacations, unlike other seniors who prefer international holidays during summer recess.

Given that Venkataramani has maintained an apolitical profile in his career, the senior advocate's appointment came as a surprise in legal circles.

(Inputs from The Print)

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 RUMA PAL

Justice Ruma Pal did her LL.B. from Nagpur University and went on to read for her Bachelor of Civil Law (BCL) degree at the University of Oxford, U.K. She commenced practice in 1968 before the Calcutta High Court in civil, revenue, labour and constitutional law matters.

On August 6, 1990, she was appointed Judge at the Calcutta High Court, and on January 28, 2000 - the day of the Golden Jubilee of the Supreme Court - she was elevated to the Supreme Court of India. She retired on June 3, 2006.

In her long and distinguished career, Justice Pal has delivered many critical judgments in landmark cases. She has written on a number of human rights issues. She co-revised M. P. Jain's Indian Constitutional Law (6th Edition) and has been published in several national and international journals. She served as the Chancellor of the Sikkim University from 2012 to 2017. She is also a member of the International Forum of Women Judges.

She was the Ford Foundation Chair Professor on Human Rights at the NUJS, Kolkata. She is also the founding member of the Asia-Pacific Advisory Forum on Judicial Education on Equality Law and an Executive Council Member of the Commonwealth Human Rights Initiative.

RELEVANCE OF CHIEF JUSTICE M.C.CHAGLA

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

Justice M.C.Chagla was born on September 30, 1900. On September 30, 2022, we would be observing his 122nd birth anniversary. He continues to be relevant even today. He joined the Bar in 1922 (full 100 years back). He was elevated as a judge of the Bombay High Court in 1941 (81 years back). He became the Chief Justice of Bombay High Court on August 15, 1947 (75 years back). He was no more on February 9, 1981 (41 years back). It was during his long journey of 8 decades and plus that he played his innings in style. His strokes were measured. He scored 4s and 6s immaculately.

I was born in 1944. He was already a judge of the Bombay High Court. I was 14 years old when he took retirement as Chief Justice of Bombay High Court. He came to inaugurate the Panjab University Law Department building on December 19, 1964. I was 1st year student of LLB. I do not recall having met him on this occasion. In fact, I never had the opportunity of meeting him. Hence, this piece is based upon what I have read and written about him over the decades. It is an amazing journey. Rich in every respect. Meaningful and wholesome. A real learning for the legal and judicial coparcenary even today.

Chagla returned to India from Oxford. Joined the Bar at the Bombay High Court in 1922. He got a seat in the Chamber of M.A.Jinnah. He took Law as a great discipline for the mind. His initial years at the Bar were financially difficult years. Jinnah firmly believed that the juniors should learn to stand on their own feet. They must not look forward for work and financial support from their seniors. Even when, he was fully convinced of his competence and diligence. Chagla remained for six years with Jinnah. He never allotted a junior brief to Chagla. Consequently, Justice Chagla virtually had no work. I do not subscribe to Jinnah's thinking. The chamber of the senior should be the laboratory for the junior. Once, if the senior is convinced of the seriousness of the junior, the senior should ensure work and financial support to him. This, in fact, is the duty of the senior. The seniors are to provide opportunities to their juniors. Unless the juniors get opportunities, how would they come up in the profession? If they start performing well, they would start getting their own work also. The seniors do give encouragement to the juniors in different ways. This is how the younger people rise in the profession. The old mind set must change.

It was after a space of 7-8 years of Chagla's joining the Bar, he got an important brief. It was also the same day on which he was engaged to be married. Chagla has recorded in his autobiography *"Roses in December"*, "I always maintained that my wife brought me luck……. I have risen in life from one high post to another…….. it was due more to her luck then to my own good fortune". It was after that case that his practice gradually increased. It was by the year 1940, he had extensive practice. During his days at the Bar, Chagla has shared an incident in his autobiography. Strangman was a lawyer and an Englishman who later served as Advocate General. He appeared before Justice Marten to make an urgent application. It was towards the end of the day. Some part-heard matter was going on. Strangman while standing behind the front row chairs, he asked for the judge's permission to make a mention of the matter. He had his hands in his pockets. He was jingling the coins which were in his pockets. Justice Marten was a stern disciplinarian. He asked him to come forward and make his application. Strangman came in front. Justice Marten asked him to take his hands out of his pockets. Looked at the clock. He saw that it was 5 o'clock. Justice Marten got up and left the court. Chagla felt very happy. Justice Marten had taught this Englishman (with bad personal manners) a lesson of his life. It was true that Strangman was a forceful advocate. Equally, skillful cross-examiner. All this was of no consequence if he lacked badly court etiquettes and personal behavior. I have shared this episode with a purpose. The young and not so young advocates must realize as to how to conduct themselves in court. This is an old incident. It remains so relevant even today.

It was in 1941 that Chagla was elevated as Judge of Bombay High Court. He adopted the practice of not reading paper-books before hand. He followed this throughout his judicial journey. He believed that it was a mistake for a judge to go

to the court after reading the paper-books. The judges tend to make up their mind one way or the other after having read the papers. This making up of mind was of course tentative. Yet, it required a very strong mind to change an opinion once formed. Justice Chagla shared this practice with the Supreme Court Judges. He appealed to them not to read the SLPs beforehand. The response was that if they do not read the SLPs beforehand, it would consume much more judicial time. Chagla disagreed. He believed that if the judge can pin down the lawyer to the essential point, it would take not more time. Rather less time. In the present times, the rule is that the petitions are read in advance in High Courts as also in the Supreme Court.

Justice Chagla developed the habit of dictating the judgments in the open court as soon as the arguments concluded. How did this happen? It was the first occasion when an important point was argued before Chagla. The two counsel opposing each other were K.M.Munshi and Taraporevala. Chagla hesitated for a moment. Took courage. Called the stenographer and dictated the judgment then and there. Thereafter, it became a habit with him. On another occasion, Chagla was sitting with Chief Justice Beaumont hearing income-tax references. When the arguments concluded, the Chief told Chagla, 'I have lost my voice. You fire off the judgment'. To deliver the judgment extempore on a subject which was new to him, was a daunting task. Chagla dictated the judgment smoothly. When he concluded, he told the Chief, 'I wish you had given me some notice'. Chief smiled and said, 'My dear boy, you have done very well. I do not think any notice was necessary' He was judge and Chief Justice for more than 17 long years. He reserved only one or two judgments. This too, in order to achieve unanimity. This feat, no one else has been able to accomplish. He believed that judgments should be founded on first principles. He illuminated justice. He humanized the law. He even humanized the taxing laws. His judgments reflected his burning desire to do 'real' and 'complete' justice. His judgments had no dark corners. In fact, they were Light Lamps.

Chagla was a multifaceted personality: lawyer, law commissioner, judge, diplomat, central cabinet minister, a man of letters and a fearless upholder of freedom and democracy.

I visited Bombay High Court. Particularly, I went to Chief Justice's Court (always Court No.52). This court, he presided over for 11 years. Outside Chief's court, stands white marble statue with the inscription: 'A great judge, a great citizen and above all, a great human being'. This inscription speaks for his relevance even after 122 years of his birth.

Chagla whole heartedly endorsed Graham Green's recipe for good life in old age: 'Good cheese, good wine and good sleep'. My recipe: relax, read, write and lecture. This is the best sleeping pill for creative, happy and old minds.

Labour Laws Q/A

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT 2014 PROCEEDINGS NOT TO BE MADE PUBLIC

Is there any prohibition for making the proceedings available to the public and what is the penalty?

The contents of the compliant, identity and address of the aggrieved woman, respondent and witness, any information relating to conciliation and inquiry proceedings, recommendations of the ICC or the LCC and the action taken by the employer or the District Officer shall not be published, communicated or made known to the public press and media in any manner.

However, information may be disseminated regarding the justice secured to the victim of sexual harassment without disclosing the name, address, identity or any other particulars calculated to lead to identification of aggrieved woman or witnesses.

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

SETTLING A RELIGIOUS LAW

Anil Malhotra*

THE NEW LAW

Haryana Legislative Assembly at its session held in 2014 had passed the Haryana Sikh Gurdwara Management Bill, 2014. Upon receiving assent of Governor of Haryana and on notification in Official Gazette, led to formation of separate Haryana Sikh Gurdwara Management Committee (HSGMC) under the Haryana Sikh Gurdwara (Management) Act, 2014 (HSGMA) for administration of Sikh Gurdwaras in State of Haryana. Reportedly, control and management of 25 big Sikh shrines amongst a total of 72 of them in Haryana, with an estimated average annual income of about Rs.30 Crores, are involved in this process. Prior to this, existing Shiromani Gurdwara Prabandhak Committee (SGPC) constituted under Sikh Gurdwaras Act, 1925 managed and administered these religious shrines both in States of Punjab and Haryana. Questions raised about the constitutional validity of the HSGMA and competence of the State of Haryana to enact this new law have been set at rest. Supreme Court has upheld validity of HSGMA freeing Gurudwaras in Haryana from control of SGPC.

THE OLD LAW

Sikh Gurdwaras Act, 1925, (SGA) which was enacted by Punjab Legislative Council to provide for better administration of Sikh Gurdwaras and for enquiries into matters as also settlement of disputes connected therewith, came into force on November 1, 1925 with previous sanction of Governor General. Upon amendment in 1959, it came into force in "*extended territories*" to which Amending Act extended upon notification. Accordingly, it came to be extended to territories which immediately before November 1, 1956 were comprised in States of Punjab and Patiala and East Punjab States Union. "*Extended territories*" finds specific definition in SGA which as a wholesome composite law running into 161 Sections. It prescribes in Section 41 that management of every notified Sikh Gurdwara shall be administered by Committee constituted thereof, by the Board and the Commission in accordance with the SGA, whose Schedule I contains a list of 415 Sikh Shrines located in the States of Punjab and Haryana. Detailed provisions for constitution, powers and duties as also management of finances of "The Board", "Committee of Gurdwaras" and "the Judicial Commission" finds mention in Chapters VI to XII in Part III of SGA. Under Section 42 of SGA, the Board shall be a body corporate and shall have a perpetual succession and a common seal, which under section 85 SGA, shall be "Committee of management" for Gurdwaras. Under Section 94-A, SGA, "e*very Committee shall be a body corporate by name of Committee of Management of Gurdwara or Gurdwaras under its management and shall have perpetual succession and a common seal and shall sue and be sued in its corporate name."* Under Section 146 SGA, Central Government is empowered to make rules to carry out the purposes of SGA and under Section 148-F SGA, Central Government may by order do anything, if any difficulty arises in giving effect to provisions of this Act in extended territories. Amendments to SGA itself are within domain of Parliament. Undoubtedly, SGPC, as of today, manning controls over Sikh shrines, is often called the "*mini-Parliament of Sikhs*."

POWER OF ENACTMENT OF THE SGA

Government of India Act, 1919 (GOI) was passed by British Parliament to increase participation of Indians in the then Government of India and provided a "dyarchy" i.e. a dual form of government for provinces existing at that time. Matters of administration were first divided between Centre and Provinces, whereafter provincial subjects were further bifurcated into transferred and reserved subjects for appropriate administration. Transferred subjects, including religion and charitable endowments, were to be administered by Governor with the help of Ministers responsible to Legislative Council composed mainly of elected members. Reserved subjects relating to other matters were to remain responsibility of Governor and his Executive Council which was not responsible to Legislature. Hence, the SGA which was enacted under the GOI, made the SGPC a "body corporate"

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with a perpetual succession and a common seal.

THE REORGANISATION ACT

Punjab Reorganisation Act, 1966 (PRA), enacted by Parliament, was an Act to provide for re-orgranisation of then undivided State of Punjab in 1966, which led to formation of State of Haryana, Union Territory of Chandigarh and present State of Himachal Pradesh. Under Section 72 of the PRA, any "body corporate" constituted under a Central, State or Provincial Act for existing State of Punjab or any part thereof serving the needs of successor States or which is a "inter-State body corporate", then, the body corporate shall continue to function and operate in those areas in which it was functioning, subject to such directions as may issued by Central Government. Section 72 PRA further stipulates that any direction issued by Central Government in respect of any such body corporate may include a direction that any law by which said body corporate is governed shall have effect. Hence, SGPC, as an inter-State body corporate under Section 72 PRA, is said to be exercising jurisdiction beyond Punjab as Board and Committees of Gurdwaras are exercising control, powers and duties as per the provisions of SGA. This situation prevailed from November 01, 1966 onwards after PRA came into force. However, now, with enactment of HSGMA, HSGMC will now manage Gurudwaras in Haryana independently from control of SGPC.

CURRENTCONSTITUTIONAL POSITION

Article 246 of Constitution stipulates that Parliament has exclusive power to make laws with respect to matters in Union list. State Legislatures have exclusive powers to make laws for the State in the State list and both Parliament and State Legislatures have powers to make laws in Concurrent list. Presuming, that HSGMA was enacted by the Haryana State Legislature under entry number 32 in the State List, inter-alia, relating to "unincorporated trading, literacy, scientific, religious and other societies", matter now stand settled by Supreme Court. This is regardless of the fact that SGPC constituted under SGA, by virtue of Section 72 PRA, as a "inter-State body Corporate" is serving needs of successor State. Haryana has found a new identity as a State in its independent rights to manage Gurdwaras in Haryana free from SGPC.

Are Judicial Reforms Paramount?

Hasan Khurshid, *Associate Editor*
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"All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them, by an independent and virtuous judiciary." -Andrew Jackson

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

According to the press release, March 3, 2021, of Freedom House, annual country- by - country assessment of political rights and civil liberties reveals that global decline in democracies has accelerated. 'Freedom in the World 2021' report says that authoritarian actors grew bolder during 2020 as major democracies turned inward contributing to the 15th consecutive year of decline in global freedom. "

According to the report, India's status changed from Free to Partly Free. Indians' political rights and civil liberties have been eroding since 2014 ….. There is an increased pressure on human rights organizations, rising intimidation of academics and journalists, and a spate of bigoted attacks including lynchings....

In many declared democracies, the undercover authoritarianism is writ large. Authoritarians generally enjoy impunity for their abuses and seizing new opportunities to consolidate power or crush dissent. In many cases, promising democratic movements faced major setbacks as a result.

Totalitarianism is a political form of government (declared or undeclared) that prohibits or neutralizes opposition parties, restricts individual opposition of State's policies or functioning, and exercises an extremely high degree of control over public and private life. The totalitarian States wearing the cloak of democracy employ all- encompassing propaganda campaigns broadcast by State-controlled media, indulge in widespread personality cultism, levying unrestricted taxes, restriction of speech, mass surveillance using repressive police, religious

persecution or State atheism.

However, the best defense against totalitarianism is the 'independent judiciary'. In Indian context, Supreme Court is acknowledged to be the custodian of constitutional rights of the citizens. However, in the recent years, Supreme Court has been seen losing its 'Custodian's image'. There are instances of most renowned lawyers in Supreme Court who have been critical of the apex court; to name a few, Prashant Bhushan, Kapil Sibal and Bhanu Pratap Singh. Not only lawyers, former Supreme Court judges, Justice Markandey Katju, Justice Madan B Lokur, former Union minister and BJP leader Arun Jaitley and senior advocate Kapil Sibal have openly criticized the highest judiciary.

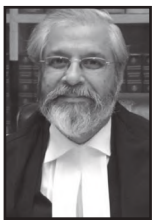
In his interview given to The Hindu on November 29, 2020, Advocate Prashant Bhushan said, "The independence of Judiciary has collapsed." He explained that in Supreme Court, there is corruption in a wider sense, where decisions are influenced by extraneous considerations. These could be nepotism, political affiliations or whatever. "Today, the major problem is the lack of independence of the Supreme Court, and its willingness to kowtow to the government." Advocate Prashant Bhushan gave two reasons of lack of independence: The first is the government's ability to bring chief justices under its control to virtually influence every important decision, because every important case can be sent to a Bench of your choice. Second reason is that the previous governments were not so ruthless making the judges vulnerable. The current regime has used State agencies to prepare a dossier on chief justices even before they assume office."

Bhushan pointing out towards post-retirement jobs of SC judges said, "After retiring you have no power whatsoever. No perks either. You don't get a Lutyens bungalow. To be in a central place in the national capital, to be prominent, to be invited to all these receptions, is a great attraction for these people. And some of these positions are very powerful. The National Company Law Appellate Tribunal is quite powerful. All the bankruptcy cases come there. There is scope, for someone who is corrupt, to make thousands of crores. The National Green Tribunal is critical. So is the National Human Rights Commission, which has serious potential to embarrass the government if it is independent. Such posts are not innocuous. Some of them have power, others have perks. The perks are worth at least Rupees 10 lakh a month. You can enjoy your two free vacations every year. With perks and salaries, one can live like a king.

BJP's deceased leader Arun Jaitley on September 5, 2013, had also said in Rajya Sabha, "There is a proposal to increase the retirement age of judges, please do it but with conditions. We are lavishly creating post-retirement benefits for them. If we don't create, the themselves create it. The view of the Supreme Court is that every member of the CIC must be a retired judge."

Arun Jaitley further said, "There is a situation where you say what should be the fees of a college. It is an accounting matter but the judicial order says that the fees of an engineering college should be decided by a retired judge. I think the temptation of continuing in a job is to keep occupying the bungalows. It is a very serious temptation. There is a danger that the desire of a post-retirement job influences the pre-retirement judgements." Again, on May 11, 2016, Arun Jaitley in Rajya Sabha gave a statement that "judiciary is destroying the edifice of India's legislature step by step, brick by brick."

Justice B.A. Khan, former Chief Justice of J&K High Court suggested, "A law would have to be enacted banning a CJI and judges of Supreme Court from accepting any post-retirement engagement, job or assignment. This would, indeed preserve and safeguard 'rule of law' and independence of the most vital limb of judiciary as custodian of the Constitution."



Justice Madan B Lokur, former SC judge, in his article published in The Wire on March 23, 2020, referring to 'judicial alacrity' and 'judicial evasion' said, "PILs relating to detention of children and preventive detention of adults in Kashmir under the dreaded Public Safety Act were not taken up with due dispatch...dealing with a habeas corpus."

Justice Lokur further said, "The Supreme Court in a PIL pertaining to police atrocities against students protesting against Citizenship (Amendment) Act, 'declined' to hear it till the violence stops." On the contrary, "The government of Uttar Pradesh put up hoardings in Lucknow, displaying the photographs, names and addresses of the alleged rioters...On the challenge to the hoardings through a PIL, Allahabad High Court ordered their removal forthwith. Rather

than complying with the order, the State government preferred a petition in the Supreme Court. The petition was treated as an urgent matter and taken up for hearing the very next day...This redefines the independence, impartiality and integrity of the judiciary. Has the last bastion (of democracy) fallen," quipped Justice Lokur.

Recently, noted senior advocate Kapil Sibal criticized the SC judgment on PMLA, which was later to be reviewed by the apex court. Attorney General K K Venugopal on September 2, 2022, declined the request of advocate Vineet Jindal to initiate contempt of court proceedings against Kapil Sibal, saying that, "The statements relating to the critiques of certain judgments by the apex court would fall within the purview of fair comments which is permissible under Section 5 of the Contempt of Courts Act, 1971, itself."

In a startling disclosure, the Enforcement Directorate (ED) on September 19, 2022, told the Supreme Court that some constitutional functionaries of Chhattisgarh and a high court judge were trying to help a few accused in money laundering case arising out of the multi-crore Nagrik Apurti Nigam scam in the State. The ED also made the submissions through the solicitor general before the bench headed by Chief Justice of India, for transfer of the trial outside Chhattisgarh.

Delayed justice is another nightmarish phenomenon associated with Indian judicial system. According to National Judicial Data Grid, a data base of the Department of Justice shows that there is an increase of 27% in pendency of cases between December, 2019 to April, 2022.

77% of the 5.4 lakh previous cases in the country are undertrials who are unable to avail bail despite SC's recent observation: 'Bail is the rule, jail the exception". According to governmental sources, over 4.1 crore cases are pending in subordinate courts of the country; 59,55,907 cases are pending in 25 high courts and 71411 cases are pending in Supreme Court.

A civil suit was filed by a resident of Delhi Pahar Ganj area in the year 1958, which was finally settled by the third-generation heirs out of the court in 2018. For six decades, the two litigant families ran to different courts of Delhi in the hope of getting justice. To bear the legal expenses, both the parties who were real brothers exhausted their savings to the extent of borrowing money, besides investing precious time of their lives. However, this is not the stand-alone case; there are millions of such cases in the country.

The activists find the easy answer of the serious situation of mounting pendency of cases by increasing the age of SC/ high court judges from 65 to 67 years, and 62 to 65, respectively. Bar bodies led by Bar Council of India (BCI) have recently favored amending the Constitution to enhance the retirement age of judges of the high court and Supreme Court. Earlier, Attorney General of India addressing the virtual farewell event organized for Justice Subhash Reddy on his retirement had also stressed upon the need to increase the retirement age of SC/HCs judges. However, Union Minister for Law & Justice in a written reply on July 21, 2022, had said in Rajya Sabha that there is no such proposal of the government.

As such, there is no dearth of talent of younger judges who have anxiously been waiting to prove their acumen and worth once they get an opportunity. The unnecessary increasing age of old judges is blocking the career of young people. Today, every third person is afflicted with diseases like diabetes, blood pressure, carotid artery disease and other comorbidities. Then there is a senility loss. How can you expect a man beyond 60 years to be actively handling the most challenging job of judicial adjudication. The aging is another factor of slow and delayed justice delivery capability.

The age of high court judges as per Article 217 (1), has already been increased in 1963 from 60 to 62 years, through the 114th Constitutional amendment. Similarly, through Article 124 (2), the age of SC judges has been increased. How many times will it be increased? Moreover, such a varied increase contravenes Article 14 and 16 of the Constitution as judges alone cannot be benefitted in comparison to other government servants.

Further, in a fresh Notification, issued on August 26, 2022, the Department of Justice in the Union law ministry announced that the Supreme Court Rules have been amended again to extend more post-retirement facilities to retired CJIs and judges of the top court. As per the latest changes in the Rules, all retired chief justices of India, will also be entitled to a security cover round-the- clock at their residence, in addition to a 24x7 personal security guard for a period of five years from the date of retirement. Moreso, a CJI will now get a domestic help, a chauffeur and a secretarial assistant for lifetime from the day he/she demits office. A retired Supreme Court judge will be entitled to 24x7 security cover

at his/her residence in addition to a round-the-clock personal security guard for a period of three years from the date of retirement. What all is this? Is it not an act of freebie at the cost of tax payers' money? Their Lordships have always taken a serious view of exchequer's money wasted by the executive or the law-makers. It is expected that their Lordships will not allow the squandering of public money for the specific class of retirees in contrast to other retired constitutional functionaries and government officers etc.

At present, the SC has 193 working days, high court 210 days and trial courts 245 days a year. Even the apex court rules specify that there has to be a minimum of 225 working days. These sittings need to be increased. As such, the only solution for expeditious disposal of arrears is doubling the existing strength of the Hon'ble judges in all the levels of judiciary with technological advancements. Honestly speaking, Armed forces personnel are doing much more difficult and riskier jobs compared to other vocations prevalent in the country. Citizens repose greater confidence and faith in higher judiciary. The deficiencies have to be identified and ameliorated in the best interest of the Nation.

Senior Advocate Mahalakshmi Pavani, President-Supreme Court Women Lawyers Association said, "In my opinion, ours is an independent judiciary where the judges are delivering justice fairly under no influence. However, as of today, discharging duties of a judge has become literally difficult, where judges are kept under the microscopic view. Social media trial on remarks, oral observations made by judges during the hearing of matters has become a practice. Quite often they are labelled as spokesman of government. I strongly resent this trend because it has a negative impact and portrays judges in a poor light. Being a judge is the most difficult job and requires great sacrifice, dedication and long hours of work. At times most uncharitable and disparaging remarks are made against judges and sometimes done intentionally to get the sensitive cases off their roster or indirectly compelling them to recuse."

With regard to judges' age Mahalakshmi said, "I believe that the retirement age of the High Court and Supreme Court judges may be enhanced subject to their consent and keeping in to consideration their mental and physical health. They should not be compelled to work post 62 and 65 respectively. Steps should also be taken to fill up the vacancies in the High Courts and the Supreme Court of India. More and more women should be promoted to the Bench to ensure gender parity. Justices L.N. Rao and Indira Banerjee in their farewell speeches said that the judges need a longer tenure because they felt when they were actually ready to do a lot since they were presiding, their tenure came to an end."

Mahalakshmi agreed that Law Minister Rijiju has recently written letter to all CJs of all States to accelerate the process of setting up fast track courts and fast track special courts to hear cases of heinous crimes against women, children and senior citizens. Presently, of 1800 fast track courts, only 896 were functional as of July 31, 2022, and more than 13.18 lakh cases against children, women and senior citizens are pending. Lack of judicial infrastructure is the main reason for this state of affairs. Another reason is vacancies not being filled up. The high courts of every State should endeavor to fill up the vacancies at the earliest and ensure smooth functioning of the fast-track courts in order to promptly deliver justice. Internet connectivity and improvement of technology should be the focus. Judges also need to be tech savvy for which training is necessary. I personally feel setting up of evening courts with retired judges and retired administrative staff utilizing the infrastructure dealing with cases of motor vehicle, insurance and family nature which will definitely help in clearing the backlog of cases.

Mahalakshmi lamented to mention the common perception that Supreme Court judges come at 10 o' clock, consume long lunch hours and go home at 4 pm. They don't work rigorously like doctors, engineers and policemen for 8 to 10 hours, although they live in spacious AC bungalows, travel in chauffeur driven luxurious cars, have elaborate security cover, draw heavy pay packets but their accountability towards public is zero. They avail very long summer and winter vacations. It is unfortunate that people have this perception. Each matter that is heard by the Bench is voluminous and therefore, requires a lot of consideration. The Benches aren't restricted to a particular roster and have to deal with all kinds of cases which involves a lot of hard work. Judges not only sacrifice their time and energy but also their family life. Apart from judicial work, Supreme Court judges also have administrative work which

take up a substantial amount of time. Over the years, the job of a doctor has become easier owing to medical advancement but a judge has to deal with intricacies of law and therefore, any comparison with a doctor or an engineer is a blow to the judiciary. We need to have a humane approach and not pass uncharitable remarks about judges.

Commenting on the recent move of the government to provide lifetime domestic help, a chauffeur and a secretarial assistant for ex- CJIs, 24x7 security cover for retired SC judges, Mahalakshmi said, "Maintaining law and order is no easy feat. Most of the matters dealt by the Supreme Court judges are of national importance and sensitive in nature. Judiciary is the third pillar of democracy and the Supreme Court judges, in performing their duty of administering justice, are exposed to threats. There have been instances where judges were assaulted. It is necessary to provide ample security cover and other facilities befitting a Supreme Court judge. It is our responsibility to provide these facilities to the carriers of justice even after retirement. It is just a small token of gratitude from the side of the government to the judge who has sacrificed his life for the judiciary."

K.C. Kaushik, learned lawyer of Supreme Court agreeing to

Mahalakshmi said that "under Indian Constitution, judges of the Constitutional courts are duty bound to protect citizens' rights. All the judges take Oath to uphold the dignity of Indian Constitution so they are supposed to be independent."

Contrary to the general perception that there is no dearth of talent in younger judges and they should be given chance for higher judicial service to replace the old ones whose senility has dulled as natural phenomenon, Kaushik favored the recent move of Bar bodies led by Bar Council of India for amending the Constitution to enhance the retirement age of judges of high courts and Supreme Court to 65 and 67 years respectively. His logic is that age of judges should be enhanced because Judges are being appointed around 50 years in high courts and around 60 years in Supreme Court. Infact, overall longevity has increased in India.

Kaushik emphasized upon the need of functioning the fast-track courts and fast track special courts as was recently recommended by Law Minister Rijiju through his letters to CJs of all States. "According to me, all lower courts should be converted on a fast-track mode because citizens have already started losing faith in the lower judiciary", opined Kaushik.

Kaushik agreed that "SC judges come at 10 O'clock, consume long lunch hours and go home at 4 pm. They don't work constantly like doctors, engineers and policemen for 8 to 10 hours, but we should remember that they have to decide matters after hearing the arguments of both sides as per the law, then to do their research before dictating judgements on facts and law so they do require some extra time other than hearing the matters. However, the strong point is that judges are not hermits, they too are the members of society. Therefore, to ensure no favour or prejudice takes place, judges like civil servants should be barred for not accepting assignments. There should at least be a cooling period for judges of high courts and Supreme Court of at least two years for not accepting any assignments in Central or State governments. The practice of retired judges accepting a governorship and/ or MP in Rajya Sabha must be stopped forthwith in public interest."

OBSTETRIC NEGLIGENCE: FRACTURE OF BABY'S ARM

REVISION PETITION NO. 3085 OF 2014
DR. ASHWINI M.S *Versus* MALINI A.N..Decided by the Hon'ble NCDRC on 13 September 2022

Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS: Malini A.N. (the respondent) filed Consumer Complaint No. 384 of 2012, claiming compensation of Rs.10/- lacs, for alleged medical negligence committed by the petitioner at the time of her caesarean delivery on 02.04.2012, in Mc.Gann Hospital Shimoga, fracture was caused in right arm of new born baby, that the complainant experienced labour pain and went to Mc.Gann Hospital Shimoga on 02.04.2012 at 10:30 hours for delivery of the child, complainant was firstly registered as outdoor patient and referred to Dr. Shobha U.N. (opposite party-2), who examined her, thereafter, a nursing student present there also examined her, by that time labour pain was started as such the complainant requested to give a room. She was informed that room was not available and she was asked to walk in corridor, where a bed was arranged. The nurse on duty asked the complainant to meet Dr. Ashwini M.S. The complainant met Dr. Ashwini M.S., who after examining her medical papers, asked her to obtain a scan report. Dr. Shobha U.N. gave a slip for obtaining scanning report from Malnad Diagnostic Centre, which was outside the hospital. In spite of severe pain, the complainant obtained scanning report and gave to the nurse. Who gave it to Dr. Ashwini M.S., who after examining it, advised to caesarean delivery immediately. The complainant signed the consent form for caesarean delivery. But Anaesthetist was not available at that time as such, the complainant was taken to labour ward and attempt was made for normal delivery, which failed. At about 4:10 PM, signature on the consent form for caesarean delivery was obtained from the parent of the complainant and thereafter, surgery for delivery was performed. After delivery of the child, the family members were informed that mother and child both were healthy. After some time, they were shifted to the ward. In the morning of 03.04.2012, swelling was noticed in the right arm of the complainant's child. When the doctors came to round in morning, he was informed in this respect, who advised for X-ray. On X-ray, it was found that bone of right hand was broken. Thereafter, treatment of the child was started. The complainant along with baby remained in the hospital till 09.04.2012. On the allegations that Dr. Ashwini M.S. had committed negligence at the time of her surgery due to which, right arm of the new born baby was fractured, the complaint was filed for compensation.

DEFENSE: The petitioner stated by that the complaint was not maintainable as the service has been provided to the complainant by the government hospital, free of charge. The facts that the complainant came to Mc.Gann Hospital Shimoga on 02.04.2012 at 10:30 hours for delivery of the child, her registration as outdoor patient, examination by Dr. Shobha U.N. have not been denied. She examined the medical papers including the scanning report of the complainant on 02.04.2012 at 1:30 pm. After examination, she was advised to caesarean delivery as the baby was healthy and normal delivery did not appear probable. The relatives of the complainant delayed, signing the consent form for caesarean delivery. At about 4:10 PM, signature on the consent form for caesarean delivery was obtained from the relatives of the complainant and thereafter, surgery for delivery was performed. The baby did not sustain any injury at the time of caesarean delivery. After delivery, the mother and baby were found in good condition. However, the complainant was advised to show the baby to paediatrician and she made a noting in this respect in the case sheet. Opposite party-1 visited the ward in night round on 02.04.2012 and found that mother and baby were in good sleep. Final Investigation Report of the Hospital was not based upon actual examination of papers and statement of the concerned persons. On the application of opposite party-1, the report has been reviewed on 19.07.2012 and no negligence at the time of caesarean delivery was found.

OBSERVATIONS: In Final Investigation Report of the Hospital dated 07.07.2012,

statements of the doctors and the nurses attending the patient from the time of her coming to hospital till her caesarean delivery were recorded. On the basis of these evidences, it has been found that at the time of surgery, head of the child was dropped at the bottom of uterus, which was a difficult delivery and there was possibility of the bone of child's hand could be fractured at the time of its bringing out. If these situations are co-related with the statement of the complainant that Dr. Ashwini M.S., examined her at 1:30 pm and advised for caesarean delivery immediately; she signed the consent form for caesarean delivery; but Anaesthetist was not available at that time as such, she was taken to labour ward and attempt was made for normal delivery, which failed, are fully corroborated and proved. At about 4:10 PM, signature on the consent form for caesarean delivery was again obtained from her parent and thereafter, surgery for delivery was performed. Due to attempt for force delivery, head of the child might have fastened at the bottom of the uterus. The petitioner was required to handle the case more carefully as she had attended the patient at all the relevant time and every fact was in her knowledge but she committed negligence and due to her negligence, the fracture was caused in right hand of the child. The complainant might be under delusion of anaesthesia on 02.04.2012. If on that day, she could not notice the fracture in the hand of the child, then it was normal for her. The review report does not record any reason for reviewing the previous report.

HELD: Foras below have not committed any illegality in holding that the petitioner has guilty of committing negligence. Supreme Court in Rubi (Chandra) Dutta Vs. United India Insurance Company Ltd. (2011) 11 SCC 269 and Loudres Society Snehanjali Girls Hostel Vs. H & R Johson (India) Ltd. (2016) 8 SCC 286, held that National Commission has no jurisdiction to set aside concurrent findings of facts recorded by two foras below, in exercise of revisional jurisdiction. The counsel for the petitioner relied upon the judgments of Supreme Court in Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1, Martin F D'Souza Vs. Mohd. Ishaq, (2009) 3 SCC 1, C.P. Sreekumar (Dr.) Vs. S. Ramanujam, (2009) 7 SCC 130 and S.K. Jhunjhunwala Vs. Dhanwanti Kaur, (2019) 2 SCC 282, which have no application in the fact of this case as in this case negligence of the petitioner was proved from the Investigation Report of the hospital itself. In view of the aforesaid discussion, the revision petition has no merit and is dismissed.

Supreme Court Guidelines

HINDU ADOPTIONS & MAINTENANCE ACT, 1956

CHILD IN ADOPTION TO FOREIGN PARENTS

Lakshmi Kant Pandey v. Union of India

AIR 1984 SC 469: 1984 (2) SCR 759: 1984 (2) sec 244: 1984 (I) SCALE 159

Dated: February 06, 1984

BENCH: Justices P.N. Bhagwati, R.S. Pathak and Amarendra Nathsen.

Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative wouldbe to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive parents would be the next best substitute for the biological parents.

The essence of the directions given in this case is broadly summarised in ***St. Theresa's Tender Loving Care Home* v. *State of Andhra Pradesh,* (2005) 8 SCC 525** are as follows, Guidelines and the norms to be followed in the case of adoption by foreigners:

1. Every effort must be made first to see if the child can be rehabilitated by adoption within the country and if that is not possible, then only adoption by foreign parents, or as it is some time called 'inter-country adoption' should be acceptable.

2. Such inter-country adoption should be permitted after exhausting the possibility of adoption within the country by Indian parents.

3. There is a great demand for adoption of children from India and consequently there is increasing danger of ill-equipped and sometimes even undesirable organisations or individuals activising themselves in the field of inter-county adoption with a view to trafficking in children.

4. Following are the requirements which should be insisted upon so far as a foreigner wishing to take a child in adoption is concerned. In the first place, every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the government of the country in which the foreigner is resident. No application by foreigner for taking a child in adoption should be entertained directly by any social or welfare agency in India working in the area of inter-country adoption or by any institution or centre or home to which children are committed by the juvenile court. This is essential primarily for three reasons:

I. Firstly, it will help to reduce, if not eliminate altogether, the possibility of profiteering and trafficking in children, because if a foreigner were allowed to contact directly agencies or individuals in India for the purpose of obtaining a child in adoption, he might, in his anxiety to secure a child for adoption, be induced or persuaded to pay any unconscionable or unreasonable amount which might be demanded by the agency or individual procuring the child.

II. Secondly it would be almost impossible for the court to satisfy itself that the foreigner who wishes to take the child in adoption would be suitable as a parent for the child and whether he would be able to provide a stable and secure family life to the child and would be able to handle trans-racial, trans-cultural and trans-national problems likely to arise from such adoption, because, where 268 *Hindu Adoptions & Maintenance Act, 1956* 269 the application for adopting a child has not been sponsored by a social or child welfare agency in the country of the foreigner, there would be no proper and satisfactory home study report on which the court can rely.

III. Thirdly, in such a case, where the application of a foreigner for taking a child in adoption is made directly without the intervention of a social or child welfare agency, there would be no authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted at the earliest in accordance with law and grows up in an atmosphere of warmth and affection with moral and material security assured to it. The record shows that in every foreign country where children from India are taken in adoption, there are social and child welfare agency licensed or recognised by the government and it would not therefore use any difficulty, hardship or inconvenience if it is insisted that every application form a

foreigner for taking a child in adoption must be sponsored by a social or child welfare agency licensed or recognised by the government of the county in which the foreigner resides. It is not necessary that there should be only one social or child welfare agency in the foreign country through which an application for adoption of a child may be routed; there may be more than one such social or child welfare agencies, but every such social or child welfare agency must be licensed or recognised by the government of the foreign country and the court should not make an order for appointment of the foreign country and the court should not make an rode for appointment of a foreigner as guardian unless it is satisfied that the application of the foreigner for adopting a child has been sponsored by such social or child welfare agency.

5. The position in regard to biological parents of the child proposed to be taken in adoption has to be noted. What are the safeguards which are required to be provided insofar as biological parents are concerned? We may make it clear at the outset that when we talk about biological parents, we mean both parents if they are together or the mother or the father if either is alone. Now it should be regarded as an elementary requirement that if the biological parents are known, they should be properly assisted in making a decision about relinquishing the child for adoption, by the institution or center or home for child care or social or child welfare agency to which the child is being surrendered. Before a decision is taken by the biological parents to surrender the child for adoption, they should be helped to understand all the implications of adoption including the possibility of adoption by a foreigner and they should be told specifically that in case the child is adopted, it would not be possible for them to have any further contact with the child. The biological parents should to be subjected to any duress in making a decision about relinquishment and even after they have taken a decision to relinquish the child for giving in adoption, a further period of about three months should be allowed to them to reconsider their decision.

6. But in order to eliminate any possibility of mischief and to make sure that the child has in fact been surrendered by its biological parents, it is necessary that the institution or center or home for child care or social or child welfare agency to which the child is surrendered by the biological parents, should take from the biological parents a document of surrender duty signed by the biological parents and attested by at least two responsible persons and such document of surrender should not only contain the names of the biological parents and their address but also information in regard to the brother of the child and its background, health and development.

But where the child is an orphan, destitute or abandoned child and its parents are not known, the institution or center or home for child card or hospital or social or child welfare agency in whose care the child has come, must try to trace the biological parents of the child and if the biological parents can be traced name it is found that they do not want to take back the child, then the same procedure as outlined above should as far as possible be followed. But if for any reason the biological parents cannot be traced, then there can be no question of taking their consent or consulting them. It may also be pointed out that the biological parents should not be induced or encouraged or even be permitted to take a decision in regard to giving of a child in adoption before the birth of the child or within a period of three months from the date of birth. This precaution is necessary because the biological parents must have reasonable time after the birth of the child to take a decision whether to rear up the child themselves or to relinquish it for adoption and moreover it may be necessary to allow some time to the child to overcome any health problems experienced after birth.

7. Of course, it would be desirable if a Central Adoption Resource Agency is set up by the Government of India with regional branches at a few centers which are active in inter-country adoptions. Such Central Adoption Research Agency can act as a clearing house of information in regard to children available for inter-country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded by the social or child welfare agency in the foreign country to such Central Adoption Resource Agency and the latter can in its turn forward agencies in the courts. Every social or child welfare agency taking children under its care can then be required to sent to such Central Adoption Resource Agency the names and particulars of children under its care who are available for adoption and the names and particulars of such children can be entered in a register to be maintained by such Central Adoption Resource Agency."

NOTE: In terms of this Court's ***(St. Theresa's Tender Loving Care Home* v. *State of Andhra Pradesh)*** decision in *Lakshmi Kant Pandey* case (supra), CARA was formed and it published "Guidelines for adoption". Under these guidelines every State has a VCA to co-ordinate and oversees inter-state adoptions.

Relevant Cases: *Lakshmi Kant Pandey* v. *Union of India,* AIR 1984 SC 469: (1984) 2 SCC 244; *St. Theresa's Tender Loving Care Home* v. *State of Andhra Pradesh,* AIR 2005 SC 4375: (2005) 8 sec 525.

CATCHING THE BTK KILLER

By Max Alexander

Something doesn't seem right, thought Cindy Plant as her truck bounced along an old dirt road north of Wichita in January 2005. Plant, 52, is code and animal control officer for the tiny community of Valley Center, which lies just north of the country road. Valley Center has many paved highways, but Cindy prefers North Seneca Street, a less traveled agricultural route that parts a sea of wheat fields.

She was taking Seneca to Park City, a nearby town where her friend Dennis Rader held the same position she did. They'd met in 1991 when Plant, a sturdy blonde with a soft open face, trained Rader in animal control-teaching him how to recognize and evaluate dog behavior, when to use the tranquilizer gun, and how to deal with sadness when dogs need to be put down.

The back of Plant's truck is often populated with a barking dog or two, generally in some state of distress, but today what distracted her was litter-specifically a Post Toasties cereal box propped up against a road-curve signpost. As a code officer, Plant pays attention to trash. “If I see tires dumped, or an old freezer, I get out and report it to Environmental Health,” she says. “When you look at trash and debris, it's flung, it's thrown, it's blown, but it's never propped up.” Plant passed the box for several days, curious yet always too busy to get out and take a look.

As Plant suspected, the cereal box was not trash. It had been weighted with a brick and positioned carefully against the signpost by Wichita's notorious serial killer, who in a letter to police once referred to himself as BTK-short for "bind them, toture [sic] them, kill them.”

BTK enjoyed corresponding with the cops, sometimes via the media. In a postcard tip sent to a local TV station about the time Plant spotted the cereal box, the killer indicated its location, and said the box contained a doll, some jewelry, and an "acronym list" that may have been a word puzzle.

Months earlier, the reemergence of BTK, who had not been heard from in 25 years, had sent shock waves through Wichita. Police believed he was responsible for some ten deaths, his reign of terror beginning on January 15, 1974, when he murdered Joseph Otero and his family.

After serving 20 years in the Air Force, Otero, 38, had moved with his wife, Julie, 34, and their five children to Wichita, a center of aircraft manufacturing. The killer apparently interrupted a sandwich-making operation when he entered the modest Otero home on that cold winter morning: In the kitchen, a knife coated in peanut butter was found in midsmear on a slice of bread. The telephone line had been cut. BTK tied up Joseph, Julie and two of their children-Joey, 9, and Josie, 11-then, according to police reports, slowly strangled them to death with venetian blind cords. Although he did not sexually assault any of the victims, semen was found on young Josie's inner thigh, indicating the killer was a sociopath who took sexual pleasure in the killing. He also took souvenirs-a watch and a key chain leaving the bodies to be discovered by the couple's other three children, all teenagers, when hours later they returned home from school.

Determined to solve the Otero crime quickly, police mobilized across town, interviewing anyone who had even a remote acquaintance with the victims. They set up a roadblock near the house and quizzed passing drivers. Wichita Police Chief Floyd Hannon even traveled to the Oteros' native Puerto Rico' as well as Panama, where the family had once been stationed, looking for clues. In the ensuing months several arrests were made, but the suspects all had good alibis and were released. Because DNA matching had yet to be developed, the killer's semen sample was of little help in the investigation.

The Otero family was killed when Dennis Rader was 28 and between jobs. His father, William, who died in 1996, was a former Marine who worked at a Wichita power plant; mother Dorothea was a grocery store bookkeeper and still lives in the Park City bungalow where Dennis and his three younger brothers grew up-on North Seneca Street, a couple of miles south of where the Post Toasties box was found.

John Davis, 59, Rader's best friend from age five, recalls enjoying a Tom Sawyer-Huck Finn childhood with his pal. "We spent a lot of time at the Little Arkansas River, fishing and swimming," he says. "We would dig foxholes and build forts. Neither of us ever got into any sort of trouble. Our parents kept a close eye on us. Dennis's father was a very nice person. He was fair-minded, but you just knew he didn't put up with any nonsense.” The pair joined the Boy Scouts, regularly taking long hikes and canoe trips.

After graduation from Wichita's Heights High School in 1963, Davis saw less of Rader,

but the friends remained loyal. “He would lend me his car so I could pursue my girlfriend," says Davis, who is a staff member at the University of Washington in Seattle. When that girlfriend became Davis's wife in 1966, Rader was best man. The same year, Rader joined the Air Force. After an honorable discharge in 1970, he married Paula Dietz and settled down in Park City to raise a family in a small '50s ranch house they purchased on Independence Street, a crescent-shaped lane with no sidewalks.

Until July 1973, Rader worked as an assembler at the local Coleman camping supply factory. In November 1974 he landed a position as an installer for ADT, the nationwide home security company. The job was the first in a series of positions that gave Rader access to Wichita homes in an official capacity.

Three months after the Otero murders, the killer struck again-stabbing to death 21-year-old Kathryn Bright, a worker at Coleman, and shooting her brother Kevin, who escaped with serious head injuries. It was just a few months after the Bright murder that the killer first identified himself as BTK in a grammatically challenged, typewritten letter to police. “I’m sorry this happen to society,” he wrote. “They are the ones who suffer the most. It's hard for me to control myself. You probably call me ‘psychotic with sexual perversion hang-up.’ When this monster enter my brain, I will never know.”

To prove his authenticity, the killer related details of the Otero murders that had not been released to the public: “All victims had their hands tie nehind [sic] their backs. Gags of pillow case material. Slip knotts [sic] on Joe and Joseph ... Purse contents south of the table. Spilled drink in that area also, kids making lunches.”

More grim killings, and letters, were to come. On Saint Patrick's Day of 1977, BTK entered the tidy cottage of a 24-yearold church choir singer named Shirley Vian, locked her three children in the bathroom, and then tied Vian to a bed and strangled her as the children wailed. “They were very lucky,” BTK wrote in a letter. "A phone call save them. I was going to tape the boys and put plastics bag over there [sic] head like I did Joseph [Otero] and Shirley. And then hang the girl. God-oh God what a beautiful sexual relief that would [have] been."

In December of the same year, not far from Vian's home, BTK bound and strangled Nancy Fox, a 25-year-old secretary; then he used a downtown pay phone to report the homicide. "You had to have lived here to know the fear that gripped this city," recalls Plant. "The Otero killings happened on my 21st birthday. I was a young mother and just scared to death." Robert Beattie, a local lawyer and author of a book about BTK called Nightmare in Wichita, says a generation of Wichita women took to checking their phone lines the moment they entered their homes.

In 1975, after BTK had killed five people, Rader's son, Brian, was born. When Paula Rader was pregnant again, in January 1978, BTK claimed responsibility for killing Shirley Vian in a poem called "Shirleylocks," based on the nursery rhyme "Curley Locks," that he sent to the Wichita newspaper. Ten days later he sent another poem to a local TV station in which he described killing Nancy Fox. "Seven down and many more to go," he warned. Four months later, Kerri Rader was born.

During those years, Rader attended Wichita State University graduating in 1979 with a degree in administration of justice, which typically leads to a career in law enforcement.

At the same time, Arlyn Smith, a young Wichita detective, hoped to trace the killer through the physical evidence of his letters. BTK usually sent police poor photocopies of the original letters, to distort the typewriter's "fingerprint." But Smith figured even photocopies must have some identifiable characteristics. The Xerox Corporation, along with paper and toner manufacturers, agreed to help. Thanks to their efforts, some of BTK's letters were traced to two copy machines on the Wichita State campus.

Police had located the haystack, but they still had to find the needle.

Then, after seven victims, the letters and killings stopped.

As the years went by, many assumed BTK had died, moved away or been imprisoned, but Wichita's new police chief, Richard LaMunyon, wasn't so sure. In 1984, LaMunyon launched a task force to investigate the crimes. To avoid tipping off the complacent killer, the force was kept secret and named Ghostbusters after that spring's hit movie. It included local psychologist John Allen, who began poring over the history of the case.

“When I reviewed the 1970s investigations,” recalls Allen, “it became apparent that they were looking for an obvious madman-someone who would act so bizarre that he drew attention to himself. But I believed you could be next to this guy in an elevator and have no idea. I felt he was thoroughly ensconced in a social network-his job, his church.”

By the mid-‘80s, DNA was beginning to be used in criminal forensics, so the Ghostbusters began voluntary DNA testing of

suspects. They used computer databases to scan records at Wichita State, hoping to cross-reference a suspect. They even convinced the Pentagon to let them view top-secret military satellite photos of Wichita on crime days Still no killer. LaMunyon disbanded the Ghostbusters in 1986, and the trail went cold.

In 1988, Dennis Rader left ADT. The following year he became the Wichita field operations supervisor for the 1990 Census. Among his jobs was verifying new residential addresses around town. In 1991 he became the uniformed code officer for Park City. He also wore the uniform of a Scout leader, working with a local pack of which his son, Brian, was a member.

In Park City, Rader gained a reputation as a stickler for the rules. "He came out and measured my grass and said it was too long," remembers Cheryl Hooten, owner of Auntie C's, a local restaurant. "He fined me for putting up [restaurant] signs around town. I had no inkling they weren't allowed."

Cindy Plant says Rader's personal appearance reflected his attention to detail: "You never saw him in blue jeans; he wore Dockers and nice shirts. His desk was immaculate, everything hung up on a pinboard." Plant traveled all over the state with Rader, organizing training seminars. They stayed in hotels and spent hours in the car and over meals, but Rader never talked much about his personal life. "One time he had just taken his kids on a vacation and seemed to be thrilled about it," she says. "I could tell he really cared about his family." Although Plant never saw him lose control, there were stories. She once heard that Rader "blew up at the Wichita animal shelter manager for changing their billing practice."

George Martin, a fellow Cub Scout leader, says that Rader was a stickler with his young Scouts. He recalls that Rader took his outdoor skills seriously. "He taught the boys knots," Martin says. "He was very strict that they learn; he wouldn't let them slack off."

In January 2004 the Wichita Eagle ran a story marking the 30th anniversary of the unsolved Otero murders. Two months later, the newspaper received a letter with a return address of Bill Thomas Killman (initials BTK). In the envelope was a photocopy of a driver's license belonging to Vicki Wegerle, a 28-year-old Wichita mother who'd been strangled in 1986, and three photos of the death scene apparently taken by the killer. The unsolved Wegerle murder had not been linked to BTK, but based on characteristics of the letter, police were certain this was no copycat. After 25 years of silence, BTK was back.

While a new generation of Wichitans checked their phones and nervously eyed strangers, the killer fired off at least eight separate communications over the next 11 months-daring police with word puzzles, dolls, and chapters of his proposed autobiography. With his taunting letters and sick poems, "he seemed to take a special enjoyment out of proving the cops couldn't catch him," says Dr. Allen, the Wichita psychologist. "He was obviously a very narcissistic guy who sought a lot of attention."

Assuming BTK was at least in his 20s when he killed the Oteros, he would have to be more than 50 by now. But if he had changed over the years, so had the tools to catch him. On February 16, 2005, a local TV station received a padded envelope from BTK containing a necklace and a copy of the cover of a novel about a killer who bound and gagged his victims. The package also contained a computer disc. Investigators were able to recover deleted files on the disc that suggested it had been used at the Christ Lutheran Church near Park City. The recently elected president of the church council at Christ Lutheran, police learned, was Dennis Rader, 59-year-old married father of two grown children-a balding, bespectacled Cub Scout leader and former Wichita State University student.

At some point, police had secretly obtained a sample of 26-year-old Kerri Rader's DNA, probably through medical lab records. It was reported that the sample closely matched DNA from one or more of the original crime scenes.

Rader was arrested on February 25, 2005, as he drove near his home. He is said to have confessed to a total of 10 murders, including the 1985 killing of Marine Hedge, a 53-year-old widow who lived on Rader's block. The last known murder was in 1991, when BTK abducted 62-year-old grandmother Delores Davis from her home, just up the road from Christ Lutheran Church.

Carmen Montoya was in her Albuquerque office when a Wichita detective called with the news. Montoya is a 45-year-old mother who works for a nonprofit group that mentors school kids. Her maiden name is Otero. On a winter day in Wichita in 1974, 13-year-old Carmen skipped home from school to discover her strangled parents in their bedroom. She was raised by family friends.

When the detective called, "I was speechless," Montoya says in

a soft, clear voice. “I felt relieved, angry and sad. I thought [the killer] would be a really big, mean-looking man. It blows me away that this was a man who was so active in his church.”

She wasn't alone. Cindy Plant has a hard time forming complete sentences when she talks about Rader now. Standing outside the animal shelter in Valley Center, on a late winter afternoon, she ignores a chorus of yelping dogs and scans the sky, as if the right words might flash like falling stars. "We stayed in hotels, had dinner together. And to find out that the person I've lived in fear of all these years was ... My God, I haven't just known a killer. I think I could deal with that. But I've known someone who was a serial killer. You wonder what makes these types of people tick.”

Like many who knew Rader, childhood friend John Davis speculates that he had more than one personality, each unaware of the others. But Dr. James Alan Fox, coauthor of Extreme Killing: Understanding Serial and Mass Murder, says that assumption, while comforting to those who knew the “good” Dennis, is probably off the mark. “Lots of people have multiple sides of the same personality,” he says. “It's not schizophrenic, but they are able to compartmentalize. Serial killers can be good husbands and fathers and neighbors, but strangers mean nothing to them."

Davis wants to visit Rader in the Sedgwick County jail, where he is being held on $10 million bond. “lf I sat down with him I would say, ‘I’m here to see the Dennis that I know and care about, but there's another part of you that I don't understand. “He fumbles and fights back tears. "And I would just ask him, 'What the hell were you thinking?”

Fox says a killer like BTK is typically obsessed with power and control. "It's probably not a coincidence that the killings stopped when Rader got the position as compliance officer," he explains, adding that the motivation for serial killers is fairly straightforward. "Lots of people take pleasure in other people's pain. At lower levels we see it in people who are sarcastic." Serial killers take that to the extreme, of course, and understanding why is not so easy. Fox speculates that such killers have particularly vivid sexual fantasies that they feel compelled to pursue. Once they kill, says Fox, "the fantasies become crystallized and more demanding.”

It's all academic to those who know Rader. “I try not to understand him,” says Christ Lutheran Pastor Michael Clark, “because then I might judge him.”

On May 3, Rader, now 60, stood mute at his arraignment and allowed the judge to enter a plea of not guilty on his behalf. He awaits trial on charges that would bring life in prison. (Because the BTK murders were committed before 1994, when Kansas reinstated the death penalty, the charges are not capital-punishment offenses.)

Two Sundays before Easter and two weeks after Rader's arrest, bright morning sun streams through the high windows of Christ Lutheran Church. Paula Rader's seat in the choir remains empty; until recently a bookkeeper for a local convenience store, she remains in seclusion. Their daughter, Kerri, is married to a Web designer and lives in Michigan. Son Brian is in the Naval Submarine School in Connecticut.

Assisting Minister Donn Bischoff offers a prayer “for the Rader family and for the victims of BTK and their families.” The Gospel reading is the story of Lazarus, whom Christ brought back from the dead. Jesus tells his disciples, "Those who walk during the day do not stumble, because they see the light of this world. But those who walk at night stumble, because the light is not in them.”

After the service, Pastor Clark removes his vestments and sighs wearily. "Nothing in the seminary prepared me for this," he says. Clark is a year older than Rader. Three times a week, he drives down to the jail and speaks with his congregant from the other side of a glass wall. "He needs a pastor,” adds Clark. “And the family is devastated. Paula's life is turned upside down. I'm afraid she may have to move away, because people will take it out on her.”

Or they may take it out on Clark himself. “Some people want me to get up on that pulpit and condemn Dennis to hell,” he remarks. "But that's not why I was called into the ministry.”

All the while, Cindy Plant can't stop thinking about the cereal box. “Now BTK was a puzzle and a game person,” she says. "And you know how that box was against a road-curve sign? Well, the arrow on that sign points to Park City. I keep wondering if that was a clue.”

Carmen Montoya is looking toward the future; she plans to attend Rader's trial. "At this point I don't even know if I could face him, but I feel I need to,” she says. “He got gratification ruining people's lives. He needs to know that he didn't ruin mine.”

Dennis Rader was sentenced to ten consecutive life terms. He is incarcerated in Kansas’s El Dorado Correctional Facility.

Of LAWS. For Laws. By Laws

Sadiya R. Khan
Advocate

I wondered
I wandered
As I Read
"On Laws": Kahlil Gibran said
I humbly infer
It`s beyond Poetic Mastery
Rare legal poetic piece
The Children. The Animals.
The laughing Oceans. The Serpents.
The Shadows. illegal feasts
All answers to a lawyer
So True for..
Contemporary Legal Threads
It`s all so courageously said
My pen writes in honour
For the Great Gibran
His words "On Law" inspire
A lawyer from 21st Digitalised Era
Gibran could foresee
The Legal destiny
Where ink bottles know none
Where plaints are print out tons
Feather pens were windy fun
Reads. Observes. Absorbs
The Sowed laws
Crossing Nautical Miles
Jurisprudence turning Modern
An Epic to create
Orders and Judgements
Thou feed the Hungry, Oh not the Law?
My pen writes in honour
For the Great Kahlil Gibran
This lawyer from 21st Digitalised Era
Where Smoke isn't caused by Fire
What Laws meant to corrupt desires?
I though witnessed no Feast
Yet Law transformed to Richly Treat
So many flaws unsaid
Loopholes created laughter's for unrest
I was thinking ..
Not to belong to this Age
Only if Philosophers were Legal Sage
My pen writes in Honour
For the Great Gibran
The Legal Tides
Covering all
Sand dunes say it all
Somewhere in the deserted law
Human Rights got flawed
Turning the hands of time
This isn't the Age of Patience
Where Law is slow
An Online Era
Where Law is Sure
Unknown though ..the Road of Justice
Whether achievable or not?
Not a blot though
Until legal Angel's plough!
My pen writes in honour
For the Great Gibran
For the Olive tree is dense
The fruits so splendid
For the wood of law chiselled
From Paper to Paperless
A journey so long
Traversed. Meandered. Amended
As many Poets could ever think
Law at a blink
As fast could Justice be pronounced
As slow as a Snail the pending files
Reformatory is beautiful
Better than your Hon`ble years
A pigeon of Peace though
Squirrels-Walnuts -The Mighty Crow
I wonder ..
For the Destiny of Law books
Will it be sustainable for the next age?
Much of it copied on browsers
Imagine Law without a Page!
My pen writes in honour
For the Great Gibran
The Legal Barometers are constant
Overcrowded Courts with Gowns
An amazing view
Smiles With Frowns
The hurry to mention matters
O! What an Art of words
Manage the noise and the Que
Be Brief and Quick
All this Age.. too views
This is all the work days
Allow me to speak Justice delays
At times Victim see no light of the day
At times waiting is disdain!
My pen writes in honour
For the Great Gibran
The Weathervanes keep changing
Precedents and Precedents
Amendments and Amendments
A sparrow with a twig
Is not a cobbler to stitch
Law is no stranger to Politics
A subset
Law is dignified even today
And shall always be
Never to lose lustre
Neither malleable nor ductile
Neither will it be
I pray it remains so..
It`s on its word
Legal thinking mind
Hardworking Legal Clan
Not understood by non-legals
The mighty Legal eagle journeys
Beyond comprehension of common eyes
Ascending Stratospheric Heights
Slow Sure
Flap the Strong Wings
My pen writes in honour
For the Great Gibran
This age too needs Human Rights
Are they for Human Rise?
Digital Age is a furore
Lion Roars ..as I see
Law practise not for the Weak willed
Acknowledge brave minds
The fight for Justice is not sublime
Your reference to shadows
I find "**ecdysis"** today
Done by both
Vertebrates and invertebrates
So did time then?
Bring innocence to freedom then..?
Of the Hungry hands and wrinkled faces
Did Law then win the race?
My pen writes in honour
For the Great Gibran
As I see..
Pleadings. Drafting. Arguments
A Lawyers Life is no easy
It begins with Law
It ends with Law
O! How better can I say
A lawyer's life ever since
Codified in Mesopotamian age
The Legal Independence
The Poetically Legal
Suns. Sums. Songs
Of the Law..
For the Law..
By the Law..

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:

Purna Titali Asana

The word "Purna" refers to 'complete' and "Titali" means 'butterfly' in Sanskrit. In this pose the legs are spread out the way a butterfly opens its wings in flight.

Benefits: Relieves stress and lifts your spirits;

Inner thighs get relaxed;

Helps overcome fatigue;

Soothes your legs;

Beneficial to the uro-genital system.

Procedure: Sit on the floor with your legs stretched in front. Keep your head, neck and spine erect. Hold the ankles of the respective legs. Bend the legs at the knee and bring the feet closer to the body. The soles of both feet should be joined. Follow with one round of inhalation and exhalation. Pull the joined feet closer to the groin. Place both the palms on the respective thighs. Take a deep breath and press the thighs down. Remove the hands from the thighs and hold the feet together. Move the knees up and down without any support. Exhale. Do not lean in front or back while performing the pose. Close your eyes and breathing normally continue flapping the knees for as long as possible.

***Caution*:** People with knee pain should avoid this yoga pose.

Healthy Food

Sapodilla

Sapodilla also known as chikoo (*Manilkara zapota).* It is extremely sweet to taste, and tastes very much like cotton candy or caramel and has a grainy texture. It is rich in carbohydrates, which, in turn, makes it a high-calorie and high-energy fruit. An interesting sapodilla nutrition fact is that it has a very high content of vitamin C, followed by other vitamins including vitamins A and B-complex. Sapodilla is also rich in minerals including copper, iron, phosphorus, magnesium, zinc, calcium and electrolytes including sodium and potassium. Sapodilla is a rich source of the poly-phenolic antioxidant tannin. One of sapodilla's benefits is its ability to cure diarrhea. Sapodilla is also a rich source of fibre. Sapodilla fruit regulates the metabolism and keeps the digestive tract clean. It is rich in minerals which help in formation of essential enzymes and gastric juices. Sapodilla fruit is also a rich source of anti-oxidants and helps prevent cancer. In addition, intake of chikoo fruit during pregnancy is highly recommended; this is because of sapodilla's high nutrition content. It helps revitalize the skin, making you look younger and preventing the appearance of dark spots, fine lines, and patches on skin.

Recipe of the Month

Chikoo Halwa

Ingredients:

- 5 chikoos
- 200 gms mava (khoya)
- 7 tbsp sugar
- 3 to 4 cardamoms (elaichi)

Method: Peel and mash the chikoos. Cook in a vessel for 5 minutes. Add sugar and stir till it is absorbed completely. Remove and add mava. Mix well. Then pour into a dish and sprinkle powdered cardamoms. Spread silver paper.

Diet Tip: Chew food thoroughly for better digestion and assimilation.

Happy Holidays

Palampur

Palampur is a fascinating spot in the Kangra Valley, surrounded on all sides by tea gardens and pine forests. The scenery presents a sublime and beautiful contrast- the plain presents

a picture of rural loveliness and repose, while the hills are majestic. There are a number of places of tourist importance near Palampur; notable among them are: **Tea Factory** is the hub of tea plantations in North India. During the trip to this hill resort, do not forget to pay a visit to the tea factory run by the Cooperative Society in order to enhance your knowledge on the processing and manufacturing of the world famous Kangra tea. **Church of St. John in the Wilderness** truly represents the age-old grandeur of the period. **Bundla Chasm,** renowned for its spectacular waterfall, is a favourite picnic locale for visitors. The serene landscape here makes it among the frequented tourist attractions in Palampur. **Neugal Khad** is an ideal place to relax amidst nature's breathtaking beauty. The serene Bundla stream flows through this 300 m wide chasm that offers a picnic locale to tourists. Located barely a km away from Palampur, it commands a spectacular vista of the snow-clad Dhauladhar Hills. **Temple of Bunsla Mata** dates back to nearly five centuries and continues to attract visitors in large numbers. The drive to the temple through sprawling acres of fragrant tea plantations and lush green fields is beautiful. **Andretta village** is among the most largely visited excursions from Palampur. The village is home to exquisite handicrafts produced by the local artists and attracts tourists in large numbers from different parts of the world. Pottery making is the most famous art practiced here. The historic town of **Sujanpur Tira** is yet another popular excursion site from Palampur where one can visit a number of ancient forts and temples. The remarkable architecture of the monuments needs to be seen here. **Baijnath,** home to the magnificent Shiva Temple, attracts visitors from all over the country in large numbers. **Gopalpur** has a mini Zoo where one would find some of the most fascinating and rare species of birds and animals. Kids would surely love the visit but adults too would find it an interesting experience.

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

Long –Term Preparation

Prepare yourself generally as a public speaker.

Everybody has a personal manner of speaking, and it's a mistake to try to be what you're not. So don't try to emulate Perry Mason. Be yourself. But avoid the common mistakes in delivery that advocates make. You'll find that avoiding some of them takes practice.

Don't speak fast. Machine-gun presentations, even when perfectly well understood, are ineffective. Most people can process information only at a moderate rate. When ideas even the best ideas-come tumbling forth too fast, they're apt to induce either headache or inattention. (There is probably such a thing as speaking too slowly, but few have ever observed it.) Working on a slower presentation is likely to be difficult but worth the trouble.

Adjust the volume of your voice to the surroundings and the sound-enhancement equipment available. The decibel level of your delivery should be conversational, not oratorical, throughout. The

judges should be able to hear you with ease and without discomfort. If you're speaking so softly that they miss snippets of your presentation, or so loudly that listening is painful, they'll rarely ask you to adjust your volume; but they'll often tune you out. Crescendos and fortissimos of delivery may be effective in a declamatory oration, when appeal to emotion and incitement to action are the object. They're decidedly ineffective in the courtroom, where counsel's implicit message to the court is "Let us reason together."

Lower the pitch of your voice. A high and shrill tone does not inspire confidence. You must speak, of course, with the voice you've been given, but voices can be improved over time. Expand your lower register through practice. This doesn't mean that you should sound like a radio announcer. But realize that your natural tone tends to be elevated by excitement, or by the desire to drive home a point.

Speak distinctly. Oral argument is not the place to drop consonants and slur your words. Practice enunciating each word clearly and separating it from the words before and after. Most judges, if they have not understood a phrase or sentence of your presentation, will not ask you to repeat it-and your point will have been lost.

Purge your speech of "ums" and "ers," Such "filler" sounds do nothing but distract. Far better, if necessary, simply to pause between words. But avoiding "urns" and "ers" can't be achieved by practicing it the night before argument. Like clear enunciation and modulation of volume and pitch, it's something you must put into practice in your daily speech if you aspire to be an oral advocate. One way to sensitize yourself to "urns" and "ers" is to tape-record or videotape a practice presentation. That exercise in self-observation can be uncomfortable, but it can induce dramatic improvement.

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

AGREE TO DISAGREE

When you negotiating in a conflict it's easy to ship into "did nor, did So" arguments about things that are completely irrelevant. This is obviously counter- productive: it rainforest differences, while your goal is precisely the opposite. Declare out loud that you think it's fine to agree to disagree on side issues. Once that's done, you can focus on the central issue, which is why you came to the table in the first place.

73 years Young High Court of Rajasthan

Aruneshwar Gupta
Senior Advocate

Law and Legal Institutions are young forever with the dynamic energy existing within, which continues to evolve with every human relationship coming into existence. They ceaselessly, in spite of minor abrasions, march forward with poise, dignity and magnanimity, to protect and compensate the suppressed wills and unheard cries and also punish those who commit breach and violate law. Courts are the hub of social balance as it resolves conflicts and disputes from conception of being till the issue of secession certificate. Roscoe Pound in 'Justice according to Law' brilliantly penned: "We have always known that the judicial process does not at all times and in all places confirm absolutely and in all respects to our ideal of it. Despite all the checks with which we surround it, it does not come out in every case entirely as we could wish. But the striving for the ideal, I repeat, goes far to realize the ideal. It is the approximation to our ideal of it which is significant, not the falling short, which we seek continually to control and to reduce to a minimum". (emphasis supplied)

Greater Rajasthan was formed on March 30, 1949 with Sawai Man Singh II as the Rajpramukh and Hiralal Shastri as the Chief Minister. On that date High Courts were functioning in five states – Jaipur, Jodhpur, Bikaner, Udaipur and Alwar. On August 29, 1949 Rajasthan High Court, Ordinance 1949 was notified and High Court of Rajasthan was inaugurated at Jodhpur by the Rajpramukh. Oath was administered to Justice K.K.Verma from Allahabad as Chief Justice of Rajasthan and the following 11 (eleven) Judges representing different states as judges of High Court of Rajasthan:

1. Justice Naval Kishore and Justice Amer Singh of Jasol from Jodhpur
2. Justice K.L. Bapna and Justice Mohd. Ibrahim from Jaipur
3. Justice J.S. Ranawat and Justice Shardul Singh Mehta from Udaipur
4. Justice Khem Chand Gupta from Kota
5. Justice Tirlochan Dutt from Bikaner
6. Justice D.S.Dave from Bundi
7. Justice K.K.Sharma from Bharatpur
8. Justice Anand Narain Kaul from Alwar

The principal seat of High Court was kept at Jodhpur and benches at Jaipur, Udaipur, Bikaner and Kota. Shri G.C.Kasliwal was appointed as the first Advocate General of Rajasthan. On January 26, 1950 Constitution of India came into effect, Rajasthan was given the status of Class 'B' State and the strength of the judges was reduced to 6 (six). It was essential that the Judges must confirm to the eligibility provided under the Constitution. The result was that Hon'ble Chief Justice K.K.Verma, Justice Khem Chand Gupta, Justice Trilochan Dutta, Justice Sardool Sing Mehta retired on January 24, 1950 and Justice A. N. Kaul on March 3, 1950. Justice Naval Kishore was appointed as the acting Chief Justice and continued till January 1, 1951 when Justice K.N.Wanchoo from Allahabad was sworn in a Chief justice on January 2, 1951. Chief Justice K.N.Wanchoo continued as Chief Justice till August 10, 1958 when he was elevated as judge of Supreme Court of India. Justice K.N.Wanchoo completing a tenure of 7yy, 7mm, 12 dd, longest tenure by any Chief Justice of Rajasthan.

From May 22, 1950 benches at Bikaner, Kota and Udaipur were abolished, but Jaipur Bench continued to function. In the vacancy caused two eminent lawyers – Shri I.N.Modi (29.01.1953) from Jodhpur and Shri D.M.Bhandari (26.08.1955) from Jaipur were elevated to the Bench. Jaipur bench was abolished in 1958 and was re-established on 31.01.1977.

40 Chief Justices and 200 pusine Judges totaling to 240 judges have been elevated as judges of Rajasthan High Court. 53 of them have been from other High Courts. 8 Judges had two tenure either because of non confirmation and reappointment or transfer to other High Court and ghar waapasi. 23 Chief Justices and Judges have been elevated to Supreme Court, 8 of them having Rajasthan as their Permanent High Court (PHC) and one as Chief Justice of India.

Chief Justice Dipak Misra in his foreword to 'Understanding Supreme Court Better – 151 Facts you need to know' beautifully articulated:

"Information, sometimes is perceived s an unhealthy substitute for knowledge. On certain occasions, it is pointed out that knowledge is lost in information. Though these observations characterize and, in a way, distinctly compartmentalize between 'knowledge' and 'information, yet a pregnant one, there are situations, places and institutions where information has the effect of potentiality to assume the position and platform of knowledge. However, it has to satisfy certain condition precedent i.e., precision, terminological exactitude and sincerity of effort..."

With its nobility, fairness, integrity and deep understanding the High Court has continued to reach the common man. Looking forward for many more glorious and wonderful years, delivering justice to all as we have the brightest and beautiful minds on the bench, relentlessly supported by a highly experienced, knowledgeable and skilled bar.

REAL LAW SCHOOL PERSONAL STATEMENTS

ENSURE YOUR TOPIC HAS APPROPRIATE BREADTH

"Opening up" doesn't come organically to everyone. The truth is, most of us have a very hard time finding a way to de-clog and allow oxygen to flow freely throughout our bodies. There are of course tools, but they are not always so easy to find. Sometimes you come across important tips in magazines or on television: They might be breathing exercises to help with circulation, or work-outs to get your blood flowing, or even drugs to open up the blood vessels in your lungs as wide as they can open.

Being open is the first step one can take in becoming a whole and complete person. For me the first time I felt truly opened up, occurred thanks to something fairly simple. I had always had a stuffy nose. I don't know if I was living with low-grade allergies or some kind of nasal irritation, but for the most part, I breathed in and out of my mouth if I needed to take in full breaths of air,

It wasn't the best way to live life, and certainly not the most attractive.

Let's face it, "mouth breather" is not necessarily how a person wants to be thought of. But I didn't have much choice considering there was no fast and hard diagnosis and not much in the way of treatments, although I tried changing my diet and on occasion, resorted to nasal sprays.

One day a close friend brought over a small plastic blue tea pot-like contraption and with a smile pronounced it a "neti pot." I had never heard of one before. It turns out a neti pot is actually the oldest form of something called "nasal irrigation" whereby the nose is cleansed of toxins and debris with nothing but warm water and iodized salt. The word "neti" itself comes from the Sanskrit for "nasal cleansing." The practice comes out of the Ayurvedic yoga practices of India and can be traced all the way back to ancient yogis - male yoga masters - as one of the six cleansing practices called "kriyas." The belief was held that the neti pot would functionally clear and strengthen breath, purify the nose and lead to deeper and more effective meditative practices.

I have to admit, I was skeptical. But at my friend's prodding, I filled the pot with about a cup of warm water - what one might use for a comfortable bath, then mixed in a quarter teaspoon of iodized salt. Once the solution was sufficiently stirred, I placed the arm of the pot, per my friend's instruction, and leaned my head over to the side above the sink.

At first the results were unremarkable. As I slowly poured the water into my nostril, it immediately poured back out again. I stopped and implored my friend, frustrated that the front of my shirt was now splashed with salt water. My nose and sinuses were so blocked, there was simply no way for the water to pass through them. But my friend remained steadfast. She told me that I had to keep pouring until the blood vessels softened and the mucus could loosen up. Not wanting to disappoint my friend, I tried again. Again the water simply ran down my cheek, but I finished a complete pot nonetheless. Then I refilled the pot and poured it into my other nostril. This attempt too, simply filled my nostril and then retracted back out again and down my other cheek.

By the time I had a filled a fourth pot with the solution, I was ready for my friend to leave. She promised me that this could be my last try, now that the front of my shirt was soaked as well as the front of my jeans.

This time, the strangest sensation overcame me as the water entered my nostril then seemed to stream across my nasal pathway, looping generously into my other nostril and then out in a rivulet that splashed delicately back into the basin. I almost wanted to sneeze, as the water tickled its way around my nose. Immediately, I filled a fifth pot and ran the water through my nose the other way. It felt so good, my friend had to tell me to stop so that I wouldn't irritate my delicate nasal passageway.

I let the air flow into my nose, down my throat and into my lungs. It was revitalizing and wonderful. For me, the neti pot was the greatest tool I have ever found, and it represents my philosophy, which is to open up to life. Ever since I adopted this philosophy, my life has become full, open and flowing. It has made me profoundly ready to move forward in my life and career. As an aspiring lawyer, being open has lead me down the path toward law school. With every breath I find myself closer and more deeply enmeshed in my dreams.

Who knew that something as

basic as a neti pot could change my life? But after that day, I traded in my friend's plastic version for an authentic ceramic pot. I made my practice more of a ritual that would represent a cleansing three times a day. Today my momentum is clear, directed, and most of all fluid.

JD MISSION REVIEW

Overall Lesson

If you are a strong writer, you have no excuse for picking a weak topic.

First Impression

The introduction is a bit cliche and uninteresting, but I like how the candidate shares a true story from her life early in the essay. In addition, the transition from a metaphorical "opening up" to a literal one is logical-though the subject matter is a bit unpleasant.

Strengths

The candidate's writing is quite good. She is able to share a personal narrative and hold the reader's attention-a surprisingly difficult task for many applicants, and a vitally important one, given that the school's admissions reader has probably reviewed 100 other essays since breakfast. Moreover, that she is able to capture and maintain the reader's attention with such a trivial-and sometimes unpalatable-story is a testament to her writing ability.

Weaknesses

I have to question how seriously the applicant is taking the essay, which is a problem. Did she choose this topic because the neti pot really did change her life, and if so, what does that say about her? Perhaps she has been very fortunate if the worst thing that has ever happened to her-as the essay seems to imply-is a stuffy nose. Not that she needs to write about the worst tragedy of her life, but if she is going to choose such a low-stakes and, frankly, slightly gross story to convey who she is, she must do a better job of linking her original "opening up" metaphor to her views, beliefs, and dreams-as well as to her law school aspirations.

She ends her essay with the following: "I made my practice more of a ritual that would represent a cleansing three times a day. Today my momentum is clear, directed, and most of all fluid."

This summary statement sounds trite and uninspired, and it lacks a critical, intelligent application of her discovery. The candidate could instead take her essay in one of several different directions. For example, she could discuss the importance of ritual. Or she could detail more specifically how her life has changed since discovering the neti pot-not just literally, but also what being more "open" means in actual practice.

Finally, she needs to find a smoother way of connecting this change in her life with her current aspirations to attend law school. As is, the transition does not work.

Final Assessment

I would advise the candidate to set this essay aside and return to the basics. Thoroughly brainstorming other possible topics could benefit her tremendously. She has the writing skills necessary to deliver a powerful essay, and better topics than the neti pot discovery may be buried in her personal history. However, if she wants to move forward with this theme, she will need to edit her personal statement with a heavy hand, searching in particular for overuse of the expression "opening up" and taking care not to assume that her readers will naturally understand what that means. She must instead elaborate on real-life examples of the metaphor in practice.

Legal Thesaurus

Judicia posteriora sunt in lege fortiora :

The later decisions are the stronger in law.

Applied in Union of India v. Alok Kumar, (2010) 5 see 349.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur:

Judgments are, as it were, the dicta (or sayings) of the law, and are received as truth.

Judiciis posterioribus fides est adhibenda :

Trust should be put in the later decisions.

Judici officium suum excedenti non paretur :

A judge who exceeds his office (or jurisdiction) is not obeyed.

Judicis est in pronuntiando sequi regulam, exceptione non probata:

It is the proper role of a judge in rendering his decision to follow the rule, when the exception has not been proved.

University at Buffalo School of Law

The University at Buffalo School of Law - the only law school in the State University of New York system — is situated on the flagship campus of a world-class research intensive public university, the largest in the northeastern United States. One of only a few law schools located on an international border, we offer a myriad of cross-border learning opportunities, including our new cross-border legal studies concentration. Many of our nationally prominent faculty members have a Ph.D. in addition to their law degrees, which allow us to offer a wide range of interdisciplinary course options taught by experts.

Our innovative January short courses offer an inside view of real life lawyering and a diverse menu of topics and forums, including: tax law in Paris, international trade law in New Zealand, legal culture in Thailand, and human rights law in Washington, D.C. The benefits of combining the classroom with service are brought together in our practicum courses that are among of the strongest in the country. These courses combine study of a substantive area of law under a full-time faculty member with service in the community under the guidance of practicing lawyers.

Courses

Juris Doctor

The Juris Doctor is the basic U.S. law degree, and is held by the vast majority of practicing U.S. lawyers, as well as businesspeople, policy makers, academics and people in other walks of life.

A signature component of the J.D. program is the school's exceptional Legal Analysis, Writing and Research Program that requires students to take three semesters of Research and Writing, including two in the first year, and to devote significant attention to the skills they will need to practice law.

The LAWR program, based on proven methodologies, was developed in consultation with education experts, judges, judicial clerks and attorneys to produce a curriculum designed to prepare students to hit the ground running in their initial legal position. The University at Buffalo School of Law's legal skills program also comprises moot court and trial technique experiences, published journals,

University at Buffalo School of Law

professional development initiatives and service-learning opportunities.

LL.M.

General LL.M. Program

The General LL.M. Program allows lawyers who have demonstrated success in their legal education, their practice, or both, to create individualized programs designed to take their careers to the next level. LL.M. students have access to nearly the entire J.D. curriculum, and admitted students receive one-on-one academic advisement in the selection of their courses to help them navigate through our substantial range of course offerings and out-of-the-classroom learning opportunities. The program takes one year to complete. Our dynamic classrooms give LL.M. students the opportunity to learn alongside students in our three- and two-year J.D. programs and share their global perspectives, enriching our community both in and out of class.

Many General LL.M. students use the degree to satisfy jurisdictional requirements for the admission of foreign-trained lawyers to practice law, including those of the New York Board of Law Examiners and the National Committee on Accreditation in Canada.

Criminal Law LL.M. Program

The Criminal Law LL.M. Program builds on the School of Law's strength in the interdisciplinary study of criminal law. One of the only post-professional programs in New York devoted exclusively to the study of criminal law, this program has attracted lawyers from all over the world who intend to teach, do policy work, or work as prosecutors or judges in their home jurisdictions.

Charles B. Sears Law Library Library's fine collection of more than 6,00,000 volumes and microform equivalents plus a wide array of online resources in legal and cross-discliplinary subjects is augmented by convenient access to the University's three-million-volume research collection. When research material is not available on campus, SUNY Buffalo Law students are encouraged to use the extensive and efficient inter-library loan network. The library's instructional technology resources include a state-of-the-art computer classroom, thirty-three networked computer workstations offering a variety of software, numerous laptop connections, and extensive audio-visual curricular support.

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1. **Which of the following does not come under the 'immovable property' as per the T.P. Act?**
   (a) Sales of a ceiling fan.
   (b) Right to claim maintenance.
   (c) Right relating to lease
   (d) Easementary right.
   Ans. **Answer is A.**
2. ***State of U.P.* v. *Nawab Hussain*, 1977 SCR (3) 428 relates to:**
   (a) *Res subjudice*
   (b) *Res judicata*
   (c) Constructive *res judicata*
   (d) Deemed *res judicata*
   Ans. **Answer is C.**
3. ***X* is living in Pune and *Y*, his brother in Mumbai, *X* wants to file a suit for partition of their joint property situated in Delhi and Bangalore.**
   (a) The suit may be instituted in Delhi only.
   (b) The suit may be instituted in Bangalore only.
   (c) The suit may be instituted either in Delhi or Bangalore.
   (d) None of the above.
   Ans. **Answer is C.**
4. **An immovable property held by *Y* is situated at Bhopal and the wrongdoer personally works for gain at Indore. A Suit to obtain compensation for wrong to the property may be instituted.**
   (a) At Bhopal
   (b) At Indore
   (c) Either at Bhopal or at Indore
   (d) None of these
   Ans. **Answer is C.**
5. **Under which Section of Income tax Act, 1961 'Income of other persons included in Assessee's total income'**
   (a) 56-58
   (b) 60-65
   (c) 45-54
   (d) All of the Above
   Ans. **Answer is B.**
6. **A period of 12th Months commencing on the 1st day of April of every year is known as:**
   (a) Assessment year
   (b) Leap year
   (c) Previous year
   (d) None
   Ans. **Answer is A.**
7. **Which Section of the Information Technology (Amendment) Act, 2008 deals with the validity of contracts formed through electronic means:**
   (a) Section 12
   (b) Section 10A
   (c) Section 11
   (d) Section 13
   Ans. **Answer is B.**
8. **Joint sitting of both Houses of Parliament may be called by the?**
   (a) Speaker
   (b) Chairman
   (c) President
   (d) Prime Minister
   Ans. **Answer is C.**
9. **Specific relief..... Where the agreement is made with minor fill in the blanks.**
   (a) Can get
   (b) Cannot be given
   (c) Can release
   (d) Implemented with law
   Ans. **Answer is B.**
10. **A person entitled to the possession of specific immovable property may recover in the manner provided by:**
    (a) The Code of Procedure, 1908
    (b) The Indian Registration Act, 1908
    (c) The Indian Contract Act, 1872.
    (d) The Transfer of Property Act, 1882.
    Ans. **Answer is A.**
11. **Section 39 of Specific Relief Act deals with**
    (a) Registration of Instruments
    (b) Cancellation of Instruments
    (c) Correctness of Instruments
    (d) None of the above
    Ans. **Answer is D.**
12. **A "dumb witness" given his evidence in writing in the open court, such evidence would be treated as**
    (a) Oral evidence
    (b) Documentary evidence
    (c) Secondary evidence
    (d) Primary evidence
    Ans. **Answer is A.**

NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

Private Defence is a basic human instinct that is recognised by law. It is considered to be an involuntary or a spontaneous action of a man, done in order to protect himself from danger. Therefore, if any act is done by a person in order to protect **himself or his property or another's person or property**, it is considered to be Private Defence.

However, in order to take the defence of Private Defence, three conditions must be fulfilled. They are:

1. There must be imminent threat to the person or property.
2. The force used was only for the purpose of protection.
3. The force used was reasonable.

To understand this better, let us take a closer look at the requirements of these conditions.

1. There must be imminent threat to the person or property:

This defence states that, the threat imposed on a person must be a *real* and an *imminent threat*. Along with this, the reaction to the imminent threat must be instant.

2. The force used was only for the purpose of protection:

In order to claim the private defence what has to be shown is that, the force that was used in order to protect oneself was used only for the purpose of protection and that there was no *mala fide* (bad intention) intention in it.

3. The force used must be reasonable.

What Private Defence requires, apart from the above elements is that, the force used by the person in order to protect him or his property must be reasonable or proportionate.

Q.1. A and B are neighbours. B owns a field where he grows crops. A owns three cows. They enter into B's field and destroy it. B throws a stick at the cows to shoo them away. This stick hits one of the cow and kills it. A sues B for the act. Will B is liable?

a) No, the force used in this case was used only for the purpose of protecting the field and B had no ill-intention.

b) Yes, the force used in this case was intentional.

c) B was always jealous of A's cows.

d) A should be given justice.

Answer: a

Q.2. A and B are neighbours. There were constant tiffs between the two. B owns a field where he grows crops. A owns three cows. They enter into B's field and destroy it. B shooed the cows away. However, remembering their recent feud, B plans to take revenge at A by shooting the cows. When the cows were almost out of the field, B takes his gun and shoots at one of the cow. This causes death of the cow. When A sues B, B claims Private defence. Will B's claim stand?

a) No, since the force used in this case was with a malign intention.

b) Yes, since B was acting in self-defence.

c) Yes, the force used in the present case was reasonable.

d) No, B is not a good person.

Answer: a

Q.3. You were playing cricket in your neighbourhood and the most annoying dog 'Don' of your neighbourhood starts running behind you furiously. Eventually, after running behind you for a while, Don turns back and walks away. You notice this and later pick up a stone and throw it at Don thereby killing it. Would you be granted self-defence?

a) Yes, because there was an imminent threat to me.

b) No, since there was no imminent threat.

c) Yes, because I don't like don

d) Yes, because don is not a good pet.

Answer: b

Q.4. You are walking home at 1 a.m. and the street is very deserted. After walking for a while, you realize that there is a person approaching towards you. You increase your walking pace and the person behind you starts running towards you and puts his hand on your shoulder. You feel threatened, so you take a gun out of your bag and shoot him. When the trial starts against you for killing that person, you claim private defence. Would your claim stand?

a) Yes, since there was an imminent threat to me.

b) Yes, the force used in this case was used only for the purpose of protecting myself and not killing the person.

c) No, since the force used was unreasonable in this case.

d) No, since my protection is my first interest.

Answer: c

Q.5. Which of the following is/ are protected under self-defence?

I. A enters B's house at 2 am at night without B's permission and B strikes him with a rod.

II. B finds that A is trying to physically harass C and B shoots A to save C.

a) Only I

b) Only II

c) Both I and II

d) None of the above

Answer: a

Quick Referencer for Judicial Service

Q. *'A'* **threw a lighted cracker in a crowded market. It fell on** *B's* **shop.** *'C'* **was standing nearby. To save himself and** *B's* **shop too,** *'C'* **threw the cracker away. It then fell on** *D's* **shop.** *'D'* **in his turn, threw it away which then fell on** *'E'* **who became blind. Decide who is liable to** *'E'***?**

Civil Services/I.A.S. (Main) Exam, 2008

Ans:*'A'* is liable to *'E'* – *Scott* v. *Shepherd*, 17 WB 1892.

Reasons: In the famous *Wagon Mound's* case it was held regarding doctrine of Remoteness of damage that a person can be held liable for his act only when a prudent man can foresee the injury caused by his act.

The answer of this problem has been best explained by the learned author *Ratan Lal* in his work on Law of Torts (25th Edn., page 186). The learned author states—

"Intended consequences of the tort feaser are evidently foreseeable. But an intentional wrongdoer's liability will cover all consequences, whether foreseeable or not, which results from his wrongful act. This is not affected by the *Wagon Mound* case. The striking illustration of the extent of intentional wrongdoer's liability is furnished by the case of *Scott* v. *Shepherd*, where the defendant threw a lighted squib into the market house when it was crowded. The fiery missile came down on the shed of a vendor of ginger bread who to protect himself caught it dexterously and threw it away from him. It then fell on the shed of another ginger bread seller, who passed it on in precisely, the same way, till at last it burst in the plaintiff's face and put his eye out. The defendant was held liable to the plaintiff."

In support of above explanation the learned author remarks—"It is an application of the same or similar principle that in action for deceit which is an intentional tort, the tort-feasor is liable for all actual damage whether foreseeable or not, which directly flows from the fraudulent act". [*Doyie* v. *Olby Ltd.*, (1969) 2 QB 158.]

Facts of the given problem are similar to *Scott* v. *Shephered* thus from the above discussions and decision given in the famous case of *Scott* v. *Shephered* it is clear that in the given problem *'A'* is liable to *'E'*.

Kishor Prasad

Landmark Judgments

WHO IS THE EXECUTIVE HEAD OF NCT OF DELHI
Government of NCT of Delhi v. *Union of India*
(2018) 8 SCC 501: 2018 (7) sq 356: 2018 (8) SCALE 72: 2018 (250) DLT 594
Decided on: 04-07-2018
Hon'ble Judges: Dipak Misra, CJ, A.K. Sikri, A.M. Khanwilkar, D.Y. Chandrachud and Ashok Bhushan, JJ.

Facts: The Delhi High Court ruled that complete control of all matters regarding NCTD exercised by Lieutenant Governor of Delhi. Appellant claims that after 69th Amendment status of voters of NCTD has moved from national to real but claim negatived by the High Court of Delhi. Appellant contends that unless appositely interpreted, apart from other aspects, language employed in entire chapter containing Article 239AA shall denude appellant NCTD of its status.

Issue: Whether NCTD can be called a state in a sense in which Constitution expects one to understand? Whether concurrence of Lieutenant Governor is required on executive decision of GNCTD? Whether inhabitants or voters of Delhi remain where they were prior to special status conferred on Union Territory or amended constitutional provision that has transformed Delhi instills "Prana' into cells?

Held: CM is the executive head of NCT of Delhi and Lieutenant Governor (GT) to follow aid and advice of council of ministers on all matters. Status of NCTD is sui generis, a class apart and status of LG of Delhi is not that of governor of state, rather he remains Administrator in limited sense, working with designation of LG. By virtue of 69th Amendment with insertion of Article 239AA, Parliament envisaged representative form of Government for NCTD. Said provision intends to provide for capital directly elected Legislative Assembly having legislative powers over matters falling within State List and Concurrent List, barring those excepted. LG has a mandate to act on aid and advice of Council of Ministers except when he decides to refer matter to President for final decision. LG has not been entrusted with any independent decision-making power.

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F01	Factories Act, 1948	115
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H02	Hindu Adoption & Maintenance Act, 1956	70
I18	Income Tax Act, 1961	1350
I19	Inland Vessels Act, 1917 with Rules, 2016	320
L09	Land Ports Authority of India Act, 2010	85
P07	Payment of Gratuity Act, 1972 along with Rules, 1972	95
P16	Prasar Bharati (Broadcasting Corporation of India) Act, 1990 with allied Act, Rules & Regulations	80
P24	Prevention of Insult to National Honour Act, 1971	80
P42	Public Records Act, 1993 along with Rules, 1997 and The Destruction of Records Act, 1917	80
P44	Protection of Women from Domestic Violence Act, 2005 along with Rules, 2006	95
S03	Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Rules	140
M09	Mines Act, 1952 along with allied Rules	255
M18	Muslim Laws (Containing 9 Acts & Rules)	90
D06	Dowry Prohibition Act, 1961 along with Rules	70

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Contact

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Lawyers' Wit

- Q: How does a pregnant woman know she is carrying a future lawyer?
  A: She has an extreme craving for baloney.
- Q: What is the legal definition of "Appeal"?
  A: Something a person slips on in a grocery store.
- A lawyer is sitting at the desk in his new office. He hears someone coming to the door. To impress his first potential client, he picks up the phone as the door opens and says, "I demand one million and not a penny less." As he hangs up, the man now standing in his office says, "I'm here to hook up your phone."

And finally:

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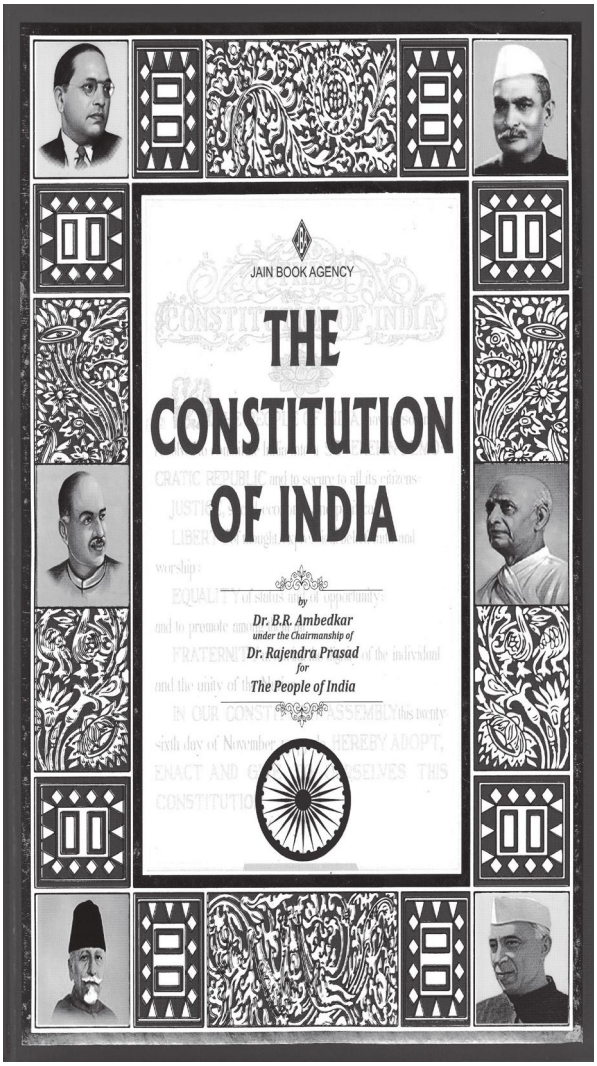
"Your Honor, the relevance of this line of questioning will become apparent in a moment."

The main business of a lawyer is to take the romance, the mystery, the irony, the ambiguity out of everything he touches.

-Antonin Scalia



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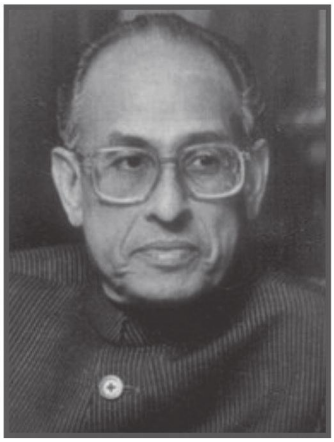

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Latest SUPREME COURT Judgments

RIGHT TO ESTABLISH EDUCATIONAL INSTITUTION: A FUNDAMENTAL RIGHT

Supreme Court in Pharmacy Council of India v. Rajeev College of Pharmacy and Ors., Civil Appeal No. 6681 of 2022

– Right to establish an educational institution is a fundamental right under Article 19(1)(g) of the Constitution of India.

– Reasonable restrictions on such a right can be imposed only by a law and not by an execution instruction.

– Fundamental rights given under Article 19 cannot be restricted through executive instructions -citizen cannot be deprived of the said right except in accordance with law. It has further been held that the requirement of law for the purpose of clause (6) of Article 19 of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise.

Pharmacy Council of India, the petitioner filed the petition challenging orders of the High Courts of Delhi, Chhattisgarh and Karnataka, whereby the moratorium issued by the Pharmacy Council of India on opening new colleges for 5 years was set aside.

All the three High Courts, i.e., Karnataka, Delhi and Chhattisgarh, while allowing the writ petitions filed by the respondent-institutions and quashing and setting aside the Resolutions/communications of the Central Council of the appellant-PCI, have, in a nutshell, held thus:

(i) That the right to establish educational institutions is a fundamental right guaranteed under Article 19(1) (g) of the Constitution of India;

(ii) That there can be reasonable restrictions on such a right. However, such a restriction can be imposed only by law enacted by the competent legislature;

(iii) The Resolution/ communication dated 17th July 2019, vide which the moratorium was imposed is an executive instruction and could not be construed as a law and, therefore, the moratorium imposed by an executive instruction is not sustainable in law.

Petition stands disposed and held that *right to establish an educational institution is a fundamental right under Article 19(1)(g) of the Constitution of India.*

Pharmacy Council of India (PCI) could not impose restrictions on the fundamental right to establish educational institutions under

Anshul Jain

Article 19(1)(g) of the Constitution of India.

Article 19 of the Indian Constitution as follows…… Protection of certain rights regarding freedom of speech, etc.—

(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions or co-operative societies;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) *omitted*;

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right

Continued on page 54...

CONSTITUTION OF INDIA

Article 202

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.

202. *Annual financial statement.*—(1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of Judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

Article 202 describes the procedure for presentation of the Budget to the House(s) of the State Legislature. What is commonly called the Budget is actually an Annual Financial Statement of the estimates of revenue receipts and expenditure of the Government. The Governor *i.e.*, the State-Government is charged with the responsibility of ensuring that the budget is laid before the House(s) of the State Legislature for each financial year (article 202(1)). Further, it is laid down that the estimates of expenditure embodied in the annual financial statement shall show separately:

(a)the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of the State; and

(b)the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State and shall distinguish expenditure on revenue account from other expenditure. [clause 2]

Clause (3) of article 202 lists the main heads of expenditure charged on the Consolidated Fund of the State. Article 202 is analogous to article 112 which is in regard to the Union budget. The two procedures are very similar.

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, what is generally done is that the sums required for carrying the business are entered in the annual financial statement which the Minister has to lay before the House or Houses of Legislature in respect of every financial year under article 202.

There is nothing in article 202 of the Indian Constitution (as there is in section 56 of the Australian

Dr Subhash C Kashyap

Constitution) which requires the statement of the purpose of the appropriation in respect of every item included in a demand. Article 202 of the Constitution must be read with articles 149 and 150 of the Constitution and thus the Budget or "the annual financial statement" must give such particulars of the receipts and expenditure as would be necessary to satisfy the requirements of the Comptroller and Auditor-General for maintaining the accounts. In other words, the receipts and expenditure must be classified in the Budget in the way indicated in the List of Major Heads of Account. Failure to do so will amount to a non-compliance with articles 149 and 150 which are as much binding on the State Government and the Legislature as any other provision in the Constitution bearing on the powers of the Government and the Legislature. The Rule that the Budget must follow the pattern of the List of Major and Minor Heads does not however imply that a separate grant must be made in respect of each head of the account comprised in the Budget or that money expendable under each head of account prescribed by the List must be sought in a single demand. What each demand should comprise of is dealt with in rule 109(1) of the Assembly Rules which ordinarily requires that a separate demand should be made for each department of the Government but permits the Finance Minister to include in one demand grants for two or more departments.

...Continued from page 52

conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

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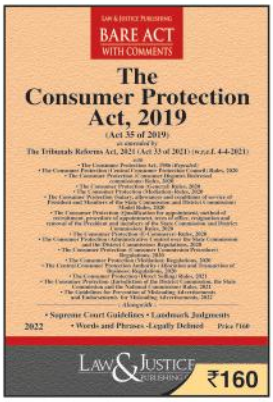

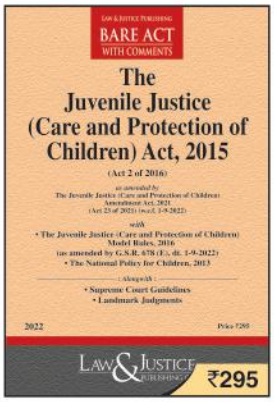

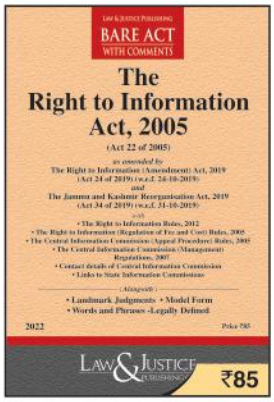

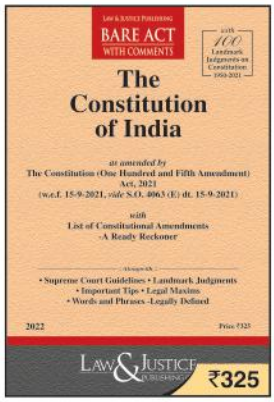

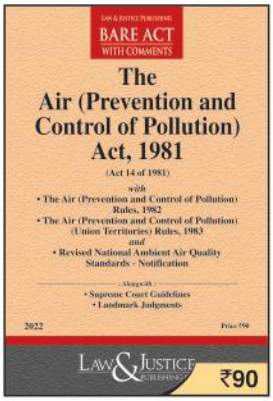

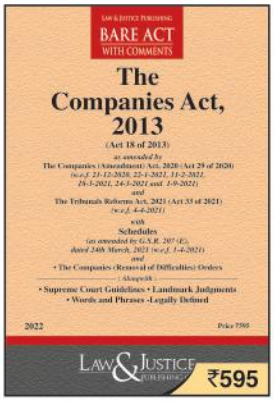

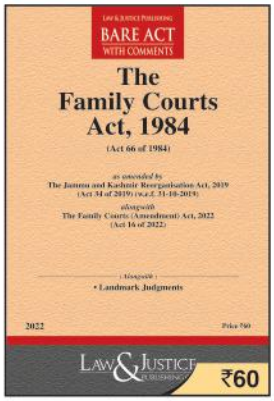

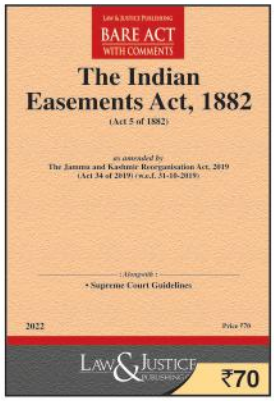

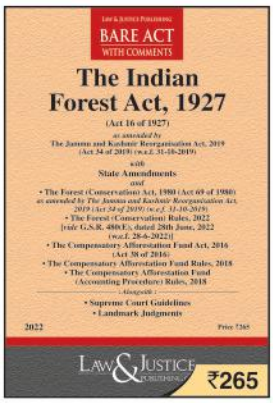

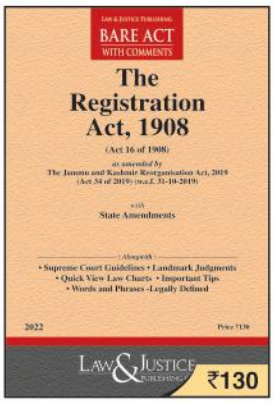

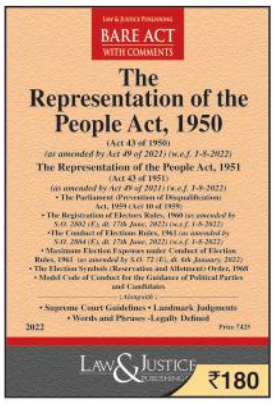

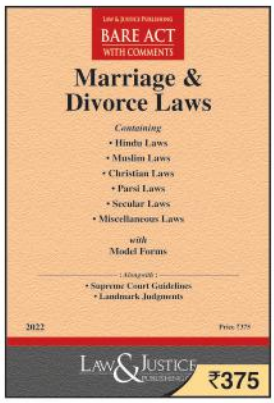

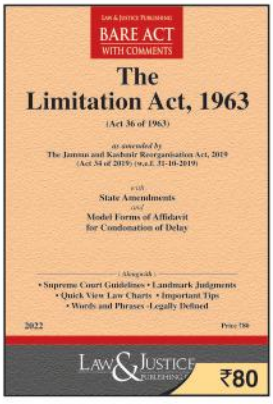

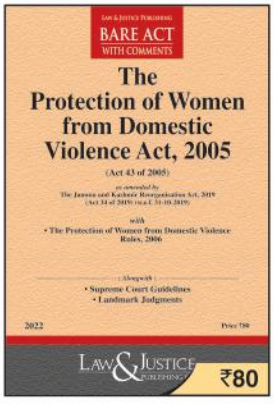

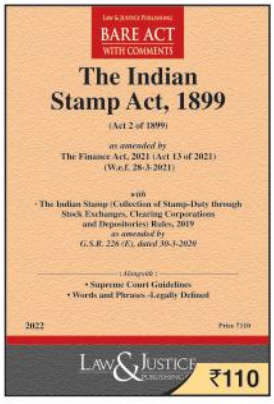

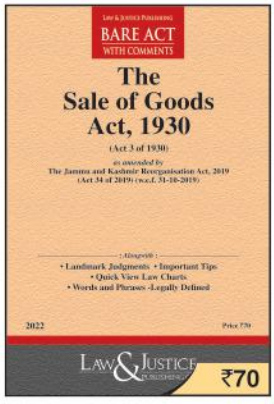

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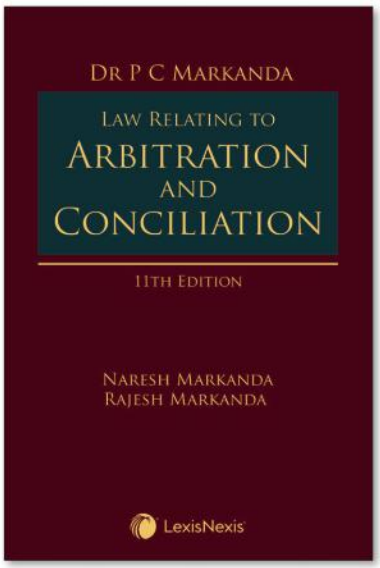

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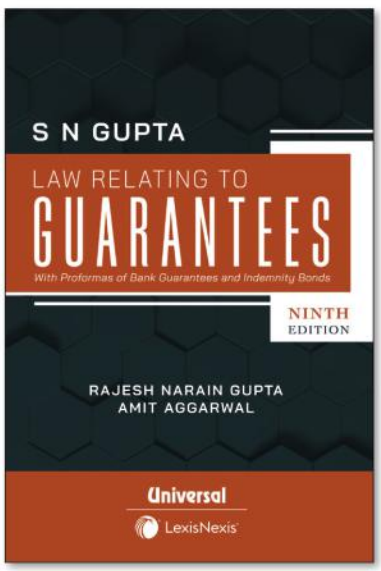

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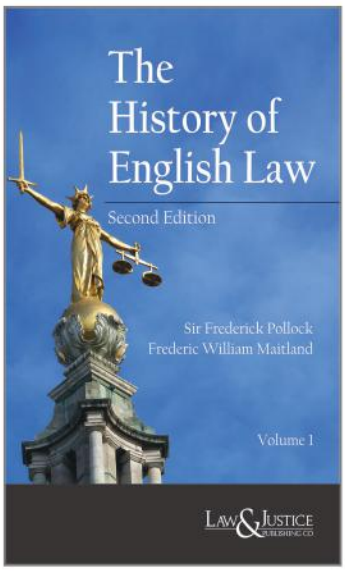

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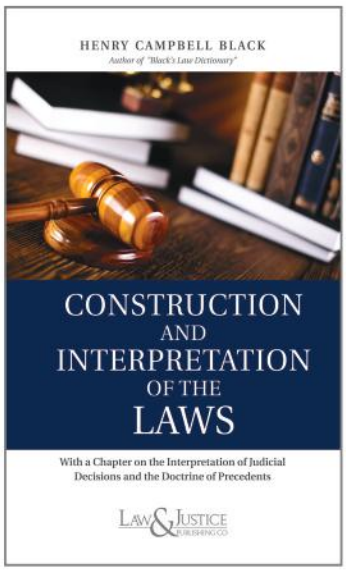

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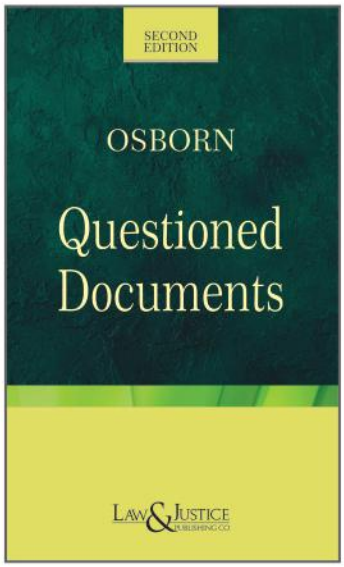

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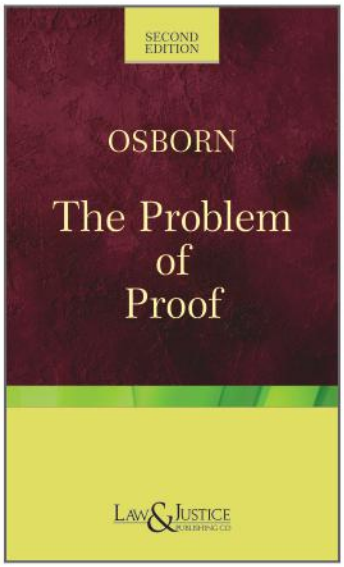

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