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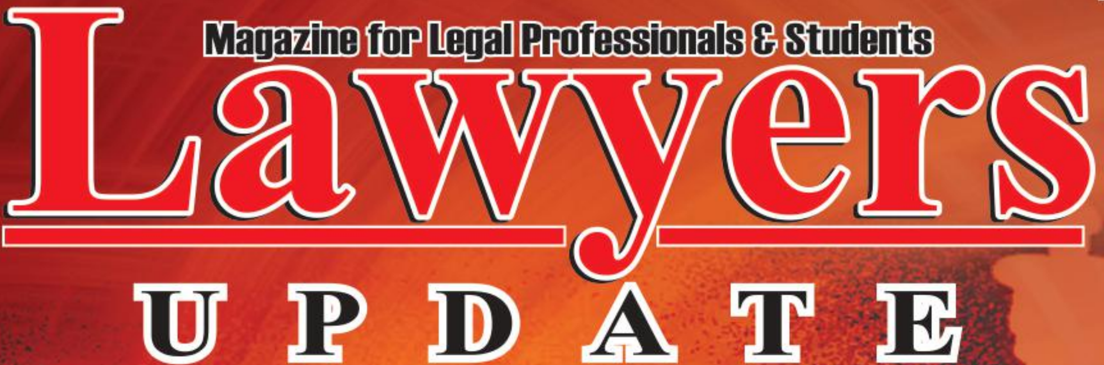

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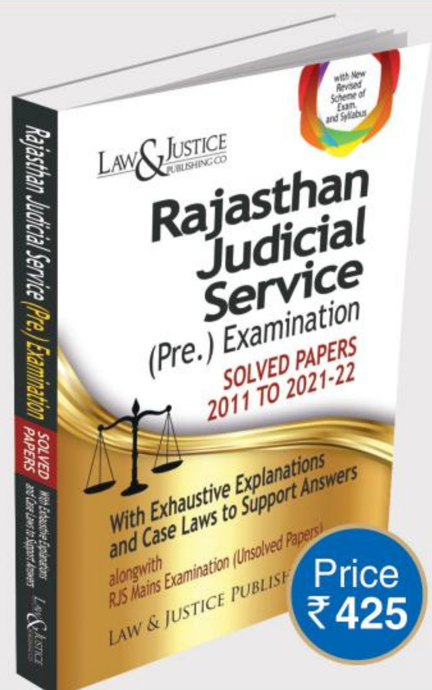

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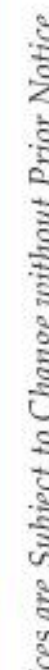

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Dear readers,

Marital rape is a complicated issue because on the one hand there is the inviolable right of a woman to turn down all kinds of sexual advances by anybody, including her husband, while on the other there is the institution of marriage, the sanctity of which needs to be preserved for the social order to hold. But it's not a contest, as it might seem to some, between individual rights and the collective rights of the society, for the welfare and prosperity of the society cannot be ensured unless individual rights are protected. The problem is more practical than theoretical.

It cannot be argued that married women do not have the same rights to physical and sexual autonomy as unmarried women, nor can it be argued with much force that getting into a marital bond necessarily implies a complete or even substantial surrender of sexual autonomy. The issue simply is whether or not a married woman, sexually assaulted or raped by her husband, has an effective legal remedy.

She has. She can leave the husband's house and live separately, and during such separation, judicial or otherwise, if the husband forces himself upon the wife, the act is a punishable offence. Past sexual violence is not precluded from the definition of "cruelty" as a ground for divorce. The only difference is that the husband will not get punished for the first act of non-consensual sex with his wife so long as it does not involve violence because martial violence, unlike marital rape, is not legally excepted.

However, as long as the wife keeps condoning non-consensual sexual intercourse by her husband, the acts remain non-punishable. Practically speaking, criminalizing marital rape would not make things any better for married women or marriages in general.

(Manish Arora)

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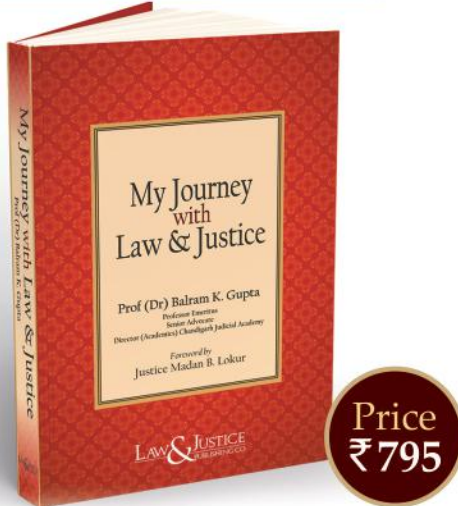
JUST RELEASED



My Journey with Law & Justice

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

Foreword by
Justice Madan B. Lokur

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AUTHOR SPEAKS

"My journey has moved from Professor of Law to Senior Advocate to Judicial Educator. Legal education for 22 years, legal profession also for 22 years and judicial education for 10 years. It is a journey of continuity. Not three different innings. I have never been out of crease. Therefore, I was never stumped. In cricket, different players excel as batsmen, bowlers and fielders. Only some are three-in-one. They play their roles in continuity. Always, one at a time. From legal education to legal profession, this blending equipped me to play the role as a judicial educator. Thus, it is a meaningful utilization of each role in continuity. Coupled with this, I have been a Rotarian since the year 1977. The founder of Rotary Paul Harris was a lawyer. Many Rotary International Presidents have been lawyers, judges and legal academics. During all these years, I have connected Rotary with Judiciary. Through my writings, talks and memorial lectures. Rotary values have been part of my journey throughout. Normally, one is a professor or an advocate or a judge. Those who graduate from a lawyer to a judge, they combine both together. The experience gained as a lawyer equips him to be a judge. We also have service judges. They are shaped in the laboratory of court-rooms. I have enjoyed my long innings of almost 55 years in playing the different roles in continuity. This journey is three-in-one.

In sharing this journey of mine in the Book, I have kept one thing in mind. Every journey is filtered with roughs and toughs of life. There is no journey minus stumbling blocks. Hurdles and difficulties. I am no exception. I faced them. I encountered them. I surmounted them too. In sharing this journey, I have not touched them. This is intentional. Personal perspectives and prejudices step in. The negativity in mind takes charge of you. Therefore, I have not dealt with them. The sharing of a journey with a positive mind, it tastes better. Its flavor lingers. One enjoys reading it. With passage of time, it does not perish. It is living.

The Book has four parts. The first part covers the different roles that I played. This is autobiographical. The remaining three parts cover my experiences in the different roles that I played. These three parts are my selective writings captioned as Shaping the Judges, Leaves from their Lives and Judicial Review and the Constitution. These are essays and life sketches. The essays cover my experience of different roles. During these different decades, I met the best of minds: the academicians, lawyers and judges. They influenced me and my thinking. They helped me in chartering my journey. As an academic, I had never thought that I would ever switch over to the profession. I had thought, I would superannuate as a professor. Circumstances conspired. I accepted the challenge of the legal profession. Sailed through smoothly. Once again, it had never crossed my mind that I would ever cross over to judicial education. I was offered the Directorship of National Judicial Academy because of my mixing of academic and professional career. When I got this opportunity, my son told me, Papa, these are your harvesting years and you are running away. Justice A.K.Sikri was my Chief Justice. He told me that time comes when you have to give back to the society. Therefore, I accepted the challenge of judicial education. Judicial education is not the exclusive domain of the academics. The first three directors of NJA were pure academicians. I was the first one with this combination. Before my term came to an end at NJA, the Executive Council of NJA decided to revisit the rules for the appointment of Director. It was felt that pure academicians are not suitable to play the role as judicial educators. Consequently, the experience as a lawyer and a judge with a strong academic base became the parameter for this responsible position. I have enjoyed recording my journey with a hope that those who would read it, would also enjoy it."

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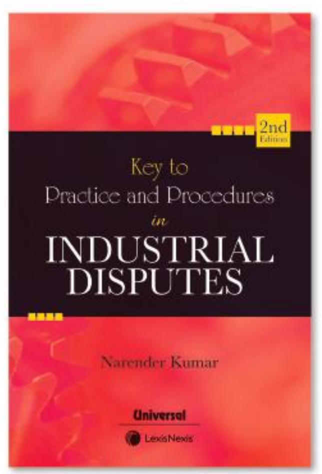

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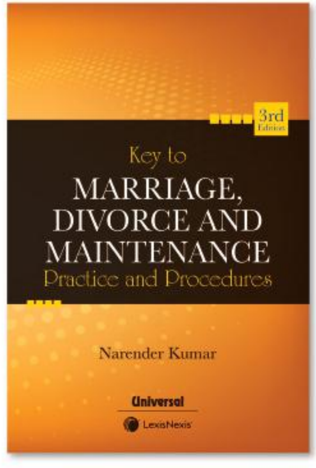

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STREET LAWYER

Weaponization of Unreason - III

In continuation of the second part, we carry on analyzing two recent real-life interactions -- one textual, the other in-person -- with three educated people to illustrate the point.

HemRaj Singh

"What about rape squads in Arab countries like Egypt?", ABC asked. "What about them?" I asked. "Anyone seen not wearing a hijab is publicly gang-raped. There's a word for it in Arab as well, I'll tell you, nobody intervenes as it's the norm and completely normal," ABC said. "And?", I asked, wondering where it was going. "My point is they subjugate women and treat them like shit so its [sic] no surprise that they use shit analogies to define women." "There is no "they" here and no "us" here," I said, adding further that it did not really prove anything except the continuing subjugation of women by men.

I had already told her that when it came to unfair and even cruel treatment of women at the hands of men, no culture or people were any better than any other culture or people, the only difference being that the extent and degree of oppression and subjugation in different cultures and among different people has been different at different times, but at one time or the other, all people and cultures have treated their women with cruelty and have gone to extraordinary lengths to oppress and subjugate them.

Cultures and people aside, even in the areas of science, art and philosophy, women have been treated extremely unfairly with their achievements historically downplayed over and over again compared to those of their male counterparts. But something deplorable does not become less so just because everybody does or has done it at some point. So, yes, it is certainly unfortunate and regrettable that men, under patriarchal social setups, have routinely subjugated and oppressed women, and if the Egyptians have been inflicting sexual violence on their women for any reason whatsoever, it's just as reprehensible. What else could I or anybody else say? So what really was the point of bringing up the Egyptian brand of female subjugation anyway, I wondered. More importantly, what did "they" refer to exactly — the Egyptians, the Arabs or some other group or class of people?

Next, ABC shared a picture displaying juxtaposed images of the headlines of two separate news stories published by the same media establishment, one lauding the freedom to don burqa in a western country and the other critical of Haryana's ghoonghat tradition. ABC saw hypocrisy and double-standards at play, as many other might do, in the treatment of two issues in the media. "Ghoonghat is not comparable with hijaab; it's the equivalent of "naqaab". So that's one issue with it. And it's not the only issue. The distinction between "choice" and imposition is the difference here. Not ghoonghat and hijaab. As long as you are free to not put them on, and you choose to, it's a choice. When the socio-cultural background you come from makes it a norm you cannot deviate from, it's an imposition," I said.

"Why are we even concerned about Egypt or Arabic? Or what 'aurat' means in Arabic. We use the term 'aurat' all the time in India, and it just means an older female who is not a 'girl', and that's about it. To go into the Arabic roots makes no sense here. The question is, why is this debate being raked up? What purpose it serves?" I said, trying to indicate to ABC that while the discussion about female subjugation was fine, the demonizing slant of it was problematic.

The oppression of women "is not new, and it's not unique to any specific culture or country. A lot of cultures are a lot worse, and a lot better than us [sic]," I said. She responded, "I think we know the worst amongst all. I accept that there has been oppression of women by the world but still i feel thats there." "You know the worst amongst all? What do you mean? And who is the worst?" I asked. "Islamist fundamentals radical whatever we might call them," she said.

I ended the textual discussion right there, intending to explain to ABC over the phone or in person that it was the fundamentalism itself that was the problem and not this or that kind of it, for one fundamentalism was not better or worse than any other, all of them being equally bad; nor was one fundamentalist different from another in their desire to ensure a complete subjugation or annihilation of the "other" by all means necessary. It's not whether they would rape, kill and maim en masse but when, for radicalism of all stripes comes with inbuilt genocidal tendencies. And the offending "other" can be anybody — man, woman, people belonging to different castes, class or religion and also people belonging to the same class, caste or religion as the radicals and conveniently called "traitors" solely for not siding with the fundamentalist elements.

However, missing that point was not as big or as fundamental a problem as the confirmation bias glaringly evident in the way ABC seemed to have gone about first concluding who was the "worst" and then looking for evidence to support her conclusion, readily and unquestioningly accepting all evidence in favour and just as readily rubbishing everything that did not agree with her preconceived notions. Else, she would not have missed, among other things, that the imposition of ghoonghat is no different from the imposition of hijab, and the only reason why ghoonghat is not brutally enforced is because liberal and progressive Hindus (regularly ridiculed now) still far outnumber radical Hindus, whose number is steeply rising. Hindus have, by and large, been resistant to radicalization, but it might be changing. And, no, Islamist fundamentalists are so far not the "worst" even in the respect of which ABC was speaking. More on that later.

…to be continued

GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

JAGANNATH'S CASE

It is not without extreme sorrow that I have to invite public attention to a third miscarriage of justice in the Punjab. This time it is not a case of a celebrity like Babu Kalinath Roy or a lesser light like Lala Radha Krishna, the Editor of the *Pratap*. The case of which the papers have been furnished me relates to one Mr. Jagannath, unknown to fame and unconnected with any public activity. He has been sentenced by one of the Martial Law Tribunals to transportation for life, with forfeiture of property, under section 121 of the Indian Penal Code, i.e., for waging war against His Majesty. The facts of the case are lucidly set forth in his petition to be found elsewhere. It is addressed to the Hon. Sir Edward Maclagan, the Lieut. Governor of the Punjab. The reader will find also the judgment in the Gujaran - walla case in respect of fifteen accused of whom Mr. Jagannath was one. The following is the text in the judgment dealing with the case:

"Jagannath, accused 10, had the notices convening the meeting of the 5th, printed in Lahore and was present at the meeting. He denies his presence at the meetings of the 12th and the 13th. But we have no hesitation in holding that he was present at both and that his defence is worthless. There is ample evidence to show that on the 14th April, he took a very active part in having the shops closed. We are satisfied of his guilt and convict him under sec. 121, 1. P. C."

I submit that it was no crime on the accused's part to have the notice convening the meeting of the 5th printed, nor to have been present at the meeting, unless the notices or the meetings were of an incriminating character. This is what the court has to say about the meeting of the 5th April:

"It is alleged that the people of Gujaranwalla knew little and cared less about the Rowlatt Act and that on the 4th April certain of the accused decided to start an agitation against this Act on the same lines as had been adopted in other parts of the country at the instance of Gandhi. A mass meeting was accordingly convened and held on the evening of the 5th April when the Rowlatt Act was condemned."

Under no Statute known could these facts be held to involve any crime. The Judges themselves have stated as much:

"We are not however satisfied in this case, that prior to the 12th April any indictable conspiracy had come into existence. We therefore feel constrained to acquit those of the accused who are shown only to have taken part in the proceedings prior to that date."

It is difficult therefore to understand the reference of the court to the accused's presence at the meeting of the 5th or his having been an agent for getting the notices printed. The court proceeds, "On the evening of the 12th and during the day of the 13th certain of the accused in consultation with Bhagat agreed that they should follow the example set at Amritsar of burning bridges and cutting telegraph wires." Now these facts, it is plain, undoubtedly prove a criminal conspiracy but the court is silent as to which accused agreed upon the crimes recited in .the paragraph. It should be remembered that there was a meeting on the 12th, of the District Congress Committee held prior to the evening meeting of the 12th referred to in the sentence quoted above. I submit that it was necessary for the court definitely to find that the accused was present at the agreement alleged to have been arrived at, for burning bridges and cutting telegraph wires. But there is nothing in the finding of the court beyond a vague general statement about the accused's presence at the meetings of the 12th and 13th. I would suggest that even if the accused was in Gujatanwalla on the 14th April and took a very active part in .having the shops closed, it would be no offence, unless he could be proved to have been party to the criminal agreement referred to.

Whilst, therefore, the judgment seems to afford no evidence of the accused's crime, statements, most damaging to the court and conclusive in favour of the accused, have yet to follow. The accused's defence rested upon an *alibi*. He stated that he left Gujaranwalla on the 12th April by the 5 p.m. train enroute for Kathiawad where he had a case. Now I admit that it is as easy to set up an *alibi* as it is difficult to prove it. But anyone reading the petition can only come to one conclusion, viz., that the defence of *alibi* was completely established. Mr. Jagannath produced local respectable witnesses to show that he had left Gujaranwalla on the 12th. He applied for subpoena to summon witnesses from Kathiawad to show that he was in Dhoraji on the 16th April. The court rejected the application, but granted interrogatories, put the accused, a poor man, to the expense of Rs. 250 for the expenses of the Commission, and yet strange as it may appear, pronounced

judgment against the accused without waiting for the return of the Commission. He made an application for the stay of argument, till after the receipt of replies to interrogatories. The application was rejected. In a second application he urged that the court should ascertain by telegram the result of the interrogatories. Even that application was proved unavailing. The accused has rightly contended in the petition that on this ground alone the conviction was illegal and ought to be set aside. The petition refers to the register of the Foujdar of Dhoraji saying that he reached Dhoraji on the 16th April. The accused shows also by the examination of 10 independent witnesses that he was in Dhoraji on that date. He shows further· by extracts from Railway Time Tables, that it takes 44 hours to reach Dhoraji from Delhi by the fastest train, and shows conclusively that it was physically impossible for him to be in Gujaranwalla after 6 p.m. on the 13th; though as a matter of fact he shows by other conclusive evidence that he left Gujaranwalla on the 12th He produces proceedings of Jetpur Court where he had his case in Kathiawad. There is, therefore, no ground whatsoever for keeping the accused in jail for a single moment.

The accused on his own showing is "a petty shopkeeper at Gujaranwalla, paying no income tax, being ignorant of Urdu as well as English and not possessed of any influence in a big town like Gujaranwalla with a population of 30,000 persons. He being a man of humble position and status in life, with 'no education, has never taken part in politics, nor was he a member of the local District Congress Committee or any other political body or association." The humbleness of his position makes the injustice all the more galling and makes it doubly incumbent on the public to see that the meanest of the subjects of the King suffers no wrong. The decision of His Honour the Lieut. Governor in the case of Lala Radha Krishna raises the hope that speedy justice will be done in this case. Bad as Babu Kalinath Roy's and Lala Radha Krishna's cases were, this, if possible, is worse in that Martial Law Judges in their impatience, shall I say, to convict, declined to wait for a return of the Commission they themselves had granted - a Commission on whose return hung the liberty, and might have been, even the life of the accused.

Young India, 30-7-1919

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It needs to be noted that JGLS has established international collaborations with over 250 law schools/universities in the world since its founding in 2009.

During the COVID-19 pandemic, JGLS has developed many new international opportunities for students to benefit from in the post pandemic world. As JGLS prepares to welcome students back on campus, new programmes have been added for international mobility for undergraduate, graduate and postgraduate students.

The list of new partner institutions are as follows:

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6. The University of Edinburgh, United Kingdom
7. The University of Nottingham, United Kingdom
8. American University Washington College of Law, American University, United States of America
9. Drexel University, United States of America
10. Seattle University School of Law, Seattle University, United States of America

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"Perfection is achieved, not when there is nothing more to add, but when there is nothing left to take away."
– Antoine de Saint- Exupery

"Worry a little every day and in a lifetime you will lose a couple of years. If something is wrong, fix it if you can. But train yourself not to worry. Worry never fixes anything."
– Mary Hemingway

"There are two things which a man should scrupulously avoid; giving advice that he would not follow and asking advice when he is determined to pursue his own opinion."
– Norman MacDonald, Maxims and Moral Reflections

"Develop success from failures. Discouragement and failure are two of the surest stepping stones to success."
– Dale Carnegie

"If we are striving, if we are working, if we are trying to the best of our ability, to improve day-by-day, then we are in the line of our duty."
– Herbert J. Grant

"When you focus on problems, you will have more problems. When you focus on possibilities, you will have more opportunities."
– Anonymous

"Anger makes you smaller, while forgiveness forces you to grow beyond what you were."
– Cherie Carter-Scot

"If you can solve your problems, then what is the need of worrying?. If you cannot solve it, then what is the use of worrying ."
– Shantideva

"Alphabet 'O' stands for opportunities, which is absent in yesterday, available in T'o'day, and thrice in T'o'm'o'rr'o'w. So never lose hope."
– Anonymous

" Our character … is an omen of our destiny, and the more integrity we have and keep, the simpler and nobler that destiny is likely to be."
– George Santayana

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 Ms. Justice Bela M. Trivedi

Justice Bela M. Trivedi was born on 10th June, 1960 at Patan, North Gujarat. Did her schooling at various places as her father had a transferable judicial service. Did her BCom - LLB from the MS University, Vadodara. Practised as a lawyer on Civil and Constitutional side in the HC of Gujarat for about ten years. Was appointed directly as the Judge, City Civil and Sessions Court at Ahmedabad on 10th July, 1995. It was a happy coincidence that her father was already working as the Judge, City Civil and Sessions Court when she was appointed. The Limca Book of Indian records has recorded the entry in their 1996 edition that " Father - daughter judges in the same court ". Worked on different posts like Registrar - Vigilance in the HC, Law Secretary in Govt of Gujarat, CBI court judge, Special Judge - Serial Bomb blast matters etc. Elevated as the Judge of Gujarat HC on 17th February, 2011. Transferred to the Rajasthan HC where she worked since June 2011 at the Jaipur Bench till she was repatriated to the Parent HC at Gujarat in February 2016. Since then was working as the Judge of Gujarat HC, till she was elevated as Judge of Supreme Court of India on 31st August, 2021. Due to retire on 09th June, 2025.

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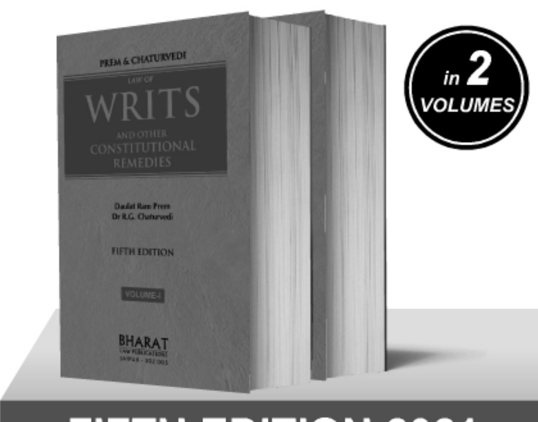

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Towards a Renovation of Indian Legality?

Upendra Baxi*

Global Indians and the Law
by Anil and Ranjit Malhotra

comes to us heavily recommended by justices and jurists in the Commonwealth. It is a third edition - the last one was published in 2014 - but in fact a new work in many ways. It is time-tested but not future weary. The work under review is optimistically critical.

It is, at least for me, difficult to read legal treatises. They deal with a mass of legal information addressed to specific areas of law. Essentially, the information is organized along the principle: the more, the better. That "more" is quite formidable when it involves delegation of legislative power to the executive; this delegation, typically exercised through rules and directions, published in the gazette is inaccessible to lawyers and sometimes even to judges! This aggravates the problem of access to law and justice. In theory, ignorance of law is not an excuse for non-compliance, but in practice of law is often not known or knowable even for the law enforcers and administrators, let alone the wider public.

This book exemplifies the mysteries and miracles of delegated legislation. If the devil, or angel, of law lies in detail, that detail often lies in notifications, directions, and rules of delegated legislation. The work under review may be read as a massive exercise in information-retrieval. This comprehensive legal treatise is, and the first ever one, dealing broadly with the legal situations and problems actually and potentially confronted by "overseas Indians", whom the learned authors also name "global Indians". Its 24 Chapters mainly cover public and family law matters, divided into 7 parts -- nationality, and citizenship, marriage and divorce, maintenance in matrimonial matters, custody guardianship, and adoption, surrogacy, and succession. The academic distinctions between theory and practice of what is called "family law", "conflicts of law", "public" law (constitutional law and administrative law as well as statutory interpretation and judicial process), are pedagogically necessary in law schools. However, these are always merged and mixed in problem situations in real life, as justices and lawyers well know. Nevertheless, a cardinal point to be noted is that this treatise interweaves the learned authors ◎legal interventions", both as counsellors and public intellectuals who have contributed to the making of the law. Jeremy Bentham notably remarked long ago the law is made by "judge & the company", that is by a conjoint effort of the Bench and the Bar.

Interestingly, Professor Karl Llewellyn, the great American jurist who was one of the founders of "realistic jurisprudence" spoke of the "law jobs" and the" "problem case" as tools of justice delivery. The Malhotra brothers address these in this work in the contexts of the Global Indians and the "problem cases" encasing them.

A great merit of this work is to engage the intersection between various bodies of normative/ doctrinal law and (what may only be called) the "living law" for overseas Indians. The invention of a new term like "global Indians" lies in designating, and pioneering, a new field of study and research for Indian people living abroad and subject to multiple jurisdictions and laws.

One hopes that a future companion book will deal with overseas Indians in conflict with Indian criminal law justice administration, a kind of handbook of transnational criminal law. Further, it would surely not be asking of such veterans to include many more aspects that emerge in comparative law and jurisprudence and which dwell upon the regulation of multiculturalism and the human right to manage the conflict of multiple practices of identification. These additional perspectives will entail a more liberal use of appendices where texts of legislation, including the rules made by administrative authorities, which could thus be housed better. This will also allow scope for more multidisciplinary perspectives and analytical materials.

At the threshold, is a big conceptual question: how to describe persons of Indian origin settled in other parts of the world? The ambitious aspect of this work lies in the coinage of the expression "global Indians", that is overseas Indians who are deeply rooted in Indian culture and civilization. We arealso treated to a common categorization of "overseas Indians" deployed by the modern Indian laws. "International Indians" as well is used interchangeably in this book. This certainly is a better expression rather than a term like "foreigner", which though specifically used for non-Indians is also used for "people of Indian origin" (a term now abandoned in favour of "overseas citizens of India").

Concluding the first chapter, the learned authors rightly observe: the "retention of a foreign passport today cannot lead to the deportation and removal from India". Reminding Parliament that the "controversy is bigger and larger", the authors ask: "Why then, do we need to retain the ... 1920 and 1946 enactments" made for a very different milieu?

***Emeritus Professor of Law, University of Warwick and Delhi**

Referring to the current political disagreement, and peaceful public protest, surrounding the CAA (Citizen's Amendment Act, (2019), the authors pointedly say that what is now needed is that "our Parliament also reconciles... concepts of freedom, personal liberty, and natural justice" with the "determination of nationality", even while awaiting the final adjudication of the constitutional validity of the amendment (1.46). I may add that a review of the constitutionality of the excessive administrative delegation of decision-making power to the executive in these matters is also long overdue.

Further, our authors are of the view, that if "parentage is the purpose to be achieved, either by adoption or surrogacy, then restricting parentage through surrogacy on the grounds of marital status is arbitrary and discriminatory" and "violative Articles 14 and 21 of the Constitution" (21.33).

To take yet another example, the authors maintain that the "returns formula" is now evident in a new thought process akin to the "mirror orders" formula. This is adopted by the Supreme Court of India in Jasmeet Kaur's case *2019 SCC OnLine SC 1599* (where usually the orders of child custody passed by an Indian Court are treated as if passed by a foreign Court (15.14 & 15.24). If such an evolving mirror order child centric jurisprudence finds total judicial approval in India, the authors suggest, children removed to India will be reunited with both parents in their foreign abode. However, according to the Malhotra brothers, this is best a stop gap arrangement evolved by the judiciary; legislative overhaul is enhanced by a resolve reinforcing inter-continental parental child removal. (15.25). Implicitly, they also suggest that India should be a party to "the Hague Convention on Civil Aspects of International Child Abduction" (18.3). Concern with the rights of the children animates this analysis.

We see this at work in chapter 20 dealing with "Guardianships and Adoptions: Different Perspectives", which impressively notes that an inter-country adoption by prospective parents of Hindu religion under Hindu Adoption and Maintenance Act, 1956, is exempt from the rigours of procedures of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2017. Further, they advocate that such inter-country adoptions can be facilitated with the issuance of conformity certificates by Central Adoption Resource Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoptions, 1993. Simplified rehabilitation for welfare of the child adopted within the family propels this argument (20.50), as India is a signatory to the UN Convention on the rights of the child. The approach is commendable.

Usually, legal treatises tend to be expository and do not offer views on matters left to parliament or legislatures. I have offered four, out of many instances, of direct commentation in this work of what authors think the law ought to be. There are many more. In this, this work marks a refreshing trend, making room for informed pleas on how to remove constitutional difficulties and assuage basic demosprudential anxieties while making or amending the law.

The penultimate chapter (chapter 23) deals with "diplomats, conflict of jurisdictions, and anti-suit injunctions". Anti-suit injunctions are devices restraining action on suits, by overseas Indians, passed by Indian courts, when both parties are within jurisdictions of the foreign and the Indian courts. This presents a paradigm conflict of laws situation. By definition, considerations of territoriality, sovereignty, and resultant international comity, limit the reach of jurisdiction of domestic courts. Even when anti-suit orders may have no binding effect on the foreign courts, the parties within the jurisdiction of the Indian courts may remain subject further to contempt jurisdiction and proceedings. The authors offer a detailed narration of Devyani Khobragade's case in Delhi High court and study similar situations in matrimonial and succession contexts. They suggest vividly why it is high time that our courts develop a framework for "stopping repression" by way of anti- "suit" injunctions in India to safeguard the rights of Indians. Surely, it is no judicial parochialism to stop injustice and oppression at the doorstep: "The yeoman verdicts are a big crutch" but a "preventive remedy is stronger than a powerful cure at the end" (23.18).

My appreciation of this magnificent treatise, indeed, grows apace with the recall that it was brought to fruition in bizarre and bewildering Covid-19 times. It ends with a corpus of constraints as well as opportunities for delivering a "Real Justice in a Virtual World" (Chapter 24). The learned authors recognize and emphasise the pre-Covid attainments in access to justice though digital means. Yet, they feel, even at the height of the second phase of the pandemic, the need for substantive changes in adjudicative structure and process. These will include a heightened access to the exponentially growing unmet needs of an Indian diaspora, and allocation of judicial time for 30 million plus strong formation of "global Indians". This need for allocation of judicial time is pressing for a variety of situations - for the settlement of "emergent child custody, matrimonial domestic violence, spousal maintenance, inter-country adoptions, surrogacy, succession, inheritance issues, besides resolving nationality, and citizenship issues." The diaspora will need and demand, "solutions" in more equitable and efficient dispensation of digital justice. In many senses, this will also assist the much -needed renovation of Indian legality.

Remembrances

Soli Sorabjee

on his 92nd
Birth Anniversary
9th March

R.K.P. Shankardas

on his 5th
Death Anniversary
10th March

Justice A.R. Lakshmanan

on his 80th
Birth Anniversary
22nd March

Anil B. Divan

on his 5th
Death Anniversary
20th March

T.R. Andhyarujina

on his 5th
Death Anniversary
28th March

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SINGLE PARENTS AS LEGAL GUARDIANS

Anil Malhotra*

Karan Johar, Tushar Kapoor, Neena Gupta and Sushmita Sen are single parents. Verdict of Supreme Court in *ABC,* held that a single unwed mother has a right to maintain a petition to claim sole and exclusive guardianship of a child born outside of wedlock. It was a path breaking view shattering shackles of traditional and conventional societal setups in a realm of statutory personal laws where a Uniform Civil Code is a Constitutional aspiration. Apex Court set aside the judgments of Guardian Judge and High Court which had summarily rejected the claim of mother who had refused to disclose the identity of father, which had obviated issuance of notice to the natural father. Supreme Court whilst setting aside dismissal by Guardian Judge, upheld maintainability of single mother's application for guardianship and remanded it to Guardian Court for considering and deciding matter on merits expeditiously, without requiring notice to be given to father of child. Apex Court in doing observed that, "*having received knowledge of a situation that vitally affected the future and welfare of a child, the Courts below could be seen as having been derelict in their duty in merely dismissing the petition without considering all the problems, complexities and complications concerning the child brought within its portals.*"

Salutory Apex court judgment which protects identities of all parties also culls out a new dimension of matrimonial rights in recognising mother's fundamental right of privacy which may have been violated, if she was compelled to disclose name and particulars of father of child. It was held that there is no indication that welfare of child would be undermined in non-disclosure of identity of father or that court notice is mandatory in child's interest. It was decided that non-issuance of notice to father "*may well protect the child from social stigma and endless controversy.*" However, very aptly, Apex Court has a note of caution for verdict being relied upon in other inter-parental child custody disputes by stating that, "*we should not be misunderstood as having given our imprimatur to an attempt by one of the spouses to unilaterally seek custody of a child from the marriage behind the back of other spouse.*"

Espousing implementation of a uniform civil code, Apex Court laments, "*this remains an unaddressed constitutional expectation.*" Erudite verdict drawing support from India acceding to Convention on Rights of Child, overcomes barriers of religion. It accords relief to unwed Christian mothers in India by granting benefit of seeking guardianship, "*of their illegitimate children by virtue of their maternity alone, without the requirement of any notice to the putative fathers.*" This is in tandem to earlier path-breaking verdicts. In *Stephanie Joan Becker,* a single 53 years lady was permitted to adopt a female orphan child aged 10 years by relaxing the rigor of guidelines of CARA in totality of facts of case that the proposed adoption would be beneficial to child as experts were of view that adoption process would end in successful blending of child in USA. Likewise, in *Shabnam Hashmi,* Apex Court upholding recognition of right to adopt and to be adopted as a fundamental right has held that every person, including Muslims, irrespective of religion they profess is entitled to adopt a child. Verdict in *National Legal Services Authority,* recognising transgender as third gender have held "*that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution.*" Clearly, a new family law emerges.

Apex Court gave a new beneficial interpretation to term "Parent" in the Guardian and Wards Act, 1890 (GWA) by interpreting it to mean, "*in the case of illegitimate children whose sole care giver is one of his/her parents, to principally mean that parent alone.*" Likewise, requirement of appointment of a guardian under the GWA for a minor whose father is living, the milestone verdict rules, "*the views of an uninvolved father are not essential, in our opinion, to protect the interests of a child born out of wedlock and being raised solely by his/her mother.*" Finding that sole factum before Court is welfare of minor child, benefit further reaches out to issuance of birth certificates as well, by issuing directions, "*intendedly not restricted to the circumstances or the parties before us.*" It is held, "*accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the birth certificate, unless there is a Court direction to the contrary.*"

*The Author, a lawyer has 9 books, *anilmalhotra1960@gmail.com* Website: *https://www.anilmalhotra.co.in*

This general directive, will serve as a mandatory practice direction for administrative authorities, Family Courts and Guardian Judges all over country who are faced with peculiar dilemma of having similar guardianship petitions before them and could not have decided such petitions of single parents.

Above laudable directions, may pose a dilemma in cases where children are conceived and/or born from In-vitro Fertilisation (IVF) and surrogacy arrangements to couples or single/gay parents, where legal identity of mother may not be disclosed. Necessarily, child born to womb of a surrogate mother will not qualify her to benefit of a birth certificate under new surrogacy laws. This causes conflicting problems with natural parents particularly when the commissioning or single mother relies on an egg donor. Such a predicament may only necessitate Parliament to legislate a law, because misconceived reliance on judgment may create litigative rights for seeking undue benefits for extraneous considerations in such cases. Regardless, verdict is a fresh breath espousing rights of parenthood upon single parents and unwed mothers caught up in a conventional time wrap wherein Apex Court has held that, *"the law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents."* Yeoman spirit of Supreme Court to give effective relief in a plethora of conventional personal laws reflects vibrant stature of Indian judiciary reaching out in adjudicating controversial family disputes.

Lawyers' Wit

- Many years ago, a junior partner in a firm was sent to a far-away state to represent a long-term client accused of robbery. After days of trial, the case was won, the client acquitted and released. Excited about his success, the attorney telegraphed the firm:
  "Justice prevailed." The senior partner replied in haste: "Appeal immediately."
- Q: What do you call a lawyer who has gone bad?
  A: Senator.

"Am I to assume that your client will be submitting an insanity plea?"

Like any good lawyer, I'm going to maintain a confidentiality of advice offered in confidence.

Ari Melber

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

REFER TO CLONE CASES

Stella Liebeck of Albuquerque, New Mexico, scalded her private parts when she drove away too fast from a McDonald's restaurant with a hot cup of coffee on her lap. McDonald's was aware that its coffee was too hot: it had already received a number of complaints. But it hadn't done anything about it, due to cost reasons. Reason enough for a Jury to grant Ms. Liebeck damages of 2.7 million dollars. However absurd the amount might seem, it wasn't remarkable. Her lawyer referred extensively to comparable cases that led to such damages. And that did it. This principle applies to every negotiating situation. Back up the fees you charge with objective criteria, refer to comparable situations. The ball is then in the other person's court to justify why he should pay you less. And that's often pretty tough.

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Advocate

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The Preamble Declares!

Article 1 ..
"You are born free and equal
In Dignity and Rights..."
My Pen is not questioning
Or submits any oppose
It's a humble observe
O! The Global Nations ..
Humans Caged
Treated Unequal
Then why is this Plight?
The variation amid
The Granted & The Implemented
Nations need to catalyse
Nations need to Humanise
Nations need to synchronise
Nations need to Rise…
From Petty approaches to Oceanic Embrace!

How many articles to count?
For they *magnanimously provide*
Which articles to remind?
For they so humanely provide
Only Implementations in vain
The essence to be born
Is not only to survive?
The Global pleadings
Is Poor poorer?
The Rich Richer?
In Digital Era
The SDGs to MDGs Journeys…

Article 4 ..
"No one shall be held in Slavery or servitude…"
My Pen is not questioning
Or submits any oppose
It's a humble observe
O! The Global Nations...
I see Global Slavery Index rise
Then why is this plight?
The variation amid
The Granted & The Implemented
Nations need to catalyse
Nations need to Humanise
Nations need to synchronise
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How many Articles to count?
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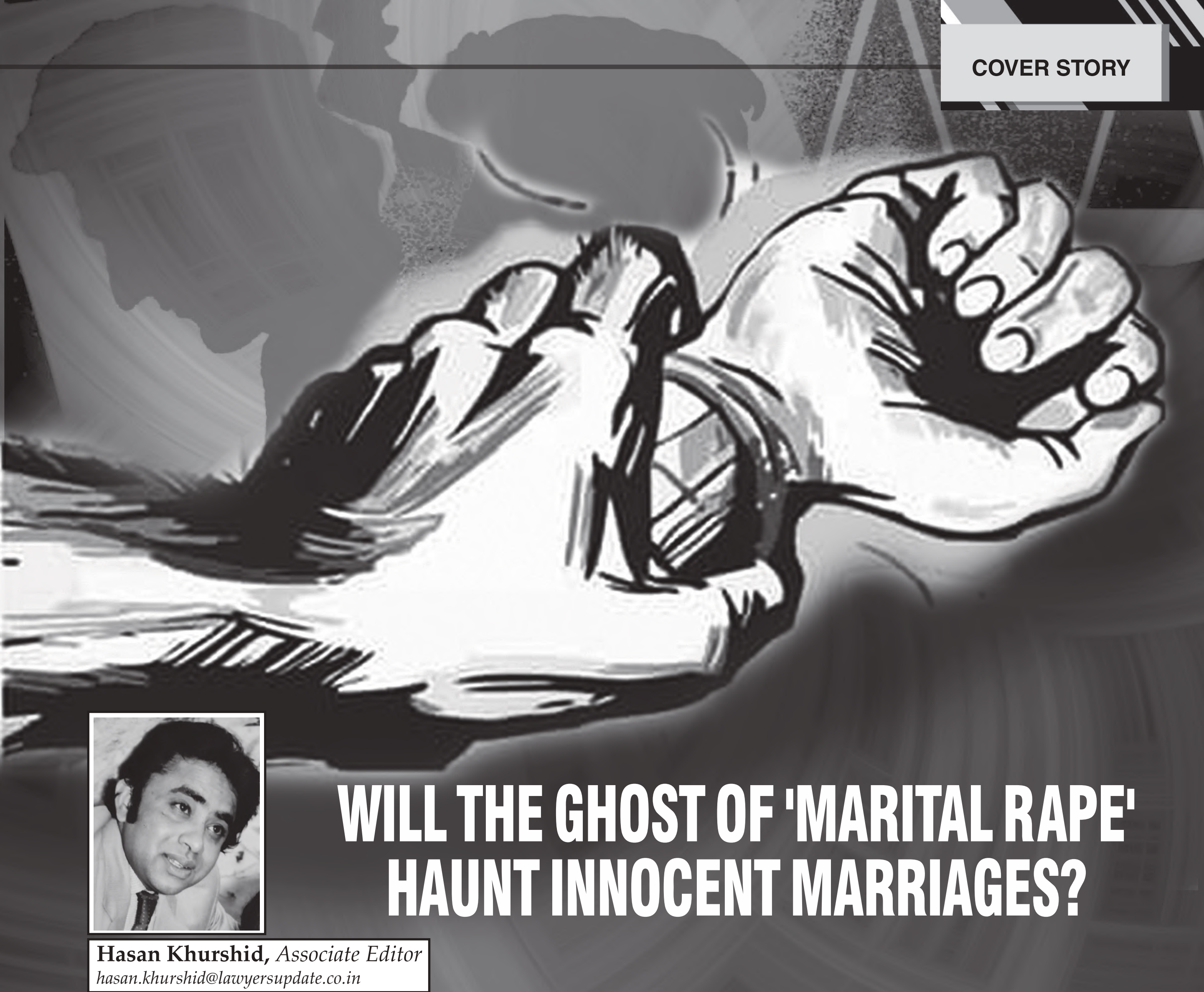
For they so humanely provide
Only Implementations in vain
The Global pleadings
Is Global Slavery Modernised?
The Machine Vs Human skill?
Eating the poor Starving Labourers Bread?
What a Global Unrest of Labour & Sweat
Pyramids to Skyscrapers journey…
International Agendas preserving peace
And Humanitarian Emergency Reliefs
Protecting Refugees, Providing for calamity griefs
Remembering the Great Mandela`s humanity citadels
"It is easy to break down and destroy,
The heroes are those who make peace and build".



WILL THE GHOST OF 'MARITAL RAPE' HAUNT INNOCENT MARRIAGES?

Hasan Khurshid, *Associate Editor*
hasan.khurshid@lawyersupdate.co.in

Time and again the ghost of 'presumed marital rape' surface on Indian soil to frighten the gullible married couples indicating its assured abuse if made an offence. Again there is a rising chorus seeking the criminalisation of marital rape.

Currently, a bench of High Court of Delhi, consisting justices Rajiv Shakdher and C. Hari Shankar has been conducting marathan hearings on daily basis since January 10, 2022, on a bunch of PILs filed in 2015 by NGOs RIT Foundation; All India Democratic Women's Association and two individuals- a man and a woman, seeking to strike down the Exception- 2, in Section 375 of Indian Penal Code (IPC), as in their view, it discriminated against married women who are sexually assaulted by their husbands.

Exception- 2, in Section 375 of IPC decriminalises marital rape and mandates that sexual intercourse by a man with his own wife not being under 15 years of age is not rape.

Advocate Karuna Nundy arguing her case for criminalising marital rape in India told the court that criminalising marital rape is about respecting the right to say 'no' and recognising that marriage is no longer a universal licence to ignore consent.

Fair enough that petitioners are trying to take a stand on a woman's right to say 'no' to unwanted sexual advances, but what about from the principle of gender equality, man's right to say 'no' to excessive demand of 'sexual pleasure' by sexually pro-active alfa women, who are today enlightened being educated to enjoy the pleasure of sex beyond pregnancy. At times, not getting the adequate measure of concupiscence from their husbands, certain over-demanding wives resort to adultery. Newspaper reports are flooded with the disastrous results of adultery. The existence of over-sexed, promiscuous and nymphomaniac women can not be denied. What does the law suggest to address the plight of those husbands who are married to such wives?

On this reverse situation of women's excessive demand for

sexual pleasure, NGOs as well as the bench maintained decorous silence. Pertinent question arises that when the point of forcible sex by husband is debated in the court or elsewhere; why then the phenomenon of excessive and forcible demand of sexual pleasure by wives is not brought to these platforms. The Constitution guarantees equal protection of law irrespective of gender.

Khushwant Singh once wrote that "most Indian men are not even aware that women also have orgasm; most Indian women share this ignorance, because although they go from one pregnancy to the next, they have no idea that sex can be pleasurable."

Gone are the days when Khushwant Singh expressed this observation. Today's assertive alfa women are over-demanding and husbands unable to meet their absolute demand of concupiscence are at risk of 'performance anxiety', humiliation, loss of self-esteem and face the risk of her clandestinely swindling to adultery. Hence, from the principle of equal justice, men too be given 'right to say no'.

To cite a few recent reported cases of adultery in Delhi, just in a single month of February, 2022, include the case of a 26 year old man Hasim, who on February 3, bludgeoned his wife to death in Delhi's Tughlaqabad area. Police said, "According to the man, his wife Shaheen was having an affair with one Salman and that they often fought over that. He had changed a couple of rented houses to end the alleged relationship. However, she continued her relationship and wanted to leave him."

On February 10, Delhi Police arrested a 33 year old man Daulat Ram for allegedly killing his friend Sonu, as the deceased was in relationship with Ram's wife and was pressurising the woman to elope with him.

The Bombay High Court on February 10, 2022, commuted the life sentence awarded to a man for killing his wife to 12 years imprisonment, after holding that the woman had screamed at her husband in a public place calling him "impotent". He committed the offence in the result of "sudden and grave provocation" and " not a premeditated one". The incident had occured on a busy road. The loud allegations made by the deceased were heard by one and all. It was quite natural for a man to feel ashamed upon being referred as "impotent."

Delhi Police on February 21, 22, arrested a woman Seema and six other people for allegedly killing her husband in Delhi's Rohini area. The wife had an extramarital relationship with Gaurav Teotia, one of the accused, who offered rupees four lakh each to five accomplices to kill 35 year old Pradeep, the husband of his beloved Seema. According to police, Seema was in relationship with Teotia for the past eight years and wanted to live together.

On February 21, 22, a 24 year old married woman- mother of four-year old son, Devyani was arrested along with one Kartik Chauhan, a friend of her live-in partner for allegedly sedating and killing her 55 year old mother Sudha Rani, as her mother objected to her live-in relationship and had threatened to disown her if she did not return to her husband. Devyani had left her husband in Delhi's Madangir area a few years ago to enter in a live-in relationship with another man. The constant nagging enraged Devyani so much that she hatched the plan to kill her mother.

Recently, while giving a decree of divorce to a couple, Kerala High Court ruled, "Making discreet phone calls frequently by the wife with another man disregarding the warning of the husband, that too at odd hours, amounts to matrimonial cruelty." The court however noted that the evidence of phone calls is not enough to infer adultery on part of the wife.

The Centre in it's affidavit filed in August, 2017, had said that the Supreme Court and various high courts have already observed the rising misuse of Section 498-A. It had further said that marital rape has not been defined in any statute or law and while the offence of rape is defined under Section 375 of IPC, defining marital rape would call for a broad based consensus of the society.

Regarding the petitioners' submission that other countries, mostly western, have criminalised marital rape, the Centre had said it does not necessarily mean India should also follow them blindly.

Justice should be given to the righteous irrespective of being man or woman. There are several cases of women who want to divorce their husbands for the sake of getting big alimony besides other emotional needs. Any such move shall bestow upon golden opportunity to women for securing divorce fabricating marital rape.

"Nemo judex in causa sua" (no one can be the judge of his own choice.) The High Court of Delhi, on January 10, 2022, observed that even though there can be no compromise on the bodily autonomy of a woman, marital rape cannot be treated as

a prosecutable offence because of the qualitative difference between a marital and non- marital relationship. Describing the difference, Justice C Hari Shankar said, a marital relationship holds an expectation and also a legal right for reasonable sexual relation from the spouse. "In a marital relationship there is a qualitative difference. There is an expectation of a conjugal relationship of both parties. When a party gets married, a person has an expectation and to a certain extent, the legal right also to express normal sexual relationship with your partner. Because if it is denied, it can lead to civil consequences and also to divorce."

However, just on the next day of hearing on January 11, 2022, the court observing differently said that every woman, married or unmarried has a right to say 'no' and therefore, it cannot be a ground not to take marital rape seriously or dismiss it as an offence. The bench questioned as to how the dignity of a married woman is different than that of an unmarried woman? How it affects an unmarried woman's dignity but not a married woman's dignity? Whether she is married or unmarried, she has a right to say 'no'.... The question is whether it is an offence or not and whether this offence is tenable under Constitution", Justice Shakdher said.

Amicus curiae and senior advocate Rajshekhar Rao argued in favour of doing away with the Exception in Section 375 of IPC to make marital rape an offence. Rao submitted that "rapist remains a rapist irrespective of relationship."

Amicus curiae and senior advocate Rebecca John told the court that the current rape laws are based on the doctrine

that a married woman grants irrevocable sexual consent to her husband and such "absurdity should not be allowed to prevail." To this Justice Shakdher said, "She (wife) was almost treated under that doctrine as someone who is incapacitated from giving consent. It is like we have in the Contract Act that certain categories of people cannot give consent. The declaration seems a little problematic."

Lord Mathew Hale in 'History of the Pleas of the Crown' wrote, "The husband can not be guilty of rape committed by himself upon his lawful wife, for by their mutual consent and contract, the wife hath given up herself this kind unto her husband which she cannot retract."

Lord Hale asserted that upon marriage a wife consents and automatically hands over her person to the husband for sexual acts and the consent once given is irrevocable, which cannot be retracted subsequently.

In a reverse situation, as per the unique court ruling reported in Daily Express of September, 2011, a French court, ordered a 51 year old man to pay his 47 year old ex- wife 8500 pounds in damages for failing to have enough sex with her during the 21 year marriage. But subsequently, his ex- wife took him back to a higher court demanding the cash in compensation for "lack of sex over 21 years of marriage." The man admitted his shortcoming blaming tiredness and health problems for his inactivity.

Opposing the batch of petitions, learned Advocate RK Kapoor, counsel for NGO Hridey, an intervenor told the high court that offences concerning marriage stand on a different footing and the wisdom of Parliament in retaining the marital rape Exception should not be doubted.

Referring to the court's earlier observation that if a sex worker who was forced to have sexual intercourse could file rape charges, why should a "wife be less empowered", Kapoor said that to compare the two would be an " insult to the institution of marriage." Kapoor further said, "a perpetrator cannot claim restitution of conjugal rights against sex worker and correspondingly sex worker cannot claim regular maintenance from a perpetrator. There is no emotional relationship between sex worker and the stranger. The relationship between husband and wife is a package of a large number of mutual rights and obligations which are social, physiological, religious and economic, etc. It cannot be limited to just one event of consent for sexual relationship alone."

Kapoor has given a very practical and logical answer to the bench, as it can not be the only cause of cruelty to wife by way of doing sex with her against her desire. A husband may otherwise force upon wife to carry out other chores of the household without her willingness, capacity and capability , such as washing lot many clothes, utensils, cleanliness, etc; subjecting her to physical, mental and emotional hardship. Will the funded NGOs bring out all such matters before the courts to prove their acumen?

It may not be surprising that some day these smart NGOs may bring forth the case of fixing up the duration and prescribing the conditions for coitus at the cost of exhausting precious time of the Hon'ble courts.

During the hearing on January 27, the court said that it can not fold it's hands and sit when people are approaching it with a problem in a particular legislation. The court's remark came when an NGO Men's Welfare Trust argued that criminalising marital rape has a social impact which has to be decided by the legislature and not by courts due to lack of their competence in the matter. The bench said the argument is "vague" as the bench is examining the legal aspect of the problem and not the social or psychological impact. The provision has to be tested on the anvil of Constitution.

Defending woman petitioner's plight, the court said that one of the petitioners is live example where she has alleged abuse against her husband but could not proceed due to Exception clause in the rape law.... so are we to tell her no we can't examine whether you are right or wrong? We can't, we need to examine it.

Earlier, advocate Jai Sai Deepak appearing for the NGO said that the issue of criminalising marital rape should be kept out of the domain of the courts for the purpose of judicial legislation because the court is not in a position to accommodate or at least share multiple points of view for obvious reasons.

Justice Deepak Misra, former CJI, who had earlier decriminalised adultery, now sometime back during a press conference said that marital rape should not be criminalised in india and it is an idea borrowed from other nations. "I don't think that marital rape should be regarded as an offence in India, because it will create absolute anarchy in families and our country is sustaining itself because of family platform which upholds family values."

On February 2, 2022, minister of women and child development Smriti Irani, in Rajya Sabha replying to a question of CPI member Binoy Viswam, clarified, "Let me say, to condemn every marriage in this country as a violent marriage, and to condemn every man in this country as a rapist is not advisable in this August House."

Earlier, former minister for women and child development Maneka Gandhi had said that India can't have a law against marital rape because marriage is tested as a sacrament in the country.

On August 23, 2021, the Chhattisgarh High Court, on a revision petition discharged a 37- year old man from the charge of matrimonial rape saying that sex with a legally wedded wife is not rape under the IPC. The court however, retained the charges of Sections 377 and 498-A. In his order, Justice NK Chandravanshi said, "In this case, the complainant is legally wedded wife of applicant no.1 (husband); therefore, sexual intercourse or any sexual act with her by the husband would not constitute an offence of rape, even if it was by force or against her wish."

The Chhattisgarh high court on March 4, 2022, held that denial of physical relationship by one spouse to the other amounts to cruelty. The court allowed the plea for divorce made by the husband in this case. "Physical relationship between husband and wife is one of the important parts for healthy married life", the court stated.

The 15th Law Commission headed by Justice BP Jeevan Reddy, in it's 172nd Report captioned 'Review of Rape Laws' submitted in March 2000, denied to criminalise marital rape on the ground that it will be an excessive interference of law in marital lives of people.

Further the Parliamentary Standing Committee of Home Affairs, which examined the Criminal Law (Amendment) Bill, 2012, in the aftermath of the Delhi gang rape case, in it's 167th Report in March 2013 did not recommend criminalisation of marital rape on the ground that it would have the "potential of destroying the sacred institution of marriage, which is based on mutual love and trust."

Senior advocate Mahalakshmi Pavani, who is also the President of Supreme Court Women Lawyers Association says, " If we are talking about protecting the dignity of women, we need to also talk about protecting

the dignity of men against false accusations. The Constitution doesn't discriminate on the basis of gender."

Mahalakshmi further said, "Deep- seated gender bias is totally different from criminalising marital rape. I am not in favour of marital rape being criminalised for many reasons, both pros and cons and this being a private matter between two individuals, State should not tinker with the same. Right to privacy is now a fundamental right and I feel it should be respected."

Dr. Surat Singh, Supreme Court lawyer, educated at Harvard and Oxford said, " Marital therapy is a far more effective tool to handle marital discord, rather than complain to police on either side. If we treat unwilling sexual intercourse between the married couple as a proper 'rape' under Section 376 IPC, it will create more conflict and friction and a marriage that might be salvaged by proper counselling may be finished forever."

Noted advocate Trisha Singh Kadyan said, "Rape is coercive, violent, non- consensual sexual intercourse with a woman by applying fear or fraud to commit the offence. Whereas, this is absolutely not the case of married couples as the relationship between husband and wife depends on mutual trust, understanding, love and compassion. How can you compare a criminal's act with that of the life partner, who besides sexual act lives together, eats together, and brings up the children together."

Renowned advocate Dr. Madhumita Kothari said, " For a successful married life pre and post-marriage counselling is very necessary. Behavioural issues should be dealt with empathy and not by using the large stick of law, as the same may become counter productive. The aim should be to save the family through correctional approach and not to destroy it through punitive and revengeful way by undesired interference of law."

The Delhi government has submitted before the bench that a court does not have the power to create a new offence even as it argued that marital rape is treated as a crime of cruelty in India, which can be prosecutable under charges of domestic violence.

On February 3, 2022, Centre filed a fresh affidavit seeking time to conduct a consultative process with the State governments and the stakeholders, adding that a judicial decision, without allowing the government complete the discussion "may not serve the ends of justice". It was submitted by Union government that the issue has a major socio-legal impact and intimate family relations require a meaningful consultative process with various stakeholders and State governments, which must be done as it can not be decided merely upon the arguments of a few lawyers. The Centre also submitted, "... considering the social impact involved, the intimate relations being the subject matter and this court not having the privilege of having been fully familiarised with ground realities prevailing in different parts of society of this large, populous and diverse country, taking a decision merely based upon the arguments of a few lawyers may not serve the ends of justice."

Solicitor General Tushar Mehta told the court that marital rape is a sensitive issue and needs a holistic view. Reading out Center's fresh affidavit, Mehta said that the issue requires deliberations as it is a socio- legal matter, and will impact 1.35 billion Indians in one go.

Mehta further said, ".... please don't treat this as a mere Constitutional validity issue. It affects human life. We are entering in a bed room....mere legal approach in the issue must not be taken.Ultimately, these are the views of some lawyers.... we do not know how your judgment may impact human rights....but while dealing with a sensitive socio- legal issue, a holistic approach is called for."

Hearing Centre's argument, the court granted two weeks to Centre to formulate it's stand. However, Justice Shakdher said, "If the Centre doesn't come back with a discussed stand on February 21, 2022, it would consider the government's stand of 2017, in which it said that India, can not blindly follow Western countries and criminalise marital rape contending that several other factors have to be taken into account."

However, on February21, 2022, Centre requested the bench of justices Rajiv Shakdher and C Hari Shanker to give more time for government's decision but the bench refused to grant more time to the Union government for consultations saying, "There is no terminal date for ending the consultations." The judgment was reserved for directions on March 2, 2022.

LEGAL LUMINARIES

DR. AMAN HINGORANI

Dr. Hingorani, called to the Bar in 1992, is an Advocate-on-Record at the Supreme Court of India. He acts as a mediator at the Supreme Court and the Delhi High Court mediation centres as also an arbitrator at the PHDCCI, New Delhi.

Dr. Hingorani has been engaged in teaching law and professional skills development since 1998 as adjunct faculty, and is an International Advocacy and Mediation Skills Trainer. He has taught constitutional law, human rights, arbitration, mediation, international trade law amongst other subjects. He has run training programmes for students, law teachers, lawyers and judicial officers. Dr. Hingorani has taught in programmes at various institutions in India (including National Judicial Academy, Bhopal; State Judicial Academies of Delhi, Jodhpur and Manipur; Campus Law Centre, Delhi University; Indian Law Institute, New Delhi; the National Law Schools at Delhi, Trichy and Mumbai) and abroad (including Keble College, Oxford University and Law School, Warwick University, UK).

Dr. Hingorani has prepared the ADR preparatory material for the All-India Bar Examination; the ADR Manual for the FICCI as its National Consultant; and the Mediation Rules for the PHDCCI, apart from curriculum for law courses and other activities, such as the modules for the Indo-British Project on Advocacy Skills Training, British Council, New Delhi.

Dr. Hingorani has authored the widely acclaimed book, *Unravelling the Kashmir Knot*, which was released by then Chief Justice of India, Justice T S Thakur in the presence of Justice Dalveer Bhandari, Member, International Court of Justice, The Hague. The Foreword is by Professor Upendra Baxi, Emeritus Professor of Law, University of Warwick and Delhi. The book has been presented by Dr. Hingorani at various universities and organizations in the US (including at Harvard, Yale, Columbia University, Washington DC, Atlanta, North Carolina) and in the UK (including at Cambridge, Oxford, London, Cardiff, Warwick, Sheffield Hallam) and across India at universities, think-tanks, literary festivals, academic and cultural institutions.

Dr. Hingorani has another 80 publications, both national and international, on varied subjects ranging from PIL jurisprudence to the Bhopal Gas tragedy to the grant of intellectual property protection to genetically modified organisms to the dynamics of global missile proliferation.

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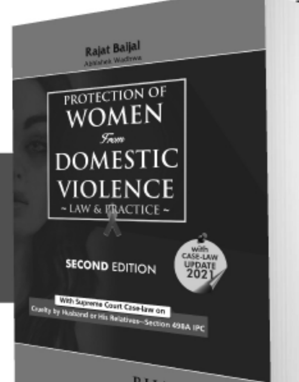

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by
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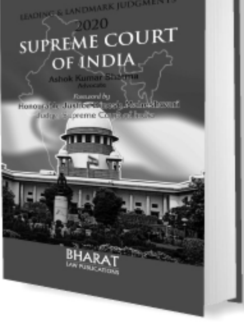

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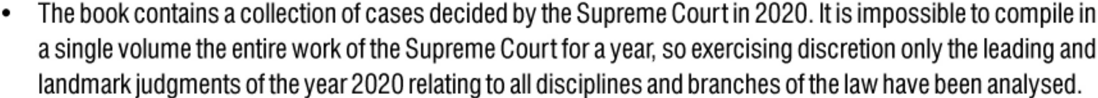

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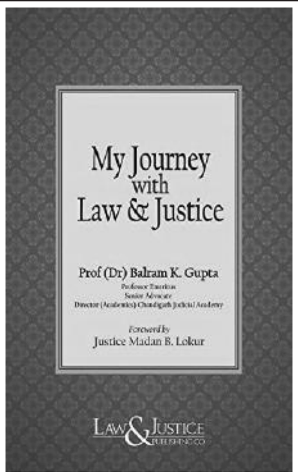
MY JOURNEY WITH LAW & JUSTICE

by Prof (Dr.) Balram Gupta

Transcript of the Address of Hon'ble Justice Dr. D.Y. Chandrachud Judge, Surpeme Court of India at the book launch on 29 January 2022



Thank you very much for the very warm introduction. A very good morning to my own teacher and guru to a generation of Indian students, lawyers and judges, Professor Upendra Baxi to whom I bow in salutation this morning. My distinguished colleague Justice Surya Kant, Chief Justice Ravi Shanker Jha, Justice Amol Rattan Singh, my very distinguished former colleague and predecessor on the e-Committee of the Supreme Court, Justice Madan Lokur, all the other dignitaries and of course what we would call in Marathi the Utsav Murti, the reason for today's function, our Professor Balram Gupta. Professor Balram Gupta, I would not say that he is a jack of all trades that would be belittling his unique achievements. He has dabbled with a lot of endeavours in the legal profession but I can certainly say that he is the master of all. He has dawned the robes of Professor of Law, a Senior Advocate and Director of the National Judicial Academy, a role in which I had the opportunity of interacting with him extensively. What is very significant is that he has fared exceptionally well in every role that he has assumed in his distinguished career. I think, if there was any person whose journey of life could depict the contours of fairness and justice in the pursuit to what is fair and just, it would be Professor Balram Gupta. The book which he presented to me in Chandigarh two weeks ago is a compilation with an autobiographical flavor and his selective writings, give

the reader a lesson on law and life. In his book, he tackles issues such as academic plagiarism in an eminently readable style. Teaches lawyers and judges, the value of professional ethics through his writings. **His autobiographical account written in short and comprehensible sentences in Lord Denning style would help law students, lawyers and judges to navigate through their career choices, given that the author has such a wide range of experiences of his own**. He recalls, as a student of law, in the years before the advent of technology, when reference materials were not easily available. I was taken back to my own formative years as a student of law at the Campus Law Centre and later as a PhD student where we had to hand write our entire thesis. This book is thus informative but I think, what is the hallmark of the text is that it is very personal as well. **This compilation of writings by Dr. Balram Gupta as the Director of the National Judicial Academy on shaping Judges and Judicial Propriety is a must read for all Judicial Officers**. He writes on, how a Judge as an officer of the Court should conduct herself with humanism and compassion. He refers to the four-way test propounded by Socrates to judge a judge which is: to hear courteously, consider soberly, answer wisely and decide impartially. Unfortunately, today when we select or recruit judicial officers, we test them only for the information that they have at their disposal in the examination which we conduct. Equally, this book tells us that Judges and Judicial Officers, the core of judging lies in empathy, in being sensitive and in the emotional stability which an individual as a Judge possesses. This unfortunately is something which we do not test when we recruit judges into our system at all. In the Essay, titled Strengthening Judicial Culture, Professor Balram Gupta states that an open court system strengthens Judicial Culture, introduces Discipline and ensures the Rule of Law. In the

course of COVID-19 pandemic, we have been struggling to keep our systems open consistent with the fundamental norms of open justice on which all democratic societies ought to be founded. I fully endorse the views of Professor Balram Gupta. A Judge is to be judged not only by the number of judgments delivered and the rate of disposals but also by her conduct within the walls of the courtroom. One of the flip sides of the technology is that we have an emphasis on statistics because technology provides information at our fingertips. While we have information at our fingertips, we must equally realize that the worth of a life in judging cannot merely depend upon the number of cases which waded through the hands of that particular judge but there are more fundamental values at stake in terms of nurturing basic constitutional aspirations and ideas. When a Judge begins to hear a case, she must do so with an open mind unbridled by her own prejudices. It is not only imperative that justice is done but as we always say that it is seen to be done. Justice seen to be done only when judicial proceedings are open for public viewership. This not only provides legitimacy to judicial institutions but also furthers democratic principles of accountability. In various countries across the globe including in India, a Judge's performance is periodically evaluated for this purpose both qualitative and quantitative parameters are used. These indicators include the disposal rate of a Judge, the quality of judgments and a variety of other factors including the behavior of a Judge towards the lawyer during court proceedings. However, while data on the disposal rates and judgments are easily available in the public forum including on the National Judicial Data Grid, the behavior of a judge in the courtroom is not easily ascertainable because of a lack of transparency in judicial proceedings. Unless, this important indicator of performance evaluation is publicly available, it would be difficult to evaluate the performance of a judge and would pose challenges to judicial accountability. Dalai Lama said: lack of transparency results in distrust and a deep sense of insecurity. Though legal journalism is on the rise and reporting of judicial proceedings has gained traction almost by the minute if not by the second. It has its limitations. Unless you have followed the arguments by legal luminaries such as Nani Palkhivala and H.M. Seervai. We fortunately have distinguished members of the Bar in our midst even now. I think it's important that we must live stream and record proceedings in every Indian court. Several High Courts have already commenced the initiative, among them the Gujarat High Court, the High Court of Karnataka, the High Court of Madhya Pradesh and the High Court of Orissa. I think it is a matter of time that these practices, these best practices are now shared across the nation. I thus feel that all Courts across the country must open their proceedings for public viewership. I heartily congratulate Professor Balram Gupta for the publication of this book and **recommend it to be included as course reading in law schools**. Perhaps, the book signifies in a fundamental way the personality of the author. The dignity and acknowledgement of the role of the legal profession, not merely nurturing life in society as it stands today. I think every page of this book embodies his quest for learning, his love for literature and his passion for erudition which are the scholarly attributes which make the personhood of Dr. Balram Gupta as we know him so closely. I thank you, Professor Dr. Balram Gupta for inviting me to make this presentation this morning. It has been a pleasure to read your book and to go through it. I will only end with a little anecdote. I was talking to Chief Justice S. Vazifdar, just a few days after you presented the book to me and he was quarantining in Washington DC. I read out to him what you had said about him on the occasion of his farewell and of course Shiavax said in his characteristic style, he has been very charitable to me. But I do believe that what you have said embodies such beautiful anecdotes, traits about personalities you have come in touch with. Fundamental ideas about the direction where the Constitution and Judicial Review should be taking us not just in terms of today's values and today's principles that such as the principle of proportionality but how we develop and build upon these founding bricks that have been laid for us step by step by those who have come before us. It is a reminder to us that we are really in that sense passengers, we are pilgrims in this path of engaging with and unfolding the Constitution. It is a sobering reflection for each one of us. It is important to us to look at a broader picture and realize that we are only a speck in this universe of law and justice. Thank you very much.

FORTIFYING RIGHTS OF CHILDREN AGAINST COVID INDUCED STATE OF AFFAIRS

Saksham Bhardwaj*

There is no greater violence than to deny the dream of our children— Kailash Satyarthi

When the global community is wrecked by corona virus, it becomes pivotal to fence our children against all kinds of health hazards and violation of their rights. The interest of a child in any Nation must be safeguard against all the wounds of nature. They are the bright future for any economy. The regime of Rights of the children acts as a jab and confers immunity against any violation. Amidst unprecedented corona crisis, children can be seen as most affected victims. Concerned governments are under legitimate expectation to extend support to these vulnerable children. It has been learnt from different corners of the world that the rights of children was suffocated and not allowed to be ventilated appropriately.

The discussion over global platform pitches the **digital divide** as stumbling block in reaching education in far flung areas. *"Beyond the internet accessibility, the poorest students in remote areas and girls do not have access to smartphones. Marginalized children are paying the heaviest price as millions of young people are not able to access remote learning during school shutdowns"* **Dr Dhir Jhingran** said during the discussion organized by UNICEF. Technology has to reach in every quarter of the world to ensure seamless education.

Anxieties and other mental disorders amongst adults had taken a huge toll on the children. It has been reported from some parts of the world that children are facing **domestic violence** when they were locked inside due to covid. The UN Special Rapporteur had raised an alarm against the violence and said *"For too many women and children, home can be a place of fear and abuse. That situation worsens considerably in cases of isolation such as the lockdowns imposed during the COVID-19 pandemic."* We need to address such issues urgently to save the children being rendered as subjects of violence.

Personal liberties are not meant to be smothered especially when they are guaranteed under various constitutions of the world (like we have under Article 21 of the Indian Constitution). It was reported that children have to dilute their rights of liberty and are living in crowded, unhealthy conditions in detention centres. In such situations, the role of respective Nation becomes very important in line with their constitutional scheme, to afford them humanly conditions with strict regard to their liberty.

The schools are shut as a measure to contain spread of corona virus. Consequently, the children are bound to spend more time online and thereby can become easy feed for **sexual exploitation predator on online platform.** According to UK's National Society for the prevention of cruelty to children, the corona ensued lockdown *"brewed a perfect storm for offenders to abuse children."* Ostensibly, this is the perfect time for the perpetrators to brainwash innocent children and make them do whatever they want. Parents are required to spend more time with their children and must keep a vigil on their online activities.

It was reported that around 99% of the children in the world are living under restriction on their movement due to covid induced lockdown, which has resulted in affecting their brain development due to high level of **stress** and involuntary isolation embraced. Also, some of them may get traumatized due to loss of their loved ones, separation of their parents, no friends to chatter at house etc. during lockdown. Indeed, we need a well guided counseling sessions to keep these children sail through difficult times.

Under the **Indian Constitutional scheme,** the rights of children to lead a protected life are indefeasible in nature, as manifested from the bare reading of Article 21. Also, Article 15 (3) is an enabling provision which allows government to come up with welfare schemes for the benefit of children, in line with what was envisaged by our Constitution framers. Since India is signatory to certain International instruments, it owes its allegiance to them as well. Article 3 of UDHR and Article 6 of ICCPR guarantees right to life (this ostensibly include right to life of children). Accordingly, the govt. is demonstrating its political will to safeguard the life of children affected by corona virus. The govt. is creating conducive environment where rights of children will not be discounted. It was learnt from the news surfacing around that several children rendered homeless because of the untimely demise of their parents occasioned by corona virus. It would be better to place such children in safe custody and care of the authorities, before they can fall prey to social evils. The dynamic situation demands complete engrossment in order to understand the ramifications of corona situation in our society. All the governmental steps have to be channelized in the direction of welfare of children. Also, Indian justice delivery system is shielding children and their

rights against any violation. **In Re Contagion of COVID 19 Virus in Children Protection Homes case,** various guidelines were issued from time to time by the Hon'ble Supreme Court to save the interest of child who was affected most after pandemic descended. The temple of justice is ready to foil any act intended to thwart children rights. The coordinated exercise of power between judicial wisdom and legislative will certainly benefit those at the receiving end. The Children has to be protected against any untoward incidence, especially when the human race is fighting against an unknown ghost virus (Corona) in keeping with Constitutional ethos.

Advocate, Author and founder of the blog "Constitutional Ethos".

1. Amidst child rights crisis, experts call to 'reimagine' a sustainable, safer world for children, UNICEF for every child, https://www.unicef.org/india/press-releases/amidst-child-rights-crisis-experts-call-reimagine-sustainable-safer-world-children.

2. COVID-19 and Children's Rights, Human Rights Watch, https://www.hrw.org/news/2020/04/09/covid-19-and-childrens-rights.

3. Technical Note: COVID19 and Children deprived of their liberty, The Alliance for Child Protection in Humanitarian Action UNICEF, https://alliancecpha.org/en/child-protection-online-library/technical-note-covid-19-and-children-deprived-their-liberty.

4. See supra note 2.

5. Henrietta H. Fore and Zeinab Hijazi, COVID-19 is hurting children's mental health. Here are 3 ways we can help, World Economic Forum, https://www.weforum.org/agenda/2020/05/covid-19-is-hurting-childrens-mental-health/.

YOU MADE YOUR CASE

—The Art of Persuading Judges—

Cite authorities sparingly

You're not writing a treatise, a law-review article, or a comprehensive *Corpus Juris* annotation. You are trying to persuade one court in one jurisdiction. And what you're trying to persuade it of is not your (or your junior associate's) skill and tenacity at research. You will win no points, therefore, for digging out and including in your brief every relevant case. On the contrary, the glut of authority will only be distracting. What counts is not how many authorities you cite, but how well you use them.

As for governing authority, if the point you are making is relevant to your reasoning but is neither controversial nor likely to be controverted, a single citation (the more recent the better) will suffice. Anything more is just showing off to an unappreciative audience. But if the point is central to your case and likely to be contested, not only cite the case bur concisely describe its facts and its holding. And follow that description by citing other governing cases (*Accord Smith v. Jones, Roe v. Doe*).

If there is no governing authority in point, your resort to persuasive authority may require more extensive citation to show that the rule you are urging has been accepted in other jurisdictions. (For example: "Every other jurisdiction that has confronted this question has reached the same conclusion. See Smith v. Jones, 972 P.2d 1294 (Cal. 1998); Roe v. Doe, 649 N.E.2d 1391 (N.Y. 1995); Riley v. Silberman, 593 S.E.2d 930 (Va. 2003).") If persuasive authority is overwhelmingly in your favor but not uniformly so, you may have to resort to a footnote showing all the courts in your favor, followed by a But see citation of the few courts that are opposed. And citing an ALR annotation on point will be helpful.

Secondary authorities (treatises, law-review articles, case annotations) help confirm your analysis of trends in the law, general background (supporting, for example, your statement that before the statute at issue was adopted, the law was thus-and-so}, and your view about what is the "best" rule with the most desirable policy consequences. It's superfluous-and hence harmful-to cite a secondary authority for a proposition clearly established by governing authority.

Don't expect the court, or even the law clerks, to read your secondary authority; they will at most check to see that it supports the point you make. They will therefore be persuaded not by the reasoning of your secondary authority but only by the fact that its author agrees with you. And the force of the persuasion will vary directly with the prominence of the author. Thus, except as a convenient way to refer the court to a compendium of cases, it's not much help to bring to the court's attention the fact that a student law-review note is on your side. Use it only when you have nothing else.

GOOD MEDICAL RECORD IS A "GOOD DEFENSE", POOR MEDICAL RECORD IS A "POOR DEFENSE" AND NO MEDICAL RECORD MEANS "NO DEFENSE"

FIRST APPEAL NO. 840 OF 2013
DR. JAGDISH LALWANIVersusMADAN LAL YADAV & ORS.
FIRST APPEAL NO. 52 OF 2014
DR. SUSHIL ACHARYA VersusMADAN LAL YADAV
Decided by the Hon'ble NCDRC on 15.02.2022

Anoop K. Kaushal, Advocate
anoopkaushal@gmail.com

FACTS: Mrs. Phooli Devi wife of Mr. Madan Lal Yadav – Complainant was suffering uterine problems about 1 ½ years. Complainant admitted his wife in Krishna Hospital and hysterectomy was done on the same day, soon after the operation, the patient had pain and urine started oozing out continuously and a urine bag was installed. On 24.03.2005, the patient got discharged from the Hospital with advice for complete bed rest, there was no improvement in her post-operative pain and discomfort and on 28.03.2005, the patient was taken to SMS Hospital, Jaipur, Dr. S.S. Yadav at SMS Hospital examined the patient and told about the cut injury to patient's urinary bladder during the hysterectomy, she was called for another operation for repair after three months only, the patient was operated at SMS Hospital on 16.09.2005 and discharged on 24.09.2005, Mr. Madan Yadav filed a Consumer Complaint against Opposite Parties before the State Commission to claim Rs. 35,00,000/- as total compensation. After hearing the parties, the State Commission partly allowed the Complaint and directed the Opposite Parties Nos. 1 to 5 to pay lumpsum amount of Rs.10,00,000/- with interest of 6% per annum to the Complainant. The Complaint against Mr. Girdhari Lal Yadav (Opposite Party No. 6) was dismissed. Two of the five original Opposite Parties i.e. Surgeon, Dr. Sushil Acharya and Dr. Jagdeesh Lalwani preferred separate First Appeals.

DEFENSE: The Opposite Party No. 2 filed its reply, but the Opposite Parties Nos. 1, 3, 4, 5 & 6 did not file reply despite newspaper publication in 'Dainik Bhaskar'. The Opposite Party No. 2 in its reply stated that he was neither a doctor nor manager/administrator of the Krishna Hospital, but he was a Radiographer, running X-Ray Diagnostic Center in one part of Krishna Hospital. As, he was a relative of the Complainant, therefore, he requested the Surgeon, Dr. Sushil Acharya (Opposite Party No. 3) to operate Complainant's wife without any consideration. The operation was done at free of cost, therefore, the Complainant was not a consumer. He further submitted that the treating doctors saw the post-operative oozing of urine and opined that, it was a possible complication after long standing Pelvic Inflammatory Disease (PID).

OBSERVATIONS:

The affidavit filed by the Opposite Party No. 2 before the State Commission clearly states that all the Opposite Parties were jointly managing the hospital. Moreover, there was criminal proceeding going on simultaneously. Thus, we do not accept that only the Opposite Party No. 2 was served the notice and aware of the proceedings before the State Commission. It is evident from the observation of the State Commission that Dr. Sita Ram Yadav (Opposite Party No. 2) was Manager / Administrator at Krishna Hospital and Dr. Sushil Acharya (Opposite Party No. 3) was a General Surgeon. He performed the hysterectomy in 2005. He was conferred MCh Neurosurgery in 2015. Admittedly, Dr. Jagdish Lalwani (Opposite Party No. 4) was MBBS and his role was limited as Anesthetist during surgery. The Opposite Party No. 5 - Dr. D. R. Meena, stated in her affidavit that she had only examined the patient for pre-operative fitness and not involved in surgery. In our view, though Surgeon can perform hysterectomy but, in the team of doctors, there was no qualified Gynecologist at Krishna Hospital. We have gone through Shaw's Textbook of Gynaecology (16th Ed.) and several medical literatures on Pelvic Inflammatory Disease (PID). *The diagnosis of PID is based on combination of medical history, signs and symptoms, pelvic examination, blood and urine tests. In addition, it is confirmed by ultrasound, endometrial biopsy and finally by diagnostic laparoscopy. However, in the instant case, the treating doctors just relied on medical history, signs and symptoms to diagnose PID. Only in acute cases of PID, the surgical intervention is required. The first choice of treatment should be by antibiotics, which was not done by the treating doctors. As discussed, there was no*

Gynecologist, who examined the patient and diagnosed the PID. Thus, in our view, the doctors at Krishna Hospital were failed in their duty of care. No doubt, the surgery was uneventful but the question remains whether the patient really needed hysterectomy operation without any confirmed diagnosis of PID. Even if, we consider that the bladder injury was a known post-operative complication, however, in our view the operating surgeons should be more careful during surgery to avoid injury to the surrounding organs. In the instant case, post-operatively the treating doctors failed to detect or explain about the reasons for urinary leak.

The observation made by the State Commission in its para 11 of the Order, which is reproduced as below:

"11. During the course of investigation, the Investigating Officer sought expert opinion from Medical Jurist of the SMS Hospital in this matter. Dr. T.C. Sadasukhi, an Urologist of the SMS Hospital, expressed his opinion that the patient was suffering from Vescico Vaginal Fistula and a perforation was seen in the urinary bladder and uterus and this perforation was likely result of hysterectomy. Dr. Sadasukhi further opined that such possibilities are increased in case the uterus and urinary bladder are attached to each other due to infection. He also found during laparoscopy that the uterus was having considerable swelling and possibility of such complication (a cut & perforation in urinary bladder) was 3-8%. Thus, from the expert opinion of Dr. Sadasukhi, discharge ticket of the SMS Hospital (Annexure-2) and the charge sheet submitted by the police against non-petitioner no. 2-6, the allegation of the complainant is corroborated that the Doctors at the Krishna Hospital had negligently cut and perforated the urinary bladder of Mrs. Phooli Devi, during the course of operation of uterus. As a result of it, Mrs. Phooli Devi was subjected to severe pain, discomfort and uncontrolled dribbling and oozing of urine continuously from the date of initial surgery on 13.03.2005 (Annexure-1) till her second surgery in the SMS Hospital on 16.09.2005 (Annexure-3)."

The facts in the instant case clearly reveal us that the State Commission has merely relied on the charge sheet filed by the Police against the Appellant. We have perused the opinion from the Medical Jurist the expert opinion of the Urologist, Dr. T.C. Sadasukhi from SMS Hospital, Jaipur (Annexure – A3). According to him, there was VVF known complication occurs during hysterectomy operation. The chances are more due to infection between the wall of urinary bladder and uterus i.e. adhesions or due to cyst in the urinary bladder or abnormality in the uterus, such chances are 3 to 8%. According to him it cannot be termed as medical negligence.

HELD: In the instant Appeals, the Medical Record is devoid of pre-operative consent, the operative details and further treatment details maintained by the Opposite Party Hospital. ***It should be borne in mind that the Medical Record is, itself, a vital document to prove the duty of care of the treating doctors or hospital. In our view, good medical record is a "good defense", poor medical record is a "poor defense" and no medical record means "no defense".*** In the instant case, the Appellants failed on this count, the records were poorly maintained. Based on the foregoing discussion, it is evident that the team of doctors is devoid of competent Gynecologist to diagnose PID and further mode of management by hysterectomy operation. In our view, initially, the patient (PID) could have been treated by medication and thereafter the decision of hysterectomy was a reasonable standard of practice. The Opposite Parties failed to follow the reasonable care. In addition, the poor Medical Record maintained by the hospital, itself, was a deficiency in service and failure of duty of care. Considering the entirety of the case, though, in our view, the negligence is attributed in the instant case, we are not convinced with the award made by the State Commission, which is on a higher side. Therefore, the lumpsum compensation of Rs. 5 lakh alongwith interest @ 6% per annum from the date of filing of Complaint would be just and proper in this case.

good living

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Your Body

We are suggesting some selected Yog Asanas to rejuvenate your body. Next in the series is:

Bhujangasana (Cobra Pose)

The name Bhujangasana comes from the Sanskrit word 'bhujanga' which translates to 'snake' or 'serpent' and 'asana' meaning 'posture'. Hence, it is often referred to as the Cobra Pose, as it reflects the posture of a cobra that has its hood raised.

Benefits: Increases flexibility, Tones the abdomen, Strengthens the arms and shoulders Decreases stiffness of the lower back, Stretches muscles in the shoulders, chest and abdominals, Improves menstrual irregularities, Elevates mood Firms and tones the buttocks, Stimulates organs in the abdomen, like the kidneys, Improves blood circulation, Relieves stress and fatigue, Opens the chest and helps to clear the passages of the heart and lungs Improves digestion, Strengthens the spine Soothes sciatica, Helps to ease symptoms of asthma

Procedure: Start in the prone position, by lying flat on your stomach on a comfortable, level surface (preferably a yoga mat). Make sure your feet are together, with the toes against the floor. "Spread your hands on the floor and ensure you elbows are placed close to the rib cage," says Zubin Atre, Founder of The Atre Yoga Studio. Close your eyes and inhale slowly. "Focus more on inhaling, really breathe in," adds Zubin. Feel the stability in your pelvis and thighs, imagine them rooted to the ground throughout Bhujangasana. Exhale gradually before opening your eyes. Continue breathing slow and deep.

As you inhale, make a gently effort to push the chest forward and steadily straighten your arms Deepen your stretch to create a graceful, even arc in your back. "Your navel should be off the mat by maximum 5 cm", says Zubin Atre. Ensure you're stretching just as much as you can; do not force.

Keep your shoulders broad, but relaxed. Lift from the top of your sternum, but avoid pushing the front of your ribs forward. Try to distribute the stretch evenly along your spine. Breathe calmly and hold here for 5 to 10 breaths. As you exhale, gently release your body back to the floor.

Healthy Food

Beetroot

Beetroot is a dark red vegetable. Beetroot is a rich source of folate and manganese and also contains thiamine, riboflavin, vitamin B-6, pantothenic acid, betaine, magnesium, phosphorus, potassium, zinc, copper and selenium. Beets contain an antioxidant known as alpha-lipoic acid, which has been shown to lower glucose levels, increase insulin sensitivity and prevent oxidative stress-induced changes in patients with diabetes. Because of its high fibre content, beetroot helps to prevent constipation and promote regularity for a healthy digestive tract. Choline is a very important and versatile nutrient in beetroot that helps with sleep, muscle movement, learning and memory. Beets also contain carbohydrates, protein, powerful antioxidants. Beets are high in immune-boosting vitamin C and essential minerals like potassium (essential for healthy nerve and muscle function) and manganese (which is good for your bones, liver, kidneys, and pancreas). Beets also contain the B vitamin folate, which helps reduce the risk of birth defects. As beetroots contain natural minerals like silica, it helps the body to utilize the calcium consumed in a proper way providing strength to bones.

Recipe of the Month

Beetroot Raita

Ingredients:

Beetroot - ½ cup grated
Curd - ½ cup plain yogurt
Milk - ¼ cup
Salt as needed
Oil - 1 tsp

To temper

Oil - 1 tsp
Mustard - ½ tsp
Urad dal - 1 tsp
Asafoetida - a pinch
Green chilli - 1 finely chopped
Curry leaves - 1 sprig

Procedure

Peel beetroot, grate it finely. In a kadai, heat oil and saute this grated beetroot.

It takes a while to get cooked. You can sprinkle little salt and cook covered in low flame. If gets burnt, sprinkle water and cook.

Once cooked and becomes soft, transfer to a plate and cool down.

In a mixing bowl, place curd, milk and salt. Beat until smooth.

Add the cooked beetroot and mix.

Temper with the items given under 'to temper' in order and mix.

Happy Holidays

Manipur

Manipur, a little Shangrila located in North-East India, is a Jewel of India. An oval shaped valley surrounded by blue green hills, rich in art and tradition has inspired description such as the "Switzerland of the East" with its cascading rapids, tripling rivers, varieties of flowers, exotic blooms and lakes. **Shaheed Minar** marks the indomitable spirit of the patriotic Meitei and tribal martyrs who sacrificed their lives while fighting the British in 1891. **Khwairamband Bazar/ Ima Market** is a unique all women's market and is splited into two sections on either side of a road. Vegetables, fruits, fish and household groceries are sold on one side and exquisite handlooms and household tools on the other. **Kangla** has a significant place in the heart and mind of the people of Manipur and the relics are perfect reflection of the rich art and culture of Manipur and civilization. **Shree Shree Govindajee Temple** is one of the most attractive sights for the tourists. Twin domes, a paved courtyard, and a large raised congregation hall form a perfect backdrop for priests who descend the steps, to accept offerings from devotees in the courtyard. **Manipur State Museum,** near the Polo Ground, has a fairly good collection and display of Manipur's tribal heritage and a collection of portraits of Manipur's former rulers. **War Cemetery** commemorates the memories of the British and Indian soldiers who died during the World War II. **Manipur Zoological Garden** gives one an opportunity to see the graceful brow antlered deer (Sangai), one of the rarest and endangered species in the world, in sylvan surroundings. **Loukoi Pat** is a tiny lake and a retreat for visitors from within and outside the state. Boating facilities and the scenic beauty of the place is able to mesmerize the visitors. **Khonghampat Orchidarium** houses over 110 rare varieties of orchids, which include dozens of endemic species. **Bishnupur** is a picturesque town and is famous for its chiselled stoneware. **Red Hill (Lokpaching)** is a thrilling spot where the British and the Japanese fought a fierce battle during World War II. **Sadu Chiru Waterfall** is a picturesque site famous for its perennial Water Fall in a scenic foot hill. **Kangchup** is a health resort on the hills over-looking the Manipur valley. The scenery is picturesque and worth seeing by the construction of Singda Dam here. **Loktak Lake** is the largest fresh water lake in the north-east region. From the Tourist Bunglow set atop Sendra Island, visitors get a bird's eye view of life on the Lake— small islands that are actually floating weeds on which the Lake-dwellers live in the backdrop of the shimmering blue water of the Lake. **Moirang** town is one of the main centres of early Meitei folk culture with the ancient temple of the pre-Hindu deity, Lord Thangjing, situated here. **Keibul Lamjao National Park** is the only floating National Park in the world, and the last natural habitat of the Sangai (Rucervus eldii eldii) the dancing deer of Manipur. **Khongjom War Memorial** on the Indo-Myanmar road is a major historical place. **Mutua Museum** is a cultural complex at Andro village and houses artifacts of the State and from all over the North East. **Moreh** is a real shopping paradise for shoppers where sundry products ranging from electronics to daily consumables are available in plenty. **Churachandpur** is a bustling tribal town and district headquarter where products of arts and crafts of the area are available in the local market. **Ukhrul** is the highest hill station and is a centre of a colourful warrior tribe, the Tangkhul Nagas. Ukhrul is also known for a peculiar type of land-lily, the Siroi Lily. **Tamenglong** houses mysterious caves, splendid waterfalls and exotic orchids. The Tharon cave, Buning meadow, Zilad lakes, Barak Waterfalls are some of the places of tourist interest.

EXPLORING THE DIGNITY JURISPRUDENCE DEVELOPED BY THE SUPREME COURT OF INDIA

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Balram Pandey
Final Year Student,
Symbiosis Law School, NOIDA

The Moving Finger writes and, having writ; Moves on: nor all your Piety nor Wit. Shall lure it back to cancel half a Line; Nor all your Tears wash out a word of it.

Line of poetry sometimes epitomize reams of legal prose. Justice, like equality, democracy and development, is a word of ambiguous import and possesses a basic absolute meaning and plural relativist meanings dependent on specific social conditions and molded by time, circumstance and cosmic changes. Indeed, history, geography and cultural anthropology often meets, to condition these concepts, their color and contours. The judicial process depends for its performance potential on the legal profession. As Justice Krishna Iyer remarked eloquently, social justice through law-in-action finds fulfilment only if an aware cadre of lawmen serve the system. Not only do judges interpret the Constitution and the statutes enacted by the legislature, but sometimes they also create the law. This statement is true for all legal systems. There can be no judgement without the establishment of law. This facet of lawmaking is most strongly manifested in common law systems. It has been developed over hundreds of years by judges. In this short piece, we attempt to highlight the judgment(s) of the Supreme Court which manifested the ethos of Indian experiment of constitutionalism to protect the human dignity.

In the insightful words of Lord Goff, *"the common law's history is one of continual, incremental evolution over many centuries"*. Without any legislative authorization, judge-made law may emerge and provide remedies to new issues in a legal system. When a judge uses philosophy as a tool in his trek towards the paths of justice, a philosophy of life and a philosophy of law help the judge in understanding his role and in executing that role. Through it, a judge can participate in the search for truth, while understanding the limitations of the human mind and the complexity of humankind. As Justice Aharon Barak says, *"with the help of a good philosophy, a judge will better understand the role of the law in a society and the task of the judge within the law"*. One cannot accomplish much with a good philosophy alone, yet one cannot accomplish anything without it.

Law is a tool that is intended to realize social goals. There is no consensus about the content of these goals, which is why it is necessary to find a balance among the various theories *inter se*. Some will regard the eclectic approach as an attempt to avoid a coherent legal theory. There will doubtless be others who regard the eclectic approach as an independent legal theory in itself. Whatever the case, each judge should adopt for himself a position on these questions. A landmark judgement of *NALSA v. Union of India* in 2014 strengthened the human rights and dignity of the transgender community. The Supreme Court issued crucial orders for states to follow in order to preserve and promote the rights and dignity of transgender people. It was notable for upholding an individual's right to self-identity. While concurring in the decision, Justice A.K. Sikri wondered if, because a person's gender is assigned to them at birth, wouldn't this defeat the purpose of self-identity?

In the *NALSA* case, Justice Sikri opines that the claim of *"sex"* after birth *"violates human rights to a large extent"* and *"leads to an undignified life"*. The Court observed that, to make the rights of transgenders' a reality, it is necessary to first assign them their proper *'sex'*.

Any practice that discriminates against citizens is prohibited by the Constitution. Even though the Constitution does not expressly prohibit discrimination based on disability, the constitutional courts have determined that Articles 14 and 21 of the Constitution safeguard disability rights. In the case of *Jeeja Ghosh v. Union of India*, a Division Bench comprised of Justices Sikri and Radhakrishnan deliberated on disability rights. In the instant case, the petitioner Jeeja Ghosh was discriminated because of her disability while travelling with an airliner. The Apex Court while taking cognizance of the issue reaffirmed the rights of individuals with disabilities and instilled confidence in them. The Justices were faced with the difficult task of determining whether foreign treaties are enforceable in India and if Article 21's '*right to life*' includes the '*right to live with dignity*'.

The rights that differently abled people are given under the Act of 1995 are based on the basic principle of human dignity, which is the core value of human rights and is considered as a vital aspect of the right to life and liberty. Article 21 of the Constitution establishes such a

right, now known as the human right of disabled people. The Supreme Court concluded that, *"right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the Right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal"*.

This understanding lands us on the key intersectionality between the ideals of human rights and Article 21 through this crucial extract from the ruling. As the Constituent Assembly recognized the significance of Article 21, it was left to the Constitutional Courts to interpret it in the future. Moving on to the legacy of liberal constitutionalism, the Apex Court expanded on this concept by including the Right to differently abled persons and consequently, incorporating the concept of dignity and human rights into public law. Nobody could have predicted that the right to die with dignity would be included in Article 21 when the Constitution was written.

In the notable case of *Common Cause v. Union of India*, a registered society by the name of Common Cause filed a petition in the Supreme Court under Article 32 of the Constitution. The petition argued that right to die with dignity should be recognized as a fundamental right under Article 21. The petitioner also asked the Court to make orders to the government allowing terminally ill patients to execute *'living wills'* directing appropriate actions. However, there were differences in the opinion of the Apex Court on this issue in its earlier judgement(s) of *Aruna Shanbaug v. Union of India* and *Gian Kaur v. State of Punjab*, which needed to be settled. In the instant case, reasonable questions came from the areas of morality and the autonomy of an individual's existence.

Justice Sikri pens in his opinion in the Common Cause case to further this cause: *"When we come to the moral aspects of 'end of life' issues, we face the situation of dilemma. On the one hand, it is an accepted belief that every human being wants to die peacefully. Nobody wants to undergo any kind of suffering in his last days. So much so a person who meets his destiny by sudden death or easy death is often considered as a person who would have lived his life by practicing moral and ethical values"*. Finally, the Supreme Court ruled that Article 21 of the Constitution guarantees the right to die with dignity. Justice Sikri's contribution to the dilemma of human rights, privacy, and its construction with fundamental rights became a vital instrument in reaching this conclusion, particularly in establishing a line between moral authority and autonomy.

A central element of a modern democracy is the protection of constitutional, statutory, and common law human rights. Without these rights, we cannot have democracy. Take human rights out of democracy and democracy loses its soul; it becomes an empty shell. As Justice Pikis, former president of the Supreme Court of Cyprus, rightly observed, the essence of human rights lies in the existence within the fabric of the law of a code of unalterable rules affecting the rights of the individual. Human rights have a universal dimension, they are perceived as inherent in man, constituting the inborn attribute of human existence to be enjoyed at all times, in all circumstances, and at every place. Furthermore, in a functioning constitutional democracy, the need of a strong Criminal Justice System (CJS) cannot be underestimated. Among the various fallacies of CJS, one that jumps out is witness protection. The CJS has struggled to protect witnesses in numerous situations. The *'classic'* common law operates where there is no legislation. It provides case law to govern matters that have not been regulated through legislation.

The Constitution is the statement of Indian identity, it was to foster the achievements of many goals, transcendent among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man, and, it was hoped, this revolution would bring about fundamental changes in the structure of Indian society—a society with a long and glorious cultural tradition. But greatly in need, the founding fathers believed, of a powerful infusion of energy and nationalism. The theme of social revolution and human dignity also runs throughout the proceedings of the Constituent Assembly. The Supreme Court is rightly implementing the theme as per the wishes of great founding fathers. Let us conclude this discussion with the insightful remarks of eminent legal philosopher Professor Upendra Baxi: *"The rather versatile expression 'human rights' requires a careful conceptualization, if only because there are many ways of taking about human rights. Typical among them remain the distinctions between natural and moral rights on the one hand and legal rights on the other; the 'Theory' elevates the idea of human rights as distinctively ethical. 'Human Rights' emerge variously as ideals to be pursued, values to be fostered, policy ends to be achieved, and virtues to be cultivates in individual and collective behavior, economic activity and political conduct in the pursuit of human and social development"*.

Deceased son's semen samples: Who is the owner?

Prof. Kusum

Developments in the field of law,globalisation,advancemen-ts in medical science, technology and procedures ,etc have correspondingly given rise to intricate, interesting and peculiar issues before the judiciary. An issue that has come up before the Delhi High Court just days ago is in regard to claim of old parents to cryopreserved frozen semen sample of their unmarried deceased son. The young son, aged 30 years,

was suffering from cancer and the parents were informed that the treatment for the same could make him sterile. The parents thereupon asked the hospital authorities to preserve his semen samples which they could use to continue the family line.

Reportedly the parents even paid to the hospital for sometime, charges for preserving the same;after sometime the hospital refused to accept the charges. When after the death of their son they asked for his semen sample for use for possible

procreation through surrogacy(or any other assisted reproductive device) the hospital refused their request saying that there was no law, policy or legal procedure to decide as to who should be handed over the semen sample of an unmarried deceased male. The parents have approched the court now. They have argued that they were the sole claimants of their deceased son's "bodily

assets", and therefore hospitals refusal was a violation of their rights. One is at a loss to understand the logic and legalese behind the hospital's refusal. The semen was cryopreserved at parents' behest after they were informed that their son's cancer treatment could render him infertile. The obvious intention and purpose behind such preservation could be only one, I. e, posthumous procreation for continuing family line; the parents also paid charges for preservation for sometime which, reportedly by parents, hospital refused to accept after sometime. Now that their son is dead and the samples are still preserved and none other but his parents want it to have a child of their deceased son if possible with assistance of assisted medical procedures,

why should any technicalities, if any, come in the way? Had there been a wife or partner as co -claimants it would have been a different thing but in this case the deceased

was unmarried and there is no other claimant. Of what use would this sample be to anyone else! On the other hand it could bring immense hope and joy in the sunset years of the old parents. What could be the perils of conceding to the demand of the parent? If health perils to the potential surrogate or child are envisaged, medical testing can be ordered before use. The demand and desire of the parents seems to be legitimate; they are old, they have a desire to see the shadow of their deceased son in his offspring if they succeed, they have their son's gamets and assisted reproductive procedures are viable and acceptable today so why deny them this ray of hope; unless the hospital had purchased these samples for some medical research in which case they could be the owners and refuse to part. A more pragmatic and humane approach is needed to give meaningful relief.

On The Lighter Side

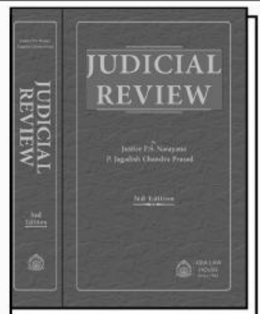
I SUE YOU!

Where there's smoke, there's cooking, and when young people are involved it's often cordon noir. Two Colorado teenagers were so proud of their excellent, home-baked cookies, they left some outside a neighbour's door with a heart-shaped card. When Wanita Renea Young saw their unfamiliar shadows moving outside her front door after ten o'clock in the evening, she had an anxiety attack which landed her in hospital. She won $930 in medical costs. (Denver Post, September 2005)

SUGAR AND SPICE

The best way to double your money is to fold it up and put it back in your pocket. It's absolutely not to go to court. Peer Larson. 17, discovered this simple maths the hard way when he tried to sue the Wisconsin superintendent of public instruction to get summer homework done away with. He claimed that on top of a 180-day school year. his summer maths project was really too much. Complaint dismissed. *(Pittsburgh Tribune-Review, February 2005)*

OUR LATEST RELEASES



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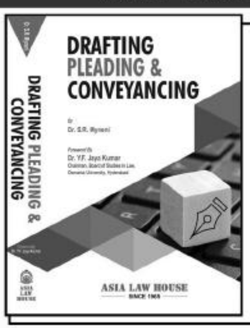

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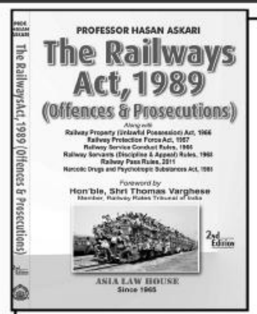

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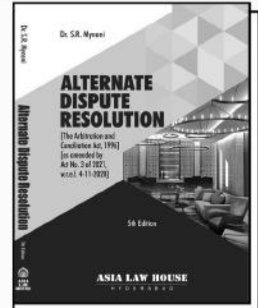

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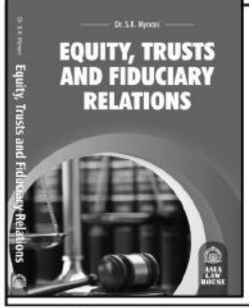

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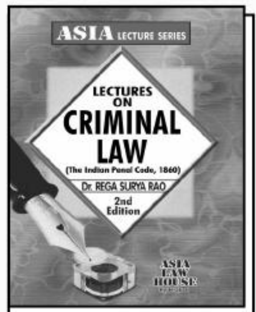

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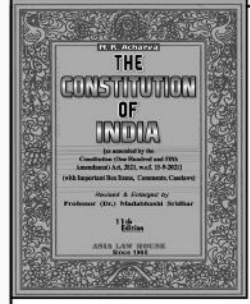

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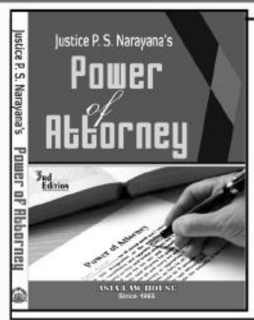

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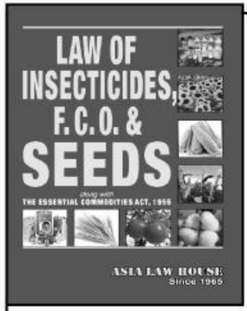

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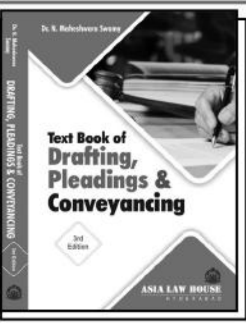

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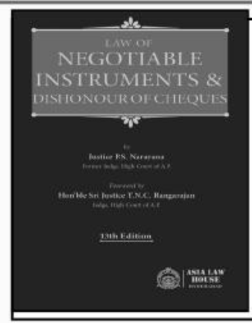

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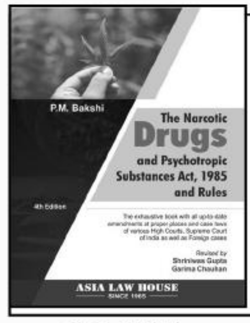

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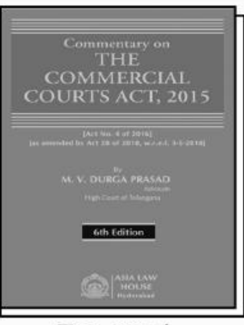

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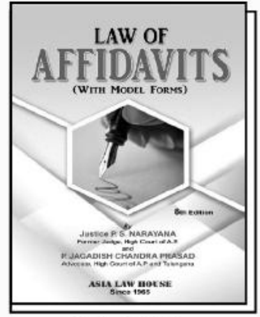

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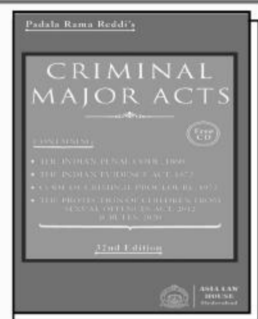

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I STARED DOWN DEATH

Christopher W. Davis

Trammi Smith got up early and dressed in jeans and a white shirt. She had an appointment in traffic court in Shelbyville, Indiana, over a minor violation. Waking her husband, Shawn, with a kiss, she told him she was taking the van. The kids were already up, eating cereal and watching cartoons. After court, she thought she might stop to get her nails done and then pick up sodas at the Bigfoot convenience store on the way home.

In Batesville, an off-duty policeman noticed the car slowly cruising a neighborhood. There'd recently been a string of burglaries there-and this guy drove like someone casing houses. The officer called in a description of the vehicle, and in minutes a police car was on the scene, lights flashing.

McAninch pulled over and lifted his shirt, showing Scalf the 9 mm semiautomatic in his belt. He kept the engine running. Then, as the officer approached, he gunned it and took off.

Tammi's traffic case was quickly resolved without a fine. Leaving the courthouse, she checked her watch. She still had time to get her nails done.

McAninch reached speeds of up to 120 mph on Interstate 74, swerving around stop sticks on the highway and throwing screwdrivers, bottles, anything he could put his hands on, out the window at police.

Tammi was at the register, holding a copy of the *Shelbyville* News, when a stocky man in a long-sleeved white shirt and jeans burst through the front door with a gun in his hand. “Everybody get out or I'm going to kill you!”

Two female employees rushed for the back door. McAninch leaped over the counter, cornering the clerk, a young man, at the register. Not knowing what to do, Tammi ducked behind a food rack at the back of the store.

But McAninch saw her. “You, get up here!” he shouted.

Okay, Tammi told herself, this is God's plan for me today. I might die. Don't be afraid of dying. Everybody's got their time. This might be mine.

As police cars gathered in the parking lot, McAninch ordered the clerk to lock the front door, The young man eased around the counter, locked the door and pocketed the key. Then, seeing McAninch was focused on the police out front, he bolted for the back door.

Tammi was now alone with the gunman.

McAninch grabbed her by the hair, forced her up to the window and put his gun to her head-showing police he had a hostage.

“Please don't shoot me,” Tammi said. She started to cry. “I have kids.”

McAninch turned the gun away and instead fired a shot through the window at police. Then he dragged Tammi to the back of the store and into a windowless office, a cramped space with a desk, two chairs, a phone and two computer monitors, one that showed views from security cameras inside the store.

McAninch told Tammi to take a seat and then sat next to her. The wait began. Tammi knew her only chance was to stay calm, show no emotion and try to keep talking to this guy.

The office phone began to ring. One of the calls was from a reporter at Indianapolis radio station WIBC, who had heard about the police chase and called for an eyewitness account.

McAninch told her he was holding a hostage, and then asked the reporter to call a woman friend. The reporter linked them on a conference call and later broadcast portions of their conversation.

“What's up, baby?” asked McAninch.

“Nothing," the woman responded. “What's wrong?”

“I'm in a gas station. There's about 50 police outside. I shot at them so ... they're probably going to end up killing me.”

She tried to talk sense to him. “Can't you go out with your hands up?" she asked. “Figure another way out of this.”

Nothing changed his mind. In the midst of the conversation, McAninch even put Tammi on the phone.

At long last, police took command of the phone line. They now controlled McAninch's access to the outside world through a police negotiator.

When he first called, the negotiator asked McAninch who he was holding hostage. Was she all right? Did he or Tammi need medical attention? Then the negotiator settled into a long conversation calculated to keep McAninch calm.

Tammi was working on the same idea. When McAninch was off the phone, she took family photos out of her wallet. "Here's my daughter," she told him. "She's a cheerleader. She's ten. Isn't she beautiful?"

McAninch studied the photo. "Yeah, she's a beautiful girl." "Do you have any kids?" Tammi asked.

Yes, he said, one, a 13-year-old daughter, but he had no pictures.

Tammi was trying to get to know him. Win his trust. It was already obvious to her that he wasn't expecting to get out alive. She had to find a way to convince him not to take her with him.

There was money everywhere.

Tammi had never seen a room so disorganized. There was cash piled on the desk in the office. Checks written out to Bigfoot all over the place. Bunches of cash behind the chairs. McAninch stuffed over $1,000 into his pockets. And handed Tammi $350 out of the stack of cash on the table.

"I can't take that," she told him. "God's watching. I'm not a thief."

"Take it," he insisted. "Put it in your wallet-now!"

She tried to shake him off. "All I want is to go home and make dinner for my family."

"I can't let you go. You're my security blanket," McAninch told her. "You're what's keeping me alive.

Fifteen hours crept by. McAninch sat thinking, tapping the gun against his head and making multiple demands of the police negotiator. He wanted to visit his mother's grave before being locked up, he wanted his pal Joe Scalf set free, he wanted to talk to his daughter, he wanted a live television crew filming his surrender so there wouldn't be any monkey business, and he wanted cold beer. "Of all places to hold up," he said, "I chose one that doesn't sell beer."

Through it all, Tammi was close enough to him to grab his gun, but even if she could wrestle it from him, she knew she'd never be able to use it. She tried to maintain an appearance of calm.

"You're a pretty cool hostage," he said, and told the police:

"This bitch ain't scared at all."

Slowly McAninch began to talk to her. He confessed he was bipolar. That he used Valium. He had marijuana with him and started to smoke a joint, offering her a puff. She said no.

"At least I'm locked up in here with a beautiful girl and not some guy," he said.

At around 2 a.m., McAninch gathered flattened cardboard boxes and put them on the floor. Then he found some Bigfoot employee uniform shirts in the back room and laid them on the cardboard to make a bed. As he stretched out, blocking the front doorway, gun in hand, he asked Tarnmi, "You want to do something?"

"What!" Tammi said, surprised and angry. McAninch lay there looking at her as the minutes ticked by, then said, "Okay, I'm not even going to go there."

Tammi watched as he closed his eyes. All right, she thought.

What if he goes to sleep? Should I run for it? In the end she decided not to. The doors were locked, and he still held the gun. And as far as she could tell, he never did drift off to sleep.

The negotiator called again, offering a cell phone to McAninch because the landline had become staticky. Send Tammi out for it; they'd leave it outside.

"I'm not sending her out there till you guys back off," McAninch said.

Taking a chance, Tammi walked to the front door, took the handle and pulled. "The door's locked," she yelled to the police.

"Get back here," McAninch ordered.

"Let me go get that phone. I'll come back," she pleaded. After more negotiation with her and the police, McAninch finally agreed. But he wanted to make sure his "protection" would come back.

He began rummaging around in the store, searching. Suddenly he picked up a vacuum cleaner, grabbed a screwdriver and took it apart. He ripped the electrical cord free, and came for Tammi. He tied the cord around her waist.

As dawn broke, police demolition experts rigged the heavy back door with explosive charges. A SWAT team was ready to blow it open and rush the store.

At the same time, around 6:30 a.m., McAninch changed his mind and decided to send Tammi out once more to get the phone. He played her out on the cord. She opened the door, stepped forward, saw the phone on the ground and reached for it.

Policemen hidden in the shadows grabbed her by the arm and tried to pull her free. For a moment Tammi was trapped in a tug of war. But McAninch reeled her back in.

"Get back!" he yelled at the police. "Get back!" He fired a shot. Police returned fire. One SWAT unit blew open the back door. Another unit rushed the front.

"Stop shooting! Stop shooting!" Tammi yelled. "I'm right here! I'm right here!" She fell to the floor and grabbed a plastic soda tray to shield her head.

Suddenly it was silent. The shooting stopped. She looked at McAninch, who was lying motionless across her leg-bullet wounds in his arm, leg and chest.

Tammi didn't scream or cry. She didn't know whether to run or not. She thought McAninch might still be able to shoot her. But he was dying. His mouth was open and there was a gaping hole under his chin pulsing out blood. He'd shot himself-he would never go back to prison.

Her husband, Shawn, ran to the trailer to meet her. They hugged, unable to speak, and Shawn began to cry. But Tammi was too burned out for tears.

She didn't cry that day or night or the next day. It wasn't until around midnight of the second day that she began to weep uncontrollably.

From the time she was a child, Tammi Smith had nightmares that someone was lurking in the dark waiting to kill her with a knife or a gun. After Bigfoot, she doesn't have that dream anymore.

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Legal Thesaurus

Caveat emptor:

Let the purchaser beware. A maxim implying that buyer must be cautious, as the risk is his and not that of the seller.

Latin phrase meaning "let the buyer beware; phrase meaning that the buyer is himself responsible for checking that what he buys in the good order".

In early English law "Caveat emptor" was the general rule, and it was one well suited to primitive times. Men either bought their goods in the open marketplace, or from their neighbours and buyer and seller contract on a footing of equality. Now the complexity of modem commerce the division of labour and the increase of technical skill, have altogether altered the state of affairs.

The rule of caveat emptor probably owes its origin to the fact that in early times nearly all sales of goods took place in market overt. [Morley v. Attenborough, (1849 3 Exch at p. 511. (per **Parke B**.). [**Chalmers**]. Its policy has been defended on the ground that it tends to diminish litigation (Mercantile Law Commission 1855, 2nd Report, p. 10), but the distinct tendency of modem cases is to limit its scope. In a case, in 1838, where a ship was bought while on a voyage, and had stranded, though she was not a total wreck. **Lord Wensleydale** said : "In the bargain and sale of an existing chattel, by which the property passes the law does not, in the absence of fraud, imply any warranty of the good quality or condition of the cattle so sold." [Barr v. Gibson, (1838) 3 M & W 399]; but now the implied condition of fitness for a particular purpose may also apply to specific goods. [In a case in 1867, **Lord Blackburn** gives the following illustration: "Where a horse is bought under the belief that it is sound, if the purchaser was induced to buy by a fraudulent representation as to the horse's soundness, the contract may be rescinded. If it was induced by an honest misrepresentation as to its soundness, though it may be clear that both vendor and purchaser thought that they were dealing about a sound horse, and were in error, yet the purchaser must pay the whole price unless there was a warranty; and even if there was a warranty he cannot return the horse and claim back the whole price unless there was a condition to that effect in the contract." *[Kennedy v. Panama Co., (1867), LR 2 QB at p. 587].*

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LEGAL WRITING *Tips*

Express coordinate ideas in similar form.

This principle that of parallel construction, requires that expressions similar in content and function be outwardly similar. The likeness of form enables the reader to recognize more readily the likeness of content and function. The familiar Beatitudes exemplify the virtue of parallel construction.

Blessed are the poor in spirit: for theirs is the kingdom of heaven.

Blessed are they that mourn: for they shall be comforted.

Blessed are the meek: for they shall inherit the earth.

Blessed are they which do hunger and thirst after righteousness: for they shall be filled.

The unskilled writer often violates this principle, mistakenly believing in the value of constantly varying the form of expression. When repeating a statement to emphasize it, the writer may need to vary its form. Otherwise, the writer should follow the principle of parallel construction

Formerly, science was taught by the textbook method, while now the laboratory method is employed	Formerly, science was taught by the textbook taught by the textbook taught by the laboratory method

The left hand version gives the impression that the writer is undecided or timid, apparently unable or afraid to choose

* Excerpt from 'What I Believe" in Two Cheers for Democracy, by E. M. Forster.

one form of expression and hold to it. The righthand version shows that the writer has at least made a choice and abided by it.

By this principle, an article or a preposition applying to all the members of a series must either be used only before the first term or else be repeated before each term.

the French, the Italians, Spanish, and Portuguese	the French, the Italians, the Spanish, and the Portuguese
in spring, summer, or in winter	in spring, summer, in spring, summer,
the French, the Italians, the	(in spring, in summer, or in winter)

Some words require a particular preposition in certain idiomatic uses. When such words are joined in a compound construction, all the appropriate prepositions must be included, unless they are the same.

His cousin, who is a	His cousin, a member of
His speech was marked by disagreement and scorn for his opponent's position.	His speech was marked by disagreement with and scorn for his opponent's position

Correlative expressions (both, and; not, but; not only, but also; either, or first, second, third; and the like) should be followed by the same grammatical construction. Many violations of this rule can be corrected by rearranging the sentence

It was both a long ceremony and very tedious.	The ceremony was both long and tedious.
A time not for words but action.	A time not for words but for action.
Either you must grant his request or incur his ill will.	You must either grant his request or incur his ill will.
My objections are, first, the injustice of the measure; second, that it is unconstitutional	My objections are, first, that the measure is unjust; second, that it is unconstitutional

It may be asked, what if you need to express a rather large number of similar ideas – say, twenty? Must you write twenty consecutive sentences of the same pattern? On closer examination, you will probably find that the difficulty is imaginary – that these twenty ideas can be classified in groups, and that you need apply the principle only within each group. Otherwise, it is best to avoid the difficulty by putting statement in the form of a table.

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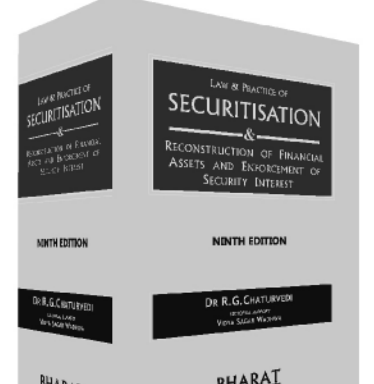

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1. **Restrictions may not be imposed on freedoms provided under Article 19(1)(a) on this ground**
   (a) Defamation
   (b) Public Order
   (c) Sedition
   (d) Security of the state
   Answer is C.
2. **Right guaranteed to citizen only is**
   (a) Article 21
   (b) Article 20
   (c) Article 19(1)(a)
   (d) Article 25
   Answer is C.
3. **President can be removed on the ground of?**
   (a) Proved Misbehaviour
   (b) Incapacity
   (c) Violation of Constitution
   (d) All the above
   Answer is C.
4. **The designation 'Senior Advocates' is provided under**
   (a) Section 16, Advocates Act, 1961
   (b) Section 26, Advocates Act, 1961
   (c) Section 6, Advocates Act, 1961
   (d) Section 15, Advocates Act, 1961
   Answer is A.
5. **Right to pre-audience is provided by**
   (a) Section 33 of Advocates Act, 1961
   (b) Section 23 of Advocates Act, 1961
   (c) Section 16 of Advocates Act, 1961
   (d) Section 36 of Advocates Act, 1961
   Answer is B.
6. **The 'Contempt of Court' belongs to**
   (a) Entry 77 of Union list and Entry 14 of State list in the VIIth Schedule of Constitution of India
   (b) Entry 70 of Union list and Entry 40 of State list
   (c) Entry 67 of Union list and Entry 13 of State list
   (d) None of these
   Answer is D.
7. **Who was the Chief Justice of India when the Concept of PIL was introduced to Indian Judicial system**
   (a) M. Hidayataullah
   (b) A.M. Ahmadi
   (c) A.S. Anand
   (d) P.N. Bhagwati
   Answer is D.
8. **The Supreme Court of India issued a number of direction for the prevention of Woman in Various forms of prostitution and to rehabilitate their Children Through various welfare measures an 'so as to provide them with dignity of person, means of livelihood and socio-economic development in the Case of**
   (a) *Vishaka* v. *State of Rajasthan*, AIR 1997 SC 3011
   (b) *Gaurav Jain* v. *Union of India*, AIR 1997 SC 3021
   (c) *Delhi Domestic Working Women's Forum* v. *Union of India*, (1998) 1 SCC 14
   (d) *Sheela Barse* v. *Union of India*, (1986) 35 SCC 596
   Answer is B.
9. **"Hadees" is one of the sources of Muslim law, It Comprises**
   (a) Very words of god
   (b) Words and actions of the prophet
   (c) Unanimous decision of jurists
   (d) Analogical decisions
   Answer is B.
10. **Intellectual Property appellate Board is established under which Act**
    (a) The Copyright Act, 1957
    (b) The Patent Act, 1970
    (c) The Trademark Act, 1999
    (d) The Designs Act, 2000
    Answer is C.
11. **What is the maximum duration within which fast track arbitration must be completed**
    (a) 6 Month
    (b) 12 Months
    (c) 18 Month
    (d) 24 Month
    Answer is A.
12. **Which one of the following section deals with form of summons?**
    (a) Section 60
    (b) Section 61
    (c) Section 62
    (d) Section 64
    Answer is B.

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Landmark Judgments

ATTEMPT TO RAPE
Nemai Dey
v.
State of Tripura
MANU/TR/0165/2018
***Decided* on**: 06-09-2018
Hon'ble Judge: Arindam Lodh, J., High Court of Tripura at Agartala.

Facts: FIR lodged by mother of victim prosecutrix. Complainant alleged that victim girl was alone at home and cooking rice. Accused alleged to have trespassed into kitchen of house and grabbed the victim down on ground, tore her frock, removed her panty, removed his undergarments and tried to lay his body over body of victim. Victim raised alarm and struggled hard when informant mother on hearing her cries immediately returned back to home and found appellant to run away. Officer in charge Police Station registered case under sections 448,376,511, IPC against accused.

Issue: Essential of Attempt to Rape.

Held: The High Court acquitted main accused of attempting to commit rape charges. It was observed that at best it was case of 'fondling'. Offence does not fall within sake of section 376 but under section 354, IPC.

Quick Referencer for Judicial Service

Q. '*A*' owes Rs. 22,000 to '*B*' but the debt is barred by Limitation Act. '*A*' signs a written promise to pay '*B*' Rs. 11,000 on account of debt. Is it a valid contract/ agreement? Refer to relevant provision of the Contract Act.

U.P. Judicial Service Exam. 1992

Civil Services (I.A.S.) Main Exam. 1999

Ans: Yes, it is a valid agreement (Contract)—**Section 25(3)**.

Reasons: According to **Section 25** an agreement without consideration is void.

But this problem is based on **Section 25(3)** which is one of the exceptions of general rule given in Section 25.

According to **Section 25(3)** an agreement is valid even in absence of consideration if it is a promise to pay wholly or in part a time-barred debt provided that promise is in writing and signed by the promissor.

In this problem all the conditions given in **Section 25(3)** namely time-barred debt, promise in writing with signature etc. are satisfied. Thus, agreement between '*A*' and '*B*' to pay '*B*' Rs. 11,000 on account of debt is valid. Though there is no consideration moving from '*B*' to '*A*' for this promise to pay Rs. 11,000.

Note: It is also notable that here it is also immaterial that debt was of Rs. 22,000 and '*B*' promised to pay only Rs. 11,000 because relevant words used in Section 25(3) are "wholly or in part". Thus, promise to pay any amount upto Rs. 22,000 which '*A*' owes to '*B*' is valid and enforceable.

Kishor Prasad

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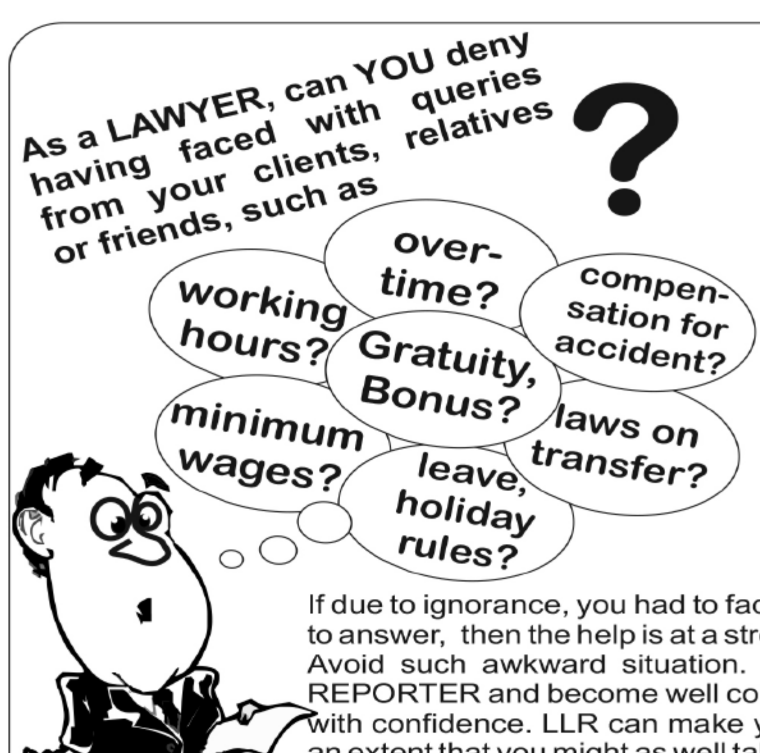

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REAL LAW SCHOOL PERSONAL STATEMENTS

MAKE EVERY ILLUSTRATION COUNT

I love gardening: My hands in the dirt, the smell of freshly grown flowers or vegetables the invigorating sensation of working the earth in the great outdoors. There is order to sowing seeds-steps and clear directives that allow life to reproduce generationally.

I feel like the law boasts numerous similarities to a garden: While there are no hard and fast rules, there are serious guidelines to each. In a legal environment, you have to understand the existing laws of the land. But you must also understand that public opinion shifts and makes room for subtle changes to the law.

Similarly in a garden, one day it might be raining, and the next there may be a freeze. So although you might understand the rules of how to make a plant grow, you are also subject to the whims of the weather.

Every year I plant all the vegetables I like to eat in a salad. I am very specific in what I like to eat and the truth is, I only like a salad that contains each of these very specific vegetables. If one or more hasn't yet grown, I subsidize it with ones from the market. In every salad I expect:

- Lettuce
- Tomato
- Cucumber
- Radish
- Corn

More often than not, I do not have corn so I use frozen corn from the season before that I keep in my freezer. I plant corn, just as I plant lettuce, tomatoes, cucumbers, and radishes. I like the flavors as they come together: The sweetness of the corn, the juiciness of the tomato, the crunch of the cucumber, the pepper of the radish and the freshness of the lettuce. This is, to me the perfect taste.

This is very much how I believe the law is. You bring together a specific group of rules and together they create a civilization that is preferable and comfortable and in which its citizens may thrive. For the law against drunk driving to be enough, there must be traffic laws for drivers to follow. For laws around safety there must be laws around security. For laws that protect property and finance there must be laws about how property and finance may be used.

Gardening reflects many things that are similar to the legal system. One is required to get really dirty when they garden, literally. You must dig deep in order to give your seeds the best hope of flourishing. In law, sometimes you have to dig through endless cases in order to find the seed to plant so that your jury understands your client's case.

When one gardens, one must have patience. Things don't happen immediately, even if you are re-planting something already half-grown. For the plant itself must find its roots to become a stable and thriving entity. Only then may you reap its bounty. Law is the same' way. Changing the existing ways of the land takes time. The ideas must take root and grow strong and independent before you may harvest them.

It's easier to garden as a team. When I garden with my family, the garden grows bigger and stronger. In a legal team the same is true. The more brilliant minds you can bring together, the better the case you can build. But sometimes you must work alone. It can become lonely and tedious but because in one case, the vegetables are your companions and in the other, the client's story is, you aren't really ever alone. There is always a sense of accomplishment as a team.

When you sit down at the table and take a bite of the first salad of the season, you remember why life is good. When it comes to a good legal battle, the same can be true. Taking the sweet with the crunchy and peppery richness creates the perfect bite of an American salad, a dream for which my parents moved from across the sea from Ukraine to realize.

JD MISSION REVIEW

Overall Lesson

Use a few strong supporting examples rather than multiple weak ones.

First Impression

I would give the first paragraph an A grade. Gardening is a rather unique subject for a personal statement, which immediately makes this essay seem potentially interesting. Also, the beginning is neither overly dramatic nor excessively dull or abstract. It strikes a good balance in that way-and this is rarer than one might think.

Strengths

I believe the essay's overall theme of comparing gardening to law can work. Although the candidate offers too many examples (as I will discuss further in the Weaknesses section of this review), the following comparisons are particularly effective:

- The similarities between the constantly shifting legal environment and the whims of the weather in the second and third paragraphs

• His discussion about the importance of patience in the eighth paragraph

• His point about how combinations of laws/plants work together in the penultimate paragraph (though this could benefit from revision by the candidate)

Weaknesses

The candidate's comparison of law to gardening would work better if he were to describe gardening first in each instance and the law second. Notice how he does the opposite at the beginning of the essay:

I feel· like the law boasts numerous similarities to a garden. While there are no hard and fast rules, there are serious guidelines to each. In a legal environment, you have to understand the existing laws of the land. But you must also understand that public opinion shifts and makes room for subtle changes to the law.

Similarly in a garden, one day it might be raining, and the next there may be a freeze. So although you might understand the rules of how to make a plant grow, you are also a subject to the whims of the weather.

The candidate could fix this by simply changing the order of the two paragraphs.

In addition, we do not need to know what he likes to put in his salad, nor that he will not eat a salad unless it includes specific vegetables. Not only is this information superfluous, but it also makes him seem a little too compulsive.

Finally, although I actually like the idea of comparing gardening to law, the candidate provides too many comparisons. He needs to pick one or two - possibly three, if they are somewhat related - and focus on those rather than listing five or six parallels, several of which are quite weak and thereby detract from the impact of his theme.

Final Assessment

This essay essentially needs to be rewritten, though parts of it can be salvaged

And used as draft material Again I would suggest that the candidate concentrate on fleshing out just two or three comparisons-such as the strong ones I noted in the Strengths section of this review-and eliminate the rest. However, he must be careful not to try to tell the admissions committee too much 'about how the law works. After all, he has not been to law school yet.

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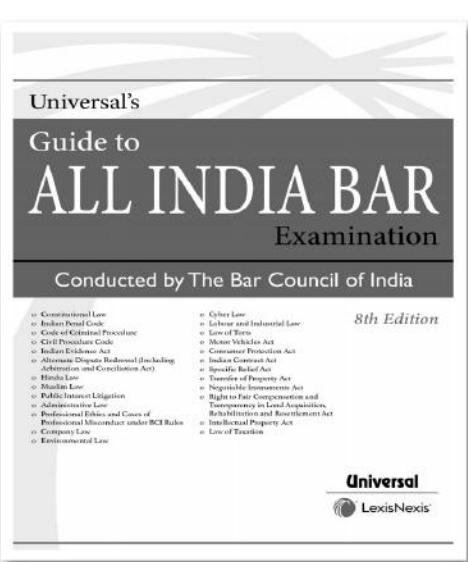

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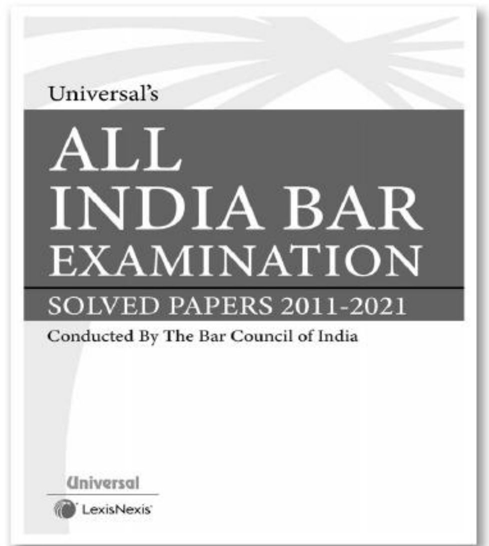

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NEW CLAT PATTERN

PASSAGE BASED MCQS – LEGAL REASONING

The word "surrogate" has been derived from the Latin word "*surrogatus*" which means "appointed to act in the place of". The method of Surrogacy requires a woman who consents to carry the baby and go through gestation for it. After the child is born, it is then handed over to the couple who sought it. The role of the woman carrying it is merely that of a gestational carrier. "Surrogacy is a well-known method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child. However, she will not raise the child but hand it over to the contracted party. She may be the child's genetic mother (the more traditional form of surrogacy) or she may be, as a gestational carrier, carry the pregnancy to delivery after having been implanted with an embryo.

The Surrogacy Act requires the couple seeking surrogacy to be close relatives of the person who they wanted the surrogate mother to be. However, the bill does not define who these 'close relatives' shall be. The establishment of a National Surrogacy Board is provided for in the Act, so that the regulations may be governed in a systematic manner. This Board appoints and sustains authorities and gives them the power and competence to regulate and monitor surrogate practices.

The Act henceforth requires the couple seeking surrogacy and the mother offering it to both have eligibility certificates to do so, which shall be released by competent authorities. The biggest limitation of this Act is over foreigners and Non-Resident Indians (NRIs). They are no longer allowed to seek surrogacy in India. This was done after several cases of abandonment of children, and child trafficking cases came to light. This lacuna has been the reason for many debates, resting on the question of whether the limitation placed was a well thought one.

However, same-sex couples do not come under the purview of this Act and hence, dampens the idea of equal rights to the LGBTQ+ community. NCP leader Supriya Sule said it was a good bill but not *modern* enough. The same goes for people in relationships different from traditionally monogamous married ones. This means that not just homosexuals, even single parents and live-in couples have been left out from the ambit of this Act. They cannot seek surrogate pregnancy in India. The couple seeking surrogacy must have been married for at least five years and mandatorily possess a competent registered doctor's certificate, confirming their infertility.

Another limitation is over couples that already have children. Childbearing couples are not allowed to seek surrogacy in India. However, such couples can adopt children as per existing laws.

Q.1. The Supreme Court of India lifted the ban from homosexuality in India by ruling that the Section 377 of IPC, which prohibits the consensual sex between the couple of same sex to be unconstitutional. After this historic judgement of the Supreme Court, Reema and Seema decided to live under the same house, as a couple and have a baby through the process of Surrogacy. Both of their families were very supportive of the decision and they found that Radha, who was a close relative of Reema was volunteering to be the surrogate mother. Both the couple and the surrogate mother applied to the get the eligibility certificate from the authority. Choose the Correct from the options.

(a) They will get the certificate as they qualify all the criteria for the surrogacy.

(b) They will get the certificate as the Supreme Court has stuck down section 377 of the IPC.

(c) The will not get the certificate because surrogacy is not allowed to the homosexual couples.

(d) The will not get the certificate because surrogacy is not allowed to the female homosexual couples.

Answer: c

Q.2. Which of the following cannot be attributed to the above passage?

(a) In surrogacy, the women who gives birth to the child hands it over to the contracting party.

(b) The Surrogacy Act requires the couple seeking surrogacy to be close relatives of the person who they wanted the surrogate mother to be.

(c) The Surrogacy Act allows surrogacy to the couples who are not Indian citizens but are born in India.

(d) The Surrogacy Act does not allow surrogacy to the couples who are not infertile.

Answer: c

Latest SUPREME COURT Judgments

"CASES OF SEXUAL ASSAULT OR SEXUAL HARASSMENT"

Supreme Court in *Nawabuddin* vs. *State of Uttarakhand,* 2022 LL SC 142 [CRIMINAL APPEAL NO.144 OF 2022]

"Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure"

"Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas"

"Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner - Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure"

"No leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law - By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them"

"DOWRY MENACE"

Supreme Court in *Kahkashan Kausar @ Sonam & Ors.* vs. *State of Bihar & Ors.* 2022 LL SC 141

"Incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever.

Anshul Jain

This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives"

"General and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged"

Reliance was placed on *Rajesh* Reliance was placed on *K. Subba Rao* v. *The State of Telangana,* (2018) 14 SCC 452 wherein it was also observed that: "The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out"

CONSTITUTION OF **INDIA**

Article 195

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.

Dr Subhash C Kashyap

***195. Salaries and allowances of members.*—Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding province.**

Article 195 corresponds to article 106 of the Constitution providing for Salaries and Allowances of Members of the Union Parliament.

There is no provision in the Bihar Legislative (Leaders of the Opposition Salary and Allowances) Act, 1978 which enjoins the Speaker to recognise the leader of a party in opposition having the greatest numerical strength, to be the leader of opposition. The power of recognition of any such leader by the Speaker is not to be exercised under this Act. Whenever the Speaker recognises any person as a leader of opposition he does so on the basis of precedent or practice of the Legislature in question, keeping in view at the same time, the definition in the Act. If the basis of recognition is not the Act in question but the practice prevailing then he has to follow the practice of recognising the leader of an opposition party which has not only the greatest numerical strength as required by the definition in the Act, but has also one-tenth of the total membership of the House. Where the total strength of the largest opposition party is reduced to less than one-tenth of the total membership of the House and the Speaker cancels his previous order of recognition of leader of that party as leader of opposition, the order of cancellation is not illegal notwithstanding the fact that the party continued to have the greatest numerical strength.

Even though a member of the State Legislative Assembly receives pay and allowances, he is not in the pay of the State Government because legislature of a State Government cannot be comprehended in the expression 'State Government'.[4]

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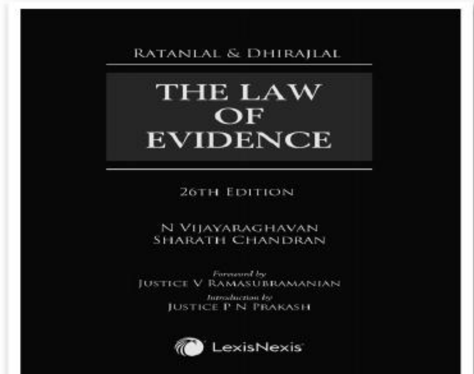

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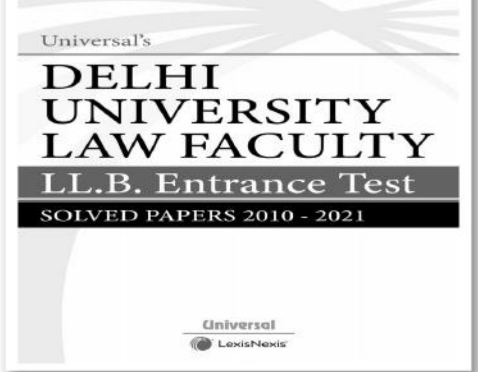

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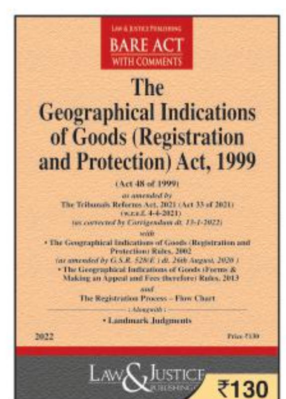

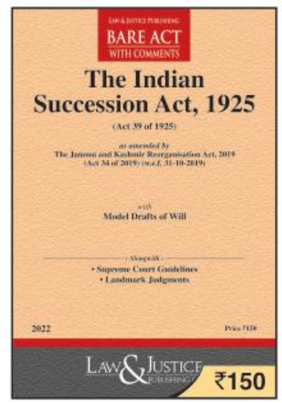

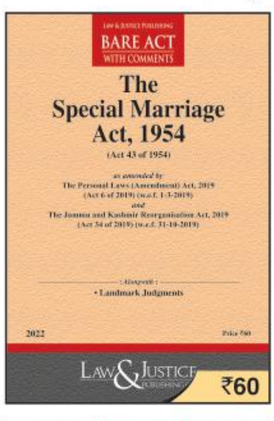

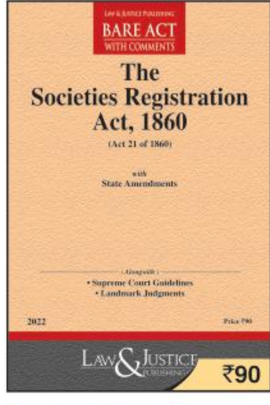

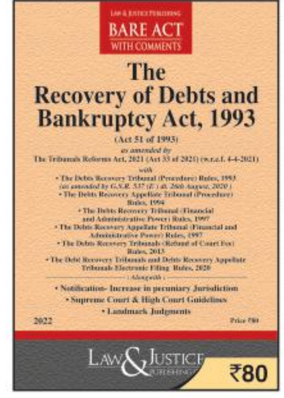

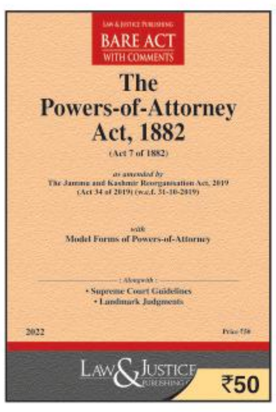

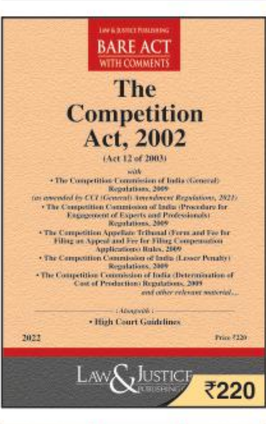

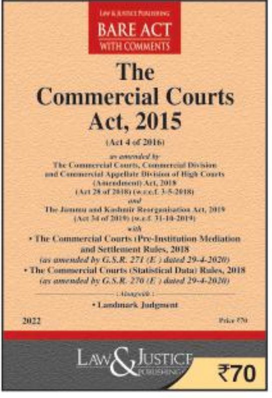

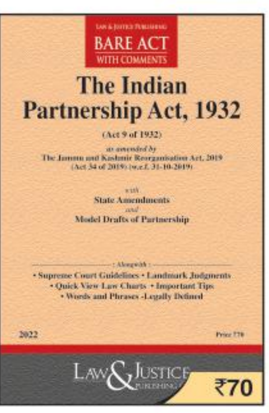

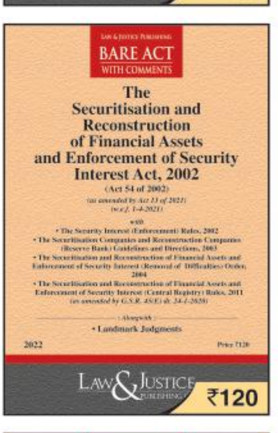

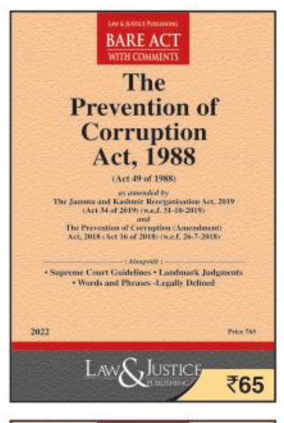

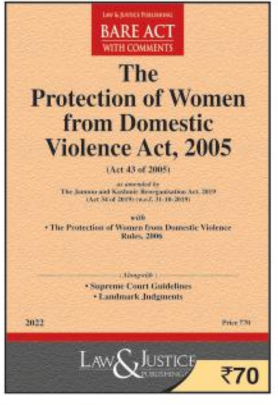

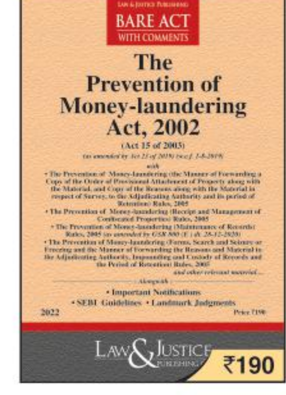

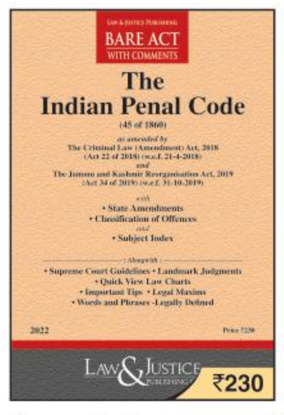

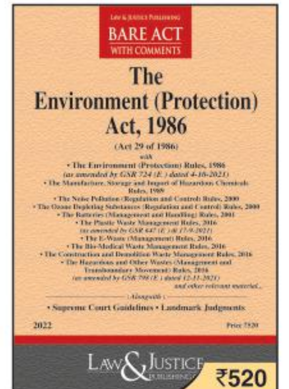

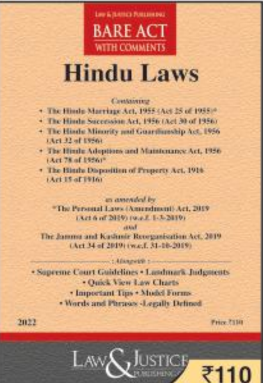

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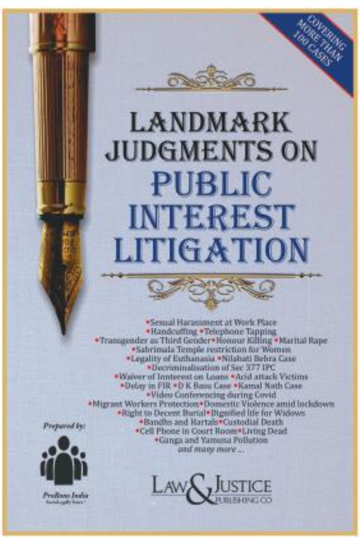

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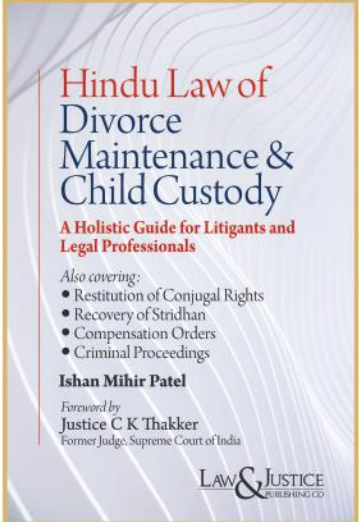

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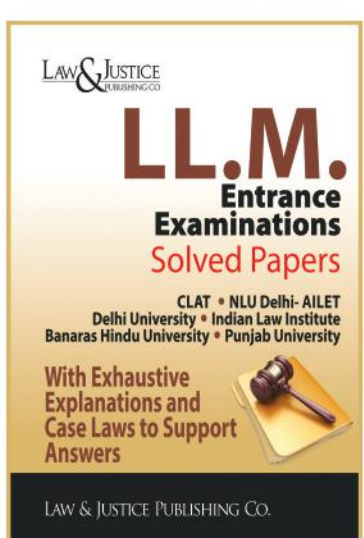

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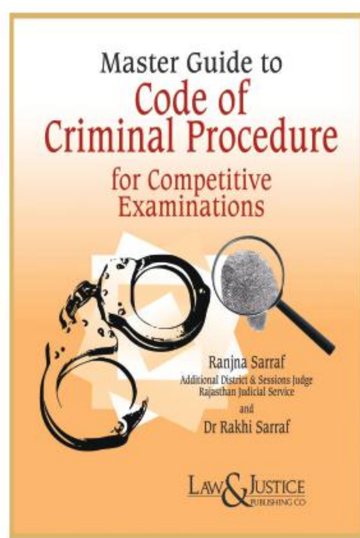

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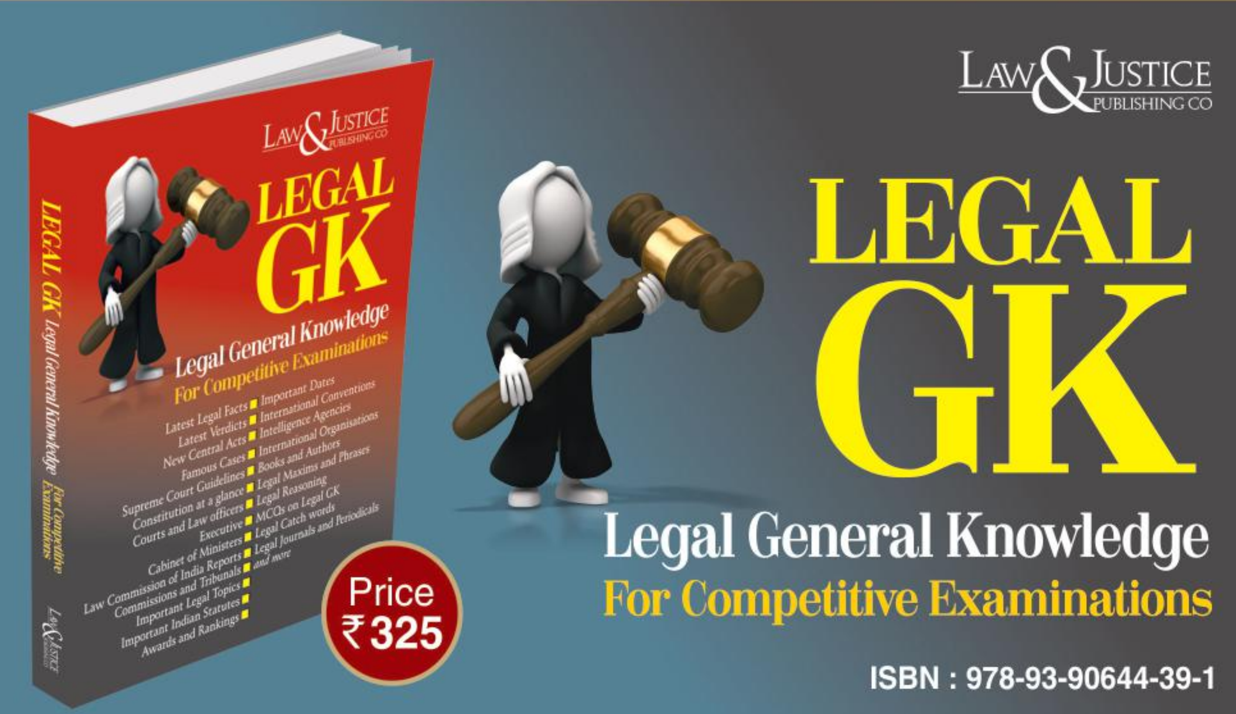

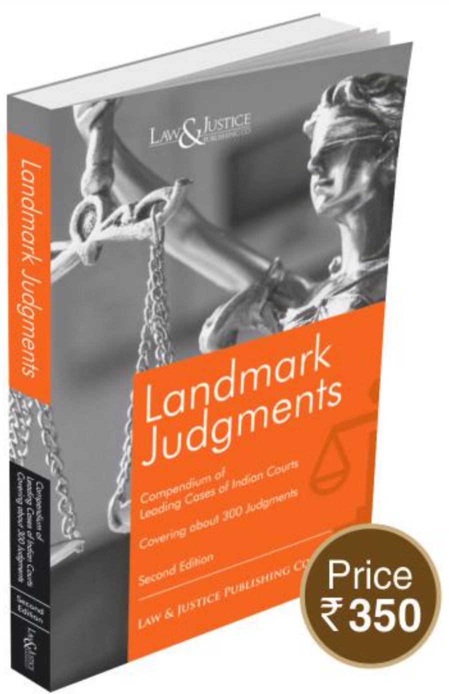

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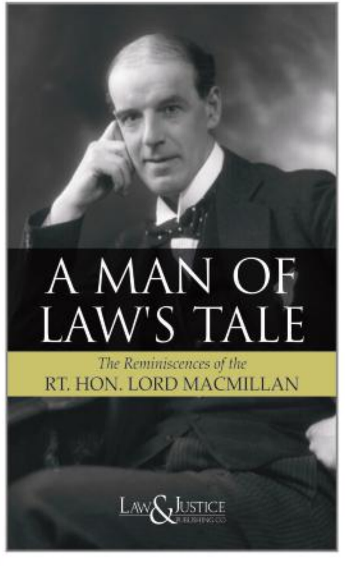

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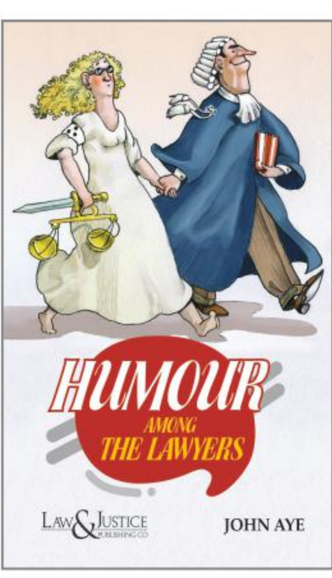

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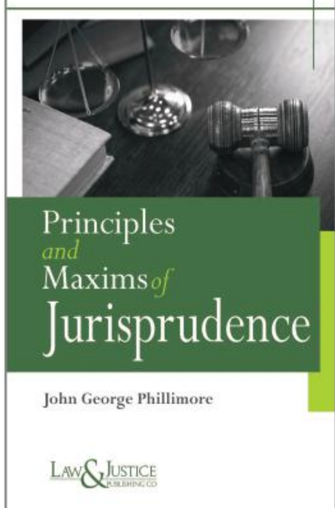

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