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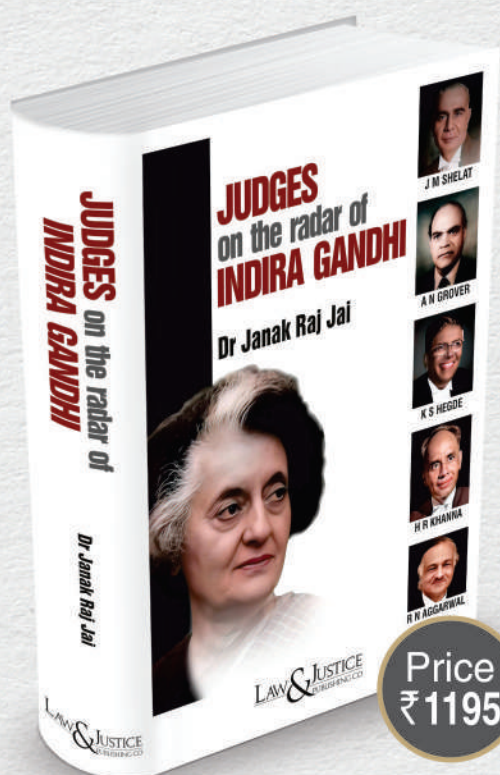
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Dr Janak Raj Jai

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The memoirs are divided into three parts. Part I contains 14 chapters, which deal with various topics including the Family tree, Role of Destiny, Partition of the country, Operation Blue Star, Declaration of Emergency, Denigrations of the Judicial Institution, punishing the inconvenient Judges, by way of transferring, superseding, reverting them and bringing judicial impotency during Emergency.

Part-II contains the visits of the Author to various places in India and abroad. The memoirs also contain Book Reviews published in various journals and magazines. It also contains interviews conducted by the author, with eminent personalities including the Chief Justice of India.

Part III contains Annexures in the form of letters and documents, which have their own significance and importance.

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Manish Arora
(Manish Arora)

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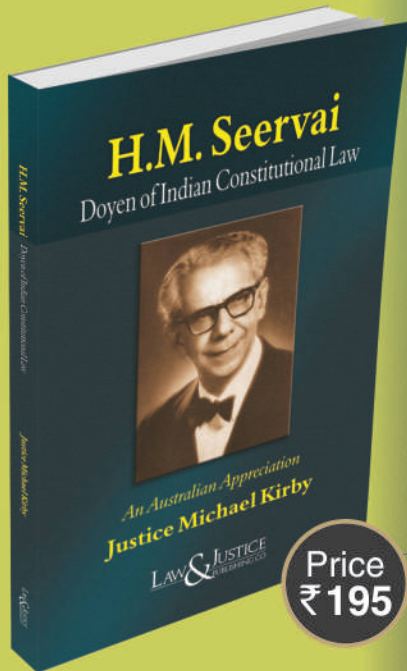
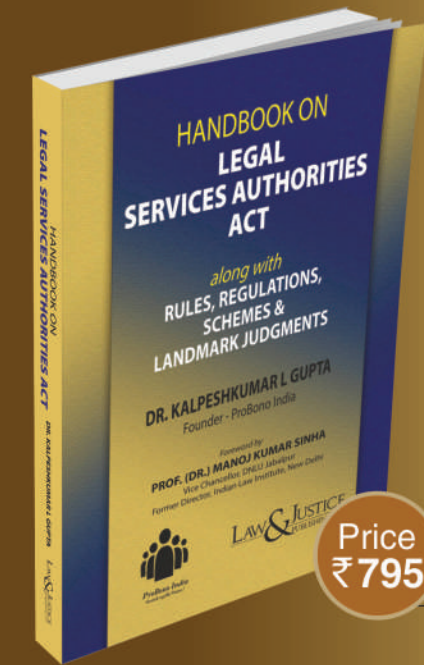
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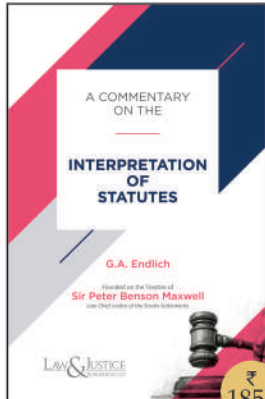
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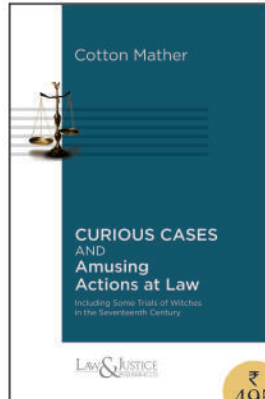
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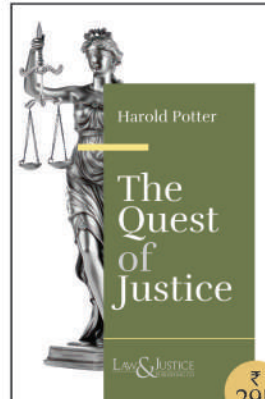
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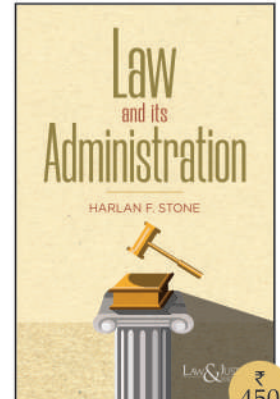
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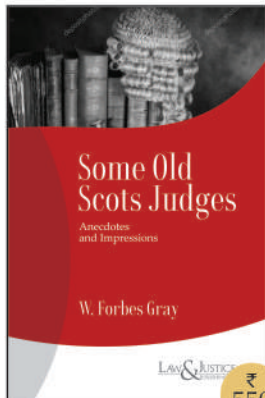
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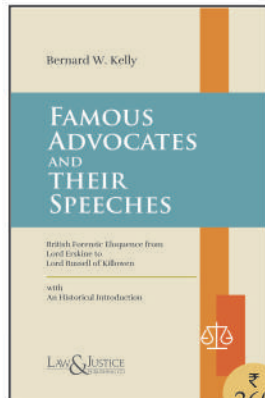
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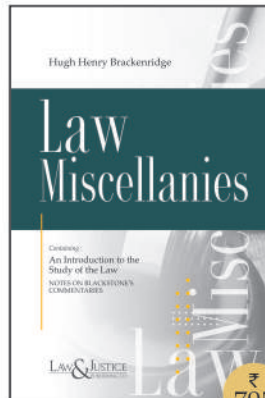
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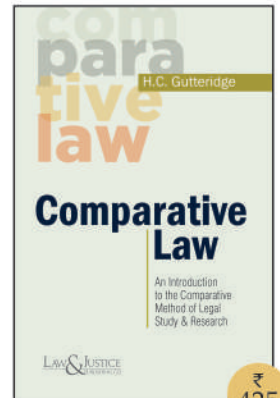
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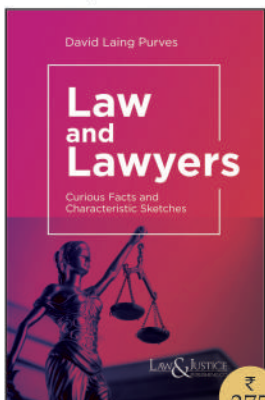
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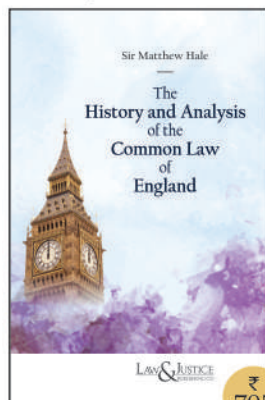
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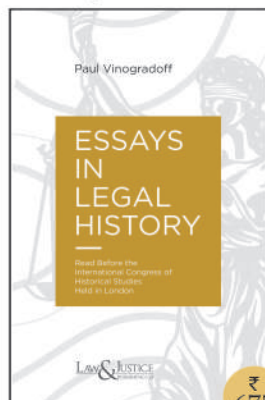
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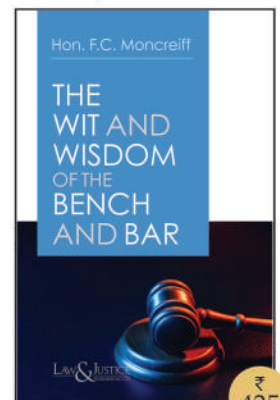
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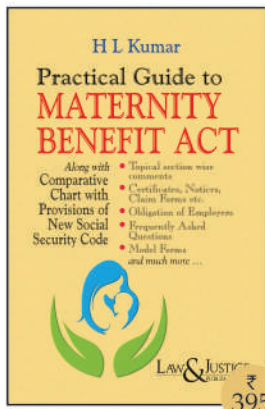
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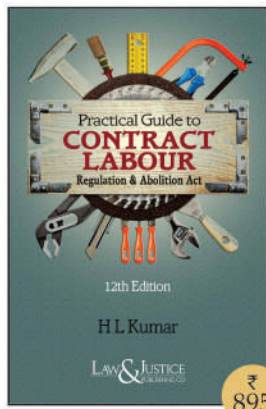
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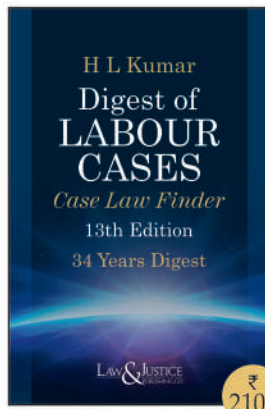
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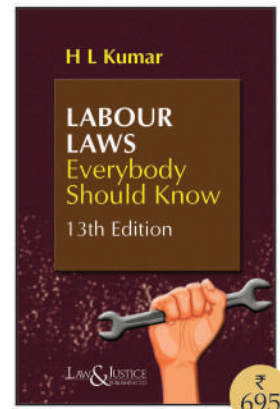
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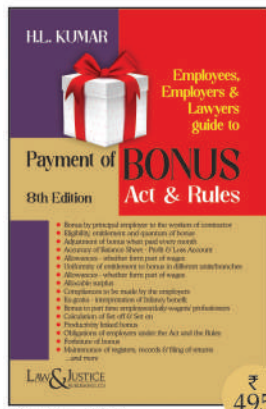
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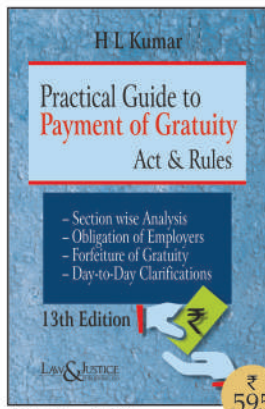
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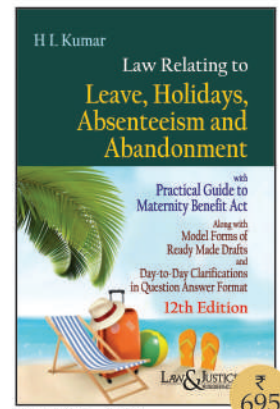
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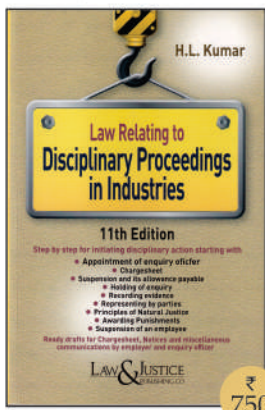
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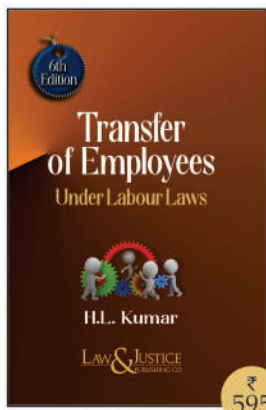
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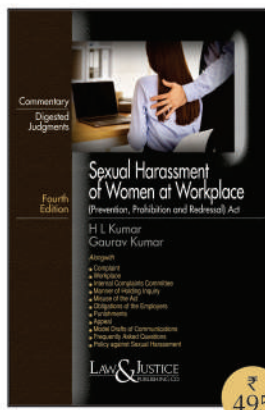
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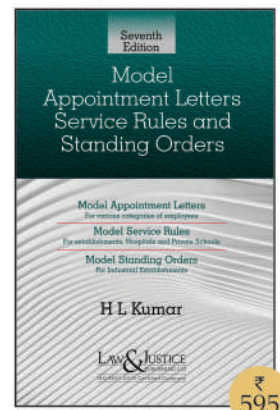
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STREET LAWYER

The First Rebellion - II

Was the rebellious streak an acquired personality trait or a natural disposition? The first rebellion might tell something about it.



HemRaj Singh

“Yeah, but that’s patriarchy,” she said. The sudden invocation of patriarchy for an explanation (more like an impassioned indictment, from the sound of it) did not sit too well in the context of the discussion but I did not point it out or try to course-correct the flow of the conversation because it seemed more interesting to see where she was going with patriarchy even though she was clearly confusing patriarchy with patrilineality. But then, in certain contexts, the distinction between the two is inconsequential and academic. So, I thought it better to wait for her blurry start to focus so that her point could come to light. And since I was just casually sharing a discussion I had had with someone at some point of time in the recent past, a new line of conversation appeared more appealing to me.

But as the exchange progressed, it revealed how common and easy it is, even among the educated people, to fail to critically examine their own ideas and conclusions. Interestingly, the conversation I was sharing when she came up with her patriarchy input was also about another highly educated person failing to examine rhetoric in the light of plain facts.

In the context of the original conversation, it was a significant fact that the Hindu caste system operated through patrilineal kinship, meaning that the son takes the caste of the father rather than the mother, and is part of father’s clan (*khaandaan*) and not the mother’s. That’s because the bride is married “into” the family of the groom and becomes a part of his family after marriage, which is basically conversion by marriage. “Maybe there was a break somewhere in the chain and that’s why,” she had said, trying to explain why a Brahmin might see himself as a kshatriya or belonging to kshatriya lineage. “No, it’s the father’s line always. So the son of a Brahmin father is a Brahmin. That’s the lineage. Mother’s ancestry doesn’t matter.” “That’s just patriarchy,” she said. “Yes, but that’s there all around.” “It’s in North India mostly,” she said. “Not in South India?” I asked. “South India was matriarchal. Even now there is some matriarchal societies there.”

“Except for some patches in the South and perhaps a tribe or two in the North-East of India, there are hardly any matriarchal societies anywhere in India as far as I know,” I said. “Yes, now. South India became patriarchal when Mughals went there and tribes are patriarchal due to outside influence. Because of our influence,” she explained. “Okay. So, South India was matriarchal before the Mughals? And the tribes before the influence of our patriarchy were matriarchal? So, tribes untouched by civilization should also be all matriarchal then, no?”

She then talked about the Cholas in the context of matriarchy, implying that society was matriarchal during the time of the Cholas. I did not enter the

discussion about the Cholas because the interaction was obviously not going anywhere, and next question that occurred to me was: “So, between the Cholas and the Mughal, the society was

matriarchal?” Instead, before moving to the regular work talk, I briefly reflected on the possible causes of patriarchy, which, being a global phenomenon, could not be conveniently and simplistically explained as a self-serving creation of scheming, evil men. At no point during this entire conversation did I try to set her facts right — not once — because I wasn’t interested in proving her wrong. I just wanted to understand the structure of her thoughts and how she stacked up her “facts” to draw the conclusions she drew. To me the question simply was whether or not her inferences logically followed her assumptions, howsoever factually erroneous the assumptions. That’s why instead of questioning her facts, I floated questions that should have had satisfactory answers, if her conclusions and inferences were valid.

This is not the first time I am sharing a conversation in this column because conversations are revelatory, if you listen beyond words. Conversations, as we all know, are not only about our thoughts and ideas but also about the internal structure of our thinking, which is informed, in no small part, by the deep-seated prejudices lurking in the subconscious more than the ideas we consciously espouse. It is by now well known that human beings are naturally susceptible to confirmation bias and it takes conscious effort of will and critical thinking on our part to avoid stepping on that slippery slope. Interestingly, it’s not quite as difficult as it might seem and takes just a few moments of honest reflections, if you have the necessary mental tools (like intellectual honesty and a healthy disregard for conventions), to see the fallacy of our ways.

In the conversation I shared above, the fallacy begins right when the girl indicts patriarchy for patrilineality, not because they are not related and also not because one cannot be explained by the other but simply because patriarchy or, for that matter, patrilineality is not up for debate there; it’s a given and falls beyond the scope of the discussion. If gravity as a reason for the objects to fall to the ground is relevant, it is not automatically relevant to talk about general relativity and space-time distortions caused by mass and energy to explain why gravity exists. Unless such a digression can be fruitfully brought within the scope of the original discussion, it is wholly unwarranted. But for now, let’s allow the girl’s digression, and talk some more about what she wants to talk about — patriarchy.

...to be continued



GANDHIJI'S THOUGHTS ON THE LAW AND THE LAWYERS

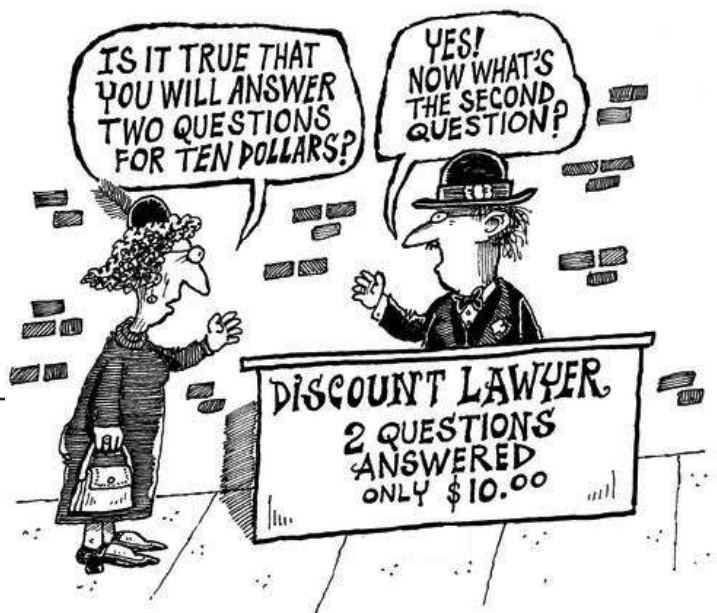
5,000 MILES AWAY

The recent debate in the Assembly over the proposal to appoint two additional judges to the Privy Council for the purpose of hearing Indian appeals has revived the controversy about the location of this final court of appeal. If it were not for the hypnotism under which we are labouring, we would see without effort the futility, the sinfulness, of going five thousand miles away to get (or buy") justice. It is said that at that delightful distance the judges are able to decide cases with greater detachment and impartiality than they would if they had to hear appeals, say in Delhi. The moment the argument is examined it breaks down. Must the poor Londoners have their Privy Council in Delhi? And what should the French and the Americans do? Must the French by arrangement have their final Court of appeal in America and the Americans in France? What should we do if India was an independent Country? Or is India an exceptional 'case' requiring special favoured treatment giving the right of appeal in far off London? Let no one quote in support of the seat of the Privy Council in London the case of the Great Colonies. They retain the anachronism out of sentiment. And the movement is on foot in several colonies to have their final Courts of appeal in their own homes. The sentiment in India is the other way. A self-respecting India would never tolerate the location of her final Court of appeal anywhere else but in India.

Young India, 18-2-1926, p. 67

Lawyers' Wit

- A man walked into the local Chamber of Commerce of a small town, obviously desperate. Seeing a man at the counter, the stranger asks, "Is there a criminal attorney in town?" To which the man behind the counter immediately quipped, "Yeah, but we can't prove it yet!"
- Q. What do honest lawyers and UFOs have in common?
- A. You always hear about them, but you never see them.



All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.

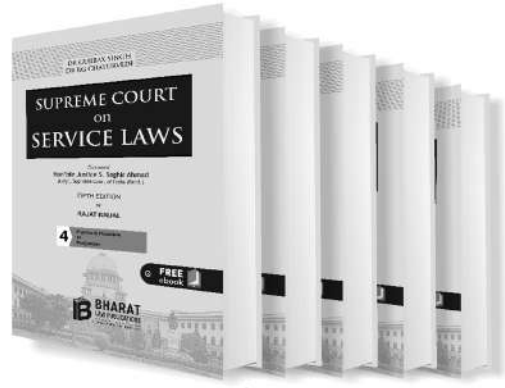
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— *Hon'ble Justice S. Saghir Ahmad*
(Former Judge, Supreme Court of India)

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The Importance of Keeping Your Mind Active

A failing memory or a constant remark like I forgot was something we associated with the elderly. But sadly, we see this phenomenon running across all ages these days. It is no longer a prerogative of the elders.

Earlier we were worried about our grandparents forgetting important things but these days everyone needs reminders for everything. Just like any other muscles, the muscles of the brains need to be exercised too. Keeping the mind active is important, at any given age. I marvel at the very senior lawyers who can remember cases and clauses from the various laws. They remembered everything because they had no back up, or hard drive to store data. Just the hard drive of their own mind. Reliance on external devices is fine to free up our time and mind for more important things, but too much reliance can be detrimental, because if there is a problem with the devices (be it our laptops or mobiles), we can feel lost.

Improving a person's memory is just one of the benefits of having an active mind, by doing small activities on a daily basis you are essentially training your brain to be able to withstand the memory loss that comes with age. Try dialling your grocery store, instead of always pressing the saved number.

Remembering things, like the places you visited, the roads, telephone numbers, names of people and places, all help the mind to remain active. The more we rely on our mind, the better it gets. How in sports, we say practice, practice and practice. Even the best sportsmen are always training to get better.

Now we sit in our car and

put on the GPS. What happened to reaching our destinations by remembering which turn to take and the landmarks along the way. I was in Kashmir a few years ago and I was amazed how my father remembered shops and key places from his childhood. Even the driver was in awe.

Do you remember how our grandmothers could cook the same dishes, so well, time and time again, without reference to any recipe book (forget YouTube which was non-existent at that time). The recipes were stored in their own hard drive (their mind), due to repeated actions.

It is said that boredom is one of the main reasons for memory loss, as your mobility decreases with age so does your ability to get out and do things as much as you used to. These limitations have a very negative impact on a person's mental health so it is important that you do everything you can to occupy your mind throughout the day, it is likely that you are going to feel much more positive after a day of activities in comparison to a day spent doing nothing.

Out of personal experience I can share that when my mobility was zero, I made it a point to keep my mind active. I would be on my laptop, reading & writing, listening to music. I was blessed to have family and friends who would visit me, the social interactions, smiles and conversations, were medicine for me.

So, a great way to keep your mind active is to spend time with others. I see people have so many groups, such as a walking one, or music group, yoga group, reading club or a local club group. Making and seeing



Shilpa Bhasin Mehra

friends is a great way to keep the mind active as you are likely to have enjoyable conversations and fun with friends, this is also great for your mental health as you are making sure that you do not spend too much time alone.

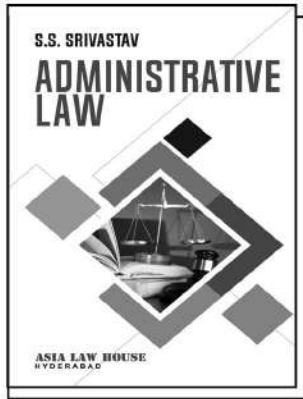
There are many ways in which you can keep your mind active, watching television is a great way to relax but it can also be informative if you are watching something new, avoiding watching the same content is the right way to go as you are aiming to keep your mind active with new content. You could also try playing board games as this also encourages you to have some social interaction with your peers, this is a great way to occupy the mind and embrace that competitive streak within.

We all know the old saying, "An idle mind is the Devil's workshop," the new version of this saying is "An idle mind is an open invitation to Alzheimer's".

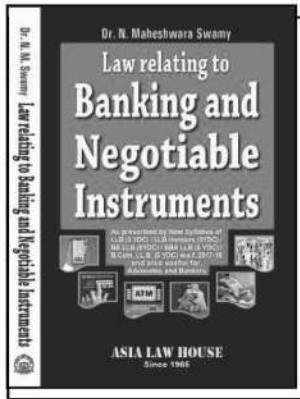
But that doesn't mean we have to be busy 24/7 with a to do list. Research from Harvard and other institutions of higher learning shows that idle moments of mindfulness without imperatives—nothing to rush to, fix or accomplish—actually add to your mental and physical health: greater productivity, better memory, stronger immune system, fewer health problems, greater happiness and longer life.

"Our life is shaped by our mind; we become what we think." - Buddha

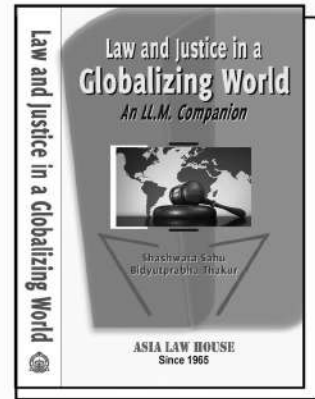
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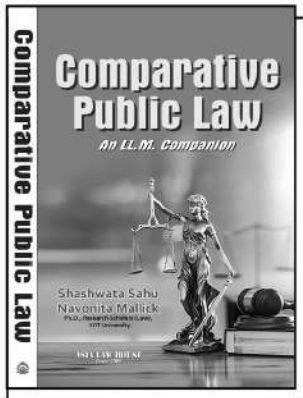
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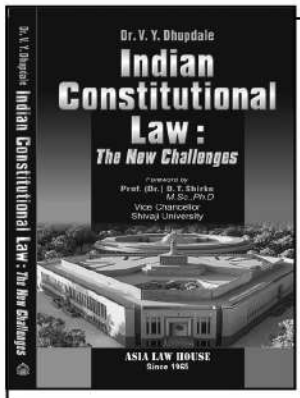
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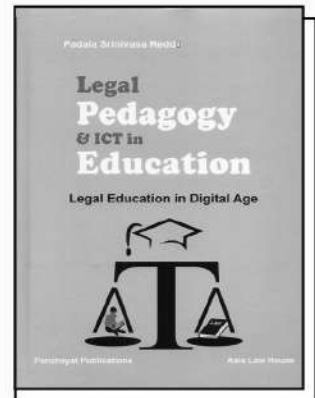
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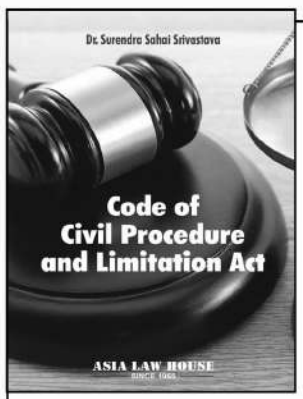
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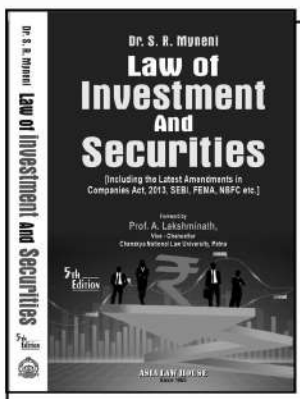
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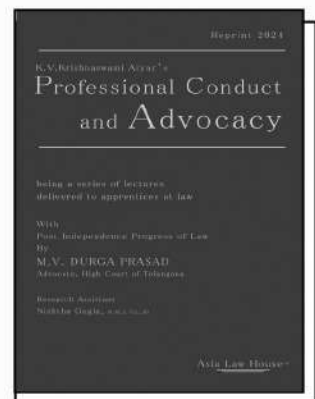
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CONTEMPORARY ROLE OF INTERNATIONAL CONVENTIONS AS SOURCES OF PRIVATE INTERNATIONAL LAW - AN INDIAN PERSPECTIVE

Magnitude of the Problem:

India is home to about 1.3 billion Indians over a territory of 3.28 million square kilometers. As per Government of India statistics, an estimate of over 3.4 million non-resident Indians have registered as Overseas Citizen of India (OCIs) to acquire lifelong visa free entry to India. Their actual numbers may be more than 32 million. These global Indians have inhabited, settled, and thrived in almost 208 countries across the globe. Undoubtedly, these international Indians are a unique nationality by themselves. They propel a dire need for a global law to govern their conflicts. Link and retention of their ties with their extended families in India and abroad has found expression in issues relating to nationality, citizenship, marriage, divorce, spousal maintenance, alimony, inter-parental child removal, custody, and guardianship of children. Besides this, it is in division of matrimonial property, inter-country adoptions, succession, and inheritance of Indian property and last but not the least in surrogacy arrangements, link prevails. Domestic violence in abusive marriages of international couples has created a new jurisprudence. Foreign Courts and overseas law practitioners are at sea attempting to resolve these problems for lack of any updated or amended Indian

laws or reasoned interpretation of law on these subjects. Conflict of laws is galore. Parallel and simultaneous adjudications in different jurisdictions create anomalous situations which compound legal dilemmas relating to human relationships. Applicability of foreign laws, validity of judgments pronounced overseas and verdicts of Indian Courts which need exposition are consequential issues requiring interpretation and expert opinion. Indian Courts perform a herculean task in carving individual solutions in complex litigations under outdated Indian legislations. In the face of such a situation, effective remedial solutions can only be found through India's accession to International Conventions as the prime source to dispute resolution in private international law matters.

A. The Removed Child and The Law in India:

William Wordsworth in his Poem, "My Heart Leaps Up", also known as Rainbow, in 1802 nostalgically expressed "the Child is Father of the Man." We are still alive to this jarring thought. Lord Alfred Tennyson, in Memoriam talks of "an infant crying in the night, an infant crying for the light, and with no language but a cry." Is poetry law. Child custody and the vexed question of cross border inter parental child removal not finding any legislative definition, they remain a subject of varying



Anil Malhotra*



Ankit Malhotra**

judicial interpretation of the Supreme Court from time to time. India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction, 1980, acceded to by 208 other countries. Thus, wrongful removal and retention of a child by a parent defies recognition and acceptance under codified Indian law, even though it is an offence internationally. A corpus of 32 million NRIs living globally in 208 countries with multifarious relationships, creates an immense potential for unresolved child custody disputes upon a parent relocating to India by violating the other parent's rights in a foreign jurisdiction. The hapless child tossed over continents suffers in silence for no fault of his.

Codified law in India:

As the principal personal law applicable to persons professing the Hindu religion, The Hindu Minority and Guardianship Act, 1956 (HMGA), declares that the natural guardian of a Hindu minor boy or an unmarried girl shall be the father, and after him, the mother, provided that the

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custody of a minor who has not completed 5 years of age, shall ordinarily be with the mother. The HMGA does not contain any independent, statutory or procedural mechanism for adjudicating custody rights or declaring Court appointed guardians. The reference to the word "Court" in the HMGA relegates a parent or any other person seeking appointment as a "guardian" to invoke the provisions of a 130-year-old colonial law i.e. the Guardian and Wards Act, 1890 (GWA), and wherein the parent is constrained to seek exclusive temporary custody of his biological offspring during the pendency of such hearing. Sad, but true, child custody issues between parents are thus to be determined under GWA, upon a natural parent wanting to be declared as an exclusive guardian to his own natural born child.

India is a signatory to the United Nations Convention on the Right of the Child (UNCRC). Consequently, the definition of the "best interest of the child" has been implanted from the UNCRC in the Juvenile Justice (Care & Protection of Children) Act, 2015 (JJ Act), to mean "the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development". Axiomatically, Courts in India, are now duty bound to ensure the true import of this meaning to full expression. The JJ Act was drastically amended in 2015 pursuant to India's accession to the UNCRC and all beneficial provisions to secure

the best interest of the child were incorporated in the JJ Act. This demonstrates the visible significance of the UNCRC in motivating amendment of Indian statutes to incorporate provisions of International Conventions.

Best Interests of the Child:

When India became a signatory to the United Nations Convention on the Rights of the Child (UNCRC) on 11 December 1992, steps were taken to secure the best interests of the child in India. Accordingly, section 2(9) of the Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act) now states that the 'best interest of the child means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social wellbeing and physical, emotional and intellectual development.' The definition of the best interest of the child has been expounded by the Supreme Court in *Lahari Sakhamuri v. Sobhan*³ to mean that:

...it cannot remain the love and care of the primary care giver, i.e., the mother in case of the infant or the child who is only a few years old. The definition of "best interest of the child" is envisaged in Section 2(9) of the Juvenile Justice (Care & Protection) Act, 2015, as to mean "the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identify, social wellbeing and physical, emotional and intellectual development".

Thereby, the Court in its wisdom, shattered the glass ceiling of gender preference and provided neutrality to parents', on the welfare of the child principle. Earlier, in 2017, Justice

A.K. Sikri in *Vivek Singh v. Romani Singh*⁴ discussed the concept of Parental Alienation Syndrome and held that "a child-centric human rights jurisprudence that has been evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation." The law declared by the Supreme Court shall be binding on all courts. In the absence of a clear codified law on cross border inter-parental child removal issues, the much-needed clearer path of judicial precedent will continue to guide litigants and courts. The prophecy of Wordsworth resounds, reverberates, and echoes, resonating that the child is the father of man. This vibrant jurisprudence has evolved from the focus of the Courts to evolving law by interpreting provisions of UNCRC incorporated in the JJ Act. Consequently, this has also led to Indian Courts directing parties to obtain mirror orders from foreign courts, before children are relocated from India to their foreign homes as was done in *Dr Navtej Singh v State of NCT & Anr*⁵, upheld by the Supreme Court of India, in *Jasmeet Kaur v State (NCT of Delhi) & Anr*⁶.

This notable trend of finding alternate solutions for return of removed children till India signs the 1980 Hague Convention on Abduction, is an offshoot of protecting the best interest of the child secured by the UNCRC. Aided by principles of comity of courts, determination of best interest by jurisdiction of closest contact, succour is found in law enacted under the UNCRC umbrella.

¹AIR 1960 SC 93, ²AIR 2009 Supp. SC 732, ³2019 SCC Online SC 3951, ⁴2017 (3) SCC 231, ⁵2018 SCC Online Del 7511
⁶2019 SCC OnLine SC 1599

UNIVERSAL LAWS OF SUCCESS

[Thoughts for Sharing]

Compiled by:
Pradeep Arora

"Putting your heart, soul, blood and guts into what you do is more important than winning or losing."

– Anonymous

"Old age is like climbing a mountain. You climb from ledge to ledge. The higher you get, the more tired and breathless you become, but your views become more extensive."

– Ingmar Bergman

"Try not to become a man of success, but rather to become a man of values."

– Albert Einstein

"The character of any man is the sum total of his tendencies and bent of mind."

– Mahatama Gandhi

" Heights by great men reached and kept were not obtained by sudden flight, but while their companions slept, they were toiling upward in the night."

– Longfellow

"The word spirituality doesn't necessarily mean religion; it means whatever it is that helps you feel connected to something that is larger than yourself."

– Dean Ornish

" Happiness comes when your work and words are of benefit to yourself and others."

– Budha

"Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen."

– Winston Churchill

"We never do anything well till we cease to think about the manner of doing it."

– William Hazlitt

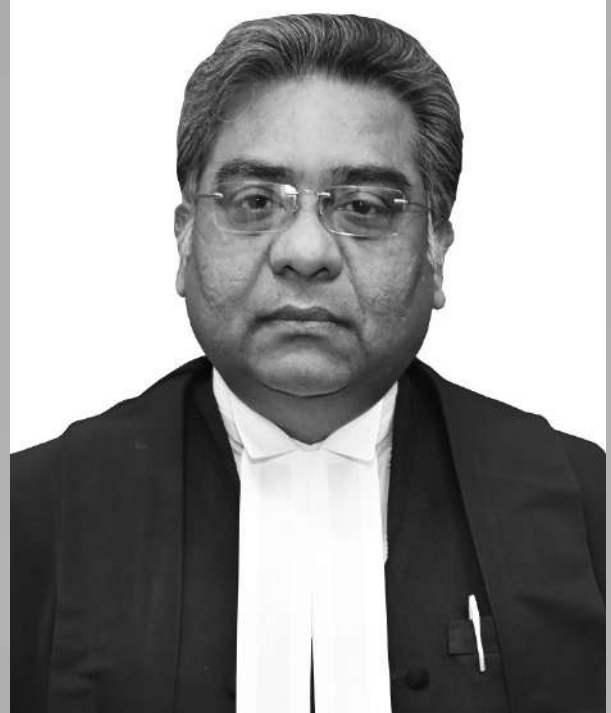
"Minutes spent in planning can save hours when it comes to execution."

– Anonymous

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

KNOW YOUR JUDGES

Hon'ble Mr. Justice Manindra Mohan Shrivastava

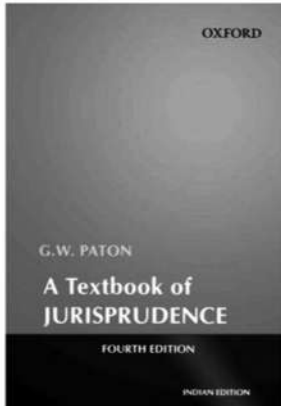


Hon'ble Mr. Justice Manindra Mohan Shrivastava was born on 6th March, 1964 at Bilaspur. Did his schooling at Bilaspur, graduation (B.Sc.) from CMD College, Bilaspur and LL.B. with gold medal from K R Law College, Bilaspur. Was member of Board of Studies and Academic Council, Guru Ghasidas University, Bilaspur. Enrolled with the Bar Council of M.P., Jabalpur, on 5th October, 1987 and practiced at District Court, Raigarh, High Court of Madhya Pradesh and High Court of Chhattisgarh. Was Standing Counsel for Department of Income-tax, Municipal Council, Raipur and Chhattisgarh State Electricity Organisations, Corporations etc. and is associated with Rotary International. Designated as Senior Advocate on 31st January, 2005 and elevated as Judge of Chhattisgarh High Court on 10th December 2009. Transferred to Rajasthan High Court and took oath on 18th October, 2021.

Took oath as the Chief Justice of Rajasthan High Court on 6th February 2024.



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REMEMBERING BABA SAHEB AMEDKAR

Bhimrao Ramji Ambedkar (BRA) was born on 14th April, 1891. He was the 14th child, the last of his parents. We have celebrated his 134th birth anniversary throughout the country. Even beyond the country. He had breathed his last on December 6, 1956. Just at the age of 65. His life story is rich. It deserves to be shared.

He suffered throughout his schooling from the curse of untouchability. He was married after his passing the matriculation in 1907. Both were minor. After graduation, he was selected as a scholar to go to USA for higher studies. This, in fact, was the turning point in his educational career. He was at Columbia University for three years. He took 29 courses in economics, 11 in history, 6 in sociology and 5 in philosophy. He got his MA and Ph.D during 1915 and 1916. From USA, he came to London for his further studies. He was admitted to the Gray's Inn for Law and was also allowed to prepare for D.Sc. at the LSE. He had to return to India. Later, he went to UK. Got his Bar-at-Law and D.Sc degree also. He studied for some time at Bonn University in Germany.

BRA during 1935-36 after his return, he wrote, "Waiting for a Visa", a 20 page autobiographical story. It covered his experiences with untouchability from his childhood. The book is used as a text book in Columbia University. The Osmania University awarded another Doctorate on January 12, 1953. This catalogue of his academic attainments has been unmatched.

BRA had a different vision. The **Mahad Satyagraha** of 1927 was the change maker in Amedkar's political thought. He led a group of Dalits to drink

water from **Chavdar lake**. The lake was a public water source. He sowed the seeds of Dalit emancipation. Ambedkar said that we are not going to the tank to drink its water. We are going to the tank to assert that we too are human beings. We are equals. The echo of this is integral part of Article 15 of the Indian Constitution. There would be no restriction on any citizen only on the ground of religion, race or caste regarding the use of wells, tanks and bathing ghats. Possibly, no body could have at that time thought that it would become part of the Indian Constitution.

Mahtma Gandhi was the Father of the Nation. BRA was the father of the Constitution. Mahatama Gandhi wanted that the Chief Architect of the Indian Constitution should be a scholar from the depressed classes. Therefore, he persuaded Jawahar Lal Nehru and Sardar Patel to make him the Chiarman of the Drafting Committee. It needs to be acknowledged that he rose well above the ranks of the framers of many a constitution. His scholarship and erudition were his constant companions. The intellectual feast coupled with his vastness of reading. The ability to marshal the facts. These were his tools to crease out the different amendments moved. Whenever the amendments were proposed, the members of the Constituent Assembly (CA) were given opportunity to debate and discuss. He would stand up to respond. He would invariably persuade the Assembly to his point of view. He never allowed the democratic process to be tinkered. It was never an empty formality. The crafting of the Constitution took almost three years. The CA Debates would



Dr. Balram K Gupta

Professor Emeritus

Sr. Advocate

Honorary Chief Advisor, CJA

bear testimony for all times to come. Moreover, there were seven original members of the Drafting Committee. Aakash Singh Rathore in his recent book (2020): **Ambedkar's Preamble** has recorded that 5 of the key persons actually had little or no contribution in the drafting process. Ultimately, the burden of drafting the constitution fell on BRA. The authorship of the Preamble also belongs to him. The Preamble was born on February 6, 1948. The Preamble of 1950 contained 81 words. In 1976, four words were added. Nothing was taken out. The 75 years Constitutional journey has proved that the whole of the constitution can be interpreted through the medium of the Preamble. Equally, the constitutional courts have ruled that the constitution begins with the Preamble. It is integral part of the constitution. In fact, the Preamble contains the basic structure of the constitution. It is amenable within certain limitations. No essential feature can be deleted or excluded or removed. In essence, the Preamble itself is the basic structure of the constitution. BRA's DNA runs through the Preamble and the Constitution. In 1952, Columbia University conferred upon him the degree of LL.D. This was in recognition

of the work done by him as Chief architect of the constitution.

BRA gave us the Indianized Constitution. Granville Austin described the Indian Constitution, most progressive and revolutionary political document of the time. We Indians were not used to follow the discipline of the constitution. We had difficulties. In desperation, BRA said, burn the constitution if you cannot follow the constitution. He made it clear that no constitution is good or bad. It all depends upon the men who are working out the constitution. The crafting of the constitution is not difficult. The working out of a constitution is a serious, responsible and disciplined exercise. The story of 75 years of Indian Constitution is the story of protecting the basic structure

of the constitution. This is how, we are still being governed by the Indian Constitution. We would be continued to be governed by the holy book. This constitutional gift of BRA will last long. Let us look forward to the first centenary celebrations of the constitution. I had spoken on : How young is the US Constitution on the occasion of bicentennial celebrations of the US constitution in 1987. In 2050, we would be speaking : How young is the Indian Constitution. Constitutions do not get aged. With the passage of time, they grow like a plant. They emerge as a tree to continue to serve the nation.

BRA resigned from his post of the first law minister of India. The comprehensive Hindu Code Bill was dropped by the Indian

Parliament. The key features of the bill were: women could inherit family property. The code gave both man and woman the right to divorce. Widows and divorcees were given the right to remarry. BRA was a supporter of women rights. He believed that every girl who marries must stand by her husband, to be husband's friend and equal. She should refuse to be his slave. Surely, this would have brought dignity to the women in India at the threshold of the Constitution.

BRA was unique in different ways. His thinking. His vision. His statementship. How much we wish, he had lived longer. The shape of Indian Constitution would have been more wholesome than we see it today. The like of him are rare.

Labour Laws Q/A



TERMINATION OF PROBATIONER WORKING FOR 240 DAYS

Q. Can the services of a probationer be terminated if he completes 240 days' service in the preceding 12 months?

Ans. Termination of a probationer, as engaged under the Industrial Disputes Act and even completing 240 days, will not amount to retrenchment since it will be covered by clause (bb) of section 2(oo) of the Industrial Disputes Act whereas in the absence of such provisions under the UP Industrial Disputes Act, it will amount to retrenchment.¹

The Delhi High Court has

also held that the termination of the services of a probationer in terms of appointment condition, during probation, discharged simpliciter without stigma does not tantamount to illegal retrenchment or termination.² A probationer, even if he has completed more than 240 days service, has no right to have automatic permanency.³ Termination of services of a probationer is not covered by the definition of 'retrenchment' attracting section 25F of the Industrial Disputes Act since it does not amount to retrenchment.

Termination of services of



H. L. Kumar

*Advocate, Chief Editor,
Labour Law Reporter*

probationer as per contract of employment is not 'retrenchment' as defined in section 2(oo) of the Industrial Disputes Act as such termination is covered by clause (bb) of section 2(oo) of the said Act.⁴

References:

1. *Managing Director, Pradeshik Co-operative Dairy Federation Ltd. Lucknow v. Presiding Officer, Labour Court, Agra*, 2011 LLR 799 (All HC).
2. *Mahesh Chand v. Management of M/s. LE Meridien*, 2013 LLR 899: 2013 (3) LIC 3424 (DelHC).
3. *Raju Kapoor v. Management of M/s. Janata Co-op. Bank*, 2013 LLR 839: 2013 FLR 29 (Del HC).
4. *Air India Ltd. v. Mahinder Singh*, 2014 LLR 60: 2014 (140) FLR 813: 2014 (1) LLN 146 (Del HC)

Women **in** LEGAL PROFESSION

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

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

JUSTICE SUVRA GHOSH

Born on 23rd April, 1968, Justice Suvra Ghosh completed her 10th and 12th standard, I.C.S.E. and Higher Secondary (Hyderabad Board), in 1983 and 1985, respectively. She was selected for the National Merit Scholarship, and the State Merit Scholarship in 1985.

After completing her BA LL.B. (5 years' course) from the University of Calcutta in 1991, she appeared in the West Bengal Judicial Services Examination in 1992, and joined the West Bengal Judicial Services in 1994 as a Civil Judge (Junior Division), then termed as "Munsif".

She was promoted to the Higher Judicial Services (District Judge Entry level) in 2009 through Limited Competitive Examination held by the High Court of Calcutta, where she secured first position in the said examination.

She worked in various capacities including Deputy Secretary-cum-Registrar, State Legal Services Authority, West Bengal; Joint Secretary, Department of Law, Government of West Bengal; District and Sessions Judge in the districts of Birbhum, 24 Parganas (North) and Darjeeling; Chief Judge, City Sessions Court, Calcutta; and Secretary, Judicial Department, Government of West Bengal.

On 19th November, 2018, she was elevated to the Bench

of the High Court at Calcutta as an Additional Judge, and was appointed as a Permanent Judge of the Calcutta High Court on 4th May, 2020.

Notable Judgments

In June 2019, the Bench of the Chief Justice Thottathil B. Radhakrishnan and Justice Suvra Ghosh, though refused to issue any specified directions in a PIL filed against the ongoing doctors' strike in West Bengal, reminded the 'striking' doctors about the Hippocratic Oath, and called upon them to reconcile. "It is definitely for the doctors to now turn themselves to the reconciliatory mode in the larger interest of the suffering people and answer their oath which they have taken while they became doctors."

In July 2019, a Division Bench of Justice Ghosh and Justice Sanjib Banerjee, held that the Calcutta High Court's administration had erred in ordering a Railway Magistrate to be suspended and to be forced to retire, after he passed an order rebuking the railway officials for delays in trains. Holding that the administration's ruling



was "disproportionate" and "shocking", the Court ordered a fine of ₹1,00,000 to be paid by the High Court administration, and reinstated the Magistrate. The ruling attracted wide attention, as it was reported as a case of the Calcutta High Court fining itself.

In December 2019, a Division Bench of Justice Ghosh and Justice Joymalya Bagchi, while observing that there was no statistical data to conclusively establish that imposition of death penalty would definitely lead to reduction of crime committed by others in the society, commuted an order of death penalty to life imprisonment, in the case of a man convicted for possession of heroin above commercial quantity.

The Division Bench of Justice

Ghosh and Justice Bagchi, in December 2019, also directed the State Government to expedite the process of video linkage between correctional homes, courts and police stations, to ensure seamless and quick production of undertrials *via* video linkage.

In another case in January 2020, a Division Bench of Justice

Ghosh and Justice Bagchi, held that indulgence in 'sting operation' purportedly in public interest does not extinguish the criminal liability of an individual.

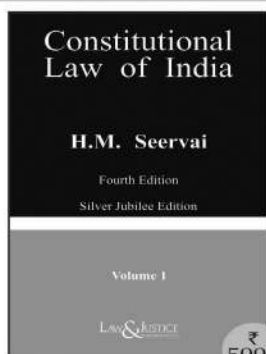
In January 2023, the Full Bench of the Calcutta High Court at circuit bench Jalpaiguri, comprising Justice Joymalya Bagchi, Justice Suvra Ghosh, and

Justice Krishna Rao, held that an accused who is under detention under the provisions of the NDPS Act, cannot be released automatically on statutory bail on the expiry of 180 days, which is prescribed under section 36A(4) of the Act, until and unless he makes an application either in written or oral form.

NEW BOOKS ON CONSTITUTION

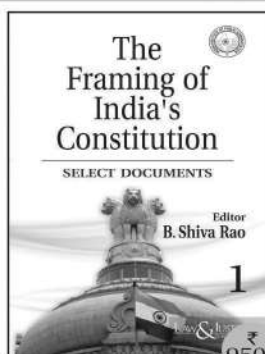
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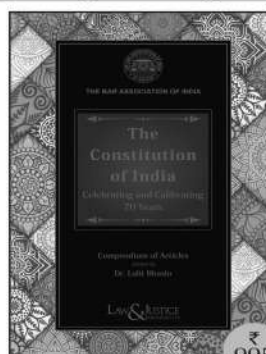
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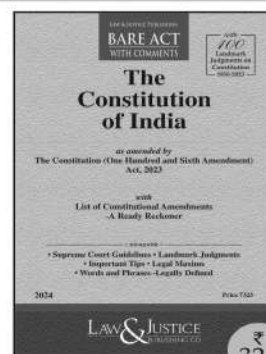
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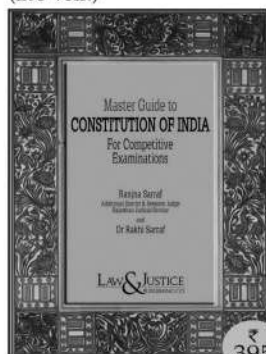
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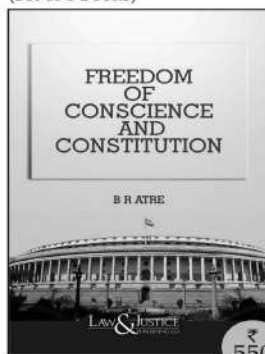
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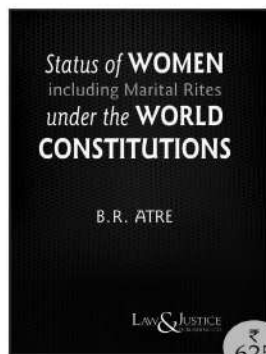
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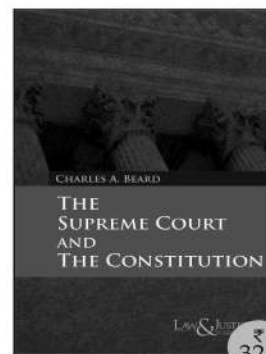
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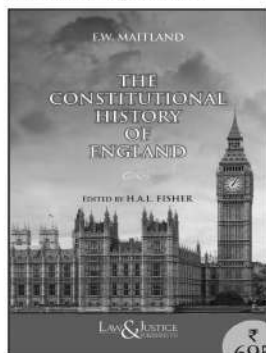
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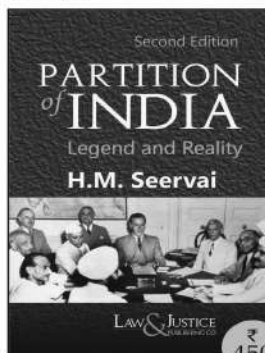
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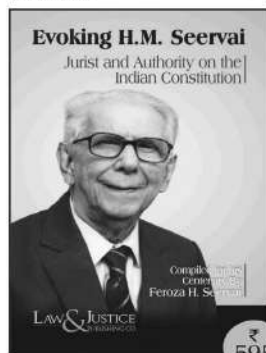
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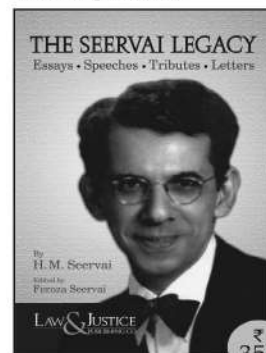
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CORROSIVE CELEBRITY- INFLUENCED ADVERTISEMENTS NEED LEGAL ANTIDOTE

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

The term 'Hero' denotes a person who is admired for his courage, outstanding achievements or noble qualities. The hero is a character who in the face of danger, combats adversity through feats of ingenuity, courage or strength. The hero is a role model, looked by others as an example to be imitated. According to Cambridge dictionary 'hero worship' is a feeling of extreme admiration for someone, imagining that they have qualities or abilities that are better than anyone else's.

However, gone are the days when hero worship provided the elevation of human spirit. Today, the concept of role model has shifted from personalities of heroic deeds to film actors, singers, musicians, models, cricketers, wrestlers and the likes,

who are simply the professionals in their respective fields, but through constant projection and exhibition on silver screen they have somehow gained support from the vast majority of feeble and impressionable minds, mostly teenagers, who out of peer pressure act like 'you clap, so I clap' manner.

The manufacturers and service providers for last few decades have been spending huge amount of budgets by engaging marketers, advertisement agencies to engage celebrities, influencers for endorsement of their product to make advertisements believable and to enhance consumer recognition of their brands.

Celebrity endorsements as of now have become the most effective marketing tool in all

types of advertisements, be it in electronic or print form, which can exert a great influence on consumers' attitudes and buying intentions. Influencers cause great influence on the endorsed product. However, for creating such a big influence upon the sale of the endorsed product, the so-called celebrities charge heavy amounts from the manufacturers/businesses. Some celebrities charge up to 5 to 5.5 crore a day to endorse brands. Several celebrities have also endorsed the co-ownership endorsement model by taking an equity stake in the product brand company. Another form of arrangement is a royalty agreement where the celebrity leases a brand to another company, which is in manufacturing and distribution.

These influencers induce

consumers by way of unsubstantiated claims. They lure consumers to sell 'dreams' through audio-visual and print media in most persuasive manner. Such attempts create a desire in the mind of a consumer to purchase the product which otherwise was not his actual demand.

The main targets of these advertisers are: healthcare, personal care and education sector. According to the sources, out of total complaints received in the past, in Advertising Council of India (ASCI) about 90% were against misleading ads from healthcare sector, which set high claims like curing diabetes, kidney stones, blood pressure, height increase, weight loss, skin fairness, among others. Such claims need to be substantiated with necessary scientific support, past record and research & analysis carried out. The sources added that almost 216 complaints against such deceptive and exaggerated advertisements were upheld.

Similarly, in November 2012, the Food Safety and Standards Authority of India (FSSAI) reportedly issued notices to 38 top selling brands, asking them to withdraw their 'misleading' ads. The brands included Complan, which claimed that one grow two times by using the product and Kellogg's which claimed that research shows that people who eat low fat breakfast like Kellogg's Special K, tend to be slimmer than those who don't eat that. Horlicks claimed that children consuming Horlicks were taller, stronger and sharper.

In the similar fashion, in education sector, such tall claims exist in large numbers. According to a report released almost a decade back by ASSOCHAM and quoted in PIL case of Nemichand Jain Vs. Union of India, before

High Court of Delhi, the business of coaching institutes with huge state-of-the-art buildings are fetching profits upto Rs. 1,50,000 crores per annum and is likely to touch more than Rs.2,35,000 crores by 2015.

In December, 2013, The High Court of Delhi, in its interim order had directed the Indian Institute of Planning and Management (IIPM) not to publish any advertisement in print, television or online without the Court's approval. The interim order came after the University Grants Commission submitted an affidavit underlining that IIPM advertisements could potentially mislead students, public at large.

The Central Consumer Protection Authority (CCPA), has recently imposed Rupees three lakh fine on New Delhi's Maluka IAS coaching institute for advertising 'misleading claims guaranteeing success' in prelims and mains in UPSC civil service examination -2022. The institute had claimed that over 120 of its students were selected in the examination.

The CCPA chief commissioner Nidhi Khare said, "CCPA found out the that the institute advertised various types of courses but information with respect to the course opted by the advertised successful candidates was concealed in the advertisement, thereby deceiving consumers into believing that successful candidates owe their success to coaching institute. As a matter of fact the actual need of advertisement is to inform the consumers about the specification of a product, such as its price, feature, availability, sources, price, company name and its ingredients, but today with the advent of celebrity endorsed trend advertisement business has become the source of consumer bashing, extortion

and cheating, which needs to be prevented with an iron fist.

There is no limit of mental torture caused to the viewer at the hands of the marketers. Since there is no opposition, protest or hue & cry from the viewers of the electronic devices, the advertisers take it for granted to show any clip thousands of time in a single day. The consumers having no sense of their individual rights or privacy keep on tolerating the trauma of excessive and repeated exhibition of the same clips, as if they are the chattel of the advertisers.

It's double whammy for the consumers of the TV programmes that almost 30% of their electricity is wasted in watching undesired advertisements in between the shows, for the exclusive benefit of the advertisers, which is a 'wrongful gain' for the advertiser and 'wrongful loss' of the consumer/viewer.

The marketers, influencers are engaged in exploitation of children an childhood in clear violation of Article 39 (e) (f) by engaging children ranging from two months to 14 years as actors in advertisement. The National Commission for Child Rights (NCCPR) is silent on the issue.

The film actors and cricketers are promoting chewing pan masala under the guise of mouth fresher. Some of the influencers have promoted Online gaming sites which are actually 'gambling sites' smartly packaged as gaming sites. Once a Hollywood actor, Pierce Brosnan featured in a tobacco chewing advertisement, which he later said, he was told it was a mouth fresher.

Celebrities and influencers are equally liable for misleading endorsements. In a landmark judgment on May 7, 2024, in Indian Medical Association & Anr Vs. Union of India (W.P. Civil No.

645/2022), a Bench of Supreme Court comprising Justices Hima Kohli and Ahsanuddin Amanullah has declared that celebrities and influencers are equally liable if they endorse misleading advertisements. Hearing the petition the Bench came down heavily on the influencers who feature in such advertisements.

The Bench added that in the age of social media, celebrities and influencers wield considerable influence with millions of impressionable minds take their words as gospel truth. In many instances, the endorsements are misleading or false leading to consumer detriment and eroding trust in advertising.

However, our contention is that the practice of endorsement by so-called celebrities should be banned as it arbitrarily and discriminatory incurs the heavy cost on the pocket of the gullible consumer, which are prejudicial to the interests of the consumers as a class, because the heavy cost of celebrities fees is included in products M.R.P.

Senior Advocate Mahalakshmi Pavani, President-



Supreme Court Women Lawyers Association, said, "As per my observations in several cases, it is always the helpless

poor consumer who ultimately bears the heavy cost of celebrities' endorsement and there are many factors responsible for the same. Before we delve into the whole conversation regarding the legal consequences and remedies available to consumers in lieu of false celebrity endorsements, one must understand the whole psyche behind the consumption pattern and purchasing capacities of respective consumers."

"Besides, influencers, the overall fanaticism and idolization of celebrities further moves consumers to rely on the endorsements promoted by such celebrities. However, ultimately in the end it is the consumer who pays a heavy prize of such endorsements since many often find the product ill-suited to their needs and often with a tangible financial denominator. This is a sufficient clarion call for legislative and regulatory authorities to tighten the noose on such false, fraudulent and misleading endorsements."

"In today's media-saturated environment, consumers are increasingly susceptible to external influences disseminated through the media, with celebrities often leading the charge in shaping consumer behaviour. Whether through social media platforms, traditional advertising channels, or product endorsements, the impact of celebrity-focused advertising extends beyond mere entertainment and impacts consumer decisions."

"Consumers often trust celebrities as authority figures and believe in their endorsements without critically evaluating the product or its claims. When these endorsements are misleading or false, consumers may end up purchasing products that do not deliver the promised results, leading to financial loss."

"Celebrities often portray an aspirational lifestyle in their ads, creating a desire for consumers to emulate them. When products fail to live up to the promised results, consumers may feel disappointed and disillusioned, impacting their self-esteem and mental well-being."

"Many consumers may not have access to accurate information or resources to

verify the claims made in advertisements. This lack of information leaves them vulnerable to deceptive marketing tactics and false promises, resulting in wasted money and potential harm to their health or well-being."

"Advertisements often use emotional appeal to persuade consumers to purchase products. When celebrities endorse products, their emotional connection with the audience can lead consumers to make impulsive decisions without considering the rational implications, ultimately leading to regret and financial loss."

"In some cases, there may be loopholes or lax enforcement of regulations governing advertising standards. Celebrities and advertisers may exploit these gaps to make misleading claims or endorsements without facing significant consequences, leaving consumers unprotected and vulnerable to exploitation."

Mahalakshmi further said, "While going through the available law provisions on this subject, I do realize that as of now, we need effective mechanism for the stringent and immediate implementation of all the available provisions in the Consumer Protection Act and all sorts of applicable recent Guidelines Code issued by the Ministry of Consumer Affairs and other departments which is possible with the efforts of our Judicial system, acting as an effective regulator of these laws. Right now, exactly the same path is being taken by the Hon'ble Supreme Court which is seeking effective compliance of the stipulated Guidelines of 2022 (*Guidelines for Prevention of Misleading Advertisements and Endorsements of Misleading Advertisements, 2022*) along

with several newly introduced modifications/better improvised rules for the advertiser/advertising agencies are also being issued considering the gravity of this issue in the latest order dated 07.05.2024 and I wholeheartedly welcome this new laid law by the Hon'ble Supreme Court which will definitely ensure a massive improvement and radical change in the existing situation as of now. I hope that by the time regular law will be legislated, the effectiveness of this order passed by the Hon'ble Supreme Court will serve as the legal antidote and may do the needful required in the present circumstances."

With regard to credibility of endorsements, Mahalakshmi said, "In my opinion, celebrities wield unprecedented influence over the masses. With their carefully curated images and expansive reach, they are sought after by advertisers to endorse products ranging from cosmetics to cars. However, beneath the glitz and glamour lies a troubling reality: celebrity endorsements are often nothing but a guise for perpetuating fraud upon the gullible masses."

"First and foremost, celebrities have no verified and reliable knowledge about the products which they endorse. Whether it's a skincare regimen or a weight loss supplement, their authority stems solely from their fame rather than any genuine knowledge or expertise regarding the authenticity or positive results of using that product/services. Yet, consumers are led to believe that these endorsements carry weight, blindly placing their trust in individuals whose sole qualification is their ability to captivate an audience and make them spend or invest their hard-earned money into those products or services endorsed by them."

"Moreover, the motivations behind celebrity endorsements are rarely altruistic. Behind closed doors, lucrative deals are struck between celebrities and advertisers, with hefty pay cheques exchanged for lending their faces and voices to a product. This financial incentive creates a conflict of interest, where the celebrity's primary concern is their bank account rather than the well-being or safety of their fans."

"Furthermore, the very nature of celebrity endorsements is inherently deceptive. Advertisers capitalize on the emotional connection between fans and their favorite stars, exploiting this bond to peddle products with dubious efficacy. Whether it's a promise of flawless skin or instant weight loss, these claims are often exaggerated or outright false, preying on the insecurities of the gullible masses."

When asked about tender-aged children engaged as actors in films, electronic/ print media, etc; Mahalakshmi said, "I definitely agree with the employment of young children and in fact squandering their childhoods amidst the much glamorized entertainment industry. Concerning the definition of child labor, the law is fairly myopic, with the enactment of the Child and Adolescent Labour (Prohibition and Regulation) Act of 1986 which prohibits the employment of children in hazardous occupations and processes, and regulates their employment in other areas. The law applies to the whole of India, however, its application is limited to establishments, including railways, major ports, mines, and oilfields. With regards to the definition of 'establishment', Section 2(iv) defines it to include

"a shop, commercial establishment, workshop, farm; residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment". However, given the tumultuous hours spent in shooting in the entertainment industry protection of the constitutional right of children under Article 39 it is only time that the labor code be extended to the entertainment industry with a set of detailed regulations and appropriate teething provisions to monitor the employment of young children in such entertainment pursuits."

Dr. Trisha Kadyan, Advocate



and legal adviser with Delhi GST department, said, "While it's undeniable that consumers, especially those

with limited resources, can be disproportionately affected by misleading endorsements, it's not solely the responsibility of the consumer to bear the consequences.

Celebrities and influencers, by virtue of their platform and reach, hold significant power over public perception. When they endorse a product, they are essentially vouching for its quality and efficacy. Therefore, they must bear a portion of the accountability when those products fail to meet expectations or are misleadingly promoted."

Dr. Kadyan further said, "Amending the Consumer Protection Act to address the issue of misleading endorsements is indeed a step in the right direction. The frequent release of endorsed ads can inundate consumers with potentially deceptive information, leading to confusion and exploitation. Implementing an Ordinance to swiftly address this issue could

provide interim relief while long-term legal measures are put in place. However, any amendments or ordinances should be carefully crafted to balance the interests of both consumers and businesses, ensuring fair practices in the advertising industry. There needs to be greater scrutiny and accountability to prevent endorsements that are deceptive or misleading. Transparency regarding the nature of the endorsement and any potential conflicts of interest is essential to empower consumers to make informed choices."

About involving tender-aged children in advertisements, she said that the practice raises ethical concerns regarding their exploitation and protection. Article 39(e) and (f) of the

Constitution of India enshrine the principles of safeguarding childhood and preventing child labor. While children participating in advertisements may not necessarily fall under the category of child labour, it's crucial to ensure that their involvement is voluntary, safe, and does not compromise their well-being or education. Regulations should be in place to protect the rights and interests of children involved in advertising.

Noted Advocate S.K. Sharma, labour law expert said, "Considering the evolving nature of the entertainment industry and the increasing participation of children as actors



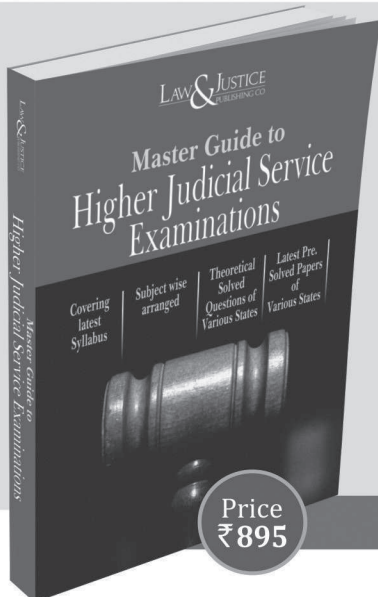
in films, electronic/print media, it would be prudent to consider adding special provisions for the occupation and process of child actors through an amendment in Child Labour (Prohibition and Regulation) Act, 1986."

Dr. Ravindra Wankhedkar, former National President of Indian Medical Association said that the helpless consumers ultimately bear the heavy cost of celebrity endorsement. As a renowned doctor, he recommended that the role of children in advertisements should be banned and that the celebrities should be extremely cautious in endorsing the products.



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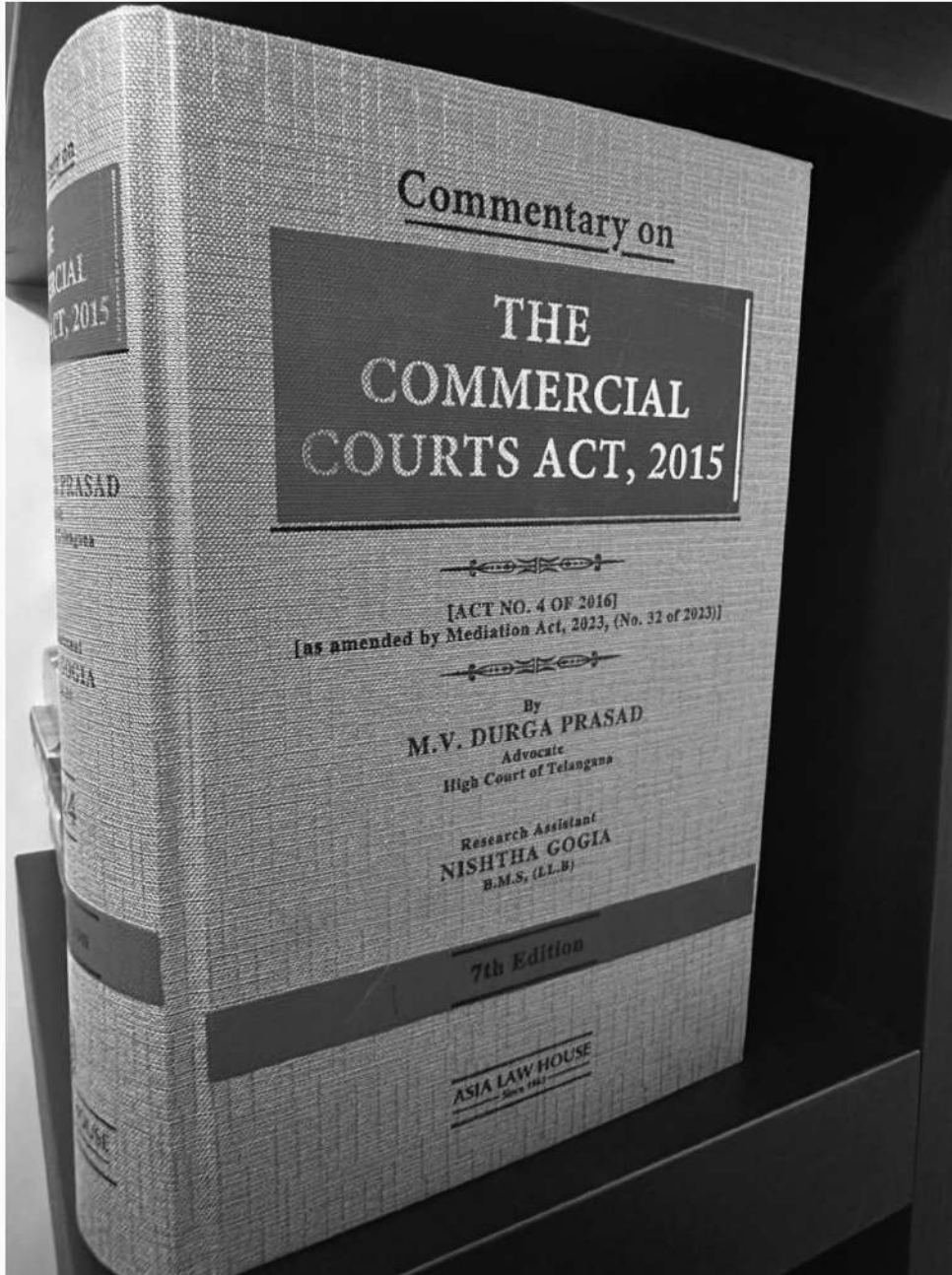
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Pleadings and Evidence in A Case Of Medical Negligence

Pacemaker Implantation under co morbid conditions

CONSUMER CASE NO. 1934 OF 2018

JAGDISH K. SHARMA

Versus

MEDANTA, THE MEDICITY

Decided by the Hon'ble NCDRC, NEW DELHI on 14.05.2024.



Anoop K. Kaushal, Advocate

anoopkaushal@gmail.com

FACTS: On 04.07.2016 at 1603 hrs, as advised by Dr. Balbir Singh (Opposite Party No. 3), the patient was admitted at Medanta, The Medicity (Opposite Party No. 2) for planned and Elective Procedure of Pacemaker Implantation. After detailed examination, no abnormality on the patient was detected by the doctor and the nurse on duty. *The medical history of the patient that she was a high-risk case for development of a stroke and was on Pradaxa 150mg twice per day was informed to the Opposite Party No. 3, considering which, the Opposite Party No. 3 had kept the patient off Pradaxa for 48 hours.* On 05.07.2016 at 2.58 pm, the patient underwent Pacemaker Implantation at Opposite Party No. 2. On 06.07.2018, it was informed to the Complainant No. 1 that the patient was under medical supervision in Cardiology ICU and would be discharged on the same day after the Complainant No. 1 cleared the bills. It was alleged that upon arrival at Medanta Hospital, the Complainant No. 1 was denied access to the Cardiology ICU to see his wife unless he cleared the bills first. Hours later, when finally granted entry, he found his wife in the ICU unconscious and unattended, suffering from a life-threatening stroke. *Being a Cardiologist himself, he had to intervene to provide emergency care instructions and the delay in treatment due to hospital negligence resulted in severe consequences*

for his wife, including paralysis. It was further alleged that the hospital's failure to restart the patient's medication i.e. Pradaxa much earlier after surgery and the irresponsible conduct of the Opposite Parties towards the patient further aggravated the situation due to which, the patient suffered a stroke leading to paralysis. On 08.07.2016, ultimately, the patient was discharged. Despite complaints to the Hospital administration, including a letter to Dr. Naresh Trehan, Chairman & MD, no satisfactory response was received. It was further alleged that due to unhygienic conditions in the hospital, the patient developed pacemaker infection on 29.07.2016. On meetings of the Complainant No. 1 with Dr. Naresh Trehan, Chairman and MD and the Medical Superintendent of the Hospital, they denied any negligence on the part of their Doctors or Hospital. Alleging medical negligence causing stroke and ultimately paralysis to the patient, the Complainants filed the Consumer Complaint seeking total compensation to the tune of Rs. 2,78,24,904/- with interest at the rate of 12% p.a. from the date of Complaint till realisation.

DEFENSE: *The stroke suffered by the patient on 06.07.2016 was the fourth stroke suffered by the patient, which was attended to very swiftly and the damage caused to the patient was not due to the*

stroke. The Complainant No. 1 being a Cardiologist himself, a detailed discussion regarding the pacemaker implantation including the management of Pradaxa was conducted. *It was also informed to the Complainants that the patient being a known case of recurrent stroke, Tab. Pradaxa will be temporarily discontinued and will be started after 24 hours of the conduct of the procedure. On the date of pacemaker implantation, pre-operative relevant blood investigations were conducted which reported the patient fit and normal to undergo implantation.* The Single Chamber Pacemaker implantation was conducted by the Opposite Party No. 3, which was uncomplicated. Post-operative protocol was followed to manage the patient. Chest X-ray and ECG were conducted, which showed normal report post-operation. On 06.07.2016, in the morning, the patient was conscious and was examined. She was showing expected improvements. *As per protocol at 1.00 pm, Tab. Pradaxa, which was on hold for 24 hours of the procedure, was administered. However, at around 3.10pm, when the discharge formalities were completed, the patient suffered a sudden stroke, in response to which, CT Brain Plain and CT Angio Brain and Neck was conducted on urgent basis, the findings of which revealed that the stroke to*

the patient in 2014 and January, 2016 had caused damage to the brain. It was also suggestive of the fact that the patient was prone to atherosclerosis and such significant stenosis at such an aggressive rate cannot be solely due to temporary discontinuation of Tab. Pradaxa for a very limited period. An informed consent was given by the Complainant No. 1 at 3.50pm for procedure of endovascular mechanical thrombectomy on the patient to prevent major infarct. The patient underwent a successful procedure by 5.30pm. The patient was, thereafter, shifted to ICU for continued monitoring. Tab. Pradaxa was advised to start. On 07.07.2016, finding the patient conscious and oriented and after getting the required examination, she was shifted to a room and she completely recovered from the stroke. On 08.07.2016, the patient was discharged from the Hospital in a stable condition with follow-up advice. It was stated that except on 14.07.2016, the Complainants, thereafter, did not come-up for further follow up.

TERMS OF REFERENCE TO EXPERT TEAM OF AIIMS, NEW DELHI: whether there was any negligence by the hospital and the treating doctors on account of:

a. delayed administering of Pradaxa, which would have avoided the stroke;

b. whether the ICU staff should have been more attentive in attending to the patient; and

c. or any other point, which the Expert Committee may find on the part of the Opposite Parties, which might be construed as negligence on their part."

Expert Opinion of AIIMS: There was no medical negligence

on the part of the hospital and the treating team.

"The medical board is of opinion that there was no medical negligence by the hospital or treating team. In response to the specific questions asked:

a. There was no delay in administering Pradaxa after the permanent pacemaker implantation.

b. According to the available hospital records and timelines the response of the ICU staff and treating team was optimal.

c. None."

HELD: Considering that the main argument of the learned Counsel for the Complainants that the administration of Pradaxa or rather non-administration and the same not having been found to be relevant leading to the unfortunate stroke suffered by the patient as per the Expert Report, I do not see any further observation by me in this regard and therefore to this extent, the argument of the Complainants fails. The second argument of the learned Counsel for the Complainants was about the poor post-operative care in the ICU. It is the fact that the patient did suffer a stroke while she was at the stage of being discharged from the ICU of the hospital. The Complainants have submitted that there was no prompt action taken to prevent such episode. However, on perusal of the record, it is seen that there was prompt action taken by the staff and the doctors in shifting the patient to the Cardiac Cath Lab, where she underwent mechanical thrombectomy and was discharged two days later on 08.07.2018. I understand the anxiety of the Complainant No. 1, who is the husband of the Complainant No. 2 and

who himself is a Cardiologist. On reading the Complaint, it becomes very evident and at times he could not control himself from giving directions to the hospital staff / doctors. It is not the case of the Complainant No. 1 that the Doctors at the hospital were really incompetent as he himself had chosen the hospital after due care and the patient had even earlier been admitted in the hospital for certain interventions, which was done to the satisfaction of the Complainant No. 1. It has to be kept in mind that once the patient is admitted to the hospital, it should be left to the treating doctors to decide on the process and procedure of treatment and also give certain space to them in performing their duties. No doubt, the **Complainant No. 1 is a Cardiologist, however, interfering with the treatment and casting doubt on the treating doctors, in my opinion, after going through the record is not warranted and appears to be an over-reaction.** It is unfortunate that the patient suffered a cardiac stroke and had to suffer thereafter. *However, there is no proof or co-relation shown in the Complaint or argued that the cardiac arrest was the result of the implantation of the pacemaker. Since the patient was a chronic heart patient and having gone through various interventions in the past, the probability of such stroke cannot be ruled out. It is to the credit of the hospital that prompt action post-stroke was taken and the patient survived.* In view of the aforesaid discussion, I do not find any medical negligence on the part of the Opposite Parties. Accordingly, the Complaint is dismissed.

Supreme Court Guidelines



CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003

SMOKING IN PUBLIC PLACES: PROHIBITED

Murli S. Deora v. Union of India and Others

AIR 2002 SC 40: (2001) 8 sec 765: 2001 (8) SCALE 6: 2001 (6) ALT 35

Writ Petition (Civil) 316 of 1999

Dated: November 02, 2001

BENCH: Justices M.B. Shah and R.P. Sethi.

Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue

directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places, namely:

- (1) Auditoriums
- (2) Hospital buildings
- (3) Health institutions
- (4) Educational institutions
- (5) Libraries
- (6) Court buildings
- (7) Public offices
- (8) Public conveyances

including railways

Learned Attorney-General for India, assured the court that

the Union of India shall take necessary effective steps to give wide publicity to this order of electronic as well as print media to make the general public aware of this order of prohibition of smoking.

We further direct the registrar-general, to intimate the State Governments/Union Territories as well as the commissioners of police as mentioned in our orders dated 31- 8-2001 and 28-9-2001 of this Court with directions for submission of their compliance report in this Court within five weeks from today. The Union of India shall also file its response at the earliest.



Humour of the Law

SHARING FATIGUE

I was waiting for some case in which I was a counsel," says Mr. O' Flanagan in *The Irish Bar*, "when the crier called, ' Pluck and Diggers,' and in came James Scott, Q.C., very red and heated, and throwing his bag on the table within the bar, he said, C My lords, I beg to assure your lordships I feel so exhausted, I am quite unable to argue this case. I have been speaking for three hours in the Court of Exchequer, and I am quite tired. Pray excuse me, my lords; I must get some refreshment.' The chief justice bowed, and said, 'Certainly, Mr. Scott;' so that gentleman left the court. 'Mr. Holmes, you are in this case,' said the chief justice; 'we'll be happy to hear you.' 'Really, my lord, I'm very tired too,' said Mr. Holmes. 'Surely,' said the chief justice, 'you have not been speaking for three hours in the Court of Exchequer? What has tired you?' 'Listening to Mr. Scott, my lord,' was Holmes' sarcastic reply."

AN EVALUATION OF INDIAN JUDICIARY VIS A VIS WOMEN'S REPRODUCTIVE RIGHTS IN INDIA

Ankita Shukla &
Mishal Qayoom Naqshbandi

Abortion is now a practice that is widely accepted in many nations throughout the world. However, for a very long period abortion was regarded as an unlawful practice in India. Several women lost their lives while attempting to end their pregnancies either through unlawful means or inhuman means.

The position of abortion in India is now legally well founded, however, this was not the situation before 1971, as the providers of abortion services and women would face up to three to seven years of imprisonment, respectively, for providing and seeking an abortion. The only exception to this rule was in the case that there was a threat to the life of the pregnant woman.

Before 1971 the Indian Penal Code of 1860 included the following provisions related to abortion: -

1. Section 312 and 313: causing miscarriage
2. Section 314 : causing death of a woman during a miscarriage
3. Section 315 and 316 : injury caused to an unborn child
4. Section 317: abandonment and exposure of an infant
5. Section 318 : concealment of childbirth

Section 312 which is most relevant to the present discussion reads as:

"Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the

woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

In the year 1964, Shantilal Shah Committee was established by the Central Family Planning Board of India to ease the rigors of the law on abortion. Hence to lower the incidences of botched abortions and maternal deaths that were linked to illegal and unsafe abortions, the report advocated liberalizing the rules governing abortion. Its purpose was to investigate and examine the moral, social, legal, and medical justification for abortion.

On 4th December 1966, the Shantilal committee sent a report with through observations of the then prevailing circumstances and after an exhaustive deliberation, India's first law on abortion known as Medical Termination of Pregnancy would be legal, if qualified medical practitioners allowed it. The MTP Act 1971 provided for conditions in which a women (only married) can choose to terminate her pregnancy (not beyond 20 weeks), those conditions include that if the:

Nonetheless, this Act was heavily criticized due to noteworthy shortcomings like:

- a. The pregnancy arises from crimes such as sexual assault or rape.
- b. It causes a risk or danger to the women's physical or mental health.
- c. The child has a risk of being born with a physical or mental malformation.
- d. Girls under 18 who are insane, or lunatic cannot get their pregnancy terminated without

the written consent of a parent or guardian.

e. Abortion up to 12 weeks of pregnancy requires the opinion of one registered medical practitioner.

f. Abortion between 12 to 20 weeks requires the opinion of two registered medical practitioners.

Nonetheless, this Act was heavily criticized due to noteworthy shortcomings like:

a) Few tests are performed in the 20th week of pregnancy to ascertain abnormalities that are only confirmed after the 20th week. However, the act did not allow the termination of pregnancy beyond 20 weeks.

b) Even married women had to prove contraceptives' failure to terminate their pregnancy, violating the fundamental right to privacy.

Taking note of these few of the many shortcomings, the Medical Termination of Pregnancy (Amendment) Act, 2002 was introduced with a view to provide for the facility of termination of pregnancy even in private hospitals and it suggested that the term 'lunatic' be substituted with 'mentally ill person'.

However, as technology advanced so did the cry to amend the erstwhile MTP Act also grew bigger as there were issues related to women's privacy and her reproductive rights and choices were at stake which needed urgent attention and hence the Medical Termination of Pregnancy (Amendment) Act, 2021 was set in motion and it ushered various novel changes in the Indian history.

The amendment increased the gestation period from 20 to 24 weeks for termination of pregnancy for special categories of women, including rape and incest victims, physically disabled women, minors, widows, and other vulnerable women. It emphasised on protecting the privacy and confidentiality of a woman who opts for termination of her pregnancy and further allowed all women, irrespective of her marital status to access safe abortion of their pregnancies.

On October 12, 2021, the Union Government notified the Medical Termination of Pregnancy (Amendment) Rules 2021, in which the categories of women eligible for abortion of pregnancy up to 24 weeks were specified. They are:

- (a) survivors of sexual assault or rape or incest;
- (b) minors;
- (c) change of marital status during the ongoing pregnancy (widowhood and divorce);
- (d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act 2016;
- (e) mentally ill women including mental retardation;
- (f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and
- (g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

Indian courts have often placed the issue of abortion rights within the ambit of constitutional doors, the case of *Suchita Srivastava v Chandigarh Administration* (2009) is an example of the situation where

the court recognized the right of an intellectually disabled woman to continue her pregnancy and in turn made reproductive choices a part of the right to personal liberty under Article 21 of the Constitution of India, 1950.

Another significant Supreme Court decision on abortion in India was the 2017 case of *Ms. X v. State of Maharashtra*, where the court further clarified that a woman has the right to terminate her pregnancy if continuing it would pose a grave threat to her physical or mental health.

In *Chandrakant Jayantilal Suthar & Another v. State of Gujarat* (2015 SCC Online SC 668), A minor who had been sexually assaulted by her doctor became pregnant. The Gujarat High Court denied her family's request for a termination. The rape victim was "psychologically devastated," according to one of the medical team's doctors, and "physically too weak to deliver a child." The medical team concluded that the pregnancy presented a "serious threat to her life" for this reason. The medical experts also mentioned that the girl's health wouldn't be harmed by the surgery and that terminating a pregnancy at 24 weeks is still safe. Upon reviewing the medical opinion, the Supreme Court permitted termination with the girl's agreement. But the Court acknowledged that this was an especially tough decision because,

"Whatever be the circumstances in which the child was conceived, whatever the trauma of the young mother, the fact remains that the child is also not to blame for being conceived."

However, it was also contended that,

"A rape victim shall not be further traumatized by putting through a needless process of approaching

courts for taking permission."

The landmark case of *X v Health and Family Welfare Department* (2022) is another laudable piece of judgment as it has come at a time when sexual and reproductive rights are being considered a rather contentious issue across the globe, particularly after the United States overturned the landmark *Roe v Wade* Judgment, which granted constitutional validity to the right to abortion. It has set both India and the issue of women's rights in the country on the path of progressiveness.

The ruling stated that a woman's right to her bodily autonomy and her freedom to select her own course in life are fundamental factors in her decision to either carry a pregnancy to term or end it. It also acknowledged that an unintended pregnancy could have detrimental impacts on a woman's life, interfering with her profession, education, and mental health, among other things.

However, it appears that anti-reproductive rights views have eclipsed the good progress of 2021 and 2022 in 2023. This pro-rights programme suffered a significant setback a year following the ruling in *X v. Principal Secretary*¹, which demonstrated how much more work needs to be done before India can become a fully liberal and right-based jurisdiction for medical abortion.

In the case of *X v Union of India*², a married 27-year-old mother of two petitioned the Supreme Court to obtain an abortion in accordance with the Medical Termination of Pregnancy Act, 1971. Because she was breastfeeding, the petitioner didn't know she was pregnant until about 24 weeks because

of a disorder called lactational amenorrhoea. The petitioner immediately went to the highest court to get access to necessary treatment after initially being denied at the medical facility. The arguments for foetal viability and worries for the rights of the unborn child were heard and given precedence over the petitioner's right to reproductive autonomy in a somewhat dramatic turn of events at the Supreme Court.

Even though her mental health issues satisfied the legal standards, her reproductive rights were evaluated in comparison to a checklist to determine if she qualified for a termination at 24 weeks and were deemed insufficient. The Court observed that she was not entitled to the protections provided by Section 3(2B), which included pregnancy during humanitarian situations, disabled people, mentally ill people, widowed or divorced people, and survivors of sexual assault. Additionally, she was not eligible for Section 5 protections, which permit pregnancy termination in situations where the woman's life is in danger.³

First off, it was unclear how the Court interpreted mental illness as a ground for termination. The Court rejected X's repeated requests for termination on the grounds of her mental health, postpartum depression and psychosis, suicidal thoughts, and propensity to hurt herself and her children.⁴ Second, the decision raises the question of what really qualifies as a threat to a woman's life, given that the petitioner's concerns about suicide were considered and rejected.

According to the ruling, a woman must demonstrate both her absolute necessity for an abortion and the risks

associated with her situation to fully enjoy her right to reproductive autonomy. By doing this, the Court essentially reversed the ruling it made in *X v. Principal Secretary*,⁵ wherein it acknowledged that a woman was the "ultimate decision-maker" when it came to her reproductive choices.

The Supreme Court of India permitted the termination of a 22-week pregnancy in the case of *Mrs. X v. Union of India*.⁶ This was carried out upon the opinion of a seven-member Medical Board that the woman's physical and mental well-being could be seriously jeopardised if the pregnancy were to continue. The Court ruled that a woman's right to terminate her pregnancy is protected by her right to bodily integrity and that her right to make reproductive choices is a component of her "personal liberty" under Article 21 of the Constitution.⁷ The Supreme Court rendered similar rulings in other cases involving pregnancies that lasted longer than 20 weeks and fetuses with a variety of abnormalities and medical disorders that put both the mother and the foetus at significant danger. (*Tapasya Umeshia Pisal vs. Union of India*⁸ [24 weeks]; *Meera Santosh Pal vs. Union of India*⁹ [23 weeks]; *Mamta Verma vs. Union of India*¹⁰ [25 weeks]). The Supreme Court relied on the opinion of medical board in all these cases for its decision.

In *Murugan Nayakkar vs. Union of India & Ors.*,¹¹ the Apex Court allowed the termination of 32-week old pregnancy of a 13-year-old rape victim holding, "Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and

above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed."

This case highlighted that any rule or regulation (Rule 3B of MTP, 1971) which discriminates between a married and unmarried woman is unconstitutional and is nothing but a manifestation of patriarchal mindsets and values.

But in *Savita Sachin Patil v. Union of India*,¹² the court decided against ending a pregnancy that was 27 weeks along. The Medical Board concluded that although the foetus had serious physical defects, the mother was not at physical risk. Based on the Medical Board Report, the Court subsequently refused to allow termination on the grounds.

In *Alakh Alok Srivastava v. Union of India*,¹³ the court denied a termination in the case of the petitioner, a 10-year-old victim of rape who was also 32 weeks pregnant. The Medical Board believed that the petitioner would be less at risk from the pregnancy's continuance than from its termination at that point. Throughout the case, the Centre was instructed by the Court to oversee the establishment of permanent medical boards in states to promptly review requests for terminations made after 20 weeks of pregnancy.¹⁴

It is evident from this that the Medical Board's recommendations influence the Court's rulings. The woman's reproductive rights are not taken into consideration by the Court; instead, it is the Medical Board's conclusions about the continuation and termination of pregnancy that matter. Therefore, we must consider whether the courts ought to rely only on Medical Board Recommendations.¹⁵ While

the Medical Boards have the authority to assess a woman's physical health, may they also assess her mental health and any issues that might necessitate ending her pregnancy? If the woman's reproductive autonomy is to be safeguarded, shouldn't she ultimately decide whether to end the pregnancy?

The Supreme Court of India intervened in a recent decision to handle a dire case involving a 14-year-old rape survivor who wanted to end her pregnancy at around 30 weeks. The Supreme Court underlined the significance of the child rape survivor's health and well-being by rejecting the Bombay High Court's decision. It was thought to be critical to allow abortion at this advanced time.¹⁶

The MTP Act needs to be reformed to provide parameters for abortion beyond 20 weeks. There is a need for proper guidelines that the Board must take into consideration while planning on termination. As the Board has different opinions about when termination is advised, it is currently crucial that guidelines be followed when Medical Boards are established.

Our discussion of human rights, reproductive rights, and fairness in the legal system centres on the choice between life and death, with little regard for the consequences of

abortion, particularly when a late termination could result in a child who is born alive. Although we rarely have this debate, it is one that needs to happen immediately.

Not only is the lack of standards for these situations a legal oversight, but it is also a conspicuous lack that raises numerous unanswered issues, such as: What resources are available to care for a kid born in such circumstances? Exist any government initiatives to help these kids? Above all, and most importantly, who will take care of and raise them? Is it morally right for us to uphold their rights under the Equal Protection Clause of the Constitution?

At the end one should not lose sight of the fact that despite these changes, still a lot remains to be addressed as it is apparent that even though abortion is an inalienable right of a women, still she is at a mercy of doctors to exercise this indispensable autonomy. Also given the fabric of our society, it is often a difficult choice for a woman to think and opt for termination of her pregnancy so not only legal but also moral values also needs to be introduced as then only in true sense the intrinsic right of bodily autonomy can be understood and bestowed to all women in its legal sprits.

In the light of the above

discussions, it is suggested that the role of Supreme court should be reduced to minimum as the minor's viewpoint in agreeing to terminate or continue with the pregnancy should be given paramount importance as the social stigma and ostracization leads to adverse steps. Further, it is recommended that a Central level committee be constituted comprising of a panel of members from the respective State, Centre, NGO, National Commission Women, retired Chief Justice of India and senior doctors of medical board of India, whose decision and orders should be given final weightage and preference as they are well-versed with each case on merits and would be taking into consideration each aspect and consequence of the decision they hold. It is to be kept in mind that forcing a pregnant mother to not to terminate her pregnancy amounts to violation of her right to bodily autonomy, right to privacy, and right to reproductive choices, therefore intervention of courts to decide the case in a staggered manner is unwarranted especially in a scenario where robust mechanism can be established to decide the welfare of the victim in consonance with providing her a life with dignity and respect which is of utmost importance to any democratic State.

¹*Id*

²WP (Civil) No. 1137 of 2023

³<https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward> (accessed on 14.05.2024)

⁴*Id*

⁵*Supra Note 5*

⁶AIR 2017 SC 1055

⁷*Supra Note 7*

⁸(2018) 12 SCC 57

⁹(2018) 13 SCC 339

¹⁰(2018) 14 SCC 289

¹¹W.P. (C) No. 749/2017

¹²WP (C). No.121 of 2017

¹³AIR 2018 SC 2440

¹⁴*Supra Note 7*

¹⁵<https://clpr.org.in/blog/abortion-jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all> (accessed on 14.05.2024)

¹⁶<https://www.indiatoday.in/law/story/bombay-high-court-denies-minor-rape-victim-permission-to-abort-28-week-old-fetus-2398354-2023-06-27> (accessed on 14.05.2024)

LAW OF
**PROTECTION OF
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"It is an attempt to relieve the mind, heart and body of not only the Lawyers who are under huge work pressure but also of all our readers, who are facing the very common and ever increasing problem of stress."

Your Body

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



Veerabhadra (Warrior Pose)

This pose strengthens the arms, shoulders, thighs and back muscles, all in one go. This pose is named after *Veerabhadra*, a fierce warrior, an incarnation of Lord Shiva. The story of the **warrior Veerabhadra**, as all stories from Upanishads, has a moral that adds value to our life.

Benefits:

- Strengthens and tones the arms, legs and lower back.
- Improves balance in the body, helps increase stamina.
- Beneficial for those with sedentary or deskbound jobs.
- Extremely beneficial in case of frozen shoulders.
- Releases stress in the shoulders very effectively in a short span of time.
- Brings auspiciousness, courage, grace and peace

Procedure:

Veerabhadrasana or Virabhadrasana is one of the most

graceful yoga postures and it adds beauty and grace to one's yoga practice.

- Stand straight with your legs wide apart by a distance of at least 3-4 feet.
- Turn your right foot out by 90 degrees and left foot in by about 15 degrees.
- Checkpoint: Is the heel of the right foot aligned to the center of the left foot?
- Lift both arms sideways to shoulder height with your palms facing upwards.
- Checkpoint: Are your arms parallel to the ground?
- Breathing out, bend your right knee.
- Checkpoint: Are your right knee and right ankle forming a straight line? Ensure that your knee does not overshoot the ankle.
- Turn your head and look to your right.
- As you settle down in the yoga posture stretch your arms further.
- Make a gentle effort to push your pelvis down. Hold the yoga posture with the determination of a warrior. Smile like a happy smiling warrior. Keep breathing as you go down.
- Breathing in, come up.
- Breathing out, bring your hands down from the sides.
- Repeat the yoga posture for the left side (turn your left foot out by 90 degrees and turn the right foot in by about 15 degrees).

Healthy Food



Apricots

Apricots are excellent sources of vitamin-A and carotenes. 100 grams of fresh fruits carry 1926 IU or 64% of daily required levels of vitamin-A. These compounds known to have antioxidant properties and are essential for vision. Vitamin-A also required for maintaining healthy mucosa and skin. Consumption of natural fruits rich in carotenes helps protect the body from lung and oral cavity cancers. Fresh fruits contain vitamin-C, another natural antioxidant. Vitamin-C helps the human body develop resistance against infectious agents and scavenge harmful oxygen-free radicals. They are an also good source of minerals such as potassium, iron, zinc, calcium and manganese. Potassium is a heart-healthy mineral; an important component of cell and body fluids that help regulate heart rate and blood pressure. The total antioxidant or ORAC value of fresh apricots is 1115 $\mu\text{mol TE}/100 \text{ g}$. Most of this value attributed to some important health promoting flavonoid poly phenolic antioxidants such as lutein, zeaxanthin, and beta-cryptoxanthin. Altogether, these compounds act as protective

scavengers against oxygen-derived free radicals and reactive oxygen species (ROS) that play a role in aging, cancers and various disease process. Further, zeaxanthin, a carotenoid selectively concentrated in the retinal "macula lutea" in the human eyes where it is thought to provide antioxidant and protective UV light-filtering functions. Thus, consumption of fruits rich in zeaxanthin helps eyes protect from age-related macular disease (AMRD), especially in the older adults.

Recipe of the Month



Apricot Oatmeal Cookies

Ingredients:-

- 2/3cup granulated sugar
- 2/3cup packed brown sugar
- 1/2cup butter or margarine, softened
- 1/2cup shortening
- 1teaspoon baking soda
- 1teaspoon ground cinnamon or cardamom
- 1teaspoon vanilla
- 1/2teaspoon baking powder
- 1/2teaspoon salt
- 2eggs
- 3cups quick-cooking oats
- 1cup Gold Medal™ all-purpose flour
- 3/4cup chopped dried apricots
- 1/2cup finely chopped pecans

Procedure:-

1. Heat oven to 375°F. In large bowl, beat all ingredients except oats, flour, apricots and pecans with electric mixer on medium speed until creamy, or mix with spoon. Stir in all remaining

ingredients.

2. Drop dough by rounded teaspoonfuls about 2 inches apart onto ungreased cookie sheet.

3. Bake cookies 8 to 10 minutes or until edges are brown and centers are soft. Cool 1 to 2 minutes; remove from cookie sheet to wire rack.

Happy Holidays

Coonoor

Coonoor is the second largest hill station located in the Nilgiri hills. It is famous for its verdant environs and for a variety of wildflowers and birds. Coonoor provides a perfect setting for activities like trekking and hiking. It is also famous for its tea plantations and festivals. Travelers can also enjoy the ride on the toy train, which connect Coonoor with other hill stations in the Nilgiri Hills.

Coonoor is located in the western part of the state of Tamilnadu, in the southern region of India, at the head of the Hulikal ravine at an altitude of 1850 m above sea level. It is 19 km from Ooty. The weather in Coonoor is pleasant. Summers (April-June) are mild, while winters (November - February) are cool. It experiences southwestern monsoon rains in July-September. The Nilgiri hills have been the home of the Toda tribe for centuries. Coonoor began to develop as a tourist destination in the 19th century when the British made Ooty a popular hill station. Coonoor provides the traveler with the panoramic view of the lush green Nilgiri hills, with its ravines, valleys, and waterfalls. Bird watching is a popular

pastime in Coonoor, as the area boasts of a large variety of species like cormorants, pipits, thrushes, parakeets, skylarks, Nilgiri verditer, etc. The Sim's Park is an important place to visit in Coonoor. It is a 12-hectare park, having a collection of over 1,000 plant species, which include magnolia, pines, tree ferns, and camellia. Travelers can take a walk through the tea gardens. There are number of trekking and hiking trails around Coonoor. Travelers can enjoy the exhilarating and unique ride on the toy train that connects Coonoor with Mettupalayam and Ooty. The trip provides some breathtaking views of the Nilgiri hills in all its natural glory, every year in the month of May, a fruit and vegetable show is held in Coonoor. A tea and tourism festival is held every winter.

Coonoor does not have an airport of its own. The nearest airport is in Coimbatore. Coonoor is on the toy-train line between Mettupalayam (28 km) and Ooty. Coonoor is well connected by road with Ooty, Coimbatore, and Kotagiri. We would provide you all India tourist permit vehicles for the local transportations and also for the intercity drives too.

The best time to visit Coonoor is between the months of October and March.



LEGAL MAXIM AND ITS RELEVANCE TO CONTRACT LAW

INTRODUCTION:

A Legal maxim or legal phrase elucidates a legal principle, proposition or concept.

Maxims are of practical importance and most frequently cited, commented on and applied. A legal maxim is an established principle or proposition of law which is in Latin form. These principles help many practicing lawyers in applying the existing laws in a fair and just manner and it also helps the court in deciding the issue. Not all the maxims normally have the dogmatic authority of statutes and are usually not considered as law except to the extent of their application in adjudicated cases.¹

Maxims are principles and authorities, and part of the general customs or common law of England and are of the same strength as acts of parliament.²

This article gives a brief idea about how maxims are used and how these can be applied in contract law.

APPLICATION:

Firstly I would like to explain how to use the legal maxims., lets consider

The principles of natural justice in the context of administrative decisions.

In any administrative decision, principles of natural justice plays an important role as it helps in preventing arbitrariness and ensuring fairness and equality.

These principles contain two components:

- a. AUDI ALTERAM PARTEM
It means hear the other side

and no person should be denied unheard and every party who is affected by administrative decision should be heard.

The principle was affirmed in landmark case Maneka Gandhi v. union of India (1978) 1 SCC 248 ; AIR 1978 SC 597

In administrative decision the authorities should provide notice to affected parties, accurate evidence or allegations against them and allow them to respond to it. If there is a failure in following the principle the administrative decision will be invalid.

b. NEMO JUDEX IN CAUSA SUA -

It means that no one should be a judge in their own cause.,In State of Orissa vs Dr. Binapani dei (1967) SCR (2) 625, the Supreme Court held that decision maker must be not interested and free from any conflict of interest .

In any administrative decision the decision maker maintains objectivity and independence and he should not be concerned about the final outcome.

SOME OF THE LEGAL MAXIMS WITH CASE LAWS

We can understand how these Latin maxims/phrases are applied in the Indian legal context

1. Maxim – “actus non facit reum nisi mens sit rea”

Meaning – an act does not make a person guilty unless there is a guilty mind.

Case law- State of M.P VS B.L Shukla (AIR 1995 SC 758), wherein it was held that in the court it is mandatory to prove both the actus reus and mens reas in a criminal case. It is very

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important to prove the guilty act along with the involvement of guilty mind.

2. Maxim – res judicata

Meaning – a matter already judged

Case law – In Satyadhyan ghosal v. Snt deorajin debi (1960) SCC ONLINE SC15 ; AIR 1960 SC 941, Court discussed the doctrine of res judicata which prevents the same matter to be presented or relitigated between the same parties.

3. Maxim – “dua lex sed lex”

It means that the law is harsh, but it is law.

While this is not associated with any case law, but the maxim dual ex sed lex states the principle that even if the law is strict or severe it must be abided.

4. Maxim – “volenti non fit injuria “

Meaning –to one who is willing, no harm is done. The person will be responsible for his own risk or harm.

Case law – In Nagappa v. Gurudayal Singh, (2003) 2 SCC 274 the Court applied this maxim and held that when a person causes a voluntary damage or he takes up a risk and suffers for his action the maxim can be applied.

LEGAL MAXIM AND ITS RELEVANCE TO CONTRACT LAW

Law of contacts deals with the matters of contracts. A contract is made when an agreement becomes enforceable by law. There is no legal obligation as long as its a mere agreement.

Once the agreement becomes contract there is a legal obligation by the parties involved.

Maxims are precise statements of general principles that apply to many situations and one can apply the maxims in contract law and relate to case law., This maxims help in understanding the contract law and these can be easily applied to the facts of the case .

There are some legal maxims relevant to contract law which are discussed below:

1. EX DOLO MALO NON ORITUR ACTIO

“Ex dolo malo non oritur actio” is a latin maxim that means “an action cannot arise from fraud “

This principle states that a person cannot claim a legal right or file a legal claim based on his own fraudulent or wrongful conduct. Thus, one cannot take advantage of their own wrongdoing to gain legal benefits or reliefs. It is a fundamental concept in many legal systems as this maxim prevents unfairness and maintain integrity in legal proceedings.

Case law-

In Abdula Sahib vs Guruvappa and co. 1943 (SCC ONLINE MAD 265) the Madras High Court says that “no court will lend its aid to a man whose cause of action is immoral or an illegal act”. It was further held that the plaintiff will be denied the court assistance, because he himself has committed a fraud.

2. EX NUDO PACTO NON ORITUR ACTIO

Ex undo non oritur actio is a latin maxim that says “a bare promise without consideration cannot be enforced.”

This maxim states that a contact without consideration is a invalid contract , and when something of value is promised

there should be something useful in return but if it is something else it cannot be enforced by law.

The concept of consideration is very essential in contract law and if there no proper consideration the contract is void.

CASE LAW

In the case of S.Parameshwari v. Balasubramanian 3, the Court held that a contract without consideration cannot give rise to legal action.³

3. CAVEAT EMPTOR

Caveat emptor is the Latin phrase that says “ let the buyer beware”.

The buyer should be aware of the products and research about the product before purchasing it and the seller is not responsible after the product being purchased

CASE LAW –

In Shital Kumar Saini vs. Satvir Singh, (2005) 1 CPR 401 a compressor purchased with a one year warranty had a defect in three months when the buyer asked for replacement, the needful was done by the seller it was reasonable because there was a implied warranty in this case.

In Ranbirsingh Shankaesingh Thakur vs Hindustan general electric corporation ltd, (AIR 1971 BOMBAY 97)

The buyer wanted to buy specific goods and he impliedly made the purpose known to the seller and the seller sold the goods irrespective of whether he is the actual producer or not.

4. RESPONDEAT SUPERIOR

MEANING – let the master answer.

An employer or the principal is legally liable for the wrongdoing of an employee or agent.

The employer is liable for the negligent acts of the agent within the scope of their employment.

Case law –Savitha Garg vs. The Director, National Heart

Institute (AIR 2004 SUPREME COURT 5088).

In this case the Supreme Court held that the hospital is the principal party which is responsible for the actions of agents such as doctors and any negligence on their part the hospital will be liable.

MORRIS V. C.W.MARTIN &SONS (1966) 1 QB 716

In this case their servant, Morrisey who was responsible for cleaning the coat, instead stole it. Now the owner or master of the company was held to be liable for his action. But if the goods were in the possession of the owner he would not be liable but it was under the control of the servant so the owner of the company would be liable for it.

5. QUI FACIT PER ALIUM FACIT PER SE

Meaning – he who acts through another does the act himself.

It is a fundamental legal maxim of the law of agency. It is a maxim often stated in discussing the liability of employer for the act of employee in terms of vicarious liability.

Case law

Deo Narain a Rai and Anr. Vs Kukur Bind and Ors., 1902.SCC ONLINE ALL 5

The appellants filed a complaint against the respondent, Mr Kukur Bind, seeking recovery of an amount of Rs 381 and possession of certain mortgaged property based on a mortgage deed dated August 25, 1896.

However, it was noted that Mr Kukur Bind did not sign the deed, and his signature was not visible. Instead, a patwari named Shiunaudan Lal had signed on his behalf. It was revealed that Mr Kukur Bind was illiterate and unable to write his own name, and thus he had allowed the

patwari to sign on his behalf.

The Court held that the signature of other person can be considered as the mortgaged owner's signature and used this maxim to conclude the above case.

6. DELEGATES NON POTES DELEGARE

Meaning - the rule that a person to whom a power, trust or authority is given should perform it. The person cannot delegate this obligation to anyone unless expressly authorised to do so.

Case law –State v. Kunj Bihali Chandra and others (1937 SCC ONLINE PAT 215)

In this case, the Patna High Court on the basis of the maxim 'delegate non potest' held that the legislative power lies exclusively with the legislature and that the legislature therefore cannot surrender power and consequently any such thing done would be void.

7. QUID PRO QUO

MEANING – A favour or advantage granted in return of something.

In a general sense, the meaning of quid pro quo is a consideration, something in return for something and such consideration makes both the parties form a valid contract.

Case law

Further in *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd* (SCC pp 434-35, para 23) held that 'there is no quid pro quo between the tax payer and the public authority. It is a part essentially for services rendered and there must be an element of quid pro quo between the person who pays it and the public authority.

8. ACTIO PERSONALIS MORITUR CUM PERSONA

Meaning - 'a personal right of action dies with the person'

In simpler terms when a person dies, their personal rights and legal claims also dies with them. The general rule is that all the legal duties end with the death of a person but some cases of defamation, assault and personal damages have exception., This means that even after the person is dead someone else can represent him for claiming his legal rights or anyone take legal action against them.

Case law-

Hambly v. Trott (1776) 98 E.R. 1136. – In this case the plaintiff sought to recover farm animals from the defendant death. The Court ruled that claims of trespass will be dismissed but actions on contracts will succeed.

9. VIGILANTIBUS NON DORMIENTIBUS JURA SUBVENIUNT

MEANING - The law assists only those who are vigilant people, and not those who sleep over their rights.

It states that the legal process will benefit people who are watchful on their rights and it will not benefit people who are ignorant.

Case law

Vanka Radhamanohari v. Vanka Venkata Reddy and Ors. (1993) 3 SCC 4.

The exception was made to this maxim and it was a criminal case of cruelty to a woman under section-498-A under IPC. The Court observed that this maxim would not be applicable to this case as it comes under the case of offence relating to cruelty against women.

10. QUI SENTIT COMMODUM DEBET ET

ONUS

MEANING - Literally this means that he who enjoys the benefit ought also to bear the burden he who enjoys the advantage of a right should also take the accompanying disadvantage.

Case law

Fazulbhoy jaffer v. The credit bank of India (1914)16 BOMLR 730. In this case the shareholder was a minor and wanted to withdraw his shares from the company and remove his name from the register.

CONCLUSION

The above few maxims are illustration as to how it can be used in the context of contract law and such maxims can also be used by the Courts to pass a fair judgement and render justice.

In conclusion, understanding of and effective use of legal maxims is a fundamental skill set for law students and legal professionals. Legal maxims provide a foundation or basic knowledge for law students. Legal maxims provide clarity in legal communication, and should be accurately applied in appropriate cases. Care should be taken by lawyers not to apply a wrong maxim for solving a case. The Supreme Court in *Rohit pulp & paper mills v. Collector*, AIR 1991 SC 754 held that maxims and precedents ought not to be mechanically applied and: they are of assistance in so far as they furnish guidance by compendiously summing up principles based on rules of common sense and logic. These maxims strengthen advocacy and legal arguments and should be used in an effective manner to solve legal issues.

¹Broom's legal maxims; 11th edition, universal law publishing co. 2011

²Shri. P Ramanatha aiyar, advanced law lexicon; 5th edition, lexis nexis, 2016

³S.Parameswari vs Balasubramanian on 26 November, 2008 (indiankanon.org)



1. **The chief elements necessary to constitute a crime are:**
 - (a) A human being
 - (b) An evil intent
 - (c) Injury to another human being or society
 - (d) All of the above

Answer is D.
2. **“Dealer” includes a person who is engaged:**
 - (a) In building bodies for attachment to chassis; or
 - (b) In the repair of motor vehicles; or
 - (c) In the business of hypothecation, leasing or hire-purchase of motor vehicle.
 - (d) All of the above

Answer is D.
3. **Under Section 25 of the Land Acquisition Act, the amount of compensation awarded by the court:**
 - (a) Shall not be less than the amount awarded by the Collector under Section 11
 - (b) Shall not be equal to the amount awarded by the Collector under Section 11
 - (c) Shall not be more than the amount awarded by the Collector under Section 11
 - (d) All of the above

Answer is A.
4. **The undertaking contained in a promissory note, to pay a certain sum of money is:**
 - (a) Conditional
 - (b) Unconditional
 - (c) May be conditional or unconditional depending upon the circumstances
 - (d) All of the above

Answer is B.
5. **Recently, in which case the Kerala High Court held that a University Grant Commission criterion which allowed certain relaxation in marks to reserved categories as violation of Article 16(1) of the Constitution:**
 - (a) Nair Service Society v. UGC, WP(C) No. 5190 of 2016 (W)
 - (b) CBSE v. UGC, WP(C) No. 5190 of 2016 (W)
 - (c) UGC v. State of Kerala, WP (C) No. 5190 of 2016 (W)
 - (d) UGC v. Secretary of State, WP(C) No. 5190 of 2016 (W)

Answer is A.
6. **In which of the following cases, it was said that “unless a right of appeal is clearly given by statute it does not exist”:**
 - (a) M/s Ram Narayan Pvt. Ltd. v. Trading Corporation Ltd., AIR 1983 SC 786
 - (b) Raja Himanshu Dhar Singh v. Addl. Registrar, AIR 1062 All 439
 - (c) Zair Hussain Khan v. Khurshed Jain, (1906) ILR 28 All 545
 - (d) Smt. Gangabai v. Vijaya Kumar, AIR 1974 SC 1126

Answer is C.
7. **Which of the following sections deals with the provisions relating to maximum period for which an undertrial prisoner can be detained:**
 - (a) 436
 - (b) 436A
 - (c) 437A
 - (d) 437

Answer is B.
8. **To make the criminal harmless by supplying him those things which he lacks and to cure him to those drawbacks which made him to commit crime is known as:**
 - (a) Expiatory or penance theory of punishment
 - (b) Deterrent theory or preventive theory of punishment
 - (c) Reformative or rehabilitative or corrective theory of punishment
 - (d) Retributive theory of punishment

Answer is C.
9. **Pakala Narayan Swami v. Emperor is a leading case on:**
 - (a) Dying Declaration
 - (b) Confession
 - (c) Accomplice
 - (d) Expert witness

Answer is A.
10. **Who are the partners in a bill of exchange?**
 - (a) Drawer & Drawee
 - (b) Payee
 - (c) Both (a) and (b)
 - (d) None of the above

Answer is C.
11. **Income which accrue or arise outside India but are directly received into India are taxable in case of:**
 - (a) Residents only
 - (b) Both ordinarily residents and non-resident
 - (c) Non-resident
 - (d) All the assesses

Answer is D.
12. **‘A’, a surgeon, knowing that a particular operation is likely to cause the death of ‘Z’, who suffers under a painful complaint, but not intending to cause Z’s death & intending in good faith Z’s benefit performs that operation of Z with Z’s consent. A has committed no offence. It is contained in:**
 - (a) Section 88 of the IPC
 - (b) Section 89 of the IPC
 - (c) Section 90 of the IPC
 - (d) Section 87 of the IPC

Answer is A.



REAL LAW SCHOOL PERSONAL STATEMENTS

QUADRUPLE-CHECK YOUR GRAMMAR

Our world changed forever, not just for Americans but for everyone, I am referring to when the United States (US) economy crashed in September 2008. In that time, I was beginning my religious studies at Columbia International University (CIU) in Columbia, SC. While I was a full-time seminarian, I was also working full-time as a Registered Nurse at Carolinas Medical Center in Charlotte, NC in a position that paid a per diem rate. At this point in my life I thought I was doing pretty well for myself, as I was 26 years old, a single woman, who was ambitious, driven, and had her 5-, 10-, and 15 year plan on cruise control. In addition, I was a homeowner in Charlotte, NC. As I was a residing in Charlotte, I was commuting back and forth to Columbia, SC for class which was almost a two hour drive each way.

Yet, this story had a major shift when in 2009; I had to leave my job due to lack of available hours. Then in 2011, I was unable to finish my seminary studies due to finances. On top of all that the stress of my economic situation began to take a toll on my health. Then in 2012, my home of 5 years was foreclosed on. At this point, I was 30 years old woman who had a promising future, but yet had lost everything I had worked hard for and saw as my trophies for all my achievements.

But in the end, all I had left was my faith, my education, and

my determination to not allow my life to be paralyzed by these extreme economic hardships. If it was not for the prayers and support of my family, I do not know how I would have made it through this tough time. For months, I kept replaying these experiences over in my mind in trying to figure out what mistakes did I make to get to this point, and if I did not make any mistakes then why did this have to happen to me. I did everything I could to prevent these horrible events from taking place. I used all my resources and educated myself to the best of my ability to prevent such events from taking place in my life.

But all with no avail, I had to come to the realization that I did lose it all and that there was nothing else I could do to have prevent it from happening or to have changed the course of events. When I did finally accept the fact, which took me a long time to do, I said I would use all that I went through to make me a stronger and wiser person. In addition, I believe I did not go through all these hardships for myself, but to be able to relate to others who have had such experiences or are experiencing very trying times in their own lives.

Since 2010, I had a growing, burning desire to go to law school but one thing after another made me doubt myself and my ability to achieve such a goal as law

school because of its extreme rigorousness and demanding academic commitment, more so than nursing school. Yet, even during my hardships, my desire to seek a career in the legal profession grew even more with further clarity about why I had to go through what I went through. I have always seen the importance of advocacy, but now I see it in a broader sense in that advocacy is not just about speaking up for others but having the passion and drive to fight for the rights of others at any cost.

Therefore, if my experiences have helped me to overcome the fear and doubt of accepting my fate in pursuing a career in the legal profession then in a bitter-sweet way it was worth it. These experiences will in turn make me a much more effective, efficient, compassionate, and dedicated professional in the legal field. In addition, I will be able to impact my community on a local, national, and global level.

I am determined now more than ever to move forward in seeking a legal education at Harvard Law School (HLS) for the school's history and reputation as well as its commitment to public service by providing legal aid to the local community, such as your past initiatives in assisting local residents with foreclosures. I have always been community oriented and I commend the school for making it a requirement for each student

to have a certain number of pro bono service hours to graduate from HLS. I cannot think of any other school that would prepare me for my future in the legal profession then at HLS. Therefore, I do hope that the Admissions Committee will see my passion and commitment in having to overcome many challenges and hardships to reach this decision in my life in wanting to become a lawyer.

JD MISSION REVIEW

Overall Lesson

In the climax of your essay (the big transition), avoid vagueness and use concrete language instead.

First Impression

The beginning of this essay is too dramatic. A better choice would be to say, "When the U.S. economy crashed in September 2008, I was beginning my religious studies at Columbia International University in Columbia, SC." As the essay continues, it feels very plot heavy-the candidate tells us what happened to her, but she does not really convey her thoughts about what was happening apart from "I thought I was doing pretty well for myself." In addition to being too informal, this statement does not describe what was going on in her mind. Why was she working full-time as a nurse while also

attending school full-time out of town? Why did she have a two-hour commute? Why was she not living in the city where she attended school or going to school in the city where she lived? We need to know the reasons behind her choices and to understand how her experiences affected her emotionally. She could share her insights by describing her hopes at that time and what she envisioned accomplishing in five years.

Strengths

The candidate comes across as 100% truthful. Her story is painful to read, and many Americans could probably relate to it. She also effectively illustrates her reasoning for wanting to attend law school: she lost her job and her house. She seems to have been without an advocate during her foreclosure, so now she wants to become a legal advocate for others. That is a powerful experience.

Weaknesses

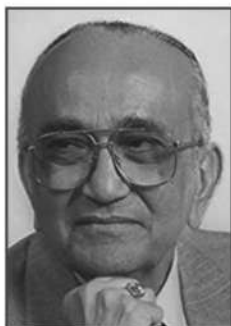
Before she describes the rough patch in her life, she needs to reflect more on the events leading up to it and share her emotional reality. Once the candidate presents her decision to attend law school, we need more concrete details. Did she in fact have a lawyer during her foreclosure? Why did she decide

not to resume her religious studies? She says that in 2009, her financial stress began to "take a toll" on her health, but she does not explain what that toll was. I am sure she has answers, but we need more concrete details about her story for this essay to feel complete.

Also, her grammar is problematic enough to be an obstacle for her as both a law student and a lawyer, but even before then as a law school applicant. Her essay contains numerous run-on sentences. In the short term, she should have someone with excellent grammatical skills line edit her work. In the long term, she should take a grammar class or invest in a grammar book. Although the work will likely be tedious and dull initially, she will ultimately learn the fundamentals, and doing so will serve her well for the rest of her life and career.

Final Assessment

I would advise this candidate to consider the questions I have posed in this review and then work the answers into her essay. She should then ask a trusted person to review it line by line and identify and discuss any grammatical problems he/she finds. She has a wonderful and powerful essay buried somewhere in here-she just needs to dig it out and polish it!



Remembrance

**Justice
P.N. Bhagwati**

on his 7th
Death Anniversary
17th June

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Legal Thesaurus

Hold the advantage:

It has been remarked that the words "hold the advantage" in Section 89, **Trusts Act** cannot be held to create at once an enforceable as distinguished from establishable trust in favour of the transferor. [*Rajah of Ramnad v. Arunachellam Chettiar*, 19 IC 596]. When a compromise is entered into as between persons one of whom could not have in

good faith believed in the claim put forward by him and the latter secures an undue advantage in derogation of the interests of another; such advantage must be deemed to be held in trust for the benefit of the person prejudiced or his representative and should be restored to the latter. [*Ovula Kondama Naicken Aiyar v. Aparanji Ammal*, 52 IC 1003]. An alienee in good faith and for consideration from the party who has secured

such advantage is not, however, affected by the infirmities affecting his alienor's title. [Ibid: see Section 96, **Trusts Act**]. The purchaser of an advantage gained by the exercise of undue influence with notice of its exercise or of the circumstances from which the court confers the equity, is subject to the same liability as his transferor. [*Bainbridge v. Browne*, (1881), 18 Ch D 188].



Elmer Gantry Sinclair Lewis 1927

This satirical novel rocked America in the late 1920s, and the name Elmer Gantry is still a byword for people who do not practice what they preach. It tells the story of a failed minister (Gantry) who becomes a traveling salesman in America's Midwest. When he meets Sister Sharon Falconer, a touring evangelist, he falls for her and becomes an integral part of her sermons, acting the part of a traveling

salesman who finds God. The ultimate hypocrite, Gantry goes on to make a fortune preaching a faith he does not believe in and attacking all the vices he does possess—adultery, alcohol, and avarice.

When Elmer Gantry came out in 1927, ministers called for it to be banned. The well-known evangelist Billy Sunday (who had appeared in one of Lewis's other novels as the Reverend Monday) called Lewis "Satan's cohort." The book was banned in Boston; Kansas City, Missouri; and elsewhere, and a copy was burned in Ohio. News of the bans fueled sales and the book became America's best-selling novel of the year

BANNED BOOKS

LEGAL WRITING *Tips*

Unique. Means "without like or equal." Hence, there can be no degrees of uniqueness.

It was the most unique coffee maker on the market.

The balancing act was very unique.

Of all the spiders, the one that lives in a bubble under water is the most unique.

It was a unique coffee maker.

The balancing act was unique.

Among spiders, the one that lives in a bubble under water is unique.

Utilize. Prefer use

I utilized the facilities.
He utilized the dishwasher.

I used the toilet.
He used the dishwasher.

Verbal. Sometimes means "word for word" and in this sense may refer to something expressed in writing. Oral (from Latin *os*, "mouth") limits the meaning to what is transmitted by speech. Oral agreement is more precise than verbal agreement.

Very. Use this word sparingly. Where emphasis is necessary, use words strong in themselves,



The Law of Law School

Rule 12

Read Hornbooks and Treatises

The casebook method of law teaching teaches you to study specific cases in the hope that you will distill the important principles and systemically organize them in your mind. A purist's approach to learning through cases will make the argument that the process of inductive reasoning from case to case is a superior way to learn the law.

Whether or not you choose this method, you should know that there are other methods of

understanding a legal subject. In fact, hornbooks and treatises have been written on any subject area you might study. Hornbooks are commercial summaries of the law, organized by subject and issue and helpful for distilling the core principles. Treatises involve academic summaries and commentary of the issues and all of the cases that touch on the legal issue. A complete treatise might dwarf in size your casebook because it attempts to canvass the entire subject on a

national scale.

On occasion, try reading hornbooks or treatises on 1 L subjects. These books can provide context to the cases. You can see the forest for the trees (as they say) and understand why your professor is so focused on that particular tree. You will understand the history, politics, and rationale and even learn where the law makes no sense. These books cannot replace case reading, but they can augment learning by providing a needed context.

YOU MADE YOUR CASE —The Art of Persuading Judges—

Substance of Argument Greet the court and, if necessary, introduce yourself

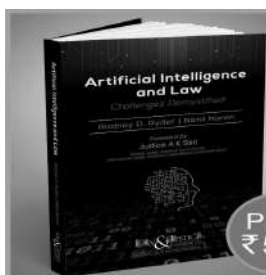
Make eye contact with the presiding judge and begin your presentation with whatever formulary introduction is customary in the court before which you're appearing. Typically it is "May it please the court." In the Supreme Court of

the United States, it is "Mr. Chief Justice, and may it please the Court."

If the court has called you forward by name, proceed at once to your argument. If the court has merely said something like "Counsel for the appellant may proceed," begin by introducing yourself:

"I am John Smith, representing the appellant, Paul Jones." Don't

waste time describing your client unless you have reason to believe that the court has not read the briefs. In the latter event, state briefly the business or office of your natural-person client if that is relevant to the case ("Mr. Jones is the sheriff of Maricopa County, New Mexico") or the state of incorporation and business of your corporate client ("Ajax is a Delaware corporation that manufactures paper clips")



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PEKING UNIVERSITY LAW SCHOOL

Peking University (PKU) Law School was officially inaugurated on June 26, 1999. Its precursor was the Law Department of Peking University, which was founded in the year of 1904, and therefore the institution with the longest history of modern legal education in China. In the 1952 “grand adjustment of law departments,” it was once merged into Beijing Politics and Law College. In 1954, During the “Cultural Revolution” (1966-76). PKU Law Department has developed rapidly for the past 30 years. It remains in the frontier of Chinese legal education, in terms of recruiting the most talented faculty, breaking the new grounds of research, cultivating outstanding students, and building and rebuilding China's legal system.

Academic Programmes

Undergraduate Program

The undergraduate program is a 4 year program. Students may apply for exchange programs in United States, Singapore, Australia, Japan and Korea to broaden their views and can also choose courses in politics, information, international relations, communication, and etc. Students may participate in a double major in economics, psychology, philosophy, art and mathematics, which provides a cross-discipline platform for comprehensive legal professionals. In addition, the program also provides a two-year degree of law in intellectual property for students in other majors in order to make students have a systematic understanding of law and intellectual property.

Master of Jurisprudence (for students without an LLB degree)

Peking University Law School is one of the first law schools in mainland China to have the degree of Master of Jurisprudence. The goal of the Master of Jurisprudence degree is to cultivate students with the following abilities: comprehend basic legal theories and handle relevant legal cases with interdisciplinary knowledge, become high-level legal professionals in legislature, judicial system, administration, legal service, legal supervision and social management. The Master of Jurisprudence is a 3 year program. It combines basic theoretical instruction with specialty focus, combines courses with practice, and combines foreign exchange program with internships. It



PEKING UNIVERSITY
SCHOOL OF TRANSNATIONAL LAW



is based on research centers and advocates cross-discipline integration.

Doctor Program

Peking University Law School has Ph.D. degrees in legal theories, legal history, constitution and administrative law, criminal law, civil law, litigation law, economics law, international law and environmental law. The goal of the Ph.D. degree is to cultivate students with following features: have overall legal knowledge structure and abilities to analyze emerging legal issues. The Ph.D. degree is a 4 year program (for Master-Doctor combined program graduate students, 3 years). Peking University strives to provide opportunities such as research programs and international exchange programs for Ph.D. students.

Law Library

The Law Library was established in 1954 with the reconstruction of the Department of Law at Peking University. At that time, the Library was known as the reference room, and it had only two staffs and held about six thousand volumes of books. In October 1997, it was renamed as the "Law Library" upon the approval at the Department Head Meeting.

The Law Library is not only a professional library with a rich collection of books and a

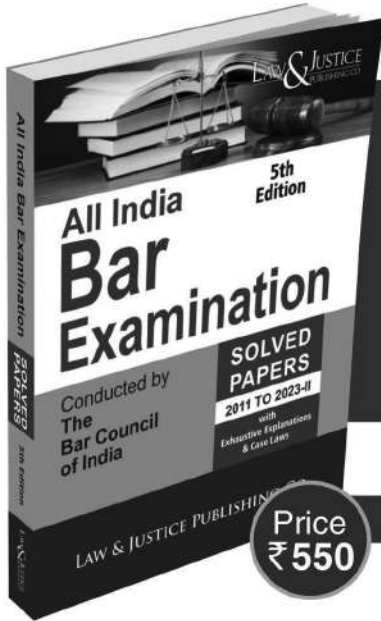
good academic atmosphere, but also serves as the Legal Documentation and Information Center of Peking University. The library occupies a total area of 1,100 square meters with four floors, where open stacks are managed in enclosed environment. Currently, the library has a staff of 12, including four professional librarians at mid to senior levels. There is a current periodical reading room, an electronic reading room, the Chinese stacks, the foreign language stacks and a reading room with books from Taiwan, Hong Kong and Macau. The collection amounts to over 85,000 volumes of books and nearly a thousand sheets of microfiche. Recent acquisitions of the library also include CDs, video tapes and materials in various new formats. The library's collection primarily consists of law books but also includes books on interdisciplinary subjects so that the library can provide academic, theoretical, systematic and integrated resources for the students. The Law Library is equipped with 62 computers, 3 photocopiers and 2 microfiche readers.

CONTACT

Peking University Law School
No.5 Yiheyuan Road,
Haidian District, Beijing
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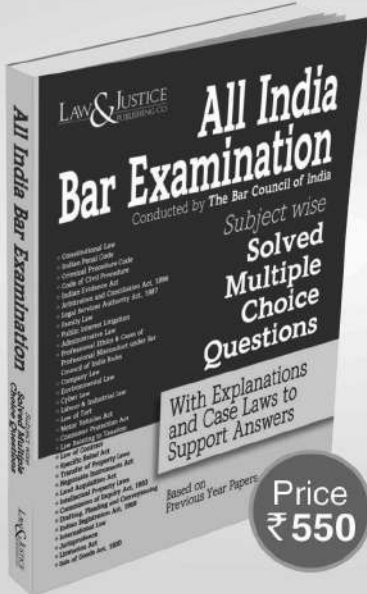
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v.

Union of India

AIR 2017 SC 4161: 2017 (10)

SCALE 1:

2017 (178) AIC 1: 2017 (10)

SCC 1

Decided on: 24-08-2017

Hon'ble Judges: J.S. Khehar,

CJI, J. Chelameswar, S.A.

Bobde, R.K. Aggarwal,

R.E Nariman, Abhay Manohar

Sapre, Dr. D.Y. Chandrachud,

Sanjay Kishan Kaul and S.

Abdul Nazeer, JJ.

Facts: Right to privacy has constitutionally protected value.

Issue: Whether privacy is a constitutionally protected value?

Held: (i) Decision in MP. Sharma case overruled which held that right to privacy is not protected by Constitution.

(ii) Decision in Kharak Singh overruled to extent that it held that Right to privacy is not

protected by Constitution.

(iii) Article 21 Right to privacy is protected as an intrinsic part of right to life and personal liberty and as a part of freedoms guaranteed by Part III of Constitution.

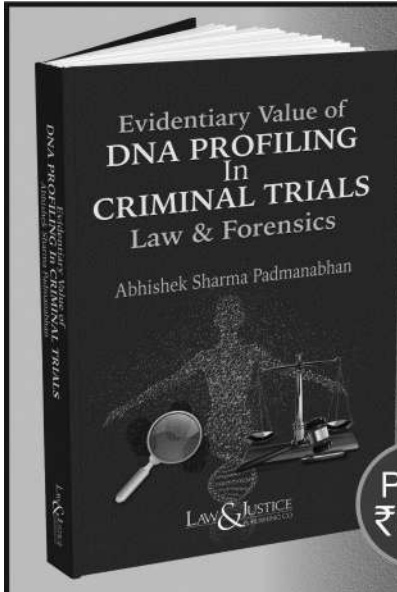
(iv) Subsequent to *Kharak Singh* decisions which enunciated the position in (iii) lay down correct position in law.

Majority view: J.S. Khehar, CJI, R.K. Aggarwal, Dr. D.Y. Chandrachud and S. Abdul Nazeer, JJ.

Privacy rights connote to be left alone. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes

the plurality and diversity of our culture. Like other rights which form part of the fundamental freedoms protected by Part III. including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure, which is fair just and reasonable. "Privacy has both positive and negative part. The negative part restrains the state from committing an intrusion upon the life and personal liberty of a citizen on the other side the positive part imposes an obligation on the state to take all necessary measures to protect the privacy of the individual."

Concurring view by J. Chelameswar, S.A. Bobde, R.E Nariman, A.M. Sapre, S.K. Kaul, JJ.



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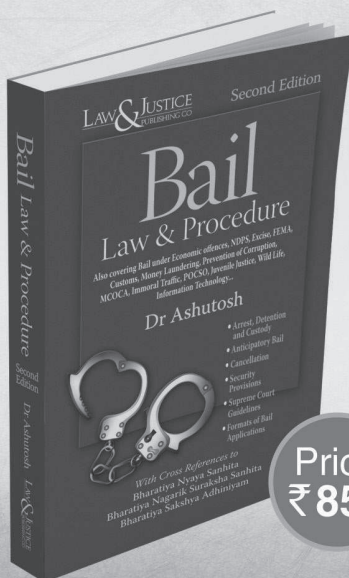
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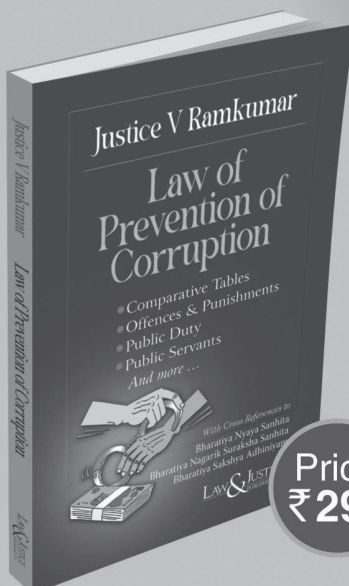
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Quick Referencer for Judicial Service

Q. 'B' holds land in Bihar on a lease granted by 'A', the landlord. The revenue payable by 'A' to the Government being in arrear, the land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. 'B' to prevent the sale pays to the Government the sum due from 'A'. Is 'A' bound to make good to 'B' the amount so paid?

*Delhi Judicial Service Exam. 199
Civil Services (I.A.S.) Exam.
1974, 1976*

*19th Bihar Judicial Service
Exam. 1979*

*West Bengal Judicial Service
Exam. 1999*

*U.P. Civil Services Main Exam.
1995*

Ans: Yes, 'A' is bound to make good to 'B' the amount paid by 'B' to the Government— **Section 69** (Reimbursement of person

paying money due by another, in payment of which he is interested).

Reasons: This problem is based on **Section 69** of Indian Contract Act which provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other."

In this problem 'B' is interested to pay money due as arrear to the Government to prevent the sale of land as well as its consequence which will result in annulment of B's lease, and also pays to the Government the sum due from 'A'.

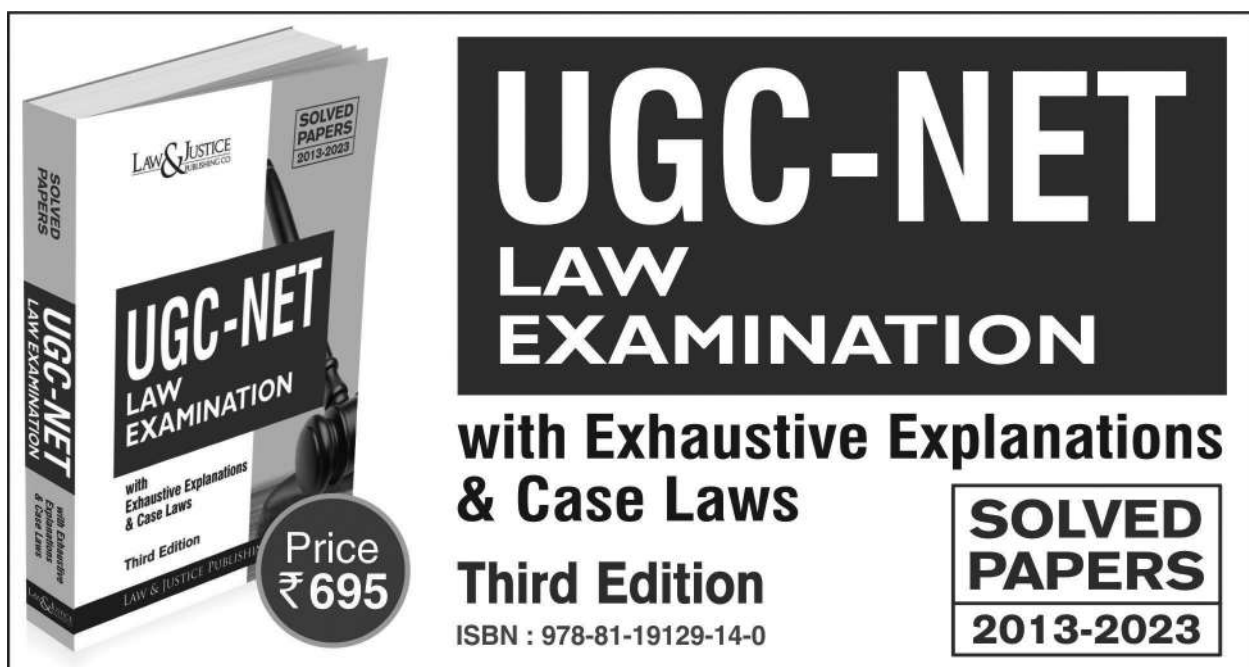
Thus, in this problem 'A' is bound to make good to 'B' the amount paid by him to the Government in view of the provision made in Section 69 of

Indian Contract Act.

Note: (1) See Illustration attached to **Section 69**

(2) It is notable that **Section 69** applies only when the plaintiff has made the payment to another person and not to himself. Thus, where a certain Government was the tenant of a land and paid to itself out of the rent due to the landlord the arrears of land revenue due to itself, the Government cannot recover from the landlord because it was a transfer of money from one head to another within the Government and not payment to another person and although it was done to save the land from being sold in execution yet it does not come within the ambit of Section 69—Secretary of State for India v. Fernandes, (1907) 30 Mad 375

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PASSAGE BASED MCQS – LEGAL REASONING

The Code of Criminal Procedure makes provision for the recording of confession by the Magistrate. When a person who is in police custody and is accused of a crime, repents and is inclined to confess his guilt, in such a situation the person is taken to the nearest Magistrate for the purpose of recording the confession by the Magistrate. Under Section 164 of Cr.PC any Metropolitan Magistrate or a First Class Magistrate is competent to record a confession made by the accused but however it also says that, the persons vested with executive magisterial powers are not competent to record the confessions. For example, the DOG, the Commissioner of Police who are vested with the executive magisterial powers are not competent to record confessional statements. Further Section 164 prescribes a procedure in order to ensure that the confession is free and voluntary, Para 2 of Section 164 says that the Magistrate must explain to the accused that he is not bound to make a confession and that if he chooses to make a confession it would be used in proceedings against him. It is the duty of the Magistrate to warn him. Further, it says, when an accused who is brought before the Magistrate to make a confession, is not willing to confess or refuses to make a confession then the Magistrate shall not authorize him to police custody but should authorize him to judicial custody. Otherwise the purpose of providing a safeguard

is defeated. It further says, when the Magistrate is fully convinced that the accused is making a voluntary confession then only he should record the confession and then add a footnote at the bottom that the accused has been explained that he is under no obligation to make a confession and that it will be proved against him. Finally, he adds: "I have every reason to believe that the confession is voluntary and this confession recorded was read out to the accused's reason to believe that the confession and found to be correct". Only when a confession is recorded in this manner by a Magistrate it can be proved.

Q.1. X was taken to the nearest magistrate to record his confession but decided against recording it. Choose the correct course of action for the magistrate.

- a. Send the accuse back to police custody
- b. Persuade him to record the confession
- c. Send him to judicial custody
- d. Any of the options A or C.

Answer: c

Q.2. The magistrate was not sure that whether the accused was under compulsion to record the confession or not. He asked him some questions to clarify and also told him about the consequences of his confession. What is the right course of action as a magistrate?

- a. Not record the confession if he is not convinced about the voluntary nature of the

confession.

- b. Record the confession after asking the questions from the police.

- c. Record the confession after asking the questions from the accused.

- d. None of the above.

Answer: a

Q.3. Which of the following is the duty of a magistrate while recording the confession?

- a. To explain to the accused that he is not bound to make a confession.

- b. The confession will be used in the proceedings against him.

- c. To ensure that no physical torture is done on the accused.

- d. Both A and B.

Answer: d

Q.4. Which of the following is attributable to the passage above?

- a. When a person who is in police custody and is accused of a crime, repents and is inclined to confess his guilt, in such a situation the person is taken to the nearest Magistrate for the purpose of recording the confession by the Magistrate.

- b. It is the duty of the police to warn the accused.

- c. "I have every reason to believe that the confession is voluntary and this confession recorded was read out to the accused's reason to believe that the confession and found to be correct". Only when a confession is recorded in this manner by a Magistrate can it be proved.

- d. Both A and C

Answer: d

Latest SUPREME COURT Judgments

DYING DECLARATION: PRINCIPLES

On 15 May, 2024, the Hon'ble Supreme Court in a case of *Rajendra S/O Ramdas Kolhe v. State of Maharashtra*, 2024 INSC 422, laid down the principles relating to dying declaration. Issue before the court was related to the dying declaration, *whether dying declaration can be the sole basis for conviction without any corroboration?*

I. Not an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

II. Every must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;

III. No general proposition that a dying declaration is a weaker kind of evidence than

other pieces of evidence;

IV. A dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;

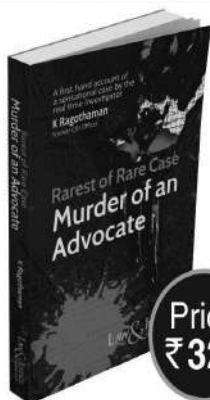
V. A dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;

VI. In order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.



Anshul Jain

Supreme Court: Law relating to dying declaration is now settled: *"Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction."*



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CONSTITUTION OF INDIA

Article 222

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.

222. Transfer of a Judge from one High Court to another.—(1) The President may, on the recommendation of the National Judicial Appointments Commission referred to in article 124A], transfer a Judge from one High Court to any other High Court.

(2) When a Judge has been or is so transferred, he shall, during the period he serves, after the commencement of the Constitution (Fifteenth Amendment) Act, 1963, as a Judge of the other High Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

The power under article 222 is to be exercised only exceptionally and in public interest, and where it becomes expedient and necessary in the public interest. Any transfer on the whims and caprices of the executive or not in public interest can be challenged in court as being ultra vires or without jurisdiction. Also, no transfer can be made without consulting the Chief Justice of India. Consultation does not mean concurrence, but there must be full deliberation and all the facts and documents must be considered. But article 222 does not require consent of a judge

to transfer from one to another High Court.

Transfer must be (i) only in public (national) interest and (ii) after effective consultation with the Chief Justice of India. Consultation or deliberation is not complete until the parties make their points of view known to the other or others and discuss and examine the relative point of their views.

The power vested under article 222 can only be exercised in “public interest”. The concept of “public interest” when read in article 222 makes it obligatory that the views of the Chief Justice of India are accepted by the executive. Proposal for transfer should be initiated by the Chief Justice of India alone. A transfer made (i) in public interest, (ii) on the recommendations of the Chief Justice of India cannot be treated as punitive or an erosion in the independence of Judiciary and is not justiciable.

The power of transfer can be exercised only in ‘public interest’ i.e., for promoting better administration of justice throughout the country. There is a clear provision for transfer in article 222 and transfer in accordance with the recommendation of the Chief Justice of India cannot be treated as punitive or an erosion in the independence of judiciary. There is nothing in article 222 to require the consent of a Judge/ Chief Justice for his first or even



Dr Subhash C Kashyap

a subsequent transfer.

Care must be taken to ensure that no Chief Justice is transferred without simultaneous appointment of his successor-in-office, and ordinarily the acting arrangement should not exceed one month. It may be desirable to transfer in advance the senior most Judge due for appointment as Chief Justice to the High Court where he is likely to be appointed Chief Justice, to enable him to take over as Chief Justice as soon as the vacancy arises and, in the meantime, acquaint himself with the new High Court. This would ensure a smooth transition without any gap in filling the office of Chief Justice.

In the formation of opinion, the Chief Justice of India, in case of transfer of a Judge other than the Chief Justice, is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred, any Judge of the Supreme Court whose opinion may be of significance in that case, as well as the views of at least one other senior Chief Justice of a High Court, or any other person whose views are

considered relevant by the Chief Justice of India.

Exercise of power of transfer under article 222 of the Constitution is to subserve a public purpose and to promote 'public interest' for better administration of justice. The guideline of public interest, i.e., 'for promoting better administration of justice throughout the country' is sufficient guideline for proper exercise of the power and to ensure exclusion of the possibility of any arbitrariness in the exercise of power of transfer under article 222 in accordance with the recommendation of the Chief Justice of India. The provision requiring exercise of this power by the President only after consultation with the Chief Justice of India, and the absence of the requirement of consultation with any other functionary, is clearly indicative of the determinative nature, not mere primacy, of the Chief Justice of India's opinion in this matter. This does not exclude judicial review but merely limits the area of justiciability to the constitutional requirement of recommendation of the Chief Justice of India for exercise of power under article 222 by the President of India.

Judicial review is necessary to check arbitrariness. But as to locus standi, only the judge who

is transferred can challenge it.

Before recommending the transfer of a Judge of one High Court to another as a judge, the Chief Justice of India must consult a plurality of Judges. He must consider the views of: (i) the Chief Justice of the High Court from which the Judge is to be transferred; (ii) any Judge of the Supreme Court whose opinion may have significance in the case; (iii) the Chief Justice of the High Court to which the transfer is to be affected. All these views along with the response of the judge to be transferred are to be expressed in writing and should be considered by a collegium consisting of the Chief Justice and the four senior-most judges of the Supreme Court before reaching a conclusion on the proposal and conveying it to the Government of India along with the proposal for transfer. Unless the decision to transfer has been taken in the manner aforesaid, it is not decisive and does not bind the Government of India.

Before recommending the transfer of a puisne Judge of one High Court to another High Court, also as a puisne Judge, the Chief Justice of India must consult a plurality of Judges and he must take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred, any Judge of the Supreme Court whose opinion

may have significance in the case and at least one other senior Chief Justice of a High Court or any other person whose views he considers relevant. The views of the Chief Justice of the High Court from which the proposed transfer is to be affected as also the Chief Justice of the High Court to which the transfer is to be affected should be expressed in writing and should be considered by the Chief Justice of India and four senior most puisne Judges of the Supreme Court. These views and those of each of the four senior-most puisne Judges should be conveyed to the Government of India along with the proposal of transfer. Unless the decision to transfer has been taken in the manner aforesaid it is not decisive and does not bind the Government of India. The opinion of the Chief Justice of the High Court or the puisne Judge proposed to be transferred should be placed before the collegium of Chief Justice of India and his first four puisne Judges to be considered by them before reaching a final and conclusive decision on the proposal. This principle applies equally to the transfer of a Chief Justice of one High Court to another except that, only the views of one or more knowledgeable Supreme Court Judges need to be considered

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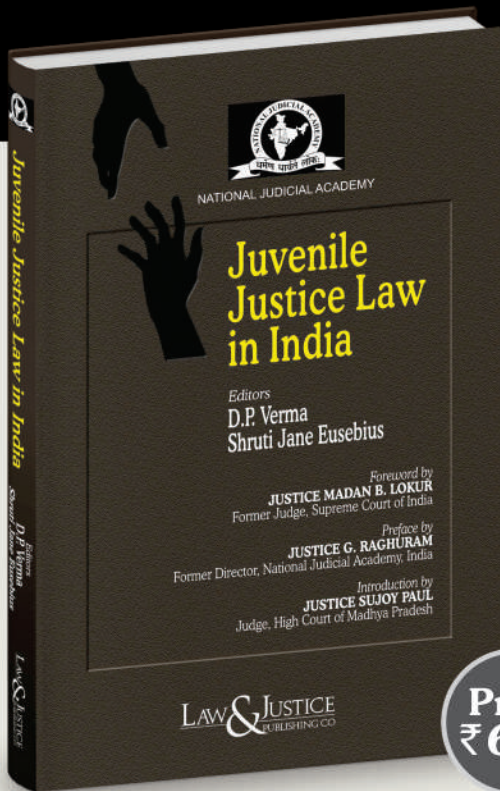
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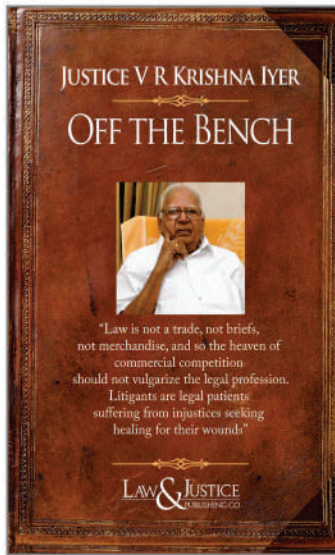
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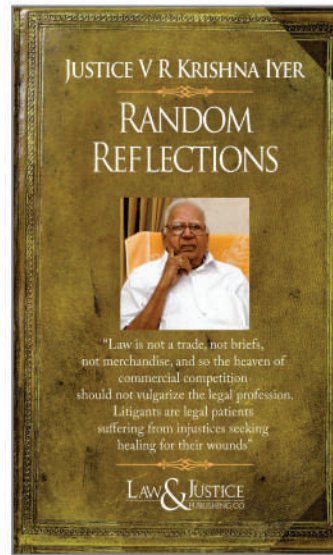
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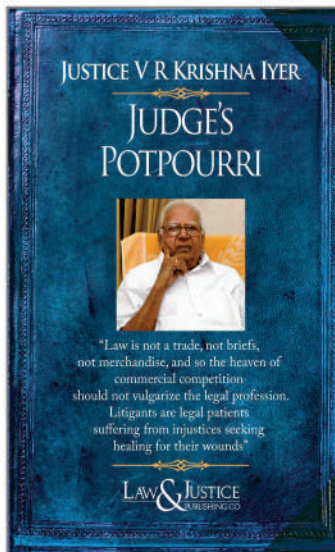
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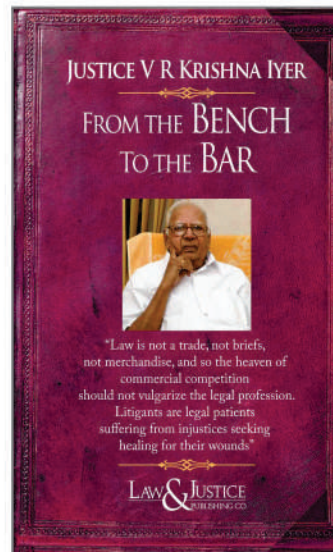
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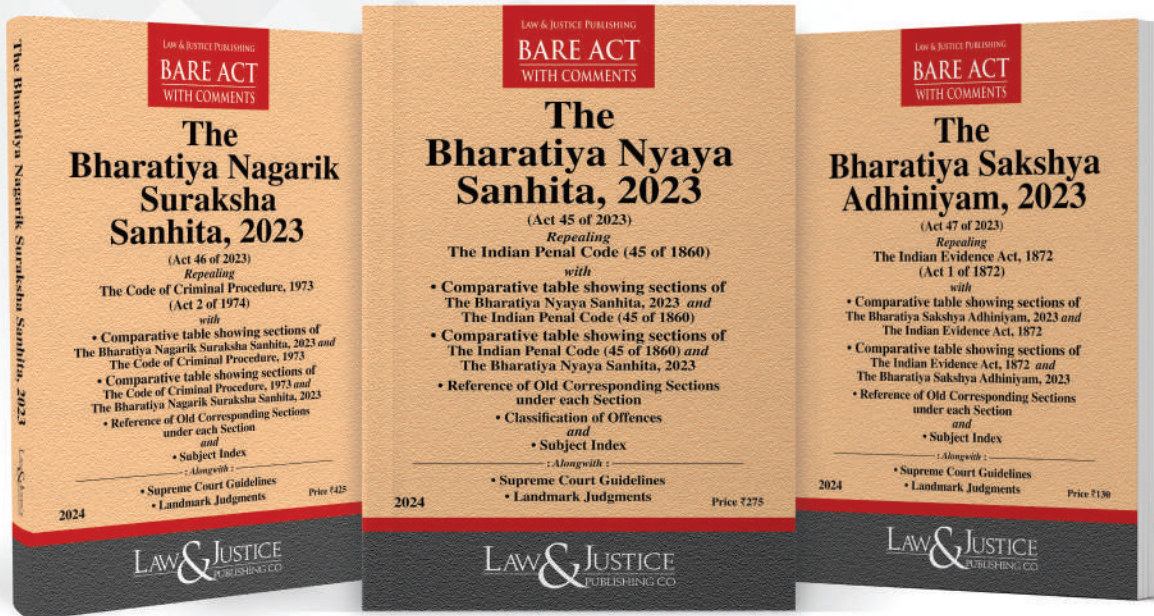
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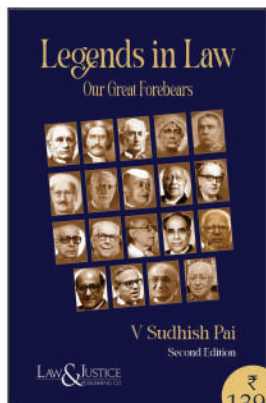


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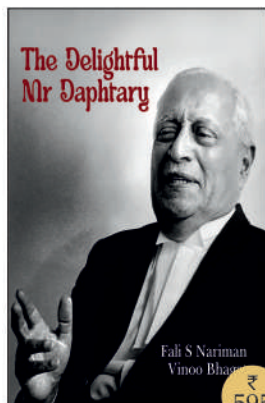
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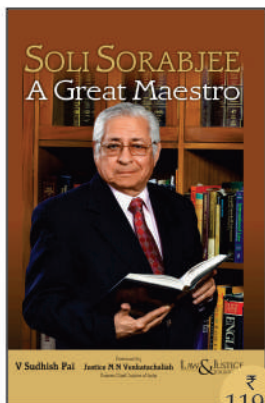
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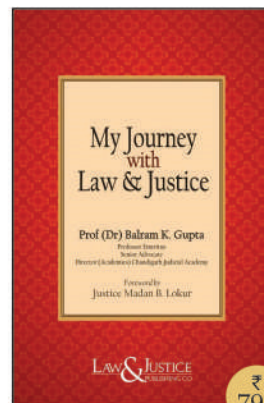
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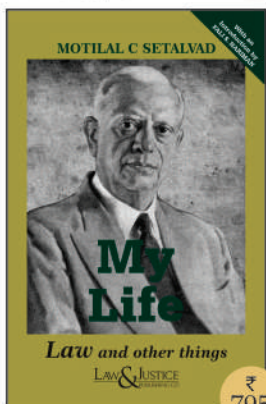
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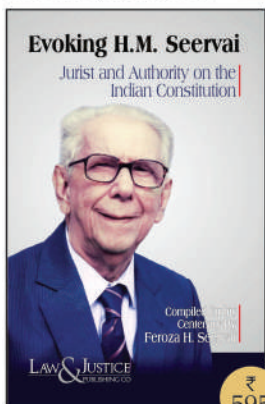
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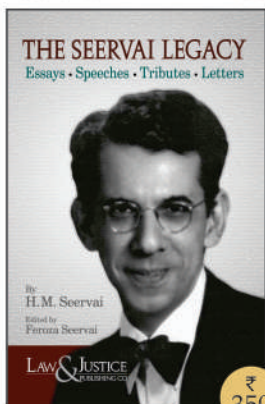
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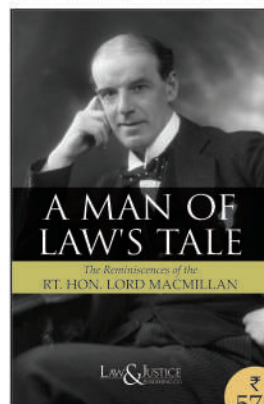
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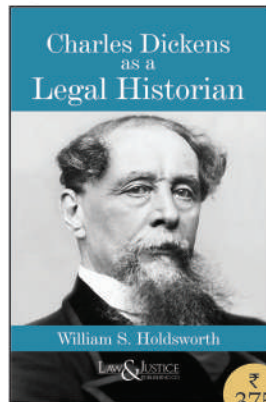
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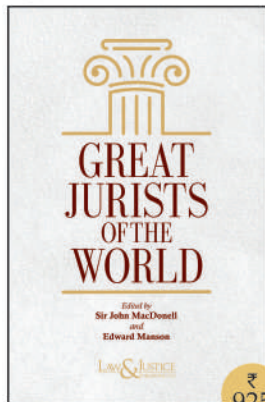
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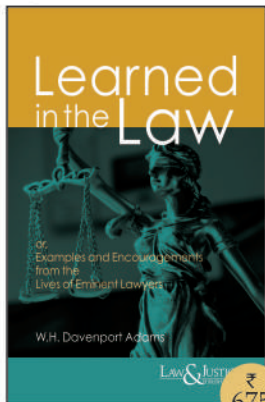
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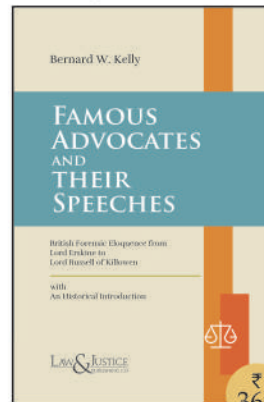
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