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ILI Newsletter

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Editorial

The reform in legal education has been a matter of utmost priority for the Government and has been on its agenda for quite a long time. Towards this end timely initiatives were taken by the Government which culminated in the drafting of an effective education policy which was released in its final form on 29 July, 2020 under the title of New Education Policy 2020(NEP). The NEP is the first education policy of the 21st century which seeks to adequately address and to accommodate the needs of developmental imperatives of the country. This Policy suggests extensive revision and revamping of all aspects of the education structure, including its regulation and governance in order to create a new system that is aligned with the aspirational goals of 21st century education. The NEP took note of the suggestions made under the Sustainable Development Goals (SDG4) which seek to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all" by 2030.The thrust of NEP is on the development of the creative potential of each individual. The NEP envisages an education system rooted in Indian culture, ethos and values which is dedicated towards building of vibrant knowledge society by imparting high quality of education to all. It also emphasizes that the curriculum and teaching method of educational institutions should be such that it has an enabling effect on the cultivation among the students a deep sense of respect towards the Fundamental Duties and Constitutional values. The core focus of the NEP regarding higher education is aimed at ending the fragmentation in higher education by transforming higher education institutions into large multidisciplinary universities, colleges, each of which will aim to admit 3,000 or more students. According to NEP, all higher education institutions (HEI) shall strive to become vibrant multidisciplinary institutions by 2040. The NEP clearly states that the Single stream HEI will be phased out over time. This may create a problem for the National Law universities engaged in exclusively offering law degree and any attempt to shift these national law schools from Stand-alone University to multidisciplinary institutions would certainly hurt the objectives of the law schools. Since legal and medical education has been kept out of the purview of the NEP, there is hope that the regulatory body would seriously consider the recommendations and find out an effective solution so that the present status of national law universities is not disturbed. The NEP proposes multiple exit options to a student enrolled in an undergraduate course with appropriate certifications. The regulatory body has to take necessary steps to introduce multiple exit options to a student in the legal education as well which is not available at present to law students. The NEP has renamed the Ministry of Human Resource Development (MHRD) as the Ministry of Education, which is a sign of the country's changing focus on education. After all, the objective of quality higher education must be facilitation of personal accomplishment, enlightenment and productive contribution to the society.

Manoj Kumar Sinha

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ACTIVITIES AT THE INSTITUTE

The Indian Law Institute hosted the following virtual Webinars for students and other participants.

❖ A talk was organized titled **"Perverse Economies of Intimate and Personal Labour: Resuming Domestic Work in Households after the Lockdown"** by Dr. Pooja Satyogi, Assistant *Professor,* the Centre for Law, Governance and Citizenship at Ambedkar University, Delhi on July 6, 2020. The talk followed by an interactive session delineated how formalities of social distancing and mask-wearing have begun to inflict intimate and personalised relationships in ways that entrenches existing hierarchies enabled by past practices. The talk tried to demonstrate the social phenomenon that the pandemic is thrusting on us. The programme was coordinated by Dr. Jyoti Dogra Sood, Associate Professor, ILI and Dr. Latika Vashist, Assistant Professor, ILI.

❖ Indian Law Institute organized One Day Webinar on " **"Research Metrics: - Impact Factor and h- Index"** on July 22, 2020 on Cisco Webex platform. The webinar is on Research metrics. The lecture discusses impact factor and h-Index as a useful index to measure the research output and impact. Eminent Guest Dr. Rajesh Singh, Professional Senior (Deputy Librarian) Electronic Resources & Training Division, University of Delhi, Delhi was the Resource Person of this webinar. This webinar is jointly coordinated by Mrs. Gunjan Jain, Assistant Librarian and Mr. Bhoopendra Singh, CSA, ILI.

❖ The Indian Law Institute organised a webinar on **"Changing Dimensions of Authorship in Copyright Law"** by Dr. Annamma Samuel Faculty of Law, G D Goenka University, Gurugram on July 23, 2020. The focus of the discussion was in today's digital world are we slowly departing from the concept of human authorship to the Artificial Intelligence systems taking its place as Author/creator of the work? The author vehemently discussed about the background of copyright law, and the criteria and basis for copyright protection, authorship and identification of lacunas in the act, Comparison of Indian law with UK and US etc. Discussion closed with question and answer round and thank you note by Dr.Jyoti D.Sood, Associate Professor, ILI. Arya.A.Kumar, Assistant Professor, ILI coordinated the programme.

❖ Film theory considers cinema as 'cultural unconscious' that is central in understanding the formation of the society. An online discussion on **"The Impossibility of Love in Meghna Gulzar's "Raazi"** was organised on July 24, 2020. The speaker Mr Amit Bindal , through the landscape of the much celebrated film 'Raazi' explored how masculine worldviews get couched in terms of (woman's) valour, agency and sacrifice. He discussed how such imagination forestalls all possibilities of cultivating and nurturing love. Ms. Avani Bansal delivered a lecture on the issue of **"Gender Mainstreaming: Have We Learnt the Lesson from the Pandemic?"** on July 28, 2020. The talk was followed by the question answers which discussed the gender dynamics and focused on the lessons that the pandemic taught us about shaping the home and work space divide – to move the discourse on gender from binaries to a more holistic approach. Mental well being is as important, if not more, as physical well being. The pandemic brought great uncertainties in our lives and many students as well as employees were dealing with issues of anxiety and stress. Dr Archana Krishna, holistic clinical and organisational psychologist was invited to discuss "**Mental Health Matters and Psychological Coping Strategies"** on July 30, 2020. The interactive session explored ways to manage anxiety and mental resilience in these stressful times. These programme were coordinated by Dr. Jyoti Dogra Sood, Associate Professor, ILI and Dr. Latika Vashist, Assistant Professor, ILI.

❖ The Indian Law Institute in collaboration with All India Lawyer's Forum (AILF) organised a webinar on "**Legal Education and Challenges in India**" on September 26, 2020. The Chief Guest of the programme was Hon'ble Justice Shri Surya Kant, Judge Supreme Court of India and other dignitaries Professor (Dr.) Manoj Kumar Sinha,

Director, ILI and Advocate Shri Vikas Verma, Co-Chairman, National Executive, AILF.

This was followed by a welcome note by Professor (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, New Delhi. In his note, Professor (Dr.) Manoj Kumar Sinha discussed numerous issues relating to the theme of the webinar and set the right tone for the webinar and announced the launch of special issue of ILILR and invited Chief Student Editor of ILILR to give brief insights about the working of ILILR.

Ms. Nivedita Chaudhary, the chief student editor, ILILR introduced the participants to ILI Law Review and also spoke about the special issue on COVID-19. This was followed by a formal introduction of the guest of honour, Hon'ble Justice Shri Surya Kant, Judge Supreme Court of India and invitation to address the audience by Advocate Shri Vikas Verma.

Hon'ble Justice Surya Kant began his speech with a brief introduction of the theme of the webinar by elaborating about the golden history of legal practices and enumerating about Gandhi, Nehru and Ambedkar. His lordship also emphasized on the role of the bar in the judiciary and highlighted the current problems within the legal education. His lordship also highlighted the importance of legal education and said that legal education is the process of legal sensitization and awareness to masses and that sound legal education is *sine qua non* for a prosperous legal fraternity. His lordship quoted the landmark case of *State of Maharasthra* v. *Manubhai,* AIR 1989 Bom 296 where the court laid down certain principles related to legal education, which are yet to be adopted by us.

In his address, His lordship put forth various pertinent recommendations and suggestions for the betterment of the legal education. The event came to an end with a thank note by Advocate Shri Vikas Verma, Co-Chairman, AILF.

AILIA ACTIVITIES

The Association of ILI Alumni (AILIA) celebrated the Teacher's day along with its Alma mater, the Indian Law Institute on September 5, 2020. Many legal luminaries joined the celebrations by marking their auspicious presence and sharing their experience at ILI. Eminent Personalities like Professor (Dr.) KNC Pillai, Former Director and Dean, ILI and National Judicial Academy, Professor (Dr.) MP Singh, Former Dean and Professor, ILI and Director – Centre for Comparative Law and Chairman of the Law School Doctoral Committee, JGLS, Dr. Kauser Edappagath, Principal District & Sessions Judge, Ernakulam and Alumni, ILI, Dr. G K Goswami, Joint Director, CBI and Alumni, ILI, Professor (Dr.) Manoj Kumar Sinha, Director ILI, were invited to enrich the young budding Lawyers, Advocates, Teachers and Students. The programme was convened by ILI Alumni Ms. Neema Noor Mohammed, Assistant Public Prosecutor, Mahila Court, Government of NCT of Delhi along with Ms. Megha Nagpal, Assistant Professor, Symbiosis Law School Noida and Ms. Tripti Arora Dohutia, Assistant Professor, School of Law, Ajeenkya D.Y Patil University, Pune.

Professor K.N.C Pillai recollected his memories of ILI days when ILI, through its intensive research approach and contribution, attained the status of Deemed University from a mere research institute and Professor MP Singh, former dean at ILI for a short tenure, started his address by appreciating the research culture and output of the Indian Law Institute. He shared some of his invaluable experiences as an academician. Professor Manoj Kumar Sinha, Director of ILI, another academician par excellence shared his experience at the Law Institute. Sir is an inspiring personality for thousands of law students, lawyers and law teachers due to his vast knowledge and simple and amicable personality.

The programme was coordinated by AILIA team including Mr. R. C Meena, Ms. Mini Srivastava, Mr. Amit Raj Agarwal, Ms. Surabhi Pandey, Mr. Puneet Singh Bindra, Mr. Shailendra Singh Nirmal, Ms. Drishti Jindal etc.

STATE UNIT ACTIVITIES

Colloquium on "Evolution of Due Process norm under American Law: Lessons for Indian Judiciary", March 6, 2020

The Kerala State Unit, ILI & Kerala High Court Advocates Association jointly organised a Colloquium on "**Evolution of Due Process norm under American Law: Lessons for Indian Judiciary**" in the High Court Auditorium on March 6, 2020.

From L-R, Prof. (Dr.) C. Rajkumar, Hon"ble Mrs. Justice Anu Sivaraman and Hon"ble Mr. Justice Matthew F. Cooper

The esteemed panellists included Hon"ble Mr. Justice Matthew F. Cooper, Judge, New York State Supreme Court, Hon"ble Mrs. Justice Anu Sivaraman, Judge, High Court of Kerala and Professor (Dr.) C. Rajkumar, Vice Chancellor, O.P Jindal Global University.

Hon'ble Mr. Justice Cooper addressing the audience

Hon'ble Mr. Justice Cooper elaborated on the 14th Amendment of the US Constitution, which contains the "**due process**" and "**equal protection**" clauses, and opined that it was necessary to expand the scope of basic rights to earlier disenfranchised people, how the due process clause has been used to expand the scope of rights on several issues including the rights against self-incrimination, reproductive autonomy and gay marriage. Hon'ble Mrs. Justice Anu Sivaraman, who moderated the panel discussion, opened the floor for an informed and enlightening discourse on the concept and applicability of "**due process**" in Indian judiciary. Professor (Dr.) Rajkumar opined that while the phrase "**procedure established by law**" was adopted instead of "due process" for practical reasons of expediency in the Indian Constitution, he observed that over the years, India has come to have a better appreciation of the "**due process**" clause. He also commented on how jurisprudential growth in India has been shaped by the Court's interpretations of Article 21 of the Constitution of India. The panellists unanimously put across the need for adopting a more nuanced, doctrinal approach in reinterpreting the law using Article 21 of the Constitution of India. Others who spoke at the event were Senior Advocate Ranjith Thampan, Additional Advocate General of Kerala and Advocate R.Lakshmi Narayan, President, Kerala High Court Advocates Association.

The State Unit of the Indian Law Institute jointly with Kerala Federation of Women Lawyers, organized Women's Day 2020 on March 9, 2020 at the Kerala High Court Auditorium. Hon'ble Sri. Justice S. Manikumar, Chief Justice, High Court of Kerala delivered the Women's Day message.

In his speech Hon'ble the Chief Justice made a clarion call for Gender and Generational Equality in tune with the UN Women's new multi-generational campaign. Smt. S.K.Devi, President, Kerala Federation of Women Lawyers delivered the

introductory address and Sri. R.Lakshmi Narayanan, President, Kerala High Court Advocates' Association offered felicitations. Women lawyers were honoured by Hon'ble Chief Justice for their exemplary achievements in social and legal spheres. This was followed by a deeply insightful panel discussion on the topic "**Enforcement of Women's rights: Challenges and Remedies**". The panellists were Hon'ble Smt.Justice K.K.Usha, Former Chief Justice of Kerala; Hon'ble Smt.Justice K.Hema, Former Judge, High Court of Kerala and Smt.Parvathi Menon, Advocate who also was the moderator of the discussion. The distinguished panellists deliberated on a constructive and thought provoking discussion touching upon the changing notions of Women Empowerment and how judiciary is the harbinger of equality and liberty in feminist jurisprudence. The panel discussion was followed by a Kuchipudi recital by Kumari Parvathy Menon, law student and daughter of lawyer parents.

PROJECT

Project on " Police System in India"

In India, the year 2019 -20 marks the 70th anniversary year of adoption of the Indian Constitution. On this occasion, it is important to review and analyse the working of Criminal Justice System in the country. The Government of India initiated some steps to revamp the criminal justice system. Police, the most visible face of the government, sets the wheels of Criminal Justice System in motion. It is, therefore, becomes important to study the Police system in India keeping the federal structure in mind. A group of academicians, practitioners, experts and researchers, along with Menon Institute of Legal Advocacy Training (MILAT) – a think tank - have started a project 'Police System in India'. This project will be published in book form with state-wise volume for all the States and Union Territories as well as the central police organizations (separately about 35 volumes by 2021). It is expected that the data and findings in this project report will contribute to a better understanding of the priority areas in policing while focusing on greater public welfare.

The project is undertaken by MILAT - Menon Institute of Legal Advocacy and Training and Thomson Reuters along with Indian Law Institute and more than 30 premier legal institutions in the country and a sum of Rupees One Crore has been marked towards the implementation of Project and publication of the Project Report.

Prof. (Dr.) S Sivakumar, Professor, ILI is the Project Director.

ACADEMIC ACTIVITIES

Admission for the Academic Session: 2020-21

The admission process for Ph.D., LL.M. (One Year) and Post Graduate Diploma Programmes of one year duration in Alternative Dispute Resolution (ADR), Corporate Laws and Management (CLM), Cyber Laws (CL) and Intellectual Property Laws (IPRL) started on July 20, 2020. The last date for submission of Ph.D. and LL.M.(One Year) form was on August 19, 2020 and Post Graduate Diploma Courses was on September 19, 2020.

EXAMINATIONS

Post Graduate Diploma Annual Examination-2020

The Annual examinations of Post Graduate Courses for the academic session 2019-2020 were held during August 18, 2020 to September 12, 2020.

Semester End Examination- 2020

The Semester-End-Examinations for LL.M 1year (2nd Semester) for the academic session 2019-20 were held during August 21, 2020 to August 31, 2020. The Dissertation Vivas were conducted on September 30, 2020.

Ph.D: Coursework Examination

The Ph.D Coursework examination 2020 were conducted from September 2-10, 2020.

MEETINGS

BOARD OF STUDIES (BOS) & INTERNAL QUALITY ASSURANCE CELL (IQAC) COMMITTEE

Board of Studies (BOS) and Internal Quality Assurance Cell (IQAC) Meetings were held on August 11, 2020 under the chairmanship of Professor (Dr.) Manoj Kumar Sinha, Director, ILI.

RESEARCH PUBLICATIONS

Released Publications

- *Journal of Indian Law Institute* **(JILI)** Vol 62(2)(April –June,2020)
- *ILI Newsletter* vol XXII, Issue II, (April-June, 2020).

Forthcoming Publications

- *ILI Newsletter* Vol XXII, Issue IV, (October -December,2020).
- Book titled *Human Rights of Vulnerable Groups: National and International Perspectives* by Professor (Dr.) Manoj Kumar Sinha and Arya A. Kumar

Faculty Publications

- Professor (Dr.) S. Sivakumar along with Professor (Dr.) G. Kameswari, former Professor, Indian Law Institute have authored a book titled "Article 21: The Code of Life, Liberty and Dignity in the Indian Constitution". The book is commemorative volume of "70 years of working of Indian Constitution". Thomson Reuters (A division of Newgen Digital Works Pvt. Ltd.) published this work.

E-LEARNING COURSESS

Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E-Learning courses of three months duration on **"Cyber Law"** (36th batch) and "**Intellectual Property Rights and IT in the Internet Age" (**47th batch) was completed on September 22, 2020.

FORTHCOMING EVENTS

The Indian Law Institute will organize the following webinars:

- National webinar on "International Humanitarian Law: Issues and Challenges" on October 02, 2020.
- Association of Indian Law Institute Alumni (AILIA) will organize a webinar on "Relevance of Gandhian Precepts in Articulating Resistance" on October 03, 2020.
- National webinar on "Environmental Law: National and international Perspectives" on October 04, 2020.
- National webinar on "National Education Policy, 2020: Higher Education" on October 18, 2020.
- National Webinar on "The 20th Anniversary of UN Security Council Resolution" on October 29, 2020.

LEGISLATIVE TRENDS

Insolvency and Bankruptcy Code (Second amendment) act, 2020

(Act no 18 of 2020, enacted on September 23, 2020)

The Act was enacted to amend the Insolvency and Bankruptcy Code, 2016. The amended Act inserted a new section 10 A which provides for the suspension of initiation of corporate insolvency resolution process. In section 66 of the principal Act after subsection 2 subsection 3 and 2 are inserted. The Insolvency and Bankruptcy Code (Amendment Ordinance), 2020 was also repealed.

Essential Commodities (Amendment) Act, 2020

(Act no 22 of 2020, enacted on September 23, 2020)

The Act was enacted to amend the Essential Commodities Act, 1955. The amended law provides that the Union Government can regulate the supply of certain foodstuffs including cereals, pulses, potato, onions, edible oilseeds, and oils, only under extraordinary circumstances which include war, famine, extraordinary price rise and natural calamity of grave nature.

Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020

(Act no 20 of 2020, enacted on September 23, 2020)

The Act was enacted to provide for a national framework on farming agreements that protects and empowers farmers to engage with agri-business firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner.

Farmers Produce Trade and Commerce (Promotion and Facilitation) Act, 2020

(Act no 21 of 2020, enacted on September 24, 2020)

The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 is an act of the Indian Government that permits intra-state and inter-state trade of farmers' produce beyond the physical premises of **Agricultural Produce Market Committee** (APMC) **market yards** (mandis) and other markets notified under state APMC Acts. It was enacted to provide for the creation of an ecosystem where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers' produce which facilitates remunerative prices through competitive alternative trading channels; to promote efficient, transparent and barrier-free inter-State and intra-State trade and commerce of farmers' produce outside the physical premises of markets or deemed markets notified under various State agricultural produce market legislations; to provide a facilitative framework for electronic trading.

Companies (Amendment) Act, 2020

(Act No. 33 of 2020, enacted on September 28, 2020)

Decriminalisation of the Companies Act and lightening rigour of penalties are the main features of the Amendment Act. Besides relaxation of CSR law, remuneration to non-executive directors in case of inadequate profits, producer companies, periodic financial results by non-listed companies, etc. has been provided. It removes the imprisonment for various offenses and substitutes fine by penalty in and reduces amount of payable as penalty across the board. In certain minor omissions, etc. penal consequence has been omitted.

Indian Institutes of Information Technology Laws (Amendment) Act, 2020

(Act No 28 of 2020 enacted on September 22, 2020)

The Indian Institutes of Information Technology Laws (Amendment) Act, 2020 amended the principal acts of 2014 and 2017. It declared five IIITs in Public-Private Partnership mode at Surat, Bhopal, Bhagalpur, Agartala & Raichur as Institutions of National Importance by granting them statutory status along with the already existing 15 IIITs under the IIIT (PPP) Act, 2017. The IIIT Laws (Amendment) Act, 2020 entitled the institutions to use the nomenclature of Bachelor of

Technology (B.Tech) or Master of Technology (M.Tech) or PhD degree as issued by a University or Institution of National Importance. The Act also enabled the Institutes to attract enough students required to develop a strong research base in the country in the field of Information Technology.

Epidemic Diseases (Amendment) Act, 2020

(Act No 34 of 2020, enacted on September 29, 2020)

The Act was enacted to amend the Epidemic Diseases Act, 1897, which shall be deemed to have come into force on the 22nd day of April, 2020. The Amendment Act essentially introduced provisions that criminalise and punish any attack on healthcare professionals or their property. It specifically identifies (i) public and clinical healthcare providers such as doctors and nurses, (ii) any person empowered under the Act to take measures to prevent the outbreak of the disease, and (iii) other persons designated as such by the state government.

LEGAL JOTTINGS

It is sufficient to prove attestation of one attesting witness to be in his handwriting when both attesting witnesses are dead

Explaining the requirement under Section 69 of the Evidence Act pertinent to Section 68 of the Evidence Act that the attestation by both the witnesses is to be proved by examining at least one attesting witness, the bench of SK Kaul and KM Joseph, JJ has held **if the signature of the person executing the document is proved to be in his handwriting, then attestation of one attesting witness is to be proved to be in his handwriting**.

The issues arose in this case were:

- Is it still the requirement of law when both the attesting witnesses are dead that: under Section 69 of the Evidence Act, the attestation as required under Section 63 of the Indian Succession Act, viz., attestation by the two witnesses has to be proved?
- Or is it sufficient to prove that the attestation of at least one attesting witness is in his handwriting, which is the literal command of Section 69 of the Evidence Act apart from proving the latter limb?

The Court observed that in a case covered under Section 69 of the Evidence Act, the requirement pertinent to Section 68 of the Evidence Act that the attestation by both the witnesses is to be proved by examining at least one attesting witness is dispensed with. The Court held that, in a case covered under Section 69 of the Evidence Act, what is to be proved as far as the attesting witness is concerned, is, that the attestation of one of the attesting witness is in his handwriting. The language of the Section is clear and unambiguous. Section 68 of the Evidence Act, as interpreted by this Court, contemplates attestation of both attesting witnesses to be proved. But that is not the requirement in Section 69 of the Evidence Act.

The Court further said that Section 69 of the Evidence Act manifests a departure from the requirement embodied in Section 68 of the Evidence Act. In the case of a Will, which is required to be executed in the mode provided in Section 63 of the Indian Succession Act, when there is an attesting witness available, the Will is to be proved by examining him. He must not only prove that the attestation was done by him but he must also prove the attestation by the other attesting witness.

On the limits on power of a Hindu to execute a will and effect of section 30 of the Hindu Succession Act, 1956, the Court explained that under Mitkashara Law, a Hindu could bequeath his separate and self-acquired properties even prior to the Hindu Succession Act being enacted. A Hindu being a member of the joint family could also possess his separate properties which are of various kinds. They include obstructed heritage which is

property inherited by a Hindu from another who is a person other than his father, father's father or great grandfather, Government grant, income of separate property, all acquisitions by means of learning. A Hindu could execute a will bequeathing his separate and self acquired property. As regards his authority to execute a will concerning his interest in the property of the joint family of which he is a coparcener, the law did not permit such an exercise.

The Court further stated n the case of property of the joint family as long as the property is joint, the right of the coparcener can be described as an interest.

"as long as the family remains joint, a coparcener or even a person who is entitled to share when there is a partition cannot predicate or describe his right in terms of his share. The share remains shrouded and emerges only with division in title or status in the joint family. Once there is a division the share of a coparcener is laid bare."

Further, *after the passage of the Hindu Succession Act even without there being a partition in the sense of a declaration communicated by one coparcener to another to bring about the division it is open to a Hindu to bequeath his interest in the joint family*.

"In other words, the words "interest in coparcenary property" can be predicated only when there is a joint family which is in tact in status and not when there is a partition in the sense of there being a disruption in status in the family. Thus, the right of a Hindu in the coparcenary joint family is an interest. Upon disruption or division, it assumes the form of a definite share. When there is a metes and bounds partition then the share translates into absolute rights qua specific properties."

On the impact of the Hindu Women's Right to Property Act, 1937, the court explained that Section 3(2) of the 1937 Act contemplates the situation, where, at the time when the Hindu dies after the enactment of the Act in 1937 (it came into force on 14th April, 1937 and it was repealed by Section 31 of the Hindu Succession Act 1956), in order that the widow acquires the same interest as her husband had under Section 3(2), the Hindu must die when he is not separated from the joint property.

(*V. Kalyanaswamy (D)* v. *L. Bakthavatsalam (D)*, 2020 SCC OnLine SC 584 , decided on July 17, 2020)

One Nation One Education Board| Court refuses to entertain PIL; Says it's not the function of the Court

The apex court has refused to entertain a public interest litigation seeking directions for uniform education with a common syllabus and curriculum for all children aged between 6-14 years across the country. The Court was hearing the PIL suggesting to opt "one nation one education board", the petition had also sought directions from the court to merge the Indian Certificate of Secondary Education (ICSE) and the Central Board of Secondary Education (CBSE). Petitioner argued that the reliefs which have been claimed are founded on the provisions of Article 21A of the Constitution and on the Right of Children to Free and Compulsory Education Act 2009. The Court was, however, of the opinion that it is not within the domain of this Court under Article 32 of the Constitution to direct the constitution of a National Education Council or National Education Commission.

"These are matters which fall within the domain of experts. Similarly, the relief which has been of introducing a "standard textbook with a chapter on the Constitution" is a matter of policy. The school syllabus contains subjects bearing on the knowledge of rights, duties and governance under the Constitution."

Asking the petitioner to approach the Government with his prayer, the Court said,

"The petition lays no foundation or justiciable basis for the Court to issue directions of this nature. … This is nothing but an effort to confer legitimacy on the petitioner's attempt to enter into an area of educational policy."

The ICSE and the CBSE are national-level boards of education in the country for schools.

(*Ashwini Kumar Upadhyay* v. *Union of India*, 2020 SCC OnLine SC 580 decided on August 17, 2020)

Accused cannot be acquitted merely because investigating officer is the complainant

NDPS Act is a Special Act with the special purpose and with special provisions including Section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made there under shall be compelled to say from where he got any information as to the commission of any offence.

In this case, the apex court has finally settled a long drawn issue by ruling that a person accused for an offence under the *Narcotics Drugs and Psychotropic Substances Act (NDPS Act)* is not entitled to acquittal on the ground that the informant and the investigating officer are the same. The court held that *there is no automatic apprehension of bias when the informant and the investigating officer (IO) is the same, and such cases will have to be decided on a case-to-case basis.*

The Court said that

"… merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis."

Earlier in ***Mohal Lal* v. *State of Punjab*, (2018) 17 SCC 627** it was concluded by the apex court that if the complainant is the investigating officer in the matter himself, then the trial is vitiated and the accused is entitled to acquittal. The Division Bench failed to make sense of the decision in the said case and considered it appropriate to refer the case to a larger bench consisting of three judges.

(***Mukesh* v. *State (Narcotic Branch of Delhi***, 2020 SCC OnLine SC 700, Decided on August 31, 2020)

Unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Hindu Adoptions & Maintenance Act, 1956

The apex court held that an unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Hindu Adoptions & Maintenance Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under Section 20 of Act, 1956.

The Court was hearing a case wherein a woman had filed an application under Section 125 CrPC against her husband, claiming maintenance for herself and her 3 children. While the Judicial Magistrate dismissed the application under Section 125 Cr.P.C. of the applicant and 2 of her children, the daughter's application was allowed for grant of maintenance till she attains majority. The High Court dismissed the application filed under Section 482 Cr.P.C. of the appellant on the ground that since appellant has attained majority and is not suffering from any physical or mental abnormality, she is not entitled for any maintenance.

"The right of unmarried daughter under Section 20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter under Section 20 is right granted under personal law, which can very well be enforced by her against her father." By virtue of Section 125(1)(c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain itself. "The Scheme under Section 125(1) Cr.P.C., thus, contemplate that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself."

The purpose and object of Section 125 Cr.PC. as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of HAMA, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under 34 Section 125 Cr.P.C. to determine the claims contemplated by Act, 1956.

The Court noticed that since the application was filed under Section 125 Cr.P.C. before Judicial Magistrate First Class, the Magistrate while deciding proceedings under Section 125 Cr.P.C. could not have exercised the jurisdiction under Section 20(3) of Act, 1956. Hence, there is no infirmity in the order of the Judicial Magistrate First Class as well as learned Additional Magistrate in not granting maintenance to appellant who had become major. The Court, however, gave liberty to the appellant to take recourse to Section 20(3) of the Act, 1956 for claiming any maintenance against her father. (*Abhilasha* v. *Prakash*, 2020 SCC OnLine SC 736 , decided on September 15, 2020).

FACULTY NEWS

Invited/Delivered/Lectures

Professor (Dr.) Manoj Kumar Sinha, Director, ILI

- Invited as a Key Note speaker to talk on "Judicial Delays in Administration of Justice" organised by Kristu Jayanti College of Law, Bengaluru, July 03, 2020.
- Delivered a talk on "State Responsibility and International Law" to the students of the Adamas University, Kolkata, July 04, 2020.
- Delivered a talk on "Covid 19 and Right to Health" to the participants of Faculty Development Programme, organised by ICFAI university, Tripura, July 04,2020.
- Delivered a lecture on " Publications Ethics" to the Ph.D. scholar of Rajiv Gandhi National University of Law, July 5,2020
- Invited to speak on " Right to Health: National Perspectives" in a workshop on, "International Virtual workshop on "Protection of Human Rights During Pandemic" organised by Bangalore University, Bangalore, July10, 2020.
- Invited as Chief Guest to address the participants of International FDP on Clinical Legal Education 2020" organised by Indian Centre for Clinical Legal Education, New Delhi, July 12, 2020.
- Invited to deliver a talk on "An Argument for Human Rights Clinic: A mode to have Experienced and Sensitized Professional" webinar Series cum FDP on ' Thematic in Clinical Legal Education and Research' organised by Himachal Pradesh National Law University, Shimla, July 16, 2020.
- Invited to deliver Valedictory address to the Participants of one week Faculty Development Programme on "Innovative Teaching Learning Methods & Research in Law: Challenges Ahead" organised by Department of Law, Sharda University, Greater Noida, July 18,2020.
- Invited to Deliver a talk on "Importance of Fundamental Duties in day to day Life" organised by Legal Awareness and Literacy Committee (LALC), Amity Law School in association with Advocates Campaign for Thought Revolution, under the aegis AWGP, Shanti Kunj, Haridwar, July23' 2020.
- Delivered a talk on "Rights of the Child as Human Rights" to the interns of the National Human Rights Commission of India, organised by the National Human Rights Commission of India, New Delhi, July 28,2020.

- Invited to deliver a special lecture on "New Education Policy 2020" organised by the Faculty of Education, Banaras Hindu University, Varanasi, August 06,2020.
- Invited to deliver a lecture on "Right to Health: Issues and Challenges" to the participants of Seven day National Level Faculty Development programme in Public Law, organised by KSLU Hubli, Karnataka, August 08, 2020
- Invited as Guest of Honour to participate in Justice V.R. Krishna Iyer Memorial Public Lecture on How Concurring Opinion Matter?" organised by Ronald Dwarkin Study Circle and Constitutional Law Society NLUO, Odisha, August 09, 2020.
- Invited as Chief Guest to inaugurate the webinar on "Child Rights and the Constitution of India" organised by Independent Thought, New Delhi, August 15, 2020.
- Invited to address Ph.D. students on "Types of Sampling" organised by the Maharashtra National Law School, Nagpur, August 16, 2020.
- Invited to deliver a talk on "International Human Rights" to the interns of the National Human Rights Commission of India, organised by the National Human Rights Commission of India, New Delhi, August 18, 2020.
- Invited to deliver a talk on " Right to Health: Issues and Challenges" to the participants of Online Capacity Building Programme, organised by S.S.Khanna Girls' Degree College, University of Allahabad and Droit Penale Group, August 22, 2020
- Invited to deliver a talk on "Role of Regulatory Bodies in Legal Education" to the participants of Online Faculty Development Programme, Kishinchand Chellaram Law College, Mumbai, August 25, 2020
- Invited to deliver a talk on " Right to Health Issues and Challenges" to the participants of webinar organised by Gauhati University, September 11 2020.
- Invited to deliver couple of lectures on Human Rights to the participants of online Refresher programme, September 12 &14, 2020.
- Participated as a Judge in the final round of Virtual Moot Court competition organised by Narsee Monjee Institute of Management Studies, Bangalore, September 13, 2020.
- Invited to deliver a talk on " Right to Health Issues and Challenges" to the participants of webinar organised by HRDC, Pt. Ravishankar Shukla University, September 15, 2020

Invited to deliver a talk on "International Humanitarian Law" to the Interns of the National Human Rights Commission of India, September 16, 2020

Professor (Dr.) S.Sivakumar, Professor, ILI

- Has participated in the 16th ALIN General Meeting and he was a Speaker in the International Conference on Laws for Fading Borders in Asia organised by Korean Legal Research Institute, Seoul, South Korea on virtual mode. He has presented a paper titled "Migration and Constitutionally Protected Class in India" on September 18, 2020.
- Organised, Chaired and addressed the participants in a series of Webinars on 'Police System India Series' organised by the Menon Institute of Legal Advocacy Training(MILAT) along the Indian Law Institute (ILI) and other premier legal institutions :
  - First Webinar on "Police System in Utter Pradesh" on August 8, 2020.
  - Second Webinar on "Police System in Uttarakhand and Bihar" on August 22, 2020.
  - Third Webinar on "Police System in Maharashtra" on August 29, 2020.

- Fourth Webinar on "Police System in Delhi and Central Police" on September 12, 2020.
- Fifth Webinar on "Police System in Assam and Arunachal Pradesh" on September 16, 2020.
- Sixth Webinar on "Police System in Tamil Nadu and Chattisgarh" on September 19, 2020.
- Seventh Webinar on "Police System in Andhra Pradesh and Telengana" on September 23, 2020.
- Eighth Webinar on "Police System in Laksha Deep, Himachal Pradesh and Kerala" on September 26, 2020.
- Ninth Webinar on "Police System in Sikkim and Meghalaya" on September 30, 2020.

Dr.Anurag Deep, Associate Professor, ILI

On invitation, Anurag deep participated in following webinars as resource person

- Five Days Online Programme On Legal Research Methodology, Faculty of Law, University of Lucknow, 6 July- 10 July 2020 on the topic "The Introduction of the Legal Research Methodology" on July 6, 2020.
- School of Environmental Sciences (SES) & Special Centre for Disaster Research (SCDR), JNU, New Delhi on the Role of Judiciary during Emergencies, July 14, 2020.
- Five Days Virtual Legal Colloquium on 'Changing Socio - legal Dynamics and State Responsibility amidst Covid- 19'-on the topic "Right to Health and lessons from COVID-19, Graphic Era Hill University, Dehradun, August 25, 2020.
- Webinar on Indo Pak Dialogue-How India and Pakistan can learn on educational issues, August 31, 2020.
- Panel discussion on Conviction and Punishment of Prashant Bhushan contempt case, August 31 and "whether President Rule can be imposed in Maharashtra State" in Desh Manthan, Online News media channel on September 13, 2020.
- Law Department of VSSD College, Kanpur, National Webinar on *New Education Policy*, 2020 on on September 8, 2020.
- RMLNLU, Lucknow, and Government of UP jointly organised a webinar on "Prospects and Challenges in Multi-lingual Legal Education in the Perspective of New Education Policy 2020" on September 14, 2020.
- Refresher Course in LAW –" Current Challenging Legal Issues" September 07-19, 2020 by Pt. Ravishankar Shukla University, Raipur (C.G). The topic for the lecture was "Covid -legislative measures," (Sept 16) and "Judicial review -Current trends" on September 18, 2020.
- Law Laboratory in collaboration with Court Kutchery organised a webinar on Digitalisation of Legal Research and Drafting on September 19, 2020.

Dr. Jyoti Dogra Sood, Associate Professor, ILI

Invited as a speaker in a *Child Rights Law Educational Webinar Series 2020* organized by Independent Thought on Sep.12, 2020, on the topic "Child in Conflict with Law: National and International Perspective"

CASE COMMENTS

The Director General (Road Development) National Highways Authority of India* v. *Aam Aadmi Lokmanch & ors.

AIR 2020 SC3471
Decided on July 14, 2020

The grievance in the present appeal arose out of the directions issued by the State of Maharashtra under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP) and the order of the National Green Tribunal (NGT). The argument of the appellants was that the provisions of the NGT Act, especially sections 14, and 19 do not authorize that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. The origin of the case could be traced to the unfortunate road accident involving the death of Ms. Vishaka Wadekar, who was driving her car with her daughter Sankruti Wadekar. The cause of accident was 'over-mining' near the hill that resulted in the destruction of a small hill near the national highway which created a large amount of debris. The resultant debris and a part of the hill collapsed and slid down on the road claiming the lives of Ms. Vishaka and her daughter. Immediately after the accident the President of Aam Admi Lokmanch filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010, seeking mandatory injunction to restore natural contours at the foot base of the hill that was destroyed due to the continuous and indiscriminate mining by the contractor. The NGT in its order held respondents liable including the contractor as well as the National Highway Authority of India (NHAI) for having done the mining of the hill illegally. The respondent challenged the directions of the NGT and government of Maharashtra before the High Court, which upheld the direction of the NGT. The NHAI contended in its appeal that the directions issued by the NGT fell into error because there was no evidence to establish in any way that NHAI was responsible for the degradation of the environment which led to the tragedy. It was also argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased.

The Supreme Court formulated four issues for consideration: "(1) Jurisdiction of NGT to award compensation; (2) the merits and soundness of the NGT's decision to award compensation and the legal principles applicable;(3) the wide directions given by the NGT effecting ban on construction in and around foothills; and (4) Issue regarding circular and the legality of the order/notification of the state of Maharashtra issued under Section 154, MRTP Act." The Court, at length, examined the relevant provisions of the NGT Act and cited a number of important decisions given by the Court to ascertain or earmark the jurisdiction of the NGT with certainty. The Court, after a detailed review held that the NGT has the power to issue directions and provide for restitution of property damaged and for the restitution of the environment. The court further observed that as per the NGT Act the tribunal possesses two kinds of power and jurisdiction: primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved relating to the implementation of the enactments specified in Schedule I [Section 14 (1)]. The legal position and jurisdiction of NGT was considered by the court in *Mantri Techzone Pvt. LTD.* V. *Forward Foundation And Ors.*(Civil Appeal No. 5016 of 2016) where it was held that the NGT has special jurisdiction for enforcement of environmental rights. With regards to the issue whether NGT possesses the power to award compensation the Court observed that the wide language of provisions of NGT Act enables the tribunal to direct, *inter-alia,* payment of compensation. The court also referred to the case of *State of Meghalaya* v. *All Dimasa Students Union* wherein the Supreme Court affirmed the Tribunal's decision of issuing directions in respect of large-scale mining in the state of Meghalaya despite the fact that mining and

the subject of mines is not specified in the first schedule of the NGT Act. This goes on to show that the tribunal has been vested with wide powers when it comes to environmental matters. The court further observed that NGT Act is a beneficial legislation therefore its powers can't be read narrowly and an interpretation as regards its jurisdiction which favours conferring of jurisdiction should be preferred over an interpretation for taking away the jurisdiction. With regards to the second issue the court observed that in ascertaining the granting of compensation, the judiciary in India has always followed the approach that a statutory corporation or local authority can be held liable in tort for injury caused due to defective supervision of its activities contracted out to another agency. It was further observed by the court that ordinarily the principle of law of negligence applies to public authorities also. Further, negligence committed by a public authority while performing a duty is easier to prove as compared to when it fails to act in furtherance of a duty. In the present case, however, the accident occurred on a national highway and as per the National Highways Act, 1956 it is the responsibility of the NHAI to ensure maintenance of highways. It was further observed by the court that in the present case the terms of the contract between NHAI and the concessionaire clearly contemplated the safety of highway users, an elaborate highway monitoring mechanism and reporting of any unusual highway occurrences and an inspection by an engineer. The court, on the basis of evidence before it concluded that NHAI was in receipt of the information of debris and hill-damage around the highway and held that NHAI failed to take any remedial action. The third issue pertained to the correctness of NGT's direction towards banning development activities around foothills. The Court deliberated on the power and jurisdiction of the NGT under sections 15(1)(b) and (c) and observed that these powers are not restitutary, in the sense of restoring the environment to the position it was before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive. The court observed that the tribunal, depending on the cases and applications made before it, is an expert regulatory body and its personnel include technically qualified and experienced members. Therefore, the directions it can potentially issue affect not only those before it but also state agencies and state departments. In the present case, however, the court held that the directions issued by the NGT were improper and not justified given the facts of this case. The NGT in this case based it's directions on the report of the SDM and that of the accident. No scientific or technical evidence or expert opinion were sought by the tribunal regarding any construction or development around the foothills. Therefore, in court's view the tribunal's decision was improper and procedurally indefensible. The fourth issue related to the circular and the legality of the order of the state of Maharashtra, issued under Section 154, MRTP Act. The Court observed that the directions can be issued notwithstanding any other provisions of the MRTP Act, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, from time to time. However, in the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14 November 2017.The Court held that the directions issued by authorities under the act are arbitrary. Consequently, the notification issued by Maharashtra Govt. pursuant to the directions of NGT in para 17 (e) were also set aside, quashing the order of the Bombay High Court as well to that extent. Hence the appeals were partly allowed. The Court held the NHAI liable for illegal mining and upheld the directions given by the NGT to compensate the legal representatives of

a woman and her daughter who died in an accident while traveling on National Highway.

Manoj Kumar Sinha

In re, Prashant Bhushan

2020 SCC OnLine SC 646
Decided on August 14, 2020

The law of contempt is a blend of liberty and responsibility of individuals. It contains the idea of restraint of power of the Court and restraint of freedom of the citizen. The contemnor insists that the Courts must restrict their power of contempt in a democracy while the Court insists that the citizen must limit their liberty to speak anything and everything against the Court because "abuse of liberty is not the path to freedom or justice". (Dias - Jurisprudence). It will lead to anarchy.

The facts of *Prashant Bhushan contempt* case is that the accused, a well-known advocate, has posted following tweets in June 2020 :

> Tweet 1-"CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"
>
> Tweet 2-"When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

The Contempt of Court Act, 1971 provides certain grounds of insult or defamation of court. One is "scandalising or lowering the authority of the court'. The issue before the Court was whether these tweets are covered under the provision "scandalising or lowering the authority of the court" or should the judiciary "be willing to ignore, by a majestic liberalism" such tweets even though they are in bad taste, inappropriate and couched in irresponsible words? Was the tweet a legitimate exercise of freedom of speech and expression under article 19 or was it in violation of reasonable restrictions provided under article 19(2)? Does the tweet underline the genuine concern of a common citizen or does it undermine the integrity of judges? The Court held that the tweets amount to contempt of court.

There were other issues also like (a) maintainability- the contempt petition was filed by Advocate Maheshwari but the Supreme Court has treated it as *suo motu*. Is it permissible under the Contempt of Court Act, 1971? It was a question on maintainability of petition. The Court held that the "powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act of 1971. This Court is vested with the constitutional powers under article 129 and 142(2) to deal with the contempt. (b) liability of social media-Can the social media platform "twitter" which is an intermediary, be proceeded against for the tweet and will the safe harbour clause under section 79 of Information technology Act, 2000 provides a defence? The Court accepted the defence of twitter and discharged the notice issued to twitter.

On the issue of contempt, the Court referred *Ravichandran Iyer* v. *Justice A.M. Bhattacharjee*, (1995) 5 SCC 457 where it was observed that "fair criticism is based on the authentic and acceptable material permissible but when criticism tends to create apprehension in the minds of the people regarding integrity, ability and fairness of the Judge, it amounts to contempt. Such criticism is not protected under article 19(1)(a) of the Constitution." While examining the first tweet, (which claimed that the CJI kept the Court in lock

down) the Court held that "during the said period, the vacation Benches of the Court were regularly functioning. the Court has heard 12748 matters. 686 writ petitions filed under Article 32." Therefore, it is factually incorrect to say that the Supreme Court was in lockdown. "In this premise, making such wild allegations thereby giving an impression, that the CJI is enjoying riding an expensive bike, while he keeps the SC in lockdown mode and thereby denying citizens their fundamental right to access justice, is undoubtedly false, malicious and scandalous. It has the tendency to shake the confidence of the public at large in the institution of judiciary and the institution of the CJI and undermining the dignity and authority of the administration of justice." Advocate Prashant Bhushan was found guilty for the first tweet. He was also found guilty for the second tweet which was not on fact but was an opinion. Second tweet is not the subject matter of this comment because of space restriction.

Whether the tweet is an opinion or a fact? An opinion gets greater protection than a statement based on fact. A fact can be true, false or misleading. The truth provides scope for argumentation. A statement which is factually wrong places the accused in an extremely defensive position. A statement is said to be misleading if it provides some part of fact and conceals other parts. If the concealment is deliberate it amounts to cheating and fraud. If it is not deliberate, it amounts to misrepresentation. First tweet was factually wrong. The factual inaccuracy was deliberate. It caused harm to the reputation of the Supreme Court. The followers of tweet or readers of tweet have the right to know the correct fact. It was pandemic time. Common persons were in lock down. There was no occasion to know whether the Court is functioning or not. A practicing lawyer of the Supreme Court was the best person to act as a carrier of correct information. In this situation, he owed a responsibility towards his followers and readers. There was an implied relationship of trust between a lawyer of his distinction and his readers. A false information amounts to breach of trust. Part IVA (h) calls upon every citizen "to develop the scientific temper" for which flow of correct fact is a precondition. His tweet was also in breach of fundamental duty. The contemnor knew this fact very well not only because he was a practicing advocate in the Supreme Court but also because he himself got relief in article 32 case on an urgent basis. He approached the Supreme Court in the case of *Prashant Bhushan* v. *Jaydev Rajnikant Joshi* on April 30, 2020 during lockdown. His case was listed for the very next day, ie May 1, 2020 and he got interim relief from the Court. This establishes that the contemnor has also committed intellectual dishonesty, cheating and fraud to those who believe in him. It is not only morally inappropriate, unlawful under civil law but harmful enough to attract criminal sanction.

The freedom of speech and expression against the Court has three classifications. (a)Those which are criticism of the court, their functioning and the judgements. They do not risk the independence of the judiciary. Indeed criticism of the institutions of State including judiciary is oxygen for democracy. Disagreement and dissent with the judiciary is an essential mode of checks and balances in rule of law. The freedom of expression constitutes an integral part of democracy based on fearless dialogue, seamless discussion, sharp disagreement and strong dissent. (See, Manoj K Sinha and Anurag Deep, *Law of Sedition in India and Freedom of ExpressionI,* 2018, ILI) Sometimes the dissents are inappropriate, uncalled for but they can be within legal limits of reasonable restrictions. To criticise a "judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy." (b) Those expressions which are manifestly inappropriate because the language, time, place and the contemnor has a particular context. They amount to indirect threat to the independence of the judiciary. But the Courts

exercise restraint and record warnings. When such expressions are not only misleading but false they have potential to break the trust with the judicial system. They are an attempt to indirectly intimidate the judges. *Prashant Bhushan* case comes under this. He is a representing in many cases which is pending in the Supreme Court. The tweets have a tendency to intimidate judges who were/are unfavourable to him. (c) Those expressions which are a direct threat to the independence of the judiciary. They intimidate the judges directly. They destroy the rule of law and demonstrate no respect for democratic institutions as well as constitutional values. It is the domain of the Court. *Justice Karnan* case is an illustration of this. The independence of the judiciary is under threat due to such irresponsible conduct of a person belonging to an intellect class.

In the case of *In Re: S. Mulgaokar*, [(1978) 3 SCC 339] Krishna Iyer, J. after warning that contempt jurisdiction ought to be rarely used, rightly observed that in contempt cases (i) the Court should consider totality of factors, (ii) the Court must reach to a conclusion that the attack on judge or judiciary is scurrilous, offensive, intimidatory or malicious (iii) it has crossed beyond condonable limits,(iv) then the Court must "strike a blow on" the contemnor**.** Despite this judicial dictum the Court (led by Arun Mishra, J.) has not sent the convicted contemnor to jail and fined him Rs 1 only. The Court has demonstrated its large heart and generosity.

Free speech in India is different from the UK because there is no constitutional protection and limitation. It is not like the USA where free speech is couched in terms of "absolutism" and there are no express restrictions in the Constitution except those developed through the doctrine of police power. The doctrine of free speech in India rests on "rights with restrictions" model. In the last one decade there is a growing trend to take protection of free speech after indulging in vilification of courts. The conviction of Prashant Bhushan should convey all such people to "take heed for they will act at their own peril." Liberty of free speech should not slip into a license to browbeat an institution. The judgement on *Prashant Bhushan contempt case* rejects superficially attractive arguments of free speech and rightly relies on substantially enduring rationale based on P5 (principles, provisions, precedents, policy and professional opinion). It is high time the judicial institution be preserved and protected from such internal attack from the Bar.

Anurag Deep

Court on its own motion

Civil Writ Jurisdiction Case No. 7124of 2020
Decided on September 18, 2020

The rhetoric of essential basic education was not enough for impoverished families to send their wards to school. Something more needed to be done, and State of Tamil Nadu started the mid day meal programme. This was proving successful, and so was followed by many other states in order to increase the enrolment of students in school. Moreover, the Child Labour Prohibition legislation could only make sense if families were incentivized for weaning their children from employment and putting them in schools. Realizing the huge difference it was making in the lives of children, the Government of India initiated the National Programme of Nutritional Support to Primary Education on Aug. 15,1995. The Programme was being run in different forms and scale across India in terms of providing cooked and uncooked food. It was in the year 2001 that PUCL initiated a public interest litigation which led to the historic right to food judgment where the apex court in its interim - order dated Nov. 28, 2001 mandated that all government and government assisted primary schools to provide cooked mid-day meals. And as has been documented in various studies this had a huge impact on not only enrolments but also

attendance, retention and nutrition needs of children. Some states have been more proactive than others and have also used it as an opportunity to overcome micronutrient deficiencies among children. The sections dealing with children viz. mid day meal scheme and integrated child development services scheme of the National Food Security Act, 2013 were the culmination of the historic judgment.

Some stray incidents of gross negligence in preparing and distributing food kept being reported from different parts of the country but by and large the mid day meal initiative was a huge success. All was going in the right direction until the pandemic hit and schools were closed indefinitely, and apart from education mid day meal became the first causality. The High Court of Judicature at Patna took *suo motu* cognizance of a news item titled "School shut, no mid-day meal, children in Bihar village back to work selling scrap" published by Indian Express, Delhi Edition on July 6, 2020.The judgment of the high court dated Sep. 18, 2020 dealt exclusively with the issue of child's right to education and right to food. The court with the help from amicus curiae chartered these two rights from both international as well as domestic instruments. What is fascinating about the judgment is that the court was very alive to the fact that given the pandemic situation schools will be shut for a long time and so engaged with the best practices which need to be adopted to effectuate these two rights. For this the court examined best practices of not only the developed world - the UK and Canada, but also examined strategies closer home in Bangladesh and Bhutan as well.

After a detailed analysis the court directed the state, *inter alia*, to continue with mid day meal scheme or disburse ration along with text books and note books to the entitled students. Taking nutritional needs seriously the court directed the state engages *anganwadi* workers to monitor height and weight of children at regular intervals. The court advised the state to partner with NGOs for addressing the issue of education and proposed a multi-faceted strategy to impart education. Since mobile handset penetration in Bihar was reported to be greater than any other electronic mode, the authorities were asked to use this medium and even explore the possibility of waiver of telecom charges when being used for accessing educational programmes. The court, in its order, made a road map for the state which if implemented in its spirit will by and large be a guarantee that its children do not go back to the pre 1995 era where children labored to get food, and education was a distant dream!

The court as *parens patria* was trying to ensure that children of the state are adequately nourished and cherished, and are not forced back to the dark world of rag picking, child marriage and other pernicious practices. However, the directions by the Chief Justice in para 42 are qualified by the phrase, "to consider, enforcing,to the extent possible" and this perhaps is the weakest link in the otherwise brilliant judgment and it is hoped that the state does not shy away from its primary responsibility of taking care of its children, which is as per the court the "wealth of the nation", as nothing in the directions numbered (a) to (j)seem impossible or worth further consideration, rather every part of it must be mandatorily implemented.

Jyoti Dogra Sood

Vineeta Sharma* v. *Rakesh Sharma

2020 SCC OnLine S 641
Decided on August 11, 2020

Under the Hindu Succession (Amendment) Act, 2005, daughters had been given an equal right in inheriting the property. But few issues like whether the father needed to be alive at the time of the law being amended for the daughter's entitlement to such property and also, whether the amendment should apply with retrospective effect remained unanswered.

The Supreme Court in the present case answered these issues by ruling that **daughters have equal right in coparcenary by birth** and that it is not necessary that the father coparcener should be living when the Hindu Succession (Amendment) Act, 2005. It held: **"the conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth."**

The two issues came before the case was: whether the amended Section 6 of the Act of 2005 requires the coparcener to be alive as on 09.09.2020, for the daughter to claim rights in the coparcenary property? and whether the amended Section 6 of the Act of 2005 is prospective, retrospective or retroactive?

The court referred to various concepts of Hindu Law, both codified and customary, being concepts such as Coparcenary and Joint Hindu Family and unobstructed and obstructed heritage, and also referring to catena of Judgments ruled that coparcener father need not be alive for a daughter to inherit rights over the coparcenary property. Explaining obstructed and unobstructed heritage, the Hon'ble Supreme Court held that the unobstructed heritage takes place by birth, whereas the obstructed heritage takes place after the death of the owner. The Court also added that the concept of uncodified Hindu Law of unobstructed heritage has been given a concrete shape under the provisions of Section 6(1)(a) and 6(1)(b) and that the coparcenary right is by birth and therefore, it is not at all necessary that the father of the daughter be living as on the date of the amendment, since she had not been conferred with the rights of coparcener by obstructed heritage.

As regards the applicability of the amended section 6 to be retrospective or prospective, the Hon'ble Supreme Court held that the amended Section 6 is retroactive in nature. Explaining the concepts of prospectively, retrospectivity and retroactivity, the Hon'ble Supreme Court held that the operation of retroactive statute operates based on a characteristic or event which happened in the past or requisites which had been drawn from antecedent event. The Court further opined that Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth and since the right is given by birth, that is an antecedent event, and provisions operate on and from the date of the Amendment Act, making it retroactive. The Court also added that the provision contained in Section 6(4) makes it clear that the provisions of Section 6 are not retrospective.

In this Landmark judgement, by granting women equal right in Hindu joint family property with retrospective effect, the Supreme Court has removed the confusion existed in law on coparcenary rights. The Hon'ble Supreme Court as a protector and guardian of Gender Justice, recognised women's right as coparceners and the right to equality under the Indian Constitution.

Arya A Kumar

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