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Editorial

India has assumed the Presidency of the Group of Twenty (G20) from Indonesia and will hold the Presidency of the G20 from December 1, 2022, to November 30, 2023. The theme of India's G20 Presidency is "Vasudhaiva Kutumbakam" or "One Earth, One Family, One Future". The G20 was founded in 1999 after witnessing the massive Asian Financial Crisis, which happened between 1997 and 1998. It was initially started with the idea of providing an informal forum for the Finance Ministers and Central Bank Governors of the important developed and developing economies to discuss international economic and financial stability. This organisation was upgraded to the summit level of Heads of State in the wake of the global economic and financial crisis of 2007. Since 2009, the G20 leaders have been meeting regularly, and over the years, the G20 has become the premier forum for international economic cooperation. It plays an important role in shaping and strengthening global architecture and governance on all major international economic issues. The G20 does not have a permanent secretariat or staff. The G20 Presidency rotates annually among the members and is selected from a different regional grouping of countries. The country that holds the Presidency of the G20 for a year organises meetings for member states throughout the year. The functioning of the G20 is primarily assigned to two functional tracks, namely the Sherpa and Finance tracks. The agenda of Sherpa tracks includes socio-economic issues, environment, climate change, health, agriculture, energy, tourism, trade and investment, and anticorruption. The Finance track engages in fiscal and monetary policy issues such as the global economy, financial regulation, international financial architecture, and some other agendas. In addition to these two tracks, there are engagement groups that bring together civil societies, parliamentarians, think tanks, women, youth, labour, businesses, and researchers from the G20 countries. The membership of the G20 consists of 19 countries and the European Union. The G20 includes all permanent members of the Security Council, all members of the G7, and the BRICS, and represents around 85% of the global GDP, over 75% of global trade, and encompasses around two-thirds of the world population. The 19 member countries are therefore divided up into five groups, each comprising a maximum of four countries. Most of the groups are formed on a regional basis, i.e., countries from the same region are usually put in the same group. The EU, the 20th member, is not a member of any of these regional groups. Each year, another country from a different group assumes the G20 Presidency. A series of meetings have already begun since December 1, 2022, and this has allowed the Government of India to showcase its preparedness to take up leadership under both tracks. The Presidency of the G20 will move to Brazil after India's term comes to an end. It is time to make the G20 more inclusive, and membership in the G20 should be given to the African Union and other poor nations from the Global south.

Editorial Committee

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ACTIVITIES AT THE INSTITUTE

National Conference on the "Working of the Indian Judicial System" on April 22-23, 2023

The Indian Law Institute organised a National Conference on the working of the Indian Judicial System on April 22-23, 2023 at ILI. The conference was inaugurated by Hon'ble Mr. Justice Surya Kant, Judge, Supreme court of India. In first session, an interesting presentation was involved a live demo of a machine learning tool to assist judges in their judgement. While the algorithm was promising, the presenters acknowledged much work was needed before it could be used in real time. Nevertheless, this prompted a healthy discussion on how AI can be used to assist judges in their work, shifting the focus from replacing judges with AI to helping them in their work. Several existing AI solutions were discussed by the chairs that gave examples from their professional experience and highlighted how they have found these solutions to be lacking from a legal perspective.



Hon'ble (Mr.) Justice Surya Kant lighting the ceremonial lamp at the inaugural session

More work is required to make AI tools which are helpful in legal issues. Emphasis was also laid on the role of international conventions on regulating AI,



Dignitaries at the National Conference

acknowledging the ongoing efforts of the EU in this regard. These conventions are necessary to address concerns of data privacy and to bring some standardization in implementation.

In the second session, an important point raised was that judicial process has two functions - adjudicatory and procedural, and it was highlighted that while AI can aid in procedural function, it has limited functionality in adjudicatory. The chair highlighted the issues in fine-tuning AI for legal matters - uneven writing style of judgments, no set format of judgments, difficulty in locating obiter and ratio, sheer volume of judgments requiring huge manpower. A need was highlighted by the presenters to use AI in judicial matters keeping in mind the social aspect. Several examples were brought up where simple application of machine learning models had given questionable results which were not reflective of social realities

The topic deliberated in this session was "Pendency and Delay". Appeals from arbitration and mediation to the courts lead to endless number of litigations - which favours those with big pockets. A suggestion from the panel was there could be a limit, beyond which there can be no appeals. An interesting note made by the chair was the term "founding fathers" is paternalistic in nature, and perhaps, can be substituted with "founding parents". An interesting debate took place on the topic of SLP. A suggestion was that the jurisdiction of High Courts be expanded by the Supreme Court to handle these petitions. Another point raised by the audience was that majority of the petitions are of the nature - "cut, copy, paste" which is why many of these petitions are pending with the SC. Analyses by presenters highlighted a main reason for delays to be delays during investigation and prosecution. The chairs agreed with this view and asserted that discourse around pendency should not focus only on the judiciary, but also on the accused, prosecution and investigating authority. Augmentation of ADR infrastructure and timely recruitment of judges were discussed as possible solutions to pendency. A suggestion by the members was regarding constituting a national litigation policy, which could be tasked exclusively with tackling delays at every point of the litigation process. The co-chair narrated from his personal experience how processes that usually take around 8 months could be executed within one day through simple tweaks. A need was felt for a comprehensive look at pendency, where focus should be placed on procedural aspects. The topic discussed in third session was "Judiciary and tech initiatives". Analysis by the presenters showed different levels of implementation tech initiatives by the courts in different states - a reason

for this could be that it is the High Courts which prescribe how the subordinate courts will use technology. Overall, various states were found to be not employing tech solutions for payment of court fees and challans. Members debated widely on this point and they suggested that it could be because the High Court Chief Justices are constricted by their limited tenure and do not want to upset the hierarchical order. Presentations also focussed on the subject matter of cases before the High Court writ petitions and analyses showed it was mostly writ of mandamus for ensuring administrative action, which significantly contributes to pendency and instead can be easily resolved by prompt action by the administration itself. The audience also raised several ICT issues that they faced while accessing E-Court initiatives-such as software glitches, poor connectivity and language inaccessibility.

Fourth session was based on the theme “Appointment of judges” in which the chair asserted that diversity in society should be represented in the judicial composition - leads to inclusion of diverse opinions. Significant discussion took place on the issue of transparency - a need was felt for clear criteria for appointment which not only brings clarity but also reinforces faith in the judiciary. The topic in general generated significant interest in the audience and was discussed widely. Concerns were raised with regards to perceptions of nepotism and bias in judicial appointments. Many speakers also discussed the provision of appointing ad-hoc judges and whether this provision was not widely used due to reasons not publicly acknowledged. Fifth session was based on the topic “Legal aid” and sixth session focussed on “Language issues” and the final session was based on “Institutional reforms”.

National Conference on "50 years of the Basic Structure Doctrine: In Retrospect and Prospect" on April 24, 2023



Prof. (Dr.) Upendra Baxi lighting the Ceremonial Lamp



Snippets from the National Conference

The Indian Law Institute in collaboration with the Centre for Law and Governance, Jawaharlal Nehru University conducted a National Conference on "50 years of the Basic Structure Doctrine: In Retrospect and Prospect". The conference commenced by a welcome address by the Director of the Indian Law Institute, Prof. (Dr.) Manoj Kumar Sinha. He flagged the importance of the relationship between globalization and the basic structure. Through a reading of Article 28 of the Universal Declaration of Human Rights, he stressed on the significance of being a citizen of the world. He also emphasised on the theory of Immanuel Kant, who conceptualised humans as citizens of the world. Drawing from

Thomas Pogge he asserted that the obligations of justice is applicable to the world because we share a global basic structure which are governed by a set of political and economic institutions.

Thereafter, Dr. P. Puneeth, Associate Professor, Centre for Law and Governance, JNU gave the opening remarks to set the tone of the conference. He started by opining that the basic structure doctrine is the most profound contribution of the Indian judiciary to constitutional jurisprudence. He stated that basic structure of the Constitution provided for limits to the parliamentary powers. The doctrine is not well entrenched in the constitutional framework and has become 'India's pride and world's envy'. He also pointed out that the first time the basic structure term was used in the in *Re Beruberi* case. Dr. Puneeth also remarked that Justice Khanna had pointed out the textual basis of the basic structure doctrine. Justice Khanna stated that what can be amended is the existent Constitution and the framework does not permit it to be replaced by a new Constitution. Dr. Puneeth also indicated that the Constitution has been amended 105 times, 30 times in the first 23 years and 75 times since *Keshavananda Bharati* case. Only in 8 cases has the Supreme Court of India struck down constitutional amendments. It was only 6 times that the amendments have been held to be violative of the basic structure doctrine. He showed how judiciary has been reluctant in striking down amendments as unconstitutional. Further he also raised a question whether the basic structure doctrine has been helping the expansion of state power. He cautioned that the past experiences of the usage of basic structure doctrine have made us realise that basic features such as democracy, rule of law and secularism can be diluted without violating the basic structure doctrine.

In her special address, Prof. (Dr.) Kamala Sankaran, Prof. of Law, Ford Foundation chair on public interest law, NLSIU, theorised the basic structure doctrine to be akin to the Indian philosophical idea of darshan, acknowledging that it is constituted by multilayers of reality that cannot be searched or found at once. Prof. Sankaran pointed out the difficulty that one faces while ascertaining what would constitute basic structure. Subsequent to the *Keshavananda Bharati* case, several judgments have identified several features as basic, but the process of determination remains ambiguous. The judgments have dealt with the basic structure doctrine in a non-exhaustive manner rather than providing a fixed list. She said that

the basic structure doctrine is like a common law doctrine that goes on a case-to-case basis. Drawing from Rochana Bajpai's work she conceptualised basic structure doctrine in terms of constitutional choices by the courts. She also raised several questions like, can we have a listing of the basic features? Should the basic structure be located in the text of the Constitution? How much role the people's perception plays in understanding the basic structure?

The conference also had as a special speaker Prof. (Dr.) Upendra Baxi, Emeritus Professor, University of Warwick. The Eminent Jurist highlighted the difference between constitutional politics and the politics of power. The logic of power in both these concepts is different. Politics of power is always interested in partisan constitutionalism. He also cautioned us against 'ratio-hunters' who are only interested in the summary of the case. The nuances of the judgements can only be understood by reading the judgements and it is the only way to distinguish between politics of power and constitutional politics. Prof. Baxi asked a very pointed and important question if the apex court is bound by the basic structure? The question he stated becomes even more important in the present context where the apex court is accepting sealed covered documents.

Finally, the conference was concluded by the Presidential address delivered online by Hon'ble Mr. Justice Ravindra Bhat, Judge, Supreme Court of India. He also emphasized the noncoherent nature of the basic structure doctrine. He raised the question of what the test is to determine the basic structure. Some judgements like *Indira Gandhi*, *Maneka Gandhi*, *Minerva Mills* do shed some light but there is not clear test that is elucidated. Justice Bhat's address looked at other jurisdictions like Italy and Germany to understand the evolution of the basic structure doctrine. He delved into issues like nature and limits of constitutional power and the ever-changing nature of the basic structure. The conference culminated with a vote of thanks given by the Coordinator of the conference, Prof. (Dr.) Jyoti Dogra Sood, Professor, ILI.

Five Days Training Programme on Law for 'Group A, Officers' of "National Institute of Defence Estate Management (NIDEM)" on June 04-09, 2023

A Five Days Training Programme on Law for 'Group A, Officers' of "Indian Defense Estate Services" was organized from June 04-09, 2023 at ILI. This

programme was jointly organized by the Indian Law Institute, New Delhi and National Institute of Defense Estate Management (NIDEM). This programme aimed to enhance the officer's understanding on the practical as well as theoretical aspects on law which would help them in their services. The course was tailor made to cater the needs of officers serving in the Indian Defense Estate Services.



Prof. (Dr.) Ranbir Singh lighting the ceremonial lamp.

The programme was inaugurated by the Chief guest, Prof. (Dr.) Ranbir Singh, Founding Vice Chancellor of National Law University, Delhi/NALSAR, Hyderabad, presently Pro-Vice Chancellor, IILM University with the lighting of lamp along with other dignitaries. The Chief Guest and Guest of Honour were welcomed by the Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute with the bouquets of flowers.

The first session was taken up by Dr. P. Puneeth, Associate Professor, Jawahar Lal Nehru University, New Delhi on the topic "Understanding Judicial System and Process". The next lecture was taken by Dr. M.K. Pandey, Advocate Supreme Court of India on the topic "Handling case in Civil Court/ High Court and Supreme Court". In the post lunch session, Dr. Aman Hingorani, leading Supreme Court Lawyer, took the session on "Writ Appeals, Review and Judicial remedies".

On the second day of Training Programme, the first session was taken by Advocate Ankit Jain on

"Avoiding Contempt of Court" followed by the tea break. The second session was taken by Dr. Parveen, Assistant Professor, Delhi University on "Principles of Natural justice and Administrative Law". The Post lunch session was taken up by Dr. Pramod Tiwari, Assistant Professor, Delhi University on "Civil Procedure Code".

On the third day of Training Programme, the first session was taken by Prof. Kiran Gupta, Professor, Delhi University on "Scope of Government liabilities for wrongful acts done by Government Servants". The second session was also taken up by Prof. Kiran Gupta on the topic "Lease and License" followed by a Tea Break. The third session was taken by FCA, Amit Sikri on the topic "Mortgage and Sale". In the post lunch session, Dr. Anil Sain, Assistant Professor, Delhi University deliberated on "Municipal Tax and allied Taxation related Issues".

On the fourth day of the Training Programme, the first session was taken by Dr. Shivani Verma, Assistant Professor, Delhi University on "Law relating to Land Acquisition" followed by a high tea. The second session was taken by Dr. Ashutosh Nanachal, Advocate on "Limitation". This was followed by the lunch. In the post lunch session, Ms. Rajul Jain, took the lecture on "Handling of Litigation".

On the last day of the Training Programme, the first session was taken up by Prof. (Dr.) B.T Kaul, Former Chairperson, Delhi Judicial Academy/Former Professor, Delhi University on "Handling Cases in the Central Administrative Tribunals". The second session was also taken by Prof. B.T. Kaul on "Labour Laws". The third session was taken by Dr. M. K. Pandey, Advocate, Supreme Court of India on the topic "Service and Disciplinary Matter". This was followed by lunch.

The Chief Guest of Valedictory Session was Hon'ble Justice Mr. Navin Sinha, Former Judge, Supreme Court of India. The Chief Guest and other dignitaries were welcomed by Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, New Delhi with the bouquets of flowers and shawl. In his welcome address Prof. Sinha discussed briefly about the five days training programme and its learning outcomes. He mentioned that a continuous evaluation of the officers was done and feedback was taken on daily basis.

After this Mr. Sanjeev Kumar, Director, National Institute of Defense Estate Management delivered his

Special Address. He discussed about the role of Defense Estate Management Services and NIDEM. He shared the importance and key take away points of this five days training programme. He highlighted that in this programme officers from all parts of the country participated and it provided them a rich learning experience.

Later, the Valedictory address was given by the Chief Guest, Hon'ble Mr. Justice Navin Sinha, Former Judge, Supreme Court of India/Formal Chief Justice, Chhattisgarh High Court and Rajasthan High Court. He shared his valuable learning experience as judge and Advocate in various Constitutional Courts with the participant officers. He discussed how the government is coming as the biggest litigant in the country and what can be best done by the officers to meet the ends of justice. He motivated the participant officers to work with utmost honesty and sincerity.



Chief guest presenting certificates to the participants in the presence of Director & Registrar, ILI

Then the vote of thanks was proposed by Mr. S.C. Prusty, Registrar Indian Law Institute. Thereafter, Hon'ble Chief Guest Mr. Justice Navin Sinha proceeded with the Distribution of Certificates to the participant Group A, Officers which marked the end of the five days training programme. This was followed by the High Tea. Dr. A.K. Verma was the coordinator of the programme.

ILI –NATIONAL HUMAN RIGHTS COMMISSION (NHRC) TRAINING PROGRAMME

One Day Training Programme for Officials working in Juvenile Homes, Old Age Homes & Health Sector on Human Rights: Issues and Challenges on May 27, 2023

One Day Training Programme was jointly organized by the Indian Law Institute and National Human Rights Commission for officials working in Juvenile Homes, Old Ages homes and Health Sector on “Human Rights: Issues and Challenges” was held on May 27, 2023.

The programme was inaugurated by the Chief guest, Hon'ble Mr. Justice Rajendra Menon, Chairperson, Armed Forces Tribunal, Principal Bench, New Delhi and Former, Chief Justice of Delhi High Court and Patna High Court with the lightening of Lamp along with other dignitaries.



Snippets from the training programme.



Hon'ble (Mr.) Justice Rajendra Menon lighting the ceremonial lamp at the training programme

The welcome address was delivered by Prof. (Dr.) Manoj Kumar Sinha, Director Indian Law Institute, New Delhi. Thereafter, the Guest of Honour, Prof. (Dr.) Ranbir Singh, Founding Vice Chancellor of National Law University, Delhi and NALSAR, Hyderabad, presently Pro-Vice Chancellor, IILM University addressed the participants.

Then the Chief guest, Hon'ble Mr. Justice Rajendra Menon delivered inaugural address. He put stress on bring the juvenile offenders back to the main stream society. He laid stress on the reformatory approach and move out the child from the clutches of the criminal tendencies. He also put forth that there is need to delve deep into the root cause of child's deviant behavior. Vote of thanks was proposed by Mr. S.C. Prusty, Registrar, Indian Law Institute.



Snippets of the programme

The first session of the training programme was taken by Dr. Veerendra Mishra, Senior IPS Officer, Madhya

Pradesh and Former CEO, CARA on “Unconventional Dimensions of Girl Trafficking”. He discussed Human Smuggling vis a vis Human Trafficking where he discussed the AMP, that is, Action, Means and Purpose model involved in Human Trafficking as per the United Nations Palermo Protocol, 2000. He discussed those issues of non-reporting and non-registration of cases of child exploitation. Further, He discussed issues of adoption related exploitation and trafficking of children mainly girls. He also discussed intergenerational tradition of prostitution among certain tribes in India in which young brides or young girls are involved. He discussed other forms of sexual exploitation or trafficking of children.

The second session was taken by Dr. Nimesh Desai, Senior Psychiatrist and former Director of Institute of Human Behaviour and Allied Sciences, Delhi on “Human Rights of Persons with Mental Illness across Settings”. He discussed the nature, cause and categorization of Mental Illness or disorders. He discussed the need for recognition of mental illness as public health problem. He stressed that the certain mental illness can be cured with treatment and there is a need to adopt human rights approach towards the people with mental illness by the society and institutions. He discussed the United Nations Convention on Rights of Person with Disabilities and The Mental Health Care Act, 2017.

The third Session was taken by Prof. Dr. Jyoti Dogra Sood, Professor of Law, Indian Law Institute, New Delhi on “Rights of Juveniles: Issues and Challenges”. She discussed the provisions of the Juvenile Justice Act and stressed that the endeavor has to reclaim the child. She discussed the principle of ‘participation’ and ‘best interest of child’ and discussed the UN Convention on the Rights of the Child, 1990. She discussed the semantics used in the context of child in conflict with law and described children as our national assets. She stressed on the need to develop the ‘individual care plan’ as every child has their own needs. Which was followed by the Lunch

In the fourth session, Mr. Rajesh Parthsarthy, Physician delivered the lecture on “Role of Health officials in Protecting Human Rights of Juveniles and Old Age Persons”. He discussed the basic role and duties of health officials. He discussed the ILO recommendations, Indian Constitutional provisions and Convention on Elimination of all form of

Discrimination. He discussed education as great equalizer. He discussed that there should be right based approach in which health of child should be given priority. He discussed role of doctors or health workers with respect to juveniles and old age people.

In the last session, Prof. (Dr.) Manoj Kumar Sinha, Director, Indian Law Institute, New Delhi took it on “India’s Obligation under the UN Convention of the Rights of the Child in India”. He started with the distinction between the Human Rights and Fundamental Rights. He then discussed the definition of ‘Human Rights’ in Section 2 (d), The Protection of Human Rights Act, 1993. He discussed, how the complaint mechanism of National Human Rights Commission is expeditious, low cost and accessible. He then discussed the United Nations Convention on the Right of the Child, 1990, the three Optional Protocols. India is party to the first and second Optional Protocol. He discussed the principle of non-discrimination, Best interest of the Child and the right to life. Further, he discussed certain main challenges in the field of Rights of child as Extreme Poverty in certain parts of the country, lack of knowledge about rights, massive social inequality and lack of coordination between various agencies. With this Last Session the programme came to an end.

International Yoga Day Celebration

The 9th International Yoga day was celebrated at the Indian law Institute on June 21, 2023 to spread awareness about the benefits of yoga and meditation worldwide. This year yoga day was celebrated on the theme “Yoga for Vasudhaiva Kutumbakam” i.e Yoga for the welfare of all in the form of 'One World-One Family'. It emphasizes the spirit of Yoga. As part of the Yoga day celebrations, yoga session was organized under the guidance of Yoga Instructor, Ms. Neha Kumari, Morarji Desai National Institute of Yoga, New Delhi in which all the employees of the



International Yoga Day Celebrations held at ILI

Institute practiced different Yoga Asanas. The Director of the Institute addressed the august gathering, highlighting the importance of yoga and its contribution to public health. He encouraged people to do yoga at home with their families, creating physical, mental and spiritual well being.

COMMITTEE MEETINGS

Library Committee

The meeting of Library Committee was held on June 21, 2023, under the chairmanship of Hon’ble Mr. Justice Surya Kant, Judge, Supreme Court of India.

Membership Committee

The meeting of Membership Committee was held on June 21, 2023, under the chairmanship of Hon’ble Mr. Justice Surya Kant, Judge, Supreme Court of India.

Finance Committee

The meeting of Finance Committee was held on June 21, 2023, under the chairmanship of Hon’ble Mr. Justice Surya Kant, Judge, Supreme Court of India.

Building Committee

The meeting of Building Committee was held on June 21, 2023, under the chairmanship of Hon’ble Mr. Justice Surya Kant, Judge, Supreme Court of India.

LIBRARY

- ❖ Library Added 119 Books on Contract Law, Arbitration and Mediation, Human Rights, International Law, Intellectual Property Rights, Media law, Cyber Law, Criminal Law, Administrative Law, Constitutional Law and Research Methodology to enrich the library collection.
- ❖ The Institute Library took Green Initiative to recycle the waste paper into reusable Stationery Products.

- ❖ The Theses of six Ph.D. Scholars were uploaded on the Shodhganga Portal.

EXAMINATIONS

Ph.D. Programme

The Course Work Examination (Paper III) for the Ph.D. Programme was held on April 12, 2023. The result of the same was declared on April 20, 2023.

All India Admission Test for LL.M

The All India Admission Test for LL.M.-2023 was held on May 07, 2023. The result for the entrance test was declared on May 25, 2023. The *viva-voce* for the shortlisted candidates were held on May 29-30, 2023 and the final result was declared on June 05, 2023.

Ph.D. Entrance Test

The Entrance Test for Ph.D. Programme was held on May 7, 2023. The result for the entrance test for Non-Exempted Category candidates was declared on May 15, 2023. The *viva-voce* for the shortlisted candidates was held on May 26, 2023. The final result was declared on June 22, 2023.

Award of Ph.D. Degree

The *viva-voce* open defense of thesis of Mr. Gyandeep Chaudhary, Mr. Setu Gupta, Ms. Aswathy Madhukumar, Ms. Richa Chauhan, Ms. Gunjan Malhotra Ahuja, Ms. Charvi Kumar and Ms. Ira Rana were held on May 16, 2023; May 22, 2023; May 23, 2023 and May 24, 2023 respectively. They have been awarded the Degree of Philosophy (Ph.D. in Law) on May 16, 22, 23 & 24, 2023 respectively.

LL.M. Programme

LL.M. 2nd Semester End Examination for the LL.M. 1 year programme for the Session 2022-2023 were held during May 15- 24, 2023.

The Supplementary Examination for LL.M. 1st Semester Examination for the LL.M. 1 year programme were held during May 26-29, 2023.

The result for the LL.M. 1 year (1st Semester) Examination for the Session 2022-23 was declared on April 21, 2023.

PG Diploma Programme

The Annual Examination for PG Diploma Courses for the Session 2022-23 was held during April 05-28, 2023.

ACADEMIC ACTIVITIES

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 Rights Law (IPRL) started on March 15, 2023 as per the schedule approved by the Academic Council i.e., on 10.01.2023. The last date for submission of Ph.D. and LL.M. (One Year) form was 21.04.2023 and Post Graduate Diploma Programmes was on 30.06.2023.

RESEARCH PUBLICATIONS

Released Publications

- ❖ *Journal of the Indian Law Institute* Vol. 64(3) (July-September) 2022.
- ❖ ILI Newsletter Vol. XXIV, Issue IV (Oct-Dec 2022) & Vol XXV Issue I (January –March) 2023

Forthcoming Publications

- ❖ *Journal of the Indian Law Institute* Vol. 64(4) (Oct-Dec 2022).
- ❖ ILI Newsletter Vol. XXV, Issue III (July-September, 2023).

VISITS TO THE INSTITUTE

- ❖ 40 students from Pooran Gopal Shukla National College of Law, Mathura Bharatpur Road Mundesi Mathura on April 17, 2023.
- ❖ 13 students from Arunachal Law Academy, Lekhi Village, Naharlagun, Arunachal Pradesh visited the Institute on April 26, 2023.
- ❖ 42 students from Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal visited the Institute on May 19, 2023.
- ❖ 90 students from Sathya Bama, Institute of Science and Technology, Chennai visited the Institute on June 21, 2023

E –LEARNING COURSES

Online Certificate Courses on Cyber Law & Intellectual Property Rights Law

E Learning courses of three months duration on “Cyber Law” (44th batch) and “Intellectual Property Rights and IT in the Internet Age” (55th batch) were started on May 08, 2023.

FORTHCOMING EVENTS

- The Indian Law Institute and University of Portsmouth, United Kingdom will organise Joint Workshop on “Constitutional Governance in India: Assessing Implementation, Measuring Impact” on July 20-21, 2023.
- The Indian Law Institute with collaboration with Kamkus College of Law, Ghaziabad will organise a Workshop on “Use of Artificial Intelligence in Legal Teaching and Research” on July 26, 2023.

LEGISLATIVE TRENDS

THE APPROPRIATION ACT, 2023

(Act No. 4 of 2023)

The Appropriation Act was enacted to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of India for the services of the financial year 2023-24.

THE JAMMU AND KASHMIR APPROPRIATION ACT, 2023

(Act No. 6 of 2023)

The Jammu and Kashmir Appropriation Act, 2023 was enacted to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the Union territory of Jammu and Kashmir for the services of the financial year 2022-23.

LEGAL JOTTINGS

Notice to Intelligence Officer for non-compliance of Section 50 of the NDPS Act

By way of Special Leave Petition, the petitioner had challenged the order passed by the Madras High Court which had partly allowed the appeal preferred by the petitioner and had upheld the judgment of conviction against the petitioner for the offence punishable under Section 8(c), Section 21(c), Section 25, Section 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (‘NDPS’) and sentenced him to rigorous imprisonment for a period of 10 years. As per the custody certificate, the petitioner has already undergone a period of 8 years and 10 months of actual conviction. The division Bench of Abhay S. Oka and Ahsanuddin Amanullah

J.J., issued notice to the State by the Intelligence Officer. Issue for consideration before the Court is with regard to the compliance and applicability of Section 50 of NDPS. The petitioner relied upon *S.K. Raju v. State of West Bengal*, (2018) 9 SCC 708 which had observed that wherever the search of a person takes place, the requirement of mandatory compliance of Section 50 of NDPS was attracted, irrespective of whether the contraband was recovered from the body of the person or not. 50. Conditions under which search of persons shall be conducted.—(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest gazetted officer of any of the departments mentioned in Section 42 or to the nearest Magistrate. (2) If such requisition is made, the officer may detain the person until he can bring him before the gazetted officer, or the Magistrate referred to in sub-section (1). (3) The gazetted officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made. (4) No female shall be searched by anyone excepting a female. (5) When an officer duly authorised under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior. The petitioner contended that the impugned judgment was bad in

law as the same ignored the mandatory provision of Section 50 of NDPS. It was contended that the prosecution had failed to prove the case beyond reasonable doubt since the story of the prosecution was filled with numerous contradictions. It's an established fact that the alleged seizure of the contraband becomes vitiated if the provision of Section 50 of NDPS was not complied with. The petitioner submitted that as per the cross examinations of prosecution witness 5, admittedly the accused was not explained their right to be searched individually, hence the judgement of conviction could not have been sustained. The Courts below based their findings upon the consideration that since the contraband was not seized from the body of the petitioner, therefore the rigor of Section 50 of the NDPS Act would not be applicable which is in contrary to the judgement in SK Raju (Supra). After perusing the above stated facts, the Bench issued notice to the State by the Intelligence Officer. The matter was adjourned for a hearing on 01-05-2023.

[Mohammed Imran Mansoori v. State by the Intelligence Officer, 2023 SCC Online SC 372, decided on 27-03-2023].

Pronouncing unprepared judgments is gross negligence and callousness of Judicial Officer

While hearing an appeal filed by the Registrar General of Karnataka ('appellant') challenging the order of the Karnataka High Court that set aside the penalty of dismissal from service of a Civil Judge set aside the impugned order of the High Court and upheld the penalty of dismissal imposed upon the respondent. Factual Background: In the matter at hand, the respondent was suspended on allegations of gross misconduct by an order dated 25-01-2005 followed by the initiation of disciplinary proceedings. The enquiry reports revealed some charges to be proved while other charges were not proved. Subsequently, the Full Court of High Court was resolved to impose the penalty for dismissal from service upon the respondent and based on the resolution of the High Court, an order of dismissal

from service was passed by the Governor of Karnataka. Aggrieved by the findings of the enquiry officer, the respondent filed a set of three writ petitions challenging the order of dismissal from service, but all the writ petitions were dismissed. Subsequently, the respondent filed four intra-court appeals, which were allowed by the Division Bench of the High Court and set aside the order of penalty along with the findings of the enquiry officer and directed that no further inquiry can be held against the respondent. Being aggrieved by the decision of the High Court, the appellant filed civil appeals before the Supreme Court. Supreme Court's Analysis: Whether the order of penalty of dismissal from service was justified qua the charges proved and whether the Division Bench of the High Court was right in setting aside the same? The Court referred to the charges imposed upon the respondent and said that certain charges that revolve around pronouncement of operative portion of the judgment in open court without the whole text of the judgment being ready are serious in nature and the reply given to them by the respondent is wishy washy. The Court said that "a judicial officer cannot pronounce the concluding portion of his judgment in open court without the entire text of the judgment being prepared/dictated". The Court said that the charges which revolve around gross negligence and callousness on the part of the respondent in not preparing/dictating judgments, but providing a fait accompli, was completely unacceptable and unbecoming of a judicial officer. Thus, the order of penalty of dismissal from service was completely justified. Further, the Court said that the High Court did not test the correctness of the order of penalty in this case on the established parameters which the Court is obliged to follow while considering a challenge to an order of penalty imposed upon a judicial officer pursuant to the disciplinary proceedings followed by a resolution of the Full Court of the High Court, the parameters are namely: 1. whether the charges stood proved; 2. whether the findings of 12 the inquiry officer are

reasonable and probable and not perverse; 3. whether the rules of procedure and the principles of natural justice have been followed; and, 4. whether the penalty is completely disproportionate, especially in the light of the gravity of the misconduct, his past record of service and any other extenuating circumstances. The Court opined that High Court's opinion in the impugned order that the acts of omission and commission attributed to the respondent do not constitute grave misconduct, is very-very curious. The Court called the High Court's recordings -that dismissing the respondent from service itself is very atrocious, to be a "veiled attack on the Full Court of the High Court. The Court said that they were unable to conclude how the High Court went to the extent of certifying the respondent as an innocent and honest officer. Further, placing its reliance on Managing Director, ECIL v. B. Karunakar (II), 1994 Supp (2) SCC 391, the Court said that the High Court's opinion that the second show cause notice issued to the respondent was in violation of the principles of natural justice was not factually and legally correct. The Court pointed out that they have not come across a case where the High Court, while setting aside an order of penalty has held that there shall not be any further inquiry against the delinquent, but in this case, the High Court has done the same, creating a new jurisprudence. Thus, the Court allowed the appeals and set aside the impugned order of the High Court.

[The Registrar General, High Court of Karnataka v. M. Narasimha Prasad, 2023 SCC Online SC 376, decided on 10-04-2023].

Corruption must be dealt with iron hands

In a set of criminal appeals, against the order of Gujarat High Court, wherein the respondent's application for anticipatory bail was allowed for offences under Section 7 of the Prevention of Corruption Act, 1988, the apex court allowed the appeals and set aside the impugned order of the High Court and said that the Courts must draw a delicate balance between liberty of an individual as

guaranteed under Article 21 of the Constitution of India and the need for a fair and free investigation, which must be taken to its logical conclusion. Background In the matter at hand, the complainant is a businessman engaged in the construction business. In February 2019, the respondent, an Indian Revenue Service Officer ('IRS'), posted as Additional Commissioner of Income Tax, Ahmedabad, conducted a survey for the financial year 2018-19 under Section 133-A of the Income Tax Act, 1961 against the complainant's business, whereunder the group disclosed an additional income of Rs. 50 crores. Thereafter, in September 2021, search and seizure action was initiated by the Income Tax Department, Ahmedabad and some papers related to the complainant's business were seized. Subsequently, the complainant and the Respondent met frequently in connection with the case, and it is alleged that during these interactions the respondent had threatened to ruin the complainant's business and demanded illegal gratification. Accordingly, an illegal gratification of Rs. 30 lakhs was demanded by the respondent to help the complainant with his case. The complainant had recorded this conversation and handed it over to the investigating authorities. The Complainant was directed to deposit the amount in the account of X person, who happens to be owner of a firm. Thus, FIR was registered against the respondent under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 ('the Act') on 04-10-2022. Considering the gravity of the case, the case was transferred to the Central Bureau of Investigation ('CBI') and FIR was re-registered on 12-10-2022 for offences under Section 7 of the Act. Several notices were issued to the respondent under Section 41 A for appearances before the CBI, to which the respondent sought more time to appear before the Investigating Officer. The Respondent had simultaneously preferred an application for grant of anticipatory bail before the Sessions Court, Ahmedabad, which was rejected. Meanwhile, the Court of Special CBI judge issued a non-bailable warrant against the respondent, and

aggrieved by the same order, the respondent applied for anticipatory bail before the Gujarat High Court. The High Court granted anticipatory bail to the respondent, which forms the impugned order. Analysis, Decision The Court said that the time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail, the Courts must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of Constitution of India and the need for a fair and free investigation, which must be taken to its logical conclusion. The Court noted that the High Court fell in a factual error in observing that the FIR was registered on 12-10-2022, whereas the FIR against the respondent was originally registered on 04-10-2022, and considering the gravity of the offences, the case was transferred to CBI and FIR was re-registered on 12-10-2022. Further, the Court noted that the manner in which the respondent evaded his arrest with the help of his colleagues and got the evidence destroyed, is a strong circumstance to indicate his complicity. The nature and gravity of the alleged offence should have been kept in mind by the High Court. The Court referred to the materials placed on record by the CBI and said that it seems that prima facie, the allegations against the respondent cannot be brushed aside lightly. Also, there appears to be a well-organised syndicate comprising officials of Income Tax Department, businessmen and hawala traders, who are in tandem, and such a nexus needs to be unearthed through an unimpaired and unobstructed investigation. Further, the Court said that the first proviso to Section 17-A of the Act refers to the cases wherein a public servant is charged with acceptance of an undue advantage or attempt thereof. If prior approval or sanction to investigate such an officer through a trap is sought, it is likely to defeat the very purpose of the trap and the investigation, which is not the underlying intention of the legislature. Also, the investigation against the respondent, being accused of demanding bribe, did not require any prior approval of the Central Government. Thus, the Court viewed

that, considering the nature of allegations, material on record and the settled legal principles on grant of anticipatory bail, the High Court ought to have refrained itself from extending protection against arrest to the respondent in exercise of its discretionary jurisdiction under Section 438 of the Code of Criminal Procedure. Therefore, the Court allowed the appeals and set aside the impugned judgment and order of grant of anticipatory bail to the respondent. The Court also quashed the remand order against the respondent passed by the Special Judge, CBI Court on 30-12-2022.

[Central Bureau of Investigation v. Santosh Karnani, 2023 SCC Online SC 427, decided on 17-04-2023].

Pension cannot be denied dehors the authority of law

In a criminal appeal against the order of Punjab and Haryana High Court wherein, the appellant's petition to quash his trial and consequential orders to release the pensionary and other benefits was dismissed, the Division-Judge Bench allowed the appellant's appeal and set aside his conviction order and allowed the appellant to retain the pension benefits. Brief Facts In the matter at hand, the appellant joined the Indian Army as an Assistant Commandant in the Border Security Force ('BSF'). Thereafter, he was promoted as Commandant, he was also awarded various medals, including the Police Medal by the President of India for rendering about 30 years of unblemished service. Later, he was transferred to Punjab as Commandant of the 1956 Battalion. On 05.04.1995, the local police conducted a search and a few Jerrycans of Acetic Anhydride, a controlled substance under Section 9-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') were stated to be in Pakistani territory and in the fields owned by Indian civilians adjoining the border. On 07.04.1995, the appellant was directed to hand over charge and was placed under arrest. Search of appellant's house did not lead to any recovery of any incriminating materials. On 09-04-1995, an inquiry

was ordered into the incident and the Inspector controlling the area where Jerrycans were recovered made a statement against the appellant alleging that he was involved in the incident. Thereafter, the appellant was superannuated on 31.08.1995, and a charge-sheet was served to the appellant for offences under Sections 40 and 46 of Border Security Force Act, 1968 ('BSF Act') and Section 25 of NDPS Act. The General Security Force Court ('GSFC') found the appellant guilty and sentenced him to 10 years of rigorous imprisonment; imposed fine of Rs. 1,00,000/- and dismissed him from service. Aggrieved by the order, the appellant filed a petition before the High Court for quashing his trial and the impugned order therein, as also seeking directions to quash all consequential orders and to release the pensionary and other benefits to the appellant. The appellant was granted bail, but the High Court dismissed the appellant's plea to release his benefits, which forms part of the impugned judgment. Court's Analysis The Court analysed the proportionality of the appellant's punishment considering his nearly 32 years of service to the Country and viewed that the punishment meted out was disproportionate. The Court said that in the absence of direct and cogent evidence against the appellant, even if the GSFC was convinced of the appellant's guilt, the punishment handed out was too harsh, knowing appellant was a first-time delinquent, and not a habitual offender. The Court noted that the appellant had served the country for over 31 ½ years without blame or blemish, and received various awards, including medal from Hon'ble the President of India, the appellant's track record was unquestionable. The Court said that it should not be construed that the appellant, being the Commandant, had no duty to prevent such incident, but to stretch it to the extent to label him an active partner and facilitator of such crime was wholly unjustified since no direct evidence was found against the appellant, further. Further, the Inspector's statement, who confessed his involvement in the crime and added that it was on behest of the

appellant's direction cannot be enough to incriminate the appellant solely without other evidentiary materials. Therefore, non-recovery of any incriminating evidence from the appellant's house must benefit the appellant. The Court viewed that considering the seriousness of the issue, the High Court was not denuded of the power to sift through the evidence, further it reiterated that High Courts, under Articles 226 and/or 227, are to exercise their discretion solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge, as highlighted in *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675. Placing its reliance on *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, the Court reiterated that a person cannot be deprived of pension dehors the authority of law. Thus, the Court allowed the appeal, quashed the impugned judgment of the High Court and set aside the conviction and sentence of the appellant awarded by the GSFC. It was held that appellant was entitled to full retiral benefits from the date of his superannuation.

[*B.S Hari Commandant v. Union of India*, 2023 SCC OnLine SC 413, decided on 13-04-2023].

Assure women safe & secure workplace or they will fear stepping out

SC issues directions for PoSH Act implementation The Supreme Court attributed the reluctance on the part of victims of Sexual Harassment at workplace to report the misconduct to, (i) uncertainty about who to approach under the Act for redressal of their grievance; and (ii) lack of confidence in the process and its outcome. With the intent to fulfil the promise that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [PoSH Act] holds out to working women all over the country, the apex court has issued extensive directions to ensure the implementation of the law after observing that, "However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by

all the State and non-State actors.” Noticing that the working of the PoSH Act is centred on the constitution of the Internal Complaints Committees (ICCs) by every employer at the workplace and constitution of Local Committees (LCs) and the Internal Committees (ICs) by the appropriate Government, as contemplated in Chapters II and III, respectively of the PoSH Act, the Court observed that an improperly constituted ICC/LC/IC, would be an impediment in conducting an inquiry into a complaint of sexual harassment at the workplace, as envisaged under the Statute and the Rules. It will be equally counterproductive to have an ill prepared Committee conduct a half-baked inquiry that can lead to serious consequences, namely, imposition of major penalties on the delinquent employee, to the point of termination of service. Even though the PoSH Act was enacted in 2013, there are serious lapses in the enforcement of the Act even after such a long passage of time. The Court took note of the report of a National daily newspaper that has conducted and published a survey of 30 national sports federations in the country and reported that 16 out of them have not constituted an ICC till date. Where the ICC have been found to be in place, they do not have the stipulated number of members or lack the mandatory external member. Remarking on the sorry state of affairs that reflect poorly on all the State functionaries, public authorities, private undertakings, organizations and institutions that are duty bound to implement the PoSH Act in letter and spirit, the Court said that, “If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/managements/employers cannot assure them a safe and secure work place, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting

the PoSH Act is achieved in real terms.” The Court attributed the reluctance on the part of victims to report the misconduct to, (i) uncertainty about who to approach under the Act for redressal of their grievance; and (ii) lack of confidence in the process and its outcome. The Court observed, “Being a victim of such a deplorable act not only dents the self esteem of a woman, it also takes a toll on her emotional, mental and physical health. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job.” The Court, hence, stressed that this social malady needs urgent amelioration through robust and efficient implementation of the Act and issued the following directions, (i) The Union of India, all State Governments and Union Territories are directed to undertake a time bound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act. (ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/ Institution/Body, as the case may be. The information furnished shall also be updated from time to time. (iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes. (iv) Immediate and

effective steps shall be taken by the authorities/managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted. (v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations. (vi) The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers and adolescent groups with the provisions of the Act, which shall be included in their annual calendar. (vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules. (viii) It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued. (ix) The Registry of the Supreme Court of India shall transmit a copy of the judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued. The Chairperson, Bar Council of India and the

Apex Bodies shall transmit a copy of the judgment to all the State Bar Councils and the State Level Councils, as the case may be. (x) Member-Secretary, NALSA is requested to transmit a copy of the judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of the judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States. The Court has directed the Union of India and all States/UTs to file their affidavits within eight weeks for reporting compliances.

[*Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 621, decided on 12-05-2023].

FACULTY NEWS

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

- Invited to deliver a talk on Constitutional Values to participants of the Faculty Development Programme (FDP), organised by Amity University, Noida on June 30, 2023.
- Invited to deliver a talk on International Human Rights Law to participants of the summer course, organised by the Indian Society of International Law, New Delhi on June 15, 2023.
- Invited to deliver a talk on International Human Rights to interns of the National Human Rights Commission of India, New Delhi on June 12, 2023.
- Invited to deliver a special lecture to the participants of one week Faculty Development Programme (FDP) on Outcome Based Education: Changing Dimensions of Law Teaching and Research” organised by the School of Law, Bennett University on May 31, 2023.
- Invited to deliver a talk to the participants of the Legislative Drafting Training Programme on “Regulations and By-Laws- Real Laws in the Real World” organised by the Institute of Constitutional and Parliamentary Studies (ICPS) on May 23, 2023.

- Invited as keynote speaker to address the participants of one day conference on “Contemporary Indian Laws: Issues and Challenges” organised by the School of Legal Studies, Apeejay Styra University, Gurugram on May 20, 2023.
- Invited to deliver a talk to the participants of EURASIA Foundation on “Regional Approach to Refugees: The European Context” organised by University Institute of Law, Punjab University Regional Centre, Ludhiana on May 09, 2023.
- Invited to deliver a lecture to the interns of the NHRC on “the International Human Rights Law” organised by the National Human Rights Commission of India on May 09, 2023.
- Invited to deliver a talk to delegates from Indonesia on “Law, Human Rights, Governance & Disaster Mitigation” organised by South East Asian Centre of Jawaharlal University on May 07, 2023.
- Invited to Judge the teams in the final round of the First CCI-DME Moot Court Competition organised by DME and Competition Commission of India, Noida on April 29, 2023.
- Invited as Chief Guest to address the participants of a one-week online Short-Term Course on “Outcome Based Legal Education and Research” organised by National Law University and Judicial Academy, Guwahati, Assam on April 23, 2023.
- Invited to Judge the teams in the final round of the First Edition International Moot Court Competition, organised by Amity Law School, Amity University, Gurugram, Haryana on April 23, 2023.
- Invited as a Special Guest to address the Participants in the inaugural function of “National Conference on Legal Education, Profession and Integrating Pro Bono Culture to Better Access to Justice” organised by Rajiv

Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur on April 08, 2023.

- Invited as an Expert by All India Radio to share expert opinion on Trade and Investment in Working Group (TIWG) of G 20, organised by All India Radio on April 04, 2023.

Prof (Dr.) Jyoti Dogra Sood, Professor, ILI

- Delivered a lecture on "Designing Training for Specialized Courts" in the Training of Trainers programme for Directors and Deputy Directors of State Judicial Academies at the National Judicial Academy on May 14, 2023.
- Delivered a lecture on "Women and Criminal Law" to faculty and students in the Annual Fest Activa 2023 of Shaheed Bhagat Singh Evening College on April 25, 2023
- Delivered a lecture on "Understanding the principles of adversarial nature, diversion & restoration of juvenile justice system & historical evolution of JJ system in India and categorization of children under the present statute" to Principal Magistrates at Bihar Judicial Academy on April 03, 2023.

CASE COMMENTS

Anil Agarwal Foundation and Ors. v. State of Orissa and Ors.

2023 (5) SCALE 602
Decided on April 12, 2023

The present appeal was filed against the impugned common judgment passed by the High Court quashing the land acquisition by the beneficiary company and directing the Government to restore the land to its respective owners. There were two writ petitions filed before the High Court, one by the original landowners whose lands have been acquired and the other by way of Public Interest Litigation on behalf of the small landowners and people of the locality. The dispute involved the acquisition of six thousand acres of land belonging to six thousand families; this acquisition has affected around thirty

thousand people. The land was acquired by the Government on behalf of Vedanta Resources for the establishment of a university in Orissa to impart education at the undergraduate and post-graduate levels in the fields of medicine, management, general science, and the humanities. In this regard, a Memorandum of Understanding was signed between the Government of Orissa and the Vedanta Foundation. The Government of Orissa confirmed the availability of the land of about 8000 acres and gradually provided additional land and other facilities requested by the company. The writ petitions were filed alleging that the land acquired by the government from poor and small farmers for the purpose of establishing a University by a private company was mala fide and would cause immense hardships to poor farmers. The High Court quashed the impugned land acquisition and directed that the possession of the acquired lands shall be restored to the respective land owners irrespective of whether they have challenged the acquisition of their lands or not. The impugned common judgment and order passed by the High Court were the subject matter of the appeals.

The Counsel appearing on behalf of the appellants had argued vehemently that the High Court materially erred in quashing and setting aside the entire acquisition proceedings, even with respect to the landowners who did not challenge the acquisition proceedings. It was also argued that acquisition proceedings have attained finality under Section 6 of the Act of 1894. The majority of landowners were paid compensation, and even the possession of 3342 acres was handed over to the beneficiary. The appellant counsel also stated that the project does not fall within any prohibited area and is situated beyond the coastal regulatory zone. The proposed university is 2000 metres away from the Sea. However, the counsel appearing for the original writ petitioners argued that the government had given undue favour to the appellants by modifying or tweaking the rules in

favour of the company to ensure smooth facilitation of the land for the parties. It was also pointed out that the Government of Orissa did not apply its mind regarding the genuineness of the appellant company's demand for ten thousand acres of land for building the campus. It is submitted that the High Court has rightly observed and held that the public interest at large is affected and there is a violation of the Rule of Law. The Court held that in this case, the State government, miserably failed to apply the relevant provisions of the 1894 Act and the Rules of 1963, and acquired a vast tract of land, which led to the displacement of 30,000 people. The Court observed that the High Court has rightly entertained the writ petitions, including the Public Interest Litigation petitions, and merely because some persons did not file the objections, it cannot be a ground to set aside the acquisition proceedings. The Court held that

the High Court has not committed any error and is justified in setting aside the entire acquisition proceedings, which have been vitiated by non-compliance with the statutory provisions under the Act of 1894 and the Rules of 1963. The Court dismissed the petitions and imposed costs of 5 lakh rupees on the appellants, to be paid to the Registry of the Court within six weeks of the decision in this case.

The Court rightly set aside the acquisition of the land by the Government to help a private company build a University that will offer UG, PG, and other higher degrees to students from the State and outside of the State. In the beginning of the 21st century, the government introduced a new dimension in the higher education sector by allowing private players to start universities, and today that number has touched 432. The state's engagement with public universities is very low today, and these institutions are desperately looking for funds to provide education to all at the minimum cost. The state cannot simply move out of its responsibility to provide affordable education to a large population. The state should also not bend the rules by just looking at investment

perspectives; it has a greater responsibility to protect the rights of its people and also the environment, both of which are pious obligations of the state. The Court, by setting aside the acquisition of the land of the poor farmers, has restored the dignity of the farmers, protected their fundamental rights, and also protected the environment from further destruction.

Manoj Kumar Sinha

Shilpa Sailesh v. Varun Sreenivasan

2023 SCC Online SC 544,
Decided on May 01, 2023

In this significant judgement, the apex court has held that the Supreme Court has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion subject to the requirements and conditions laid down under *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 and *Amit Kumar v. Suman Beniwal*, 2021 SCC OnLine SC 1270. The court held that the mandatory waiting period of 6 months for divorce by mutual consent can be dispensed subject to requirements and conditions laid down in previous Supreme Court judgments.

It was also held that in exercise of power under Article 142(1) of the Constitution of India, Supreme Court has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. However, while clarifying that whether a party can directly canvass before Supreme Court the ground of irretrievable breakdown by filing a writ petition under Article 32 of the Constitution, the Court said that the parties should not be permitted to circumvent the procedure by resorting to the writ jurisdiction under Article 32 or 226 of the Constitution. Issues and Analysis: Scope and ambit of power and jurisdiction of Supreme Court under Article 142(1) of the Constitution of India The Court took note of Article 142 of the Constitution and said that this Article is apparently unique as it does not have any counterpart in most of the major written constitutions of the

world. Further, it said that Article 142(1) of the Constitution of India, which gives wide and capacious power to the Supreme Court to do ‘complete justice’ in any cause or matter’ is significant, as the judgment delivered by Supreme Court ends the litigation between the parties. The Bench said that Article 142 gives legal authority to the Supreme Court to give precedence to equity over law. This power, like all powers under the Constitution, must be contained and regulated, as it has been held that relief based on equity should not disregard the substantive mandate of law based on underlying fundamental general and specific issues of public policy. The Court while drawing a distinction between the Constitutional power exercisable by Supreme Court under Article 142(1) of the Constitution, and the inherent power of the Civil Court recognised by Section 151 of the Code of Civil Procedure, 1908 and the inherent power of the High Court under Section 482 of the Code of Criminal Procedure Code, 1973 said that the Constitutional power conferred by Article 142(1) of the Constitution on Supreme Court is not a replication of the inherent power vested with the Civil Court under the CPC., and the High Court under the CrPC, as the plenary and conscientious power conferred on Supreme Court under Article 142(1), seemingly unhindered, is tempered or bounded by restraint, which must be exercised based on fundamental considerations of general and specific public policy. Further, the Bench said that the fundamental general conditions of public policy refer to the fundamental rights, secularism, federalism, and other basic features of the Constitution of India. Specific public policy should be understood as some express pre-eminent prohibition in any substantive law, and not stipulations and requirements to a particular statutory scheme.

The major issue in this case was whether the mandatory waiting period for divorce by mutual consent as prescribed under Section 13-B of the

Hindu Marriage Act, 1955 could be waived. However, during the hearing, the Bench decided to also consider the issue of whether the power under Article 142 of the Constitution of India is inhibited in any manner in a scenario where there is an irretrievable breakdown of marriage in the opinion of the Court, but one of the parties is not consenting to the terms. The Court said that Article 142(1) of the Constitution has seemingly unhindered this tempered and bound by restraint which must be exercised based on fundamental considerations of general and specific public policy. Fundamental general conditions of public policy referred to fundamental rights, secularism, federalism, and other basic features of Constitution of India. Whereas specific public policy should be understood as some express provision in any substantive law and not stipulated a requirement to a particular statutory scheme. It should not be confined to a fundamental and non derogable principle at the core of the statute. It was never doubted or debated that the Supreme Court is empowered under Article 142(1) to do complete justice without being bound by the relevant procedure, if it is satisfied that it is necessary to depart from the procedure to do complete justice. Thus, the Court held that period of 6 months can be dispensed with, as specified in the two judgments of this Court in Amardeep Singh (supra) and Amit Kumar (supra). Further, it has been held that it is possible for the Court to dissolve the marriage on the ground of irretrievable

breakdown of marriage that will not contravene the specific or fundamental principles of public policy. The Court also laid down the factors to be kept in mind by the Court while deciding when there is irretrievable breakdown of marriage and how to balance out equities, especially with regard to maintenance, alimony, economic rights of children.

Therefore, a party cannot file a writ petition under Article 32 and seek relief of dissolution of marriage directly from Supreme Court. Thus, the Bench held that in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein Supreme Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. Further, it was said that the Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed. The Court also laid down the factors to be kept in mind by the Court while deciding when there is irretrievable breakdown of marriage and how to balance out equities, especially with regard to maintenance, alimony, economic rights of children.

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