ILI Newsletter

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Editorial

The historical process of crystallisation and expansion of international protection of human rights has been marked by the phenomenon of multiplication and co-existence of instruments of distinct legal nature available at global and regional levels. The various means of protection is accompanied by their overriding identity of purpose and the broad conceptual unity of human rights. These mechanisms of human rights protection ought to be seen as mutually complementing rather than competing with each other. With the policy of avoidance of conflict between international and national jurisdictions, co-existing human rights procedures seem in practice to reinforce each other at international level. Whenever violations of any right take place the only proper place to seek redress is the judiciary of the state concerned. However, states differ in the level of integrity and independence which they accord to their judicial systems. Whether independence of judiciary remains intact even during emergency is very controversial subject in many countries. It is observed that the role of the national judiciary in protecting human rights in such situations is often marginal. In a world marked by cultural diversity and fragmentation into independent states with diverse socio-political-economic structures, people have not yet reached a stage where the consequences of merging or centralisation of human rights protection at global and regional level could be properly anticipated and assessed. The international community should make serious efforts to define the distinction between ordinary and higher rights and the legal significance of this distinction. It should also intensify efforts to extend the list of non-derogable rights recognised by the international community of states as a whole. In addition, the concepts of jus cogens and public order of the international community should be allowed to develop gradually through international practice and growing consensus. Acceptance of these concepts would go far towards deterring violation of human rights.

Manoj Kumar Sinha

Inside

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ACTIVITIES OF THE INSTITUTE

One Day Training Programme

The Indian Law Institute in collaboration with the National Human Rights Commission (NHR) organized One Day Training Programme for Functionaries of Old Age Home and Homes under the Juvenile Justice Act on October 17, 2014. Hon'ble Mr. Justice D. Murugesan, Former Chief Justice, Delhi High Court/ Member, NHRC has inaugurated the Programme.

Shri Mathew Cherian, Executive Director, Help Age India, New Delhi, Mr. Shahbaz Khan Sherwani, Programme Coordinator, Chiild Protection, HAQ, New Delhi, Prof. (Dr.) Ved Kumari, Professor of Law, Delhi University, Dr. Rajesh Sagar, AIIMS, New Delhi were invited as resource persons to address and interact with the participants.

One Day Workshop on Prosecution Complaint under PMLA

The Indian Law Institute in collaboration with the Enforcement Directorate organized One Day Workshop on Prosecution Complaint under Prevention of Money Laundering Act, 2002 on November 1, 2014. Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India/ Treasurer, ILI inaugurated the Workshop.

First Annual Law Conference on Human Rights: Contemporary Issues and Challenges

In pursuance of the decision of the Executive Committee and the Governing Council of the Indian Law Institute to organize an Annual Law Conference every year with effect from 2014, the Indian Law Institute organized its first Annual Law Conference on the theme "Human Rights: Contemporary Issues and Challenges" on December 10, 2014. Eminent jurists, academicians, lawyers, judges, activists and students attended the conference and participated in the day long deliberations.

The conference was inaugurated by Hon'ble Justice Dr. Arijit Pasayat, Former Judge, Supreme Court of India and Chairman, Academic Council, ILI. Justice Pasayat, in his inaugural speech, emphasised the need to consider the human rights of the victims of crime and balancing them with the human rights of the accused in dealing with criminal cases, in particular, organized crimes. Mr. Rakesh Munjal, Senior Advocate and Vice – President, ILI and Mr. Sushil Kumar Jain, Senior Advocate and Member, Governing Council, ILI were also present in

Hon'ble Justice Dr. Arijir Pasayat and other dignitaries lighting the lamp.

the inaugural session and addressed the participants. The panel highlighted the excesses and human rights violations committed by state machinery to secure high conviction rates and, thus, emphasized on due process, fair investigations and the rule of law to realize the promise of human rights.

The conference proceedings were divided into three thematic sessions. The first session was chaired by Prof. Upendra Baxi, Emeritus Professor of Law in Development, University of Warwick. Prof. T.K. Oomen, Professor of Sociology, Jawaharlal Nehru University and Prof. Ved Kumari, Professor of Law, Delhi University were the panellists. The discussion began with the note on the silencing of suffering behind the celebrations of human rights day: what meaning could be accorded to the 10th December celebrations that are marked with the invisibilization of the violence of Bhopal (3rd-4th Dec.) and Babri mazjid (6th Dec.)? Further, addressing the theme of the session, "Human Rights: Teaching and Research", the speakers discussed the importance of human rights education in the existing law curriculum. This entails an overhauling transformation in the conceptualization of the objectives of legal education (such that it creates socially sensitive lawyers and judges), course contents (wherein human rights approach is incorporated in every course, rather than being relegated to specialized/ optional courses), teaching methodology (that needs to become self-reflexive and self-critical), etc. Further, the panel discussed the importance of the history of human rights in understanding the limits, potential and the politics of human rights.

Prof. Upendra Baxi with other panellists in the first technical session

Prof. A. K. Koul, former Vice Chancellor, National Law University, Jodhpur chaired the second technical session on "Human Rights and Development". Prof. Yogesh P. Tyagi, Professor and Dean, Faculty of Law, South Asian University and Mr. Ashish Srivastava, Director General, Election Commission of India participated in this session. While highlighting the challenges in conceptualizing and effectuating the right to development, this session called for serious efforts that must be undertaken at national and international levels: a national normative revolution that would entail making constitutional changes, enacting legislation, improving case law, revising legal literature, and promoting development-related interdisciplinary research with a focus on law; an international normative revolution wherein an international framework convention on the right to development should be drafted, followed by a series of protocols on various components of development; and finally a data revolution which will secure reliable data on various aspects of development at both domestic and international level

Audience interacting with the panellists

The final session on "Intellectual Property Rights and Public Health" was chaired by Prof. A. K. Bansal, Professor and Dean, Faculty of Law, Delhi University. Prof. Afsal Wani, Professor and Dean, Faculty of Law, Gurugobind Singh Indraprastha University, and Ms. Leila Choukroune, Director (Research Professor), Centre for Social Sciences and Humanities were the panellists in this session. While the speakers conceded the need to balance the IPR laws and regulations with the mandate of securing public health, immense challenges imposed by the global order and the regime of intellectual property rights for the effective realization of right to health in the developing countries were also underscored.

Panellists in the third technical session

The conference opened up many areas for further discussions and debates. The participants were left with many challenging questions and propositions. How should human rights be made "Other-regarding" from "self-regarding"? How scholarly efforts should be undertaken in the Indian academia to foreground the suffering of marginalized and impoverished segments of the population? How do we conceive of writing multiple histories of human rights? What kind of affective engagement is needed between the researcher and the researched to begin a project of human rights? What kind of changes should be made in the legal education such that law students and teachers begin to imagine themselves as "soldiers of justice"? The conference culminated with the hope that the research agendas of law departments of this country are conceived in response to the concerns and issues reflected in the above questions.

Dr. Anurag Deep was in-charge of the technical session on "Human Rights: Teaching and Research".

Dr. Jyoti Dogra Sood was in-charge of the technical session on "Intellectual Property Rights and Public Health".

Ms. Arya A. Kumar was in-charge of technical session on "Human Rights and Development".

Dr. P. Puneeth was the Conference Co-ordinator.

Two Days Workshop for Judicial Officers

The Indian Law Institute in collaboration with National Human Rights Commission (NHRC) organised two days training programme for Judicial Officers on December 20-21, 2014 on the theme "Human Rights: Issues and Challenges".

The program was inaugurated by the Hon'ble Mr. Justice Cyriac Joseph, Former Judge, Supreme Court of India/ Member, NHRC. Judicial officers from different parts of the country have participated in the workshop.

Hon'ble Mr. Justice Cyriac Joseph along with the participants

Shri Sunil Gupta, Law Officer, Tihar Jail, New Delhi, Mr. Sanjay Parikh, Senior Advocate, Supreme Court of India, Dr. P. M. Nair, Former Director General, National Disaster Response Force, New Delhi, Prof. (Dr.) Ved Kumari, Professor of Law, Delhi University, Prof. (Dr.) B.T. Kaul, Chairperson, Delhi Judicial Academy, New Delhi, Ms. Priya Hingorani, Advocate, Supreme Court of India were the resource persons.

Hon'ble Mr. Justice D. Murugesan, Former Chief Justice, Delhi High Court/ Member, NHRC was the chief guest in the valedictory function.

Hon'ble Mr. Justice D. Murugesan with other dignitaries on dais in the valedictory function.

Swachta Diwas

The Indian Law Institute organized **Swachta Diwas** Programme on October 2, 2014.

Staff of ILI taking part in the programme

National Integration Day

The Indian Law Institute organized a National Integration Day on October 31, 2014. Dr. Anurag Deep, Associate Professor delivered a talk on "The Role of Sardar Patel in the preparation of Draft of the Fundamental Rights for the Constituent Assembly."

RESEARCH PUBLICATION

Released Publications

- *Journal of the Indian Law Institute* (JILI) Vol. 56 (3) (July – September, 2014)
- Annual Survey of Indian Law Volume XLIX 2013.

Publications on the Anvil

- *Journal of the Indian Law Institute* (JILI) Vol. 56 (4) (October – December, 2014)
- Book on "*Environment: Sustainable Development and Climate Change*"
- Index to Indian Legal Periodicals -2013.
- Directory of law colleges in India

SPECIAL LECTURES

Prof. (Dr.) P. Ishwara Bhat, Vice Chancellor, National University of Juridical Sciences, Kolkatta visited the Institute on October 1, 2014 and delivered a lecture on "Comparative Methods in Legal Research" to LL.M. Students of ILI.

Prof. (Dr.) Thomas Berg, James L. Oberstar Professor of Law and Public Policy, University of St. Thomas visited the Institute on October 14, 2014 and delivered a lecture on "Interaction of Law and Religion" to the LL.M. students of ILI. Hon'ble Mr. Justice Madan Lokur was present.

Prof. (Dr.) Upendra Baxi, Professor of Law, University of Warwick, UK visited the Institute on November 20, 2014 and delivered a lecture on "Welfare State and Free Market Economy: Constitutional Imperatives" to the LL.M. students of ILI.

Prof. (Dr.) M.P. Singh, Chancellor, Central University of Haryana visited the Institute on November 28, 2014 and delivered a lecture on the topic "Rights of Minorities in India" to the LL.M. students of ILI.

ACADEMIC ACTIVITIES

- LL.M - One Year (first trimester) examinations were held from October 29-31,2014.
- LL.M - Two Year and LL.M - Three year odd semester examinations were heds from December 8-10, 2014.
- E -Learning certificate course on Cyber Law - Result for the nineteenth batch was declared in November 2014. Admission to the twentieth batch was started from December 23, 2014.
- E - Learning certificate course on Intellectual Property Rights Law - Result for the thirtieth batch was declared in November 2014. Admissions to thirty-first batch was started from December 23.2014.

LIBRARY

- Library added new books and reports on Constitutional Law, legal education, Halsbury's Laws of India to enrich its collection.
- Readers' tables and chairs have been replaced with new furniture.
- Many students and researchers from National University of Study and Research in Law, Ranchi, Alliance University, Bengaluru, University of Petroleum and Energy Studies, Dehradun and Amity University, U.P, visited the Library for their Internship, research and reference purpose.

VISITS TO/FROM THE INSTITUTE

- Students of Law Department, University of Burdwan, Golapbag, Burdwan visited the Institute on October 28, 2014 and attended a lecture session and visited the library.
- A delegation of judges and academicians from different countries visited the Indian Law Institute on November 12, 2014. Judge Clifford Wallace, Chief Judge, Court of Appeal, Ninth Circuit, US, Professor W. Cole Durham, Jr., Director, International Centre for Law and Religion Studies, BYU, USA, Professor Asher Maoz, Founder-Dean, Peres Academic Centre Law School, Israel, Professor Carmen Asiain Pereira, Professor of Law and Religion, University of Montevideo, Uruguay, Professor Tore Lindholm, Norwegian Centre for Human Rights, University of Oslo, Norway were part of the delegation. They interacted with the faculty and students of ILI.

Delegates participating in a interactive session

STAFF PROMOTION / APPOINTMENTS

Dr. Furqan Ahmad, Associate Professor has been promoted as Professor w.e.f. 4.11.2014.

Dr. Vandana Mahalwar joined as Assistant Professor w.e.f. 12.11.2014.

Dr. Deepa Kharb joined as Assistant Professor w.e.f. 13.11.2014.

Mr. Stanzin Chostak joined as Assistant Professor w.e.f. 17.11.2014.

Ms. Latika Vashist joined as Assistant Professor w.e.f. 9.12.2014.

Dr. Susmitha P. Mallaya joined as Assistant Professor w.e.f. 10.12.2014.

Mr. Bhoopendra Singh joined as Computer System Administer w.e.f. 01.10.2014.

FORTTH COMMING ACTIVITIES

The Indian Law Institute along with National Green Tribunal is organising an International conference on "Global Environment Issue" in March, 2015.

FACULTY NEWS

Manoj Kumar Sinha was invited as a Speaker in Rule of Law Workshop organised by National Law University, New Delhi, on December 13, 2014.

He was also invited as a Guest of Honour on the Occassion of Law Day Celebration by Lloyd Law College, Greater Noida, U.P. November 26, 2014.

He was invited as Chief Guest to deliver inaugural address to the participants of the two days National Colloquium on Legal Research Methodology organised by Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur, held on November 1-2, 2014.

He presented a paper in International Symposium on Constitutional Parameters of Individual Freedom, Secularity, Public Interest and Social Reform, organised by the Institute of Advance Legal Studies, Amity University, New Delhi, on November 10, 2014. He was invited as Chief Guest to deliver inaugural address in two day conference on Globalisation and Human Rights organised by Baba Bhim Rao Ambedkar University, Lucknow, on October 13-14, 2014. He was invited as Guest of Honour to the inaugural function of the Certificate Course in Competition Law by Indian Institute of Corporate Affairs, on October 10, 2014. He was invited as Guest of Honour to inaugural function of Amity International Moot Court Competition, October 9, 2014.

He was nominated as subject Expert, Guru Nanak Dev University, Jalandhar, Punjab.

He was appointed as the Member of the Editorial team of *Ife Journal of International and Comparative Law* published by Department of International Law, Faculty of Law, Obafemi Awolowo University,Ile-Ife, Nigeria.

Anurag Deep was invited to judge the quarter final round of the Moot Court Competition held on October 4-5, 2014 organized by the USSLLS, Indraprastha University, New Delhi.

He has published a case comment titled "Judicial Delineation on Quashing of FIR: A Critical Study of *Jitendra Raghuvanshi* v. *Babita Raghuvanshi* (2013)4SCC58" in *Ideal Journal of Legal Studies*. He also published three articles in Hindi on appointment of judges, secularism and capital punishment in the November and December issue of *Samsamyik Mudde* - a magazine for competitive exams.

Jupi Gogoi presented a paper on "Online Content Protection and Fair Trade: An Indian experience" at Expert Forum on *ICT laws in Asia* at Korea Legislation Research Institute, Sejong, South Korea on October 30, 2014.

She was invited to be a judge in the Third Indraprastha National Moot Court Competition organized by USSLLS, Guru Gobind Singh Indraprastha University, New Delhi on October 11, 2014.

She was invited as a judge in the Thirtieth Bar Council of India Inter University Moot Court Competition, 2014 organized in Llyod Law College on November 8, 2014.

Deepa Kansra was invited to be a judge in the Third Indraprastha National Moot Court Competition organized by USSLLS, Guru Gobind Singh Indraprastha University, New Delhi on October 11, 2014.

She was invited as a judge in the Thirtieth Bar Council of India Inter University Moot Court Competition, 2014 organized in Llyod Law College on November 8, 2014.

LEGISLATIVE TRENDS

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014

December 31, 2014

The Ordinance was passed with the objective of facilitating land acquisition under the Act, along with a provision for higher compensation, rehabilitation and resettlement benefits for the farmers whose lands are

acquired. The following are the important changes introduced by the Ordinance:

- In the principal Act (The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) the word 'private company' is replaced with 'private entity'. Private entity under the Ordinance is referred to as an entity other than a Government entity or undertaking and includes a proprietorship, partnership, company, corporation, non-profit organization or other entity under any law for the time being in force.

- The Ordinance inserts a new chapter- chapter IIIA titled "Provisions of Chapter II and Chapter III not to apply to Certain Projects". Section 10 A under this chapter states that the appropriate government may exempt the projects listed under the section from the applicability of chapters II and III of the principal Act. The projects listed include projects vital to national security and defence of India, rural infrastructure, affordable housing and housing for poor people, industrial corridors, infrastructure and social infrastructure projects.

The Coal Mines (Special Provisions) Second Ordinance, 2014

December 26, 2014

The ordinance was passed with the objective of providing for allocation of coal mines and vesting the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees with a view to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilization of coal resources consistent with the requirement of the country in the national interest.

The salient features of the Ordinance are:

- The word 'mine infrastructure' includes infrastructure such as tangible assets used for coal mining operations, being civil works, workshops, immovable coal mining equipment, foundations, embankments, pavement, electrical systems, communication systems, relief centres, site administrative offices, fixed installations, coal handling arrangements, crushing and conveying systems, railway sidings, pits, shafts, inclines, underground transport systems, hauling systems…land demarcated for afforestation and land for rehabilitation and resettlement of persons affected by coal mining operations under the relevant law.

- The Ordinance defines schedule I, II and III coal mines and the requisite procedure and institutional framework for the auction and allotment of the schedule I, II and III coal mines.

LEGAL JOTTINGS

Requirement of a Speaking Order in exercise of Judicial Function

The power of the state government, under section 102 of the Motor Vehicles Act, 1988, to modify the existing scheme for granting or refusing permission, is not purely administrative in character but partakes of exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted on with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view.

[*B.A.Linga Reddy* v. *Karnataka State Transport Authority* 2014 (14) SCALE314]

Formation of Co-operative Societies

Co-operative movement is a socioeconomic and a moral movement. It has now been recognized by article 43A of the Constitution of India. It is to foster and encourage the spirit of brotherhood and co-operation that the government encourages formation of co-operative societies. The members may be owning individually the flats or immovable properties but enjoying, in common, the amenities, advantages and benefits. The society as a legal entity owns the building but the amenities are provided and that is how the terms "flat" and the "housing society" are defined in the statute in question. There is reason to deviate from the principle laid down in *Sind Co-operative Housing Society's* case.

[*The Commissioner of Income Tax* v. *Darbhanga Mansion CHS Ltd. Income Tax;* Appeal No. 1474 of 2012

CASE COMMENTS

Nand Kishore* v. *State of M.P.
2015(1) SCALE10
Decided on December 16, 2014

This writ petition was filed by the petitioner claiming the benefit under section 7 A of the Juvenile Justice (Care and Protection of Children) Act, 2000. The petitioner claimed that he was born on April 14, 1980 and that the incident occurred on June 18, 1997. Thus on the date of commission of offence he was 17 years 2 months and 4 days old. The petitioner was convicted under section 302 of IPC by the trial court and same was affirmed by the high court. The petitioner was released on bail by the court on July 15 2013, and a report regarding the determination of the age of petitioner was called for from the Juvenile Justice Board. The report was submitted by the Juvenile Justice Board to the court and it reaffirmed the claim of the petitioner that he was born on April 14, 1980 and on the date of commission of offence, the petitioner was actually 17 years and 2 month and 4 days old. This finding has established beyond doubt. The petitioner was a juvenile on the date of occurrence and his incarceration henceforth cannot be continued. The main question that arose was whether the petitioner who was above 17 years on the date of commission of the offence prior to April 1, 2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. The court dealt with this issue in *Hariram* v. *State of Rajasthan* (2009) 13 SCC 1093, and held: "a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of section 2(k) had always been in existence even during the operation of the Act". The said judgment was followed by the court in later cases. The court granted benefit to the petitioners on the basis of principle developed in *Hariram's* case. The petitioner had already undergone 11 years of imprisonment, pursuant to the conviction and sentence imposed on him. The court allowed the writ petition and ordered that the petitioner shall be set at liberty forthwith.

The court in this case once again reiterated that the very scheme of Juvenile Justice Act is rehabilitatory in nature and not adversarial which the courts are generally used to. Thus, it is important that those who are responsible for implementation of the Act must be sensitive towards the need of the Juvenile, otherwise it will be almost impossible to achieve the objects of the Act.

Manoj Kumar Sinha

Rasheeda Khatoon v. ***Ashiq Ali***
2014(11) SCALE 694
Decided on October 10, 2014

In the present case, one Abdul Haq, the donor, was living in a house which was situated in Tanda, dist Faizabad, (UP). His son had migrated to Pakistan and there was no one to look after him. The father of the donee, Rasheeda Khatoon, was a close friend and neighbor of Abdul Haq and, therefore, the donee was looking after Abdul Haq till his death. Therefore, according to her, before his demise Abdul Haq gifted the house to her, which she accepted and the possession was also handed over. Further, Abdul Haq executed a deed in writing evidencing the gift made earlier in favour of donee. After the death of donor, the legal heirs of the donor raised objections over the oral gift and, tried to dispossess the donee, which is allowed by SDM, through its order dated April 12, 1975. Consequently donee filed a suit for recovery of possession, The trial court decreed the suit in favour of donee accepting the validity of oral gift, but the high court declined to accept the gift in question on various grounds. And hence the appeal came before the apex court.

The substantial question before the apex court was, what is the nature of gift under Muslim law, and whether the present oral gift was valid or not?

The court held that the document of gift does not show that oral gift was already made by owner of house in favour of donee. From the perusal of gift deed, it was manifest that owner of house had declared that he had always been owner in possession and entire house was in his exclusive ownership and possession and free from all encumbrances. Plea of actual physical possession by donee did not deserve acceptance as there was no proof that the property was mutated in her favour by revenue authorities and she was also not in possession of title deeds. Thus, evidence on record revealed that plaintiff was not in constructive possession. Therefore, one of elements of valid gift had not been satisfied as donee could not prove either actual or constructive possession, gift was not complete and hence, issue of registration did not arise.

The division bench of the apex court after consulting the basic sources of Islamic law, as well as the leading judicial precedents on the subject, though recognized the validity of oral gift, in this case having regard to the facts and circumstances, rightly dismissed the appeal inaffectuating the validity of the gift on the ground that the gift deed never revealed the constructive or actual possession with donee and the intention of the donor could not be proved that he disowned the property and finally handed over the possession of the same to the donee. The apex court referred to tradition of prophet that, "a gift is not valid unless possessed". The efforts of the apex court to decide the case according to Islamic law by collecting materials on Islamic jurisprudence must be appreciated which is rarely found now a days, in the judgments delivered by few other benches.

Furqan Ahmad

Ajay Kumar Pal* v. *Union of India
2014(13) SCALE762
Decided on December 12, 2014

When one feels the debate on death sentence in India is squeezed because it is limited to retentionlist versus abolitionist, a new area re-emerges like a spring. In this case the "sense and soundness" of two executive actions at the two extreme ends were in question. At one end the prison officials violated the fundamental right to personal liberty while at the other end the President's decision violated fundamental right to life. The prisoner in this case successfully argued that from prison to president article 21 has been violated. Besides the much debated, deliberated and decided issue of delay in mercy petition, a new question was regarding the meaning of the words "under sentence of death" used in section 30 of the Prisons Act, 1894. It was new only in the sense that for last 36 years after *Sunil Batra* (1978), the meaning remained inapplicable.

One of the statutory requirements under section 30 of the Prisons Act, 1894 is that every prisoner under sentence of death shall be confined in a cell apart from all other prisoners. In the present case also Ajay Kumar Pal was awarded death sentence by a trial court of Ranchi on April 9, 2007. *The prisoner was shifted into solitary confinement on that very day to observe the command of 30* (2). Is the prisoner "under sentence of death" as soon as a trial court awards capital punishment or does it apply only after mandatory confirmation by the high court or until the judicial process at the Supreme Court is over or after rejection of the mercy petition?

Answering the question relating to the interpretation of the words 'under sentence of death', the court quoted from *Sunil Batra* v. *Delhi Administration*, (1978) 4 SCC 494 where Krishna Iyer J., speaking for the majority held that trial court sentence of death and mandatory confirmation by high court is not right time for the application of section 30. *"*Even if [the Supreme] Court has awarded capital sentence, section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, Code and Prison Rules, has not been disposed". In other words, as per section 30(2) of the Prison Act, the prisoner can be "confined in a cell apart from all other prisoners" only "once mercy petition is rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he is 'under sentence of death', even if he goes on making further mercy petitions." On the question of delay, the Supreme court concluded that there was an inordinate and unexplained delay of 3 years and 10 months in disposal of mercy petition. By taking note of the solitary confinement as well the Supreme court commuted the death sentence to life imprisonment.

There are two things that deserve mentioning. One positive aspect is that the judgement is consistent with the law laid down in two constitution bench judgements in *Sunil Batra* and *Triveniben*. Second, is the negative aspect of judgment. The judgement could have served the humanity better by its follow up orders. It should have directed the registrar of the Supreme Court to communicate this judgement to all jail superintendents dealing with death sentence prisoners. It should have ensured the compliance of *Sunil Batra* order on section 30 (2) of the Prisons Act, 1894. They should have also directed that the compliance report be submitted within one month of *this* judgement. The error is continuing and it should be rectified as soon as possible because putting any death row convict in solitary confinement before final disposal of mercy petition (if any) is violative of article 21. It amounts to continuing violation of fundamental right.

There are around 250 convicts of death sentence whose petitions are pending either before the higher judiciary or seeking executive clemency. [News papers in

2012 reported Ajmal Kasab as "the 309th prisoner on death row in India" while Asian Centre for Human Right, October 22, 2013 reported "414 death row convicts await the gallows in India" and death penalty project of NLU Delhi identifies around 250 convicts as on January 2015.] It is difficult to state whether section 30 (2) of the Prisons Act, 1894 is followed with the cavet of *Sunil Batra* or not. There are greater chances that most of these 250 prisoners are kept in solitary confinement even before prisoners "sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or Constitutional procedure". Recently *Surender Singh Koli* (*Nithari* case) also complained that he was in solitary confinement even after this judgement of *Ajay Kumar Pal*. As a matter of fact and law *Shatrughan Chauhan* has issued 12 guidelines where the very first guideline is the *ratio* of *Sunil Batra* which distinguished solitary confinement from 'confined in a cell apart from all other prisoners' as used in section 30(2) of the Prison Act 1894. Wrong application of section 30, violation of *Sunil Batra* and inordinate delay in mercy petition changes the status of prisoner from offender to victim. For judiciary "it becomes a fresh case of violation of fundamental right under article 21" independent of the legal finding that the prisoner has committed a rarest of the rare crime. Initially prisoner was violator of law and state was the victim but now prisoner becomes victim of state inaction as well as gross negligence and state become violator of article 21.

The lesson for executive is that they must read the guidelines of judiciary carefully. This case should be a part of the training programme for prison officials. The lesson for legislature (parliament in this case) is that they should bring an amendment to section 30 (if parliament agrees with the judgement) adding an explanation that "under sentence of death means mercy petition, if any, is rejected and there is no stay of execution by the authorities". Had they amended suitably in 80s, various cases would not have led to fundamental right and human rights violations. Another point for discussion is that the jurisdiction of "writ compensation" has not been exercised by the Supreme court. Once fundamental right is violated, especially where state is the clear violator, a constitutional tort is committed. Why has the court not granted some compensation in this case? The question is whether right to claim compensation for violation of fundamental right is implicit under article 32? This is a matter for further study and research.

Anurag Deep

Neeru Yadav v. State of U.P.
2014(14) SCALE 59
Decided on December 16, 2014

In the present appeal, the order of the High Court of Judicature at Allahabad passed in exercise of the power under section 439 of the Code of Criminal Procedure, 1973 (hereinafter 'Code') granting bail to an accused charged for offences punishable under sections 147, 148, 149, 302, 307, 394, 411, 454, 506, 120B read with section 34 of the Indian Penal Code, 1860 was challenged. The accused had claimed the bail from the high court on the ground that similarly placed co-accused had already been enlarged on bail and his role was also identical to that of the co-accused. The high court had granted the bail on the *principle of parity* notwithstanding the vehement opposition to the grant of bail on the ground that the accused had criminal antecedents and the role attributed to him was different.

Being aggrieved by the said order granting bail, the wife of the deceased has preferred this appeal, by special leave under article 136 of the Constitution, for setting aside the order.

Taking note of the criminal antecedents of the accused, nature of accusations levelled against him in other pending criminal cases, his role in the instant case, which is different from that of the co-accused, the apex court observed that "[I]t can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind." Accordingly, it allowed the appeal and set aside the order granting bail.

It may be noted that normally the court does not interfere, in exercise of its discretionary jurisdiction under article 136, with the order passed by the high court granting or refusing bail. But, in the present case, it chose to interfere with the order on the ground that the high court had failed to exercise its discretion, under section 439 of the Code, cautiously and strictly.

The granting or refusing of bail is the discretion of the court, which belongs to the blurred are of the criminal justice system. In exercising the said discretion, there is a need to balance between the bi-focal interests of justice –

to the individual involved and the society affected by the alleged act of such an individual. Since refusal of bail results in deprivation of personal liberty, which is too precious a value the Constitution of India seeks to protect, bail should not ordinarily be refused unless compelling legitimate societal interests requires it. The expression "societal interests" is of wide amplitude and includes several weighty factors that deserve to be considered. In the fact and circumstances of the present case, no doubt, the high court had erred in properly balancing between the two conflicting interests but it erred on the side of liberty. It seems the Supreme Court is justified to some extent in setting aside the impugned order. But, how far the Supreme Court is justified in interfering with such an order of the high court in exercise of its extra-ordinary appellate jurisdiction under article 136 of the Constitution is a question that need to be addressed not only keeping in view the ends of justice in each individual case, as it is very subjective but also from the point of view of its own stated policy of non – interference in exercise of its discretionary jurisdiction. The exercise of discretion under article 136 of the Constitution also belongs to the blurred area of Indian legal system. Though, the provision was intended to confer residuary appellate jurisdiction on the Supreme Court, manner of its exercise has resulted in converting the Supreme Court into a regular court of appeal. More than eighty per cent of the cases that come before the apex court are under this provision. There is need to re-think over article 136 and the manner in which the power there under is exercised. Reference made to the larger bench in *Mathai* v. *George* [(2010) 4 SCC 358], needs to be considered at the earliest.

P. Puneeth

Charu Khurana* v. *Union of India
2014(12) SCALE 701
Decided on November 10, 2014

Gender empowerment and gender justice is confined to theoretical discourse in India and despite numerous legislations, in reality, women are not treated at par with men. The current writ petition brings to light the prevalence of gender inequality in the film industry in India. The petitioners in this case were trained female make-up artists and hair stylists. The first petitioner in this case submitted an application to the Cine Costume Make-up Artists and Hair Dressers Association (registered as a trade union under the Trade Unions Act) to issue her a membership card as a make-up artist and hair stylist. She was denied the same and compelled to delete the word make-up artist in her application. She in the meantime sent complaint to many authorities that she was denied work as make-up artist and also imposed a fine when she was found working as a make-up artist. Being aggrieved, she and many other female artists filed a complaint with the Federation of Western India Cine Employees (the federation). The federation sought an answer from the Association with regard to this discrimination and the reply revealed that make-up artist cards are issued only to male members from the date of formation of the Association and never to female members. The association further mentioned that this was done to ensure that male members are not deprived of working as make-up artists. If the female members are given make-up artist card then it will become impossible for the male members to get work as make-up artists and they will lose their source of livelihood and will be deprived of their earnings to support themselves and their families because no one would be interested to engage male make-up artist if the female make-up artists are available owing to the human tendency. The Federation communicated to the association that their rules were unconstitutional and discriminatory and hence they were granting permission to the first petitioner to work as make-up artist till she gets regular membership and this was valid to all the regions affiliated to the All India Film Employees Federation. The association mentioned that they were not bound by the federation and if she continues to work as make-up artist strict actions will be initiated against her. Another provision of the association which also came under scanner was that only a person who has been domiciled in Maharashtra for the last five years was eligible for membership. It was challenged as unconstitutional and violative of fundamental rights embodied in the Constitution of India. The Supreme court while deciding the case held that gender equality is a fundamental right. The discrimination done by the association, a trade union registered cannot take the route of the discrimination solely on the basis of gender. It is absolutely violative of constitutional values and norms. If a female artist does not get an opportunity to enter into the arena of being a

member of the association, she cannot work as a female artist. It is totally impermissible and wholly unacceptable. With regard to the issue of domicile, the court held that the concept of domicile, as stipulated, has no rationale. It invites the frown of articles 14, 15 and 21 of the Constitution of India.

This decision comes as a relief for all female artists who due to the discriminatory rules were not getting the opportunity to earn their source of livelihood in the industry. Acceptance of such discriminatory rules by a trade union is a shame and it depicts that despite progressive outlook in society or behind the liberal exterior, there is an opposite discernment. The decision of the court to quash the said clauses and directing the Registrar of Trade Union to see that the petitioners are registered as make-up artist within four weeks is laudable.

Jupi Gogoi

Lal Zenda Coal Mines Mazdoor Union* v. *Western Coalfields Limited

2015(144) FLR 475

Decided on December 20, 2014

The case in hand brings forth an interesting decision from the court providing an impactful/effectual interpretation of the expression *fraternity* under the preamble, and the fundamental duty to promote the *spirit of common brotherhood* under article 51A (e) of the Constitution of India.

The petitioners before the court challenged the decision of the Western Coalfields Limited (WLC) for the deduction of one day's wages from all the employees of the WCL for contributing towards the Prime Minister's National Relief Fund (PMNRF). The claim before the court being that WCL should not be allowed to deduct any amount without written authorization of each and every employee of the WCL. Reliance was placed on the Payment of Wages Act, 1936 and the Certified Standing Orders which require a written authorisation of the employed person for making contribution to the PMNRF. Section 7 (2) (p) of the Payment of Wages Act, 1936 reads as "deductions, made with the written authorisation of the employed person, for contribution to the Prime Minister's Relief Fund..."

The court took note of the said law, nevertheless it dismissed the petitions. Reliance was primarily placed on the decision of the WCL (1998, Meeting No. 6/98) taken by holding an emergent meeting to contribute some amount to PMNRF for financial assistance to cyclone affected people of Gujarat. It was also placed on record that one of the petitioners (union) had issued a letter wherein they stated that the unions support the cause to help victims of the cyclone, but the deductions being made without authorisation of each employee are illegal and should be stopped.

The decision of the court to dismiss the petitions and hold in effect that the decision of WCL was not contrary to law was premised on the article 51 A (e) which states that "it shall be the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities..." In pursuance, the court stated that the petitioners are bound by the said constitutional mandate. The duty requires the petitioners/employees of WCL to be considerate and humane to fellow beings/brothers affected by natural calamity. An attitude/decision otherwise is destructive of the requirement of preserving the spirit of brotherhood under the Constitution. The court thus concluded that the requirement of section 7 (2) (p) of the Payment of Wages Act is, firstly, "not in the fitness of things" because to have a written submission of each and every employee from a large number of organizations, public or private is not practical. Secondly, the provision of the Act (Payment of Wages) is subservient/ subordinate to the constitutional mandate of fraternity in the preamble, and fundamental duty under article 51 A (e).

The decision of the court gives rise to several questions. To list a few:

- If there are facets of the Constitution which are referred to as being essentially directive/persuasive and soft, can their relevance be understood only in situations wherein no ordinary law exists or applies?
- Can there be a constitutional mandate/duty (fundamental duty to promote harmony and spirit of brotherhood) in the absence of an ordinary/statutory rule to effectuate its implementation?
- Can a constitutional mandate without a specific content/requirement be superior to existing/ordinary law?

- Is ordinary law in its entire life of operation subject to both mandatory and persuasive dimensions of the supreme law of the land?
- Is there an evident need felt to read fundamental duties with the same "vigour and force as that of fundamental rights included in the Constitution" (in line with one of the recommendations so made during the Constituent Assembly Debates).

These questions may be simply academic, but yet are not disassociated with the practice/working of the law.

Deepa Kansra

Assam Sanmilita Mahasangha* v. *Union of India.
2014(14) SCALE 101
Decided on December 17, 2014

In 2012 and 2014 large scale riots took place in Assam resulting in the deaths of a large number of persons. It is in this background that writ petitions under article 32 of the Constitution of India were filed assailing the constitutional validity of section 6A of the Citizenship (Amendment) Act, 1985.

The court refused to accept the contention of the Additional Solicitor General that section 6A of the Citizenship (Amendment) Act having been enacted in 1985, a challenge made in 2012 would be debarred by delay and laches. It held that at least when it comes to violations of fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner. The court further held that doing so would result in shirking from the constitutional duty of the court to protect the lives of citizens and their culture. Given the contentions raised specifically with regard to pleas under articles 21 and 29 of the Constitution of India of a whole class of people, namely the tribal and non tribal citizens of Assam and given that agitations on this core are ongoing, the court held that petitions of this kind cannot be dismissed at the threshold on the ground of delay or laches.

The court held that article 32 of the Constitution which has been described as the "heart and soul" of the Constitution is itself a fundamental right. The court while discussing the *ratio* of the decisions in *Tilokchand Motichand* v. *H.B. Munshi* [(1969) 1SCC 110] to *Bangalore City Co-operative Housing Society* v. *State of Karnataka* [(2012) 3 SCC 727], and also considering important developments in law regarding the doctrine of laches went on to hold that the time has come to have a relook at the doctrine of laches altogether when it comes to violations of articles 21 and 29 as raised under the present writ petition.

The minority view of Hegde J. in *Tilokchand Motichand* v. *H.B Munshi* [(1969) 1SCC 110], finds resonance in the present case. In that case, he made reference to *Basheshar Nath* v. *CIT*, Delhi, [(1959) Supp (1) SCR 528] to bring home the point that the Supreme Court of India has been resisting every attempt to narrow down the scope of the rights guaranteed under part III of the Constitution. At the same time Hegde J also mentioned about the possibility of colorable legislation if the provisions of the Limitation Act is brought by an indirect process to control the remedies conferred by the Constitution. Concurring with the view of Hegde J, Hidayatullah CJ, also held that to put curbs in the way of enforcement of fundamental rights through legislative action might well be questioned under article 13(3).

The present case provides further impetus to analyse the scope of the public policy oriented maxims such as interest *reipublicae ut sit finis litium* doctrine of *res judicata, vigilantibus non dormientibus jura subveniunt vis- a- vis* the fundamental rights of the citizen. The constitutional preponderance of fundamental rights of citizens over legislations like the Limitation Act was reaffirmed in the present judgment

Stanzin Chostak

Narinder S. Chadha* v. *Municipal Corporation of Greater Mumbai
2014(13) SCALE 575
Decided on December 8, 2014

The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter the Act) permits the sale of cigarettes and any other tobacco products , except to persons under 18 years of age and in an area within a radius of 100 yards of any educational institution. Municipal Corporation of Mumbai, Chennai and Ahmedabad issued circulars

banning the licensee of a restaurant to keep or sell or provide any tobacco or tobacco related products in any form in the licensed premises. The impugned circular puts a bar on hookah smoking in licensed premises which is completely outside the scope of the Act. Further, as per the Act, sale of tobacco can be prohibited within a radius of 100 yards of an educational establishment while the impugned notice enhanced it to 300 yards. The circulars were under challenge in the respective high courts because of the added conditions which were not in line with the Act and the Prohibition of Smoking in Public Places Rules, 2008. Three high courts dismissed the respective writ petitions filed before them.

In the present case, the precise question considered by the apex court was whether the circulars issued by Municipal Corporations of Mumbai, Chennai and Ahmedabad travel outside the Act and the Prohibition of Smoking in Public Places Rules, 2008. After examining the relevant statutory provisions, court opined that when two exceptions have been provided under section 6 of the Act, the act of adding other exceptions to these two by municipal corporation would be impermissible in law and the said conditions would be *ultra vires* the Act and the rules made there under.

This is an important judgment for the reason that the administrative authorities, to implement any law, will interpret the legislation keeping in view the scope and object of the Act and not attempt to widen the purpose of the Act or to depart or vary from its ends. When on a subject enough is already provided by the Parliament, there is no need to supplant the same as per one's own whims and caprices. While rejecting the writ petitions, the high court had stated that while administering the law, it is to be tempered with equity and if an equitable situation demands, the high court would fail in its duty if it does not mould relief accordingly. Allowing the appeal, the Supreme Court observed:

It must not be forgotten that one of the maxims of equity is that "equity follows the law." If the law is clear, no notions of equity can substitute the same.

Vandana Mahalwar

Archana Girish Sabnis* v. *Bar Council of India

2015(1) SC T 217 (SC)

Decided on November 26, 2014

In the present case, the appellant was denied enrolment as an advocate by the Bar Council of India on the ground that her professional course Licentiate of the Court of Examiners in Homeopathy Medicine (LCEH) is not considered equivalent to degree course. The Appellant filed a writ petition before the Mumbai High Court contending that the Bar Council of Maharashtra and the Bar Council of India have no jurisdiction/authority to decide the question of equivalence of educational qualifications. The Bombay University after considering her LCEH degree as equivalent to Bachelor of Homoeopathic Medicine and Surgery (BHMS) admitted her for the three year LL.B. Course and, therefore, she cannot be denied enrolment as an advocate for practicing at the Bar and prayed for quashing of the decision of the Bar Council. The appellant also contended that the action was violative of article 14 of the Constitution for not observing the principles of natural justice as the appellant was not given an opportunity to present her case. The high court decided that the Bar Council had independent power to recognize any equivalent qualification to graduate degree for admission in graduate degree course in law.

The apex court, in an appeal by special leave, upheld the decision of the high court holding that the Bar Council is not bound to grant license as claimed by the appellant. The Supreme Court held that pursuing law and practicing law are two different things. One can pursue law but for the purpose of obtaining license to practice, the requirements and conditions prescribed by the Bar Council of India must be satisfied. The apex court, dealing with the first issue of equivalence of LCEH to a graduation degree held that as per section 13 of the Homoeopathy Central Council Act 1973, it is clear that the LCEH is a medical qualification only to practice in homeopathy medicine and not a bachelor degree.

On the second issue of authority of Bar Council to allow or deny enrolment as an advocate on the ground of non-recognition of degree held by the appellant the Supreme Court observed that on a conjoint reading of sections 7, 24 (1)(c)(iii) and 49 (1) (d) of Advocates Act,1961 and rule 1(1)(c) in part IV of the Rules there under, it is very clear that the Bar Council is empowered to make rules prescribing minimum qualification required for admission for course of degree in law from any recognized University.

Deepa Kharb

Charu Khurana* v. *Union of India
2014(12) SCALE 701
Decided on November 10, 2014

The dispute in this case brings to the fore the operation of capitalist patriarchy and its implications for the rights of women workers in the labour force. The petitioner, a qualified and trained make-up artist and hair-stylist was denied membership of the Cine Costume Make-up Artists and Hair Dressers Association of Mumbai (hereinafter "Association"). She was refused membership as a make-up artist and was only recognized as a hair-dresser as per the mandate of the membership requirements under the bylaws of the Association. According to the Association, "the said rule was introduced for the betterment of the association and not to discriminate on the basis of gender". Further, it was contended: "[t]his is done to ensure that male members are not deprived of working as make-up artists. If the female members are given make-up artist card then it will become impossible for the male members to get work as in (sic) make-up artists and they will lose their sources of livelihood and will be deprived of their earnings to support themselves and their families because no one would be interest (sic) to engage the services of a male make-up artist if the female make-up artists are available, looking to the human tendency (sic)". The bylaws of the Association further had a residency clause whereby membership was limited to those who had resided in Maharashtra for a span of five years.

The petitioners challenged the impugned clause as discriminatory and in contravention of articles 14, 19(1)(g) and 21 of the Constitution. To affirm the state's commitment to gender equality, the Supreme Court traced international conventions and treaties that mandate state parties to uphold and protect the human rights of women, along with judicial precedents that constitute the legacy of the apex court on the question of gender justice. While the court recognized that the Association is not "state" under article 12 of the Constitution of India, it brought the Association within the ambit of fundamental rights. The Association is registered under the Trade Unions Act, 1926 (Act). Section 21 of the Act provides that "[a]ny person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary..." While this section does not explicitly prohibit distinction based on sex, the Court relied on this section to further the claim of gender equality. The court held that the "[t]he aforesaid statutory provisions do not make a distinction between a man and woman" and therefore, "the clause, apart from violating the statutory command, also violates the constitutional mandate which postulates that there cannot be any discrimination on the ground of sex". Further, emphasizing petitioner's right of livelihood under article 21, the court affirmed that "[a] clause in the bye-laws of a trade union, which calls itself an Association, which is accepted by the statutory authority, cannot play foul of Article 21". Relying on *Pradeep Jain* v. *Union of India,* the court also held the residency requirement as unconstitutional.

It is important to note that the court did not hold that fundamental rights are applicable against actions of private bodies as well (strict horizontal approach). From the reasoning of the court one can conclude that the court resorted to "indirect horizontality" to bring the Association with the constitutional ambit: "The discrimination done by the Association, *a trade union registered under the Act*, whose rules have been accepted, cannot take the route of the discrimination solely on the basis of sex. It really plays foul of the statutory provisions. It is absolutely violative of constitutional values and norms" …"Unless the special provision is made, *a trade union, which is registered under the statutory provision,* cannot make a rule/regulation/bye-law contrary to the constitutional mandate and the statutory authority cannot accept the same". According to indirect horizontal application of FRs, if the private entity has any link with the state authority, the former should also be brought within the constitutional ambit and be governed by the FRs. In this case the Association was registered under a statutory body; the Registrar of Trade Unions, being a statutory authority is "state" under article 12 and thus, cannot allow an unconstitutional clause in the bye-law of the Association registered under the statute.

This case can be contrasted with *Zoroastrian Coop. Housing Society Ltd*. v. *District Registrar, Coop. Societies (Urban)*, [(2005) 5 SCC 632] where the court held that "[t]he fundamental rights in Part III of the Constitution are normally enforced against State action or action by other authorities who may come within the purview of Article 12 of the Constitution". The court had adopted a strict vertical approach to uphold the discriminatory bye-law of a private housing society. It will not be out of place to acknowledge the critique of *ZCHS case* advanced by Ashish Chugh [(2005) 7 SCC (J) 9] where he had made the argument of indirect horizontality, the position endorsed by Supreme Court to uphold the rights of female make-up artists in the present case .

Latika Vashisht

Additional District and Sessions Judge "X"* v. *Registrar General, High Court of Madhya Pradesh

2014(14) SCALE 238

Decided on December 18, 2014

The instant case relates to the allegations of sexual harassment complaint filed by a former additional district and sessions judge of the Madhya Pradesh higher judicial service against a sitting judge of High Court of Madhya Pradesh. On the said allegations, the Chief Justice of Madhya Pradesh constituted a committee to probe on the allegations which included the colleague judges of the same high court. This was challenged in the said writ petition by the petitioner as violative of constitutional provisions and also against section 2 of Judges (Inquiry) Act, 1968 as the investigations will not arise at a fair conclusion. The apex court rightly set aside the procedure adopted by the chief justice of high court and held that the "in-house procedure" framed by the apex court in *C. Ravichandran Iyer* v. *Justice* A.*M.Bhattacharjee* [(1995) 5 SCC 457] can be adopted to examine the allegations leveled against the chief justices and judges of high courts and judges of the Supreme Court of India. The apex court also directed to place the importance of "in-house procedure" on the official website of the Supreme Court of India and to bring it into public domain.

Independence of Judiciary is the quintessence of a democratic society. It is really an embarrassing situation when the victims of sexual harassment happens to be the female judge of the court and the accused male judge, both of whom are expected to protect the dignity and decorum of court and uphold the rule of law of our Country. It is rightly pointed out in the judgment that "those who uphold the rule of law must live by law and judges must, therefore, be obliged to live according to law." Therefore the directions given in *Ravicharan Iyer's* case which has the approval of the full court of the Supreme Court of India is justly considered by the court. Keeping in mind the rule of law and the integrity of the judicial institution the instant judgment by the division bench of the Supreme Court is a remarkable one in cases relating to sexual harassment of women at working places.

Susmitha P Mallaya

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