

BHU LAW SCHOOL

Newsletter



Editorial



The seventeenth Lok Sabha elections are knocking on the door and the country is yet again ready to celebrate what is often described as the 'Great Indian Festival'. This issue of the BHU Law School News letter will encompass the events of the last few months which not only had a material bearing on the socio-polity of the country but will also set the tone for the upcoming elections.

The year 2019 commenced with the 103rd Constitutional Amendment, extending reservations in public appointments and admissions to the 'Economically Weaker Sections' (EWS). Ten percent reservation has been provided to the EWS over and above the already existing framework. The Constitutional Amendment has already been challenged in the Apex Court for running afoul of the landmark Indira Sawhney judgment. Whether the said amendment will stand the tests of constitutionality remains to be seen, but it is sure to have far reaching consequences.

The past few months have once again been a witness to a slew of controversial yet crucial cases. Central Bureau of Investigation (CBI), the primary investigating agency of the country saw its own house set on fire when the then Director and Joint Director found themselves at loggerheads with each other. The process of acquisition of Rafale Jets became a huge bone of contention between the government and the opposition parties and is still under review. The Ayodhya dispute once again came to the fore and has been sent for mediation for the time being. If these were not enough to keep the Apex Court busy, the case of traditional tribal land dwellers and the contentious provisions of the Forests Rights Act came up and the eviction orders have been stayed for the time being.

This newsletter has tried to incorporate all these events in order to keep our readers abreast with the latest happenings. Law School, B.H.U has always striven to increase the accessibility of justice and we truly believe that the gap between law and justice can be bridged only by spreading legal awareness. I sincerely hope that this newsletter will reach out to as many people as possible by making these lofty edicts of law more comprehensible to our readers. I extend my thanks and gratitude to the editorial team for their unrelenting efforts.

R. P. RAI

INSIDE

- Faculty Updates
- Activities at Law School
- Legislative Trends
- International News
- Recent Judicial Decisions

EDITORIAL COMMITTEE

EDITOR IN CHIEF
Professor R. P. Rai
(Head and Dean)

COORDINATOR
Prof. Ajendra Srivastava

MEMBERS

Prof. C. P. Upadhyay
Prof. D. K. Mishra
Prof. Sibaram Tripathy
Prof. R. K. Patel
Dr. R. K. Singh
Dr. V. K. Saroj
Dr. K. M. Tripathi
Dr. Raju Majhi
Dr. V. K. Pathak
Dr. Adesh Kumar
Dr. Mayank Pratap
Dr. Anoop Kumar
Dr. Anil Kr. Maurya
Dr. Prabhat Kr. Saha

STUDENT MEMBERS

Abhishek Garg
Pratyush Pandey
Jyotsna Hans
Apurv Singh
Shivam Kaushik
Isha Rai
Anshu Kumari

NEW CHIEF JUSTICE OF INDIA



HON'BLE MR. JUSTICE RANJAN GOGOI

Hon'ble Mr. Justice Ranjan Gogoi assumed the office of the Chief Justice of India on October 3, 2018. He was born on November 18, 1954 and joined the Bar in 1978. Justice Gogoi practiced mainly in the Guwahati High Court and was appointed as a Permanent Judge of the Guwahati High Court on 28th February, 2001. He was transferred to the Punjab & Haryana High Court on September 9, 2010 and appointed as the Chief Justice of Punjab & Haryana High Court on 12th February, 2011. Hon'ble Mr. Justice Gogoi was elevated as a Judge of the Supreme Court on 23rd April, 2012.

FACULTY UPDATES

Prof. C.P. Upadhyay delivered a lecture on “Consumer Rights and Human Rights” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. P.K. Singh delivered a lecture on “Victim’s Protection in India: Human Rights Perspective” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. V.S. Mishra delivered a lecture on “Economic Criteria and Social Justice: Myth or Reality” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. D.K. Mishra delivered a lecture on “RTE Act” at a national seminar organised by the Faculty of Education, MGKVP, Varanasi on November 21, 2018. He acted as the Course Coordinator for the 4th Refresher Course in Human Rights and Law (Interdisciplinary) Jan 10-30, 2019 and as Programme Coordinator for “Nationwide Competition to Create Awareness about the Legal Rights of Women” conducted by the Dean, Student Welfare, BHU and sponsored by the National Commission for Women, New Delhi in the Faculty of Law, BHU on November 19, 2018. He was also the coordinator for “One-day Human Rights Basic Training Programme” conducted by the Office of the Dean, Students Welfare, BHU and sponsored by the National Human Rights Commission, India on December 10, 2018.

Prof. Sibaram Tripathi delivered a lecture on the occasion of National Human Rights Day on December 10, 2018 on “Constitutionalism and Human Rights” at BHU. He also delivered a lecture on Human Rights and the Constitution of India on January 11, 2019 as a part of the 4th Refresher Course in Human Rights and Law [January 10-30, 2019] at the UGC-Human Resource Development Centre, BHU. He also delivered a lecture on Neo Contracts at Kalam Institute, Odisha in February, 2019.

Prof. R.K. Murali delivered a lecture on “A Critical Analysis of Preconceptual Dimension of Human Rights” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. Ajendra Srivastava delivered a lecture on “Human Rights: An International Perspective” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. Ajay Kumar delivered a lecture on “Legitimacy and DNA Test: Human Rights Approach” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. M.K. Padhy delivered a lecture on “Human Rights Issues in Land Acquisition: Indian Perspective” as a part of the 4th Refresher Course on Human Rights and Law [Interdisciplinary] organised by the UGC-Human Resource Development Centre, Banaras Hindu University, Varanasi held between January 10-30, 2019.

Prof. Rajneesh Kr. Patel delivered a lecture at the Government PG College, Chunar, Mirzapur on “Women Rights” He also delivered a lecture on “Workers Rights as Human Rights” at the Academic Staff College, BHU. He delivered a lecture on “Protection of Worker’s Right through Trade Union and Human Rights” on January 24, 2019 as a part of the 4th Refresher Course in Human Rights and Law [January 10-30, 2019] at the UGC-Human Resource Development Centre, BHU.

Prof. Golak Prasad Sahoo delivered a lectures on “New Media and New Crimes: A Special reference to Information Technology Law” in the National Seminar on “Media Regulatory Framework in India: Issues and Challenges held on October 12, 2018 organized by Faculty of Law, BHU and “Human Rights Issues in Cyber World” on January 18, 2019 as a part of the 4th Refresher Course in Human Rights and Law (Interdisciplinary) organized by the UGC-Human Resource Development Centre, BHU.

Dr. Rajnish Kr. Singh delivered a lecture on “How to train about IPR” at an 8-day workshop on Methods to Mingle Design Innovation in Regular Academic Behaviour with Multidisciplinary Approach at Design Cafe, Faculty of Visual Arts, BHU on January 14, 2019. On February 5, 2019 he delivered a lecture on “Role of IPR as Marketing Tool at a 2-day

workshop on Strategy Building for Marketing of DIC’s Innovative Products organised by Design Innovation Centre, BHU. He also delivered a lecture on January 23, 2019 on the “Basics of Intellectual Property Rights at Agrasen Girls PG College, Varanasi. He published an article on “Patenting Computer Related Inventions: India in Comparison with USA and UK”, in Vol. 10 Issue 1 Nov, 2018 of the Dehradun Law Review.

Dr. Raju Majhi delivered a lecture on January 30, 2019 on the topic “Protection of Women Rights under the Constitution of India” at Swantrata Sangram Senani Bishram Singh Government Post Graduate College, Chunar, Mirzapur. He presented a paper on February 16 and 17, 2019 in the National Seminar on “Issues on Social, Political and Administration in the 21st Century” on the topic “Naxalim in India: A Critical Analysis” organized by the Department of Social Sciences, Mahatma Gandhi Kashi Vidyapeeth, Varanasi. He also presented a paper on March 1 and 2, 2019 in the National Seminar on “Integral Humanism and Development Issues in Contemporary India” on the topic “The Concept of Integral Humanism of Pandit Deen Dayal Upadhyay: An Appraisal” organized by Pandit Deen Dayal Upadhyay Chair, Faculty of Social Sciences, Banaras Hindu University, Varanasi.

Dr. Adesh Kumar Maurya was the organising secretary of a One-Day National Seminar on “Media Regulatory Framework, Issues and Challenges” organised on October 12, 2018. He was also the organising secretary of a 7-Day Workshop on “Health and Yoga” held from September 22, 2018 to October 1, 2018. He presented a paper in a One-Day National Seminar on “New Trends & Issues in Forensic Science & Medical Jurisprudence” organised on September 29, 2018.

Dr. Prabhat Saha published an article titled “Local Working under the TRIPS Agreement: Flexibilities & Implications for India” in the Journal of the Indian Law Institute (60:3 2018). He also published a article in Economic and

Political Weekly (54:2) on “Compulsory Licensing of Pharmaceutical Patents in India” on February 2, 2019.

Dr. Anoop Kumar presented a paper on “Dichotomy between WTO Norm and Indian Practice on Food Security: An Investigation” at the 6th International Conference on “WTO, Trade and Agriculture: Issues and Challenges for Developing and Least Developed Countries” during 11-12 October, 2018 at WTO Studies Centre, New Delhi. He successfully completed a Refresher Course (January 10-30, 2019) at Human Resource Development Centre, BHU.

Dr. Mayank Pratap attended the 4th Refresher Course in Human Rights and Law [January 10-30, 2019] at the UGC-Human Resource Development Centre, BHU.

Dr. Anil Maurya delivered a Guest Lecture on “Cyber Offences” at the Ramswaroop Memorial University in March 2019.

Dr. Anjali Agrawal published a research paper on the topic “India’s Biggest Tax Reform GST: A Game Changer for Indian Economy” in the international journal, Ad Valorem. She acted as Co-chairperson in a National Seminar on “Indian Taxation System: Impetus & Impediments to Economic Development”. She delivered a lecture on the topic “Current Scenario of Indian Agriculture” at Government Girls College, DLW, Varanasi. She also delivered a lecture on the topic “Women Empowerment through Development Programmes” at Government PG College, Chunar, Mirzapur. She was the Master of the ceremony at National Seminar on “Media Regulatory Framework in India: Issues and Challenges” and “India’s Biggest Tax Reform GST: A Game Changer for Indian Economy”. She presented a paper on the topic “Pt. Deendayal Upadhyay’s Idea for Economic Development of India” in a national seminar. She also presented a paper on the topic “Role of Media in Agricultural Development of India”.

PROMOTION OF FACULTY MEMBERS

Seven faculty members have been promoted to higher positions under Career Advancement Scheme. Dr. Rajneesh Kumar Patel and Dr. Golak Prasad Sahoo have been promoted to the position of Professor. Dr. Rajnish Kumar Singh, Dr. Kshemendra Mani Tripathi and Dr. Vijay Kumar Saroj have become Associate Professors. Dr. Raju Majhi has been promoted to Assistant Professor (Stage 3) and Dr. Prabhat Kumar Saha is now Assistant Professor (Stage 2). The Faculty congratulates the teachers for their success.

ACTIVITIES AT LAW SCHOOL

1. National Seminar on “Indian Taxation System: Impetus and Impediments to Economic Development”

Under the directorship of Prof. D.K. Srivastava, a one-day National Seminar was organised on November 17, 2018 on the topic “Indian Taxation System : Impetus & Impediments to Economic Development.” Mr. Ram Chandra Sikaria, Secretary, Central Tax Bar Association, Varanasi was the Chief Guest and Mr. Abhay Thakur, Additional Commissioner, Income Tax, Varanasi was the Guest of Honour.

2. National Seminar on “Media Regulatory Framework in India: Issues and Challenges”



Faculty of Law, Banaras Hindu University organized a National Seminar on the topic “Media Regulatory Framework in India: Issues and Challenges” on October 12, 2018. The program was graced by eminent

guests Prof. Harbansh Dixit, Member, UP Higher Education Service Commission, Allahabad (Chief Guest); Shri S.S. Upadhyay, Legal Advisor, Governor of U.P., Raj Bhawan, Lucknow (Guest of Honour) and Prof. Omprakash Singh (Chairman), Director, MMM Institute of Hindi Journalism, MGKVP, Varanasi.

The theme of the seminar was introduced by Joint Director of Seminar, Prof. J. P. Rai. The deliberations spanned over two Technical Sessions which were followed by a Question-Answer session. A formal vote of thanks was given by Dr. Adesh Kumar, Organising Secretary of the Seminar.

3. A Special Lecture on “Puttaswamy Case and Human Rights Jurisprudence” By Prof. D.P. Verma



On March 14, 2019, Faculty of Law, Banaras Hindu University organised a special lecture on “Puttaswamy Case and Human Rights Jurisprudence” by Prof. D.P. Verma, Additional Director (Research and Training), National Judicial Academy, Bhopal. In the landmark Puttaswamy judgment, the right to Privacy has been elevated as a Fundamental Right. Prof. Verma called the Privacy judgment as a ‘significant reminder of India’s republican value’ which heralds a new dawn as India has taken a lead among the developing countries by recognizing Privacy as a Fundamental Right. The lecture ended with the Vote of Thanks by Prof. R.K. Murali wherein he also highlighted the changing paradigms of Morality and how the gap existing between societal and Constitutional Morality needs to be bridged.

4. Samvidhaan Divas (Constitution Day) pledge.

On the felicitous date of 26th November 2018, which is celebrated as *Samvidhan Divas* (Constitution Day) since 2015, teachers and non-teaching staff of Law School took a pledge to preserve, protect and defend values enshrined in our Constitution and to devote themselves to the solemn task of nation building. It was a step in appreciation and acknowledgment of the responsibility that one of the oldest educational institution owes towards the nation.



5. Annual youth fest of Law School, Srijan 2019



From 5th to 9th December, 2019 Law School witnessed a jubilant atmosphere while *Srijan*, the annual youth festival was organized in Seminar Hall, Law School. Taking place under the auspices of Head and Dean of Law School, the fest was as competitive as ever, witnessing zealous participation of more than 250 students in 31 events. The inaugural session took place on the eve of 5th February. The session saw mesmerizing performances by students of Law School. The fest was structured to include the events in categories of singing, dance, literature, theater and fine arts but the most awaited part of the fest was ‘cultural event’. The Organizing Committee was

superintended by Dr. Naval Kishor Mishra, Student Advisor, Faculty of Law.

6. Foundation Day Celebration, *Jhanki*



In the annual foundation day celebration of Banaras Hindu University on 10th February 2019, a procession of *jhanki* was taken out inside the campus of the university. In furtherance of Law School's object, the theme of the procession was made '*Role of Law in Social Change*' which was dutifully depicted under the expert guidance of Dr. N. K. Mishra, Student Advisor, Law School. The procession was attended by all the teachers and students of the faculty.

7. Annual Inter Faculty Youth Festival of Banaras Hindu University, *Spandan 2019*



Carrying forward the enthusiasm of '*Srijan*', students of Law School participated in *Spandan*, the annual youth fest of Banaras University with intense fervor. In the event taking place from 22nd February to 26th February, Law School was represented by a contingent of 83 students. Out of

them, 8 students secured a podium finish in events like debate, elocution, quiz, essay writing, poetry recitation, and singing. In the valedictory ceremony, which was attended by renowned actor, director, and producer Dr. Rati Shankar Tripathi. Law School was represented by Prof. Dr. S. K. Gupta, and Dr. Naval Kishor Mishra, where the latter also did the honor of collecting mementos on behalf of winners.

8. The Intra-Law School, Moot Court Competition, 2019

Faculty of Law, Banaras Hindu University organised 'The Intra-Law School, Moot Court Competition, 2019 on 21st February, 2019. Almost 100 students of LL.B (Hons.) 3 Years Course and B.A.LL.B (Hons.) 5 Years Course participated in the competition out of which 30 students were selected to represent the Law School in various National and International Moot Court Competitions. Prof. R. K. Patel, coordinator of the committee organised the event.

LEGAL AID CLINIC

1. Legal Awareness Programme in Kurahuaan Village, Varanasi



The Community Legal Education and Awareness Committee of LASC with the support of a student run NGO '*Aapka Haq, Aapki Awaz*' on 14th November 2018 organized a '*Legal Awareness Program*' on the occasion of Children's Day. The theme of the program was '*Rights of Children & Gender Equality*.' The session also included an interactive session which touched upon diverse contemporary issues like importance of legal services, women empowerment, and sanitation.

The program also included two skits on the theme of ‘child abuse’ and ‘domestic violence.’

2. Event on International Women’s Day



The event was organized under the guidance and patronage of Prof. R.P. Rai, Head and Dean, Law School on 8th March 2019 and was blessed with the presence of Prof. R.K. Murali and Prof. Bibha Tripathi of the Law School. The event was aimed at recognizing and appreciating the monumental contribution of women to our society. The chief speaker of the day, Prof. Bibha Tripathi emphasized on providing equal opportunity to women to help bring out their true potential.

3. Guest Lecture on ‘A Forgotten Chapter of Constitutional Duties’



Law School, on 9th March 2019, was blessed with the presence of Prof. C.M. Jariwala, a great academician and legal luminary, to deliver a guest lecture on ‘A forgotten Chapter of Constitutional Duties.’ He is currently Dean (Academics) at Ram Manohar Lohiya National Law University, Lucknow and he shed light on the interrelation between Rights and Duties. The welcome address was delivered by Prof. M. K. Padhy (Professor, Law School). Prof. Jariwala in his lecture emphasized on the forgotten concept of duty of citizen towards the nation and juxtaposed the

contemporary position in India with that in the international sphere. The vote of thanks was delivered by Prof. S.K. Gupta, Executive Director, Legal Aid and Services Clinic (LASC).

4. A Visit to Lok Adalat, Varanasi



Volunteers of Legal Aid and Services Clinic (LASC), Law School witnessed ‘Lok Adalat’ proceedings that took place in District and Sessions Court, Varanasi on 9th March 2019. There the volunteers also got an opportunity to interact with Mr. Rakesh Yadav, Secretary, District Legal Aid Service Authority along with getting an occasion to learn the intricacies of Lok Adalat sessions.

5. Legal Awareness Drive



LASC, Law School on 11th March 2019 organized a ‘Legal Awareness Drive’ in the slums of Durgakund, Varanasi with the objective to enlighten the illiterate and uneducated about their rights and entitlements. The drives also addressed the menace of drug abuse and the related ills. Volunteers performed a street play, as a part of drive, on ‘Right to Education’ to spread awareness

among the uneducated. An art making competition was also organized for slum kids on social issues.

LEGISLATIVE TRENDS

The Constitution (One Hundred and Third Amendment) Act, 2019

The Constitution (103rd Amendment) Act received the assent of President of India on 13th January, 2019. This Act has amended Articles 15 and 16 of the Indian Constitution respectively. Article 15 (6) is inserted after Article 15(5) to provide reservations to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The amendment has excluded the provision of reservation to those who fall in 15 (5) and 15(4) (effectively, SCs, STs and OBCs). Article 16 (6) has been incorporated after the Article 16(5) for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause 16(4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category. This Act also adds an explanation which states that the "economic weakness" shall be decided on the basis of "family income" and other "indicators of economic disadvantage. This reservation is in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category (in the case of Art. 15(6)) and the posts (in the case of Art. 16(6)).

The Right of Children to Free and Compulsory Education (Amendment) Act, 2019

The Right of Children to Free and Compulsory Education (Amendment) Act, 2019 of Parliament received the assent of the President on the 10th January, 2019. It has amended the Right of Children to Free and Compulsory Education Act, 2009. This amendment has substituted the new section for section 16 under which the significant

changes have been made in the examination pattern of fifth and eighth class. The amendment incorporates that a regular examination shall be conducted in the fifth class and in the eighth class at the end of every academic year and if a child fails in the examination, he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result. However, the appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes in a prescribed manner if he fails in the re-examination. Further a discretionary power given to the appropriate government under which it may decide not to hold back a child in any class till the completion of elementary education. The amendment further provides that no child shall be expelled from a school till the completion of elementary education.

The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019

The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019 was promulgated on February 21, 2019. The Ordinance focuses on making all the declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. Ordinance further provides that the talaq means talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce. It defines Talaq-e-biddat as the practice under Muslim personal laws where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce. The ordinance penalize the offence of declaration of talaq by imposing three years imprisonment with a fine and characterized the offence as cognizable only if information relating to the offence is given by: (i) the married woman (against whom talaq has been declared), or (ii) any person related to her by blood or marriage. This Ordinance also has the provision of allowances for the muslim women against whom talaq has been pronounced which

will be determined by the Magistrate. Such Muslim women are also entitled to seek custody of her minor children which will be determined by the Magistrate.

The Central Education Institutions (Reservation in Teachers' Cadre) Ordinance, 2019

The Central Educational Institutions (Reservation in Teachers' Cadre) Ordinance, 2019 was promulgated on March 7, 2019. The Ordinance basically provides for reservation of teaching positions in central educational institutions for persons belonging to the Scheduled Castes, Scheduled Tribes, and the socially and educationally backward classes. The Ordinance further provides the reservation of posts in central educational institutions by giving reservation in the direct recruitment of teachers (out of the sanctioned strength). A central educational institution for such reservation will be regarded as one unit. Therefore, while considering the reservation of posts in the central educational institutions, such institution will be taken as one unit and reservation will not be granted on the departmental basis. This Ordinance covers the central educational institutions which include universities set up by Acts of Parliament, institutions deemed to be a university, institutions of national importance, and institutions receiving aid from the central government. Further this Ordinance excludes certain institution by keeping them in schedule such as institutions of excellence, research institutions, institutions of national and strategic importance and minority education institutions.

The Companies (Second Amendment) Ordinance, 2019

The Companies (Second Amendment) Ordinance, 2019 was promulgated on February 21, 2019. It amends several provisions in the Companies Act, 2013 relating to re-categorisation of certain offences and penalties. The Ordinance re-categorizes 16 of the 82 compoundable offences of the Companies Act, 2013 as civil defaults, where

adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and, (ii) failure to file annual return. The Ordinance has removed the punishment for the imprisonment of six months from the Companies Act, 2013, in case where a company fails to comply the issuing shares at a discount, except in certain cases. Further, the Ordinance states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him, and (ii) files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation.

INTERNATIONAL LEGAL NEWS



**UNITED
NATIONS**

“Gender equality, justice in law and practice: Essential for sustainable development”, says UN

Laws that promote gender equality "will help the Arab region move forward on the issue of justice and equality for women", Jordan Ambassador to the UN Sima Bahous, told UN News after chairing the forum centered around the study with the name: Gender and Law Justice, Evaluation of Laws Affecting Gender Equality in the Arab States. The study stressed that sustainable development goals cannot be achieved without ensuring gender equality in law and practice.

On 14 March 2019, on the margins of the 63rd session of the Commission on the Status of Women (CSW), the UN Development Programme (UNDP), the Economic and Social Commission for West Asia (ESCWA), Population Fund (UNFPA) and the Women's Fund (UNIFEM)

organized the conference, which discussed discrimination and criminal, personal status and labour laws across 18 Arab countries.

Human development means expanding opportunities for women and men to improve their lives and education, and create better opportunities. Because gender-based violence is a major barrier to gender justice, Gender justice and the law closely examines its various forms, including sexual, physical and psychological and economic violence, assessing laws and policies that affect gender equality and protect against gender-based violence.

Russian Duma approves bill targeting spread of fake news

In an attempt to curb the menace of fake news in Russia, Russian Duma (the lower house) passed on March 7, 2019 a Bill that would fine individuals and companies for spreading “fake news.” Fake news has been defined in the Bill to mean “unreliable socially significant information distributed under the guise of authentic messages and posing a security risk.” Russia’s Prosecutor General will be the one to determine whether the information in question falls into the category of “fake news.” The fines vary depending on which entity distributes the information- a private citizen (about USD \$450 to \$1500), an official, or a corporation (about \$3000 to \$7500). The fines increase for repeat offenders or if the “fake news” caused actual harm (to over \$6000 for private citizens and \$22,600 for corporations).

‘Taste of food is not subject to Copyright’: EU Court

On November 13, 2018 the European Court of Justice ruled that the taste of a food product is not eligible for Copyright protection. This ruling came in a case filed by a Dutch company, Levola in an attempt to obtain a copyright on the taste of a spreadable cheese product it produces. The case had begun over a decade ago when a Dutch food retailer created a spreadable dip Heksenkaas (witches’ cheese). In 2011, Levola got a patent in

its manufacturing process. The next year, a rival company Smilde began selling a similar spread, and a suit was subsequently brought by Levola. The line of argument taken by Levola was that the taste of a food product may be classified as a work of literature, science or art that is eligible for copyright protection. The court, however, was unconvinced and determined that “the taste of a food product cannot be identified with precision of objectivity” and thus is ineligible for copyright protection.

Thailand passes controversial cyber security law

In an attempt to curb free speech, military-appointed Thailand government passed a controversial cybersecurity bill that has the potential to enable government surveillance on February 28, 2019. The Act would give the government access to citizen's private information and internet activity. Though the Bill faced criticism over potential data access and abuse, it unanimously passed the country’s parliament with 133 positives votes and no rejections, although there were 16 absentees. There are concerns around a number of clauses, chiefly the potential for the government, which came to power via a military coup in 2014, to search and seize data and equipment in cases that are deemed issues of national emergency. This can enable internet traffic monitoring and access to private data, including communications, without a court order.

Encouraging progress made in 2018, in ‘zero tolerance’ effort to end sexual exploitation and abuse across UN

The United Nations recorded a total of 259 allegations of sexual exploitation and abuse (SEA) during 2018, according to the latest report by Secretary-General António Guterres presented to the General Assembly. Although the figures rose compared with the previous two years, the report shows increased awareness among UN and UN-related staff, and improved and harmonized reporting tools across the Organization.

Various initiatives have been put in place to date including transparent, harmonised and public quarterly reporting on the matter, the appointing of a global Victims' Rights Advocate, as well as several field-based ones, the launch in September of a Circle of Leadership, embodying world leaders' commitment to eradicating SEA across the UN system, the set-up of a Victims Assistance Tracking database to ensure services are provided to survivors and victims adequately and systematically and the launch in October of an electronic tool called "Clear Check," to screen UN staff dismissed as a result of substantiated SEA allegations, or those who resigned or were separated during an investigation.

RECENT JUDICAL DECISIONS



ANKUSH MARUTI SHINDE AND OTHERS v. STATE OF MAHARASHTRA

MANU/SC/0319/2019

The Supreme Court acquitted six persons sentenced to capital punishment

The Supreme Court on March 5, 2019 acquitted six persons who had been sentenced to death for rape and murder and whose death sentences had previously been confirmed by the Supreme Court itself in 2009 and on review in 2010. The bench comprising Justice AK Sikri, Justice S. Abdul Nazeer and Justice MR Shah observed that "the prosecution/investigating agency is expected to act in an honest and fair manner without hiding anything from the accused as well as the Courts, which may go against the

prosecution. Their ultimate aim should not be to get conviction by hook or crook. Applying the aforesaid principles to the facts of the case, the court held that "we are of the opinion that there was no fair and honest investigation and even prosecution tried to suppress the material fact from the court."

This case was not a case of a mistake in investigation, but of a complete fabrication by the police. Therefore, Supreme Court on the basis of the facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India, direct the State of Maharashtra to pay a sum of Rs.5,00,000/- to each of the accused by way of compensation, within a period of four weeks from 5th March 2019. Court further directed to Sessions Court that the said amount shall be used for their rehabilitation.

In this historic judgment Court strongly criticise the conduct on the part of the investigating agency and the prosecution. Because of such lapses, and more particularly in not conducting the investigation insofar as those four persons who were identified by PW8 on 7.6.2003, the real culprits have gone out of the controls of the law and got scot free.

In the present case Ankush Maruti Shinde, Rajya Appa Shinde, Ambadas Laxman Shinde, Raju Mhasu Shinde, Bapu Appa Shinde and Surya alias Suresh accused of murdering five members of a family on the night of 5 June 2003 after breaking into their hut, including a minor girl who was raped before being killed. They were also accused of raping an adult woman of the family, who had survived along with one of her sons. The Supreme Court bench comprising of Justice Arijit Pasayat and Justice Mukundakam Sharma, in 2009, not only dismissed the appeals filed by the three accused whose death sentence was confirmed by the High court, but also allowed State's appeal and sentenced the other three to death sentence. Court had found the crime to be cruel and diabolic. It had observed that the collective conscience of the community was

shocked; the victims had no animosity towards the accused and the attack against them was unprovoked.

The review petitions filed by three accused were dismissed by the Supreme Court in 2010. In 2016, the three accused, whose review petitions were dismissed in 2009, filed applications for reopening the review petitions, in the light of constitution bench judgment in *Mohd. Arif v Registrar, Supreme Court of India*. In October 2018, considering the review petitions and the applications, a three Judge Bench headed by Justice Kurian Joseph had recalled the 2009 judgment and the appeals were restored.

Finally in this case, Supreme Court ordered immediate release as they were found to be framed in the case by the police. The Supreme Court further observed that they had spent 16 years in prison and suffered with psychiatric trauma, which is beyond compensation.

It is important to note that during last decade, the Supreme Court has on numerous occasions expressed concern about arbitrary sentencing in death penalty cases. This is a case of gross procedural violation and non-application of mind. This judgment itself is an evidence of the fact that the administration of criminal justice in the country is in the deep crisis. This judgment of the court shall have extensive significances because it was a complete U-turn on the decision originally taken by the Supreme Court itself 10 years ago.

DR. ANOOP KUMAR
ASSISTANT PROFESSOR

***INDIAN HOTEL AND RESTAURANT
ASSOCIATION (AHAR) & ANR v. THE STATE
OF MAHARASHTRA & ORS.***

WRIT PETITION (CIVIL) NO. 576 OF 2016

*The Supreme Court rewrites rules for dance bars
in Maharashtra after 13 years*

The apex court partially upheld the validity of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and the Rules made thereunder governing dance bars in the state and scrapped some provisions of the legislation. The judgment was rendered by a Bench of Justice AK Sikri and Justice Ashok Bhushan. The Court said:

“State cannot take exception to staging dance performances per se. It appears from the history of legislative amendments made from time to time that the respondents have somehow developed the notion that such performances in the dance bars do not have moralistic basis.”

The Apex Court upheld the provision of prescribing timing of such dance performances only between 6 pm to 11:30 pm and banned showering of money on the dancers but allowed giving them tips. The court mandated written contract with employees, deposit of the remuneration in their bank accounts, and submission of the contract with the licensing authority and allowed performance based employment.

It struck down a condition by which dance bars could not be within the radius of one km from an educational institution or a religious place. The requirement of separate dancing area and the bar/restaurant area and the ban on serving alcohol in the dance area was removed. Also the requirement of applicants to have “good character” with no history of criminal record was struck down as the court opined that the terms ‘good character’ or ‘antecedents’ or ‘criminal record’ are not definite or precise. Believing that these expressions are capable of any interpretation and therefore, it is left to the wisdom of the licensing authority to adjudge whether a particular person possesses good character or good antecedents or not.

Mandatory condition for installation of CCTV cameras inside dance bars was quashed on ground of violation of privacy relying on Puttaswamy

judgment. The Court also declared Section 33A of Maharashtra Police Act, 1951 as unconstitutional being violative of Articles 14, 19(1)(a) and 19(1)(g) of the Constitution.

In conclusion the Court has “open mindedly” removed the ban on dance bars and around 70,000 dance bar dancers after 13 years. However, the court still remains uncomfortable in discussing “prurient interest”. The fact that the court found State’s contention of not licensing even a single establishment after passing of impugned act in 2014 was nonmaterial to conclude that dance in the prohibited establishments was likely to deprave, or injure the public morality or morals. It has acknowledged a different perception of these dance bars with a view to protecting the dignity and safety of women working therein and to prevent their abuse and exploitation.

JYOTSNA HANS
B.A. LL.B (H)
SEMESTER VIII

***MANOHAR LAL SHARMA v. NARENDRA
DAMODARDAS MODI & ORS.***

WRIT PETITION [CRL.] NO.225 OF 2018

“Perception of individuals cannot be the basis of fishing and roving enquiry by the Supreme Court, especially in matters relating to national security (sic).”

The Bench of Supreme Court of CJ Ranjan Gogoi, S.K. Kaul and K.M. Joseph, JJ. on 14th December handed down decision in a batch of petitions that in itself is as conspicuous as the name of the respondent on case file. The matter pertained to politically controversial procurement of 36 Rafale Jets by Government of India from France. Dismissing the petitions unanimously, the Court iterated that it has qualified jurisdiction in matters concerning national sovereignty. The matter was brought before the Court by some petitioners ‘claiming to be public spirited Indians’ (emphasis supplied) who alleged, primarily on basis of media reports, irregularities with regard to three facets

of the procurement, namely, decision making process leading to Inter Governmental Agreement (IGA), pricing of jets, and choice of India Offset Partner(IOP).

In its decision, albeit the Court ‘*in order to satisfy its consciousness*’ (emphasis supplied) looked into the matter to maximum extent that judicial propriety permitted and dealt with each facet separately in its judgment, it never actually enquired into the matter in the manner the Supreme Court ordinarily would, essentially in view of consideration of national sovereignty involved. The Court delineating the scope of Judicial Review in matters concerning national security opined that scrutiny must be limited in strictest sense to Wednesbury principle of Reasonableness and absence of *mala fide*, giving some leeway to the Government. Furthermore, keeping in mind the sensitivity of the matter concerned, all the information sought from the respondent was in a ‘sealed cover’.

The above stated inference is further strengthened by the fact that though the Court examined whole procedure and even found ‘minor deviations from procedure’, it nevertheless concluded the threshold, in the case at hand, was not crossed so as to impeach the whole process. Moreover, excessive reliance on media reports and press interviews by petitioners, which was rebutted to varied extent by media reports in favor of respondents, was found to be insufficient basis for exercising judicial review by the Hon’ble Supreme Court.

SHIVAM KAUSHIK
B.A. LL.B (H)
SEMESTER VIII

***UNION OF INDIA & ANR. v. MOHIT
MINERAL PVT. LTD.***

CIVIL APPEAL NO. 10177 of 2018

The Supreme Court upholds constitutional validity of GST Compensation Tax, a key element for the successful rollout of the GST.

A division bench of the Supreme Court comprising Justice AK Sikri and Justice Ashok Bhushan upheld the validity of Goods and Services Tax (Compensation to States) Act, 2017 and the rules made thereunder. The verdict came on a Special leave Petition (SLP) filed by the Union of India against the order of Delhi High Court in the case of Mohit Mineral Pvt. Ltd. which had challenged the validity of the Goods and Services Tax (Compensation to States) Act, 2017 and the Goods and Services Tax Compensation Cess Rules, 2017.

The compensation cess was introduced in 2017 in the wake of GST rollout with an aim to compensate the states that may suffer loss of revenue due to switching to new tax regime. This ruling overruled the Delhi High Court interim order in favour of Mohit Minerals, wherein the Court had held the Company as not being liable to pay any further tax as it had already paid a Clean Energy Cess as per Finance Act, 2010. It had held that the Compensation to States Act, 2017 was beyond the legal competence of Parliament.

The Bench ruled that the impugned Act was not beyond the legislative competence of Parliament. The Respondents had challenged the Compensation to States Act, 2017 as liable to be struck down being a colourable legislation. The contention of Respondents that the Act violates Constitution (One Hundred and First Amendment) Act, 2016 and was against the objective of Constitution (One Hundred and First Amendment) Act, 2016, was denied by the Court. The bench said that after Constitution (One Hundred and First Amendment) Act, 2016, as per Article 270, Parliament can levy cess for a specific purpose under a law made by it. The Bench pointed out that Article 270, after Constitution (One Hundred and First Amendment) Act, 2016, specifically empowers Parliament to levy any cess by law. Article 248 read with Articles 246 and 246A clearly indicate that residuary power of legislation is with the Parliament.

On the issue of the impugned Act being a colourable legislation, the Bench noted that the Statements of Objects and Reasons of the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014 included the objective of “conferring concurrent taxing powers upon Parliament and the State Legislature to make laws for levying goods and services tax.” Article 246A (1), it further noted, empowers the Parliament to “make laws with respect to goods and services tax”.

Dealing with the question whether the Act transgresses the Constitution, the bench said that the Preamble of Compensation to States Act, 2017 expressly mentions the Act to provide for compensation to the States for the loss of revenue arising on account of implementation of GST in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016. The bench said that the expression 'cess' means a tax levied for some special purpose, which may be levied as an increment to an existing tax.

The Supreme Court also held that the Compensation to States Cess is an increment to the GST, which is permissible in law. The two taxes are separate and distinct and on two different aspects of a transaction. The bench also rejected the plea that the company is entitled to get a waiver from paying the compensation cess on grounds of having paid the Clean Energy Cess.

Concluding the judgment, the Bench directed the firm to pay cess. The ruling is expected to settle the debate forever. The judgment also settled that the Clean Energy and compensation Cess are different levies with unique purposes and paying one doesn't create ground for a waiver on other. Apart from upholding the constitutionality of the Act and the rules, the verdict of the Supreme Court would also leave the taxpayers to suffer additional burden of Compensation Cess in respect of stock under the GST regime.

ISHA RAI
B.A. LL.B (H)

SEMESTER VIII

**IN RE: INHUMAN CONDITIONS IN 1382
PRISONS**

JT 2018(12) SC 159

The prisoners sentenced to death have a right to be treated on par with the convicted prisoners

A three-judge bench of the Hon'ble Supreme Court comprising Justice Madan B.Lokur, Justice S. Abdul Nazeer and Justice Deepak Gupta entertained the applications filed for seeking the directions on the issue that whether the prisoners sentenced to death by any court have a right to be treated at par with convicted prisoners and should be provided similar facilities that are given to other prisoners. It was also prayed in the application that whether solitary confinement of prisoners on death row or their separate and cellular confinement should be struck down as unconstitutional. In order to settle down the issues, the Hon'ble Court looked into one of the important aspects that when it could be said that a convict is under the sentence of death? The court relied to its decision in *Sunil Batra v. Delhi Administration and Ors.* (1978)4 SCC 494 and held that a prisoner under sentence of death can only mean a prisoner whose sentence of death has become final, conclusive and infeasible and which cannot be annulled and voided by any judicial or constitutional procedure. Further, the court added in its decision that a prisoner can be said to be a prisoner on death row when his sentence is beyond judicial scrutiny and would be operative without any intervention from any other authority. Therefore, such a prisoner cannot be said to be under a sentence of death and is entitled to every facilities such as bed and pillow, writing material and newspapers and the opportunity to communicate with family members. The court followed the view expressed in *Frances Coralie Mullin v. Administration, Union Territory of Delhi*, (1981)1 SCC 608 and held that a prisoner on death row is entitled to have meetings and interviews with his lawyers or family members. The court also considered two important

international human rights instruments, namely, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and pointed out that right to live with human dignity is fundamental right and any prison regulation and procedure contrary to it, shall be considered as unconstitutional. The court further observed that the old rules, circular and instructions under Prisons Act are contrary to the Article 21 of the Indian Constitution. Hence, the court directed the State government of Rajasthan and all other state governments to incorporate such rules, regulations and instructions which do not curtail and violate the freedom of the prisoners. The Supreme Court constituted a three member committee, headed by its former Judge Justice Amitava Roy and requested them to look into all other issues raised in the application in greater depth in addition to its Terms of Reference. This is a welcome change as the decision has opened the new dimensions in the jurisprudence of the human rights of the prisoners by ensuring that even the prisoners under sentence of death have human rights and State must take appropriate measures to protect the rights of the prisoners.

PRATYUSH PANDEY

B.A. LL.B (H)
SEMESTER X

**SWISS RIBBONS PVT. LTD. & ANR. v.
UNION OF INDIA & ORS.**

WRIT PETITION (CIVIL) NO. 99 OF 2018

*The apex court upheld the constitutionality of the
Insolvency & Bankruptcy Code, 2016*

A two-judge bench of the Supreme Court consisting of Justices R F Nariman and Navin Sinha on January 25, 2019 upheld the constitutionality of the Insolvency & Bankruptcy Code, 2016 (or IBC). The basis for the challenge by the petitioners was that the IBC was discriminatory to operational creditors vis-à-vis financial creditors.

The court made clear the obvious intelligible differentia between a financial creditor and an operational creditor. “A financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money”, on the other hand, “an 'operational debt' would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”

The following differences were also pointed out by the apex court: financial debts are secured while operational debts are not; the nature of loan agreements with financial creditors varies from that of contracts with operational creditors inasmuch that the former enables the corporate debtor to set up and run its business while the latter are concerned with supply of goods and services for the operation of business; the quantum of money involved differs greatly as operational costs are much smaller than financial debts and cannot be compared on the same scale; the repayment of financial debts stipulates a schedule for such repayment whereas no such schedule is stipulated by operational contracts; the forum in which dispute resolution of financial debt and operational debt takes place is different; operational creditors are not involved in the assessment of the viability corporate debtor's business and its reorganisation when there is financial stress as financial creditors are. Bearing these points in mind, the difference between the initiation of insolvency proceedings by financial creditors and operational creditors under Sections 7 and 8 of the Code respectively, becomes clear.

The constitutionality of S. 12A, which allows the withdrawal of an application admitted under S. 7 or S. 9 or S. 10, was upheld. The challenge was on the ground that the approval of 90% of the committee of creditors to withdraw an application is too high a figure and therefore, arbitrary. The court rejected this contention saying that to accept a withdrawal/settlement claim, virtually all the financial creditors must be in agreement and thus,

the requirement of 90% is not arbitrary. Moreover, u/s 60 of the IBC, the committee of creditors does not have the final say on the matter and an arbitrary rejection of a just withdrawal/settlement claim may be set aside by the NCLT/NCLAT.

The court also found that the resolution professional has not been given any adjudicatory powers under the Code and he has only administrative powers as opposed to quasi-judicial powers. Moreover, the resolution professional in many matters cannot act without the approval of the committee of creditors and can be replaced by a 2/3rd majority of the committee, in case they are unsatisfied by his performance. He is merely a facilitator of the resolution process.

The petitioners also challenged S. 29A on the ground that it disqualifies ‘related parties’ from submitting a resolution application which includes persons related to disqualified persons but unconnected with the business activities of such persons. In other words, the contention was that bona fide resolution applicants were excluded by S. 29A. The court clarified that the term ‘relative’ in this respect obviously means being connected with the business activity of the resolution applicant and an unconnected party would not attract S. 29A.

The final challenge by the petitioners was to S. 53, that in the event of liquidation, operational creditors would get nothing as they rank below all other creditors. To this, the court said that there is an intelligible differentia between operational and financial creditors (as discussed above) and inasmuch, Article 14 is not infringed by S. 53.

APURV PRATAP SINGH
B.A. LL.B (H)
SEMESTER VIII

Subscription:-
40 INR- SINGLE
150 INR- ANNUAL

Published By-
Law School, Banaras Hindu
University, Varanasi- 221005
dean.lawschool.bhu@gmail.com
Telefax: +91-542-2369018
<http://www.bhu.ac.in/law>