



BHU LAW SCHOOL NEWSLETTER

Vol. VII, Nos. 1, 2 & 3, January- September 2018



EDITORIAL

The month of September 2018 saw a slew of landmark judgments having great material bearing on the constitutional as well as public morality of the nation. These judgments varied from the decriminalization of the Adultery and homosexuality, the validity of Aadhar, entry of women into Lord Ayappa’s Temple in Sabarimala, reconsideration of the M. Nagaraj judgment (reservation in promotion) among others.

Various constitutional benches of the Supreme Court delivered these judgments and few of them are already being hailed as landmark judgments by several jurists across the nation. While decriminalizing homosexuality by partially striking down Section 377 of the Indian Penal Code, the Supreme Court of India very emphatically reinstated that social or majoritarian morality cannot dictate constitutional morality. In the similar vein, the Court while striking down the colonial-era law of Adultery, held the law to be arbitrary and against the dignity of women. In the highly contentious Aadhar issue, even though the constitutional validity of Aadhar was upheld, but various riders were put in place to prevent its abuse. These judgments champion the cause of individual liberty and will go a long way in the constitutional history of this country. While some of these judgments were unanimous, others like the Aadhar and Sabarimala Judgment saw sharp dissents from Justice D.Y. Chandrachud and Justice Indu Malhotra respectively. Even these dissents hold great importance in our constitutional and democratic landscape. As the noted jurist Benjamin Cardozo once said, “The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years”. Furthermore, as Justice D.Y. Chandrachud had himself once noted, “Dissent is the safety-valve of a democracy.” Thus, even these dissents require a close perusal as if history is any teacher, dissents often gradually become majority opinions.

The Faculty of Law, Banaras Hindu University has always striven to keep all our students, faculty members as well as the society around us, well informed about these legal developments. The reason is pure and simple. These judgments of the Supreme Court reiterate the values of individual dignity and the democratic way of life and hence have a great material bearing on all our lives. However, these lofty judgments will have no meaning for the ordinary citizens if these do not help them in securing justice. These lofty edicts need to find a way to the common masses and this newsletter is just a small step in that direction.

This newsletter is the result of the tremendous effort put in by our students and the faculty members. I extend my thanks and gratitude to the editorial team for their unrelenting efforts in this regard as well as Ms. Jyotsna Hans, a fourth year B.A. LL.B. student who helped in composing the present issue.

Professor R. P. Rai

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FACULTY UPDATES

Prof. Dinesh Kumar Srivastava delivered a lecture on “Goods and Services Tax” in Tilakdhari Sing Law College, Jaunpur on 26th September, 2018.

Prof. Sibaram Tripathy delivered key- note address in the Workshop organized by Sambhalpur University Law College on 27 the September, 2018 on Social justice. Prof. Tripathy has become a member of Board of Studies of Silchal University, Assam.

Prof. Ajendra Srivastava presented a paper “Competency of Child Witness: Recent Trends in Forensic Psychology on Competency” in the National Seminar on “New Trends & Issues in Forensic Science and Medical Jurisprudence” held on September 29, 2018 in the Faculty of law, BHU.

Prof. M.K. Padhy chaired the 1st Technical Session of the National Seminar on “New Trends & Issues in Forensic Science and Medical Jurisprudence” held on September 29, 2018 in the Faculty of law, BHU.

Prof. Bibha Tripathi delivered keynote address in National Workshop on “Shaikshik Sansthaon Me Laingik Utpidan Ki Samasya Evam Samvaidhanik Pravdhan”, ICC Committee and NSS, MGKVP Varanasi on 26th Feb. 2018. She delivered lecture as chief guest on the auspicious occasion of International Women’s Day at Institute of Agricultural Science organized by the NSS unit on 8th March 2018. She has also delivered special lecture on Feminist Criminology on 17th august, 2018 in BBAU, LUCKNOW. She has delivered the keynote address on 27th September, 2018 on prohibition of child marriage in Paradkar Bhavan, Varanasi organized by Dr, Shambhu Nath Singh Research Institute Varanasi and a lecture on Laws Relating to Protection of Rights of Child, in the capacity building workshop organized in joint collaboration with National Commission for Protection of Rights of Child, State Commission for Protection of Rights of Child and North Eastern Railway on 5th October 2018 in the Indraprasth Community center LahartaraVaransi. Prof. Bibha Tripathi has contributed various columns in National Newspapers including Sashaktmahila, Ajhindidainik (12th Jan 2018), Apradh ke daldal me digbhrmit yuva, Ajhindidainik (6th Feb. 2018) and Mritudand se hal nahi hog is samasya, Ajhindidainik (12th May 2018). She has also published articles including “Deconstruct and Decriminalise”, *Economic and political weekly*, Vol. 53, Issue No. 8, 24 Feb, 2018, “Mandirkebahane”, *Sochvichar* Feb 2018, and “Kishore Apradhita”,

Sochvichar August 2018. She has become a member of RAAC BHU from 11th May, 2018. She also conducted a workshop on Gender Sensitization and Self Defense in the Faculty of Law on 9th August 2018 In Collaboration with Women Grievance Cell BHU and Sayesha Welfare Foundation New Delhi

Dr Rajneesh Kumar Patel, Associate Professor, at Faculty of Law, B.H.U Varanasi, presented a paper on the topic Dr. Ambedkar’s Vision on Social Justice and Indian Constitution, in National seminar organized by Department of Sociology, B.H.U, Varanasi. He has also presented a paper entitled “Environment Protection through Community forest” in a National Seminar organized by Prof. H N Tripathi Foundation. He delivered a lecture on the topic “Medical Negligence and its Legal Aspects “in National Symposium organized by Faculty of Ayurveda, BHU. He acted as a judge in Srijan, 2018 organised by Law School BHU. He has presented a paper on “ Legal Education in India and Contemporary Challenges “ in two day International conference on Emerging Scenario in Indian Higher Education System: Issues and Challenges organized by Lalta Singh Rajkiya Mahila P.G College Adalhat, District Mirzapur.

Dr. Golak Prasad Sahoo, Associate Professor delivered the keynote address on “*Cybercrime and Cyber Security*” at Madhusudan Law College, Cuttack, Odisha on 28-02-2018. Dr. Sahoo acted as Organizing Secretary of National Seminar on ‘*New Trends & Issues on Forensic Science and Medical Jurisprudence*’ organized by Faculty of Law, BHU on 29-09-2019 and also acted as convenor of Technical Session II of ‘*Medico-Legal and Ethical Issues and Forensic Techniques and Cyber Forensic: Problems and Solutions*’. He has also authored *New Legal Dimensions of Cybercrime and Indian Judiciary on Appreciation of Electronic Evidence: Vol. I, Vol. II and Vol. III*.

Dr. Rajnish Kumar Singh delivered invited lectures on various topics on Intellectual property Rights at NIPER, Hajipur, Bihar during September, 2018 and also delivered invited lectures on “Copyright and Academic Research” at Faculty of Ayurveda, Banaras Hindu University in July 2018. He has also contributed a chapter on “Legal Control of Money Laundering: International and National Initiatives” in the BC Nirmal, Sabari Bandhopadhyay (eds.) *Combating Corruption: Blact Money and Money Laundering Issues & Challenges Ahead* (2018), Satyam Law International.

Dr. Kshemendra Mani Tripathi organised various events including a Lecture on “National Integration” on 23 January, 2018 on the Birth Anniversary of S. C. Bose, National Conference on Environment on 28th march, 2018, Workshop on GST in August, 2018, Panel Discussion on “Education Policy in India: Challenges and Prospects” in September, 2018. Dr. Tripathi became a member Proctorial Board, B.H.U. in June 2018 and member of Academic Council, B.H.U. in September 2018. He also delivered a lecture as resource person on “Role of legal education in India” in September 2018 and edited the Book “Changing Paradigm of Environment Protection in India” in March 2018. He also participated in 7 National Conferences across India during 2018.

Dr Raju Majhi, Assistant Professor, at Faculty of Law, B.H.U Varanasi, presented a paper entitled “Higher Education : Present and Future” in two day International conference on Emerging Scenario in Indian Higher Education System: Issues and Challenges organized by Lalta Singh Rajkiya Mahila P.G College Adalhat, District Mirzapur. He also acted a judge in Srijan, 2018 organised by Law School BHU.

Dr. Adesh Kumar Maurya presented a paper in the Seminar on “Higher Education in India” organized by Faculty of Social Science, BHU on 14th

April, 2018. Dr. Maurya also participated in Akashvani recording on Yuvvani on the topic “Fundamental Rights of Citizen of India” on 5th August, 2018.

Dr. Anil Kumar Maurya submitted three updated MOOC Modules on different issues on Environmental law to National law university, Delhi in September, 2018.

Dr Anjali Agrawal, Assistant Professor of Economics published a paper on the topic “Mid-Day meal scheme and food security of India” in an International journal Vaichariki. She edited a book on Food Security in India: A Brief Overview, Published by Nath Ram Publication. She has presented a paper on the topic on Indian Agriculture & Budget 2018-19 in one day national seminar organized by Department of Economics, DAV PG College, Varanasi. She has presented a paper on the topic Challenges of Indian Agriculture after Twenty Five Years of Economic Reforms in two day international seminar organized by Department of Economics, Faculty of social science, B.H.U, Varanasi. She has presented a paper on Failure of Higher Education for Creating Job Opportunities in India in two day International conference on Emerging Scenario in Indian Higher Education System: Issues and Challenges organized by Lalta Singh Rajkiya Mahila P.G College Adalhat, District Mirzapu

ACTIVITIES AT LAW SCHOOL

National Seminar on “New Trends and Issues in Forensic Science and Medical Jurisprudence”



Professor R.P. Rai, Shri Kamendra Prasad and Dr. Sarjeet Singh Dang (L to R)

A one-day National Seminar on “New Trends and Issues in Forensic Science and Medical Jurisprudence” was organized at Law School BHU on the 29th of September 2018. Shri Kamendra Prasad, Former Director, National Institute of Criminology and Forensic Science, New Delhi was

the Chief Guest and Dr. Sarjeet Singh Dang, Former Cabinet Minister, UP Government presided over the inaugural session. 16 specialists presented their research findings in two technical sessions. Identification of criminals, crime investigation, collection of evidence and the use of and the challenges posed by new techniques were discussed during the session. Professor R.P. Rai, Head & Dean, Law School BHU welcomed the guests, Professor M.K. Padhy presented the theme of the seminar, Dr. G.P. Sahoo presented the vote of thanks and Dr. N.K. Mishra conducted the event. More than 250 participants from various parts of the country participated in the discussion.

One Day Workshop on Insolvency and Bankruptcy Code, 2016

A one-day workshop on ‘Insolvency and Bankruptcy Code, 2016’ was conducted by the Faculty of Law, BHU on 15th September, 2018. The Head and Dean, Professor R.P. Rai, welcomed the Chief Guest Dr. Abhay Thakur, Director, Income Tax, Varanasi and Guest of Honor Mr. Kartik Agrawal, Group Company Secretary, JVL AGRO

Industries Ltd.. Dr. Abhay Thakur, Mr. Kartik Agrawal, Prof R.P. Rai and Prof. C.P. Upadhyay inaugurating the workshop The distinguished speakers of the technical session were Mr. Sameer Jain, Founder and Managing Partner of PSL Advocates and Solicitors and Mr. Anurag Byas, Vice President, ICICI Securities, Mumbai. The speakers analyzed the various aspects of the subject in-depth and interacted with the students. Prof. C.P Upadhyay, Coordinator, B.A.LL.B, proposed a formal vote of thanks.



Dr. Abhay Thakur, Mr. Kartik Agrawal, Prof R.P. Rai and Prof. C.P. Upadhyay inaugurating the workshop



Mr. Sameer Jain and Mr. Anurag Byas address the students (L to R)

Seven Days Workshop on Health & Yoga

Faculty of law organized a seven days workshop on Health & Yoga from 22nd September onwards in collaboration with Bharat Adhyayan Kendra, Faculty of Arts, BHU. The Workshop was attended by 45 participants. In the Inaugural Session Prof. Rakesh Upadhyay of Bharat Adhyayan Kendra was the Chief Guest. Prof. Sadashiv Kumar Diwedi, Coordinator of Bharat Adhyayan Kendra was the Chief Guest of the Valedictory Session. Prof. R.P. Rai was the Director, Prof. S.K. Gupta was the Joint Director, Dr. Adesh Kumar was the Organizing Secretary and Dr. Geeta Bhatt was Co-organising Secretary of the Workshop.



Current Law Forum: Lecture on Environmental Issues of Ganga River

Sri Arun Kumar Gupta, Advocate Allahabad High Court delivered a lecture titled “Environmental Issues of River Ganga” on 10 the September, 2018. He presented the scientific analysis of the importance of Ganga water and the issues pertaining to pollution. Prof. R.P.Rai welcomed the guest, Dr. N.K.Mishra proposed vote of thanks and Prof. M.K. padhy, Coordinator, Current law Forum, conducted the proceedings.

Workshop on Gender Sensitization and Self Defence Training with Sayesha Foundation

A workshop on Gender Sensitization and Self-defence was organised in the Faculty of Law on the 9th of August 2018. The Women Grievance Cell, B.H.U., Proctorial Board and Sayesha Foundation coordinated the same. The Head and Dean, Professor R.P. Rai, welcomed the Chief Guest and members of the Women Grievance Cell. Former Dean, Faculty of Law, Prof. D.K. Sharma, addressed the gathering. The theme of Gender Sensitization was presented by Prof. Bibha Tripathi. Prof. Royana Singh, Chairperson WGC, B.H.U. and Chief Proctor B.H.U, was the Chief Guest of the function. Dr. Naval Kishore Mishra, the Student Advisor, Faculty of Law, conducted the session and proposed a formal vote of thanks. The students took much interest in the self-defence training imparted by the Sayesha Foundation.



Hon'ble Vice Chancellor's Address to the new batches of B.A. LL.B. (Hons.) and LL.B. (Hons.) on 3rd August, 2018



The Law School organized the Induction Programme for its newly admitted students of B.A. LL.B., LL.B. and LL.M. Courses from 18th July, 2018 to 21st July, 2018 at Mahamana Seminar Hall. About twelve interactive sessions were held. The dignitaries who addressed the students include : Prof RP Rai (Head and Dean), Prof DK Sharma (Ex Head and Dean), Prof MC Bijawat (Ex Head and Dean), Prof Awadhesh Pradhan (Dept. of Hindi, BHU), Swami Ritananda ji (Ram Krishna Hospital, Varanasi), Prof Ajay Kumar (Law School BHU), Prof RK Murali (Law School BHU), Dr Puneet Bindlish (Dept. of Humanistic Studies, IIT-BHU) and Dr RK Dangi (Deputy Librarian , Law School, BHU). On the basis of performance best performing students were awarded with prizes. The Induction Program was organized by jointly by Prof. S.K. Gupta and Dr NK Mishra, Student Advisor, Law School, BHU. The student volunteers of the Legal Aid Clinic also provided support for this program.

6th Mahamana Malaviya National Moot Court Competition, 2018

The Faculty of Law, BHU organised the sixth edition of its prestigious national level competition on 7-8th April 2018 wherein 24 teams from across the country argued it out in the courtrooms of the faculty over the course of two days. The moot problem this year dealt with the provisions of Constitutional Law. The Inaugural was presided over by the Guest of Honour Prof. N. R. Madhav Menon, Chancellor NUEPA New Delhi and had Hon'ble Mr. Justice Arun Mishra as the Chief Guest.

The competition was divided into preliminary, semi-final and final rounds, with each round being judged by eminent professors, lawyers and judges respectively. The final round was witness to a bench comprising AP Sahi, J., AR Masoodi, J., ArunTandon, J., and Neeraj Tiwari, J. The Central University of South Bihar and the School of Law, KIIT (Deemed to be) University were awarded the winner and the runner-up prize by the Chief Guest,

Hon'ble Mr. Justice BS Chauhan, Chairman, Law Commission of India.



Inauguration of First and Second Floor of Class rooms and Teachers Chambers

The newly constructed class rooms and teacher's chambers on first and second floors above the Mahamana Sabhagar was inaugurated by the Hon'ble Vice Chancellor of Banaras Hindu University in the presence of Hon'ble Mr. Justice Arun Mishra, Judge Supreme Court of India on 8th April, 2018. Dean, Faculty of Law, the Finance Officer of BHU, Faculty members and the students of the Faculty remained present.



Special Lecture by Prof Usha Tondon

Prof Usha Tondon, Professor-in-Charge of Campus Law Center, Faculty of Law, University of Delhi delivered a Special Lecture on "Domestic Violence Act: Judicial Interpretation" on 23rd January, 2018. Prof. DK Sharma, the then Dean of Faculty welcomed the guest.



Sankay Gaurav Samman Samaroh

The Faculty of Law felicitated its former students who achieved success in different competitive examinations including judicial services and other exams of lectureship etc. The successful former students in various fields including corporate sector in large number were recognized and felicitated on 25th January, 2018. Prof. D.P. Singh and Mr. Neeraj Tripathi, Registrar of BHU graced the occasion by their presence.



Winners of Various events of SPANDAN, 2018 (Inter Faculty Youth Festival of Banaras Hindu University with the Dean and other Faculty members and Annual Cultural Festival of Faculty of Law, BHU: SRIJAN



ACTIVITIES AT LEGAL AID CLINIC FACULTY OF LAW, BHU

Jhanki on Basant Panchmi

Legal Aid and Service Clinic, BHU organized Jhanki and Procession on the occasion of Basant Panchmi (BHU Foundation Day) on 22nd January, 2018. The theme of the Tableau/ Jhanki of Faculty of Law was based on Triple Talaq.

Community Legal Awareness Workshop

Legal Aid and Service Clinic, BHU organised a Public Legal Awareness Workshop on Protection of Rights of a Women at Vasanta College for Women, Rajghat Varanasi on 28 March 2018.

The proposed workshop focused on the following issues:-

1. Problem of Dowry & Legal Remedies.
2. Law on Domestic Violence.
3. Problem Eve Teasing, Sexual Abuse and Human Trafficking.
4. Property Rights of Women.
5. How to File FIR, RTI Application, Consumer Case and cybercrime complaint etc.
6. Compensation scheme for the victims of rape and acid attack.



During the workshop, the participants were made aware about their constitutional & various statutory rights, existing legal institutions for Protection of Rights of Women, legal remedies available to women, local administrative agencies/officers for protection of women, important NGOs working for protection of women & last but not the least about the free legal aid & free legal services offered by Legal Services Authority & BHU Legal Aid & Services Clinic. The Workshop was interactive in nature, through audio-visual content such as Power Point presentations aided by posters, plays, short films, etc. Hindi and English pamphlets were also distributed among the students.

Best Legal Aid and Service Clinic Award

Legal Aid and Service Clinic, BHU has been awarded as best legal aid and service clinic by GNLU Annual Legal Services Forum held on the 13th and 14th of April 2018. The LASC, BHU was represented by the Shreya Chowdhary, Shresth Samaiyar and Soumya Pandey members of the LASC.

Induction Programme for Newly Selected Member of LASC

Legal aid and Service Clinic has conducted a selection process to recruit the new student volunteers for the session 2018-19. The Clinic adopted the three tier selection process ie, a preliminary objective test to shortlist the candidates, theme presentation through the PPT and finally a viva voce. The Clinic selected 25 new student volunteers. An Induction Program was organised on 13th September, 2018 at the Faculty Lounge. Prof RP Rai, Head and Dean, Prof RK Murali, Prof SK Gupta, Dr GP Sahoo, Dr Adesh Kumar and Dr NK Mishra addressed the participants. The senior members of the Clinic gave brief presentations about of the aim and activities of the various committees of the Clinic.



Legal Awareness Workshop on The Role of The District Probation Officer In Protection Of The Rights Of The Women And Children

Legal Aid and Service Clinic, BHU has organized a Legal Awareness Workshop on Role of the District Probation Officer in Protection of the Rights of Women and Children at Faculty of Law, BHU on 22 September, 2018. The focus of workshop was on the theme to empower and develop better of Practical Understanding of the socio-legal challenges for protection of Rights of Women and Children among the members of the clinic. In this workshop, various stake holders such as the D.P.O

Varanasi- Mr. Praveen Kumar Tripathi, Mr. Preetesh Tiwari, Project Coordinator, UNICEF, India, Mr. Dharmendra Das – Criminal Justice Fellow, TISS, Mumbai, the subordinate officers of the DPO, Varanasi and representatives of NGOs working for the protection of rights women and children were present.



Inauguration of Juvenile Justice Counselling Center at the Observation Home Ramnagar Varanasi

On the occasion of the Gandhi Jayanti, a Juvenile Justice Counselling Center was inaugurated jointly by Surendra Singh (IAS) the District Magistrate, Varanasi and Prof RP Rai, Head and Dean, Faculty of Law, BHU, on 2nd October 2018 at the Juvenile Observation home, Ramnagar, Varanasi. Legal Aid Centre is titled "VIDHIMANYA". This Legal Aid Centre will work under the direction and supervision of DPO office in collaboration with Legal Aid and Service Clinic, Faculty of Law, BHU with an ambition to protect the rights of children and juvenile. The objective is to provide free legal aid, advice and services to CNCP (children in need of care and protection), CINL (children in conflict with law).



Prof RP Rai and Mr. Surendra Singh inaugurating the Juvenile Justice Counselling Centre

LEGISLATIVE TRENDS

THE FUGITIVE ECONOMIC OFFENDERS ORDINANCE, 2018

The Ordinance came into force since 21 April 2018. It provides for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts and to preserve the sanctity of the rule of law in India. The Ordinance defines Fugitive Economic Offender under S.2(1)(f) as “any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who — has left India so as to avoid criminal prosecution; or being abroad, refuses to return to India to face criminal prosecution. The Ordinance also provides for procedures for declaration of an individual as a fugitive economic offender, powers for search and seizure/survey, management of confiscated properties and appellate procedures.” It is expected that a special forum to be created for expeditious confiscation of the proceeds of crime, in India or abroad, would coerce the fugitive to return to India to submit to the jurisdiction of Courts in India to face the law in respect of scheduled offences. Since the law would utilise the existing infrastructure of the Special Courts constituted under the Prevention of Money-laundering Act, 2002 and the threshold of scheduled offence is high at Rs. 100 crores or more, no additional expenditure is expected on the enactment of the Ordinance.

THE CRIMINAL LAW (AMENDMENT) ACT, 2018

The Act enacts the Criminal Law Amendment Act, 2018, to amend the Indian Penal Code, 1860, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012. It received the President’s assent on 11 July 2018 and was notified on the same day, to be effective from 21 April 2018. The Act amends the IPC, 1860 to increase the minimum punishment for rape of women from seven years to ten years. Rape and gang rape of girls below the age of 12 years are punishable with the minimum imprisonment of twenty years and is extendable to life imprisonment or death. Rape of girls below the age of 16 years is punishable with imprisonment of twenty years or life imprisonment. The Act provides a mechanism for time-bound investigation in cases of rape of girl children. The investigation into rape of a child must be

completed within two months. The case is to be tried in a fast track court. The Act states that any appeal against a sentence by the trial court must be disposed of within six months. Accused is not entitled to anticipatory bail, under new law, in offences of rape of child less than 16 years of age. Fast-track special courts will be set up to exclusively deal with rape cases. Apart from this, only a woman judge will hear the rape case and a woman police officer will record the statement of rape victims.

THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS (AMENDMENT) ACT, 2018

The Act has been notified on 20 August 2018 with retrospective effect since 3 May 2018. It aims to lessen the specified value of a commercial dispute to 3 lakhs from the present value of 1 crore. Therefore, commercial disputes of a reasonable value can be decided by commercial courts, which would lead to coming down of the time taken in resolution of commercial disputes of lesser value. *This will allow the courts to have wider pecuniary jurisdiction and institute more disputes under the Act so as to fasten the process of commercial disputes.* The amendment provides for establishment of Commercial Courts at district Judge level for the territories over which respective High Courts have ordinary original civil jurisdiction in the cities of Chennai, Delhi, Kolkata, Mumbai and State of Himachal Pradesh. The Act introduces *pre-institution mediation* process in cases where no urgent, interim relief is contemplated. It will provide an opportunity to the parties to resolve the commercial disputes outside the ambit of the courts through the authorities constituted under the Legal Services Authorities Act, 1987. The Act enables the Central Government to make rules and procedures for pre-institution mediation.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ORDINANCE, 2018

The Ordinance was promulgated on 19 September 2018. The Ordinance makes all declaration of

talaq, including in written or electronic form, to be void and illegal. It defines talaq as talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce. Talaq-e-biddat refers to 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 makes declaration of talaq a cognizable offence, attracting up to three years imprisonment with a fine. The offence will be cognizable only if information relating to the offence is given by the married woman (against whom talaq has been declared), or any person related to her by blood or marriage. The Ordinance provides that the Magistrate may grant bail to the accused. The bail may be granted only after hearing the woman (against whom talaq has been pronounced), and if the Magistrate is satisfied that there are reasonable grounds for granting bail. The offence may be compounded by the Magistrate upon the request of the woman (against whom talaq has been declared). Compounding refers to the procedure where the two sides agree to stop legal proceedings, and settle the dispute. The terms and conditions of the compounding of the offence will be determined by the Magistrate. A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be determined by the Magistrate. A Muslim woman against whom such talaq has been declared, is entitled to seek custody

of her minor children. The manner of custody will be determined by the Magistrate.

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018

The Act received the assent of the President on the 17th August, 2018. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Act seeks to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In 2018, the Supreme Court stated that for persons accused of committing an offence under the Act, approval of the Senior Superintendent of Police will be required before an arrest is made. Further, the Deputy Superintendent of Police may conduct a preliminary enquiry to find out whether there is a prima facie case under the Act. The Amending Act states that the investigating officer will not require the approval of any authority for the arrest of an accused. Further, it provides that a preliminary enquiry will not be required for the registration of a First Information Report against a person accused under the Act. The Act states that persons accused of committing an offence under the Act cannot apply for anticipatory bail. The Act seeks to clarify that this provision will apply despite any judgements or orders of a court that provide otherwise.

INTERNATIONAL LEGAL NEWS



Member States Must Give Residency Rights to Same-Sex Spouses Even If They Don't Recognize Same Sex Marriages: European Court of Justice

In a landmark ruling for LGBT rights in Europe, the European Court of Justice has directed all member countries to recognize the residency rights of same-sex spouses, even if the country does not allow same-sex marriages. The Court did note that freedom of movement may be subject to restrictions independently of the nationality of the persons concerned, if the restrictions are based on "objective public-interest considerations" and are "proportionate to a legitimate objective pursued by national law". It further opined that public policy must be interpreted strictly, and that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions.

UN Committee against Torture issues New Guidelines on Asylum Seekers' Rights

The United Nations Committee against Torture (CAT) has issued new guidelines on asylum seekers rights. These guidelines aim to help governments avoid violating international human rights law, and to help asylum seekers avoid torture or other ill-treatment. The new document also known as General Comment, addresses governments implementation of Article 3 of the Convention against Torture. That article deals with non-refoulement, a ban on expelling, returning ("refouling") or extraditing a person to another State where he or she could face torture.

Through writing the new General Comment no. 4 (2017) on how governments ought to live up to that obligation, the Committee against Torture gives guidance to States. The General Comment helps Governments assess whether an asylum seeker faces a personal risk of torture or ill-treatment in his or her country of origin, if returned there. It provides a check list of guarantees and risk factors for governments to pay attention to. The checklist, among other questions, asks government authorities to keep in mind that torture victims and other vulnerable persons frequently suffer from Post-Traumatic Stress Disorder (PTSD), which can result in a broad range of symptoms, including involuntary avoidance and dissociation. "These symptoms may affect the ability of the person to disclose all relevant details or to relay a consistent story throughout the proceedings."

Security Council stresses need of 'sustainable solutions' for millions displaced in Darfur

In a presidential statement on 31 January 2018 the security council has reiterated its demand that all parties to the conflict in Darfur create the conditions conducive to allowing the voluntary, informed, safe, dignified and sustainable return of refugees and internally displaced persons,".

The Council also voiced concern that improvements in the security situation has not translated into a commensurate reduction in the level of human rights violations and abuses, such as sexual and gender-based violence, and serious violations against children, perpetrated with impunity.

Further, the Council also said that six years after the adoption of the Doha Document for Peace in Darfur, the people of Darfur had yet to fully benefit from it. In that context, the UN body reiterated its support for the Doha Document as a viable framework for the peace process, and welcomed the signing of an African Union (AU) High-Level Implementation Panel road map by the Government and armed movements and urged them to make immediate progress on its implementation. Nations Started Drafting 'Operating Manual' For Climate Action at UN Conference in Bonn. The latest round of United Nations climate change negotiations took place in Bonn, Germany in April 2018, to further develop the "operating manual" for implementing the landmark 2015 Paris Agreement, which aims to keep temperature, rises this century, well below 2 degrees Celsius.

UN Hails Human Rights Declaration as Tool for Conflict and Poverty Prevention

As the world celebrates the 70th anniversary of the adoption of the Universal Declaration of Human Rights (UDHR) this year, the United Nations General Assembly dedicated a high-level event to discussing how respect for human rights in societies can help advance peace and sustainable development. Adopted in Paris in 1948, the UDHR was drafted in the aftermath of the Second World War and the Holocaust. The text describes every individual's inalienable rights, through 30 carefully written articles.

Describing its "revolutionary impact", UN Secretary-General António Guterres said the Declaration "has permeated policies and constitutions, from the global level to national and regional frameworks". He added that it had "unleashed the power of women's full participation", as well as "spurred the fight against racism, xenophobia and intolerance."

Access to Legal Abortion Services Needed- UN Rights Experts

A group of United Nations Human Rights experts have on International Safe Abortion day stressed that States across the world should act now to decriminalise abortion and make every effort to ensure women and girls have the right to make their own decisions about pregnancy. The group highlighted that the ability for a woman or girl to make her own decisions about pregnancy "is at the very core of [her] fundamental right to equality, privacy and physical and mental integrity and is a

precondition for the enjoyment of other rights and freedoms”.

Currently, an estimated 225 million women worldwide are deprived of access to modern contraception, often leading to unplanned pregnancies. For girls, issues arising from

pregnancy and childbirth are some of the most common causes of death in developing countries. The experts have also claimed that “Legal frameworks for abortion have typically been designed to control women’s decision-making through the use of criminal law.

RECENT JUDICIAL DECISIONS

JUSTICE K.S. PUTTASWAMY (RETD.) AND ANOTHER v. UNION OF INDIA AND OTHERS

WRIT PETITION (CIVIL) NO. 494 OF 2012

Is it better to be unique than the best? Supreme Court upholds the validity of Aadhaar Act, albeit with some riders.



Validity of Aadhaar had been a major bone of contention over the past few years. While the government of the day has hailed it as a panacea for all kinds of leakages and pilferages in the benefit schemes and an effective tool of good governance; various civil right activists, on the other hand, see it as a powerful instrument for a ‘surveillance state’. The matter was finally put to rest by a 5-judge constitutional bench of the Supreme after a marathon hearing of about 38 sessions. In a voluminous judgment running into about 1500 pages, the Supreme Court upheld the validity of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter referred to as the ‘Aadhaar Act’) by a majority of 4:1.

Majority of the judgment was delivered by A.K. Sikri, J. (for himself) and Dipak Misra, C.J. and A.M. Khanwilkar, J. A separate yet concurring opinion was delivered by Justice Ashok Bhushan. The minority opinion was delivered by Justice D. Y. Chandrachud who sharply dissented from the majority opinion and even went on to call the passage of the Aadhaar Act as a money bill, ‘a fraud on the constitution’.

In the opening statement of his judgment, Justice Sikri wrote, “It is better to be unique than the best. Because, being the best makes you the number one, but being unique makes you the only one.”; thus emphasizing the uniqueness of the Aadhaar scheme. He hailed it as a symbol of digital economy and an effective tool for the public welfare.

One of the major concerns of the petitioners was that Aadhaar infringed upon the privacy of the citizens which was declared as a fundamental right by a 9-judge bench of the Supreme Court in 2017. Furthermore, they contended that Aadhaar had the potential of being used as a tool of surveillance by the government and other agencies. Discarding the contentions regarding the risks to privacy and liberties of citizens, Justice Sikri applied the proportionality doctrine and held that “Data collection by Aadhaar is minimal and it is serving a much larger public interest.” He held that the architecture of Aadhaar, as well as the provisions of the Aadhaar Act, do not tend to create a surveillance state. He further noted that all matters pertaining to an individual do not qualify as being an inherent part of right to privacy. Only those matters over which there would be a reasonable expectation of privacy are protected by Article 21. The Aadhaar scheme, being backed by an Act also serves the legitimate State aim. Going further, Justice Sikri noted that Aadhaar gives dignity to the marginalised and hence its benefits far outweigh the concerns of privacy.

Even though the validity of the Aadhaar Act was upheld by the constitutional bench, much to the respite of petitioners and social right activists, the majority judgment struck down many provisions of the Aadhaar Act, thus doing what can be termed as a ‘balancing act’.

Many sections of the Aadhaar Act like Section 57 allowing data to be shared with private entities, Section 33(2) allowing the government to access Aadhaar data at will in the interests of “national security” and Section 47 which prohibited the citizens from lodging complains in cases of data theft and breach; have been struck down. Furthermore, it held that private companies like

mobile phone companies can't seek Aadhaar data for new SIM cards. Educational institutes, UGC, NEET, CBSE can't seek this data for admission purposes. Even banks and financial institutions can now no longer seek the Aadhaar data.

However, Section 7 of the Act which makes Aadhaar mandatory for government benefit schemes was upheld. Furthermore, it is still mandatory to link Aadhaar with the PAN card and it is even required for filing income-tax returns.

Many other core issues like the probabilistic nature of biometric technology (the rate of success of biometric authentication is 99.7% according to UIDAI), absence of strong and efficient data protection architecture and laws, lack of accountability of UIDAI, passage of the bill as Money Bill, etc. were raised during the hearings. The majority judgment dodged many of these issues and accepted the word of the government at its face value.

It is here that Justice Chandrachud's dissent is of seminal importance and requires a close perusal. Passage of the Aadhar Act as a money bill even though it doesn't directly fall under any of the four criterions mentioned in Article 110(1) of the Indian

SWAPNIL TRIPATHI v. SUPREME COURT OF INDIA

WRIT PETITION (CIVIL) NO. 1232 OF 2017
Supreme Court Allows Live Streaming of Court Proceedings

A three-judge bench of the Hon'ble Supreme Court comprising Chief Justice Deepak Misra, and two puisne justices including A. M. Khanwilkar and D.

Y. Chandrachud, JJ in a crisp judgment of 106 pages allowed for live streaming of court proceedings in the case titled *Swapnil Tripathi v. Supreme Court of India*.

The SC made a reference to Section 327 of the Code of Criminal Procedure and 153-B of the Code of Civil Procedure which deal with open court hearing. By granting virtual access of live proceedings to all, it would cultivate the right of access to justice. It was observed by the Court that though the Courts are ordinarily open to the public but an arrangement such as this would transcend the logistical and infrastructural shortcomings.

Laying down the rules which would direct the manner of recording and relaying of the proceedings, the Court, in detail, defined the stipulations with which such transmission was to

Constitution was termed by him as a 'fraud on the constitution'. Talking about the probabilistic nature of biometric technology as well as the conflict between algorithms and rights, he noted, "Dignity and the rights of individuals cannot be made to depend on algorithms or probabilities. Constitutional guarantees cannot be subject to the vicissitudes of technology."

This is a judgment with far reaching ramifications. It will be too soon to say whether this judgment requires a review or not, however if it ever so happens, the dissent of Justice D. Y. Chandrachud has already laid the perfect foundation. For now, the Supreme Court has done a good 'balancing act' by striking down certain provisions of the Act, while still upholding the Act. Even though it held the discretion of the Speaker while declaring a bill as money bill to be justiciable, it failed to call out the government on the issue. Whether such ambivalent approach suits the highest court of the land or not; will be adjudged by the vicissitudes of time.

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be made. In agreement with the recommendations of the Attorney General of India, Shri KK Venugopal, the Court reiterated that the purpose of the broadcast "...should be achieved holistically but at the same time not interfere with the administration of justice or the dignity or majesty of the court hearing the matter and/or impinge upon any rights of the litigants or witness."

In line with Art. 145(1) of the Constitution of India, the court made an exception for such sensitive cases, the streaming of which may be contrary to the interest of justice and public order for example in matters involving juveniles, cases of sexual assault and matrimonial issues. The live streaming would be dependent on the prior consent of the parties and in case of no decisive consensus, the final call shall rest with the court. The proceedings shall also be delayed to allow for editing should such a need arise. In addition to the courtroom proceedings, the streaming shall also cover ceremonial events such as oath-taking and farewell ceremonies of the Supreme Court Judges.

On a pilot basis, the streaming would only cover the cases of constitutional and national importance, being argued for final hearing, with due permission from the concerned court. Chandrachud, J. towards the far end of his judgment laid down the model guidelines for

broadcasting of the proceedings and other judicial events of the SC. This is a welcome start and has been perceived by the media to be a tool for greater accountability and spreading awareness amongst the people.

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NAVTEJ SINGH JOHAR & ORS. v. UNION OF INDIA MINISTRY OF LAW AND JUSTICE SECRETARY

Writ Petition(s)(Criminal) No(s).76/2016
Decriminalisation of Consensual Homosexual Acts: The Landmark Section 377 Verdict

A five-judge bench of the Hon'ble Supreme Court comprising Chief Justice Deepak Misra, and four puisne justices including A. M. Khanwilkar, Rohinton F. Nariman, D. Y. Chandrachud, and Indu Malhotra, JJ in their comprehensive judgment spanning 495 pages, decriminalised consensual homosexual acts between adults and as a result, partially struck down the colonial-era provision that had found its place in S. 377 of the Indian Penal Code for a little more than 150 years.

The Court granted constitutional affirmation to the Fundamental Rights guaranteed to all persons of the country and chose to tread the path of constitutional morality over popular morality, thereby giving the requisite importance to the nature of the Constitution with regard to individual liberty.

Through four separate (concurring) judgments, the Court observed that the identity of a person, which includes sexual orientation, is inherent to Part III of the Constitution and if one's right to such a fundamental choice is impeded, it would serve as a hindrance to the realisation of their identity, in turn violating their right to privacy and to dignity.

The Court further observed that the impugned provision had failed to appreciate the difference between consensual and non-consensual acts,

putting them in the same basket and as a consequence allowed for discrimination and unequal treatment of the LGBT community at the hands of law, even for the actions committed by consenting adults in a private space. This was perceived to be manifestly arbitrary. Such an act, therefore, could not be understood to affect public decency or morality and thus had no reasonable connection with the objectives of criminal law, wherein the provision was housed. The *Koushal* Judgment, which was the previous authority on this matter, had failed to take these issues into consideration and hence was overruled. However, non-consensual acts, acts with a minor and bestiality continue to be an offence, inviting sanction under the same provision.

In conclusion, it was remarked by CJI Misra that the Constitution has to be interpreted in a progressive manner, so as to bring the Fundamental Rights under a wider umbrella with the passage of time. Notions of morality, however old, must not be allowed to have such an influence as to result in a less progressive state or a compromise of such basic rights which make a person's existence in society equal, inclusive and dignified.

The decision has been celebrated across the country with the affected communities and the advocates of human rights rejoicing together, much to the dismay of the religious groups which continue to look down at the act with a religious viewpoint.

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Joseph Shine v. Union of India

WRIT PETITION (CRIMINAL) NO. 194 OF 2017
Adultery Decriminalized; Supreme Court Strikes Down Section 497 IPC

A five-judge bench of the Supreme Court struck down the 158-year-old law criminalizing adultery, declaring it unconstitutional under Article 21 of

the Constitution. The law as it stood prior to this decision penalized the act of adultery committed by a man with a married woman. It essentially treated a man as the 'sole perpetrator' and enabled the husband to initiate criminal proceedings against him. The law exempted the 'adulterer' from criminal liability if the sexual act was performed with the consent or the connivance of

the husband. It is of note that the wife was completely exempt from punishment and was not even treated as an abettor to the crime.

The judgement held that S. 497 violated a woman's right to dignity, which in turn violated Article 21. Justice Nariman observed that, "the ancient notion of man being the perpetrator and woman being the victim of adultery no longer holds good." The law as it stood subjected women to the will of their husbands, which in itself is against gender equality. We see through this judgement, a feministic approach taken by the apex court. The judges in their separate, but concurrent judgements, expressed that S. 497 treated women as chattel.

By absolving the adulterer from liability in cases where the sexual act was done with the consent or connivance of the husband, this patriarchal law basically gave the husband of the adulteress a choice while simultaneously depriving women of the same choice. Had the law been gender neutral, it would offer the wife of the adulterer the same choice to initiate criminal proceedings against the adulteress. From this angle, Article 14 was also being violated by this law.

With regard to the contention that the law against adultery guarded the sanctity of a marriage, the Court expressed that S. 497 did not criminalize sexual acts in cases where married men were sexually involved with unmarried persons. On this point, Justice D.Y. Chandrachud remarked, "the argument against you (the petitioner) is that S. 497 protects the sanctity of a marriage... However, if a married man has sexual intercourse, outside his marriage, but with an unmarried woman, that does not amount to an offence under the provision though it also effects the sanctity..."

Indian Young Lawyer Association v. State of Kerala

Writ Petition (Civil) No. 376 of 2006

Exclusion of women falling in the age group 10-50 from Sabarimala temple falls foul of constitutional doctrine of gender justice.

A five judge Constitution bench of the Supreme Court delivered a verdict with far reaching ramifications in the matter canvassed as a struggle for supremacy between two guaranteed rights of the Constitution, namely, right against discrimination and freedom of conscience striking down the 'patriarchal' practice of exclusion of women aged between 10 to 50 years as unconstitutional by 4:1 majority. The majority

Further, with regard to the sanctity of marriage, Justice Chandrachud said adultery may be an indicator of a marriage that has broken down and if a marriage has broken down, it is not for us to criminalise a party to such marriage for engaging in extramarital sexual intercourse. However, he noted that decriminalising adultery does not amount to licensing it and that adultery as a ground for divorce is a sufficient safeguard.

On the issue that the law against adultery should be gender neutral, the bench discussed the very basis for it being a crime, raising the question that whether adultery amounts to a crime against society or against the marriage as it affected the relationship between two adults.

The Court also struck down S. 198(2) as it supplied the procedure allowing the initiation of proceedings for adultery solely at the instance of the husband of the adulteress.

Public response is split between a progressive and a conservative perspective. While the former believes this judgement to be in accordance with the wave of gender equality and social reforms that have taken over the country, the latter although agreeing that the law was patriarchal, claim this to be an assault on the morals of our society as well as the customary view that marriage is a sacrament. It is for us to determine whether the idea of marriage as a sacrament holds good in today's society and if so, do we require criminal intimidation to protect said sanctity?

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judgment was authored by Chief Justice (for himself and Khanwilkar, J.) and Dr. D.Y. Chandrachud, J. gave a separate concurring opinion. Indu Malhotra, J. intriguingly, the sole women judge on the bench and a recent appointee to Apex Court, delivered a dissenting opinion.

Majority opined that the practice is derogatory to the dignity of women which specifically discriminates on the basis of their biological attribute, menstrual cycle to be precise, amounting to the practice of untouchability. The age old practice deprived women of their fundamental right guaranteed under Article 25(1). It was categorically held that devotees of Lord Ayyappa do not constitute a 'separate religious

denomination'. Moreover, by application of *essentiality doctrine*, the impugned practice was held not to be an essential and/or integral part of Hindu Religion in the sense that non-observance of such practice does not alter the nature of Hindu religion. While rejecting the contention of Travancore Dewaswom Board, it was held that 'morality' appearing under Article 25 cannot be circumscribed into the narrow bounds of religious morality and must be construed as to mean constitutional morality.

The court also assailed the rules providing statutory protection to the practice as being violative of their parent Act, Kerala Hindu Places of Public Worship (authorization of entry) Act, 1965 which was made in pursuance of mandate of Article 25(2)(b). The lone dissenter opined that court should not sit upon adjudication of matter relating to deep religious belief. Permitting PILs in religious matters would open the floodgates to interlopers to question the religious belief, even if the petitioner is not a believer of a particular religion. Another, important point espoused by

Jarnail Singh & Ors v. Lachmi Narain Gupta & Ors.

SPECIAL LEAVE PETITION (CIVIL) NO. 30621 OF 2011

"Article 16(4-A) has been couched in language which would leave it to the States to determine adequate representation depending upon the promotional post that is in question."

A five-judge Constitution Bench of the Supreme Court, comprising the Chief Justice of India Dipak Misra, and Justices Kurian Joseph, RF Nariman, SK Kaul and Indu Malhotra, on 26.09.2018, ruled that

the 2006- judgment in the case of *M. Nagaraj & Ors. v. Union of India & Ors.*, relating to reservations for Scheduled Castes and Scheduled Tribes in promotions, need not be referred to a seven-judge bench for reconsideration. However, the Apex Court reversed the finding in *Nagaraj* judgment which required to collect quantifiable data to prove backwardness, holding it contrary to the decision in *Indira Sawhney* case.

Though the decision is a clarification of *M. Nagaraj*, it has essentially gone contrary to narrative of the Apex Court in which the court leaned towards not providing benefit of promotion to SC/ST community unless exceptional circumstances are justified "in fact" by way of quantifiable data. In the

Malhotra, J. is that non-believers cannot sit upon deciding that the belief of believers is rational or not and that the touchstone of Article 14, 15, 17 will have to be kept away from such intricate issues.

The judgment has attracted varied response from the society. While Intelligentsia has crowned Deepak Mishra, J. as 'gender warrior', masses have taken to street construing the judgment as an attack on their faith demanding the state government to file a review petition. The implication of a verdict coming from Apex Court on such a 'communal' issue is that it has the potential of changing the societal thread of Indian community which is widely perceived as 'extra sensitive' towards any compulsive extrinsic change. As, rightly remarked by Mishra, J. Sabarimala is not the end but will usher in a new era.

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case at hand, Supreme Court was asked upon to clarify three riders which were put by court in *Nagaraj* and their relevance, namely, data depicting backwardness of the class sought to be benefitted, data showing the class's inadequate representation in public employment, and administrative mandate of Article 335 of the Constitution. Court doing away with these pre-requisites held that states are at liberty to provide for reservation in promotion for SC/ST's without complying with the riders provided in *M. Nagaraj Case*.

While accepting the argument of the Petitioner the Court also outlined non-implementation of *Nagaraj* verdict in a span of 12 years where no state went on to collect such data becoming a perennial impediment in promotion of SC/ST's. Furthermore, Court held that *M. Nagaraj* is contrary to *Indira Sawhney* to the extent it did away with the 'presumption' of backwardness, which was specifically upheld in that case. Court opined that 'stigma' of backwardness in SC/ST's does not fade away with rise in status and on this count distinction was made between backwardness in Article 16(4) and 16(4-A).

The question regarding the applicability of 'creamy layer' was answered in affirmative by the Court holding that it would not amount to tinkering with Presidential List under Articles 341 or 342 of the Constitution of India. Court also took note of the fact that Parliament is at liberty to amend the list

based on relevant factors. The decision also rules out ration to total population as relevant criteria for reservation in promotion. What is worth noting is the silence with regarding the adequacy of representation of SCs and STs in promotions and not disturbing administrative efficiency.

With the verdict of the Supreme Court, the controversy surrounding the issue seems to have been put to rest for the time being. However, on a deeper probe it might appear that this judgment

Public Interest Foundation v. Union of India

WRIT PETITION (CIVIL) NO. 536 OF 2011

Candidates can't be disqualified from contesting elections on mere framing of charges

The Five Judge constitution bench of Supreme Court of India has held that the political candidates can't be disqualified from contesting elections merely on the ground that criminal charges are framed against them. The bench comprised Chief Justice of India Dipak Misra along with other four judges. The main objective of this is to decriminalize politics. But The Hon'ble Supreme court left this matter to the Parliament to make law with regard to this. The Supreme Court specifically observed that it is not going to interfere with the matters of parliament as the disqualification of members of parliament and state legislature falls in the specific domain of Parliament under Article-102 of the Constitution of India.

The Supreme Court also referred to its own judgment in the case of *Lily Thomas v. Union of India*, where it has been held by the Supreme Court that the candidates who are convicted for more than two years can't contest elections.

It was submitted by the petitioners that the law breakers should not become law makers. It was also submitted that various reports of the Law Commission show that 80% of our parliamentarians are having criminal background. Therefore initiative must be taken by the court to decriminalize politics. The petitioners also highlighted that fiduciary relationship has been extended to various constitutional posts. It has also been submitted that right to contest election

has far-reaching implications. The Court appears to have snatched away with its left hand what it gave with its right hand. Applying the 'creamy layer' concept at promotion level might dilute the chances of promotion of these classes to the next higher level.

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is not a fundamental right, but is only a constitutional right. Therefore there must be some restrictions on this right.

It was submitted by the respondents that facing criminal charges does not mean conviction. They took the plea of "presumption of innocence". This doctrine says that everybody is presumed to be innocent until the guilt is proved. They took the ground that this violates Article- 14 of the Constitution.

The Supreme Court held that the candidates facing criminal charges can contest elections, but ultimately the court left this matter to the Parliament to make law on this point. But the court has issued certain guidelines for the candidates to contest the elections including -

1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein;
2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate;
3. The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents;

In conclusion, it can be said that Supreme Court is right in holding that it shall not interfere in the matters which fall within the domain of legislature. It maintains the separation of powers between legislature and judiciary.

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