



BHU LAW SCHOOL Newsletter

Vol. I, No. 1, April-June 2012

INSIDE

A Tribute to Mahamana
 Congratulatory Messages and
 Greetings
 Banaras Hindu University
 Law School: At a Glance
 Academic Courses
 Activities at the Law School
 Forthcoming Activities
 Faculty Updates
 Legislative Trends
 International Legal News and
 Events
 Recent Judicial Decisions
 Memoir

Editorial Committee

Editor in Chief

Professor B.C.Nirmal
 Head and Dean

Managing Editor

Dr. Ajendra Srivastava

Executive Editors

Dr. Rajnish Kumar Singh
 Shri Raju Majhi

Members

Dr. C. P. Upadhyay
 Dr. D. K. Mishra
 Dr. G. P. Sahoo
 Dr. V. K. Pathak
 Dr. V. P. Singh

Published by

LAW SCHOOL

Banaras Hindu University
 Varanasi – 221005, India
 email: dean.lawschool.bhu@gmail.com
 Telefax : +91-542-2369018
 http://www.bhu.ac.in/lawfaculty

EDITORIAL



It gives us immense pleasure to launch the maiden issue of the quarterly Newsletter of BHU Law School. The BHU Law School is one of the top ranking institutions of this country and has always been in the fore-front of legal education reform. In pursuit of its noble tradition to introduce innovations in legal education this Newsletter is being published on the 150th Birth Anniversary of Mahamana Pt. Madan Mohan Malaviya, a great visionary and the founder of Banaras Hindu University and the former Dean, Faculty of Law (1921 – 1923). The Newsletter comprises Academic Activities, Faculty News, Legislative Trends, International Legal News and Recent Judicial Decisions.

It is a great time for students to be a part of the higher education system more so if one is a part of institution like Law School, BHU. It would not be out of context to mention that the various Bills pertaining to higher education pending before the Parliament have the potential to change the entire way in which our Universities have to function. The Ministry of Human Resource Development's new initiative to reform higher education has met with stiff resistance from certain quarters. Recently, the lawyers across the country have decided to launch a nation-wide protest opposing the inclusion of legal education within the ambit of the Higher Education and Research Bill 2011 which awaits its passage in the Parliament. This calls for a serious debate over the issue of the governance of legal education in the country.

As an effort to engage in a meaningful debate over a variety of legal issues and also to enhance our interaction with the outside world we are publishing this Newsletter. It is intended to bridge the gap not only between academicians on the one hand, and the lawyers, Judges on the other but also between experts and non- experts communities. This Newsletter is a small and humble attempt to draw the attention of the outside world to sincere and honest efforts of our faculty engaged in promoting research and learning. Our endeavor is in consonance with the vision statement of our School which states: "The Banaras Law School should be a pioneer institution of legal education in India with an excellent team of teachers and a selected students body, stressing individual attention and extensive as well as intensive study and thereby carrying further the all important task of educational renaissance in the country in a manner befitting the monumental efforts of the founder of the University, Mahamana Madan Mohan Malaviya ji" - Prof. Anand Jee.

We hope that the series of quarterly Newsletters shall prove to be a useful information resource for the legal fraternity and all those who fight for justice. We are extremely grateful to Hon'ble Dr. B.S. Chauhan, Judge, Supreme Court of India and an illustrious alumnus of Banaras Law School, our worth Vice Chancellor Padmashri Dr. Lalji Singh, Dr. EMS Natchiappan, Member of Parliament and President Indian Society of International Law, Professor SP Subedi, Professor of International law, School of Law, University of Leeds, U.K. and other legal luminaries who have graced this issue of the Newsletter by their messages and greetings for the success of this new and innovative academic venture. We would very much like to acknowledge the significant contributions made by our colleagues in preparing this Newsletter. The research support provided by our old students Mr. Abhishek Kumar Pandey and Ms Priya Vijay is acknowledged and commended. Suggestions for improvement in the Newsletter will be highly appreciated.

B. C. Nirmal

A TRIBUTE TO MAHAMANA / CONGRATULATORY MESSAGES AND GREETINGS

A Tribute to Mahamana Pt. Madan Mohan Malaviya Ji, Founder of the University and the Former Dean, Law School


On the 150th Birth Anniversary of our revered founder Mahamana Pt. Madan Mohan Malaviya Ji we, at the Law School, BHU rededicate ourselves to the service of this Nation. In the same context, it is a pleasure to introduce this inaugural issue of the BHU Law School Newsletter as our most recent effort directed towards providing a common forum to academicians, lawyers, Judges and all those who share a common interest in fostering and promoting respect for law.



It is my earnest hope and prayer that this centre of life and light which is coming into existence, will produce students who will not only be intellectually equal to the best of their fellow students in other parts of the world, but will also live a noble life, love their country and be loyal to the Supreme ruler.


Pt. Madan Mohan Malaviya Ji's message on the founding of Banaras Hindu University.

CONGRATULATORY MESSAGES AND GREETINGS



Dr. B. S. Chauhan
Judge
Supreme Court of India

Dear Dr. Nirmal



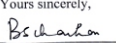
3, Janpath
New Delhi-110011
Tel. : 23012708


18.7.2012

I am extremely elated to learn that my alma mater, Law School, BHU is going to bring out the maiden issue of its Newsletter. It is good to know that Banaras Law School has been able to maintain its great place in the process of reform in legal education. With my own personal experience at Law School, I may say that it is the most prominent seat of learning of law in India. I am hopeful that the present academic endeavour of bringing out quarterly Newsletter shall provide an excellent academic forum for debates on critical issues of legal importance. It will certainly increase the academic visibility of Banaras Law School.


I, being an alumnus of Banaras Law School, sincerely wish that the present Newsletter be a great success.

With regards,
Yours sincerely,
(Dr. B.S. Chauhan).

Yours sincerely,

(Dr. B.S. Chauhan)




डा. लालजी सिंह
कुलपति
Dr. Lalji Singh Ph.D., D.Sc. (Hon.)
FNA, FASc, FNASc, FNAAS, FTWAS
PadmaShri
Bhatnagar Fellow (CSIR)
Former Director, CCMB, Hyderabad
Vice-Chancellor



काशी हिन्दू विश्वविद्यालय
BANARAS HINDU UNIVERSITY
(Established by Parliament by Notification No. 225 of 1916)
VARANASI-221 005 (INDIA)
Phones : 91-542-2368036, 2368339
Fax : 91-542-2369100, 2369951
e-mail : vbhu1@gmail.com, vc_bhu@bhu.ac.in
website : www.bhu.ac.in

I am glad to learn that the Law School, Banaras Hindu University is bringing out its Newsletter. This newsletter comprises the information about faculty activities and latest legislative and judicial trends which may be helpful for the readers in getting an idea about the Law School and its activities. This will also provide a forum for debates on contemporary issues of legal importance and enhance the academic visibility of the School.

I extend my good wishes on this occasion and compliment the editorial board of "BHU Law School Newsletter" for bringing out such an informative newsletter.

With kind regards

(Lalji Singh)



The Indian Society of International Law
V. K. Krishna Menon Bhawan
9, Bhagwan Dass Road, New Delhi - 110001

Dr. E. M. Sudarsana Natchiappan
Member of Parliament (Rajya Sabha)
President (ISIL)
09868181909



Dear Prof. Dr B. C. Nirmal Ji,
Greetings from New Delhi.


It is a very appreciable work for releasing quarterly newsletter starting from the 150th Birth Anniversary of Pandit Madan Mohan Malaviya Ji.

This Newsletter is an Excellent media for updating the knowledge of every reader through the contribution of eminent personalities including students. In the 21st century the growth of International Law is very fast and ever developing field. Any individual or Institution or society get the latest knowledge in this world then they will be very much benefitted and linked with the ever changing environment. The same logic will apply in domestic law development too.

I wish you all success in this venture .

Thanking you,
Yours sincerely ,

Dr E M Sudarsana Natchiappan



RESIDENCE :
M-113, Saket,
New Delhi - 11017
Phone : 29561311, 29562047
e-mail : sanjayparikh.advocate@gmail.com

CHAMBER :
No. 102, New Lawyers Chambers
Supreme Court, Bhagwandas Road,
New Delhi - 110 001
Phone : 23070023
Mob. : 9891496748

24th July, 2012

Sanjay Parikh
Advocate, Supreme Court

Dear, Dr. B. C. Nirmal,


It gives me an immense pleasure to congratulate you on launching the quarterly BHU Law School Newsletter. There is a real dearth of such informative newsletters in our country.

In the present era, a law school cannot confine itself to what is contained in the law books. It is necessary that the teachers of law as well as the students acquaint themselves with the recent developments in domestic and international law.

It is very heartening to know that the position which you are occupying was earlier held by towering personalities like Mahamana Pt. Madan Mohan Malaviya, Sir Ras Behari Ghosh and Sir Tej Bahadur Sapru. But it is a position of great responsibilities. The publication of quarterly BHU Law School Newsletter shows the sincerity with which you wish to carry on your responsibilities.


Again wishing you all the success in your endeavour, I am awe, under your able guidance, the BHU Law School will further enhance its pre-eminent position.

With kind regards
SANJAY PARIKH



School of Law
University of Leeds

Professor Surya P Subedi, one
MA, LL.M, DPhil (Oxford)
Professor of International Law



School of Law
University of Leeds
Leeds LS2 9JT
Fax 0113 343 5056
Telephone 0113 343 5033/4
Direct line 0113 343 4616
E-mail : s.p.subedi@leeds.ac.uk

Dear Professor and Dean Nirmal,

I was delighted to learn that the Faculty of Law at Banaras Hindu University was going to publish the BHU Law School Newsletter on a quarterly basis. It gives me a great pleasure to write to congratulate you and your colleagues on this new and timely initiative and to wish you and the Newsletter every success.

I had an opportunity to visit Banaras when I was young and was very much impressed by BHU. I had a dream of obtaining a degree from BHU myself but that opportunity never came up and it remains an unfulfilled dream to this day. Yours is a highly reputable law school both nationally and internationally.

BHU Law School has made great strides in advancing legal education since its establishment and this Newsletter will add another important chapter to its endeavour to inform its students, alumni, friends, lawyers, scholars and the general members of the public about academic activities, legislative trends, judicial decisions and international legal news. What the Newsletter aims to achieve seems to be consistent with the old traditions of your law school of introducing innovation in the teaching of law and research. This publication would also enable you to inform a wider group of scholars both within Asia and beyond of your activities and to interact with them to enhance and maintain the stature of your law school and to enhance the quality of legal education that is provided by your law school.

I very much look forward to reading the inaugural and subsequent issues of your Newsletter. Please count on my full support to your activities.

Professor Dr. Surya P. Subedi, O.B.E.;
D.Phil (Oxford), Barrister (Middle Temple);
UN Special Rapporteur for Human Rights in Cambodia;
Editor, Asian Journal of International Law (Cambridge University Press);
Vice-President, Asian Society of International Law;
Professor of International Law;
School of Law, the Liberty Building, University of Leeds, Leeds LS2 9JT, UK.

Legal luminaries who graced this issue of the Newsletter by Greetings and Best wishes



Prof. V.S. Mani, Director, School of Law and Governance of Jaipur National University and former Professor of International Space Law, JNU, New Delhi



Prof. (Mrs.) S. K. Verma, Director, Indian Society of International Law and former Director, Indian Law Institute, New Delhi



Prof. S. Siva Kumar, Director Incharge, Indian Law Institute, New Delhi



Dr. Cliff Manjiao, Deputy Secretary General, Administrative Court, Xiamen Academy of International Law and Associate Professor of International Law, Law School, Xiamen University, China

BANARAS HINDU UNIVERSITY/LAW SCHOOL : AT A GLANCE



BANARAS HINDU UNIVERSITY

Banaras Hindu University is an internationally reputed temple of learning, situated in the holy city of Varanasi. This creative and innovative university was founded by the great nationalist leader, Pandit Madan Mohan Malaviya ji, in 1916 with cooperation of great personalities like Dr. Annie Besant, who viewed it as the University of India. Banaras Hindu University was established under the Parliamentary legislation, the Banaras Hindu University Act, 1915. It played a stellar role in the independence movement and has developed into the greatest centre of learning in India. The University comprises 4 Institutes, 14 Faculties, 124 Departments, 4 Inter-disciplinary Centres, a Constituent College for Women and 3 Constituent Schools, spanning a vast range of subjects pertaining to all branches of Humanities, Social Science, Technology, Medicine, Science, Fine arts and Performing arts. It has 6 centers of Advanced Studies, 10 Departments under Special Assistance Programme and a large number of specialized Research Centres. Four Degree Colleges of the city are affiliated to the University. Bharat Kala Bhavan, the reputed museum of the university, is a treasure trove of rare collections. The 927 bed hospital of the University is equipped with all the modern amenities.

Mahamana Pt. Madan Mohan Malaviya, the Revered Founder of the University

Born in an educated Hindu family at Prayag (Allahabad) in 1861, Pt. Madan Mohan Malaviya came to be recognized as an outstanding and noble son of India. His multifaceted personality made him a great patriot, an educationist with a vision, a social reformer, an ardent journalist, reluctant but effective lawyer, a successful parliamentarian and an outstanding statesman.

Among Malaviyaji's many achievements, the most monumental was the establishment of the Banaras Hindu University (Kashi Hindu Vishwavidyalaya). In the course of his lifetime Banaras Hindu University came to be known as a Capital of Knowledge acknowledged across India and the World.

Pandit Madan Mohan Malaviya created history in Indian education with this institution - the first of its kind in the country. He served as the Dean of the Law School of the University from 1921 – 1923.

He preferred Banaras as the site, because of the centuries old tradition of learning, wisdom and spirituality inherent to the place. His vision was to blend the best of Indian education called from the ancient centres of learning - Takshashila and Nalanda and other hallowed institutions, with the best tradition of modern Universities of the West.

Malaviya Ji passed away in 1946. But his spirit is still alive and there are many who bear the torch that he lit. Many more stand ready to shoulder the mantle of his responsibility. The country is celebrating 150th Birth Anniversary of Mahamana. Government of India has constituted a National Committee for Commemoration of 150th Birth Anniversary of Mahamana with Prime Minister of India as its Chairman.



LAW SCHOOL: AT A GLANCE

The Law School is one of the oldest Faculties established in Banaras Hindu University. Teaching started in the faculty as early as 1921-22 academic session. The legal luminaries like Sir Ras Behari Ghosh and Sir Tej Bahadur Sapru, were the earlier Deans.

The foundation stone of the building was laid down by the then Prime Minister of India, Shri Lal Bahadur Shastri on 28th December, 1964.

The Law School building consists of five distinct wings, viz, the **Academic Wing**, well furnished chambers of faculty members with a Faculty Lounge at the one end and a Lecture Theater at the other; the **Administrative Wing** to assist the central administration of the University; the **Classes and Seminar Rooms Wings** along with a Moot Court Hall; the **Library Wing**, the library has the largest carpet area in the country and is well equipped with modern tools and facilities; and the **Residential**

Visitor



*His Excellency
Shri Pranab Mukherjee,
Hon'ble President of India*

Chancellor



*Dr. Karan Singh, Visionary Indian
Statesman and Member of
Parliament (Rajya Sabha)*

Vice Chancellor



Padmeshri Dr. Lalji Singh.

Registrar



Prof. V.K. Kumra

Dean



Prof. B. C. Nirmal

and **Refreshment Wing**, two hostels for boys, a big canteen and an Auditorium-both having capacity of 1000 persons. The structure is similar as that of Harvard Law School.

The Law School is a pioneer institution in introducing full time three-year LL.B degree course and a two-year full time LL.M. course. It has also taken a lead in introducing community oriented courses of law including the Law and Environment, Country and Town Planning Law, Law and Poverty, and the Animal Laws.

The Law school publishes a highly reputed Law journal (The Banaras Law Journal).

To promote skill of advocacy, Moot Courts are the regular feature at Law School.

The Banaras Law School was one of the Six Law Faculties in India to start CLINICAL LEGAL SERVICES. The model developed by Law School has been judged as the best model by Hon'ble Mr. Justice P. N. Bhagwati, former Chief Justice of India.

There are three boys hostels with all the facilities including internet facility and computer labs for the LL.B., LL.M. and Ph.D. students. The hostels accommodate about 500 students. Girl students are accommodated in the University controlled Triveni Complex.

Law School Library

Total number of Books: 73447

Number of Books Added since April 2012: 531

Online legal Database: Law School library subscribes Westlaw India and Manupatra. It has access to 120 online journals through the UGC–Infonet Digital Library Consortium.

Journals: The library receives 28 Foreign and 54 Indian Journals/Reports annually.

There are 3 computer labs with internet facility on 45 computers for LL.B., LL.M. and Ph.D. students.

The Library provides lending services, reading room facilities, reference services, student book loan facility, book bank facility for SC/ST students, photocopy facility, computer and Internet search facility and access to Online legal databases.

Placement Activities

As part of the placement activities students are given training on employability and soft skill. The placement cell also arranged for on campus recruitments during March - April 2012. Various students made it to the list of selected candidates.

Publications of Law School

Banaras Law Journal (ISSN 0522-0815), vol. 39, Jan. 2010 - Dec. 2010.

BHU Law School Newsletter, vol.1, No.1 (April-June), 2012.

Journal on Environmental and Intellectual Property Rights Law (Proposed).

ACADEMIC COURSES

1. Degree Courses & Seats: Law School offers three degree courses and PhD programme as follows:

LL.B. Three-year (6 Semesters) Course: 504 seats.

LL.M. Two-year (4 Semesters) Course: 51

seats; the Law School offers 20 specialisation groups for LL.M. students including Crime and Criminology. The specialization in Criminal Law and Criminology has been very much popular with students. The successful teaching and research in the field of Criminal Law and Criminology is supervised by Prof. M. P. Singh one of the distinguished scholar of Criminal Law and former Head and Dean of the Faculty of Law.

LL.M. (HRDE) Two-year (4 Semesters) Course: 17 seats

Ph.D. Programme

2. Diploma Courses

Law School offers 1 year (2 Semesters) P.G. Diploma courses in Intellectual Property Rights and Environmental Law. These courses are very popular with students and are job oriented. The courses have proved to be a very good value addition for the students. Prof. B.N.Pandey is the Coordinator of these diploma courses.

3. Academic Calendar

Admission: July 14–31, 2012

Commencement of Classes: July 12–26,

2012

Last date of Teaching: November 24, 2012

Commencement of Examination: December 01, 2012

Last date of completion of Examination: December 24, 2012

ACTIVITIES AT THE LAW SCHOOL

1. Annual Convocation (Degree Distribution)



The 94th Convocation of the University was organized on 17th March, 2012. Smt. Meira Kumar (Speaker, Lok Sabha) was the Chief Guest. A degree distribution ceremony was organized in the Faculty as part of the Convocation on 16th March, 2012. Six Scholars were awarded Ph.D. degree, 42 students were awarded LL.M. Degree, 16 students got LL.M. (HRDE) degree and 242 students got LL.B. degree. Law College Old Boys Medal was awarded to Km. Ruchi Srivastava for standing first at the LL.B. Examination 2011. Thakur Jagannath Singh Gold Medal was awarded to Km. Vijay Laxmi Singh for securing highest marks with first division in the LL.M. (final) Examination 2011. R.C.Mazumdar Gold Medal was awarded to Km. Payal Singh for securing highest marks in the subject Law and Women in LL.B. Examination 2011. Devendra Nath Dwivedi Memorial Gold Medal was awarded to Km. Ruchi Srivastava for securing highest marks in LL.B. (final) Exam. 2011, B.H.U. Medals were awarded to Km. Ruchi Srivastava, Shri Ajitesh Singh and Km. Vijay Laxmi Singh for standing first at the LL.B., LL.M (HRDE) and LL.M. Examinations 2011 respectively. B.H.U. Prize of Rs.500 was awarded to Kavita Kumari for securing highest marks in LL.B. final year (V & VI Sem.) Examination 2011.

FORTHCOMING ACTIVITIES / FACULTY UPDATES

2. Lecture By Hon'ble Mr. Justice Markandey Katju

Hon'ble Justice Markandey Katju, addressed the students of Law School,



BHU on 22nd March 2012. In the jam packed Swatantrata Bhawan of BHU Justice Katju explained his concept of "Four People's Principles". He pointed towards the problems faced by us in transition period. He interacted with the students and answered their questions on ancient Indian system and the possibility of revisiting ancient practices. He also spoke about the social responsibility of the media. The lecture was attended by the students and the teachers of the Faculty.

3. Intra Law School Moot Court Competition 2012



The Intra Law School Moot Court Competition was organized on 1st April 2012. Various teams comprising of the students of the Law School participated in the competition. The competition consisted of three rounds. The Final round was judged by Sh. O.P.Kejriwal (former member, Central Information Commission) and Dr. R.K.Murali (Associate Professor, Law School, BHU). Team of Anupam Dwivedi, Sumit Kapoor, and Yogendra Singh was adjudged winner and Mansi Mantoo was adjudged the best student advocate. The team of Mansi Mantoo, Uma Mishra and Digvijay Singh got best memorial award and Jagadamba Gupta was adjudged the best researcher of the competition.

Human Rights Cell, Banaras Hindu University: At a glance

Human Rights Cell was created by Banaras Hindu University on the suggestion and inspiration of the National Human Rights Commission. With the Head & Dean of the Law School as its ex-officio Chairman, the Advisory Committee of the Cell consists of one Coordinator and senior faculty members of the University appointed by the Vice-Chancellor. The Cell became functional in 1994 with some ad hoc financial, secretarial and logistic support from the University. Its main object is to promote, coordinate and monitor the study and research in human rights in the concerned departments of the University, to undertake research, survey and studies on the problems relating to human rights, and to promote human rights literacy in the University campus in particular and the community in general. It is located at and operates from the Law School.

Recently the Human Rights Cell conducted II Human Rights Training Programme sponsored by National Human Rights Commission, New Delhi in the Law School on 4th March, 2012. The Programme was inaugurated by Prof. R.K.Misra (Former Vice-Chancellor, DDU University, Gorakhpur). The programme was divided into four technical sessions on Meaning and Concept of Human Rights, Woman and Human Rights, Rights of the Child, and Human Rights of Older Persons. 287 students attended the training programme.

FORTHCOMING ACTIVITIES

- ◆ Inauguration of Chanakya Hostel by Hon'ble Vice Chancellor Padmeshri Dr. Lalji Singh on 23rd July 2012.
- ◆ Special Lecture by Hon'ble Vice Chancellor Padmeshri Dr. Lalji Singh on "Science in Witness Box" on 23rd July 2012 at Faculty of Law.

One week Induction Programme for LL.B. I Semester students, from 26th July to 01st August, 2012.

- ◆ Inauguration of the Moot Court Hall of the Law School.

Mahamana Pt. Madan Mohan Malviya National Moot Court

Competition.

- ◆ International Conference as part of the celebrations of the 150th Birth Anniversary of the founder of the University - Mahamana Pt. Madan Mohan Malviya Ji.
- ◆ Interdisciplinary Dialogue Series on Biodiversity Conservation – from Rio to Nagoya, scheduled to be held on August 31, 2012; Implementation of RTE Act – Problems and Challenges, scheduled to be held on August 11, 2012; Regulation of the Media in India – Legal and Policy Issues, scheduled to be held on August 18, 2012; and The National Commission/Committee on Human Resource in Health Bill 2012.
- ◆ Commencement of B.A. LL.B. Five-years Degree Course (under consideration)
- ◆ Launching of a new Journal on Environmental & Intellectual Property Rights Law.

FACULTY UPDATES

1. Prof. B.C.Nirmal, Law School, BHU was elected Vice President of Indian Society of International Law for 3 years (2012-2015). He was also appointed Head & Dean of the Faculty of Law, Banaras Hindu University for 3 years (2012-2015). He Presented a paper "Responsibility to Protect: Political Doctrine or Legal Norms with Special Reference to Libya and Syria", in the ISIL Eighth International Conference on Emerging Concerns in Public International Law, New Delhi on 24th February 2012. He also delivered a Keynote address on "Prohibition of Torture and Enforced Disappearances", in the ISIL Eighth International Conference on Emerging Concerns in Public International Law, New Delhi on 25th February 2012. He chaired a session on Piracy in International law at Annual Conference of ISIL, New Delhi on 15th April 2012. He delivered a lecture on "Responsibility to Protect under International Law" at Indian Law Institute, New Delhi on 27th April, 2012. Prof. Nirmal also delivered a special lecture at National Seminar on Human Rights and Education, Department of Education, M.G.K.Vidyapeeth, Varanasi,

19-20 February, 2012. He delivered a special lecture on "Parliamentary Democracy and Role of Civil Society", at a National Seminar, Department of Social Work, M.G.K. Vidyapeeth, 30-31 March 2012. He also presided over the Valedictory Session of the Orientation Programme organized by BHU Academic Staff College on 11th June 2012.

2. Prof. D. P. Verma, Law School, BHU, a renowned scholar of International Law and Human Rights was the Dean of the Law School, BHU for 3 years (2009-2012) and discharged his responsibilities with utmost commitment and dedication and has put in tireless efforts in his relentless campaign to establish the Law School as one of the premier institutions of India. He stepped down from the office of the Deanship after the successful completion of his tenure and Prof. B.C.Nirmal has taken over the responsibilities of Deanship from him on 22nd May 2012.

3. Dr. Akhilendra Kumar Pandey, Associate Professor, Law School, BHU presented a paper on "Freedom of Expression, Invasion of Belief and the Law: Indo- Canadian Perspective", in the International Seminar on Understanding Minorities in India and Canada, organized by Canadian Studies Development Programme, BHU, February 25 – 26, 2012. He was also a resource person in the 12th Refresher Course in Women's Studies, UGC – Academic Staff College BHU on June 13, 2012 and delivered a lecture on "Changing Dimensions of Concept of Justice".

4. Dr. C.P.Upadhyay, Associate Professor, Law School, BHU presented a paper on "Status of Religious Minorities: A Comparative Study of India and Canada", in the International Seminar on Understanding Minorities in India and Canada, organized by Canadian Studies Development Programme, BHU, February 25 – 26, 2012.

5. Dr. Ajendra Srivastava, Associate Professor, Law School, BHU published an article titled "International Law Crimes and Protection of Human Rights: A Brief Overview" in Universitas, an

academique Annual, Vol VI, 2011-12, pp17-26

6. Dr. D.K.Srivastava, Associate Professor, Law School, BHU published an article titled "Rights of Daisabled Persons under the Persons with Disabilities Act- An Overview" in Universitas, an academique Annual, Vol VI, 2011-12, pp1-10. He Participated in the UGC sponsored short term course on Excellence in Higher Education from February 23 -28, 2012 conducted by UGC Academic Staff College, Banaras Hindu University, Varanasi. He also participated in the Intellectual Property Rights Workshop held in Swatantrata Bhawan, Banaras Hindu University on 26th April, 2012. He was the course coordinator of the First Refresher Course in Human Rights and Value Education (Interdisciplinary) held at UGC-Academic Staff College, Banaras Hindu University, Varanasi from February 01 to 21, 2012.

7. Dr. Sibaram Tripathy, Associate Professor, Law School, BHU participated in a two day UGC sponsored national seminar titled "Role of Socio-legal Measures and Competitional Health Problem of Women Workers in Unorganized Sector of Unemployment in India" held on 23-24 June, 2012 in Kendrapara Law College, Kendrapara (affiliated to Utkal University, Bhubneshwar and presented a paper titled" Health Insurance and Rights of Women Working under Unorganized Sector". He also contributed an article titled "Protection of Traditional Knowledge: An Overview" in Universitas, an academique Annual, Vol VI, 2011-12, pp 11-16.

8. Dr. R.K.Murali, Associate Professor, law School, BHU delivered a lecture on "Patent Litigation in India" in the Workshop on Intellectual Property Rights" organized by the IPR Cell of BHU on 26th April 2012. He also delivered a lecture on "Patent Law in India" in the Orientation Course of UGC Academic Staff College, BHU conducted from 15th May to 11th June 2012.

9. Dr.Bibha Tripathi, Reader, Law School, BHU attended a Faculty Development Programme on "Research

Methods and Data Analysis using SPSS", organized by DST Center, BHU from 2nd June 2012 – 15th June 2012.

10. Dr. G.P.Sahoo, Assistant Professor, Law School, BHU was awarded Ph.D. on "Legal Control of Cyber Crime: Indian Perspective" in the Convocation of Banaras Hindu University on 5th March, 2012. He also attended International Seminar organized by the Centre for Study of Social Exclusion and Inclusion, Faculty of Social Science, BHU and delivered a lecture on "A New Paradigm from Paper Based Society to Paperless Society: Changing Dimensions of Social Development", on 30th – 31st March 2012. He also attended an National Conference organized by Faculty of Commerce, BHU and delivered a lecture on "Cyber Crime: Growing Challenges for e- Banking System in India", on April 14 – 15, 2012.

11. Dr. V.K.Saroj, Assistant Professor, Law School, BHU was awarded Ph.D. on "Limitations of International Humanitarian Law during International Armed Conflict: Challenges and Prospects" in Convocation of the Banaras Hindu University on 5th March, 2012.

12. Sh. Raju Majhi, Assistant Professor, Law School, BHU completed his thesis on "Tribal Laws and their Implementation: A Case Study of Chhotanagpur" under the supervision of Prof. B.C.Nirmal and submitted to Banaras Hindu University for award of degree. He also delivered a lecture on "Patent Process in India" in the Workshop on Intellectual Property Rights" organized by the IPR Cell of BHU on 26th April 2012.

13. Dr. V.K.Pathak, Assistant Professor, Law School, BHU attended an International Seminar on "Consumer Protection and Behaviour in Present Privatized Era", organized by S.S.College, Shahjahanpur (U.P.) in collaboration with Higginbottom

Institute of Agriculture, Allahabad and Planning Commission of India on 25, 26 Feb. 2012. He also participated in the Intellectual Property Rights Workshop held in Swatantrata Bhawan, Banaras Hindu University on 26th April, 2012 and in the 61st Orientation Course conducted by UGC Academic Staff College, BHU, from 15th May to 11th June 2012.

14. Dr. D. K. Mishra, Associate Professor, delivered a lecture on "Human Rights and Value Education: An Indian Approach" in the First Refresher Course in "Human Rights and Value Education" on 14th February, 2012 organized by the Academic Staff College, BHU

15. Dr. Ajay Kumar Singh delivered a lecture on "Statutory Protection to the Retail Business in India" in the Institute of Agricultural Sciences, BHU Varanasi on 18th June, 2012

LEGISLATIVE TRENDS



During the 2012 Budget Session of Parliament, 21 Bills were introduced in Lok Sabha and 05 Bills were introduced in Rajya Sabha. Of these, 21 Bills were passed by the Parliament. Two Bills passed by Lok Sabha are pending in Rajya Sabha and two Bills passed by Rajya Sabha are pending in Lok Sabha. The most recent Acts (Act No.24 to Act No. 29) of Parliament are summarized below.

1. THE ANAND MARRIAGE (AMENDMENT) ACT, 2012 [Act No. 29 of 2012] was enacted to amend the Anand Marriage Act, 1909. The new Act amended sec 2 of the principal Act and after the words "the Sikh Marriage ceremony called Anand", the words "(commonly known as Anand Karaj)" has been inserted. The new Act has also

inserted a new section 6 in the Act regarding the "Registration of marriages". Now the State Government for the purposes of facilitation of proof of marriage ceremony (commonly known as Anand Karaj) customary among the Sikhs, keep the marriage register for the registration of marriages, by notification in the Official Gazette, in this behalf.

2. THE NATIONAL INSTITUTES OF TECHNOLOGY (AMENDMENT) ACT, 2012 [Act No. 28 of 2012] was enacted to amend the National Institutes of Technology Act, 2007. The new Amendment Act has brought some considerable changes in the principal Act (the National Institutes of Technology Act, 2007). The new Act has amended the long title of principal Act, for the words "certain institutions of technology", the words "certain institutions of technology, science education and research" has been substituted. Again in section 1 of the principal Act, in sub-section (1), for the words "National Institutes of Technology", the words "National Institutes of Technology, Science Education and Research" has been substituted. Now in this Amendment Act for the words "the Schedule", the words "the First Schedule and the Second Schedule" has been substituted in section 2. This Act provides 10 new NITs in the country. Further this amendment Act brought some extensive changes in the principal Act to make it more effective and widen its vision.

3. THE COPYRIGHT (AMENDMENT) ACT, 2012 [Act No. 27 of 2012] has been enacted to amend the Copyright Act, 1957. This Amendment Act has brought some substantial changes in the principal Copyright Act (the Copyright Act, 1957). It amended the provisions of the principal Act in conformity with Digital Agenda of WIPO Copyright Treaty & WIPO Performances and Phonograms Treaty 1996 and to ensure protection to the copyright holders and performers against circumvention of effective technological measures applied for purpose of protection of their rights. The new Amendment Act provides the definition of new terms, viz.

"commercial rental", "Right Management Information" and "visual recording". This new Amended Act has also made certain changes in the definitions of the term "author", "communication to the public", "infringing copy", "performer" and "work of joint authorship". Moral Rights of performer have been dealt under newly inserted sections 38A and 38B in this Amending Act. The present Amendment Act has widened the scope of "fair use" doctrine in the context of cinematograph film and sound recording through amendment in the section 52(a), 52(b) and section 52(C) of the principal Act. To handle the increasing digital piracy some new provisions have been inserted. Sections 65 A and 65 B deal with the criminal offences relating to Technological Protection Measures and RMI (Right Management Information).

4. THE NORTH-EASTERN AREAS (REORGANISATION) AND OTHER RELATED LAWS (AMENDMENT) ACT, 2012 [Act No. 26 of 2012] has been enacted to amend the North-Eastern Areas (Reorganisation) Act, 1971 and Other Related Laws. This new Amendment Act inserted a new proviso in section 2 of the principal Act (the North-Eastern Areas (Reorganisation) Act, 1971 and Other Related Laws). A significant amendment is insertion of new sections 28 A to 28 K after section 28, which provide for the establishment of separate High Courts for the States of Meghalaya, Manipur and Tripura and details about judges, jurisdictions, practices and procedures, power of judges in the High Courts. This new amendment act also deals with the Special provision relating to Bar Councils and advocates.

5. THE RAILWAY PROPERTY (UNLAWFUL POSSESSION) AMENDMENT ACT, 2012 [Act No. 25 of 2012] has been enacted to amend the Railway Property (Unlawful Possession) Act, 1966. In this Amendment Act mainly Sections 3, 4 and 8 of the principal Act (the Railway Property (Unlawful Possession) Act,

1966) have been amended to make it more effective and practical. In section 3 of the principal Act marginal head has been substituted viz. "Penalty for theft, dishonest misappropriation or unlawful possession of railway property."; the new amended marginal head make the Act more clear in its approach. Substitution in the marginal heads ("Punishment for abetment, conspiracy or connivance at offences.") of section 4 of the principal Act provides a clear and unambiguous provision for the punishments and the insertion of 'Explanation' in this section states that, the words "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code (45 of 1860.). In this Amendment Act modification in the marginal head of section 8 of the principal Act and substitution in the sub section 1 of the section have also been made.

6. THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2012 [Act No. 24 of 2012] has been enacted to amend the Constitution (Scheduled Tribes) Order, 1950 to modify the list of Scheduled Tribes in the State of Karnataka. The new Act amends Part VI of Constitution (Scheduled Tribes) Order, 1950. Here in the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in Part VI. - Karnataka, in entry 37, the new terminology "Medara" has been inserted after "Meda"

INTERNATIONAL LEGAL NEWS AND EVENTS



United Nations



101st Session of the International Labour Conference, 30 May-14 June 2012

101st session of the International Labour Conference, an organ of the International Labour Organization (ILO) took place from May 30 to June 14, 2012 which was attended by almost 5000 delegates from the 185 Member States.

At International Labour Conference, each Member State is represented by a delegation consisting of the two government representatives, one employers' representative and a workers' representative. The Session concluded with calls for help in boosting democracy in Myanmar and for urgent action on the global employment crisis affecting youth around the world. The Conference also adopted a new international labour standard on social protection. It calls for providing people with essential health care and benefits, as well as basic income security constituting national social protection floors. Social protection floors are "nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion".

UN Conference on Sustainable Development, Rio+20, 20-24 June, 2012

United Nations Conference on Sustainable Development took place from 20 to 24 June 2012 in Rio de Janeiro, Brazil in pursuance of the General Assembly Resolution 64/236. It marked the 20th anniversary of the United Nations Conference on the Environment and Development (UNCED) and the tenth anniversary of the 2002 World Summit on Sustainable Development (WSSD). The outcome of the Conference is a political document "the future we want" (A/CONF.216(L.1)) which mainly focuses on the two issues: (a) a green economy in the context of sustainable development and poverty eradication; and (b) the institutional framework for sustainable development.

20th Regular Session of the Human Rights Council, 18 June-06 July, 2012

During its 20th regular session that took place from 18 June to 06 July 2012, the United Nations Human Rights Council adopted 22 Resolutions on a wide range of issues including the human rights situations in Belarus, Eritrea, Syria, Cote d'Ivoire, Mali, Somalia, arbitrary detention, the right to peace,

the effects of foreign debt on human rights, and freedom of expression on the internet. The Council also appointed a special Rapporteur on the Human Rights Situations in Eritrea and strongly condemned the continued widespread and systematic violations of human rights in that country.

Guatemala joins the International Criminal Court

The Republic of Guatemala deposited its instrument of accession to the Rome Statute with the United Nations on April 2, 2012. Guatemala joins as the 121st State Party to the Rome Statute establishing the International Criminal Court. The 1st July 2012 marks the tenth anniversary of the International Criminal Court.

Justice Bhandari joins ICJ

On 19 June 2012, Mr Justice Dalveer Bhandari sworn in as a member of the International Court of Justice. He was elected a member of the Court by the United Nations General Assembly and the Security Council on 27 April 2012 following the resignation of Mr Awm Shawkat Al-Khasawneh (Jordan) former Judge and Vice President of the Court. Mr Justice Bhandari will hold office till February 5, 2018. He has been a judge in the Higher Indian Judiciary for more than 20 years and was elevated as a judge of the Supreme Court of India on 28 October 2005.

G8 Summit 2012

Annual summit of the leaders of the G8 comprising the eight most powerful economies: Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States was held in Camp David, Maryland, the USA on May 19-20 June 2012. They met to address major global, economic, political, and security challenges including energy and climate change, food security and nutrition, Afghanistan's economic transition and transitions taking place across the Middle East and North Africa. The Summit concluded with the adoption of the Camp David Declaration which, inter alia, calls for taking all necessary steps to strengthen and reinvigorate economies of G8 countries and combat financial stresses, recognizing that the right

measures are not the same for each of the G8 countries. The 2013 G8 summit will be chaired by the UK.

Los Cabos Summit

A conclave of the leaders of the G 20 took place in Los Gabos, Mexico on 18-19 June 2012. The G20 Declaration adopted at the end of the conclave established the following priorities: supporting economic stabilization and global recovery, employment and social protection, trade, strengthening the international financial architecture, reforming the financial inclusion, enhancing food security and addressing commodity price volatility, meeting the challenges of development, promoting the longer-term prosperity, and intensifying the fight against corruption. The next year the G20 summit will be convened in St.Petersburg, Russia.

RECENT JUDICIAL DECISIONS



R. Krishnaiah v. Union of India (MANU/AP/031/2012)

Andhra Pradesh High Court Strikes down the 4.5 percent quota for OBC minorities

On 28 May 2012, a Division Bench of the Andhra Pradesh High Court comprising Chief Justice Madan B. Lokur and Justice Sanjay Kumar handed down a judgment scrapping the 4.5 per cent quota for other backward classes (OBCs) among minorities within the 27 per cent OBC reservation in government jobs and admissions to educational institutions. On 22nd December, 2011 the Central Government had issued an Office Memorandum and a Resolution earmarking a separate quota for the "castes/communities" of the minorities as defined under the National Commission for Minorities Act, 1992 which are included in the Central list of OBCs in employments and admissions to educational institutions under it. The 28 May decision of the AP High

Court on the creation of a sub-quota for OBC minorities is significant as it exposes some serious infirmities and flaws in the government's decision. In particular, it has pointed out the following serious flaws. First, the Government's decision to set aside an exclusive quota for OBCs among minorities was based on no other but religious considerations, second, the procedure prescribed under the national Backward Classes Commission Act for identifying other backward classes of citizens was not followed, and finally, a reservation in admissions to educational institutions can be effected only by legislation.

The 28 May decision also assumes significance in view of the fact that it is the fourth judgment in a row delivered by the Andhra Pradesh High Court striking down an exclusive sub-quota in favour of minorities/Muslims and must be seen in the larger context of the religion based affirmative action. It was in 2004, in the case of *Muralidhar Rao v State of Andhra Pradesh* (2004(5) ALT 634) the AP High Court for the first time set aside the AP Government's order providing 5% reservation to Muslims in Government jobs and admissions to educational institutions, "over and above" the OBC reservation by placing them in a separate category as it was done without consulting the AP Backward Classes Commission and without using relevant "criteria" for identifying backward classes. The Court found that the AP Government had no clear idea of backward classes among Muslims and no clear criteria for identifying who qualified for a separate quota. Further, in 2005 in *B. Archana Reddy v State of Andhra Pradesh* (MANU/AP/0682/2005) and in 2010 in *Muralidhar Rao v State of Andhra Pradesh* (MANU/AP/0003/2010) (Muralidhar Rao II) it declared the similar moves on the part of the State Government as unconstitutional as based on "irrelevant criteria" and dodgy surveys.

The 28 May decision of the AP High Court together with other cases decided by it on the subject has established beyond doubt that in absence of a strong statistical evidence suggesting that OBCs among minorities are substantially

lagging behind their majority equivalents in terms of social, economic and educational indicators the move to provide them with a separate quota is weak and rests on slippery grounds.

Ajendra Srivastava
Associate Professor

State of Gujarat & Ors. v. Essar Oil Limited, Anr.

A.I.R. 2012 S.C. 1146

Supreme Court dwells on the principle of restitution

The Law of Restitution is a cardinal common law principle and is founded upon the principle of unjust enrichment or unjust benefit. The core concept of restitution as opined by the Supreme Court in *Lal Bhagwant Singh v. Sri Krishen Das*, A.I.R. 1953 SC 136: *Binayak Swain v. Ramesh Chandra Pangigraphi and another*, A.I.R. 1966, SC, 948 lies in the conscience of the court which prevents a party from retaining money or some benefit derived from another which he has received by way of an erroneous decree of court.

In the instant case, the Supreme Court dealing with the core concept of restitution has observed that it is a settled principle that when a decree is reversed or varied or modified or set aside in appeal or revision, law imposes an obligation on the party who received an unjust benefit of the erroneous decree to reconstitute the other party for what the other party has lost during the period when the erroneous decree was in operation. The Court has further ruled that such reversal may be made by the Supreme Court or by the same court in the same proceeding or by the same court in the different proceedings, by different courts in different proceedings or in writ proceedings.

On the issue that an act of court cannot prejudice anyone, based on latin maxim *actus curiae neminem gravabit* the Supreme Court has gone to clarify that terminology 'the act of the Court' does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole from the lowest court of which entertains jurisdiction over the matters up to the highest court which finally disposes the case. Citing its earlier

decision in *A.R. Antulay v. R.S. Nayak & another*, (1988) 2 SCC 602: *Rodger v. Comptir D'escompate De Paris*, (1869-71) LR 3PC 465 the court held that it is the duty of the aggregate of those tribunals to take care that no act of the court in course of the whole of the proceedings does not injure to the suitors in the court. It is pertinent to make clear that when court passes an order which is *per incuriam* and the party suffered because of the mistake of the court, it is also the court's duty to rectify the said mistake.

On the facts of the case, the Court reached the conclusion that as the appellant had not received any unjust benefit, the principle of restitution could not be invoked in favor of the respondent No. 1. The Court further held that in order to get the benefit of the principle of restitution, the party claiming restitution need not have been a party to the appeal in which the decree was varied or reversed but must have been a party to the decree so varied or reversed.

Golak Prasad Sahoo
Assistant Professor

Society for Unaided Schools of Rajasthan v. Union of India,
[2012 (4) SCALE 272]

Supreme Court upholds the RTE Act

The Supreme Court on 12th April 2012 by a majority of 2:1 upheld the Constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 clearing the way for free and compulsory education to children between the age of 6 and 14 years and reserving 25 percent seats for these children in government, aided and non-minority unaided schools. The judgment written by the Chief Justice shall operate from academic session 2012-13. However, admissions given by unaided schools prior to the judgment shall not be reopened. The judgment equates denial of right to education with violation of right to live with dignity as well as right to freedom of speech and expression enshrined in Article 19(1)(a). In relation to reservation of 25 percent seats, the court has observed that "earmarking of

seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14." The Bench has observed that to put an obligation on the unaided non-minority school to admit 25 percent children in class I under the Act cannot be termed as an unreasonable restriction. The 12th April judgment thus removes the barriers faced by a child who seeks admission to class I and clarifies that it nowhere restricts the freedom under Article 19(1)(g).

Commenting on its earlier decision in *P.A. Inamdar*, the Court has held that as Article 15 stands amended by the Constitution (Ninety-third Amendment) Act, 2005 the result is that *P.A. Inamdar* to the extent that it states that there shall be no reservation in private unaided colleges and that there shall be no difference between the unaided minority and non-minority institutions, has been overruled because the Amendment decreed that there shall be reservations and that there shall be a difference between such institutions. Article 15(5) is an enabling provision and it is for the respective States either to enact legislation or issue an executive instruction providing for reservation except in the case of minority educational institutions referred to in Article 30(1). Article 30(1) is not conditional as Article 19(1) (g). The Constitution framers have cast the duty upon the Government of the day to protect the minorities in the matter of preservation of culture, language and script *via* establishment of educational institutions for religious and charitable purposes. Reservations of 25% in such unaided minority schools result in changing the character of the schools. Thus, the 2009 Act including Section 12(1)(c) violates the right conferred on such unaided minority schools under Article 30(1). However, in relation to aided minority schools the wordings of Article 29(2) become important which refers to an individual right and not a class right. It applies when an individual is denied admission into an educational

institution maintained or aided by the State. The 2009 Act is enacted to remove barriers such as financial barriers which restrict a child's access to education. It is enacted pursuant to Article 21A. Thus the decision of Supreme Court holding the Act as constitutionally valid qua aided minority schools is likely to generate an environment where resource less children can feel assured of education which will equip them to become a responsible citizen. It is a welcome decision at a very right time and now it is expected from the government to work out the modalities to ensure its effective implementation.

Rajnish Kumar Singh
Assistant Professor

Narne Construction Pvt. Limited v. Union of India
MANU/SC/0429/212
Offer of plots for sale is a service within the meaning of the Consumer Protection Act.

In a significant judgment delivered on 10th May, 2012 the Supreme Court ruled that the offer of plots for sale to customers/members with an assurance of development of infrastructure/amenities, lay-out approvals etc was a service within the meaning of the Consumer Protection Act and would, therefore, be amenable to the jurisdiction of the forum established under the Act. This case relates to several appeals filed in the Supreme Court against the decision of the Andhra Pradesh High Court dated 13.08.2010 which held that the Respondents were consumers and the Appellants were the service providers within the meaning of the said Act. The appellant company offered the sale of only developed plots to those who joined as members upon payment of the stipulated fee subject to the sanction of lay out by the concerned authorities. The sale price was not for the virgin land but included the development of sites and provision for infrastructure. Upon these facts, the A.P. High Court had observed that as the transaction between the parties was not a sale simpliciter but coupled

with obligations for development and provision of infrastructure, there was an element of service in the discharge of the said obligations of the appellant company. In deciding in favour of the Respondents the High Court drew support from an earlier decision of the Supreme Court namely, *Lucknow Development Authority v M. K. Gupta* MANU/SC/0178/1994 in which it was observed that provisions of the Act must be liberally interpreted in favour of the consumers as the Act was a beneficial piece of legislation.

The short question before the Supreme Court was that whether the appellant company was, in the facts and circumstances of the case, offering any service to the Respondents within the meaning of the Consumer Protection Act so as to make it amenable to the jurisdiction of the forum established under the said Act. The Supreme Court answered the question in affirmative and observed that the High Court was perfectly justified in holding that the activities of the Appellant-company was a service within the meaning of Clause(o) of Section 2(1) of the Act. The Court clarified that it was not a case where the Appellant company was selling the given property with all advantages and/or disadvantages on "as is where is" basis. "It is a case where a clear cut assurance was made to the purchasers as to the nature and extent of development that would be carried out by the Appellant-company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration", the Court observed.

Priya Vijay

LL.B. (BHU), LL.M.(NLSIU Bangalore)

Jugendra Singh v State of U.P.

MANU/SC/0485/2012

Supreme Court on powers of the appellate court in cases of acquittal

On 29 May 2012, the Supreme Court delivered an important judgment regarding the powers of a first appellate court to re-appreciate the evidence in cases of acquittal by the court of first instance. Delivering the judgment, a division bench comprising

B.S.Chauhan and Dipak Misra, JJ ruled that the courts while appreciating the evidence must not attach undue importance to minor discrepancies. The bench further observed that "the discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance."

This case involves the rape and murder of a nine year old child by the appellant - accused. The appellant was charged under section 302, and 376 read with section 511 of the Indian Penal Code. The Court of sessions noting some discrepancies and contradictions in the accounts of eye witnesses and between the testimony of the eye witnesses and the post mortem report came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the appellant accused. In appeal, the Allahabad High Court, however, re-appreciated the whole evidence afresh and reached the conclusion that undue emphasis was placed on minor discrepancies by the Sessions Court. It accordingly overturned the judgment of acquittal and convicted the accused under section 302, and 376 read with section 511 of the Indian Penal Code.

Referring to its earlier decisions including the *Sheo Swarup v. King Emperor* MANU/PR/0043/, *Nur Mohammad v. Emperor* MANU/PR/0022/1945, *Surajpal Singh v. State* MANU/SC/0033/1951, *Sanwat Singh v. State of Rajasthan* MANU/SC/0078/1960, and *Damodar Prasad Chandrika Prasad and Ors. v. State of Maharashtra* MANU/SC/0087/1971, the Supreme Court reiterated the following principles laid down in *Chandrappa v. State of Karnataka* MANU/SC/7108/2007:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of

acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

V.K.Pathak

Assistant Professor

Rohtas v State of Haryana

MANU/SC/0483

Supreme Court on powers of the appellate court regarding interference in cases of acquittal

In a judgment delivered on 22 May 2012, the Supreme Court of India has made some important observations regarding the law of interference with the judgment of the acquittal.

Referring to its earlier decisions in *State of Rajasthan v Talever & Anr*, 2011 SC 2271; and *Govindraju v State* (2012) 4 SCC 722 the Supreme Court held that "only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal". It further said: The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

In this case, the appellant was acquitted of the charges u/s 304 B and 498A of the Indian Penal Code by the Sessions Court mainly on the ground that there were material inconsistencies in the depositions of the prosecution witnesses and the guilt of the accused persons was not established beyond reasonable doubt. On appeal, the High Court of Punjab and Haryana re-appreciated the entire evidence a fresh and convicted the appellant u/s 304B and 498-A of the IPC while in respect of other accused persons the order of acquittal was not interfered with.

Setting aside the judgment of the High Court, Justice Dr B.S. Chauhan ruled that since the defence version seemed plausible and the demand for dowry could not be established, it was not right for the High Court to interfere with the finding of the trial Court. In the instant case, the Supreme Court reiterated the well known principle of the criminal law jurisprudence that where two views are possible regarding the guilt of the accused, he should be given the benefit of doubt.

Priya Vijay
LL.B. (BHU), LL.M.(NLSIU Bangalore)

Subscription Rates
Single Copy : ₹ 20
Annual : ₹ 75

MEMOIR

MESSAGE FROM AN EX-STUDENT



I have had the opportunity to pursue my all law degrees from the Banaras Law School, the renowned law faculty in India. An institution of higher learning is known from three things: high-class infrastructure, including a rich library; competent teaching staff; and students with the predominant zeal to acquire knowledge. I can say with utmost confidence that at that time all these were there in the Law School. Because of which, we had a real culture of teaching and learning with lots of co-curricular and extra-curricular activities. My LL.B. batch can be considered a memorable one because from among us there became a number of university professors, leading legal practitioners, eminent judges, high-ranking civil servants, a Supreme Court Judge and an Ombudsman. Because of noble efforts of my classmate and friend Mr. Subhash Chand, we meet from time to time and commemorate our student lives, which was interesting, enjoyable, but competitive. I still remember one thing that Prof. R. P. Dhokalia always used to say, 'study in a competitive atmosphere; if you do not have a competitor, create one'. I must admit that my hard work of that time is still paying. Likewise, Prof. Anand Ji always said to his fellow lecturers to be thoroughly prepared for the lecture, and if you are not prepared for the class, better do not go to the class'.

I am indebted to my parent institution and will always be so in all times to come. I would like to tell the students of the Law School to work as hard as possible because it is only the hard work that can bring success to you. God helps those who help themselves. I would say to the lecturers that you have chosen a nobles profession. Let the sense of service to the country and fellow countrymen prevail over your vested interests. As research is a part of your profession, keep seriously engaged with it also.

My best wishes will always be with you.

Prof. Dr. Abdul Haseeb Ansari
Senior Professor, Faculty of Laws
Deputy Dean, Research Management Centre
International Islamic University Malaysia
Malaysia

We are thankful to



SATYAM BOOKS

PUBLISHERS, IMPORTERS, EXPORTERS & DISTRIBUTORS

2/13, Ansari Road, Darya Ganj, New Delhi-110 002

Ph. : (0) 23242686, 23245698, Fax : 23567131, © 22459334

E-mail : satyambook@hotmail.com

sponsor of the maiden issue of BHU LAW SCHOOL Newsletter