



# BHU LAW SCHOOL Newsletter

Vol. I, No. 4, January-March 2013

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## Editorial



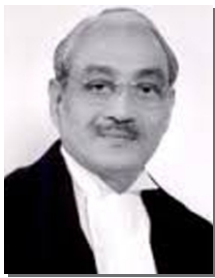
In the wake of notorious Delhi gang-rape which claimed the life of a young woman student and amidst calls for comprehensive measures to address the crimes and violence against women, the Parliament passed the much-awaited the Criminal Law Amendment Act, 2013 after intensive debate and discussions. In a nutshell, the Act broadens the definition of rape and punishes a wide range of sexual acts in widest possible stringent terms. Though the initiative taken by the Government of India is commendable, what is really needed is the effective and sensitive implementation of the law. A law however stringent it may be hardly deters if it is poorly implemented. It is worth saying that raising the public consciousness about rights of women, sensitizing the people about human rights and creating an environment where women can walk freely and safely are the real challenges to be addressed. This year marks the 20<sup>th</sup> anniversary of the Vienna Declaration on Human Rights and we can sincerely hope that through consistent and honest efforts we can make a shift in thinking of human rights. Expressing shock and anguish over the tragic incident of Delhi gang-rape, Regional Programme Director, United Nations rightly said: “...Violence against women is not a women's issue but a human rights issue...”

It is a matter of great pleasure that with the deposit of the 10<sup>th</sup> instrument of ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in February last, the Protocol will enter into force on 5 May 2013. The OP-ICESCR sets out individual communication system similar to those found in the International Covenant on Civil and Political Rights and some other conventions dealing with civil and political rights. Now the individuals living in States which are Parties to the OP-ICESCR can lodge complaints with Committee on Economic, Social and Cultural Rights regarding violation of their economic and social rights. This is a monumental achievement. The entry into force of the OP-ICESCR will contribute significantly to the development of human rights law.

I am thankful to all those who have helped in various ways toward the publication of this issue. In particular, I express my deep sense of the gratitude to Mr. Chandan Kumar Singh, Advocate, Jharkhand High Court, Ranchi for significantly contributing towards publication of this issue. Last but not least, I am thankful to Mr. Digvijay Singh, PhD scholar of this faculty for providing research support and typing assistance to the editorial team.

B. C. Nirmal

**Distinguished Visitors at Law School (Session 2012-2013)**



Justice Swantanter Kumar  
Judge, Supreme Court of India  
(03-11-2012)



Justice BS Chauhan  
Judge, Supreme Court of India  
(22-12-2013)



Justice RP Desai  
Judge, Supreme Court of India  
(02-03-2013)



Justice SP Mehrotra, Judge,  
Allahabad High Court  
(03-03-2013)



Justice Arun Tandon  
Judge, Allahabad High Court  
(10-03-2013)



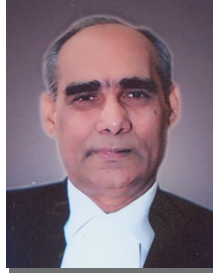
Justice Dilip Gupta  
Judge, Allahabad High Court  
(03-11-2012)



Justice AP Sahi  
Judge, Allahabad High Court  
(04-11-2012)



Justice S.N. Shukla  
Judge, Allahabad High Court  
(18-08-2012 & 10-03-2013)



Justice DD Jha  
Judge, Allahabad High Court  
(10-03-2013)



Justice RS Ram Maurya  
Judge, Allahabad High Court  
(03-11-2012 & 02-03-2013)



Justice DK Upadhaya  
Judge, Allahabad High Court  
(10-03-2013)



Prof. SK Verma  
(02,03-03-2013)



Prof. DN Jauhar  
(03-02-2013 & 02-03-2013)



Prof. S Sivakuma  
(22-02-2013 & 02-03-2013)



Prof. Abdul Haseeb Ansari  
(09-02-2013 & 02-03-2013)



Prof. David Tushau  
Missouri Western State University,  
US



Prof. Joanne Katz  
Missouri Western State  
University US(24-11-2012)



Shri R N Singh  
A D G (Prosecution) UP

**ACTIVITIES AT THE LAW SCHOOL**

**Degree Distribution Ceremony**

As part of the 95<sup>th</sup> Convocation of the University (held on 3 March 2013), 14<sup>th</sup> Convocation of the Faculty was held on March 2, 2013. In the University Convocation, held on March 3, 2013 eleven candidates were awarded PhD degree, 44 candidates were awarded LLM degree, 15 were awarded LLM (HRDE) degree and 289 candidates were awarded LLB (hons) degree.



Shri Raju Majhi Asst. Prof. Law School is receiving Ph.D. degree from Professor B.C. Nirmal, Head & Dean at the degree distribution ceremony of the law School.



Third issue of the BHU Law School Newsletter being released by Hon'ble Mrs Justice Ranjana Prakash Desai, Judge, Supreme Court of India at the Inaugural Session of the International Conference on International Environmental Law, Trade Law, Information Technology Law & Legal Education (March 2, 2013)

**Lecture on "Research Skills and Methodology"**



Professor Abdul Haseeb Ansari, of International Islamic University, Malaysia, delivered a lecture on writing skills and research methodology on 9<sup>th</sup> February 2013. He threw light on the different aspects of the subject. It was a very inspiring and fruitful lecture for the students, researches and the law

teachers.

**Lecture by Professor S. Sivkumar, Director-in-charge, ILI**



Delivering a lecture on research cooperation between the Law School and the Indian Law Institute, on February 22, 2013, Professor S. Sivkumar, Director-in-charge, ILI emphasized the need for research cooperation between the Law school and the Indian Law Institute, New Delhi. He also presented a brief overview of the "Restatement of Indian Laws Project" and called the researches to contribute in this regard. **Lecture on "Judicial Activism"** Professor DN Juhar, Vice-Chancellor, Dr B R Ambedkar University, Agra in a lecture delivered at the Law School on 4<sup>th</sup> February, 2013 shed light on different phases of judicial activism and emphasized the need for judicial reform.





**International Conference on “International Environmental Law, Trade Law, Information Technology Law & Legal Education”  
2-3 March, 2013**

Law School, BHU organized the first ever International Conference on “International Environmental Law, Trade Law, Information Technology Law & Legal Education” on March 2-3, 2013. The conference was inaugurated by the chief Guest Hon’ble Mrs. Justice Ranjana Prakash Desai, Judge Supreme Court of India. Hon’ble Mr. Justice R.S.R. Maurya Judge, Allahabad High Court and Prof. Nik Ahmad Kamal Nik Mahmood, International Islamic University, Malaysia were the Guests of Honour in the inaugural session. Prof. D.N. Jauhar, Vice Chancellor., Dr. B.R. Ambedkar University, Agra delivered the presidential address. Prof. B.C. Nirmal, Dean, law School, BHU welcomed the guests and participants. Prof. S. Sivakumar, Prof. J.L.Kaul, and Prof. Jaydeo Pati were honoured for the valuable contribution to the legal education in India, Prof. S.K.Verma and Prof. A.H.Ansari were felicitated for being illustrious alumni of Law School, BHU and Dr. Sudhir Kochhar was felicitated for his outstanding contribution and research in the field of Plant breeding during the inaugural session. Conference Souvenir and the third issue of BHU Law School Newsletter were released by Hon’ble Mrs. Justice Ranjana Prakash Desai during the inaugural session. Total four sessions were conducted and each session was devoted to a separate theme. Prof. S. Sivakumar, Director IIL, New Delhi, Prof. S.K. Verma, Former Director, IIL, New Delhi, Dr. Sudhir Kochhar, National Coordinator, National

Agricultural Innovation Project (ICAR) and Prof. Abdul Haseeb Ansari, Deputy Dean, RMC, International Islamic University, Kuala Lumpur, Malaysia chaired different technical sessions. Each technical session were followed by different distinguished speakers and discussants. Parallel Sessions for students were organized in which large number of students from different universities made presentations. Hon’ble Mr. Justice S.P. Mehrotra, Judge, Allahabad High Court was the Chief Guest and Dr. Robert P. Barnidge, Jr. from England and Dr. Olaolu S. Opadere from Nigeria were the Guests of Honour of the valedictory session. The presidential address was delivered by Prof. A. Lakshminath, Vice Chancellor, Chanakya National Law University, Patna. More than 400 participants including 244 from 19 states in India and 08 countries participated and presented papers in the conference.

**Mahamana Malaviya National Moot Court Competition, 2013**



Mahamana Malaviya National Moot Court Competition, 2013 was organized

by the Faculty of Law on 9-10 March, 2013 to mark the 150<sup>th</sup> Birth Anniversary of Mahamana Pandit Mandan Mohan Malaviyaji. 20 team across the country participated in the moot court competition. The event was judged by eminent personalities including the judges of Allahabad High Court, namely Hon'ble Mr Justice SN Shukla, Hon'ble Mr Justice DD Jha, Hon'ble Mr Justice D K Upadhyay and Hon'ble Mr Justice Arun Tandon. The competition was also adjudicated by the lower court judges, advocates, partners of various law firms from Delhi and the faculty members of law school, BHU. The winning team of the competition was NUJS, Kolkata and runner's up team was Pravin Bhai Gandhi College, Bombay.

The Joint Director of the Competition was Dr. R K Murali. Dr. Kshemendra Mani Tripathi and Dr. Vijay Pal Singh were the Organizing Secretary and Joint Organizing Secretary respectively.

**Lecture on “Epistemology and Legal Research”**

Professor NK Indrayan of University of Saurashtra delivered a lecture on “Epistemology and Legal Research” at Law School on 16 February, 2013 in the auspices of the Current Law Forum. Dwelling on the various epistemological theories he said that the quality of research could only be improved when its major component was based on empirical method.

Introducing the theme of the lecture, Professor B C Nirmal, Dean Faculty of Law emphasized the need of empirical research in law. Dr Ajendra Srivastava, the Convenor of the Current Law Forum and managing editor of the BHU Law School Newsletter proposed vote of thanks.

**Career Counseling Session for Law Students**

An interactive career counseling session for the students of the Law School was held on 16<sup>th</sup> March 2013. Shri Pramod Kumar Yadav, PCS (J) and Shri Mritunjay Kumar Singh APO, Varanasi interacted with the students regarding preparation of the competitive examinations. Dr A K Singh, Assistant Professor was the convenor of the career counseling session.

**FACULTY UPDATES**

**Professor B C Nirmal**, Head & Dean, Faculty of Law, was recently elected member of the Governing Body of the Indian Law Institute under Dean's category with the highest votes. He published a paper on Legal Education in India: Problem and Challenges in *IIUMLJ*. Citation: (2012) 20 *IIUMLJ* 139-67. Prof Nirmal also published a paper titled "Legal regulation of Remote Sensing: Some Critical Issues" in the Journal of Indian Law Institute. Citation: 54 *JILI* (2012) 451-79. He also delivered three lectures in the Refresher Course of UGC/Academic Staff College, BHU, Varanasi and presided over the inaugural and valedictory sessions.

**Dr Shailendra Kumar Gupta**, Associate Professor delivered lecture on "Law and Social Transformation: The Jurisprudential Perspective" and "The Concept and Theories of Justice" in the 2<sup>nd</sup> UGC-ASC Refresher Course in Law in the Department of Law, DDU Gorakhpur University, Gorakhpur on 19-02-2013 and 20-02-2013 respectively. Dr Shailendra Kumar Gupta also presented a paper entitled Social Justice and the Role of Legal Aid Clinics in India and the United States at the Conference on Applied Learning in Higher Education, organized by Missouri Western State University, St. Joseph, Missouri, and United States of America.

**Dr Golak Prasad Sahoo**, Assistant Professor participated in the National Conference on Global Challenges Opportunities in the post-Recession Era: A Managerial Perspective organized by the Faculty of Commerce, BHU on April 13-14-2013. He also attended the International Conference on Human Rights and Law, Justice and Governance on 26-27 April 2013 organized by School for Legal Studies BabaSaheb Bhimrao Ambedkar University, Lucknow.

**Dr. M.K.Padhy**, Reader served as one of the course coordinators of the 2<sup>nd</sup> Refresher Course in Human Rights (interdisciplinary) organized by the UGC-Academic Staff College, Banaras Hindu University, Varanasi during February 2-22, 2013. Dr Padhy acted as a resource person in the National Seminar on Recent Trends in Democratic Politics and Judiciary in India at School of Studies

in Law, Pt. Ravishankar Shukla University, Raipur-492019 (CG) on March 16-18, 2013 and delivered a lecture entitled "Contempt of Court: An Appraisal". He has also acted as a resource person in the UGC Sponsored National Seminar on Live-in Relationship and Right to Maintenance organized by the University Law College, Utkal University Vani Vihar, Bhubaneswar on May 16-17, 2013 and presented a paper entitled "Insurance in Live-in Relationship."

**Dr. Rajnish Kumar Singh**, Assistant Professor, Law School, BHU has published two articles entitled "Intellectual Property and Biodiversity: An Indian Solution to the Likely Conflict" and "Laws of Patent, PPV&FR and Biodiversity: Relevance for Traditional Knowledge" in *International Journal of Jurisprudence and Philosophy of Law* respectively in Vol. V(2011)&Vol. VI (2012). He is also the member of Editorial Board of 'Commemorative Volume on 150th Birth Anniversary of Mahamana Madan Mohan Malviya Ji' and "Shradha", Faculty wise detail of Programmes organized as part of 150th Birth Anniversary Year of Pt. Madan Mohan Malviya Ji. He was the organizing secretary of the first ever International Conference on "International Environmental Law, Trade Law, Information Technology Law & Legal Education" organized on March 2-3, 2013.

**Dr D.K. Srivastava**, Associate Professor, delivered lectures on "Commercial Surrogacy: Should it be permissible?" (February 2, 2013), "An Introduction to Value Added Tax" (February 2, 2013), "Methods of Avoidance of International Double Taxation" (February 4, 2013) and "E-Commerce through Digital and Electronic Signature" (February 4, 2013) in the Refresher Course in Commercial Law organized by the UGC Academic Staff College, University of North Bengal in February 2013.

**Dr. D K Mishra**, Associate Professor delivered lecture on "Human Rights and Values Education: An Indian Approach" in 2<sup>nd</sup> UGC-ASC Refresher Course in Law held in the Deptt. of Law, DDU Gorakhpur University, Gorakhpur on 16-02-2013 and on the same topic in 2<sup>nd</sup> Refresher Course in Human Rights (Interdisciplinary) organized by the UGC-ASC, Banaras Hindu University, Varanasi on 19-02-2013. He was Joint Director of first ever

International Conference on International Environmental Law, Trade Law, Information Technology Law and Legal Education held on March, 2-3, 2013.

**FORTHCOMING ACTIVITIES**

- (1) A National Seminar on Consumer Welfare Laws.
- (2) Launching of a new Journal on Environmental & Intellectual Property Rights

**LEGISLATIVE TRENDS**



**THE INSTITUTES OF TECHNOLOGY (AMENDMENT) ACT, 2012 Act No. 34 OF 2012**

The Act establishes the Indian Institute of Technology (BHU) Varanasi with effect from June 29, 2012. The Institutes of Technology (Amendment) Act, 2012 gives legal status to all the newly opened IITs in the country. According to the amendment Act, in the Institutes of Technology Act, 1961 for the words "and the Indian Institute of Technology, Roorkee", the words "the Indian Institute of Technology, Roorkee, the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhi Nagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Patna, the Indian Institute of Technology, Ropar and the Indian Institute of Technology (Banaras Hindu University), Varanasi" shall be substituted. The amendment Act awards a special status to the Vice-Chancellor of the Banaras Hindu University, who will be *ex officio* Chairman of the Board of Governors of the Indian Institute of Technology (Banaras Hindu University), Varanasi "and shall hold office for a period of three years with effect from such commencement."

**THE RAJIV GANDHI NATIONAL INSTITUTE OF YOUTH DEVELOPMENT ACT, 2012 Act No. 35 of 2012**

An Act to establish Rajiv Gandhi National



Institute of Youth Development (RGNIYD) is an Institute of National Importance. The Institute is located at Sriperumbudur, nearly 40 kilometers south of Chennai city. The Institute is to act as a think-tank and to assist the Government and non-Government agencies in youth related activities. The Institute strives to assist the NSS, NYK and other youth organizations in the implementation of training programmes. The Institute functions as a nodal agency for youth training and as a facilitator of youth development activities in rural as well as in urban areas.

This Institute is having the following 8 Divisions besides the Administrative Division, each one under a Faculty Head with sufficient supporting professional staff: Training Orientation and Extension (TOE), Research, Evaluation and Documentation / Dissemination (READ), Panchayati Raj Institutions and Youth Affairs (PRIYA), Social Harmony and National Unity (SHANU), International Centre for excellence in Youth Development (ICEYD), Youth and Adolescent Health (YAH), Gender Equity Division (GED), Vocational Training Entrepreneurship Development Division (VTEDD).

**THE NATIONAL INSTITUTE OF MENTAL HEALTH AND NEURO-SCIENCES, BANGALORE ACT, 2012 Act No. 38 of 2012**

An Act to declare the institution known as the National Institute of Mental Health and Neuro-Sciences, Bangalore, to be an institution of national importance and to provide for its incorporation and for matters connected therewith.

The objects of the Institute shall be to develop patterns of teaching in undergraduate and postgraduate medical, education in all its branches with a focus on mental health, neuro-sciences and allied specialties so as to demonstrate a high standard of medical education; to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; to attain self-sufficiency in postgraduate medical education to meet the country's needs for specialists and medical teachers, particularly in the field of mental health, neuro-sciences and allied specialties; to evolve

innovative strategies to offer diagnostic and comprehensive therapeutic service facilities in the field of mental health and neuro-sciences, utilizing the advances in information technology; to make an in-depth study and research in the field of mental health, neuro sciences and allied specialties. The Act vests the properties of the National Institute of Mental Health and Neuro-Sciences, Bangalore, registered under the Karnataka Societies Registration Act, 1960 in the Institute.

**INTERNATIONAL LEGAL NEWS & EVENTS**



**European Court of Human Rights on immunity of a foreign State in a private transaction**

In a Chamber Judgment delivered on 14 March 2013, the European Court of Human Rights held that immunity of a foreign State in relation to a private transaction is not absolute. It found the refusal by the Russian Courts to examine the claim of the complainant regarding the repayment of a loan to the trade representative of North Korea, a violation of Article 6 (access to justice) of the European Convention on Human Rights and Fundamental Freedoms.

The case concerned a Russian national Mr. Oleynikov who complained about the refusal by the Russian Courts to examine his claim concerning the repayment of a loan to the Trade Representative of North Korea. The claim was returned by the Russian courts without examination on the grounds that the Code of Civil Procedure provided for absolute immunity of a foreign State before the Russian courts. Relying in particular on Article 6 of the ECHR, Mr. Oleynikov complained before the ECHR, inter alia, that the Russian courts' refusal to examine his claim had constituted a violation of his right to a fair hearing. On the facts of the case, the Court concluded that the Russian courts had failed to examine whether the nature of the transaction underlying the claim was of a private law nature and to take into account the provisions of international

law in favour of restrictive immunity. However, the Chamber Judgment is not final. During the three-month period any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

**22<sup>nd</sup> Session of the Human Rights Council extends mandates on Syria, Iran and freedom of religion or belief**

The 22<sup>nd</sup> session of the human rights council which opened on 25 February and concluded on 22 March 2013 adopted several texts of far reaching importance. The month long session of the council extended the mandates of the Independent International Commission of Inquiry on Syria, the Special Rapporteur on the situation of human rights in Iran as well as the special Rapporteur on freedom of religion or belief. Other important texts includes the texts dealing with the issue of torture and other cruel, inhuman or degrading treatment or punishment and rehabilitation of torture victims; prevention of genocide; and follow-up to the report of the United Nations Independent International Fact-finding Mission on the Gaza conflict.

Established in 2006, the Human rights council is an inter-governmental body responsible for promotion and protection of human rights around the world.

**Afghanistan ratifies the Basel Convention**

Afghanistan ratified the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes by depositing its instruments of ratification with the Secretary General of the United Nations on 25 March 2013. This has paved the way for entry into force of the Basel Convention for Afghanistan on 23 June 2013 in accordance with article 25(2) of the Convention. With Afghanistan's ratification of the Basel Convention, the number of Parties to the Convention has risen to 180.

The Basel Convention was adopted on 22 March 2013 and entered into force in

1992. The overarching objective of the Convention is "to protect human health and the environment against the adverse effects of hazardous wastes."

#### ICESCR enters into force on 5 May 2013

Uruguay deposited the 10<sup>th</sup> instrument of ratification of the Optional Protocol of the 1966 international Covenant on Economic, Social and Cultural Rights (OP-ICESCR) on 5 February 2013. Now the OP-ICESCR is all set to enter into force on 5 May 2013 for the Parties to it.

The (OP-ICESCR) was adopted by the United Nations General Assembly on 10 December 2008. It provides a system of individual petition similar to those found in the First Optional Protocol to the International Covenant on Civil and Political Rights (OP1- ICCPR) and some other core human rights conventions. The OP-ICESCR will now enable victims to enforce their economic, social and cultural rights through submission of communications before the Committee on Economic, Social and Cultural Rights.

#### European Union approves Nagoya-Kuala Lumpur Supplementary Protocol on liability and Redres

On 21 March 2013, the European Union deposited its instrument of approval of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and redress to the Cartagena Protocol on Biosafety. EU is the 12<sup>th</sup> Party to the Cartagena Protocol on Biosafety to become a Party to the N-KL Supplementary Protocol. Other Parties to the N-KL supplementary Protocol are: Albania, Bulgaria, Czech Republic, the EU, Ireland, Latvia, Lithuania, Mexico, Norway, Spain, Sweden and Syrian Arab Republic.

The Supplementary Protocol was adopted on 15<sup>th</sup> October 2010 in Nagoya, Japan at the fifth meeting of the Parties to the Cartagena Protocol on Biosafety. It aims to contribute to the conservation and sustainable use of biodiversity by providing rules and procedures for response measures in the event of damage resulting from transboundary movement of living modified organisms (LMOs). The Supplementary Protocol will enter into force on the 90<sup>th</sup> day after the date of deposit of the 40<sup>th</sup> instrument of ratification or accession.

#### South Africa, Albania, Botswana and the Federated States of Micronesia join

#### Nagoya Protocol

South Africa, Albania, Botswana and the Federated States of Micronesia have become the 2<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> countries to ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the convention on Biological Diversity. Other countries that have already ratified or acceded to the Nagoya Protocol are: Ethiopia, Fiji, Gabon, India, Jordan, Lao People's Democratic Republic, Mauritius, Mexico, Panama, Rwanda, and the Seychelles.

The Nagoya Protocol was adopted at the tenth meeting of the conference of the Parties to the Convention on Biological Diversity (COP-10), in Nagoya, Japan. It is aimed at advancing the objective of the Convention on the fair and equitable sharing of benefits arising from the utilization of genetic resources by providing greater legal certainty and transparency for both providers and users of genetic resources.

### RECENT JUDICIAL DECISIONS



#### *Vipin Jaiswal v. State of A.P.* (Decided on March 13, 2013)

#### Supreme Court examines the meaning of 'Dowry'

Relying on *Appasaheb & Another vs. State of Maharashtra* (2007) 9 SCC 721, the Hon'ble Supreme Court in this case set aside the conviction of the accused by the Trial Court and the Andhra Pradesh High Court under Section 304B of the Indian Penal Code for Dowry Death and held that demand six months after the marriage for purchasing a computer to start a business, was not in connection with the marriage and was not really a dowry demand within the meaning of Section 2 of the Dowry Prohibition Act, 1961. In *Appasaheb's* case the Hon'ble apex Court had held that a demand of money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand

for dowry. Similarly in *Satvir Singh vs. State of Punjab* AIR 2001SC and *Ran Singh vs. State of Haryana* (2008) 4 SCC the Hon'ble Court has held that customary payments in connection with birth of a child or other ceremonies would not be dowry as it is not 'in connection with the marriage'. Thus if a demand is made on the occasion of the birth of a child or *mundan* ceremonies etc. of the child and if for not meeting such demand wife is harassed and she commits suicide it will not amount to dowry death. It may be submitted that such interpretation will encourage these kinds of demands by the in-laws' family with impunity. The correct interpretation will be as has been given by the Hon'ble Court in *Ashok Kumar vs. State of Haryana* AIR 2010 SC 2839 and *Bachni Devi and another vs. State of Haryana* (decided on 08.02.2011). In the former case 20 days prior to her death the deceased told her father that she was being troubled for a sum of Rs. 5,000/- so that her husband could change to a new business. The Hon'ble Supreme Court confirming the conviction of the accused under Section 304 B, held that 'in connection with the marriage' is an expression which has to be given a wider connotation. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. The Court observed that although the concept of deeming fiction is hardly applicable to the criminal jurisprudence, yet in contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304 B. Where other ingredients of Section 304 B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, this offence shall be deemed to have been committed by fiction of law. In *Bachni's* case, the Hon'ble Court held that *Appasaheb* cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry.' If a demand for property or valuable security directly or indirectly has a nexus with marriage, in our opinion, such demand

would constitute 'demand for dowry'; the cause or reason for such demand being immaterial.

**Dr. Dinesh Kumar Srivastava,**

Associate Professor

**Mohinder Singh v State of Punjab**

**MANU/SC/0069/2013**

**Supreme Court on confirmation of capital Punishment by a High Court**

In *Mohinder Singh*, decided on 28-01-2013, by the Supreme Court has considered the scope and application of Section 366 of the Criminal Procedure Code concerning the reference to the High Court for confirmation of death sentence as well as the "rarest of rare cases" doctrine.

In this case, the appellant accused was found guilty of committing murder of his wife and daughter in a gruesome manner in the background of inimical relationship in the family on account of criminal cases registered against the Appellant-accused at the instance of his deceased wife and deceased daughter. On the basis of the deposition given by his wife and daughter he had been sentenced to rigorous imprisonment of for 12 years for committing rape of his deceased daughter.

While rejecting the plea of the appellant-accused to go into the entire merits of the case, a Division Bench of the Supreme Court comprising Justice P. Sathasivam and Justice Fakkir Mohamed Ibrahim Kalifulla made the following observations on the scope of Section 366 of the Cr PC: "...The Court of Session should refer the proceedings to the High Court and the High Court can only deal with them as a Court of reference. It is the practice of the High Court to be satisfied on the facts as well as the law of case that the conviction is right before it proceeds to confirm the sentence. In other words, the High Court has to come to its own independent conclusion as to the guilt of innocence of the accused independently of the opinion of the judge. In a reference for confirmation of death sentence, the High Court must examine the entire evidence itself independent of the Session Court's views. While confirming the capital sentence, the High Court is under obligation to itself consider what sentence should be imposed and not be content with the trial court's decision on the point unless some reason is shown

for reducing the same...."

After analyzing the materials placed before the trial Court as well as the confirmation order of the High Court and referring to the case which reiterate that brutality alone is not the sole criterion of determining whether a case falls under the "rarest of rare" categories, the Supreme Court commuted the death sentence awarded to the accused to rigorous imprisonment for life till the end of his life but subject to any remission granted by the appropriate Government satisfying the conditions prescribed in Sections 432 of the Code by passing appropriate speaking orders.

**D.K. Mishra**

Associate Professor

**State of Gujarat and Anr v Hon'ble Mr.**

**Justice R.A. Mehta (Retd.) and Ors**

**MANU/SC/0001/2013**

**Supreme Court upholds the appointment of Gujarat Lokayukta**

In an important judgment delivered on 2<sup>nd</sup> January, 2013 the Supreme Court has reiterated that the Governor is bound to act on the aid and advice of council of ministers, unless he acts as *persona designate* under a particular statute or acts in his own discretion under the exceptions provided for in the constitution itself. In its judgment a division bench comprising B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla, JJ upheld the appointment of Justice R.A. Mehta as Gujarat Lokayukta by Governor Kamala Beniwal and Said that, "It is evident that the Governor enjoys complete immunity under Article 361(1) of the constitution and that under this its actions cannot be challenged for the reason that the Governor acts only upon the aid and advice of the council of ministers."

In this case the Governor of Gujarat appointed Mr. Justice R.A. Mehta (Retd.) as Lokayukta of the state of Gujarat after consultation with the chief Justice of the High Court and also with the Leader of Opposition which is a prerequisite under section 3(1) of the Gujarat Lokayukta Act, 1986. The Governor had acted as a statutory authority under the Act, 1986, and not as the head of the State, and thus, it was not required to act in accordance with the aid and advice of the Council of Ministers. The proviso of section 3(1)

clearly suggests that such consultation with the Leader of Opposition also stands dispensed with, if the Assembly is dissolved or suspended. Thus, it is evident that the Governor can appoint a Lokayukta, even when there is no Council of Ministers in existence.

The bench observed that no fault can be found with the procedure adopted by the Governor, as the objections raised by the Government were thoroughly considered by the Chief Justice, and no substance was found therein.

This appointment was challenged by Government in the High Court of Gujarat on the ground that Council of ministers headed by Chief Minister was not consulted with and that the actions of the Governor are contrary to the principles of Parliamentary democracy and thus, the Governor ought not to have corresponded with, and consulted the Chief Justice of the High Court of Gujarat directly. It was also contended that, the Chief Justice ought to have recommended, a panel of names for consideration by the other consultees, i.e., the Chief Minister and Leader of Opposition, and that he could not recommend only one name, as the same would cause the entire process to fall within the ambit of concurrence, rather than that of consultation. Furthermore, consultation done by the Governor with the Attorney General of India, who is alien to the Act, 1986, runs contrary to the statutory provisions of the said Act. The Governor is not acting merely as a statutory authority, but as the Head of the State, and hence, the entire procedure adopted by her is in clear contravention of the actual procedure, contemplated by the statute, for the purpose of selection of the Lokayukta.

The 2<sup>nd</sup> January decision assumes importance because of the reason that on one hand it explains the status of Governor when he/she is acting as *persona designate* and on the other hand it also cautions that the claim of the Governor that he/she is not bound by the aid and advice of the Council of Ministers and that he/she had exclusive right to appoint the Lokayukta is not in accordance with the spirit of the Constitution.

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## A Note on Information Technology

In 2010, several independent technology researchers discovered a new virus that had invaded computer systems around the world. While viruses in many forms have been around since the early days of the Internet, this virus caught the attention of experts because it displayed unique functions and a level of sophistication never seen before.

Dubbed “Stuxnet,” this worm demonstrated a number of interesting qualities, including a specific attack vector that was limited to certain computers operating in a rather unique fashion. While early reports suggested that this worm was intended to disrupt satellite telecommunications and other computer controlled infrastructure systems, no direct link between the virus functions and those specific systems was established.

However, after several months it became apparent that the virus had a specific geographic target: Iran. A disproportionate number of infected computer systems were located in that country. While the virus appeared around the world, no discernible damage was reported to have occurred elsewhere. Eventually, as the computer code contained in the virus was deciphered, it became evident that it was designed as a weapon, targeting a specific nuclear “research” facility in the state of Iran. The virus-Stuxnet- was a weapon that disrupted the operation of gas centrifuges used to make highly enriched uranium, an essential component in the creation of nuclear weapons. Within months, the virus was succeeded in damaging or destroying more than 900 centrifuges, setting back Iran's uranium enrichment program by several years.

It remains unclear who launched this attack, though the list of suspects is short. What is clear is that this virus was extraordinarily precise in attacking a specific target while inflicting Virtually no damage on any other computer systems. There were no reported casualties and the damage inflicted was limited to the objectives of the attack. While researchers are uncertain whether the virus has any additional functions, so far, its impact has been precise with no collateral consequence. As more is learned about the virus, security experts and the popular media have seen it as a seminal event in the growing sophistication of cyber conflict. Stuxnet can be termed as the first secret weapon of cyber warfare and America (probably) created it.

There have been attempts from time to time to penetrate cyber networks operating in Government. It has been observed that the attackers are compromising computer systems located in different parts of the World and use masquerading techniques and hidden servers to hide the identity of actual system from which the attacks are being launched. Hence, it is difficult to attribute cyber attack to a particular country.

India is increasingly targeted for cyber espionage, cyber warfare, cyber terrorism, but its response to the same is not so energetic. The scenario is so critical that NATO has requested stronger cooperation with India to counter growing cyber threats, due the growing attacks are addressing Indian critical infrastructure. Even the cyber law of India needs many suitable amendments as it has become outdated.

The Nation isn't ready to respond to cyber attacks, Indian defense and security against cyber warfare is missing. India must develop a comprehensive policy to address the cyber threat in cooperation with major countries that have devoted more attention to the problem. The only way to get pass these difficulties is awareness through training and dissemination along with strong political commitment.

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