



BHU LAW SCHOOL Newsletter

Vol. II, No. 1, April - June 2013

inside

- Faculty Updates
- Forthcoming Events
- Legislative Trends
- International Legal News and Events
- Recent Judicial Decisions
- My Experience at Law School, B.H.U.



editorial

The Supreme Court's landmark judgment of April 1, 2013 in the *Novartis* case has been hailed as lending support to the cause of poor by explicitly recognizing people's right to access life-saving drugs on affordable and reasonable price. It is widely acclaimed as a judgment which favours public interest as against the tendency of major pharmaceutical companies "to extend the patent monopolies of known drugs".

The *Novartis* Judgment reflects the concerns of the Parliament in enacting Section 3(d) of the *Patents Act, 1970* regarding the availability of generic versions of life-saving drugs at affordable price. It extends the benefits which major drug producing companies tend to limit to a few persons capable enough to buy expensive medicines. Hence, the judgment serves social purpose with wide ramifications. It strikes a right balance between the public interests and the needs to encourage innovation.

The April 1, judgment concerns the key issue concerning the true scope of Section 3 (d) of the Act. Under Section 3 (d), the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process unless such process results in a new product or employs at least one new reactant. Adopting a liberal interpretation of the terms used in Section 3 (d) of the *Patent Act*, the Court observed: "[w]e certainly do not wish to the law of patent ...to develop on the lines where there may be a vast gap between the coverage and the disclosure under the patent; where the scope of the patent is determined not on the intrinsic worth of the invention but by the artful drafting of its claims by skillful lawyers, and where patents are traded as a commodity not for production and marketing of the patented products but to search for someone who may be sued for infringement of the patent."

The true implication of the judgment shall be visible in the years to come. It is not out of context to mention that the giant pharmaceutical companies have arguments against the above view and the possible lobbying against the decision is likely to happen. One gets the feeling that it is the right time for the academics to deliberate on the issue and raise strong justifications and arguments in support for the decision.

It gives me immense pleasure to put on record that despite all odds and pressures we could successfully completed the first year of BHU Law School Newsletter and now the second volume is out. I express my thanks to all those who have been instrumental for continued success of the newsletter. In particular, I owe a special debt of gratitude to the editorial board. I am also thankful to Mr. Digvijay Singh, Research Scholar of Law School for providing research support to the editorial team.

B.C. Nirmal

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Faculty Updates

- Prof. B.C. Nirmal, Dean, Law School, BHU was elected member of governing council of the Indian Law Institute, New Delhi in Deans' Category on April 02, 2013. Prof. Nirmal delivered a special lecture on Emerging Dimensions of *Human Rights* at the ILI, New Delhi.
- Dr. Ajendra Srivastava, Associate Professor, Law School, BHU contributed a chapter "*Quota for OBC Minorities: Some Reflections*" pp. 206-228, in Dr. Bijoy C. Mohapatra & Dr. Sudhansu R. Mohapatra (eds.), *Reservation Policy in India*, Research India Press, New Delhi (2013).
- Dr. Golak Prasad Sahoo, Assistant Professor, Law School, BHU presented a papers on *Cyber Crime and Victimization of Women as Violation of Human Rights* at the International Conference on "*Human Rights Law, Justice and Governance*" organized by School for Legal Studies Babasaheb Bhimrao Ambedkar University (A Central University), Lucknow, April, 26-27, 2013, and on *Live in Relationship and Judicial Contours* in a National Seminar on "*Live –in Relationship and Right of Maintenance* organized by University Law College, Utkal University, Vanivihar, Bhubaneswar, May 16 -17, 2013.
- Dr. Rajnish Kumar Singh, Assistant Professor, Law School, BHU attended the 21- day 3rd Summer School organized by the UGC Academic Staff College, Banaras Hindu University, during May-June, 2013.
- Dr. Vivek Kumar Pathak, Assistant Professor, Law School, BHU published an article entitled "*Indian Content of Human Rights: Vedic Approach*" in the *International Journal of Jurisprudence and Philosophy of Law*, Vol. 5, Number 1-2 (2011), Serials Publication, New Delhi. He also attended the 21- day 3rd Summer School organized by the UGC Academic Staff College, Banaras Hindu University, during May- June, 2013.

Forthcoming Events

- A week long Induction Programme for the newly admitted first year students of the session 2013-14 is scheduled in the last week of July, 2013.
- An Inter Faculty Debate Competition is to be organized in the month of September, 2013.
- Intra Law School Moot Court Competition is scheduled to be organized in September, 2013.

Legislative Trends



THE NORTH-EASTERN AREAS (REORGANISATION) AMENDMENT ACT, 2012

[Act No. 39 of 2012]

It is an Act to amend the North-Eastern Areas (Re-organisation) Act, 1971. The purpose of this Amendment Act is to constitute each for the State of Manipur and for the State of Tripura a separate cadre of the Indian Administrative Service, the Indian Police Service and the Indian Forest Service. The initial strength and composition of the State cadres shall be such as the Central Government may, by order, determine before this Amendment Act.

THE CONSTITUTION (NINETY-EIGHTH AMENDMENT) ACT, 2012

It is an Act to amend the Constitution of India. This Amendment Act inserts a new Article 371J after Article 371-I of the Constitution. This Article makes special provision with respect to State of Karnataka. The President may, by order provide for any special responsibility of the Governor for establishment of a separate development board for Hyderabad-Karnataka region with the provision that a report on the working of the board will be placed each year before the State Legislative Assembly; equitable allocation of funds for developmental expenditure over the said region, subject to the requirements of the State as a whole; and equitable opportunities and facilities for the people belonging to the said region, in matters of public employment, education and vocational training, subject to the requirements of the State as a whole.

An order may provide for reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile; and identification of posts or classes of posts under the State Government and in any body or organisation under the control of the State Government in the Hyderabad-Karnataka region and reservation of a proportion of such posts for persons who belong to that region by birth or by domicile and for appointment thereto by direct recruitment or by promotion or in any other manner as may be specified in the order.

THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ACT, 2012

[Act No. 1 of 2013]

It is an Act to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Amendment Act deals with a series of amendments both substantive and procedural.

Now, on acquisition of financial assets, the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any Court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings.

After the amendment where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale. Where the secured creditor is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor.

This amendment Act also deals with Right to lodge a caveat. The provision of cognizance has been replaced with new provision according to which no court (Metropolitan Magistrate or a Judicial Magistrate of the first class) shall take cognizance of any offence except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.

The Central Government has been given the power to exempt a class or classes of banks or financial institutions.

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2012

[Act No. 2 of 2013]

It is an Act to amend the Prevention of Money-Laundering Act, 2002. This Amendment Act defines some new terms such as, beneficial owner, client, corresponding law, dealer, financial institution, and intermediary etc. It substitutes in Section 3 of the Principal Act, the words "proceeds of crime and projecting", by the words "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming".

It includes new provision in respect to Access to information. It also describes procedure and manner of furnishing information by reporting entities. It also provides for retention of properties and retention of records where any property or record has been seized. New provisions in relation to special court to release the property and letter of request of a contracting state or authority for confiscation or release the property have been included. In the schedule to the Principal Act, for Part A, new part has been substituted.

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2012

[Act No. 3 of 2013]

It is an Act to amend the Unlawful Activities (Prevention) Act, 1967. It defines "economic security" which includes financial, monetary and fiscal stability, security of means of production and distribution, food security, livelihood security, energy security, ecological and environmental security.

It also defines the term "proceeds of terrorism" which means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organization. Having this definition in mind many amendments have been made in the Principle Act. It also provides for punishment for raising funds for terrorist act. It includes a new schedule in the Principle Act.

THE BANKING LAWS (AMENDMENT) ACT, 2012

[Act No. 4 of 2013]

It is an Act to amend *the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980* and to make consequential amendments in certain other enactments.

In Section 5 of *the Banking Regulation Act, 1949* clause (a) has been substituted by term "approved securities" which means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time. The capital of banking company consists of equity shares only; or equity shares and preference shares. The Reserve Bank may increase, in a phased manner, such ceiling on voting rights from ten per cent to twenty-six per cent.

A new section has been inserted which deals with Regulation of acquisition of shares or voting rights. It makes provision for Establishment of Depositor Education and Awareness Fund by the Reserve Bank and its power in respect of associate

enterprises. It includes a new part on Supersession of Board of Directors of banking company. It extends the amount of fine and imposes huge fine. It substituted the words "State Co-operative Bank", with the words "a co-operative bank".

It amends Section 3 of the *Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970* and Section 3 of the *Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980* and provides that the authorised capital of every corresponding new bank shall be three thousand crores of rupees divided into three hundred crores of fully paid-up shares of ten rupees each.

International Legal News and Events



1. Bolivia ratifies Decent Work Convention

On 15 April 2013, the Government of the Plurinational State of Bolivia deposited with the International Labour Office the instrument of ratification of the Domestic Workers Convention, 2011 (No. 189). Bolivia is the sixth ILO member State and the second Latin American member State to ratify this instrument which, in accordance with its Article 21, paragraph 2 of the Convention, will enter into force on 5 September 2013, twelve months after the date on which it was ratified by two ILO member States. The ILO's Domestic Workers Convention seeks to improve working and living conditions of about 50 million domestic workers and sets out standards guaranteeing that domestic workers enjoy the same basic labour rights as other workers, including the right to join unions of their choice, minimum wage protection, reasonable hours of work, weekly rest and annual paid holidays.

2. ICTY marks Twentieth Anniversary

The International Criminal Tribunal for Yugoslavia (ICTY) marked the 20th anniversary of its establishment on Monday, 27 May, 2013. The ICTY came into being pursuant to Resolution 827 (1993) adopted by the United Nations Security Council on 25 May 1993.

The ICTY's two decades of existence, including the apprehension of the fugitives, the Tribunal's role in establishing the facts about the crimes, and the outreach efforts towards the communities of the former Yugoslavia.

3. G-8 Summit held in Britain

Leaders from Canada, France, Germany, Italy, Japan, Russia, USA and UK met at Lough Erne in Northern Ireland for the G8 Summit on 17-18 June, 2013. The G8 leaders elaborated three basic issues: advancing trade; ensuring tax compliance; and

promoting greater transparency. However, Syrian civil war dominated the discussion at the Summit. Besides the agreement on range of issues including tax information and new rules for mining companies agreements were also reached on a seven-point plan on the situation in Syria.

4. South Africa ratifies four ILO Conventions

On 20 June 2013, the Government of the Republic of South Africa deposited with the International Labour Office the instrument of ratification of four international labour Conventions, the Labour Inspection Convention, 1947 (No. 81), the Maritime Labour Convention, 2006 (MLC, 2006), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189).

20th Anniversary of the Vienna Declaration on Human Rights

25th June 2013 marks the twentieth anniversary of the Vienna Declaration on human rights. On 25th June 1993 the representatives of 171 countries at the World Conference on human rights held in Vienna adopted the Vienna Declaration and a Programme of Action. The Vienna declaration and the Programme of Action are widely regarded as the landmark human rights instruments wherein states reaffirmed their commitment to promote respect for all human rights and set priorities for human rights agenda. The Vienna Declaration affirmed the universality of human rights. It declared that "all human rights are universal, indivisible and interdependent and inter-related."

COP-11 to the Basel Convention

Eleventh Meeting of the Conference of the Parties (COP-11) to the Basel Convention took place from 28 April to 10 May, 2013 in Geneva, Switzerland in which about 1400 participants took part. The event took place with the ordinary meetings of the Conference of the Parties to the Rotterdam and Stockholm Conventions, and the extraordinary meetings of the three conventions.

COP-11 to the Basel Convention adopted 26 decisions which include the adoption of the framework for the environmentally sound management of hazardous wastes and other wastes as part of a decision on the follow-up to the country-led initiative to improve the effectiveness of the Basel Convention.

COP-6 to the Rotterdam Convention

Sixth Meeting of the Conference of the Parties (COP-6) to the Rotterdam Convention took place from 28 April to 10 May 2013 in Geneva, Switzerland in which about 1400 participants took part. The event took place back to back with the ordinary meetings of the Conference of the Parties to the Basel and Stockholm Conventions, and the extraordinary meetings of the three conventions, including high level segment of ministers.

At COP-6 to the Rotterdam Convention adopted 16 decisions including the listing of four new chemicals (the pesticide azinphos-methyl and the industrial chemicals Penta BDE, Octa BDE and PFOS) to Annex III of the convention.

COP-6 to the Stockholm Convention

Sixth Meeting of the Conference of the Parties (COP-6) to the Basel Convention took place from 28 April to 10 May 2013 in Geneva, Switzerland in which about 1400 participants took part. The event took place back to back with the ordinary meetings of the conferences of the parties to the Basel and Rotterdam conventions, and the extraordinary meetings of the three conventions.

At COP-6 to the Stockholm Convention 30 decisions were adopted. Major decisions include the listing of hexabromocyclododecane (HBCD) to Annex A to the Convention with specific exemptions, the adoption of a framework for the evaluation of the effectiveness of the Convention, and of processes for the evaluation of BDEs and PFOS. Other major decisions relate the adoption of an evaluation process for regional centres, additional guidance on BAT&BEP and NIP updating, the development of a road map for alternatives to DDT; reports on assessment of alternatives to DDT and on other POPs recently listed to the Convention.

Indonesia ratifies the Rotterdam Convention

Indonesia has deposited its instrument of ratification of the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade with the depository of the Convention on 24 September 2013. The Convention will enter into force for Indonesia on 23 December 2013 in accordance with Article 26 (2) of the Convention. With Indonesia's ratification, the number of Parties to the Rotterdam convention rises to 154. The objective of the Rotterdam Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by promoting information exchange programmes.

Recent Judicial Decisions**Novartis AG v. Union of India**

MANU/SC/0281/2013

Supreme Court rejected Swiss firm Novartis's plea for patent

In this much awaited case, the Supreme Court of India delivered

a landmark judgment on April 1, 2013. The Courts' decision in this case puts an end to a saga begun in 1998, when Swiss pharmaceutical major Novartis AG filed a patent application for the beta crystalline form of Imatinib Mesylate, its cancer drug marketed under the name of Gleevec. In this case applicant has claimed that the invented product, the beta crystal form of Imatinib Mesylate, has (i) more beneficial flow properties; (ii) better thermodynamic stability; and (iii) lower hygroscopicity than the alpha crystal form of Imatinib Mesylate. It further claimed that the aforesaid properties make the invented product "new" and thus, eligible for protection.

In its judgment a Division Bench comprising Aftab Alam and Ranjana Prakash Desai, JJ firmly rejected the appellants' case that the beta crystal form Imatinib Mesylate is a new product. The Court said that Imatinib Mesylate is a known substance from the Zimmermann patent itself. The Court further said not only Imatinib Mesylate is known as a substance in the Zimmermann patent, but its pharmacological properties are also known in the Zimmermann patent and therefore does not qualify the test of invention as laid down in the Sections 2(1)(j) & 2(1)(ja) of the *Patents Act, 1970*. Referring Section 3(d), Court said that, beta crystalline being a pharmaceutical substance and a polymorph form of Imatinib Mesylate fully attracts the provision of Section 3(d) and must be shown to satisfy the substantive provision and the explanation appended to it. Section 3(d) is the result of international obligation laid by TRIPs and which requires that patents be must granted only for medicines that are new and innovative and mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance are not invention and to get protection patent application should prove improved efficacy.

This judgment was eagerly watched by pharmaceutical companies all over the world, which has cleared hurdles to the manufacture of generic cancer drug in India. The judgment answers a difficult question concerning Section 3(d), which allows new form of existing drug formulation to be patented only if they result in increased efficacy. The judgment accepts Section 3(d) as a second tier of qualifying standard for patentability.

This judgment assumes importance because it strengthens the quest for access to affordable medicines in India. It has recognized the right of patients to access affordable medicines over profits for big pharmaceutical companies through patent. It affirms the idea that a patent regime has lost its social relevance when a drug is priced beyond the reach of the vast majority of a countries people.

Digvijay Singh

Research Scholar, Law School, BHU

Centre for Environment Law WWF-I v Union of India and others

2013 Indlaw SC 236

SC allows translocation of Asiatic Lions from Gir to Kuno

On 15th April, 2013 the Supreme Court in a significant judgment on wild- life conservation observed that “while examining the necessity of a second home for the Asiatic Lions, our approach should be eco-centric and not anthropo centric and we must apply the "species best interest standard", that is the best interest of the Asiatic Lions. We must focus our attention to safeguard the interest of species, as species has equal rights to exist on this earth.” “Scientific reasoning” for the re-location of Asiatic Lion has to supersede the family bond or pride of the people and one has to look at the species' best interest especially in a situation where the specie is found to be a critically endangered one and the necessity of a second home has been keenly felt. Our approach should not be human-centric, anthropocentric or family-centric but eco-centric.

Dealing with the constitutional and the legal framework for wild-life conservation, the Court observed that the subject “Protection of wild animals and birds” falls under List III, Entry 17B of Seventh Schedule. The Parliament passed *The Wild Life (Protection) Act 1972* to provide for the protection of wild animals and birds with a view to ensuring the ecological and environmental security of the country. Article 48A of the Constitution puts responsibility on the State “to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51A adds that “it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. Court observed that Art. 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct. The Court also referred to the doctrine of “public trust” and observed that the State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of *flora and fauna*, wildlife and so on. The doctrine of 'public trust' has to be addressed in that perspective.

The 15th April judgment refers to the Convention on the Conservation of Migratory Species of Wild Animals held at Bonn, 1979 to support the principle that wild animals in their innumerable forms are irreplaceable part of the earth; natural system and must be conserved for the good of the mankind.

In relation to import of African Cheetahs from Namibia to India and to introduce the same at Kuno, Court held that it is not a case of international movement of organism into a part of its native range MoEF, in our view. It has not conducted any

detailed study before passing the order of introducing foreign cheetah to Kuno. Kuno is not a historical habitat for African cheetahs, no materials have been placed before us to establish that fact. A detailed scientific study has to be done before introducing a foreign species to India, which has not been done in the instant case. The court categorically identified protecting Asiatic Lions as priority and expressed anguish on the failure of all the steps taken and the crores of rupees spent so far.

The 15th April decision in allowing MoEF's decision for re-introduction of Asiatic Lion from Gir to Kuno so as to preserve the Asiatic Lion, an endangered species establishes our duties towards the endangered species. It is heartening to note that scientific considerations have been given preference over other claims like pride of state etc. It is important to note that the true implication of the decision shall be visible in times to come but the judgment certainly brings to discussion the aspects of DPSP and fundamental duties prescribed in the Constitution for the preservation of organisms particularly endangered ones.

Anoop Kumar,

Research Scholar, Law School, BHU.

Devender Pal Singh Bhullar v State of (NCT of Delhi)

2013 Indlaw SC 225

Long delay in disposal of mercy petition is alone not sufficient for commutation of death sentence

In a significant judgment of 12 November, 2013 on the administration of death penalty in the country, the Supreme Court considered the issue whether long and inordinate delay in disposal of mercy petition alone was sufficient to commute the sentence of death into life imprisonment. The Division Bench of the Supreme Court comprising Justice G.S. Singhvi and Justice Sudhansu Jyoti Mukhopadhaya reiterated the principle that although long delay in disposal of mercy petition could be one of the grounds for commutation of sentence of death into life imprisonment, it “should not be invoked in cases where a person was convicted for offence under TADA or similar statutes as such cases stood on an altogether different plane and could not be compared with murders committed due to personal animosity or over property and personal disputes.” In this case, there was a delay of eight years in disposal of the mercy petition. But keeping in view the peculiar facts of the case, the Court held that “there was no valid ground to interfere with the ultimate decision taken by the President not to commute the sentence of death awarded to petitioner into life imprisonment.” In the instant case, the petitioner allegedly detonated a bomb on the cavalcade of a political party and thereby caused the death of nine persons and injury of 17 persons. He was charged with offences u/ss. 419, 420, 498 and 471, IPC, Section 12 of *the Passports Act* and u/ss. 2, 3, and 4 of *the Terrorists and Disruptive Activities (Prevention) Act*. He was

sentenced to death by the designated court. His appeal and subsequent review to SC were also dismissed.

Specific issues rose before the Court were: (a) What is the nature of power vested in the President under Article 72 and the Governor under Article 161 of the Constitution? (b) Whether delay in deciding a petition filed under Article 72 or 161 of the constitution is, by itself, sufficient for commutation of the sentence of death into life imprisonment irrespective of the nature and magnitude of the crime committed by the convict and the fact that delay may have been occasioned due to direct or indirect pressure brought upon the Government by the convict? (c) Whether the parameters laid down by the Constitution Bench in *Triveniben's case (Triveniben v State of Gujarat, 1989 Indlaw SC 43)* for judging the issue of delay in the disposal of a mercy can be applied to the cases in which an accused has been found guilty of committing crimes under TADA and other similar statutes? And (d) What is the scope of the Court's power of judicial review of the decision taken by the President under Article 72 or by the Governor under Article 161 of the Constitution?

Regarding issue (a), the Supreme court held that the power vested in the President under Article 72 and or the Governor under Article 161 of the Constitution is neither a matter of grace nor a matter of privilege, but is an important Constitutional responsibility to be discharged keeping in view the considerations of larger public interest and welfare of the people. Regarding issues (b) and (c), the Court held that while disposing of a petition under Article 72 of the Constitution, the President like a court has to take into consideration the nature and magnitude of the crime, the motive for committing the crime and the impact of the crime on the society etc. Since in the instant case, the petitioner was convicted for offences under TADA, the court was of the view that the case is not a fit one for exercise of the power of judicial review for quashing the decision taken by the President not to commute the sentence of death into life imprisonment. Regarding issue (d), the Court held that the power of judicial review of a decision taken by the President or the Governor is very limited. "The Court can neither sit in appeal nor exercise the power of review, but can interfere if it is found that the decision has been taken without application of mind to the relevant factors or the same is founded on the extraneous or irrelevant considerations or is vitiated due to malafides or patent arbitrariness."

Ajendra Srivastava, Associate Professor

Mahendra Nath Das v Union of India and others

2013 Indlaw SC 277

Long delay of 12 years in disposal of mercy petition coupled with the fact that the President was not properly advised in the matter may be a ground for commutation of death sentence

Whether inordinate or long delay in disposal of mercy petition

filed under Article 72 or Article 161 of the Constitution coupled with the fact *the* President was not properly advised in the disposal of such petition may be a ground for commuting the sentence of death into life sentence? The issue was considered by the Division Bench of the Supreme Court comprising G.S.Singhvi and Justice Sudhansu Jyoti Mukhopadhaya J.J in the present case. The Bench held that since the President was not properly advised and assisted in the disposal of the mercy petition therefore 12 years delay in disposal of the mercy petition may be treated sufficient for commutation of the sentence of death into life imprisonment. The Court observed that "...we are convinced that 12 years delay in the disposal of the appellant's mercy petition was sufficient for commutation of sentence of death and the Division Bench of the high Court committed serious error by dismissing the writ petition solely on the ground that he was found guilty of committing heinous crime." The Court by making reference to the earlier decisions on the subject including *Triveniben's case (Triveniben v State of Gujarat, 1989 Indlaw SC 43)* ,however, cautioned that in commuting the sentence of death into life imprisonment, the cumulative effect of all the circumstances of the case should be taken into account.

In this case, the appellant-accused allegedly committed the offence of murder punishable under Section 302 of the Indian Penal code (IPC). While he was on bail, the appellant allegedly committed another murder. He was sentenced to life imprisonment for the first crime and was awarded capital punishment for the crime committed by him second time. His appeals to the High Court and the Supreme court were dismissed. His petition under Article 72 of the Constitution was finally rejected by the President on 08-05-2011. When his subsequent petition questioning the rejection of his mercy petition was also dismissed by the Division Bench, the appellant filed the present appeal.

The Supreme Court allowing his appeal ruled that a gap of 12 years between filing of mercy petition and rejection thereof was a long time gap. The Court also found that no explanation was given for a gap of three years between 20-06-2001 and September 2004 and a gap of five years between 30-09-2005 when the then President held the view that the mercy petition of the appellant be accepted and the September 2010 when the file was actually summoned back by Ministry of Home Affairs. Furthermore, no reference was made to order and note dated 30-09-2005 of the then President in the summary prepared by the Home Ministry to be placed before the President. The Court found this lapse on the part of the Government as serious one and held that the President was actually deprived of an opportunity to objectively consider the entire matter. Hence, "the President was not properly advised and assisted in disposal of the mercy petition."

Dharmendra Kumar Mishra,
Associate Professor

Niranjan Hemchandra Sashittal and Another v. State of Maharashtra

Supreme Court expresses its anguish over the menace of Corruption

Niranjan Hemchandra Sashittal and Another vs. State of Maharashtra decided on 15 March, 2013 is an important judgment on corruption, in which the Hon'ble Supreme Court of India has expressed its anguish over the menace of corruption prevailing in our country.

In this case, the Supreme Court has directed the Trial Courts and High Courts not to quash proceeding in corruption cases on grounds of delay only. A Division Bench of Justice Deepak Mishra and Justice K. S. Radhakrishnan said, "In the present day scenario, corruption has been treated as having the potentiality of corroding the narrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence... is not be adjudged on the bedrock of the quantum of bribe." The Court also said, "An attitude of abusing official position to extend favour in lieu of a benefit is a crime against the collective and anathema to the basic tenet of democracy for, it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, a system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time any come when the unscrupulous people foster and garner the tendency to pave the path anarchism."

The court further opined that the tendency to abuse official position had spread like an epidemic and had shown its propensity for making the collective to believe that unless bribe is given, the work may not be done.

In this case, the accused as alleged had acquired assets worth Rs. 33.44 lakh. Petitioners Niranjan Hemchandra Sashittal of Maharashtra and others were aggrieved over the long delay in the trial of the case registered against them in June 1986 under Prevention of Corruption Act. Mr. Sashittal complained that he was placed under suspension, his reputation was lost and he also lost respectable livelihood. The Supreme Court refusing to interfere asked the trial Court to complete the trial before December-end of this year. The Court noted: "It can be stated that without fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance...."

Dr. Raju Majhi,
Assistant Professor



My Experience at Law School, BHU

I was delighted to attend the International Conference on International Environmental Law, Trade Law, Information Technology Law, and Legal Education on March 2-3, 2013. Sponsored by the Banaras Hindu University Faculty of Law, this first ever International Conference in Law School Varanasi was inaugurated by Hon'ble Mrs. Justice Ranjana Prakash Desai of the Indian Supreme Court of India.

It was attended by four hundred delegates, including a number from Bangladesh, Malaysia, Nepal, Nigeria, South Africa, and the United States. It was a busy and full two days, but it was intellectually stimulating and thoroughly enjoyable at the same time. I am most grateful *inter alia*, to Dean B.C. Nirmal and the Organizing Secretary, Dr. Rajnish K. Singh, and his team. Along with the rest of the delegates, I would like to extend my sincere thanks to them and their colleagues for a job well done.

I gave presentations on March 2 entitled "Rio+20: Where From? Where To?" and "Research Excellence in Legal Education: A Critical Assessment of the Research Excellence Framework 2014 and the British Approach." I appreciated the feedback that I received on my papers from colleagues on the international environmental law and legal education panels and learned quite a bit about trade law and information technology law from the other panels. I was flattered to have been invited to address the conference as a Guest of Honour during the valedictory session on March 3.

BHU has a beautiful campus. I enjoyed walking around the campus, with its attractive pale yellow buildings with red accents. I was able to make time during my stay in Varanasi to go to Sarnath, and I also saw the sun rise on the ghats along the River Ganges. A memorable time indeed.

I must say that the law students were most helpful to me during my stay. They assisted me in the library and with computer access. I am particularly grateful to Ms. Pooja Pandey, who I learned has had quite some success with public interest litigation during her time as a law student at BHU. This, combined with the good work that the BHU legal aid clinic is doing, gives me great confidence that BHU is succeeding in its crucial mission of creating the next generation of competent and committed lawyers of good conscience in India.

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