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editorial

On September 2, 2013 Rajya Sabha passed the historic National Food Security Bill (NFSB) which seeks to provide highly subsidized food grains to about two third population of the country as a matter of right. The Bill was passed by Lok Sabha on 26th August 2013. The passage of the Bill in the Parliament should be whole heartedly welcomed as it enables peoples of the country to realize their right to food with dignity.

In a major development, on September 5, 2013 the Rajya Sabha passed the Constitution (99th Amendment) Bill, 2013 which proposes to do away the existing collegium system of appointments to the higher judiciary and to replace it with a Judicial Appointments Commission (JAC). The proposed JAC will consist of three Supreme Court Judges, the Union Law Minister, the Law Secretary, and two 'eminent persons' appointed by a panel consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India. Whether new system is an improvement over the existing one or it will tilt the balance in favour of the executive is an issue which need to given serious thought. Pros and cons of the new system of JAC should be thoroughly discussed before adopting the same.

In the international arena, the entry into force of the ILO's Convention Concerning Decent Work for Domestic Workers (No 189) (Decent Work Convention) and the Maritime Labour Convention (MLC, 2006) is a major development. The Decent work Convention setting out international labour standards for tens of millions of domestic workers worldwide was adopted at the 100th session of the International Labour Conference in June 2011 which entered into force on 5th September 2013 upon deposit of requisite number of ratifications. It contains certain basic rights at par with other workers. India is a signatory of the Convention but has yet not ratified it. The conditions of domestic workers worldwide is pitiable and India is no exception. The country needs to pass a legislation which comprehensively addresses the concerns of domestic workers. Similarly, entry into force of the MLC, 2006 is equally important development. Popularly known as the seafarers' "Bill of Rights", the Convention confers on the world's 1.2 million seafarers the right to decent conditions of work. It consolidates and updates more than 68 international labour standards to the maritime sector adopted over the last 80 years.

After the successful completion of the first year of publication of the BHU Law School Newsletter, I am hopeful that the untiring efforts of the editorial team shall ensure timely and updated publication of it. I must take the opportunity to express gratitude to our Hon'ble Vice Chancellor Dr. Lalji Singh for his continued support for publication of this Newsletter. I am thankful to my colleagues and others who have helped in numerous ways towards publication of this issue. I am especially thankful to Mr. Digvijay Singh, Mr. Anoop Kumar and Miss Ranjana Tiwari for providing research support to the editorial committee.

B.C. Nirmal

Faculty Updates

- Professor B.C. Nirmal published a paper "Tackling the Problem of Space Debris: The Need to a Legal Framework" in the *Indian Journal of International law*, vol. 53(2), 2013 pp. 27-45. He published another paper "Implementation of the Biological Convention and the Indian State Practice" in *ISIL Yearbook of Humanitarian and Refugee Law* (2014), pp. 74-75. Prof. Nirmal also published a paper "The Intellectual Property Rights Protection of Softwares : The Indian Perspective", *UMLJ* (2013), pp. ixii-xxxviii. Professor Nirmal delivered a lecture on 'Relevance of Geneva Conventions in National University of Study and Research in Law, Ranchi 13 August 2013. He also delivered a lecture on Violence against Women: A Human Rights Issue in Sahai Memorial Lecture, Chhota Nagpur Law College, Ranchi on 12 August 2013.
- Dr. Rajnish K. Singh presented a paper "Copyright Issues in Open Source Software" in the National Seminar on "Information Technology and Open Source Software: Issues and Challenges" organized by HNLU, Raipur on 21-22 September, 2013. He also delivered four lectures on Sale of Goods Act and Indian Contract Act at TNAU, Coimbatore for MANAGE, Hyderabad on 23-24 September, 2013.
- Dr. R.K. Murali delivered four lectures on Company Act and Business Administration at TNAU, Coimbatore for MANAGE, Hyderabad on 23-24 September, 2013.

Activities at Law School

Induction programme for LL.B. I Semester Students

A five-day Induction Programme was conducted for the newly admitted LL.B. students from 1st to 7th August 2013. Three lecture sessions were organized each day on variety of subjects including Law, Sociology, Management, Economics, Library Information, Computer Skills and Soft Skill Development. During the programme fifteen interactive lecture sessions and three demonstration sessions by the representatives of *Westlaw*, *Manupatra* and *All India Reporters* were conducted. Various areas including Legal Education, Legal Profession, Career and Opportunities in Law, Law and Management, Law and Political Science, Communication and Communicative Skills, Oral Communication, Law and Sociology, Anti Ragging, Computer Applications and Stress Management were covered to equip the students with the knowledge and skill required to pursue the course in law effectively. Prof. Harikesh Singh, Prof. Sanjay Gupta, Prof. S.K. Trigun, Prof. M. S. Pandey, Prof. D. P. Verma, Prof. B. C. Nirmal, Prof. Alok K. Rai, Dr. Madhu Kushwaha, Dr. Raju Majhi, Dr. J. Sarkar, Dr. V. K. Jain, Dr. Md. Nazim, Mr. Raghavendra Dutt are among those who delivered lectures in the induction programme. The programme was appreciated by experts and students alike. Dr. Raju Majhi, Students Advisor conducted this programmed under the guidance and supervision of Prof. B. C. Nirmal, Head & Dean, Law School, BHU.

LAW FACULTY BHU and LITERARY CLUB-IIT-BHU jointly organized "*Pravah*" a debate series. *PRAVAH* included more than 100 students from various department/ institutes/ faculties. Parvah had 3 sessions in this first season. First was FOOD SECURITY: A SOCIAL OBJECTIVE OR MIRAGE (21 September 2013), and the second was CBI AUTONOMY: PROBABILITIES OR IMPROBABILITIES (28 September 2013). This initiative enjoyed an encouraging success. The novelty of this debate was the publication of a souvenir which comprised abstracts of participants. The convener of this debate series was Dr. K.M. Tripathi.

Intra-faculty debate on the topic "Creation of New States" was organized on 10th august 2013. Dr. K.M. Tripathi acted as the convener of the event.

Forthcoming Events

- Intra-Faculty Moot Court Competition 2013-1014, to be organized by Faculty of Law, Banaras Hindu University, on October 26, 2013.
- Indian Conference of International and Comparative Law, to be jointly organized by Faculty of Law, Banaras Hindu University, Soochow University School of Law, Taipei and Chinese Society of Comparative Law on January 22, 2014.
- National Seminar on "Legal Protection of Consumers in a Global Economy- Recent Approaches and the Way Forward" to be organized by Faculty of Law, Banaras Hindu University in Collaboration with the Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi on 29-30, March, 2014.
- Inauguration of Moot Court Hall
- Special lecture of Hon'ble Vice Chancellor on the subject of wildlife conservation in India.
- Tentative plan for introducing new academic programmes from July 2014.

  Five year BA, LLB Course (subject to approval of BCI)

  One Year LLM Course

  Diploma Courses (part time) in Environmental law, Cyber law , Forensic science and law, Corporate Governance and Tax Management.

Legislative Trends

The Criminal Law (Amendment) Act, 2013 [Act No. 13 of 2013]

It is an Act to amend the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973; the Indian Evidence Act, 1872; and the Protection of Children from Sexual Offences Act, 2012. Section 2 of this Act amends section 100 of IPC and provides for offence of acid attack and its punishment. Section 3 of this Act inserts new sections 166A and 166B. Section 166A provides for punishment for public servant disobeying direction under law and section 166B provides for punishment for non-treatment of victim.

Section 5 inserts new sections 326A and 326B. Section 326A explains voluntarily causing grievous hurt by use of acid and provides for its punishment. Section 326B explains voluntarily throwing or attempting to throw acid and provides for punishment. It also explains the term 'acid'. Section 7 inserts new sections 354A, 354B, 354C and 354D. Section 354A describes sexual harassment and punishment for sexual harassment. Section 354B talks about assault or use of criminal force to woman with intent to disrobe. Section 354C describes voyeurism and provides punishment for it. Section 354D describes stalking and punishment for it. New section 370 describes trafficking of person and punishment for it and new section 370A describes exploitation of a trafficked person and punishment for it. Sections 375, 376, 376A, 376B, 376C and 376D have been substituted. Section 375 describes rape and section 376 provides punishment for rape. Section 376A provides punishment for causing death or resulting in persistent vegetative state of victim. Section 376B provides punishment for sexual intercourse by husband upon his wife during separation. Section 376C provides punishment for sexual intercourse by a person in authority. Section 376D describes gang rape and provides for its punishment and section 376E provides punishment for repeat offenders.

New proviso in section 54A of the Code of Criminal Procedure provides that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate. Another new proviso in section 154(1) provides that if the information is given by the woman against whom an offence under different sections have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer. In section 161 of the Code, in sub-section (3), a new proviso has been inserted to provide that the statement of a woman against whom an offence have been committed or attempted shall be recorded, by a woman police officer or any woman officer. New section 198B provides that no court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon *prima facie* satisfaction of the facts that complaint has been filed by the wife against the husband. In section 309 of the Code, new sub-section (1) provides that in every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. New section 357B provides compensation to be in addition to fine under section 326A or section 376D or Indian Penal Code and section 357C provides about treatment of victims. The First Schedule to the code has also been amended.

New section 53A has been inserted to the Indian Evidence Act, 1872, which provides evidence of character or previous sexual experience not relevant in certain cases and section 114A has been substituted, which talks about presumption as to absence of consent in certain prosecution for rape. Section 119 has been substituted, to provides where witness unable to communicate verbally.

Section 42 of the Protection of Children from Sexual Offences

P. Sathasivam is New CJI

P. Sathasivam took over as the 40th Chief Justice of India on 19th July 2013. Justice Sathasivam, who has succeeded Justice Altamas Kabir will serve till April 26, 2014. He was born on 27 April 1949 in Kadappanallur in Erode district of Tamil Nadu. Justice Sathasivam was the first graduate of his family and first law graduate in his village. He was made a permanent Judge of the Madras High Court on July 8, 1996. Justice Sathasivam was elevated to the Supreme Court of India on August 21, 2007, when he was serving as Judge of the Punjab and Haryana High Court.

Act, 2012, has been substituted, which provides for alternate punishment and section 42A provides that the Act is not in derogation of any other law.

This amendment Act repeals the Criminal Law (Amendment) Ordinance, 2013

The Rajiv Gandhi National Aviation University Act, 2013 [Act No. 26 of 2013]

It is an Act to establish and incorporate a National Aviation University to facilitate and promote aviation studies and research to achieve excellence in areas of aviation management, policy, science and technology, aviation environment, training in governing fields of safety and security regulations on aviation and other related fields to produce quality human resources to cater to the needs of the aviation sector.

Section 2 of the Act, defines different terms such as 'Academic Council'; 'Board of Schools'; 'Dean of School'; 'Distance Education System'; 'Executive Council'; 'Finance Committee'; 'Institution'; 'off-shore Campus'; 'Recognised Institution'; 'recognised teachers'; 'teachers of the University' etc.

Section 3 of the Act establishes "Rajiv Gandhi National Aviation University"; section 4 talks about Objects of University; section 5 talks about powers of University; and section 6 talks about jurisdiction of University. Section 20 establishes the 'Executive Council'; and section 21 establishes 'Academic Council'. Section 30 says annual report of the University shall be prepared under the direction of the Executive Council, which shall include, among other matters, the steps taken by the University towards the fulfillment of its objects.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act No. 30 of 2013]

It is an Act to ensure, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose; and for the purpose of the Act, it defines 'affected area'; 'affected family'; 'agricultural land'; 'cost of acquisition'; 'land owner'; 'marginal farmer'; 'market value'; 'patta'; 'Resettlement Area'; 'Scheduled Areas'; and 'small farmer' etc.

Section 4 provides whenever the Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation in the affected area and carry out a Social Impact Assessment study in consultation with them. Section 5 says public hearing is to be held for Social Impact Assessment study. Section 9 exempts undertaking of the Social Impact Assessment study in case of urgency. Section 10 provides special provision to safeguard food security.

Chapter IV deals with notification and acquisition of land; and chapter V deals with rehabilitation and resettlement award; chapter VI provides procedure and manner of rehabilitation and resettlement; chapter VII establishes national monitoring committee for rehabilitation and resettlement; chapter VIII provides for establishment of land acquisition, rehabilitation and resettlement authority; chapter IX describes apportionment of compensation; chapter X provides for payment of compensation; and chapter XI describes temporary occupation of land. It repeals the Land Acquisition Act, 1894.

International Legal News and Events

10th Anniversary of the Entry into Force of the Cartagena Protocol on Biosafety

11 September 2013 marks the tenth anniversary of the 2000 Cartagena Protocol on Biosafety to the 1992 Convention on biological Diversity. The Protocol was adopted amidst the controversy regarding potential risks and benefits of genetic modification of living organisms on 29 January 2000 which entered into force on 11 September 2003. To date, 165 countries and the European Union are Parties to the Protocol.

The Protocol establishes a regulatory regime to ensuring that the development, handling, transport including transboundary movements, use and release of living modified organisms (LMOs) resulting from modern biotechnology are undertaken in a manner that prevents or reduces risks to the conservation and sustainable use of biological diversity, taking also into account risks to human health.

The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress reaches the halfway mark to entry into force

With ratification by Hungary on 9 December 2013, the Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety reached the halfway mark to entry into force. Hungary joins Albania, Bulgaria, Burkina Faso, Cambodia, Czech Republic, the European Union, Germany, Guinea-Bissau, Ireland, Latvia, Lithuania, Luxembourg, Mexico, Mongolia, Norway, Romania, Spain, Sweden and the Syrian Arab Republic that have deposited their instruments of ratification or accession to the Supplementary Protocol.

The Supplementary Protocol will enter into force on the 90th day after the date of deposit of the 40th instrument of ratification, accession, acceptance or approval by the Parties to the Cartagena Protocol on Biosafety. The Supplementary Protocol aims to contribute to the conservation and sustainable use of biodiversity by providing international rules and procedures for response measures in the event of damage resulting from living modified organisms. The Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was adopted on 15 October 2010 in Nagoya, Japan.

Maritime Labour Convention enters into force

Belgium deposited with the International Labour Office the instrument of ratification of the Maritime Labour Convention (MLC, 2006) on the historic day of 20 August 2013 which marks the entry into force of the Convention. Belgium is the 46th ILO Member State and the 19th European Union member to have ratified the Convention. The MLC, 2006, popularly known as the seafarers' "Bill of Rights" sets out the world's 1.2 million seafarers' right to decent conditions of work on a wide range of subjects. The new labour standard consolidates and updates more than 68 international labour standards to the maritime sector adopted over the last 80 years.

Decent Work Convention enters into force

This historic ILO Convention Concerning Decent Work for Domestic Workers (No 189) which gives domestic workers the same rights as other workers entered into force on 5th September 2013. The Decent Work Convention was adopted together with the Domestic workers Recommendation (No201) on 16 June 2011, by the government, employer and employee delegates at the 100th annual session of the International Labour Conference (the General Conference). The Decent Work Convention sets out international labour standards for tens of millions of domestic workers worldwide. This is for the first time that an international treaty was adopted focusing exclusively on the conditions of domestic workers. The Convention sets out that domestic workers worldwide shall have the basic labour rights at par with other workers including reasonable hours of works, daily and weekly rest, a limit on in kind payment, clear terms and conditions of employment as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining.

Since the Convention's adoption, several countries have passed new laws or regulations improving domestic workers' labour and social rights, including Venezuela, Bahrain, the Philippines, Thailand, Spain and Singapore. Legislative reforms have also begun in Finland, Namibia, Chile and the United States, among others. Several others have initiated the process of ratification of ILO Convention 189, including Costa Rica and Germany.

Myanmar ratifies the Worst Forms of Child Labour Convention

On 18 December 2013, the Government of the Republic of Myanmar deposited with the International Labour Office the instrument of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182). Myanmar is the 178th ILO Member State to ratify the instrument which calls for the prohibition and elimination of the worst forms of child labour, including slavery, trafficking, the use of children in armed conflict, the use of a child for prostitution, pornography and illicit activities (such as drug trafficking) as well as hazardous work. It is estimated that globally, approximately 85 million children worldwide are engaged in hazardous work, including 33.9 million in Asia and the Pacific.

Human Rights Committee concludes one hundredth and eighth session

On 26 July 2013 the Human Rights Committee, which is a monitoring body under the 1966 International Covenant on Civil and Political rights (the ICCPR) concluded its one hundredth and eighth session after adopting its concluding observations and recommendations on the reports of Ukraine, Tajikistan, Indonesia, Finland, Albania, and Czech Republic on their implementation of the provisions of the ICCPR. During the session, the Committee continued its discussion on a draft General Comment on Article 9 of the International Covenant on Civil and Political Rights, concerning the right of everyone to liberty and security of person. The HRC periodically examines reports submitted by States Parties on the promotion and protection of civil and political rights. Representatives of these Governments introduce the reports and respond to oral and written questions from the Committee. There are now 167 States Parties to the ICCPR.

Under the Optional Protocol to the ICCPR, 114 States Parties recognize the competence of the Committee to consider confidential communications from individuals claiming to be victims of violations of any rights proclaimed under the treaty. At present, 380 communications are pending before the HRC. Seventy-five States parties have ratified or acceded to the Second Optional Protocol to the Covenant, which also aims to abolish the death penalty. The one hundredth and ninth session of the HRC will be held from 14 October to 1 November, 2014 in Geneva.

ECHR found the automatic and indiscriminate ban on prisoners' right to vote in Turkey is too harsh

On 17 September, 2013 in the case of *Söyler v. Turkey* (application no. 29411/07), a seven Judge Chamber the European Court of Human Rights (ECHR) held, unanimously, that there had been a violation of Article 3 of Protocol No. 1 (right to free elections) to the 1950 European Convention on Human Rights and Fundamental Freedoms.

The case concerned a complaint brought by a businessman convicted for unpaid cheques that he was not allowed to vote in the 2007 Turkish general elections while he was being detained in prison or in the 2011 general elections after his conditional release. The Court found that the ban on convicted prisoners' voting rights in Turkey was automatic and indiscriminate and did not take into account the nature or gravity of the offence, the length of the prison sentence or the prisoner's individual conduct or circumstances.

It further held that the ban was harsher and more far-reaching than any the Court has had to consider in previous cases against the United Kingdom, Austria and Italy as it was applicable to convicts even after their conditional release and to those who are given suspended sentences and therefore do not even serve a prison term. The ECHR noted that the applicant's case illustrated the indiscriminate application of disenfranchisement even to those convicted of relatively minor offences. Under Turkish law, persons convicted of having intentionally committed an offence are unable to vote while serving their sentences. While being detained in prison, Mr Söyler was therefore not able to vote in the general elections held in July 2007. He was not able to vote in the general elections of 2011 either, as, even though he had been conditionally released in April 2009.

According to Articles 43 and 44 of the European Convention, the Judgment of 17-09-2013 is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court.

Recent Judicial Decisions

Jitendra Singh @ Babboo Singh & Anr.* v. *State of U.P., 2013 Indlaw SC 428

Supreme Court lays down procedure to be followed in trials of juvenile accused

On July 10, 2013, a Division Bench of Justices T.S. Thakur and Madan B. Lokur in this case laid down the procedure to be followed by the courts in trial of a juvenile accused. The Court observed that it becomes obligatory for every Magistrate before whom an accused is produced to ascertain, in the first instance or as soon thereafter as may be possible, whether the accused person is an adult or a juvenile in conflict with law. The reason for this, obviously, is to avoid a two-fold difficulty: first, to avoid a juvenile being subjected to procedures under the normal criminal law and de hors the Act and the Rules, and second, a resultant situation, where the "trial" of the juvenile is required to be set aside and quashed as having been conducted by a court not having jurisdiction to do so or a juvenile, on being found guilty, going 'unpunished'. This is necessary not only in the best interests of the juvenile but also for the better administration of criminal justice so that the Magistrate or the Sessions Judge (as the case may be) does not waste his time and energy on a "trial".

However, in cases before coming into force the new Juvenile Justice Act of 2000, where a male accused was above 16 years but below 18 years of age on the date of occurrence of the offence, the proceedings pending in the Court concerned will continue and be taken to their logical end except that the Court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. This is because the Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000. One of the basic distinctions between the 1986 Act and the 2000 Act relates to age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females. Hence, Section 20 of the new Act makes a special provision in respect of pending cases.

D. K. Srivastava
Associate Professor

Union of India and another* v. *Namit Sharma, 2013 Indlaw SC 559

SC recalls its earlier verdict on the appointments of information commissioners

In a significant Judgment of 03-09-2013, the Supreme Court recalled its earlier verdict of 13-09-2012. In the Judgment of 13-09-2012, the Apex Court had ruled that as Information commission was a judicial tribunal having essential trappings of a court, and for effectively performing the functions and exercising the powers of the Information commission , there is a requirement of a judicial mind. The Court in the judgment under review had further held that the principle of

independence of judiciary, by necessary implication, would also apply to tribunals whose functions are of quasi-judicial nature. It had been thus held that the persons eligible for appointment should preferably have judicial background and they should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the information Commission in its day-to –day working. The court had thus had given the direction that "[t]he Information Commission at the respective levels shall hence forth work in benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions."

A Division Bench of the Supreme Court consisting of Justice A.K. Patnaik and Justice A.K. Sikri interpreting the Sections 18, 19 and 20 of the Right to Information Act held that 'the functions of the Information Commission are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred u/s 3 of the Act is not denied such information except in accordance with the provisions of the Act." The Court further held that while deciding the issue whether a citizen should or should not get a particular information the Information Commission , in fact, does not decide any dispute between the parties concerning their legal rights other than their right to get information in possession of a public authority. "This function obviously is not a judicial function , but an administrative function conferred by the Act on the Information commissions." Regarding the observation of the Court while deciding the judgment under review that "there is a *lis* to be decided by the Information Commission inasmuch as the request of a party seeking information is to be disallowed and hence requires a judicial mind", the Court in the present case held that "[b]ut we find that the *lis* that the Information commission has to decide was onlyr4egard to the information in possession of a public authority and the Information Commission was required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest protected by the provisions of the Act. The Information commission, therefore, while deciding this *lis* does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act."

Regarding the applicability of the principles of the separation of power and independence of judiciary to the Information Commissions, the Court held that once it is clear that the information Commissions do not exercise judicial powers but actually discharge administrative functions, these constitutional principles cannot be relied on to hold that "Information Commissions must be manned by persons with judicial training , experience and acumen or former Judges of the High Court or the Supreme Court."

Ajendra Srivastava, Associate Professor
D.K. Mishra, Associate professors

Lily Thomas v. *Union of India and ors.,* AIR2013 SC 2662

Parliamentarians to be disqualified from the date of conviction

The Supreme Court on 10th July, 2013 held that charge sheeted Members of Parliament and Members of a Legislative Assembly, on conviction for certain offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal. A Bench of Justices A.K. Patnaik and S.J. Mukhopadhaya struck down as unconstitutional section 8 (4) of the Representation of the People Act 1951 that allows convicted lawmakers a three-month period for filing appeal to the higher court and to get a stay of the conviction and sentence. The Bench, however, made it clear that the ruling will be prospective and those whohave already filed their appeals in the High Courts or the Supreme Court against their convictions would be exempt from it.

The Supreme Court's verdict came on the Public Interest Litigations filed by Lily Thomas and NGO *Lok Prahari* who had sought striking down sub-section (4) of Section 8 of the Representation of the People Act, 1951 as *ultra vires* the Constitution, terming this provision as "discriminatory" and having the potential to encourage criminalisation of politics.

The Bench remarked that "as we have held that Parliament had no power to enact sub-section (4) of section 8 of the Act and accordingly sub-section (4) of section 8 of the Act is *ultra vires* the Constitution, it is not necessary for us to go into the other issue raised in these writ petitions that sub-section (4) of section 8 of the Act is violative of Article 14 of the Constitution. It would have been necessary for us to go into this question only if sub-section (4) of section 8 of the Act was held to be within the powers of the Parliament".

As regards the operation of the new law the Bench held that "under section 8 (1) (2) and (3) of the Act, the disqualification takes effect from the date of conviction. Thus, there may be several sitting members of Parliament and State Legislatures who have already incurred disqualification by virtue of a conviction covered under section 8 (1) (2) or (3) of the Act. Sitting members of Parliament and State Legislature who have already been convicted of any of the offences mentioned in sub-section (1), (2) and (3) of section 8 of the Act and who have filed appeals or revisions which are pending and are accordingly saved from the disqualifications by virtue of sub-section (4) of Section 8 of the Act should not, in our considered opinion, be affected by the declaration now made by us in this judgment. This is because the knowledge that sitting members of Parliament or State Legislatures will no longer be protected by sub-section (4) of section 8 of the Act will be acquired by all

concerned only on the date this judgment is pronounced by this Court".

However, the Bench said that "If any sitting member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by subsection (4) of Section 8 of the Act which we have by this judgment declared as ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and /or sentence."

The decision is hailed in the media as having far-reaching implications for cleansing India's political system.

Anoop Kumar
Research Scholar

Shimbhu and Another* v. *State of Haryana, 2013 All MR (Cri) 3306

Supreme Court ruled that compromise in rape cases is out of question

On 27th August 2013, the Supreme Court of India handed down an important judgment on the sentencing policy in crimes of serious nature scrapping a compromise entered into between the rape victim and the accused persons. The Court observed that any such compromise cannot be a leading factor in inflicting lesser punishment to the perpetrators. "Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle", the Court further observed.

In the instant appeals, the accused persons were awarded 10 years rigorous imprisonment by a trial court in Haryana for gang raping a minor girl in a village of Haryana on December 28 and 29, 1995. The Punjab and Haryana High Court dismissed the appeals filed by the convict/accused persons while affirming their conviction under Section 376(2) (g) read with Section 34 of the Indian Penal Code, 1860.

The convicts/ accused then filed an affidavit from the victim stating that she was married and leading a peaceful life and also that she is blessed with four children. According to the said affidavit, with a view to maintaining harmony in the village, the victim had settled the matter with the accused and she did not want to prosecute the matter further. It was further alleged in the affidavit that she had no objection to their sentence being reduced to the period already undergone.

A Division Bench of the Supreme Court comprising Chief Justice P. Sathasivam and Justices Ranjana Desai and Ranjan Gogoi rejected the plea for reduction of sentence based on the alleged compromise between the rape victim and the accused persons and dismissed the appeals. Reflecting on the sentencing policy under Section 376 920 (g) of the IPC which deals with the punishment in cases of gang rape, the Court observed that the ample discretion conferred on the judges to levy the appropriate sentence is not unfettered in nature rather various factors like the nature, gravity, the manner and circumstances of the commission of the offence, the personality of the accused, character, aggravating as well as mitigating circumstances, antecedents etc., cumulatively constitute as the yardsticks for the judges to decide on the sentence to be imposed. Indisputably, the sentencing Courts shall consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the crime committed."

In applying the well cherished principle that all punishments must be directly proportionate to the crime committed, the Court delved into legislative intent behind Section 376 (2) (g) IPC which deals with gang rape. It observed, "[T]he normal sentence in a case where gang rape is committed is not less than 10 years though in exceptional cases, the Court by giving "special and adequate reasons", can also award the sentence of less than 10 years." Referring to its previous case law on the subject including the decisions in *Kamal Kishore v State of H. P.* (2000) 4 SCC 502*; State of M.P. v Bala @balaram* (2005) 8 SCC 1; *State of Karnataka v Krishnappa* (2000) 4 SCC 75 and *Mohd. Imran Khan v. state Government (NCT of Delhi)* (2011) 10 SCC 192, the Supreme Court held that the decisions had clearly stated that none of the grounds raised would suffice to be 'special and adequate reasons' even if put together.' Referring to the proviso to Section376 (2) (g) IPC, which is now deleted through Criminal Law (amendment) Act, 2013. The Court further clarified that" the power under the proviso should not be used indiscriminately….for the reason that an exception clause requires strict interpretation." Taking an exception of the trend of taking softer view of the matter in awarding sentence in cases of rape, it observed that the trend "exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.

In a country like India, where a rape case is reported every 20 minutes as per a 2012 statistics, the instant case assumes significance as it emphasizes the need to severely deal with crimes against women.

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LL.B. 3rd Semester

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