



BHU LAW SCHOOL Newsletter

Vol. II, No. 3, October - December 2013

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editorial

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On December 11, 2013, the Supreme Court in its landmark judgment ruled that the same sex relationship was an offence irrespective of age and consent by setting aside the Delhi High Court verdict that found Section 377, IPC to be violative of Fundamental Rights. The apex court's judgment declaring Delhi High Court' ruling decriminalizing consensual same sex relationship as constitutionally unsustainable has generated a great deal of controversy among the lawyers and the academics. In its 2009 verdict, Delhi High Court had ruled that Section 377 of the IPC which makes same sex relationship between two consenting adults an offence was unconstitutional as being against the right to liberty and dignity. While everyone should respect the law, we cannot overlook the fact that the judgment has sharply divided the legal community. The legal and moral issues surrounding the same sex relationship are complex and are of great importance which needs to be settled as they have far reaching implications to the society. While a review petition is pending before the Court, the issue needs to be debated and discussed in the galaxy of academia.

The WTO's Bali Ministerial Conference concluded on 7 December 2013 with agreement on a package of issues designed to streamline international trade, and to allow developing countries more options for providing food security represents a significant development towards boosting the overall growth.

Last three months were full of academic as well as extracurricular activities at the Law school. Many students' activities were organized successfully. We have finalized some new courses including- Five-Year BA, LL B(HONS) Ten- Semester Degree Programme (subject to approval of BCI), One Year LL M Programme (as per norms of UGC) and some Part -Time PG Diploma Courses. We solicit the full and active cooperation of all in successful running of these academic programmes from the Session 2014-15. We express our sincere gratitude to our Hon'ble Vice Chancellor **Dr. Lalji Singh** for extending his wholeheartedly support to the efforts of Faculty towards launching new programmes.

We wish thanks to all those who have extended their help towards publication of this issue especially to our students- Mr Anoop Kumar, Mr. Digvijay Singh and Mr. Laxman Singh Rawat for providing research support to the Editorial- Committee.

B.C. Nirmal
Head & Dean



Introduction of New Academic Programmes in the LAW SCHOOL

Hon'ble Vice Chancellor, Banaras Hindu University **Dr. Lalji Singh** (Padmashri), has very kindly approved the new courses and programmes to be commenced from the academic-session 2014-15 in the Law School. With his continued support, the Law School is introducing the following courses:

1. One Year (Two- Semester) LL.M. Degree Course
2. Five-Year (Ten- Semester) BA, LLB (Hons) Degree Programme (subject to approval of BCI)
3. Diploma Courses (Part time):
 - Forensic Science and Medical Jurisprudence
 - Tax Management
 - Mass Communication and Media Law
 - Human Resource Management Service and Industrial Law
 - Information Technology Law
 - Corporate Governance
 - Environmental Law Policy and Management
 - Intellectual Property Rights

In addition to the approval of above courses under his emergency power, the Hon'ble Vice Chancellor has also taken initiative for construction of additional Teachers' chambers and up gradation of Seminar Hall of the Law School.

• Faculty News

- All the volumes of the Banaras Law Journal (ISSN.- 0522-0815) are available on www.bhu.ac.in/Academics/Law/blj... since 1965 and 2013 Issues shall be released in March 2014.

• Faculty Updates

- Faculty Members Promoted to the Post of Professor



Dr. Ajay Kumar



Dr. A. K. Pandey



Dr. D.K. Srivastava



Dr. M. N. Haque



Dr. Pradeep Singh



Dr. S. R. Tripathy



Dr. C.P. Upadhyay



Dr. D.K. Mishra



Dr. Ajendra Srivastava



Dr. R.K. Murali



Dr. V.S. Mishra

Selected to the Post of Associate Professor



Dr. R. K. Patel

Faculty Members Promoted to the Higher Grade Pay (AGP)



Dr. G.P. Sahoo



Dr. V.K. Saroj



Dr. R.K. Singh



Dr. Raju Majhi



Dr. K.M. Tripathi

- **Prof. Ajendra Srivastava**, Law School, Banaras Hindu University delivered keynote address on “Human Right and Social Justice” in the National Seminar in Human Right and social justice organized in the KS Saket P.G. College AzAodha ,Faizabad on December 6,2013 and also presented paper titled “Recognition of Belligerency: New Trends and Principles” in the “Indian Conference of International and Comparative Law”Jointly organized byFaculty of Law, Banaras Hindu University,Soochow University School of Law, Taipei andChinese Society of Comparative Law on January 22, 2014.
- **Prof Dharmendra Kumar Mishra**, Law School, Banaras Hindu University was course coordinator the first Winter School Course(21-day), organized by the Academic Staff College, Banaras Hindu University commenced from 20th December 2013.
- **Dr. J.P. Rai**, Associate Professor, Law School, Banaras Hindu University published a paper on “Right to Information Act,2005:A Study of Realities” in *Vidhik Chetna- A Journal of the Shivani Gaurav Memorial Law College, Jaunpur, U.P.*
- **Dr. Rajnish Kumar Singh**, Assistant Professor, Law School, Banaras Hindu University delivered Lecture in the two week Faculty Development Program during December 2013 at Faculty of Management Studies, BHU .
- **Dr. Rajneesh Kumar Patel**, Associate Professor, Law School, Banaras Hindu University delivered a Lecture on 'Management of Neonatal Intensive Care Unit and Accountability Under The Law" at Faculty of Ayurveda, Banaras Hindu University.
- **Dr. BibhaTipathi**, Associate Professor, Law School, Banaras Hindu University, presented a paper on “Peace-making Criminology and Swami Vivekananda” in National Seminar on Swami Vivekananda's Contribution to India, organized by Ram Krishna Mission Varanasi on 28th- 29th October 2013. She was the resource person in the National Workshop on “Bhartiya Mahilaon Ki Asmita Ki Raksha Me SamajEvamKanuni Prakriya Kin Bhumika” and presented a paper on “Streevadi Andolan KaBhartiya Mahilaonki Vidhik Sthiti per Prabhav” on 27th October 2013
- **Dr. Vijay Kumar Saroj**, Assistant Professor, Law School, Banaras Hindu University participated in International Conference on “Asian and International Law in the 21st Century: New Horizon” jointly organized by Asian Society of International Law and Indian Society of international law on

14th to 16th November 2013 at New Delhi. He presented a paper on “Challenges of Women Impairment in Rural Arias” in a national Seminar on Empowerment of Rural Women through Panchayati Raj Institution Organized by Sudhakar Mahila P.G. College Varanasi on 9- 10 November 2013. He also presented a paper on “Samajik Nayayki Prappti me Badha: Vibhinn Vishmataye” in a National Seminar on Problem of Regional Disparity in India with Special reference to Uttar Pradesh on December 14-16, 2013organized by Department of Economic, MG Kashi VidyPith Varanasi.

- **Dr. Raju Majhi**, Assistant Professor, Law School, Banaras Hindu Universityparticipated in International Conference on “Asian and International Law in the 21st Century: New Horizon” jointly organized by Asian Society of International Law and Indian Society of international law on 14th to 16th November 2013 at New Delhi. He also presented a Paper on “Naxalism Problems in India: Problem and Challenges” in a National Seminar on Challenges of naxalism in India organized by MGKVP, on 19th to 20th October 2013 and presented a Paper on “Panchayata System in Jharkhand with special reference to Women” In a National Seminar on Empowerment on Rural Women through Panchayati Raj Institutions Organized by Sudhakar Mahila P.G. College Varanasi on 9- 10 November 2013.

- **Shri Mukesh Kumar Malviya**, Assistant Professor, Law School, Banaras Hindu University got several Awards and published Paper “Bhartiya Uchaa Sikchha Me Badati Mukadamebaji Ka Vidhik Awam Samajik Swarup”, *VidhikChetana vol. IV, December, 2013.*

Activities at Law School

Intra-Faculty Moot Court Competition 2013-1014



Law School BHU organized an Intra-Faculty Moot Court Competition on October 26, 2013. Nearly 100 students Participated in the Competition. Prof D.K. Srivastava and Dr .G.P. Sahoo acted as judge. Best thirty students were finally selected to represent the Law School at National and International Moot Court Competition across the Country. Prof R.K. Murali

coordinated of the event.

Lecture on Legal Education

Lecture on "Legal Education: Future And Prospect" was organized on 19th November, 2013 with the auspice of the Current Law Forum , Law School, BHU. Prof. Salim Akhtar, Dean, Faculty of Law, Aligarh Muslim University and Prof. J.L. Kaul, acting Dean, Faculty of Law, University of Delhi delivered lectures on the subject. Prof. B.C. Nirmla, Head & Dean Law School, BHU also addressed on this occasion to the Faculty Member, Research Scholars and students of the Law School.

Forthcoming Events

- **Indian Conference of International and Comparative Law:** A One Day "Indian Conference of International and Comparative Law" is scheduled to be organized jointly by the Faculty of Law, Banaras Hindu University, Soochow University School of Law, Taipei and Chinese Society of Comparative Law on January 22, 2014.
- **Inauguration of Moot Court Hall and Special Lecture:** The Moot Court Hall of the Law School is scheduled to be inaugurated by **Dr. Lalji Singh (Padmashri)**, Hon'ble Vice-Chancellor of Banaras Hindu University on 15th February 2014 and Hon'ble Vice-Chancellor will deliver a **Special Lecture** on "Conservation of Wildlife in India".
- **National Seminar** on "Legal Protection of Consumers in a Global Economy- Recent Approaches and the Way Forward" scheduled 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.
- **Mahaman Madan Mohan Malviya National Moot Court Competition** shall be organized on 12-13, April, 2014
- Release of Proceedings containing select papers of National seminar on "Science, Technology and Law Reform" to be Organized on 3-4 November 2012.
- Release of Proceeding containing select papers of International Conference on "International Environmental Law, Trade Law, Information Technology Law and Legal Education" to be Organized on 2-3 March, 2013.
- One day workshop organised by IPR Cell, BHU on 22 March, 2014 on Intellectual Property Rights.

Legislative Trends



THE NATIONAL FOOD SECURITY ACT, 2013

(Act No. 20 of 2013)

It is an Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and connected matters. It extends to the whole of India and came into force on the 5th day of July 2013. It defines some important terms such as fair price shop, food grains, food security, food security allowance, meal, minimum support price, social audit, Targeted Public Distribution System.

Under section 3 of the Act priority households are entitled to five kilograms of food grains per person per month, and *Antyodaya* households to thirty-five kilograms of food grains per household per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System. The combined coverage of Priority and *Antyodaya* households called eligible households shall extend up to seventy-five per cent of the rural population and up to fifty per cent of the urban population. Eligible households shall be entitled to food grains at the subsidized price not exceeding rupees 3 per kg for rice, rupees 2 per kg for wheat and rupee 1 per kg for coarse grains for a period of three years from the date of commencement of this Act. These may be revised after three years by the Central Government.

Under section 4 of the Act every pregnant and lactating mother is entitled to a free meal at the local *Anganwadi* during pregnancy and six months after child birth as well as maternity benefits of sixty thousands in instalments. Under section 5 every child up to the age of fourteen years shall entitle in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local *Anganwadi* and in the case of children, up to class VIII or within the age group of six to fourteen years one mid-day meal free of charge every day except on school holidays, in all schools to meet the specified nutritional standards. Section 6 deals with prevention and management of child malnutrition. It provides that the State Government shall, through the local *Anganwadi* identify and provide meals free of charge to children who suffer from malnutrition so as to meet the specified nutritional standards. Section 7 imposes duty on State Government to implement schemes for realisation of entitlements.

Section 8 gives right to receive food security allowance in case of non-supply of the entitled quantities of food grains or meals to

entitled persons. Such persons shall be entitled to receive such food security allowance from the concerned State Government. Section 9 deals with the percentage coverage under the Targeted Public Distribution System in rural and urban areas for each State shall be determined by the Central Government and the total number of persons to be covered in such rural and urban areas of the State shall be calculated on the basis of the population estimates as per the census of which the relevant figures have been published.

International Legal News and Events



WTO 9th Ministerial Conferences held at Bali

The topmost decision-making body of the WTO is the Ministerial Conference, which usually meets every two years. During the 3 to 7 December 2013, 9th ministerial conference held at Indonesia resort island Bali. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements. There were three main Issues namely The Agreement on Trade Facilitation, Agriculture and Package of least- Develop countries (LDCs). On these issues G-33 and G-20 groups of countries had different proposal but trade minister of 159 members of the WTO managed to reach an agreement. A revived WTO is good for all countries. Its success in years to come will depend on how the more intractable parts of Doha round are taken care of. The Bali Declaration has major implications for India and other developing countries. It was rightly believed that at the Bali Ministerial Conference, the U.S. will use a trump card to have its way with India and other emerging markets: food security legislation of developing countries and the related issue of trade distorting subsidy. On the pretext of allowing India's food security law to exist alongside its commitments to the WTO, the U.S. has wrested an in-principle agreement on the issue of trade facilitation. In other words, India has agreed to greater market access for western companies in order to ensure the survival of the Food Security Act. Of the two main issues-food security and trade facilitation-on which the agreement was reached, the former concerns Indian and other developing countries, which need to subsidies food for poor, while the latter is significant for developed and developing countries. The U.S. Suggestion for a sunset clause of four years was not acceptable to India. A final deal was struck to have an interim agreement until a more permanent arrangement was worked out.

Mr. Carlos Lopes on Climate Change

At the 6 November 2013 the UN Under-Secretary General and Executive Secretary of the Economic Commission for Africa, Mr. Carlos Lopes, has called on Africa to go beyond global negotiations on climate change in their current format and seek solutions that effectively address African concerns on global warming.

UN officials urge concerted action to eradicate modern forms of slavery

At 2 December-2013 top United Nations officials marked the International Day for the Abolition of Slavery with a call for concerted action to eradicate the contemporary forms of this heinous practice. "It is vital that we give special consideration to ending modern-day slavery and servitude which affects the poorest, most socially excluded groups – including migrants, women, discriminated ethnic groups, minorities and indigenous peoples," Secretary-General Ban Ki-moon said in his message for the Day, observed annually on 2 December. The International Day marks the date in 1949 of the adoption by the General Assembly of the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The focus of the day is on eradicating contemporary forms of slavery, such as trafficking in persons, sexual exploitation, the worst forms of child labour, forced marriage and the forced recruitment of children for use in armed conflict. Today, 21 million women, men and children are trapped in slavery all over the world, according to the UN International Labour Organization (ILO), which has teamed up with prominent artists, athletes and advocates in its campaign to "End Slavery Now."

109th Session of Human Rights Committee

One hundredth and ninth session session of Human Rights Committee (HRC) was held from 14 October - 01 November 2013 in Geneva. During the session, the Committee adopted its concluding observations and recommendations on the reports of Bolivia, Djibouti, Mauritania, Mozambique and Uruguay on how they are implementing the provisions of the International Covenant on Civil and Political Rights. The Committee's one hundredth and tenth session will be held from 10 to 28 March 2014, during which it will consider the reports of Chad, Kyrgyzstan, Latvia, Nepal, Sierra Leone and the United States. The HRC is a body of independent experts which monitors implementation of the 1966 International Covenant on Civil and Political Rights (ICCPR).

Recent Judicial Decisions



Suresh Kumar Koushal & Anr. v. Naz Foundation (India) Trust and Others (SLP (Civil) No. 15436 of 2009)

The Supreme Court of India on December 11, 2013 in its landmark judgment held that Section 377 of the Indian Penal Code, 1860 does not suffer from any constitutional infirmity. Section 377, IPC criminalizes all forms of carnal

knowledge against the 'order of nature' with any man, woman or animal and punishes with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and also to fine. On a bare reading and analysis of the provision of the Section, it seems that the Section commands as it proscribes any carnal intercourse, which is non – natural. The cumulative impact of this seemingly lucid provision was that the entire community was precluded from engaging in any form of consensual homosexuality, even in the privacy of their own home.

Naz Foundation, (an NGO committed towards spreading awareness on HIV AIDS and its prevention and control) approached the High Court of Delhi under a Public Interest Litigation stating that the provision of Section 377 of the Indian Penal Code is in violation of the Fundamental Rights:- Articles 14, 15, 19(1)(a)-(d) and 21, to the extent that it penalizes sexual acts in private between consenting adults. It was argued in the writ petition that the law had a discriminatory effect because it was predominantly used against homosexual conduct, thereby criminalizing activity practiced more often by homosexual men and women. Secondly, it jeopardizes HIV/AIDS prevention methods by driving homosexual men and other sexual minorities underground and thirdly, it was also argued that, as private consensual relations are protected under Article 21 of the Constitution. Section 377 is invalid as there is no compelling State's interest to justify the curtailment of a fundamental freedom. The Naz Foundation further argued that Section 377 violates Article 14 on two grounds: first, because it was unreasonable and arbitrary to criminalize non-procreative sexual relations, and secondly, because the legislative objective of penalizing "unnatural" acts had no rational nexus with the classification between procreative and non-procreative sexual acts. The High Court dismissed the writ petition on the ground that only purely academic issues had been submitted which could not be examined by the court. It did the same in relation to a subsequent review petition. The NAZ Foundation challenged both -orders and the writ petition was remitted for a fresh decision in 2006.

The Delhi High Court in its decision (*NAZ Foundation v. Govt. of NCT of Delhi*) accepted the arguments of NAZ Foundation that consensual sexual relations in same-sex (between adults) should be decriminalized, and held that such criminalization is in contravention of the Fundamental Rights to life and personal liberty and equality before the law. The Court stated that Section 377 grossly violates [homosexual individuals'] right to privacy and liberty embodied in Article 21 insofar as it criminalizes consensual acts between adults in private. The court has also held that the Section 377 criminalizes the acts of sexual minorities, particularly men who have sex with men. It disproportionately affects them solely on the basis of their sexual orientation. The provision runs counter to the constitutional values and the notion of human dignity which is considered to be the cornerstone of our Constitution".

Against this decision, in appeal to the Supreme Court a large number of interveners were attracted. Interveners supporting the Appellants included organizations and

individuals who have stated that they had an interest in protecting the moral, cultural and religious values of Indian society. Interveners for the Respondents are composed of individuals and organizations arguing that Section 377 caused harm to the LGBT community and homosexual men in particular.

The Division- Bench of G. S. Singhvi and S. J. Mukhopadhyay, JJ of the Supreme Court, while deciding the case allowed the appeal and overturned the decision of Delhi High Court, finding its declaration to be "legally unsustainable". The Apex Court ultimately found that Section 377, IPC does not violate the Constitutional Mandates. The Apex Court, further, observed that Section 377 does not criminalize a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation.

Whether the Delhi High Court was justified in entertaining the challenge to Section 377 IPC, the Supreme Court stated that the party had "miserably failed" to provide the particulars of the discriminatory attitude exhibited by state agencies towards sexual minorities and of their consequent denial of basic human rights.

The Court held that the details provided to the Delhi High Court was thus "wholly insufficient for recording a finding that homosexuals, gays, etc., are being subjected to discriminatory treatment". The court further observed that: "[T]hose who indulge in carnal intercourse in the ordinary course and those who indulge in canal intercourse against the order of nature constitute different classes [emphasis added] and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification".

In reviewing the reading down of the Section 377 by the High Court, the Supreme Court stated that the High Court had overlooked the fact that "a miniscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders" and that over the last 150 years, fewer than 200 persons had been prosecuted under Section 377, concluding from this that "this cannot be made sound basis for declaring that section *ultra vires* the provisions of Articles 14, 15 and 21 of the Constitution." The court also regarded the discriminatory treatment complained by the Naz Foundation as a result of Section 377 as being neither mandated nor condoned by the provision itself and the fact that the police authorities and others misuse Section 377 is not a reflection of the *vires* of the provision but instead may simply be a relevant factor for Parliament to consider whilst judging whether to amend Section 377, IPC.

The learned judges noted that whilst the court found that Section 377 is not unconstitutional, the Legislature is still free to consider the desirability and propriety of deleting or amending the provision. The decision of the apex court is not only highly commendable, but it is highly protective judgment to the moral outfit which is behind the laws made by man to address the discipline of Crime and Punishment in India.

Dharmendra Kumar Mishra
Professor of Criminal Law

IndraSarmav. v. K. V. Sarma
2013 *Inllaw* SC 773

Enact or amend law to protect children born out of live-in relationships

On 26 November 2013 Supreme Court in a significant judgment on Family and Personal matters observed that “the concept of “marriage and marital relationship” to indicate that the law has distinguished “between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or *de-facto* relationship. Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship.”

In the instant case, appellant and respondent were working together in a private company and the appellant, IndraSarma, had a live-in relationship with the respondent, V.K.V. Sarma, who was already married with two children. She maintained the relationship for about 18 years and claimed maintenance amount under the DV Act. A trial court awarded Rs. 18,000 a month and this was upheld by a session court. However the Karnataka High Court set aside the order. The present appeal is directed against this judgment

Writing the judgment, Justice Radhakrishnan said we are, in this case, concerned with the question whether a “live-in relationship” would amount to a “relationship in the nature of marriage” falling within the definition of “domestic relationship” u/s. 2(f) of the Protection of Women from Domestic Violence Act, 2005 and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to “domestic violence” within the meaning of S. 3 of the DV Act.

Court said that examine the meaning and scope of the expression “relationship in the nature of marriage” which falls within the definition of S. 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is “relationship in the nature of marriage” which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

Court further held that that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a “relationship in the nature of marriage” because it has no inherent or essential characteristic of a marriage, but a relationship other than “in the nature of marriage” and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of “domestic relationship” u/s. 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to “domestic violence” under S. 3 of the DV Act.

Court said that appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures. Court said that “Parliament has to ponder over these issues, and bring in proper legislation or make a proper amendment of the DV Act.”

Anoop Kumar
Research Scholar, Law School BHU

T.S.R. Subramanianand ors. v. Union of India and ors.
MANU/SC/1128/2013

Recording of Verbal or Oral Orders from Superiors and Minimum Tenure for Bureaucrats

On 31st October, 2013, the Supreme Court, in a landmark judgment, ruled that civil servants cannot function on the basis of verbal or oral instructions, orders, suggestions, proposals, etc. and to protect them against wrongful and arbitrary pressure exerted by the administrative superiors, political executive etc. The bench comprising of Justice K.S. PanickerRadhakrishnan and Justice Pinaki Chandra Ghose suggested a fixed minimum tenure for civil servants and observed that repeated shuffling/transfer of the officers is deleterious to good governance. Minimum assured service tenure ensures efficient service delivery and also increased efficiency. The Court also directed the Centre, State governments and the Union Territories to constitute boards on transfers, postings and disciplinary action, etc.

Three main issues were raised in this case, first, the creation of an 'Independent' Civil Service Board or Commission both at the Centre and the State level; secondly, to fixed tenure for civil servants ensuring stability; and thirdly, to mandate that every civil servant formally record all such instructions/directions received from administrative superiors, political executive etc.

Dealing with first issue, the bench found it difficult to give a positive direction to constitute an independent Civil Service Board (CSB) at the Centre and State level, without executive control. The Court held that till the Parliament enacts a law, CSB, consisting of high ranking in service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level, could be a better alternative to guide and advise the State Government on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also could be overruled, by the political executive, but by recording reasons, which would ensure good governance, transparency and accountability in governmental functions. The Court observed that CSB consisting of experts in various fields like administration, management, science, technology, could bring in more professionalism, expertise and efficiency in governmental functioning. The Court further held that Parliament can also enact a Civil Service Act under Article 309 of the Constitution to set up a CSB, which can guide and advice the political executive transfer and postings, disciplinary action, etc. The Court directed the Centre, State governments and the Union Territories to constitute such boards within three months, if not already constituted.

Responding to second issue, the Court observed that at present the civil servants are not having stability of tenure, particularly in the State Governments where transfers and postings are made frequently, at the whims and fancies of the executive head for political and other considerations and not in public interest. In this regard, the Court suggested a fixed minimum tenure and held that it would not only enable the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy. The Court also directed the Union, State Governments and Union Territories to issue appropriate directions to secure providing of minimum tenure of service to various civil servants, within a period of three months.

Regarding the third issue, the Court observed that much of the deterioration of the standards of probity and accountability with the civil servants is due to the political influence or persons purporting to represent those who are in

authority. Referring rule 3 (3) (iii) of the All India Service Rules which specifically requires that all orders from superior officers shall ordinarily be in writing. The Court held that in exceptional circumstances, where action has to be taken on the basis of oral directions, it is mandatory for the officer superior to confirm the same in writing. The civil servant is required to seek confirmation of the directions in writing as early as possible and it is the duty of the officer superior to confirm the direction in writing. Therefore, the Court observed that recording of instructions, directions is necessary for fixing responsibility and ensure accountability in the functioning of civil servants and to uphold institutional integrity. Moreover, the Court observed that the practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.

Laxman Singh Rawat

Research Scholar, Law School, BHU

Assumptions of the BANARAS LAW SCHOOL

- We believe, that (धर्मो विश्वस्य जगतः प्रति षठा)* *Dharma* sustain the whole Universe.
- We believe, that law graduates have to play a significant role in the preservation and promotion of the cherished values of the society.
- We believe, that if the **rule of law**** is to be preserved and the law graduates are to play their full role in the society, we must provide a system of legal education that will produce men adept in tailoring traditional legal prescriptions to the needs of present-day India and making our law a tool of social engineering.

(Prof. Anand Jee, 'Dean's Report', (1965) 1 *Banaras Law Journal*, at 3.)

The Decisions

We decided that "the Banaras Law School should be a pioneer institution of legal education in India with an excellent team of teachers and a selected student body, stressing individual attention and extensive as well as intensive study and, thereby, carrying further the all important task of educational renaissance in the country in a manner befitting the monumental efforts of the Founder of the University, Mahamana madan Mohan Malviyaji."

* *Maharanyakopnished.*

** तदेतत् क्षत्रस्य क्षत्तं, चर्द्धर्मः तस्माद्दृष्टं यति परं नास्ति.... स धर्मः सत्यवेतत् - "Law is king of kings. Nothing is superior to law. Law with aid of king enable the weak to prevail over the strong".

- *Brihadaranyakopnished 1/4-5.*

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