LAW PROFILES
Vol. 2, Issue 4, April 2011
Date Of Publication: 14th April 2011

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Price : ₹ 70/- per Issue.
Subscription 1 year : ₹ 770/- (For 12 Issues)
Subscription 3 years : ₹ 1,770/- (For 36 Issues)
Subscription 5 years : ₹ 2,770/- (For 60 Issues)
Publisher.

Printed & Published by:
Law Profiles Publications
14-15 (G.F.), Pushpa Complex, Agra Chowk,
City & District Palwal, Haryana, India - 121102
Phone Nos : (01275) 251840, 607840
Website: www.lawprofiles.co.in

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Printed and Published by Sat Parkash Mangla on behalf of Rajiv Mangla and Printed at Chhayadeep Offset Press, Press house 10, Gurudwara Road Jawahar Colony, N.I.T. Faridabad-121005 (Haryana) and published at 14-15 (G.F.), Pushpa Complex, Agra Chowk, City & District Palwal, Haryana, India - 121102.
Editor : Rajiv Mangla.
Title owner: Rajiv Mangla. Title Code: HARENG00690.

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FEEDBACK

"According to my self, the magazine 'Law Profiles' is playing a great roll in Indian law. Many people in India have no knowledge about their fundamental rights and law. Usually people cannot get sufficient knowledge through the law books because of lack of time. But this magazine gives sufficient information about the law in short. I would like to thank Chief Editor 'Law Profiles' and his colleagues."

— Mr. Diwsh Trivedi

"One day in future, 'Law Profiles' journal will be the first choice of every law college and other educational institutions."

— Retired Principal, Govt. School

"Law Profiles should also contain the review of old issues of the journal. It will not only refresh memories of the old readers, but it will also be informative for the new readers who could not read those issues earlier. The journal should also publish the dates, schedule and syllabus of judiciary examinations of different States."

— Mr. Manish Kumar,
Advocate, Delhi Courts

[Much thanks. We will try our best to implement your suggestions in forthcoming issues of the journal — Editor].

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SUB-EDITOR'S DESK

Dear Readers,

Man and woman together constitute a 'family' which is the smallest unit of the society. Each constituent of society has its own role in the existence of society. Each person satisfies his/her needs and wants help of others. Where each one cares others' feelings and needs as well, that is the civilized society.

What makes a civilized society? In my opinion, four things are must- (i) Women's education, (ii) Public health, (iii) Positive thinking of individuals and (iv) Good living standard of the general public. All fours are inter-connected, though education of woman is the base as without it, we can not improve. Women's education is required not only for the present, but also for the future generations. An educated mother can build better citizens.

Although, today we may claim that we are advanced and civilized, but actually we are far back in matter of civilization. Majority of women are either living in distress or doing suicide each year. One big factor in women backwardness is our negative attitude & hatred thinking against woman, although numerous women have proved themselves and even today, a woman is the President of India. Positive thinking, not only towards self but also against others including the woman, is another important essential for a civilized society. Today not only man, but woman has also negative thinking against another woman. Living distressed, we can neither maintain our physical and mental health nor we can improve our living standard. In that sphere only, we can imagine the civilized society. We should remember:

'Yatra Naryastu Pujyante, Ramante Tatra Devta'

Jai Hind,

With Regards,

Kr. Rajesh Singh Rawat

Sub Editor "Law Profiles"

E-Mail: rajeshsingh@lawprofiles.co.in

MENTOR'S VIEWS

Mr. Shanti Bhushan
Senior Advocate, Supreme Court of India
Former Law Minister for the Union of India

Mr. Shanti Bhushan, a Senior Advocate, in the Supreme Court of India is well-known, eminent and amongst the topmost lawyers of the country. He was born on 11th of November 1925 in Bijnor, a District town of western Uttar Pradesh in the Rajvansh community, a branch of the Agarwal community. His father, Mr. Vishwamitra was a leading advocate in the Allahabad High Court.

He has been a scholar since childhood, not only in the academic field, but also in sports like Cricket, Golf, Tennis and Swimming.

He has practiced in almost every branch of law. There is a long list of cases successfully conducted by him. Some of them are – "brick Control Order' case, Parliament attack case, Arundhati Roy's contempt case, Provident Fund scandal case of Ghaziabad etc. He became known to everyone during Mrs. Indira Gandhi's case, in which he represented Raj Narain against Mrs. Ghandhi, the then Prime Minister of India in an election petition filed by Raj Narain wherein Justice Jagmohanlal Sinha declared her election as null & void. This resulted in the declaration of emergency by Mrs. Gandhi and ultimately in the constitution of the 1st Non-congress Government in India. He was the Union Law Minister in Morarji Desai's Government (1977–79).

At the age of almost 86, he is still quite active. He along with his son (Prashant Bhushan) is working for Judicial Accountability

and Reforms. Both of them are facing criminal contempt before the Supreme Court of India wherein the Court asked them for an apology. But he replied "the question of apology does not arise. I am prepared to go jail".

He is well known for his intellect, argumentative approach, integrity and boldness. Even after reaching the national platform, he left politics for his principles. Very few people have the courage to unveil truth and he is one such personality, having the courage to speak the truth in his book 'Courting Destiny' (published in year 2008 by 'Penguin'). This book also unveils the challenges faced by him in life, the national historical events, the leading cases conducted by him, the powers & deficiencies of the judiciary etc. His services to the nation are countless. A few days ago, he graciously consented to share his precious time with the team of 'Law Profiles' for giving his valuable views for our readers.

You are among the topmost lawyers of India. What prompted you to choose this profession? How did you achieve these heights? What are the turning points of your career?

Even though my father was a successful lawyer in the Allahabad High Court, still there was hardly a tradition of law in our family. If there was a tradition, it was that of Engineering as my two uncles and my elder brother had preferred this field.

Even though my father was a successful lawyer in the Allahabad High Court, still there was hardly a tradition of law in our family. If there was a tradition, it was that of Engineering as my two uncles and my elder brother had preferred this field. In Ewing Christian College, Allahabad, I was fascinated with Science. I was topping my class in the Science subjects and was dreaming to become a 'Scientist' though it was impractical in those days due to unavailability of institutions devoted to scientific pursuits at that time.

Fate intervened on a weekend in early 1943 when while passing through my father's office (at our residence), I saw that several junior lawyers and police officers were in deep discussion over some important question. I was curious and I asked the office clerk about it. He told me that an important question of law had arisen in one of the cases my father had been arguing on behalf of the prosecution. The clerk also told me that this question of law had been referred to a full Bench of High Court (comprising of three Judges) as there was difference of opinion among the two judges who had heard the case. I got interested and told my father that I would like to attend the hearing. So, I heard the arguments. After a couple of hours, the bench came to the conclusion that the matter was complex and also important, and should be referred to a larger bench of five Judges. Ultimately, the matter reached the bench of Five Judges, presided over by Sir Iqbal Ahmed, the then Chief Justice of the Allahabad High Court who was not present at the earlier hearings and he addressed my father, "Mr. Vishawamitra, I find that there is difference of opinion on this question and this being a criminal case, on the one side you have the State and on the other, the accused. Why is it necessary for me to apply my mind to this point? If such distinguished judges are differing, I take it that two views are possible and then I must go with the view that favours the accused, as all benefit of doubt should go to him". It was the case of *'Zameer Qasim Versus King Emperor*', in which Zameer Qasim was prosecuted in a criminal case under the Indian Penal Code (IPC), and the Session Judge had convicted him on one charge and acquitted him on another charge in the same trial. The accused had filed an appeal against his conviction and no appeal was filed by the State against his acquittal. In the appeal of the accused, the High Court decided to reverse the Trial Court's finding of conviction and, to acquit the accused on the charge for which the Trial Court

had convicted him, but they wanted to convict him on the charge for which the Trial Court had acquitted him. The question was, whether the High Court could do so, as there was no appeal filed by the Government against the acquittal? This was the question before the full bench of five Judges. Hearing the case, Chief Justice Sir Iqbal Ahmed said that any doubt on the point should go in favour of the accused. My father, the public prosecutor for the State said, "My Lord! Such a decision would force the Government to start filing appeals in innumerable cases. So far the Government had adopted the policy that, if it was satisfied about the sentence of an accused person, the sections under which he might have been convicted was immaterial. But such a decision would force the Government to start filing appeals against all acquittals". Finally by a majority of three to two, the point was decided in favour of the Government, and the law was laid down that it was open to the High Court to alter the conviction from one section to another section, even in the absence of any appeal by the Government. I found the whole case very interesting. I said to myself that this problem was as exciting as a scientific experiment and it may satisfy my intellectual curiosity. Hence, I decided to go for law. Thus, it was Zamir Qasim, the dacoit who was responsible for my law career.

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After my intermediate, I got admission in the Allahabad University for a B.Sc. degree, as there was no post-intermediate LLB course at the time. Though, I was a Science student and was very good in mathematics and physics, my real passion, from then on, was law. During my university days, I used to go to the High Court in the morning to listen to the arguments of top lawyers, and then go to the University. Even in those days, I started preparing civil briefs for my father. I also used to sit in the last row (in the college), so that instead of listening to the professors, I could study law books. Even then I got first division in B.Sc and secured a high position in the merit list in the University.

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After my B.Sc, I sent an application to the University to join "LLB." When my father came to know about it, he in spite of himself being a top criminal lawyer, was against my joining the legal profession. He felt that being a bright student, I should appear in the ICS (Indian Civil Service) examination, and he was confident that I would be selected. At that time, ICS was regarded as the topmost career. I said to my father that law was an independent profession and I was deeply interested in it, so why should I join any service? My father took me to meet Sir Tej Bahadur Sapru for advice. He was the topmost lawyer in the country, a greatly respected member of the Bar and a distinguished politician. My father introduced me to him saying, "He is my son and has

always been a very bright student. He has done his B.Sc. with excellent marks. I want him to appear for the ICS, but he wants to join LLB. So, you better advice him". In reply, Sapru exclaimed, "What? He wants to be a lawyer, and you don't want him to be one?" Sapru then turned to me and said, "Youngman, you join LLB classes and start attending my legal conferences in my chambers". So, I used to go to Sapru's office in the evening for his conferences.

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R.S. Pathak, Instead of applying for LLB, had got admitted in MA (Political Science) but he had to join LLB classes due to the insistence of his father. Later he developed interest in law, and was appointed as a Judge of the Allahabad High Court and ultimately got elevated to the highest judicial office, the post of the Chief Justice of India.

R. S. Pathak, who ultimately became the Chief Justice of India, was my class fellow for six years-two years in intermediate, two years during B.Sc. and two years in LLB. His case was just the opposite of mine. He did not want to join LLB but his father Shri G. S. Pathak, who was a top lawyer, wanted him to be a lawyer. R. S. Pathak, Instead of applying for LLB, had got admission in MA (Political Science) but he had to join LLB classes due to the insistence of his father. Later he developed interest in law, and was appointed as a Judge of the Allahabad High Court and ultimately got elevated to the highest judicial office, the post of the Chief Justice of India.

My case was unique, I did not have to struggle even for a day, as by the time I was enrolled, I had spent five years with my father and other lawyers in their chambers. At that time I was perhaps the only lawyer who paid Income Tax even in the first year of practice. I remember the day when I was paid ₹ 50/- as consolidated fees for my first case, in which ₹ 25/- were paid at the time of filing. At that time, lawyers in Allahabad usually charged a consolidated fee for the entire case. This was convenient for clients, because they could ascertain the lawyer's fee at the very beginning.

In 1949, my legal arguments, backed by extensive research and preparation, granted me recognition in the legal field. In one case, I had argued a Criminal Revision against the conviction for contravening 'Brick Control Order' which was issued under the State Act of Uttar Pradesh (UP). Initially this Act was enforced for one year only, with the provision that it could be extended for one more year by the State Government. The State had exercised its powers of extension and during this extension period, my client had allegedly committed the offence. The Criminal Revision came up before the Single Judge for hearing. I pointed out a federal Court's judgment in which a principle was laid down, "It is not open to the legislature to delegate its legislative powers". During the final hearing, this question was referred to the full bench of three judges. Before the full bench, the final hearing began at 10 am and went on the whole day. I took three days to present my arguments. Finally, the bench gave its verdict in my favour. So, this case gave me popularity within one and a half year of joining the legal profession. Later on in 1962, I was appointed as the Senior Standing Counsel for the Uttar

Pradesh and Central Government. In 1969, I was appointed as the Advocate General. At the age of 43, I was the youngest Advocate General at that time.

You have successfully fought the election petition against Mrs. Gandhi, who was amongst the most powerful Prime Ministers of India, for using deceptive and unfair means in the election. We understand 'fight against winds is not an easy task'. How did you accept this challenge?

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As my parents were in the thick of the freedom movement, my family had been associated with Nehrus. In 1957, I even campaigned with Ms. Gandhi for Pt. Jawaharlal Nehru. I still fought a case against her.

A rumor had spread after the counting of votes during the general election of 1971 that the ballot papers had been printed on chemically treated paper from the Soviet Union. On this paper, the symbol of the congress (I) was pre-printed which remained invisible at the time of voting, but after that the voter's mark disappeared and the congress symbol appeared. On this ground, a large number of opposition leaders decided to challenge the election of the congress (I) candidates. One such candidate was Raj Narain who had contested the election against Mrs. Indira Gandhi in Rai Barelli. He, along with an already drafted petition, approached me through C.B. Gupta – the former Chief Minister for the state of UP. In the drafted petition, the Main argument was the theory of chemically treated ballot papers. This theory was not acceptable to me. So, I told Raj Narain that if he wanted me to appear for him, I would redraft the petition, deleting the charge of chemically treated ballot papers, for which he didn't consent, as this was the main ground in most of the election petitions filed by other leaders. I inserted the following issues:

(i) The arranging of meetings in her constituency by the District Collectors;

(ii) Using air force planes piloted by senior air force officers during her election campaign;

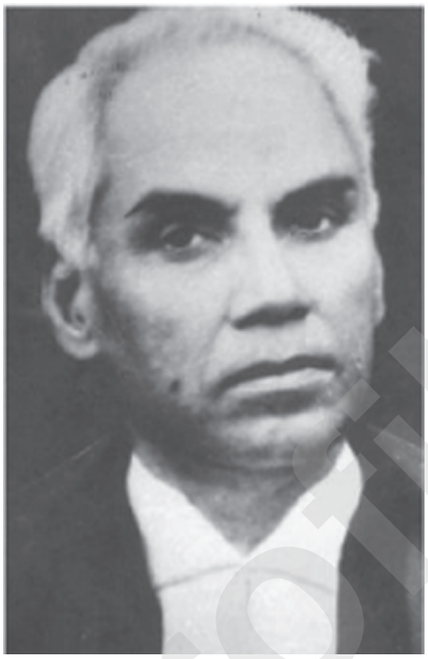
(iii) Employing Yaspal Kapur as her election agent even before the acceptance of his resignation from the gazetted post of her private secretary;

(iv) Attracting votes on religious grounds such as using Cow & Calf as election symbol, as Cows are deeply associated with religious sentiments of Hindus;

(v) Election expenses beyond permissible limits of ₹ 35,000.

This petition first came up for hearing before Justice Broome, after whose retirement, it was heard by Justice Jagmohan Lal Sinha who was not only a very able, conscientious and hard working judge, but also possessed tremendous courage of conviction.

Justice Sinha set aside Mrs. Gandhi's election and further disqualified her for a period of six years. Later, the judge himself stayed his judgment to enable her to appeal before the Supreme Court. When the hearing was pending before the Supreme Court, the public mood was strongly against Mrs. Gandhi and the Government decided to impose emergency in the Country. Within a few days of the proclamation of emergency, the 39th amendment was made in the Constitution of India, to put the election of the Prime Minister and the President of India beyond judicial review. This amendment was made after the decision of the Allahabad High Court to validate the election of the prime minister retrospectively.



Mr. Justice Jagmohan Lal Sinha

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Before the Supreme Court, I argued that judicial review was an essential part of the democratic Constitution and if the power of the Court to determine whether the election had been won by a candidate by fair means was taken away, it would inflict a deadly blow to the very concept of democracy. Ultimately, all the five judges comprising the bench accepted my arguments and unanimously struck down the 39th amendment of the Constitution.

I should say that the life of Justice Sinha is a lesson for all of us. Despite being a High Court judge, he showed extreme courage to give a verdict against the then Prime Minister of India. Greatness is not achieved by amassing wealth or clamoring for higher offices, but comes to a person for doing his work conscientiously and diligently with total integrity and objectivity. Rejecting all gratitude, he continued as a puisne judge of Allahabad till his retirement in 1982.

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You headed Ministry of Law and Justice when Morarji Desai was the Prime Minister

of India between the years 1977–79. It was immediately after the emergency. To sustain law & order, to uphold the democratic values and to restore public faith in the judiciary were the questions before the nation. How did you cope with these responsibilities as 'Law Minister'?

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During the period of emergency, in 1976, Jayaprakash Narayan (JP) called a meeting of important leaders from the Congress (O), Jan Sangh, Socialist Party and Bhartiya Lok Dal in an effort to merge them into one single opposition party. JP decided that a four–members committee should be formed for the purpose by taking one representative from each of the four parties. From Congress (O), I was nominated as a member of the committee. A new party – the Janata Party was constituted.

C.B. Gupta was the man who dragged me into politics and got me elected to the working committee of Congress (O). During the period of emergency, in 1976, Jayaprakash Narayan (JP) called a meeting of important leaders from the Congress (O), Jan Sangh, Socialist Party and Bhartiya Lok Dal in an effort to merge them into one single opposition party. JP decided that a four–members committee should be formed for the purpose by taking one representative from each of the four parties. From Congress (O), I was nominated as a member of the committee. A new party – the Janata Party was constituted. This unified Janata Party won the election in 1977 and formed India's first non-congress government at the centre, and I was appointed as its Law Minister. Within six months, I had to contest a by-election to get in to the Rajya Sabha. If we had remained in power for a full term of 5 years, we would have done a good job and would have amended the electoral law completely, amended the CrPC, CPC, Evidence Act and Limitation Act as they are quite complicated. Even some of the judges do not fully understand the complicated provisions of CPC. The law should be very simple particularly the procedural laws.

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Most people hesitate to openly talk about corruption in the judiciary. You and your son, Prashant Bhushan dared it. Like the quotations of famous revolutionaries, your

quotation is also memorable – "the question of apology does not arise. I am prepared to go to jail". Please explain the context to our Readers.

Instances of corruption are everywhere. Even in the judiciary there are many. I have said in an affidavit filed in the Supreme Court that at least 8 out of the last 16 Chief Justices were definitely corrupt. I told the court that if saying this was contempt, I would welcome being sent to jail.

Once there is a totally clean judiciary it could function as a strong check over the top corrupt officials and ministers who could be brought to book. However I feel the Supreme Court is taking the issue of corruption quite seriously now.

First of all jail is nothing for me because in 1972, I, along with more than five hundred party members, had been jailed for seven days due to a peaceful demonstration against price rise at the collector's office in Allahabad. We had violated the order of the District Magistrate. In jail, one can read books and do some good work. Instances of corruption are everywhere. Even in the judiciary there are many. I have said in an affidavit filed in the Supreme Court that at least 8 out of the last 16 Chief Justices were definitely corrupt. I told the court that if saying this was contempt, I would welcome being sent to jail.

Recently, an Inquiry committee has submitted its report confirming the guilt of Justice Sen. The Judicial Accountability Bill is pending. Is this Bill sufficient to check and handle such instances in future?

The Judicial Accountability Bill which is being brought up by the Government is useless. We are not supporting this particular bill. Once there is a totally clean judiciary it could function as a strong check over the top corrupt officials and ministers who could be brought to book. However I feel the Supreme Court is taking the issue of corruption quite seriously now. Police has to be overhauled and made to function honestly to help the common man.

I am sorry to say that Trial Courts are to a great extent corrupt. It is difficult to imagine people getting bail without spending money, when even for a convenient date, one has often to pay money in the trial courts. The sting operations are quite useful in exposing corruption. I feel Lokpal Bill (drafted by Justice Santosh Hegde and Arvind Kejriwal etc.) will help to curb corruption if the political parties' cooperate in getting it passed in the Parliament.

Most important attribute for a judge is competence. Age does not increase competence. Attractive conditions of service may be provided and young persons could be selected for the judiciary. Judges number should also be increased. Age should not matter much even for elevation to High Courts and the Supreme Court.

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My family has always had a simple life-style. Today I think, it was my good fortune that I was not appointed a Judge. After retirement, a Supreme Court Judge can not practice anywhere, but at present even in my 86th year, I am quite active in my practice.

Most cases require more thinking than study. I read most of the briefs in my bed while relaxing, because clear thinking comes when one is relaxed. In law one needs the instinct to discern, 'what can be believed' and 'what cannot be believed' or 'what can happen' and 'what cannot happen'.

Basic elements of law in simple way should be taught in schools. It will help students to become law abiding citizens. They should learn how to lead the life of a good citizen. Parents should also take care of it. No doubt 'Law Profiles' is a good magazine and is teaching laws to many, not only to lawyers but also to laymen.

Some jurists say that age of a judge of High Court should be enhanced to use their vast experience in disposing huge pendency of cases. While other are of the opinion that new recruitments can be made at comparative lower costs. There are many other reasons too in its favour as well as against it. What is your opinion upon this issue?

Most important attribute for a judge is competence. Age does not increase competence. Attractive conditions of service may be provided and young persons could be selected for the judiciary. Judges number should also be increased. Age should not matter much even for elevation to High Courts and the Supreme Court. Cr.P.C., C.P.C., Evidence Act, Limitation Act should be simplified. Gram Nyayalaya is a good concept and should be promoted.

Your have excellence in analyzing facts and interpreting laws. We have studied and seen you in helping Courts as well as in applying laws for conveying decisions. Please share the pattern and your style of working for our professional friends. Why didn't you opt for becoming a High Court or Supreme Court Judge?

My answer is: 'nobody appointed me as a Judge'. I had given my consent on 15th February, 1963 at the age of 37 years. The Chief Justice on perusing my income tax returns, surprisingly said that I would be looser, if I accepted a judgeship. But as I had good practice from the very first day, and neither me nor my wife were in the habit of over spending I did not mind for becoming a judge. My family has always had a simple life-style. Today I think, it was my good fortune that I was not appointed a Judge. After retirement, a Supreme Court Judge can not practice anywhere, but at present even in my 86th year, I am quite active in my practice. Once I found my younger son, Jayant scolding his son for not doing his home work properly, the child was trying to give some justification, but the father was not listening to him. With great anguish, the son said to his father, *"Bahut Achha Hua Aap Judge Nahin Bane, Nahin to Desh Barbad Ho Jata"*. Jayant was offered a 'Judgeship' in 2008, but he had declined the same.

Most cases require more thinking than study. I read most of the briefs in my bed while relaxing,

because clear thinking comes when one is relaxed. In law one needs the instinct to discern, 'what can be believed' and 'what cannot be believed' or 'what can happen' and 'what cannot happen'. This instinct is what distinguishes a really good judge from others. I do conferences but prepare my cases myself. After fully studying the case I also make a short note of main points of the case with references to the relevant provisions of law as also the case law, without waiting for the actual date of arguments.

There is long list of leading cases in which you appeared. Please tell us some judgments which have left indispensable marks on you.

For me, each and every case is important in which I accept a brief.

Most common people are suffering due to unawareness of there legal rights. How far the legal information is essential for one's survival and development? Whether you ever think that certain basic essential law should be a part of curriculum in each academic course? 'Law Profiles' is assisting in doing so through summing up the old and recent well established law in simplest and handy form, not only to a lawman or a lawyer but also to the public at large. What suggestions/improvements you recommend further in this respect?

Basic elements of law in simple way should be taught in schools. It will help students to become law abiding citizens. They should learn how to lead the life of a good citizen. Parents should also take care of it. No doubt 'Law Profiles' is a good magazine and is teaching laws to many, not only to lawyers but also to laymen. But its circulation is very limited being a costly magazine and a common man may not be able to bear its cost. However, I emphasize that **'**Law Profiles' should approach the schools and simple chapters for the students should be incorporated in the **'**Law Profiles'. Although this journal is doing well, still I hope, it will do better in coming days and shall have a wide circulation. I wish it 'all the best'

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Dear Readers,

A monetary prize of ₹501/- (Rupees Five Hundred and One Only) along with a 'Certificate of Appreciation' is dispatched individually to **Dr. Sonia Jain and Dr. J. U. Nanavaty** for contributing Readers' Articles, published in this issue of 'Law Profiles'. You are also invited to contribute Readers' Articles.

With regards,

Publisher

WORKERS' BENEFICIAL LAWS AT BUILDING SITES

In past, there were many Kings, which even cut off the hands of the workers after completion of their fort/*kila*. It was a mode of punishment if the fort was not built according to the king's wishes. It was a reward other times when the building had become so beautiful. In fear of loosing superiority, the king took their hands, so that they could not develop another marvelous piece on land. Whatever be the reason, no reasonable man can appraise such an inhuman & cruel practice. However, these practices were moderated with the passage of time. Still, there have been many challenges before the workers - safety, welfare, payment of reasonable wages on time etc. despite availability of numerous labour welfare laws. Keeping this in view, the Central Government has enacted the Buildings and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and other Construction Workers' Welfare Cess Act, 1996.

THE BUILDINGS AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996

Objectives

As per the preamble of this Act, its object is to regulate the employment and condition of service of buildings and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

Application

This Act is applicable to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more buildings workers in any building or other construction work. For computing the total number of the building workers, all the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account.

Who is "Building Worker"?

The nature of work is quite material in ascertaining as whether particular worker or employee is or not a 'building worker'. If the main work of a worker is managerial or supervisory nature at any building or construction site, then that worker is not a building worker. Working under the control or management of contractor or principal employer is not a material thing. Terms of employment too are not important. Nature of main work materializes.

In fear of loosing superiority, the king took their hands, so that they could not develop another marvelous piece on land. Whatever be the reason, no reasonable man can appraise such an inhuman & cruel practice. However, these practices were moderated with the passage of time. Still, there have been many challenges.

As per Section 2(e) of the Act, "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any

building or other construction work but does not include any such person:

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

This Act is applicable to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more buildings workers in any building or other construction work.

If the main work of a worker is managerial or supervisory nature at any building or construction site, then that worker is not a building worker. Working under the control or management of contractor or principal employer is not a material thing. Terms of employment too are not important. Nature of main work materializes.

Meaning of "Building or Construction Works"

The Act doesn't confine to construction of new building. Even the works of repairing, demolishing and alterations fall under this Act. Not only household, domestic and commercial constructions, but this Act is also applicable in constructing streets, roads, irrigation, drainage works etc.

Constitution of Advisory Committees and Expert Committees

The Act mandates the constitution of Advisory Committees and Expert Committees to advice the appropriate government i.e. the Central Government at the Central level and the State Governments at the State level respectively. Though the Constitution of these committees is mandatory under the Act, but they have not been constituted in majority of States, and few States where these Committees have been constituted, are not working according to the Act's mandate.

Mandatory Registration

The Act mandates every employer of building workers to make registration before the Registering Authority, appointed by the Central Government or the State Government concerned. The term 'employer' includes the owner and contractor mainly. If there is no contractor, then the Chief Executive officer or the Head of institution is required to ensure mandatory registration. The application for registration should be made in prescribed format with prescribed fees. After following the prescribed procedure, the Registering Officer issues the 'Certificate of Registration' within prescribed time. This Certificate is highly essential for carrying on the construction activities. This Certificate may be revoked in case of fraud, misrepresentation of facts or concealing of material facts etc. An appeal may lie against such a revocation order before the prescribed Appellate Authority within 30 days.

Building Workers as 'Beneficiaries'

The 'building workers' which are registered under section 12 of the Act may be called as 'beneficiaries' for the purpose of this Act, due to their eligibility for getting certain benefits. Any building worker who has performed the construction works at least for 90 days in preceding 12 months may be a beneficiary. The application for registration is made to the person, authorized by the State Board. Each State should constitute a Board for its State, to be called as '(name of the State) Building and Other Construction Workers' Welfare Board'. This Board is to be constituted as a body corporate having perpetual succession and common seal. Its chairman should be the person appointed by the Central Government. The Board

should also appoint a Secretary who can work also as an Appellate Authority against the decision of the Registering authority. The Secretary of the Board should also maintain a register containing the information regarding the beneficiaries. On behalf of the Board, identity cards should also be allotted to the beneficiaries. In the identity card, every employer shall enter & authenticate the details of the building or other construction work done by the beneficiary and return it to him.

The Act doesn't confine to construction of new building. Even the works of repairing, demolishing and alterations fall under this Act.

Though the Constitution of these committees is mandatory under the Act, but they have not been constituted in majority of States, and few States where these Committees have been constituted, are not working according to the Act's mandate.

Functions of the Boards

The Board is required to prepare a budget for each forthcoming financial year. Central Government also contributes in the Welfare Fund. Section 22 of the Act provides the functions of the State Board as:

"**1.** The Board may:

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;

(c) sanction loans and advances to a beneficiary for construction of a house, not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

2. The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

3. The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed:

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed, whichever is less: Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf."

Funds for the Board

The Board needs huge funds for performing the above said functions. Further, these funds are needed on regular basis. To cope with this regular demand of funds, a Central Act namely 'The Building and other Construction Workers' Welfare Cess Act, 1996' was enacted'. This Act provides for the levy and collection of a cess on the cost of construction incurred by employers. This cess can be collected by the Board from the employer. Certain category of employers may be exempted by the Central Government from the operation of

this Act. Other employers have to deposit the cess and to furnish returns on time. In case of failure, there is provision of punishment with imprisonment up to 6 months and the arrears can be recovered likewise revenue. The Central Government is empowered to issue notification to fix the rate of cess between 1–2% of the cost of construction. Section 3 is reproduced as:

Levy and collection of cess (Section 3 of the … Cess Act)

"(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent, but not less than one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (1) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved."

Health & Welfare Measures

The Act provides numerous health and welfare measures:

Fixed working hours (Section 28)

It is quite normal for the building workers to work continuously, without rest & intervals. They have neither fixed working hours nor the resting hours. Usually, they are required to work seven days without any weekly holiday. But now with the enforcement of the Act, the Appropriate Government (Central or State Government, as the case may be) is required to fix working hours with sufficient intervals and to fix weekly holiday.

The term 'employer' includes the owner and contractor mainly. If there is no contractor, then the Chief Executive officer or the Head of institution is required to ensure mandatory registration. The application for registration should be made in prescribed format with prescribed fees.

The 'building workers' which are registered under section 12 of the Act may be called as 'beneficiaries' for the purpose of this Act, due to their eligibility for getting certain benefits. Any building worker who has performed the construction works at least for 90 days in preceding 12 months may be a beneficiary.

Overtime wages (Section 28 & 29)

Usually, the building workers have another complaint of non-payment of overtime wages. This Act mandates to pay overtime wages twice the normal rate (basic plus allowances excluding bonus). Overtime for this purpose not only includes the hours over and above the normal working hours on a working day, but also includes the working hours on a weekly holiday. It means the building worker shall be paid twice the normal rate for the works done by him on weekly holiday.

Prohibition on incapables' engagement (Section 31)

It is the duty of employer as not to require or allow the building worker who is deaf or he has a defective vision or he has a tendency to giddiness

in any such operation which is likely to involve a risk of any accident either to that worker or to any other person.

Drinking water (Section 32)
The Act mandates the employer to make effective arrangements of wholesome drinking water in every place where building or other construction works is in progress. Further, the place of drinking water shouldn't be situated within six metres of any washing place, urinal or latrine.

Latrines and urinals (Section 33)
The employer is required to provide sufficient latrines and urinals at convenient place where the building or other construction work is carried on.

Accommodation (Section 34)
It is essential for the employer to provide temporary living accommodation to all building workers absolutely free of charges. This accommodation should be located within the work site or as near to it as may be possible. This accommodation should have separate cooking place, bathing, washing and lavatory facilities. The employer is liable to vacate the premises at its own costs after completion of the construction.

Creches (Section 35)
Where more than 50 female building workers are ordinarily employed, the employer shall provide and maintain suitable room or rooms for the use of their children under the age of 6 years. Such rooms should be adequately lighted and ventilated. The rooms should be maintained in a clean and sanitary condition. A woman should be in-charge of such crèches.

First-aid (Section 36)
Every employer shall provide the prescribed first-aid facilities in all the places where building or other construction work is carried on.

Canteens etc.(Section 37)
The appropriate Government (Central Government or the State Government, as the case may be) shall also provide by rules that the employer where not less than 250 building workers are employed, to maintain a canteen for the use of the workers.

Safety Measures

Safety Committee (Section 38)
The Act mandates that the employer shall constitute a Safety Committee where 500 or more building workers are ordinarily employed. Such a Committee should have representatives in equal proportion to that of the employer.

On behalf of the Board, identity cards should also be allotted to the beneficiaries. In the identity card, every employer shall enter & authenticate the details of the building or other construction work done by the beneficiary and return it to him.

The Board may provide immediate assistance to a beneficiary in case of accident, may make payment of pension to the beneficiaries who have completed the age of sixty years, may sanction loans and advances to a beneficiary for construction of a house etc.

Safety officers (Section 38)
The employer is also required to appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

Notice of certain accidents (Section 39)
Usually the building workers did not initiate actions against the employers due to their poverty, innocence, employer's influence, fear etc. and failed to get compensation even in death cases. No body comes to help the victims. Keeping this hard fact in mind, this Section provides for the reporting to prescribed authority by none else, but by the employer itself. Now, the employer is required to give notice to the prescribed Authority in case of death or any bodily injury by reason of which the person injured is prevented from working for a period of 48 hours. The authority shall make

proper investigation or inquiry into the matter. Prompt inquiry (within 1 month from receipt of employer's notice) shall be made in case of accident causing death of five or more workers.

This Act provides for the levy and collection of a cess on the cost of construction incurred by employers. This cess can be collected by the Board from the employer. Certain category of employers may be exempted by the Central Government from the operation of this Act. Other employers have to deposit the cess and to furnish returns on time. In case of failure, there is provision of punishment with imprisonment up to 6 months and the arrears can be recovered likewise revenue. The Central Government is empowered to issue notification to fix the rate of cess between 1–2 % of the cost of construction.

Rules making power of the appropriate Government (Section 40)

"The appropriate Government (Central or State Government) has been granted exhaustive powers in general to make rules regarding the health and safety of the building workers, including the followings:

(a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;
(b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;
(c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;
(d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;
(e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;
(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;
(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;
(h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;
(i) the safeguarding of machinery including the fencing of every fly-Wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
(j) the safe handling and use of plant, including tools and equipment operated by compressed air;
(k) the precautions to be taken in case of fire;

(l) the limits of weight to be lifted or moved by workers;

(m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments;

(q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;

(r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefore and the matters connected therewith, to be framed by the employers and contractors for the operation to be carried on in a building or other construction work;

(s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986 (63 of 1986), regarding the use of any article or process covered under the Act in a buildings or other construction work;

(t) the provision and maintenance of medical facilities for building workers;

(u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work."

Central Government's power to frame Model Rules

The Central Government, in consultation with expert committee may frame model rules in respect of all or any of the matters specified in section 40. Where such model rules have been framed, then the Appropriate Government is required to make rules, as far as practicable, in consistency of the Model Rules.

Responsibility of employers (Section 44)

To ensure compliance of the provisions of the Act regarding safety is the responsibility the concerned employer.

Notice of commencement of building or other construction work (Section 46)

The employer is required to inform the concerned Inspector at least 30 days before the commencement of construction works. The information is required to be given in form of a written notice, specifying the construction site, name & address of contractor, nature of work etc.

It is quite normal for the building workers to work continuously, without rest & intervals. They have neither fixed working hours nor the resting hours. Usually, they are required to work seven days without any weekly holiday.

Overtime for this purpose not only includes the hours over and above the normal working hours on a working day, but also includes the working hours on a weekly holiday. It means the building worker shall be paid twice the normal rate for the works done by him on weekly holiday.

Responsibility for Payment of Wages and Compensation (Section 45)

The concerned employer (including the contractor, if any) has the responsibility to pay wages and compensation (in case of accident) on time. In case the contractor fails to do so, employer shall make payment, although the employer may

deduct such sum from the bills/payments to be paid to such a contractor.

Saving of Certain Laws (Section 63)

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the building and other construction workers than those provided for them by or under this Act.

It is essential for the employer to provide temporary living accommodation to all building workers absolutely free of charges. This accommodation should be located within the work site or as near to it as may be possible. This accommodation should have separate cooking place, bathing, washing and lavatory facilities.

Where more than 50 female building workers are ordinarily employed, the employer shall provide and maintain suitable room or rooms for the use of their children under the age of 6 years. Such rooms should be adequately lighted and ventilated.

1996 Act have not been Implemented in Practice

We have seen the need of the said two Acts, namely, the Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers' Welfare Cess Act, 1996. But, although these Acts have been on the statutory books for a long time, still they have not been implemented in its entirety. To ensure their implementation in the entire nation, a Writ Petition (Civil) No. 318 of 2006 titled as 'National Campaign Committee for Central Legislation on Construction Labour Versus Union of India & Ors.' was filed under Article 32 of Indian Constitution. All the State Governments and Union Territories were impleaded as parties to the said Writ. In their replies, it was noted that many States have not framed even the rules under the Act. Many of them have the rules, but there was no constitution of Welfare Boards and Expert Committees. Few States those have the rules and also the board and Expert Committees, were not functioning properly. Net result of all these omissions was that the beneficiaries building workers have no opportunity to get their legitimate benefits, as provided under the said Acts. Vide order dated 13.01.2009, Hon'ble Apex Court has directed that the State Governments and Union Territories which have not framed the rules as per Section 62 of the Act can very well take the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules 2002, as a model and the same can be adopted for the purpose of this Act. These Rules exclusively deal with the matter and gives various model forms also for compliance of the provisions of the Act. The Court, thus, directed on 13.01.2009 as under:

> "We direct the Chief Secretary of the respective States and Secretary (Labour) of each States and the Union Territories to take timely steps as per the provisions of the Act, if not already done. We would like to have the appraisal report in the first week of May as to what steps have been taken in this regard. If any of the State Government has not done anything pursuant to the Act, urgent steps are to be taken so that the benefits of this legislation shall not go waste. Otherwise the unorganized workers of the construction sector will be denied the benefit of the Act."

The Court thereafter passed various orders and directions requiring respective States to implement the provisions of the Act. Vide order dated 18th January, 2010, the Court noticed the object of the Act as well as made reference to various provisions of

the Act and issued directions. These directions relate to the constitution of the State Welfare Boards by the respective States, holding of meetings by the said Boards at regular intervals to discharge their statutory duties, creating awareness about the benefits of the Act amongst the beneficiaries through media, appointment of Registering Officers and setting up centres in each district for that purpose. This Court further directed that all contracts with Government shall require registration of workers under the Act to give benefits of the Act to the registered persons, the CAG to conduct audit of the entire implementation of the Act and use of the allocated funds and finally the Boards to prepare detailed reports in regard to the implementation.

Keeping this hard fact in mind, this Section provides for the reporting to prescribed authority by none else, but by the employer itself. Now, the employer is required to give notice to the prescribed Authority in case of death or any bodily injury by reason of which the person injured is prevented from working for a period of 48 hours.

In case the contractor fails to do so, employer shall make payment, although the employer may deduct such sum from the bills/payments to be paid to such a contractor.

Despite passing of these clear orders by the Court, the provisions of the Act have not been implemented in their entirety. Further, noticing the persisting default, the Court passed an order dated 10th September, 2010 referring to various provisions of the Act as well as the fact that the Central Government has not even issued any directions under Section 60 of the Act, despite the Court's order dated 18th January, 2010. Noticing the incidences in that regard, the Court directed the Central Government to issue appropriate directions to the States as well as furnish the status report of Central Advisory Committee as to what steps had been taken by them with regard to implementation of the provisions of the respective Acts.

All the State Governments and Union Territories were impleaded as parties to the said Writ. In their replies, it was noted that many States have not framed even the rules under the Act. Many of them have the rules, but there was no constitution of Welfare Boards and Expert Committees. Few States those have the rules and also the board and Expert Committees, were not functioning properly. Net result of all these omissions was that the beneficiaries building workers have no opportunity to get their legitimate benefits, as provided under the said Acts.

On subsequent dates, the petitioner submitted that the directions of the Court as well as the provisions of the Act were not being implemented by various States. The Court, thus, granted liberty to the petitioner, vide its order dated 22nd November, 2010, to take out contempt motion State-wise. In the said Writ, the petitioner filed I.A. No. 6 of 2011 on 5th January, 2011 primarily praying for filing of additional documents. In the documents annexed to this application there were charts giving details of the States which had not constituted the Welfare Boards, information about constitution of the Cess Collecting Authority, number of workers registered with each State and the Schemes framed and implemented. The Court noted that from the charts, it was obvious that most of the States had defaulted in complying with the provisions of the Act and some of them, in fact, had not even constituted the State Welfare Boards despite the writ petition

being pending in this Court since the year 2006 and the Court having issued various directions in that regard. The petitioner then filed Contempt Petition Nos. 42 of 2011 and 43 of 2011.

Hon'ble Apex Court has directed that the State Governments and Union Territories which have not framed the rules as per Section 62 of the Act can very well take the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules 2002, as a model and the same can be adopted for the purpose of this Act.

These directions relate to the constitution of the State Welfare Boards by the respective States, holding of meetings by the said Boards at regular intervals to discharge their statutory duties, creating awareness about the benefits of the Act amongst the beneficiaries through media, appointment of Registering Officers and setting up centres in each district for that purpose.

In Contempt Petition No. 42 of 2011, the petitioner has averred that Respondent Nos.2 to 10 have failed to take even the preliminary steps to constitute the Welfare Boards under Section 18 of the Act and that the Central Government has neither issued any directions nor taken any steps in that behalf. The defaulters, in this regard, are stated to be the Union Territories of Lakshadweep, Government of the State of Meghalaya, Government of the State of Nagaland and the Union of India. The Labour Secretary of the respective States and the Director General of Inspection of the Government of India have been impleaded as respondents in this petition.

Contempt Petition No. 43 of 2011 has been filed primarily on the ground that the respondents in that petition had willfully disobeyed the orders of this Court, particularly the order dated 18th January, 2010 and they have not implemented the provisions of the Act. The Registering Officers have not been appointed and the workers are not being registered, resulting in non-implementation of the schemes for grant of benefits and the facilities to such workers. Defaulters in this regard are the States of Maharashtra, Goa, Himachal Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh, Manipur and the Union Territories of Daman & Diu, Dadra & Nagar Haveli, Chandigarh, Andaman & Nicobar Island. Their Labour Secretaries, Chief Inspector of Inspection and Administrators have been impleaded as respondents in this petition along with the Director General of Inspection, Government of India.

The Court directed the Central Government to issue appropriate directions to the States as well as furnish the status report of Central Advisory Committee as to what steps had been taken by them with regard to implementation of the provisions of the respective Acts. On subsequent dates, the petitioner submitted that the directions of the Court as well as the provisions of the Act were not being implemented by various States.

The Court then referred some of the provisions of both the statutes which impose a statutory obligation upon the respondents to carry out their functions and duties in accordance with those provisions and the directions issued by this Court. Every State is required to constitute a State Welfare Board in accordance with the provisions of Section 18 of the Act which Board, upon its constitution, is required to discharge its functions under Section 22 of the

Act. Some of the defined functions are to provide immediate assistance to the beneficiaries, sanction loans, give financial assistance for education of children and even make payment of maternity benefits to the female beneficiaries. The appropriate Government is further required to appoint Registering officers in terms of Section 6 of the Act and the establishments are required to be registered with that officer as per the provisions of Section 7. The beneficiaries/workers are to be registered with the officer authorized by the Board in that behalf in accordance with the provisions of Section 12 of the Act. The beneficiaries are required to make their respective contributions in terms of Section 16 of the Act. There shall be levy and collection of cess at the rate of and in the manner specified under Section 3 of the Cess Act and every employer has to furnish returns in accordance with Section 4 of that Act. After its assessment in accordance with law, the cess is to be paid and collected. The default in payment thereof bears the penal consequences as well as interest has to be paid on delayed payment of cess. Offences committed by the company and other defaulters are punishable under the provisions of the Cess Act. Then Court noted that the appropriate Governments have, admittedly, not complied with their statutory duties and functions. All the application/petitions, subject matter of the present order, are supported by affidavit filed by the coordinator of the petitioner organization. Number of States, particularly Union Territory of Lakshadweep and States of Meghalaya and Nagaland have not even constituted the Welfare Boards in terms of Section 18 of the Act. The State of Uttar Pradesh has completed the formality of constituting a Board but it is a one man Board instead of having a minimum of three or more members as required under Section 18 of the Act. The charts submitted by the petitioner further show that no worker has been registered by the States of Assam, Mizoram, Sikkim and Jammu and Kashmir. The appropriate Governments and Registering Authorities, wherever constituted, particularly the respondent State Governments in these application/petitions have failed to either collect the requisite cess amount or have collected the same inadequately and in any case have failed to distribute the benefits and facilities to the beneficiaries. In this manner and for a considerable period, the respondents in these application/petitions have, on the one hand disobeyed the orders of this Court particularly orders dated 18.01.2010, 13.08.2010 and 10.09.2010, while on the other they have failed to perform their statutory obligations under the provisions of the Act despite directions of this Court. Default on the part of these respondents, thus, has persisted over a long period and the Court is left with no alternative except to pass appropriate directions/orders in accordance with law on these two contempt petitions. In the Circumstances above-referred, Supreme Court issued notice to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated against all the respondents in Contempt Petition Nos.42 and 43 of 2011 and directed (i)The Labour Secretary, Ministry of Labour, New Delhi; (ii)The Labour Secretary Lakshadweep, (iii)The Labour Secretary, Meghalaya; (iv) The Labour Secretary, Nagaland; (v)Director General of Inspection, Government of India to be present in the Court on the next date of hearing.

Number of States, particularly Union Territory of Lakshadweep and States of Meghalaya and Nagaland have not even constituted the Welfare Boards in terms of Section 18 of the Act. The State of Uttar Pradesh has completed the formality of constituting a Board but it is a one man Board instead of having a minimum of three or more members as required under Section 18 of the Act. The charts submitted by the petitioner further show that no worker has been registered by the States of Assam, Mizoram, Sikkim and Jammu and Kashmir.

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SCOURGE OF TRAFFICKING IN WOMEN AND LAWS IN INDIA

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Once India has great respect for women. Common Indians have firm inherent belief in '*Yatra Naryastu Pujyante, Ramante Tatra Devta*'. Even the name of country was pronounced as *'Bharat Maa*' and we were much ahead to the rest of the world. Time changed. Foreigners ruled on us for centauries. We became their followers. We made them as our ideals. We approved their life-style. We adopted their beliefs and thinking, which replaced our ancient original culture. We started to look woman as a source of pleasure only. It ultimately resulted trafficking of woman just like goods. Despite having good law on this subject, State has failed to eradicate this social evil to its entirety. The Author appreciatively presented this perceptive subject.

The year 1975 was named as "International Women's Year" by the United Nations and since that year 'March 8' has been celebrated as International Women's Day. United Nations Decade for Women from 1976–1985 was also established by UNO. Since then, myriad measures have been adopted by UN General Assembly and its organs and agencies to empower the women. These measures include International Convention on Elimination of All Forms of Discrimination against Women in 1979, 1st World Conference on Women at Mexico 1975[1], Convention on Child Rights of 1989, Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1974, Declaration on the Elimination of Violence against Women in 1993, Inter-American Convention for the Prevention, Punishment and Elimination of Violence against Women (Belém do Pará Convention) in 1995, Universal Declaration of Human Rights in 1948, Convention on the Political Rights of Women in 1952, International Covenant on Civil and Political Rights in 1966, International Covenant on Economic, Social and Cultural Rights in 1966, the Beijing Declaration in 1995, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 1999 and many more. These and many other measures have been adopted to achieve 'gender equality' and to abolish altogether discriminatory treatment including various kinds of violence against women in the society.

In spite of the declaration and recognition of Universal human rights and their constitutional protection, the pernicious and sinister practice of trafficking in women and children is still prevailing in the society. It is a worst form of evil wide rampant in our society. This practice has been identified as heinous form of 'slavery'. In Europe and U.S.A., it is known as 'white slavery'. Looking to its magnitude, design and fall-outs, it has been designated as one of the forms of 'organized crimes' by the United Nations by declaring UN Convention against Trans-National Organized Crime with special reference to Women and Children, 2000. Later on a Protocol to prevent, suppress and punish human trafficking, especially of Women and Children, supplementing the United Nations

[1] The first World Conference on Women was held in Mexico City from June 19 to July 2.

Convention against Transnational Organized Crime (2003) was also adopted. Various other steps have taken at international level to contain and control this pernicious practice.

The Convention of 2000[2] has defined the Trafficking in women as follows:

'(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

'Exploitation' shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;…

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in sub-paragraph (a) of this Article;'

The world States have been asked to adopt and enact necessary legal measures to eliminate this evil from the society.

India has been a participatory and signatory to various International treaties/declarations and as a result of which, it has taken various steps to eliminate this evil. Looking to the vicious nature of the problem, the Constitution of India has also made a specific provision to eliminate the evil. Article 23 prohibits trafficking in human beings and forced labour. Article 23(1) provides that 'traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.' The Article has been designed to protect the persons not only against the State, but also against private individuals involved in such activities as these activities are worst form of slavery.

The year 1975 was named as "International Women's Year" by the United Nations and since that year 'March 8' has been celebrated as International Women's Day. United Nations Decade for Women from 1976–1985 was also established by UNO.

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[2] Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime, 2000.

Two important Directive Principles of State Policy are found in Article 39(e) and (f). They read as under:

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." Article 48 imposes on the State, a primary responsibility of ensuring that all children until they complete the age of 14 years are provided free and compulsory education."

Chapter IV-A which was inserted in the Constitution by the Constitution (Forty-Second Amendment) Act, 1976 introduced fundamental duties in the Constitution. Article 51A (e) states that it shall be the duty of every citizen of India to renounce practices, derogatory to the dignity of women.

If we read the above Articles altogether, it becomes clear that the trafficking in women has been condemned and prohibited by the Indian Constitution.

It is to be noted that India has not adopted the above mentioned definition till this date. To some extent, the State of Goa has attempted to incorporate in its Act. The Goa Children's Act, 2003 has defined the term in following words:

Section 2 (2): The trafficking in persons means:

"the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally within or across borders, by means of threat or use of force or other forms of coercion, or abduction, or fraud, or deception, or abuse of power or benefits to achieve the consent of a person having control over another, for monetary gain or otherwise."

Besides this Act, there is no Act which has defined this term.

India has been a participatory and signatory to various International treaties/declarations and as a result of which, it has taken various steps to eliminate this evil. Looking to the vicious nature of the problem, the Constitution of India has also made a specific provision to eliminate the evil. Article 23 prohibits trafficking in human beings and forced labour.

If we read the above Articles altogether, it becomes clear that the trafficking in women has been condemned and prohibited by the Indian Constitution. It is to be noted that India has not adopted the above mentioned definition till this date. To some extent, the State of Goa has attempted to incorporate in its Act.

To carry out the constitutional mandate, myriad laws have been passed. Though the Indian Penal Code of 1860 has various provisions (e.g. Sections-340-342, 354, 359-363,365,366,366A, 370-376) relating to trafficking, but they were not sufficient and efficient enough to deal with gigantic problem. Later on, the Parliament passed the Suppression of Immoral Traffic in Women and Girls Act in 1956, which was drastically amended in 1986 and renamed as the Immoral Traffic (Prevention) Act, 1956. This Act also failed to meet the challenge. Some other related Acts are the Probation of the Offenders Act of 1958, the Indecent Representation of Women (Prohibition), 1986, the Prevention of Child Marriage Act, 2006, the Bonded Labour System (Abolition) Act, 1976, the Child Labour (Prohibition and Regulation) Act, 1986 and the Juvenile Justice (Care and Protection of Children) Act, 2000. Since the State of Goa

suffering a lot because of this problem, it came out with the Goa Children's Act of 2003 to combat this problem.

The Immoral Traffic (Prevention) Act, 1956 deals with the trafficked women engrossed in prostitution and not with trafficking. This Act is not deterrent in its effect. Present day laws are sufficient to deal with problem as it has been identified as an organized crime.

All these cases have declared trafficking as worst type of the offence, affecting and violating human dignity including forced labour, forced sex, cruelty, rape, imprisonment, forced transportation, mental and physical torture and inhuman and degrading treatment. These activities have been found as violation of human right and tormenting basic social fiber.

A survey of these laws would reveal that Indian laws have not adopted holistic approach but attempted cover one or the other aspect of trafficking in women and children. The Immoral Traffic (Prevention) Act, 1956 deals with the trafficked women engrossed in prostitution and not with trafficking. This Act is not deterrent in its effect. Present day laws are sufficient to deal with problem as it has been identified as an 'organized crime[3]'.

Judiciary has also made very significant pronouncements in this regard like-Vishal jeet Versus Union of India[4]; Gaurav Jain Versus Union of India[5], Sannania Suba Rao Versus State of A.P.[6], Vishram Narsibhai Rajpara Versus State[7], Bandhua Mukti Morcha Versus Union of India[8], Prenena Versus The State of Maharashtra and others [9]. All these cases have declared trafficking as worst type of the offence, affecting and violating human dignity including forced labour, forced sex, cruelty, rape, imprisonment, forced transportation, mental and physical torture and inhuman and degrading treatment. These activities have been found as violation of human right and tormenting basic social fiber. In Vishram Narsibhai Rajpara Versus State[10], the Supreme Court of India observed that 'an anti-social act involving kidnapping and trafficking in minor girls or of an anti-social element dealing in dangerous drugs affects the entire moral fiber of the society and kills a number of persons, nor was committed for power or political ambitions or as part of organized criminal activities. No doubt they cannot be said to be exhaustive of such category but merely enumerative of the criminal intent of the worst type, destructive of the basic orderliness fundamental to the very existence of a welfare oriented society'.

Above mentioned laws and judicial pronouncements depict good intentions to eliminate trafficking and forced labour problem prevailing in the society, but still we have not been able to strike at the root cause of the problem and there is little progress towards resettlement and rehabilitation of the victims of trafficking. Much has been done; much more has to be done in this direction.

Suggestions:

1. Since present day laws are not efficient to combat this gigantic multi-dimensional problem, it is suggested that the laws must be amended in the light of the international developments in this field e.g. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the United Nations Convention Against Transnational Organ-

[3] Kamaljeet Singh v. State, 2008 INDLAW DEL.328.
[4] (1990)3 SCC 318.
[5] (1997)8 SCC 114.
[6] 2008 (17)SCC 225.
[7] AIR 2002 SC 2211.
[8] 1983 INDLAW 192.
[9] 2002 INDLAW MUM 610.
[10] AIR 2002 SC 2211.

ized Crime, 2000 (with special to women and children) etc. This should not be treated as an ordinary crime but as trans-boundary organized crime like smuggling in arms and narcotic drugs.

2. Except few instances of State laws on the subject, there is no National law. Therefore, it is suggested that a national law must be adopted, covering all the aspects of trafficking including transportation to rehabilitation and settlement of the victims.

Except few instances of State laws on the subject, there is no National law. Therefore, it is suggested that a national law must be adopted, covering all the aspects of trafficking including transportation to rehabilitation and settlement of the victims.

Special task/police force must be created for this purpose. This force/police must be given training as how to deal with the victims of the trafficking, to give counseling to the victims and help the victims in rehabilitation and resettlement.

3. Laws dealing with trafficking must be stringent, and strict punishment must be awarded to the offenders of trafficking, including the publication of names of the offenders. Punishment must be deterrent one.

4. Proceeding must be in-camera and victim must not be treated as an offender but she requires help and support of the society/government to come out of scourge/trauma of trafficking. During proceeding, she must have all necessities and amenities of life.

5. Special task/police force must be created for this purpose. This force/police must be given training as how to deal with the victims of the trafficking, to give counseling to the victims and help the victims in rehabilitation and resettlement.

6. In 'Colloquium on Justice Delivery in Human Trafficking Crimes' held at Andhra Pradesh Judicial Academy, Hyderabad on 4-5 August, 2007 which has suggested following measures to combat trafficking in India—

(i) Larger awareness and sensitization on the issue of human trafficking.

(ii) Strengthening the technical capacities of law enforcement agencies and officers towards prosecution of crimes of trafficking;

(iii) Improved response of the three wings of the criminal justice system while sharing information and promoting best practices;

(iv) Rights oriented, gender-sensitive implementation of laws that combat human trafficking, with the well being of victims as a due consideration for law enforcement officials.

Therefore, I humbly submit to this august gathering that there is an urgent need of a national law on the subject adopting holistic approach, keeping in view the gravity of the problem, trans-boundary character and widespread ramification of the crime and social strategies to combat and deal with this social evil.

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Publisher

SECULARISM IN INDIA

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The term 'secular' is a Christian term that finds its original meaning in the Christian context. *Saeculum* which is the ordinary Latin word for century or age, takes on a different connotation when applied to the age of separation of State from religion. This meant that the regulation of life would be distinguished from the confession in the church. This strategy proved to be important because it helped in a peaceful co-existence of different faiths. It also allowed for a convergence of religions toward a common commitment. The secularism of today is built on the original distinction but also involves a transformation of it. Secularism today ensures that religion will exist only in the individual's private sphere. The State upholds no religion and pursues no religious goals. This is known as the 'common ground' approach[1] wherein a common ground is set for all religions. Unfortunately this model, though ideal, has its weakness in the fact that or widening band of contradictory religious and metaphysical commitments arise leading to tension. One of the problems with secularism is that it challenges the independent ethic of the majority community which believes that because of the mere fact that they are the majority of the nation they have the prescriptive right of superiority.

The Need for Secularism in the Constitution of India

Secularism is the equality of all religions or equal respect for all religions but the Constitution of India which is the ultimate legal political and social document, is not explicitly secular and does not require us to be so. The framers of the Constitution stood for a secular India[2]. It is common knowledge that Nehru had no firm or marked belief in or commitment to religion, while in strong contrast, Gandhi's personal life was imbued with his attachment to religion. Gandhi's writings were prolific and his views pronounced on many matters. Gandhi's notions on religion and State are best expressed in Hind Swaraj, which was first written in Gujarati in 1909 and translated in 1910. This utopian concept of *Ramrajya* imagined return to a perfect system of division of labour practicing reciprocity and not competition. He claimed that "India cannot cease to be one nation, because people belonging to different religions live in it... In no part of the world are one nationality and one religion synonymous terms; nor ever been so in India." Gandhi had his unswerving purpose or winning independence for India and the constitution of united nation, and in a society where multiple religions were observed, this nation making project entailed a separation of religion and State. He proclaimed "I swear by my religion, I will diaper it. But it is my personal affair. The State has nothing to do with it. The State will look after your secular welfare, health, communication, foreign relations, currency and so on, but not my religion. That is everybody's personal concern.[3]"

[1] As stated in Taylor, Charles. "Modes of Secularism". Rajeev Bhargava (ed.) Secularism and its Critics (New York : Oxford University Press, 1998) at p. 31.

[2] "The State India and being secular and shall have no concern with any religion, creed or profession of faith", Constituent Assembly Debates, Vol 7, p. 815.

[3] Tambiah, Stanley J. "The Crisis of Secularism in India". Rajeev Bhargava (ed.) Secularism and its Critics. (New York : Oxford University Press, 1998) at p. 423.

It was in affirmation of the separation that Nehru wrote in 1945 "I'm convinced that the future government will not associate itself with any religious faith, but equal freedom to all religious functions." During the Constitutional Assembly debates, Nehru held that the establishment of the secular State in this sense was a matter of faith; and act of faith above all for the majority community because they will have to demand straight that they can behave towards other minorities in a generous, fair and just manner. Nehru, Gandhi and some other Congress leaders maintained that the essential features of their position was that there shall be no State discrimination on the grounds of religion or religious affiliation against any person professing any particular form of religious faith, and that there should not be any State patronage of any religion or extension of patronage to any one religion to the exclusion of, or in preference to, others.

'Secularism' has been a controversial issue since long, not only for the common public but also for our major political parties. One of the main reasons is diversification of religions and cultures, practiced in India, unlike other countries of the world. Our Constitution makers have not specified any particular region as the religion of the State. Nor the State can grant any special privilege to any particular religion over other religions. This Article concentrates on this sensitive issue in an admirable big way.

In current Indian political circles the Nehruvian conception of secular policies, espoused by many Indian supporters of liberal democracy, does not mean the rejection of the transcendental values of religion or that society should be religious; on the contrary, there is acceptance that all religions are meaningful and that they should have valid place in the life of the nation. However, religion is not competent in defining nationality or citizenship. The State should be neutral as between the country's many religions and tolerant of all.

Secularism today ensures that religion will exist only in the individual's private sphere. The State upholds no religion and pursues no religious goals. This is known as the 'common ground' approach wherein a common ground is set for all religions. Unfortunately this model, though ideal, has its weakness in the fact that or widening band of contradictory religious and metaphysical commitments arise leading to tension.

One of the problems with secularism is that it challenges the independent ethic of the majority community which believes that because of the mere fact that they are the majority of the nation they have the prescriptive right of superiority.

Sarvepalli Radhakrishnan gives a qualification to the Indian specifications of secular politics. He stated that "When India is said to be a secular State of, it does not mean we reject the reality of an unseen spirit of the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition, the Indian State will not identify itself with or be controlled by any particular religion. It holds that no one religion should be accorded special privileges in national

life or international relations for that would be a violation of the basic principles of democracy and contrary to the basic interests of religion and government. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of church and State[4]."

The framers of the Constitution stood for a secular India. It is common knowledge that Nehru had no firm or marked belief in or commitment to religion, while in strong contrast, Gandhi's personal life was imbued with his attachment to religion. Gandhi's writings were prolific and his views pronounced on many matters.

Nehru, Gandhi and some other Congress leaders maintained that the essential features of their position was that there shall be no State discrimination on the grounds of religion or religious affiliation against any person professing any particular form of religious faith, and that there should not be any State patronage of any religion or extension of patronage to any one religion to the exclusion of, or in preference to, others.

During the debates in the Constituent Assembly, Prime Minister Nehru declared that secularism was an ideal to be achieved and that establishment of a secular State was an act of faith. He explained his vision thus:

> "By secular State, as I understand, the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronize or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. At the same time we must be very careful to see that in this land of ours, we do not deny to anybody the right not only to profess or practise but also propagate any particular religion."[5]

Secularism as Enunciated in the Constitution of India

For the first 25 years of the existence of the Indian Constitution, the word 'secular' did not feature anywhere and it was only after the 44th Constitutional Amendment Act of 1978 that the word 'secular' was inserted into the Preamble.

"We, the People of India, are having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC…"

Thus the Preamble of the Constitution of India now explicitly state that we have a secular state. The Amendment Act of 1978 sought to define secular in the following words: 'secular' means a republic in which there is equal respect for all religions however this definition of secular is contrary to the popularly accepted western notions.

The term 'religion' has not been defined in the Constitution of India, but the Supreme Court has given it an expansive content. The guarantee under

[4] Radhakrishnan, S. Indian Philosophy, Vol. I. 5th ed. (New Delhi : Oxford. 1999) pp. 232–234.

[5] *Constituent Assembly Debates*, Vol. VII, p. 831 a cited in Rao, P.P. "Basic Features of the Constitution", (2000) 2 SCC (Jour) 1.

Article 25, subject to certain exceptions confers a fundamental right on every person not merely to entertain such religious beliefs as are allowed to him by his judgment or conscience, but also to exert his beliefs and ideas in such overt and outward acts and practices as are sanctioned and enjoined by his religion, and further to propagate and disseminate his religious beliefs, ideas and views for the benefit and edification of others[6]. The State is empowered under Article 25(2)(a) to regulate secular activities associated with religious practices[7].

All religions are meaningful and that they should have valid place in the life of the nation. However, religion is not competent in defining nationality or citizenship. The State should be neutral as between the country's many religions and tolerant of all.

No one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the basic interests of religion and government. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of church and State.

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The term 'religion' has not been defined in the Constitution of India, but the Supreme Court has given it an expansive content. The guarantee under Article 25, subject to certain exceptions confers a fundamental right on every person not merely to entertain such religious beliefs as are allowed to him by his judgment or conscience, but also to exert his beliefs and ideas in such overt and outward acts and practices as are sanctioned and enjoined by his religion, and further to propagate and disseminate his religious beliefs, ideas and views for the benefit and edification of others.

Three principles are usually mentioned as being the essential characteristics of a secular State.

1. The first is the principle of liberty which requires that State which permits the practice of any religion, within the principles set by certain other basic rights which the State is also required to protect.
2. The second is the principle of equality which requires that State which doesn't give preference to one religion over another.
3. The third principle is that of neutrality which requires that State which doesn't give preference to religious over non religious.

[6] *See* Shukla, V N. Constitution of India. 10th ed., (Lucknow : Eastern Book Company, 2001) p. 206.

[7] Jain, M P. Indian Constitutional Law. 4th ed., (Nagpur: Wadhwa and Company, 2001) p. 636.

This leads, in combination with the liberty and equality principles, what is known in American Constitutional Law as the wall of separation doctrine meaning that the State does not involve itself with religious affairs or organizations. To understand secular practice in India, we must see whether three principles have been invoked and more importantly whether they have been followed.

The principle of liberty exists only for the protection of the universal basic right of equality, as guaranteed by Article 14 of the Constitution of India. Article 14 has been interpreted by the Courts as being one that prohibits the State from discriminating against any citizen on the basis only of religion and Article 15 of the Constitution explicitly states as much.

The Indian Constitution spelt out in several articles the main provisions regarding the secular state even before the term 'secularism' was first introduced into it in 1976. Firstly, it guarantees freedom of religion to individuals as well as to religions, to any religious denomination or any section thereof. Secondly, it guarantees equality of citizenship that is no discrimination on grounds of religion and equality of opportunity in public employment.

The principle of equality which implies the right to freedom of religion has been incorporated in the Constitution which gives to every citizen quite specifically the right to profess practice and propagate religion and also certain collective rights of religion, however, the State retains the right to regulate any activity that may be associated with religious practice so as to provide for social welfare and reform. The principle of liberty exists only for the protection of the universal basic right of equality, as guaranteed by Article 14 of the Constitution of India. Article 14 has been interpreted by the Courts as being one that prohibits the State from discriminating against any citizen on the basis only of religion and Article 15 of the Constitution explicitly states as much. The principle of the secular State being the separation of State and religion has also been recognized by the Constitution which declares that there should be no official religion of the State, no religious instruction should be provided in schools of the State, and there shouldn't be any tax to support any particular religion.

The Indian Constitution spelt out in several articles, the main provisions regarding the secular state even before the term 'secularism' was first introduced into it in 1976. Firstly, it guarantees freedom of religion to individuals as well as to religions, to any religious denomination or any section thereof. Secondly, it guarantees equality of citizenship that is no discrimination on grounds of religion and equality of opportunity in public employment. There should be no discrimination in educational institutions and no communal electorates. Thirdly, it provides for the separation of the State and religion. That is, no special taxes for the promotion of religion, and no religious instruction in state educational institutions. It is clear that the intention of the constitution is neither to oppose religion nor to promote rationalization of culture, but merely to maintain the neutrality and impartiality of the State in matters of religion.

However some critics believe that the concept of secularism in the Constitution is contradictory at the very outset, since it has a Hindu majoritarian tilt[8]. Attention has been drawn by the critics of secularism to Articles in the constitution such as

8 *See generally* Bhattacharjee, A M. EQUALITY, LIBERTY AND PROPERTY UNDER THE CONSTITUTION. (Calcutta : Eastern Law House. 1997) pp. 148–150.

Article 48 which deals with the slaughter of cows. Article 48 states that "Organisation of agriculture and animal husbandry - The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."

This raises a question as to the credibility of the secular principles in the Constitution, since the prohibition of cow slaughter is obviously to accommodate the Hindu population and more so in their support.

However it is contended in this regard that if the Constitution was unsecular in the first place, there would not have been the need for a secular ideology. Secularism was introduced by the "right thinking" members of the constituent and not the "right" thinking members of the constituent assembly.

It is however submitted in this regard that Secularism in the Constitution of India has been a failure as far as implementation is concerned only because it is inherently incompatible with the socio-cultural scenario that is prevalent in the country. The primary reason for this is that India is a heterogeneous society that is formed out of a combination of diverse homogenous groups that live in close proximity but lack communal harmony. Any agenda can only be implemented if there is a consensus and a reconciliation to adopt the agenda. A secular agenda is a classic example of a concept that has been included in the constitution, although there is no consensus for the adoption of the same. The task therefore is to create that consensus.

This raises a question as to the credibility of the secular principles in the Constitution since the prohibition of cow slaughter is obviously to accommodate the Hindu population and more so in their support. However it is contended in this regard that if the Constitution was unsecular in the first place there would not have been the need for a secular ideology. Secularism was introduced by the "right thinking" members of the constituent and not the "right" thinking members of the constituent assembly.

It is however submitted in this regard that Secularism in the Constitution of India has been a failure as far as implementation is concerned only because it is inherently incompatible with the socio-cultural scenario that is prevalent in the country.

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MULTIPLE CHOICE QUESTIONS

CONSTITUTION OF INDIA, 1950

1. Electoral college for the election of President of India, consists of
(a) all the members of both the Houses of Parliament
(b) all the members of both the house of Parliament and all the members of the legislative Assemblies of the state
(c) elected members of both the houses of Parliament
(d) elected members of both the Houses of Parliament and the elected members of the Legislative Assemblies of India

2. Two members of Lok Sabha are nominated by President of India to represent the ..... community
(a) Minority
(b) Anglo-Christian
(c) Anglo-English
(d) Anglo-Indian

3. Which of the following is/are parliamentary committee(s)
(a) Public Accounts committee
(b) Estimates committee
(c) Committee on Public Undertaking
(d) Speaker of Lok Sabha

4. As per Article 171 of the Constitution of India, members of legislative Council shall not exceed ..... of total number of members in the Legislative Assembly
(a) ½nd
(b) 1/3rd
(c) 1/4th
(d) 1/5th

5. A retired judge of a High Court
(a) can not practise in any Court or in any authority throughout India, except Supreme Court
(b) can not practise in any court or in any authority throughout India
(c) can not practise in the same High Court, but he can practise in the other High Courts and in the Supreme Court
(d) can not practise in the same High Court, but he can practise only in the Supreme Court

6. Administrator of National Capital Territory of Delhi is designated as
(a) Governor
(b) Administrator
(c) Lieutenant Governor
(d) None of the above

7. Sixth schedule to the Constitution of India relates to
(a) Administration and control of Scheduled Areas and Scheduled Tribes
(b) Administration of Tribal Areas in North-Eastern States
(c) Panchayats
(d) Urban and local self governments

8. Which of the following is not covered by Article 19 of the Constitution of India
(a) Right to assemble peaceably and without arms
(b) Right to form association or unions
(c) Right to move freely outside the territory of India
(d) Right to reside and settle in any part of the territory of India

9. As per Article 59 of the Constitution of India, the President
(a) shall be a member of either House of Parliament
(b) shall not be a member of either House of Parliament or of a House of the legislature of any State
(c) shall be a member of Lok sabha
(d) shall be a member of Rajya Sabha

10. Article 121 of the Constitution imposes restriction on discussion in Parliament shall be transacted in

(a) any judges
(b) any judge of supreme Court
(c) any judge of Supreme Court or a high Court
(d) any judge of a High court.

INDIAN CONTRACT ACT, 1872

11. Under Section 10 of the Indian Contract Act, 1872, a contract which ceases to be enforceable by law becomes void
(a) from its inception
(b) when it ceases to be enforceable
(c) when it becomes illegal
(d) when it becomes unlawful

12. Which of the following is/are correctly matched in relation to mode of revocation
(a) revocation by notice- Dickinson vs. Dodds
(b) revocation by lapse of time- Dickinson vs. Dodds
(c) revocation by death or insanity of the offeror - Dickinson vs. Dodds
(d) only (b) and (c)

13. Consent is said to be 'free' when it is not caused by
(a) coercion, undue influence, fraud or misrepresentation
(b) mistake
(c) coercion, undue influence, fraud or misrepresentation or mistake
(d) fraud or misrepresentation

14. Under Section 16(3) of the Indian Contract Act, 1872, the burden of proof in case of unconscionable transaction shall lie upon
(a) the person alleging such unconscionable transaction
(b) the person in a position to dominate the Will of the other
(c) either (a) or (b) depending on the facts and circumstances of the case
(d) either (a) or (b) in the discretion of the Court

15. Section 19 of the Indian Contract Act, 1872, deals with
(a) voidable agreements
(b) void agreements
(c) both (a) and (b)
(d) none of the above

16. Under Section 21 of the Indian Contract Act, 1872, a mistake as to law not in force in India has
(a) the same effect as a mistake of fact
(b) the same effect as a mistake of law
(c) the same effect as a mixed question of law and fact
(d) none of the above

17. As per Section 28 of the Indian Contract Act, 1872, agreements in restraint of legal proceedings are
(a) contingent contract
(b) wagering contract
(c) void
(d) valid

18. 'A' promise to paint a picture for 'B' by a certain day, at a certain price. 'A' dies before the day. The contract
(a) can not be enforced either by A's representation or by B
(b) can be enforced by B but not by A's representatives
(c) can be enforced by A's representatives but not by B
(d) can be enforced either by A's representatives or by B

19. Section 44 of the Indian Contract Act, 1872 provides that where two or more persons have made a joint promise, a release of one of such joint promisors by the promise
(a) shall discharge the other joint promisor or joint promisors
(b) does not discharge the other joint promisor or joint promisors
(c) may discharge the other joint promisor or joint promisors
(d) section 44 contains no such provision

20. Effect of failure to perform at fixed time, a contract in which time is essential – the contract
(a) becomes void
(b) becomes voidable at the option of promisor
(c) becomes voidable at the option of promisee
(d) neither becomes void nor voidable

CODE OF CIVIL PROCEDURE, 1908

21. Explanation to Section 10 C.P.C. provides that the pendency of a suit in a foreign Court
(a) preclude the Courts in India from trying a suit founded on the same cause of action
(b) does not preclude the Courts in India from trying a suit founded on the same cause of action
(c) in certain situations preclude the Courts in India from trying a suit founded on the same cause of action
(d) none of the above

22. Section 15 C.P.C. provides that every suit should be instituted in the Court of ..... competent to try it
(a) highest grade
(b) higher grade
(c) lower grade
(d) lowest grade

23. Section 25 C.P.C. deals with power of
(a) High Court to transfer suits etc.
(b) Supreme Court to transfer suits etc.
(c) District court to transfer suits etc.
(d) All the above

24. Commission u/s 75 C.P.C. can be issued
(a) to make a local investigation
(b) to make a partition
(c) to hold a scientific, technical or expert investigation
(d) any of the above

25. ..... C.P.C. deals with the matter as to when may sue in the Courts otherwise competent to try the suit
(a) Section 83
(b) Section 83(A)
(c) Section 84
(d) section 85

26. Supplemental proceedings are covered by
(a) Section 93 C.P.C.
(b) Section 94 C.P.C.
(c) Section 94A C.P.C.
(d) Section 95 C.P.C.

27. An appeal u/s 104 C.P.C. shall lie from
(a) an order u/s 35A C.P.C.
(b) an order u/s 91 or 92 C.P.C. refusing to leave to institute a suit of the nature referred to in section 91 or 92 as the case may be
(c) an order u/s 95 C.P.C.
(d) all the above

28. Section 152 C.P.C. is applicable only in case of
(a) clerical or arithmetical mistakes in judgements, decrees or orders
(b) errors arising from any accidental slip or omission in judgement, decrees or orders
(c) either (a) or (b)
(d) none of the above

29. Substituted service is provided under
(a) order 5 rule 5 C.P.C.
(b) order 5 rule 6 C.P.C.
(c) order 5 rule 19 C.P.C.
(d) order 5 rule 20 C.P.C.

30. As per Order 8 rule 6 of C.P.C., particulars of set-off is to be given in
(a) written statement
(b) plaint
(c) replication
(d) rejoinder

CODE OF CRIMINAL PROCEDURE, 1973

31. "Warrant-case" as defined u/s 2(x) Cr.P.C. means:
(a) a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding seven years
(b) a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term not exceeding two years
(c) a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years
(d) a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term not exceeding seven years

32. According to section 29 Cr.P.C. the Court of a Chief Judicial Magistrate may pass
(a) any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years
(b) any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years
(c) any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding five years
(d) any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding four years

33. Section 46(4) Cr.P.C. inserted by Cr.P.C. Amendment Act of 2005 provides for
(a) prohibition of arrest of woman after sunset and before sunrise
(b) prohibition of arrest of child after sunset and before sunrise
(c) prohibition of arrest of woman or child after sunset and before sunrise
(d) prohibition of arrest of woman or child after sunrise and before sunset

34. Section 84(1) Cr.P.C. provides that if any claim is preferred to or objection made to the attachment of, any property attached u/s 83, within ..... from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment u/s 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part
(a) three months
(b) six months
(c) one year
(d) three year

35. ..... Cr.P.C. deals with the power to hold investigation or preliminary inquiry
(a) Section 157
(b) Section 158
(c) Section 159
(d) Section 160

36. Under Section 167 Cr.P.C. when a person is arrested and produced before a Magistrate, the Magistrate can remand him to police or judicial custody for ..... days at the first instance
(a) 7
(b) 10
(c) 15
(d) 21

37. Statement u/s 174 Cr.P.C.
(a) can be used as a substantive piece of evidence
(b) can not be used as a substantive piece of evidence
(c) shall be used as a substantive piece of evidence
(d) none of the above

38. Section 210 Cr.P.C. provides for procedure to be followed when there
(a) are two complaint cases in respect of the same offence

(b) are two complaint cases in respect of two different offences
(c) is a complaint case and police investigation in respect of two different offences
(d) is a complaint case and police investigation in respect of the same offence

39. Section 219 Cr.P.C., provides that when a person is accused of more offences than one of the same kind committed within the space of ..... from the first to last such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding .....
(a) three years; three
(b) twelve months; three
(c) three months; three
(d) six months; twelve

40. As per section 223 Cr.P.C. which of the following person(s) may be charged and tried together
(a) persons accused of the same offence committed in the course of the same transaction
(b) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months,
(c) persons accused of different offences committed in the course of the same transaction
(d) all the above

HINDU LAW

41. Hindu Marriage Act, 1955 does not apply to
(a) a Virashaiva
(b) a Lingayat
(c) follower of the Brahmo, Prarthana or Arya Samaj
(d) applies to all the above

42. Section 3(f) of the Hindu Marriage Act, 1995 provides that "*Sapinda relationship*" with reference to any person extends as far as the ..... generation (inclusive) in the line of ascent through the father
(a) second
(b) third
(c) fourth
(d) fifth

43. A Hindu Marriage may be solemnized in accordance with the customary rites and ceremonies of
(a) both the parties thereto
(b) either party thereto
(c) family of bridegroom only
(d) none of the above

44. A husband can file petition under ..... of the Hindu Marriage Act on any of the grounds specified in
(a) section 13(1)
(b) section 13(2)
(c) either (a) or (b)
(d) none of the above

45. As per Section 13(1)(iii) of the Hindu Marriage Act, the ground for divorce is that the other party
(a) has been incurably of unsound mind
(b) has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent
(c) either (a) or (b)
(d) none of the above

46. Section 13(2) of the Hindu Marriage Act entitles ..... to present a petition for divorce
(a) husband only
(b) wife only
(c) both husband and wife
(d) none of the above

47. A petition u/s 13B of the Hindu Marriage Act can be filed by the parties to a marriage on the ground that they have been living separately for a period of ..... or more
(a) six months

(b) one year
(c) two years
(d) seven years

48. Every petition under the Hindu Marriage Act is to be presented to the District Court within the local limits of whose ordinary original civil jurisdiction
(a) the marriage was solemnized
(b) the respondent, at the time of the presentation of the petition, resides
(c) the parties to the marriage last resided together
(d) any of the above

49. Which of the following sections of the Hindu Marriage Act entitles the respondent to make a counter-claim for any relief under the Act
(a) section 23
(b) section 23A
(c) section 23B
(d) section 23C

50. Hindu Marriage Act pertains to the Year
(a) 1956
(b) 1965
(c) 1955
(d) none of the above

*****

ANSWERS

1. d	**2. d**	**3. d**	**4. b**	**5. c**	**6. c**	**7. b**
8. b	**9. b**	**10. c**	**11. b**	**12. d**	**13. c**	**14. b**
15. a	**16. a**	**17. c**	**18. a**	**19. b**	**20. c**	**21. b**
22. d	**23. b**	**24. d**	**25. a**	**26. b**	**27. d**	**28. c**
29. d	**30. a**	**31. c**	**32. b**	**33. a**	**34. b**	**35. c**
36. c	**37. b**	**38. d**	**39. b**	**40. d**	**41. d**	**42. d**
43. b	**44. a**	**45. c**	**46. c**	**47. b**	**48. d**	**49. b**
50. c						

SUPREME LAW PROFILES
(Head-notes of latest judgments of Supreme Court)

B.N. Shivanna Versus Advanta India Limited & Anr.; Criminal Appeal Nos. 1038–1039 of 2004; D/d- 14.03.2011

☞ Criminal Contempt proceedings can't be stayed on ground that criminal proceedings are also pending upon the same facts.

The Contempt of Court Act, – Section 19 – Appeal to Supreme Court against conviction order – High Court initiated criminal contempt proceedings on request of company – Advocate of the company had grabbed a sum of ₹ 72 Lacs through misguiding – Order of Simple Imprisonment for 6 months with fine of ₹ 2,000 – Order on contempt was challenged on ground that the conviction order will affect pending criminal proceedings against him as initiated by the company – Whether HC order was justified? – Yes. Appeal dismissed. His illegal activities amounted to interference in the administration of justice.

Guffic Chem P. Ltd. Versus C.I.T., Belgaum & Anr.; Civil Appeal No. 2522 & 2523 of 2011; D/d- 16.03.2011

☞ Sum received for Loss of source of income is a non-taxable Capital receipt.

Income Tax Act, 1961 – Whether a payment under an agreement not to compete (negative covenant agreement) is a capital receipt or a revenue receipt? – Held – It is a Capital receipt and falls under 'not taxable' category, as this payment was made for the loss of a source of income – Case 'Gillanders Arbuthnot and Co. Ltd. v. CIT, Calcutta 53 ITR 283' distinguished. (Para 7–8)

Ravindra Pal Singh Versus Santosh Kumar Jaiswal & Ors.; Transfer Petition (Criminal) No.222 of 2010; D/d- 17.03.2011

☞ Prosecution witnesses should be able to depose without any fear of repercussions.

The Code of Criminal Procedure, 1973 – Section 406 – Power of Supreme Court to transfer cases and appeals – Allegations of fake encounter – Prosecution of police officers – 29 bullets were recovered from deceased's body – Case pending before CBI Court in Dehradun – Prosecution opposed transfer on the score that accused were not police officers of higher rank and so, they can't undue influence the CBI – Held – Contentions of prosecution are not tenable. Matter transferred to CBI Courts, Delhi. (Para 7)

Mrs. Rubi (Chandra) Dutta Versus M/s. United India Insurance Co. Ltd.; Civil Appeal No. 2588 of 2011; D/d- 18.03.2011

☞ Compensation can't be enhanced in appeal, if quantum of compensation remains unchallenged.
☞ Duplicate licence is valid, if issued by the Authority after following proper procedure.
☞ Interest can be granted by Consumer Forum.
☞ Revisional Court can't sit as regular Court of Appeal to reappraise the facts.

The Consumer Protection Act, 1986 – Section 21(b) – Revision Petition before the National Commission – Supreme Court held – Revision Petition can't be taken as regular course of appeal. Concurrent findings of the facts of the Courts below should be set aside only when there is jurisdictional error or miscarriage of justice. (Para 23 & 27)

Mehboob Batcha & Ors. Versus State Rep. by Supdt. of Police; Criminal Appeal No. 1511 of 2003; D/d- 29.03.2011

☞ 'Custodial death' falls under the category of rarest of rare cases for which death penalty should be awarded.
☞ SC warned all policemen of the country to follow the directions issued under D.K.Basu's case.

Indian Penal Code, 1860 – Section 302 – Custodial death – Held – Charges should be framed under this section 302 IPC like wise other murder

cases. Further these cases fall under rarest of rare cases and death penalty should be awarded in such cases. (Para 15)

Asmathunnisa Versus State of A.P. represented by the Public Prosecutor, High Court of A.P.Hyderabad & Another; Criminal Appeal No. 766 of 2011

☞ SC/ST Act has no application when alleged 'I was insulted in my absence'.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Section 3(1)(x) – Allegation of using atrocities words against the Complainant in his absence – Meaning of the words "in any place but within public view" – Held – The public must view the person being insulted for which he must be present and no offence on the allegations under the said section gets attracted if the person is not present. Complaint was ordered to be quashed. (Para 10)

State of U.P. and others Versus Rekha Rani; Civil Appeal No. 1017 of 2007; D/d- 30.03.2011

☞ Temporary employee has no right of regularization.

The Constitution of India, 1950 – Article 14 & 16 – Right of regularization in service – A temporary employee has no right to be regularized. The Court can't order for regularization on the ground that similar situated candidate has been regularized. An illegality can't be perpetuated – Cases 'State of Rajasthan Versus Daya Lal; 2011(2) SCC 429', 'State of Karnataka Versus Umadevi; (2006) 4 SCC 1', State of U.P. Versus Kaushal Kishore Shukla (1991) 1 SCC 691 relied. (Para 12 & 13)

K.K.Velusamy Versus N.Palanisamy; SLP [C] Nos.18211-18212 of 2010; D/d- 30.03.2011

☞ Section 151 can be used for reopening evidence or for recalling witnesses.

☞ Electronic record can be used in evidences.

☞ In certain situation, evidences may be reopened or recalled even at the stage of arguments.

☞ Ideally, the recording of evidence should be continuous, followed by arguments without any gap.

(a) The Code of Civil Procedure, 1908 – Section 151 vis a vis Order 18 Rule 17A – Application to lead evidence after closing of evidences when and the matter was fixed for arguments – Held – Although Order 18 Rule 17A was deleted by amendment dated 30.12.1999, still such an application can be moved under section 151 of the code – Cases 'National Institute of Mental Health & Neuro Sciences vs. C Parameshwara; 2005 (2) SCC 256' and 'Vinod Seth vs. Devinder Bajaj; 2010 (8) SCC 1' etc. relied. (Para 10)

(b) The Code of Civil Procedure, 1908 – Purpose of deleting Order 18 Rule 17A – Held – When any of the party could not put forth the desired evidence earlier despite due diligence, it can place it before the conclusion of the arguments, but this proviso was deleted to expedite the proceedings and the arguments can be heard immediately after the conclusion of evidences once – Further held – "Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency". (Para 17)

(c) The Indian Evidence Act, 1872 – Section 8 – Admissibility of electronic disc in evidences to show conversations between the parties in respect of matter in issue – Held – Such electronic record can be received as evidence – Case 'R.M Malkani vs. State of Maharastra; AIR 1973 SC 157' relied. (Para 7)

Harjit Singh Versus State of Punjab; Criminal Appeal No. 816 of 2011; D/d- 30.03.2011

☞ Notification of year 2009 can't enhance punishment for the offence of 2003.

The Constitution of India, 1950 (Article 20) vis a vis The Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 18) – Whether Notification dated 18.11.2009 can be applied retrospectively for the offence committed in year 2003? – Held – No. It will be in conflict to Article 20 of Constitution. (Para 13)

Union of India and Anr. Versus M.M. Sharma; Civil Appeal No. 2797 of 2011; D/d- 30.03.2011

☞ In interest of national security, communication of the charge and holding of an enquiry can be dispensed with.

The Constitution of India – Article 311(2) – First Secretary to the Embassy of India in Beijing at China – Found to be involved in an unauthorized and undesirable liaison with foreign nationals of the host country – The conduct of the respondent was enquired into by the Intelligence Bureau (IB) and straightway removed from service without communication of the charge – Whether holding of an enquiry before dismissal or removal of a Government employee can be dispensed with keeping in view the Security of the State? – Held – Yes. (Para 23–25)

Revanasiddappa & another Versus Mallikarjun & others; Special Leave Petition (C) No. 12639/09; D/d- 31.03.2011

☞ Illegitimate Hindu children have rights in all sorts of properties of their parents.

The Hindu Marriage Act, 1955 – Section 16(3) – Rights of illegitimate child in property – Held – Children in result of void or voidable marriage have the rights in property, either ancestral or self-acquired, of their parents only and no others, even in the joint family. But, they can claim this right only after the death of their parents and not during their lifetime. (13, 25, 26 & 35)

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A MESSAGE IN PUBLIC INTEREST

KALIYO KO KHILNE DO!

MASOOM BHRUN KI PUKAR!!

Maa Papa Ki Mannat Rang Layi, Varsho Baad Main Garbh Mein Aayi!
Sab Aapas Mein Lage Yon Kahne, Mujhse Pehle Hain Do Behanein!
Teeja To Hoga Hi Ladka, Suna Aur Dil Zor Se Dhadka!
Jane Kya Meri Gati Hogi, Ladka Nahi Jab Ladki Hogi!
Fir Papa Ne Maa Se Kaha, Test Karayein Doctor Ke Yahan!
Test Mein Ek Sui Lagai, Main Bahoot Royi Aur Ghabrai!
Doctor Ne Kaha, I am Sorry, Fir Se Hain Ladki Ki Baari!
Abortion Jaldi Hi Karbana, Nahi to Fir Hoga Pachhtana!
Aangootha Choosti Dekhti Sapne, Ye Sab Honge Mere Apne!
Meri Umar Hain Dhai Mahine, Jaane Kitne Dukh Hai Sahne!
Jab Aaayi Mummy Ki Baari, Abortion Ki Hui Taiyari!
Doctor Ne Auzaar Se Chhua, Darr Kar Sikudi Bura Haal Hua!
Jab Laga Doctor Mujhe Kaatne, Haath-Pair-Dhar Tukdo Mein Baatne!
Nanhe Pan Ka Diya Havaala, Koi Nahi Tha Sunne Wala!
Roi-Chilaayi Shor Machaya, Kisi Ko Mujh Par Taras Na Aaya!
Hai! Jaalimo Ne Maar Dala, Tukda-Tukda Kar Bahar Nikala!

– Mr. Pradeep Mangla

IMPORTANT LEGAL NEWS

Department can't charge for Self-inflicted delay

Quite often, the departments initiate some action against their clients, but thereafter they sleep for a long time, and then they wake up again and start proceedings. This cycle rotates many times in large number of cases, but the department does neither punish self nor its officers for such a delayed action, and it passes on the punishment to the ultimate consumer/user coupled with severe penalty and interests.

One such matter came up for hearing before the Hon'ble Supreme Court of India in case titled 'Delhi Development Authority Versus Ram Prakash; Special Leave Petition (C) No. 27278 of 2009; D/d- 15.03.2011' in which on 08.08.1983, Delhi Development Authority (DDA) has issued a show cause notice after routine inspection of the premise, belong to Prof. Ram Prakash wherein he was required to reply within 10 days. He replied the notice immediately on 10.08.1983. Thereafter, no action was taken for 7 years. On 28.06.1990, another notice was served to him, of which he also replied. The exchange of communication continued for several years after that. In 2004 after the death of his wife, he applied for mutations upon which DDA refused to enter mutations and made demand order for ₹1,78,85,001/- on account of misuser charges. To quash this demand order, Prof. moved a Writ Petition before the High Court of Delhi which was allowed. DDA filed Letters Patent Appeal (LPA) against the said order which was ultimately dismissed, and against which DDA moved to the Supreme Court. In this way, this matter reached ultimately to the Apex Court.

The Apex Court noted that although there is no prescribed period within which DDA should take action, but even then, the action should be taken within some reasonable period. 'What should be the reasonable period?' depends upon the facts & circumstances of each case. Hon'ble Court relied on the decision of 'State of Punjab & Ors. Vs. Bhatinda District Cooperative Milk Producers Union Ltd.; (2007) 11 SCC 363' wherein it was observed that even if no period of limitation is indicated, the statutory Authority is required to act within a reasonable time. In this case, although DDA has suspected the misuse of the plot day back in 1983, but it slept till the year 2004 until the Prof. Ram Prakash/allottee generated a need to get mutations of the said plot, and then the department raised the impugned demand, charging penalty for all these years, which was of course, unfair & unreasonable. All the three Courts have passed concurrent judgments against DDA in this case, setting aside the impugned demand order.

Not to summon Govt. Officials unnecessarily: SC

A bench comprising of Justices Markandey Katju and Gyan Sudha Mishra of the Supreme Court warned High Court judges as not to summon the senior bureaucrats unnecessarily to appear before the Court. The bench noted that many judges summon the officers merely to satisfy their ego. This noting came while appraising the summoning order of personal appearance of Principal Health Secretary of Uttar Pradesh before the Allahabad High Court for non-complying an order of the Court which was passed 21-years back. Supreme Court further directed that in such a critical situation, the High Court must first explore the option of getting compliance of the order through the Advocate General.

Post office can't be relieved by refunding postal charges only

A case titled 'The Postmaster General, Kerala & Ors. Versus Kiron Rasheed', Revision Petition No. 781 of 2010; D/d- 31.03.2011' came before the full bench of National Consumer Disputes Redressal Commission, New Delhi. In this case, an interview-letter was booked via Speed Post on 16.08.2005 which was delivered belatedly on 22.08.2005. In result of which, the

Complainant has to bear air fare to face interview on 25.08.2005 at Delhi from Kerala, as he has no option otherwise. The main contention of the Postal department was that according to Section 6 of the Indian Post Office Act 1898, there is no liability for loss, mis-delivery or damage/delay in delivery, except when caused fraudulently or willfully. The National Commission rejected this ground, stating that this privilege is not in any way connected with the modernized forms of transactions like speed post, e-mail, money transfer etc.

Along with this Section, the department has also referred the notification of 21.1.1999 of the Ministry of Communication, Department of Posts. This notification stated, "In case of delay in delivery of domestic speed post articles beyond the norms determined by the Department of Posts from time to time, the compensation to be provided shall be equal to the composite speed post charges paid." Rejecting all contentions, the State Commission accepted the contention of the Complainant that due to deficiency in services of the postal department, the Complainant has to bear air costs. Accordingly, the State Commission directed the postal department to pay air costs. The full bench of the National Commission too upheld the order of the State Commission.

Departmental inquiry can't be conducted without notice to concerned person

An employee of Central Warehousing Corporation applied for reimbursement of the medical bills concerning his dependent unemployed son's treatment. The corporation failed to reimburse it. So, the employee filed a complaint before the District Consumer Disputes Redressal Forum for relief, and the Forum allowed the complaint. Corporation moved an appeal before the State Commission which was dismissed. Finally, this case titled 'The Regional Manager Central Warehousing Corporation Versus Ch. Laxminarayana; Revision Petition No. 1060 of 2007' came up for final hearing on 30.03.2011 before the National Commission which too dismissed it on the ground that the department has raised bare allegation on the basis of a departmental inquiry of which, no notice was given to the Complainant and in his absence the inquiry was conducted.

Consumer forum can't solve disputes between trust-members

A dispute occurred between different members of the trust. Each side issued letter to the bank to stop operation of bank account of the trust for the members of other side. In result, the bank has to freeze the account. Additionally, the bank asked for an order of the Court for de-freezing the account. Against this action of the bank, one member moved a complaint for de-freezing the account and for compensation before the State Consumer Commission who held that bank was quite right in freezing the account in such a situation, and the aggrieved party should approach the Civil Court. The National Commission upheld the decision. (Smt. Ram Piari Kapoor Charitable Trust Versus Punjab National Bank; First Appeal No, 432 of 2004; D/d- 17.03.2011 by National Consumer Disputes Redressal Commission)

Supreme Court of India can't direct Pakistani Authorities

A Writ was filed under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India for directing the Pakistani Authorities to release his brother who has crossed the Pakistani border innocently and the Pakistani Security Force has arrested them. The Court martial was conducted by Pakistanis and life imprisonment was awarded to him. Since 1986, he was in Pakistani Jails. After making numerous representations to the Authorities of the Government of India, his brother filed a Writ Petition (Criminal) No.16 of 2008 titled as 'Gopal Dass through brother Anand Vir Versus Union of India and Anr.' which was heard finally on 14.03.2011 by a bench of the Supreme Court, comprising of Mr. Justice Markandey Katju and Justice Gyan

Sudha Mishra. Justice Katju first remembered the words:

"Qafas udaas hai yaaron sabaa se kuch to kaho
Kaheen to beher-e-khuda aaj zikr-e-yaar chale"

— FAIZ AHMED FAIZ

The bench noted "We cannot give any directions to Pakistani authorities because we have no jurisdiction over them. The Indian authorities have done all that they could do in the matter. However, that does not prevent us from making a request to the Pakistani authorities to consider the appeal of the petitioner for releasing him on humanitarian grounds by remitting the remaining part of his sentence".

The Court further noted that a delegation from Pakistan had recently come to India to request for releasing Pakistani prisoners in Indian jails. This delegation was headed by Hon'ble Mr. Justice Nasir Alam Zahid, a very respectful former Judge of the Pakistan Supreme Court, and it included Mr. Syed Iqbal Haider, Senior Advocate of the Pakistan Supreme Court (who had been Pakistan's Law Minister in Mrs. Bhutto's Cabinet). This delegation, accompanied by Mr. Kuldip Nayyar and Mr. Mahesh Bhatt of the Hind-Pak Dosti Manch, met the Prime Minister, Union Home Minister, Minister of External Affairs and other authorities in India, and informed them that a petition was filed by them in the Pakistan Supreme Court and the Court ordered release of 442 Indian prisoners languishing in Pakistan jails. (The Pakistan Supreme Court deserves to be commended in this connection). They requested for similar release of Pakistani prisoners in Indian jails, and the Indian Government generously reciprocated the gesture by releasing many Pakistani prisoners in our jails. Thus there is a humanitarian spirit on both sides, which we applaud.

In these circumstances, Hon'ble Supreme Court of India requested the Pakistani authorities to consider the appeal of the petitioner for remitting the remaining period of sentence and release him (as well as other similarly Indian prisoners) in the same spirit.

When prior decision is binding in place of subsequent one?

The subsequent decision is binding in case of confliction between prior decision and subsequent decision. This is one rule. Another rule is that one bench of equal strength can't overrule the decision of another collateral bench. In case of non-satisfaction of prior decision, the subsequent bench should refer the matter to the larger bench. Then, what will happen if prior decision remains unnoticed by the subsequent bench and confliction is not referred to the larger bench.

One such situation occurred in case titled 'Union of India & Ors. Versus S.K.Kapoor; Civil Appeal No. 5341 of 2006; D/d- 16.03.2011' in which divisional bench's decision of case 'S.N.Narula vs. Union of India & Others, Civil Appeal No.642 of 2004; D/d- 30.01.2004' was not observed by the subsequent divisional bench in case 'Union of India vs. T.V.Patel, (2007) 4 SCC 785' on similar question. In both the said cases, the common question of law was 'Whether a copy of the inquiry report can be supplied to the charge sheeted employee with the dismissal order simultaneously or should it be supplied in advance before passing of the dismissal order?' In S.N.Narula's case (supra), the bench has opinion that inquiry report should be supplied in advance to the concerned employee so that he can rebut. But, the bench in T.V.Patel's case was of the opinion that it is not essential to supply the copy of inquiry report to the concerned employee in advance, as the report can be supplied with the dismissal order.

As both the benches of equal strength have confliction of opinion upon a similar question of law, the subsequent bench should have to refer the question to the larger bench, but it didn't happen. Now the question arise 'Which decision should be preferred – prior decision or subsequent decision or any decision as per choice?' This question was answered in S.K.Kapoor's case (supra) by the Hon'ble bench of Mr. Justice Markandey Katju and Justice Gyan Sudha Mishra that the prior decision would leave application, only if it was overruled by the larger bench. As the prior decision

was not over-ruled, so it should be applied. The later decision in T.V.Patel's case(supra) is a *judgment per incuriam*.

Whether payment for not-compete is a Capital or Revenue Receipt?

This important question of law came for consideration before the Full Bench of the Supreme Court in case titled 'Guffic Chem P. Ltd. Versus C.I.T., Belgaum & Anr.; Civil Appeal No. 2522 & 2523 of 2011; D/d- 16.03.2011'. The petitioner/assessee had a business of pharmaceuticals works and had a huge competition with another popular company 'Ranbaxy' in field of medicines. Both the companies willingly entered into an agreement, according to which the assessee had received a total sum of ₹ 50 lacs in all for not carrying out the scheduled activities in the competitive field of medicines. Now the question arose as 'whether this receipt of payment of ₹ 50 lacs was a capital receipt or a revenue receipt?' After considering the matter at length, Hon'ble bench reached to the conclusion that the receipt was a Capital receipt and falls under 'not taxable' clause of the Income Tax Act, 1961 as this payment was for the loss of a source of income. Decision of case 'Gillanders Arbuthnot and Co. Ltd. v. CIT, Calcutta 53 ITR 283' was distinguished.

Effect of punishment for petty offences shouldn't extend to rest of life

Application forms of most of the organizations/institutions have the clause like wise 'Whether the applicant/candidate was prosecuted in a criminal case? Or Whether any criminal case was ever lodged against him/her, if any give details? etc. It is equally true that in most of such cases, the applicant/candidate denies the fact of facing prosecution in fear of loosing his/her candidature.

One such situation was faced by Sandeep Kumar who applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed:

"12(a) Have you ever been arrested, prosecuted kept under detention or bound down/fined, convicted by a court of law for any offence debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any Examination, rusticated by any university or any other education authority/Institution." Against that column the respondent wrote: 'No', despite the very fact that an FIR was lodged against him and other family members under Section 325/34 IPC at the instance of their tenant, in which they all were acquitted on 18.01.1998 when the matter was compromised. He disclosed these facts first time in year 2001 in an attestation form. In result of which, show cause notice was issued against him for concealment of the true fact. Despite filing his reply and counter reply, his candidature was cancelled. Then he has to move to the Central Administrative Tribunal who also dismissed his application. Against this decision, he filed a Writ Petition before the High Court who allowed the petition and set aside the order of the police authorities. Against this decision, the Government filed a case titled 'Commr. of Police and Ors. Versus Sandeep Kumar; Civil Appeal No(S). 1430 of 2007' before the Supreme Court of India, where before the Hon'ble bench of Justice Markandey Katju and Justice Gyan Sudha Mishra the case came up for final hearing on 17.03.2011.

Hon'ble bench was satisfied with decision of the High Court. The bench further noted that the FIR was lodged against the candidate when he was at the age of 20 years. The section under which trial was conducted was also no serious and that too against his tenant and in which his family members were also tried. There was fear of loosing candidature in disclosing said facts in the application originally filed by the candidate before the department. He should not be punished for rest of life for such a small offence. The Court should adopt liberal attitude in such type of matters. In this connection, Hon'ble Court also remembered the character of 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of

stealing a loaf of bread for his hungry family, Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

The Court also referred the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language only, and not in Welsh. So, they came to London and invaded the High Court. They were found guilty of Contempt of Court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning preferred their studies in place of spending their time in prisons.

'Jaljira' is 'packed mixed masala'

This interesting citation was made by the Supreme Court, while disposing a case relating to the assessment of sales tax in case titled 'Commercial Taxes Officer Versus M/s Jalani Enterprises; Civil Appeal No. 2559 of 2011' while deciding on 17.03.2011, the question as at what rates sales tax should be paid on Jaljira – whether @10% or 16%. The bench of Mr. Justice Mukandam Sharma and Justice Anil R. Dave held that rate @16% is the correct one, corresponding item to 'packed mixed masala' in the concerned category. The Court further noted that Idli mix and Dosa mix are outside this category.

Permissibility of Judicial Legislation

As per the scheme of the Constitution of India, Judiciary in not enshrined to do legislation works. It is the function of the legislatives. Though whenever any deficiency on any subject of law is found and the circumstances warrant immediate actions, then judiciary have passed immediate directions and guidelines to follow, until sufficient law (passes by legislatives) would be available on that subject. But it should not be done in a regular and routine manner, otherwise this will amount to transgressing of judicial powers.

One such order was passed by the High Court of Judicature at Bombay, bench at Nagpur in Writ Petition No.2216 of 2006; whereby the High Court *suo motu* took up a case titled as 'Court on its own motion vs. State of Maharashtra through its Secretary, Education Department'. In this case, the High Court issued directions that if the colleges fail to fill in the post of Principal by 31st May, 2009, then the University will issue orders in the first week of June, 2009 prohibiting admissions in the Colleges concerned. This order (impugned order) was challenged before the Supreme Court through case titled 'Bharat Ratna Indira Gandhi College of Engineering & others Versus State of Maharashtra & Others; Civil Appeal No. 2704 of 2011'. This case came up for final hearing on 28.03.2011 before the bench of Mr. Justice Markandey Katju and Justice Gyan Sudha Mishra.

The bench noted that before passing the impugned order, no opportunity was given to the affected colleges to represent their case. Neither they were impleaded as parties, nor notices were issued to them. Nor the impugned order explains the reasons for passing such a hasty order. Nor the impugned order discusses the negative impacts of lack of permanent principals upon the admission of students, because the acting principals could do the assigned work with responsibility. Nor the impugned order explains the source of information upon which the Court moved s*uo motu*. Ultimately, the impugned order was set aside.

Death sentence in all custodial death cases: SC

A shameful case titled 'Mehboob Batcha & Ors. Versus State Rep. by Supdt. of Police; Criminal Appeal No. 1511 of 2003' came for final hearing on 29.03.2011 before the Hon'ble Supreme Court, comprising of Mr. Justice Markandey Katju and Justice Gyan Sudha Mishra. In this

case, a woman was brutally gang-raped by the police men in their custody before her husband who was in police custody on allegation of his involvement in some theft case. Not only the woman was humiliated, but her husband also faced custodial violence to the extent that he ultimately died in police custody. This incident was happened in a police station of the State of Kerala. Although both the Trial Court and High Court have convicted all the accused, but neither Court deem it proper to conduct trial of accused police officials under Section 302 Indian Penal Code as well. The sentence of 3 years rigorous imprisonment and a fine was awarded to one accused while the other appellants have been given sentence of 10 years rigorous imprisonment with a fine. This order was under challenge before the Supreme Court.

The woman appeared as witness before the trial Court and narrated the whole incidence as how she and her husband faced torture in the police lock-up. Taking serious view upon this incidence, the Supreme Court warned all police officials of the country that such type of incidences shall not be borne any more. The Court further directed the registry to sent a copy of the order to Home Secretary and Director General of Police of all States and Union Territories, who shall circulate the same to all police officers up to the level of S.H.O. with a directive that they must follow the directions given by this Court in 'D.K. Basu Versus State of West Bengal; 1997(1) SCC 416' case and that custodial violence shall entail harsh punishment. The Court further suggested that like wise other murder cases, charges should also be framed under custodial death cases. The Court reflected its pain in these words:

"Bane hain ahal-e-hawas muddai bhi munsif bhi
Kise vakeel karein kisse munsifi chaahen"

— Faiz Ahmed Faiz

The Court also reiterated the version of case 'Satya Narain Tiwari @ Jolly & Anr. Versus State of U.P.; JT 2010(12) SC 154'; and in 'Sukhdev Singh Versus State of Punjab, SLP (Criminal) No.8917 of 2010 decided on 12.11.2010' in which it was stated that the crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric, and hence they call for harsh punishment.

The directions in D.K.Basu's case were:

"(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee insist be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/herbed, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on conspicuous notice board."

Non-performance of the contract is not 'deficiency in service'

An interesting complaint titled 'Sri Mangilal Soni Versus Sri T. Marappa; Consumer Complaint No. 252 of 2010' came for final hearing on 25.03.2011 before the National Consumer Disputes Redressal Commission, New Delhi in which the Complainant has invoked the original jurisdiction of the National Commission against breach of the agreement to sell of the certain properties. According to the Complainant, he has executed the agreement with the opposite parties for the purchase of certain land on total consideration of ₹2 crores in which ₹20,000 was paid on the day of execution of the agreement, but the vendor/opposite parties have failed to execute the sale deed as per the terms of the agreement, so vendors are liable to pay 5 times of the earnest money as per the agreement. Hon'ble National Commission was of the opinion that breach of the agreement didn't come under the provision of 'deficiency in services' under the Consumer Protection Act, 1986 and so the Commission has no jurisdiction to entertain the Complaint, although liberty is given to the Complainant to approach competent court of Law for Specific Performance of the Contract and/or any other alternative relief.

*****

READERS' LEGAL QUERIES

My son had died due to illness and he had a minor son who is living with his mother. His mother is not careful to his life. She is living in adultery. So I want to take custody of my son's son. Can it is possible?

You can file a petition for taking the custody of minor child under the Guardians and Wards Act, 1890. In the matter of custody of minor children, the welfare of the minor child is of paramount consideration. To this extent, legal right of a particular person is immaterial. If the mother is living in adultery, then her bad character can disturb the life and mind of the minor child. So you may get success in getting the custody of your grandson.

When I was coming to the city, in way some people attacked me. I got many injuries. I made a complaint to the police and I medically examined in a Government Hospital. But police has not registered the case against the attackers. What should I do?

Firstly you should make a Complaint to the higher police authorities. Still if the police doesn't take action, then you should file a Criminal Complaint before the Illaka Magistrate (of the area concerned where you were attacked) as per section 190 of Cr.P.C.

My grand father is about 80 years old. He wants to make a Will of our properties in my favour. But he cannot move from the bed and so, he cannot go before the sub-Registar for registration of the Will. What should I do for making the Will in my favour?

Registration of Will is not compulsory. A Will can be made even on a simple plain paper in presence of two independent witnesses. The witness may be your family member or some other, but he/she should be of majority of age, having sound state of mind. It is always beneficial to have some independent and responsible person of the society like nambardar of the village or town as one of the witness.

My vehicle was stolen by some one. An FIR was also lodged in the police station. Matter was reported to the Insurer of the vehicle for the claim, but Insurer dismissed my claim on ground that the vehicle had no fitness certificate at the time of theft. What is relief for me?

Insurer of the vehicle cannot be dismiss the total claim on the basis of fitness certificate. At the most, the Insurer can deduct 25% of the total claim for not having Certificate of Fitness, as held in many reported judgments. You should file a Complaint before the District Consumer Disputes Redressal Forum under the Consumer Protection Act, 1986.

My land was acquired by the Government and I could not file reference petition for enhancement of the compensation with in time. What should I do for getting more compensation?

You have two remedies for getting enhanced compensation- (i) Either you can file reference petition with the application of condition of delay; or (ii) you can file petition under section 28 A of the Land Acquisition Act, 1894 with in three months from the date of passing of the award of the concerned District Court in some other connected matter in respect of the same notification.

*****

READERS' VIEWS

Dear Readers,

As you all might be well aware that the burning topic for February 2011 issue of 'Law Profiles' was 'RUN AWAY MARRIAGES' upon which the Readers' Views were invited among any of the following heads:

- **Which is better option – Run-away marriage or Arranged marriage?**
- **What are the reasons behind Run-away marriages?**
- **What should a girl do when her parents are organizing an arranged marriage against her wishes?**
- **What should the parents do before arranging daughter's marriage?**
- **What should be the law regarding Run-away marriages and Arranged marriages?**

The writers of the Views selected for publication are being awarded a monetary prize of ₹101/- (Rupees One Hundred and One Only) plus a 'Certificate of Appreciation'. The cheque and certificate is dispatched to all of them. Congratulations. Their Views are:

"**1.** All the parents want to see their daughter happy in her married life. They try their best for arranging best among bests bride/bridegroom for their daughter. Hence arranged marriage is the better option, but it should be with the consent of daughter/son.

2. There are various reasons behind run-away marriages such as:

- Misunderstanding/mis-communications between parents and daughter/son.
- Immaturity of mind of boy and girl.
- Fear of not giving consent by parents.
- Boy and girl think that at present, parents may not permit them to marry but after marriage, they will compromise. It normally happens too in the society.
- Sexual attraction forces boy and girl to remain with each other. They can not wait for arrange marriage with the fear of not permitting or delay in arrange marriage. Hence they take step for run-away marriage.
- Now a days, educated boys and girls like their life partner as per their job carrier irrespective of their religion, caste, social and economic status etc. whereas their parents like their son/daughter in laws as per their religion, caste, social and economic status etc. This opposite thinking forces for ran-away marriage.

3. If girl's parents are organizing an arranged marriage against the wishes of the girl, then the girl should take support of her relatives and friends for communicating her wish with justified reasons of denying that arranged marriage. In any way, she should not prefer run-away marriage. She should clearly say about boy of her choice and try to satisfy the parents and relatives.

4. Parents should keen in mind and honor the wishes of their daughter and before going for arranged marriage, they should satisfy and take consent of their daughter.

5. Laws regarding Run-away marriage and Arranged marriages (Personal Laws) are already in existence."

— Dr. Radha Gupta, Principal,
S.B.N. College of Law
Sikar Road, Jaipur (Raj.)

"**1.** Arranged marriage is good, still runaway marriages are better when it is question of choosing partner for life and their voice goes unheard or rejected with unseemly reasons.

2. Primarily the Government could frame the provisions for mediation program between the couple and their family. Secondly as per the constitutional aim and duty of establishing the socialist secular India, the Government should frame the Uniform Civil Code and must homogenize the personal laws."

— Mr. Shivnarayan Tiwari,
Nashik (Mah.)

Dear Readers,

This era of Information technology gave us new equipments & services, especially Mobiles, Television, Computers and Internet. It makes possible for us to go through the entire world conveniently in a fraction of time. We can interact with other parts of the world, having different culture, discipline and lifestyles. Western culture has more openness than eastern one. We have twisted towards that culture, change in our dresses and lifestyles indicate so. Some says, this openness, exposure and nudity is bad for the society, others have opinions in its favour.

In this context, the burning topic for this month is 'NUDITY' upon which the Readers' Views are invited among any of the following heads:

- **Whether 'nudity' is a problem or just a social change?**
- **Whether 'nudity' and 'openness' are synonymous?**
- **Whether our culture has in-built 'nudity' or it is borrowed?**
- **Whether we should worry for increasing 'sexual exposure'?**
- **What are the pros and cons of changing lifestyles of common people?**

The Views upon all/any of the above heads should reach to the 'Law Profiles Publications' with/on the specified form provided in each copy of 'Law Profiles' journal, so as to reach to the publication latest by 31st May 2011. The selected Views will be published in June 2011 issue of 'Law Profiles'.

We are reiterating that it is not required to send Views upon all of the above heads. It is sufficient to have Views upon any of the above heads. The Viewers of the Views selected for publication shall be awarded a monetary prize of ₹101/- (Rupees One Hundred and One only) plus a 'Certificate of Appreciation'.

Jai Hind.
With warm welcome,
Publisher

*****

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A MESSAGE IN PUBLIC INTEREST

Say 'No' to Junk food

Junk-food is very popular now-a-days. People of all ages are finding it delicious. Many of us know its harms, but still not use this knowledge. Some are not aware of it harms. Obesity, skin problem, high cholesterol, heart problems are some of them.

Due to its nature, it is also scientifically called as 'scrap food'. It has minimum nutritional value with maximum calories. It lacks all forms of nutrients and fibers.

So we should eat nutritious food for good health. We should avoid road side unhygienic food too. Only nutritious food can give us stamina, power and a healthy life. Fast food is making us lazy fastly.

We should develop a habit to choose food each time we eat. After all, it is our health that is at stake. The sooner we realize, the better it is.

–Ms. Tanika Munjal

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FORM FOR READERS' LEGAL QUERIES

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Contact Numbers:.....

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Remarks (if any):.....

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