All good things in life take time to materialise and the same can be said about the Lex Scripta Review. The idea was conceived by my friend Aditya Mukherjee in 2013 and he roped me in to get the Faculty of Law of the University of Allahabad its very first law magazine. Since then we have been working very hard to steer our dream to fruition and after more than a year's hard work this magazine will finally see the day of light.

The Lex Scripta Review is a very unique name. “lex scripta” means written law. So technically this magazine is a review of the written law in a precise and concise manner so that it may be appreciated by the young students of law. The magazine consists of articles not only from students of the Faculty of Law but also from Judges and Advocates of High Courts. We are very grateful to Mr Justice Sunil Ambawani for his article on Alternative Dispute Resolution, Mr Justice A. P. Sahi for enlightening us with his Message, Mr Justice Pankaj Mithal for throwing light on the Meerut Conspiracy Case and Mr Justice Ashwini Kumar Mishra for his letter to the Law students. We are humbled at their gesture of taking out valuable time from their busy schedules and enlightening us with their profound knowledge of Law.

We would like to thank Mrs Sangita Srivastava for her article on the Indian Education System, Mrs Roopa Shankar for her article on the Differently-Abled, Mr Kunal Ravi Singh for his insight on being an apartment owner in Uttar Pradesh, Mr Kartikeya Saran who is an Advocate at Allahabad High Court for his article related to Saral Petty offences Fine Deposit Scheme initiated on the 20th of March, 2014 by the Chief Justice of the Allahabad High Court for his article related to Saral Petty offences Fine Deposit Scheme initiated on the 20th of March, 2014 by the Chief Justice of the Allahabad High Court, Miss Aamna Hasan, Advocate at Vutts & Associates, LLP Advocates, for her article on the Exhaustion of Trade Mark Rights and Mr V.K.S. Chaudhary for his valuable article on the extremely sensitive topic of Reservation and its Constitutionality.

A number of our alumni have also contributed articles for our maiden magazine. So we would like to thank Mr Abhijeet Dwivedi for his article...
related to the economic aspect of Medical Negligence, Mr Prabhash Chand for pointing out the problems the labourers have to face in times of mergers and acquisitions and Miss Madhur Bharatiya for her article on increasing Judicial Activism by the Judiciary.

The students have also presented brief rundowns of some of the recent enactments like that of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, The Copyright Amendment Act, 2012 and The Criminal Law Amendment Act, 2013.

In a panel discussion, the students chose Justice Jagdish Sharan Verma, former Chief Justice of India as the Legal Personality of the Year. He was also the Chairman of the National Human Rights Commission and also headed the Committee formed for Criminal Law Amendment after the Delhi Rape case in 2012.

We also tried to include synopses on some of the major decision in the recent past like People’s Union for Civil Liberties v. Union of India & Others, Suresh Kumar Koushal & Another v. Naz Foundation & Others, Novartis AG v. Union of India & Others and Rajeshwar Singh v. Subrata Roy Sahara & Ors.

We decided to do a section on our alumni and out of the many outstanding performers in different legal spheres the students chose Miss Sanyukta Singh as the Alumna of the Year. She was not only the topper of her batch but also made the Faculty of Law proud by completing her Masters from the University of Cambridge. Currently she is practicing at Allahabad High Court under the guidance of Mr. Bharatji Agrawal.

In the end I would like to thank our Dean Professor Rakesh Khanna and our Head of Department and Coordinator Professor B.P. Singh for supporting and encouraging us in making the Lex Scripta Review a reality.

We cannot forget the immense contributions made by the students who not only contributed their articles but also helped in chalking out the blueprint of our very first magazine.

This is an infant step towards future success. With time we hope to achieve greater heights and make this magazine bigger and better. I hope that it will enrich the young legal minds of this Faculty.

Ashutosh Mishra,
Xth Semester.
The idea of the Law Faculty, “our Law Faculty” having a magazine of its own, wherein its present and former students, as well as faculty members and people of the legal fraternity could have a chance to express their views has always been a recurring dream for me. But as they say, procrastination is the thief of time. Things came and went, but the idea of the magazine never seemed to find a launching pad. Then a dear friend of mine who was attempting to accomplish something similar in his own college, shared with me the experiences and difficulties coming his way. It was these infrequent discussions that provided the raw material and later acted as the springboard for transforming this seed of an idea into the tree of reality.

Although arrangements for the magazine had begun much earlier, the ball really started rolling during preparations for Lex Fest, 2014. When we expressed our desire to bring out a magazine, we were greeted with full support and cooperation from our Faculty, especially Professor R. Khanna, our Dean and Professor B.P. Singh, our Course Coordinator and Head of Law Department. We were also quite happy with the encouraging response from the students after the decision to publish a magazine was announced. Most students readily gave the contribution of rupees 50 fixed by the committee. Initially many attended the preliminary meetings, but as most of the students were already involved in other events of Lex Fest, the numbers dwindled. Those who kept attending subsequent meetings formed the Magazine Committee. This Committee voted on and finalized all major issues concerning the magazine including its sections, topics to be incorporated, the design, the colour scheme, etc. Teams were also formed from among its members, consisting of two or more students to work on the different sections of the magazine.

Within a couple of months the segments were prepared and the designing, formatting and editing started. Frankly speaking, reading, collating, editing and formatting more than 40,000 words was a daunting task. After shirking this responsibility for a long time when I finally sat down to finish what we had started, it took longer than I had ever expected. Then came the task of finding a publisher. Having approached many of them, we came to know that the
minimum cost of publishing the magazine would come to rupees 40,000 which was much beyond the extent of our allocated budget. Moreover, the sum reserved for the magazine was ultimately channelled towards covering outstanding costs incurred in the organisation of Lex Fest. Consequently, the magazine is now being published in an electronic format, which the reader can open even on his smartphone. Moreover, this is an eco-friendly approach.

A fact I am certain will be appreciated, is that all decisions regarding the magazine were taken democratically. Nothing was decided by me or anybody else arbitrarily. Except the name for the magazine. The names suggested during the meetings of the committee and on Facebook did not seem suitable. I finally named it, “The Lex Scripta Review” (The Written Law Review) as it appeared apposite to its contents.

I am grateful to every member of the Magazine Committee for their contribution and hard work and congratulate them on the magazine’s successful publication. I would like to thank my good friend Ashutosh Mishra without whose support and contribution this magazine would not have seen the light of day. I would also like to thank Professor R. Khanna and Professor B.P. Singh for their encouragement and assistance.

Finally, I present to you the first issue of The Lex Scripta Review.

Aditya Mukherjee,
Xth Semester.
THE MAGAZINE COMMITTEE

Aditya Mukherjee (Editor-in-Chief)
Ashutosh Mishra (Managing Editor)

THE RECENT JUDGEMENTS TEAM

Arpita Singh
Riya Kumari

THE NEW LEGISLATIONS TEAM

Kisa Zaheer Rizvi
Shreya Chaddha
Aman Mani Tripathi
THE LEGAL PERSONALITY TEAM

Shashank Mishra

Arpita Singh

MOOT EXPERIENCES REPORTER

Aainy Aaquib Furrukh

INTERNERSHIP EXPERIENCES REPORTER

Devesh Saxena

EDITOR

Kaushlesh Pandey
Dear young friends,

It gives me immense pleasure to know that the Faculty of Law, University of Allahabad is publishing a magazine for the Law students and its faculty. It is, indeed, a matter of pleasure to interact with you all, the young legal professionals in the making. Ours is a country which is governed by Rules of Law. We have given to ourselves the Constitution of India, which is the guiding spirit for governance of the nation. The study of Law in our country is, thus, a process of training aimed at conditioning of mind to bring it in tune with the spirit of Constitution, which is the fountain-head of all other laws. Legally trained mind is not only confined to the Courts of law, but is essential to enforce the spirit of the Constitutional values in all fields of public life and thereby, attain the objectives enshrined in the Preamble of Constitution.

I take this opportunity to share my views on the law of the precedents. Article 141 of the Constitution of India provides that law declared by Supreme Court is binding on all the courts within the territory of India. What is binding as a precedent is the ratio of the judgment. Analysis of all material facts and issues involved and argued has to be ascertained. Decision has to be read in the context and with reference to the particular provision of the statute. Taking out a word or sentence from the judgment, divorced from the context of the question under consideration, is neither permissible nor desirable. It is the ratio, understood in the correct perspective, which needs to be followed.

The reason for the decision is ratio-decidentendi. Judgment of superior courts normally has three segments, i.e. (i) facts and the points at issue, (ii) reasons for the decision and (iii) the ultimate decision. It is not necessary that the reasons for the decision may also be the final order contained in the decision. On account of the need to mould the relief or to do complete justice, the ratio laid down in the judgment may not be carried in the ultimate decision. Thus, it is the ratio of the judgment and not the final order, which constitute precedent.

The principle of stare decisis at non quieta movere, which means ‘to stand by decisions and not to disturb what is settled’, originated in England and is the basis of common law. It is also deeply rooted in the American jurisprudence. An earlier decision may be overruled only if the court comes to the conclusion that it is manifestly wrong. For application of the rule of stare decisis, it is not necessary that the earlier longstanding decision or decisions should have considered and either accepted or rejected the particular argument advanced in a case in hand. In other words, for the purposes of applying the rule of stare decisis, it is not necessary to enquire or determine as to what was the rationale of the earlier decision, which is said to operate as stare decisis.

The precedents which enunciate rule of law form the foundation of administration of justice under our judicial system. It is a fundamental principle, which every Presiding Officer of judicial Forum ought to know, for consistency in interpretation of law and it alone can lead to public confidence in our judicial system. Supreme Court has laid down time and again that precedent law must be followed by all concerned, and deviation from it should be only by a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. Rules of precedent is an important aspect of legal certainty in the rule of law.

The ratio of any decision must be understood in the background of the facts of a particular case. It is well-settled that a little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision. It is not open for the courts to place reliance on the decisions without discussing as to how the factual situation of the case in hand fits in with that of the decision relied upon. Observations of courts are neither to be read as Euclid’s Theorems nor as provisions of statute and they must be read in the context in which they appear to have been made.

Ratio of a case can be extended to other identical situations, factual and legal, but not mechanically, disregarding the rationale of that case. Unless and until the facts and circumstances in a cited case are in pari materia, in all respects, with those of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and the facts arising in the cases cited should not be blindly treated as part of precedent to determine the conclusions. A decision is an authority for the questions of law determined by it. A judgment must be read in its entirety and the observations made therein must be considered in the light of the questions raised. A decision is binding not because of its conclusion. But in regard to its ratio and the principle laid down therein. What is more important is to see the issues involved therein and the contest wherein observations were made. A decision is an authority for what is decides and not what can logically be deduced therefrom.

The above principles have been well-recognized in the Indian judicial system and therefore, must be well-understood as part of the legal training. The ancient city of Allahabad occupies a pioneer position in the field of law. The Law faculty of the University of Allahabad has produced eminent students of law, who have contributed in shaping up our legal framework. I hope that the students of law from the Faculty of Law would not only respect the precedents, but would also help the system to develop further. With my very best wishes!

Hon’ble Justice Ashwani Kumar Mishra
Judge, Allahabad High Court
A STEP TOWARDS 
BRINGING JUSTICE TO 
THE DOORSTEP

Kartikeya Saran
Advocate, Allahabad High Court

The pendency of cases is a phenomenon which is not unique to India, but the numbers at home are staggering and the disposal of cases has been in much focus in the recent past. The difficulty for the legal fraternity in India is that not all methods adopted in foreign lands may fit our society. When one considers that the population of the United Kingdom (England, Northern Ireland, Scotland and Wales) is about 62 million, whereas the population of the State of Uttar Pradesh itself is about 200 Million, it is obvious that population is the single most determinative feature differentiating us from other nations. Added to that, illiteracy makes issues more complex.

Various initiatives and innovative methods are being adopted across the country to ensure speedy justice, and to make the judicial system more approachable for litigants. In furtherance of directions by the Supreme Court, the Lower Courts have organised Mega Lok Adalats, enabling claimants to compromise cases with Insurance Companies, etc. and settle old, pending Litigation.

There are mobile Lok Adalat benches going to villages under the initiative of the National Legal Services Authority and the State legal Services Authority. They attempt to resolve compoundable criminal cases and civil cases, including family disputes. In Pune, for example, under the Gram Nyayalaya Act, 2009, the village Court (Gram Nyayalaya), Haveli Block, settled various cases, by providing inexpensive justice to people in rural areas at their doorstep.

In the same tone, the Allahabad High Court with the help of the State Bank of India has come up with an initiative that is certainly a first across the country. On 20.03.2014, the Chief Justice of the Allahabad High Court inaugurated the “Saral Petty offences Fine Deposit Scheme”.

The idea behind the Scheme is interesting. For any petty offence, which involves minor fine, the Court usually sends summons. The salient feature of this Scheme is that along with the summons an option will be given to the litigant informing him that if he desires to plead guilty to the charges and does not want to contest the case, then in addition to the normal mode of contesting the case in the Court, he may alternatively deposit the fine prescribed in the summons in cash, in any branch of the State Bank of India. On such deposit being made, the case against him shall stand closed. Along with the summons, the Bank Deposit Form shall also be enclosed, which will be in three parts, out of which one will be given to the litigant after the deposit is made. That itself will be proof enough that the case against him has been disposed of or closed. The Bank will be charging a small sum of Rs. 50/- as handling charges. In this way, on receipt of summons for petty offences, the litigant will not have to go to the Court in case he does not want to contest the case.

The object is to provide speedy justice to all concerned in regard to "Petty Offences", as defined under Section 206(2) of the Criminal Procedure Code 1973. These would include Traffic Challans under the Motor Vehicle Act, Challans under the Police Act, Public Gambling Act, Kshetra Panchayat and Zila Panchayat Adhiniyam.

Sections 260 and 261 of the Criminal Procedure Code, provide for summary disposal of cases. By incorporating necessary amendments in the Code, the Scheme seeks to dispose of petty cases summarily, without compelling the litigant to appear in the Court.

While the Scheme itself seems like a creditworthy effort, sensitization and awareness amongst people is always difficult in a populous State like ours. The Scheme is being launched in four districts - Allahabad, Kanpur, Varanasi and Ballia - as a pilot project. Once the teething problems, if any, in its implementation are resolved, it is planned that the Scheme will be implemented throughout the State, ultimately resulting in the SBI providing a centralized account number for all. The State Bank of India has the unique advantage of having enormous penetration inside rural areas. It has close to 1600 branches in Uttar Pradesh alone, which is a staggering number. Thus, over time it is hoped that citizens would welcome the idea of approaching Banks, instead of Courts, for petty, uncontested cases.

The added benefit, and indeed the primary achievement for some, is that the Courts would save on resources for other, more serious offences where trials may be required. The litigant, on the other hand, would save on the cost of hiring a lawyer as well as the additional expenditure and paper work involved in approaching Courts.

The Scheme is indeed a good alternative, though what should also be ensured is that anyone charged with a petty offence should also be deterred from repeating the act, lest the objective behind criminal jurisprudence of providing sufficient deterrent to the offender would stand defeated.
ALTERNATIVE DISPUTE RESOLUTION

Hon’ble Justice Sunil Ambwani
Judge, Allahabad High Court

"It is the spirit, not the form of law that keeps the justice alive"
L.J. Earl Warren

The preamble of the Constitution of India declares, to secure to all its citizens, justice, social, economic and political; and equality of status and of opportunity. Art.39A provides that State shall secure that operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities. We have the laws to secure constitutional goals and a strong and effective judicial system based on common law principles. The legal system including Courts, Tribunals and Commissions seeks to administer the laws, to secure justice. The public has great faith in our judicial system.

The complexities of our multicultural society, with ever increasing population, and the limited resources within the justice delivery system, has resulted into inordinate delays and expenses in securing justice. In order to secure speedy and inexpensive justice, both to the privileged and under privileged classes, it was found necessary to side-track those cases, which are not suited for adjudication, to the processes of Alternative Dispute Resolution (ADR). It may be called appropriate dispute resolution, as it offers options suited to the different categories of cases.

We have at present in civil laws under Section 89 and Order X Rule 1A, 1B and 1C of the Code of Civil Procedure (the Code), a mandatory requirement for the judges to consider at the appropriate stage, whether the dispute brought before it can be referred to any one of the five ADR processes, namely:-

1. Arbitration
2. Conciliation
3. Lok Adalat
4. Mediation; or
5. Judicial Settlement

ADVANTAGES OF ADR

The advantages of ADR are:

1. to facilitate access to justice to the poor and disadvantaged;
2. to provide for informal, quick and inexpensive resolution of disputes;
3. to take away cases inappropriate for adjudicatory process;
4. remove petty cases, which do not require any adjudication by courts;
5. to reduce the burden of statistical load of cases on the courts;
6. to help promoting in trade and commerce, "fair practice, good commerce and equality";
7. to maintain peace and harmony in society, by reducing hostility and promoting resolution of disputes in a peaceful manner;
8. enhancing faith and confidence in the judicial system; and to provide for dispute resolution by morals and not coercion.

In Afcons Infrastructures Ltd. V. Cherian Varkey Construction Company Pvt. Ltd. & Ors. The Supreme Court has after noticing the errors in drafting of Section 89 of the Code, provided the procedure for referring the cases to any one of the ADRs prescribed in Section 89 CPC.

CASES NOT SUITED FOR ADR

s.89 of the Code provides for settlement of disputes outside the Court. The cases, which are not suited for ADR process should not be referred under Section 89. These cases may be broadly categorised as;

1. representative suits under Order 1 Rule 8 of the Code, involving public interest or interest of persons, who are not parties before the Court;
2. disputes relating to election to public office, except those, where two groups in case of dispute of management of societies, clubs, associations are clearly identifiable and are represented;
3. cases involving granting relief in rem, such as grant of probate or letters of administration;
4. cases involving serious allegations of fraud, fabrication, forgery, impersonation, coercion etc.;
5. cases involving protection of courts for minors, deities, mentally challenged persons and suits for declaration of title against government;
6. cases involving prosecution of criminal offences etc.

CASES SUITED FOR ADR

All other suits and cases of civil nature normally suited for ADR processes, are:

1. all cases relating to trade, commerce and contracts including money claims, consumer disputes, banking disputes, tenancy matters, insurance matters etc.;
2. all cases arising out of strained or soured relationship (social issues) including matrimonial, maintenance, custody matters; family disputes such as partition/ division, and disputes amongst partners;
3. all cases in which there is need for continuation of pre-existing relationship in spite of disputes such as easementary rights, encroachments, nuisance, employer and employee matters, landlord and tenant, and disputes involving members of societies, associations, apartment owners;
4. all cases relating to tortious liability such as motor accident and other accident claims;
5. all consumer disputes including disputes with traders, suppliers, service providers, who are keen to maintain their reputation, credibility or product popularity.
REFERENCE TO ADR PROCESS
S.89 of the Code starts with the words "where it appears to the Court that there exist elements to a settlement". The Court has to form an opinion that the case is one that is capable of being referred to a settlement through any of the ADR processes. In the category of cases suited for ADR the civil court should invariably make reference to ADR process. In other cases, which fall in the excluded category, reference is not necessary. The upshot is, that it is mandatory for the Court, if in its opinion there exists element of settlement, to consider to refer the case to ADR process. The actual reference, however, depends upon the discretion of the judge, guided by the nature of dispute and the process of ADR.

After hearing and completing of pleadings, to consider recourse to ADR process under Section 89 is mandatory, the actual reference is not mandatory. Order 10 Rule 1A of the Code requires the Court to give an option to the parties, after admissions and denials, to choose any of the ADR processes. This, however, does not mean an individual action but to join action or consensus about the choice of ADR process. Rules 1A to 1C of Order X has laid down manner in which such jurisdiction is to be exercised. The Court has to explain the choice available regarding ADR processes to the parties, and permit them to opt for a process by consensus. If there is no consensus, the Court can proceed to choose the process. S.89 of the Code refers to arbitration as adjudicatory process, and negotiatory (non-adjudicatory) processes namely conciliation, mediation, judicial settlement and Lok Adalat.

The adjudicatory process of arbitration and the non-adjudicatory procedure of conciliation, are referred to in the Arbitration and Conciliation Act, 1996 (AC Act), to a private forum, the awards of which are binding on the parties under S.36 in case of arbitration and S.74 in case of conciliation, can be resorted to only if both the parties agree to refer the dispute. In the other three types of ADR procedures namely mediation, judicial settlement and Lok Adalat, the agreement between the parties is not necessary to refer to these processes.

ARBITRATION
Arbitration is an adjudicatory dispute resolution process by a private forum governed by the AC Act. If there is a pre-existing arbitration agreement, the matter has to be referred to arbitration invoking Section 8 or Section 11 of the Act. S.89 CPC pre-supposes that there is no pre-existing arbitration agreement. The Court can looking to the nature of the dispute and the possibility of settlement, in the category of cases mentioned above such as the disputes relating to trade, commerce and contracts, cases relating to tortious liability or consumer disputes, may gently persuade the parties, to refer the matter to arbitration with the consent of both the sides and not otherwise. If the parties agree to arbitration then the provisions of AC Act will apply and the case will go outside the stream of the Court. The Court will in such case, where parties agree to refer the dispute to arbitration, make a short order referring to the nature of the dispute, the agreement between the parties, the name of the arbitrator/ arbitrators; take their consent on record or allow the parties to sign the order and refer the case to arbitrator, closing the file.

CONCILIATION
Conciliation is a non-adjudicatory ADR process, also governed by the provisions of the AC Act (Ss.61 to 81). Where the Court, looking to the nature of dispute arrives at a satisfaction that there are elements of settlement, it can make a reference to Conciliation, if both the parties to the dispute agree to have negotiations with the help of third party, or third parties, either by an agreement or by the process of invitation and acceptance provided under Section 62 of the Act followed by appointment of Conciliator(s) as provided in Section 64.

Conciliation may include an advisory aspect. The settlement with the help of the conciliator under S.74 of the AC Act has same status and effect as if it is arbitral award on substance of dispute given by arbitral tribunal under S.30. Where the dispute settled with the help of Conciliator is not subject matter of suit/proceedings, the Court will have to direct that the settlements shall be governed by S.74 of the AC Act (in respect of conciliation proceedings), or S.21 of the Legal Services Authority Act, 1987, (in respect of settlement by a Lok Adalat or a mediator) to make the settlement effective.

On a reference of conciliation, the matter does not go out of the stream of the Court process permanently. If there is no settlement, the matter returns to the Court for framing of issues and trial.

LOK ADALAT
The reference to Lok Adalat does not require consent of the parties. The satisfaction of the Court to the nature of the dispute, and the elements of settlement, where the issues are not complicated and do not require determination or adjudication of any dispute, may be referred to the Lok Adalat. The Court should make a short order preferably in a few lines recording its satisfaction that the nature of dispute is not complicated, the disputes are easily sortable and may be settled by applying clear-cut legal principles.

Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat under S.20 of Legal Service Authority Act, 1987 determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law from the stage, which was reached before reference. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties,
with guidance and assistance from the Lok Adalat. The 'award' of
the Lok Adalat does not mean any independent verdict or
opinion arrived at by any decision making process. The making
of the award is merely an administrative act of incorporating the
terms of settlement or compromise agreed by parties in the
presence of the Lok Adalat, in the form of an executable order
under the signature and seal of the Lok Adalat.

To provide compulsory pre-litigation mechanism for settlement
and conciliation relating to public utility services, the parliament
has amended Legal Services Authority Act, 1987 in the year 2002,
providing for Permanent Lok Adalats in every district, exercising
jurisdiction in public utility services, such as transport, postal,
communications, water supply, hospitals and insurance. The
party can make an application under S.22C of the Act to the
Permanent Lok Adalat for assistance to conciliate under Sub-
Section (4) to settle the dispute in an independent and impartial
manner. If the parties fail to reach an agreement under subsection (7), the Permanent Lok Adalat shall under sub-section (8),
if the dispute does not relate to any offence, decide the dispute.
The award will be final and binding on all the parties under S.22E,
and will be deemed to be a decree of Civil Court and shall not be
called in question in any suit, application or execution proceedings.

MEDIATION

Mediation is a structured process of dispute resolution in which
a mediator, a neutral person trained in the process of mediation,
works with the parties to a dispute, to bring them to a mutually
acceptable agreement. The mediator does not decide the
dispute or give an award. He is only a facilitator and in charge of
the process of mediation. Mediation rules of each State under
Chapter X CPC, as recommended in Salem Advocate Bar
Association (I) 3 and (II) 4 by the Supreme Court provide for a
detailed procedure for mediation.

The mediation is a purely voluntary process in which parties
continue out of their free will. They can opt out at any time. Once
an agreement is reached and signed, and is accepted by the
Court, it is enforceable in law by the Court. The mediation avoids
adversarial approach and instead adopts cooperative methods.
The parties focus on mutual agreement with long term gains,
which improve their relationship. It offers win-win situation
putting to end to the dispute in an amicable manner. The
mediation looks forward and offers long time acceptable
solution to the parties.

In B.S. Joshi v. State of Haryana, the Supreme Court held that in
cases such as Section 498A IPC and Section 125 CrPC, where after
a settlement no evidence may be led, the High Court can quash
the first information report or the proceedings.

The mediation is recommended in all such matters in which the
relations between the parties have to survive beyond litigation.
The Court should refer all such matters to mediation in which
disputes relating to properties, partition, marriage and custody
of children, commercial and business are involved. The
mediation also succeeds in consumer disputes, suppliers,
contractors, banking, insurance, labour matters, doctor and
patients, landlord and tenant and in cases relating to intellectual
property rights.

Mediation is not recommended, where questions of law are
involved to be adjudicated by the Court, or in which offences of
moral turpitude and fraud are involved. Mediation is also not
recommended, when there is serious imbalance between the
positions of the parties, in which fair negotiation is not possible.
The court annexed and court referred Mediation Centres have
been established in almost all the High Courts and District Courts.
In High Court, the Mediation Centres are run by the Mediation
Centres under the Supervisory Committees or Director/
Coordinator. In District Courts, Mediation Centres are run by
State Legal Services Authorities with a Judicial Officer appointed
as Coordinator in each district. There are five essential
requirements for any Mediation Centre namely awareness,
infrastructure, training of mediators and referral judges,
reference by judges under Section 89 and Order X CPC and funds.
The 13th Finance Commission has given grants to set up one
Mediation Centre in each of the 600 districts in the country with
outlay of 750 courts including one court for ADR centres in each
district and remaining amount for training out of which 10% may
be spent for awareness.

The mediators receive training from the trainers of MCPC and
those mediators, who have gained sufficient experience in
Mediation Centres in the High court.

In the process of mediation after receiving brief summary of the
case from the parties, the mediator gives an opening statement,
explaining the entire structure including voluntariness of the
mediation process. He commits parties to good behaviour and
allows them to sign a form to abide by the terms of the mediation
process. He actively listens without showing any sympathy, holds
joint and separate sessions, to identify the issues of conflict. He,
thereafter, proceeds to discuss the strength and weaknesses of
the case with the parties and sets up the agenda. He, thereafter,
open channels of communication, brain storming the options,
which the parties generate among themselves, while controlling
the process. He allow the parties to focus on their long term
interests, takes them out of impasse, if any such situation arise,
and brings out underlying issues. The mediator uses dynamic
process of negotiation and bargaining explaining the parties to
the Best Alternative to Negotiated Settled Agreement (BATNA)
and Worst Alternative to Negotiated Settled Agreement (WATNA).

Parties may agree to resolve the dispute, which may also involve
the issues, which are not involved in the case, and may arrive at
an agreement, which is mutually beneficial and acceptable. The
mediator, thereafter, holds, if the parties reach to a settlement
in drafting realistic, legal, valid and effective settlement, which
resolves all the issues between them and does not leave anything
for any further dispute in future. The agreement then comes to
the Court and may be accepted with or without modifications,
which the Court may suggest and to which the parties may agree.
On the acceptance of the agreement, it becomes binding on the
parties under Order 23 Rule 1 CPC against which no appeal lies.
The agreement may be vitiated only in case of misrepresentation
or fraud. The process is entirely confidential in which the
mediator binds himself to the confidentiality and cannot be required to appear in court as a witness to the proceedings. The person in charge of Mediation Centre maintains the confidentiality and ethics amongst mediators and in the process of mediation.

**JUDICIAL SETTLEMENT**

The Court may at the stage of Section 89 or Order X Rule 1A, 1B, 1C, looking to the nature of dispute and on being satisfied that there are elements of settlement, refer the dispute for judicial settlement. If the Court feels that a suggestion or guidance by a judge would be appropriate, it may refer the dispute to another judge for dispute resolution. The Judicial Officer to whom the case is referred shall make efforts for settlement between the parties and follow such procedures as may be prescribed. Where the settlement is arrived at before such other judge, the settlement agreement will have to be placed before the court, which referred the matter, and that Court will make a decree in terms of it. The case may not be tried by the same judge to whom the matter is referred for judicial settlement but the parties did not agree to settle the matter.

In case of arbitration and conciliation, it is essential that the parties shall agree to refer the matter to the Arbitrator or Conciliator. In the case of other three ADR processes namely Lok Adalat, mediation and judicial settlement, the consent of the parties is not essential to refer the matter. The Court may on a satisfaction arrived at, on its own discretion even ex parte refer the matter to these ADR processes. In Family Courts it is recommended that the ideal stage for mediation is before the respondent files objections/ written statements, as in such case, the pleadings written with the help of lawyers very often leads to allegations, which aggravates the hostility between the parties.

**SUMMARY OF PROCEDURE**

The procedure to be adopted by the Court for reference to any of the processes of ADR may be summed up as follows:

- When the pleadings are complete before framing issues, the Court has to fix date for preliminary hearing to find out nature of dispute with the help of the parties.
- The Court should first exclude the cases, which are not fit for ADR process and record brief order, as to why the case is not fit for reference to ADR process.
- In other case the Court should explain the choice of the five ADR processes to the parties, to allow them to exercise their option.
- If the parties are willing for arbitration, or conciliation, the Court should record their agreement, and explain to the parties the procedure and the cost involved. If they agree, the matter should be referred to arbitration or conciliation. In case of arbitration, the matter goes out of court proceedings. In case of conciliation the Court has to wait until the conclusion of the proceedings, if the parties agree, the conciliation awarded can be enforced independently and the file is closed, failing which the Court proceeds with the trial.
- If the case is simple, where legal principles are settled and there is no personal animosity, the case may be referred to Lok Adalat. If there is settlement in Lok Adalat and award is declared, it become decree of the Court and the case goes out of proceedings. Where the parties do not arrive at the settlement, the Court proceeds with the trial.
- In case of judicial settlement, the Court attempts to settle the matter or refers it to some other judge. If the parties arrive at a settlement, such settlement is recorded, and the case is decided in terms thereof, failing which the case is tried by judge, who did not participate in the judicial settlement proceedings.
- If dispute is fit for mediation, the Court records that the dispute is fit for mediation, and refers it to the Mediation Centre, fixing a date by which Mediation Centre may submit its report. If the matter is settled, the agreement signed by parties and verified by the pleaders is recorded as a compromise agreement under Order 23 Rule 3 CPC, failing which the Court proceeds with the trial.
- In all cases of settlement brought before the Court namely in case of judicial settlement and settlement with the help of mediation, the Court examines to find out whether it is valid, effective and enforceable and draws attention of the parties to avoid any further litigation and about execute-ability of the settlement.
SPECIFIC PIN-POINT DEFINITIONS

The Act defines:

• "domestic worker" in section 2e
• "sexual harassment" in section 2n
• "employee" in section 2f
• "aggrieved woman" in section 2e
• "workplace" in 2o

The domestic worker in this Act implies a woman employed to do household work in any household for remuneration. The remuneration can be in the form of cash or kind given either directly or through any agency on temporary, part time, permanent or full time basis. It excludes specifically any member of the family of the employer.

Sexual harassment has been defined to include any one or more of the following unwelcome acts or behaviour; whether directly or by implication:

1. Physical contact and advances
2. A demand or request for sexual favours
3. Sexually coloured remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Sexual harassment also covers:

1. Implied or explicit promise of preferential treatment
2. Implied or explicit threat of detrimental treatment
3. Implied or explicit threat regarding future employment status
4. Interference with work or creating an intimidating or hostile or offensive work environment
5. Humiliating treatment likely to affect health or safety

Hence all kinds of gender based ill treatment comes under sexual harassment. They certainly deter the victim from performing his/her work commitments.

The term “employee” includes regular, temporary, ad-hoc, daily wage employees and persons who are working on voluntary basis i.e. without remuneration. The term also includes contract workers, trainees and probationers. Hence it brings under its purview interns working without stipend.

The “aggrieved woman” means:

• In relation to a workplace, a woman of any age, whether employed or not, who alleges to be subject of any sexual harassment by the respondent.
• In relation to a dwelling place or a house a women of any age who is employed in such a dwelling place or house.

The “workplace” includes any department, organization, establishment, undertaking, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government, local authority or Government company or a corporation or a co-operative society. Even private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, vocational, professional, educational, entertainment, industrial, health services or financial activities finds mention. Hospitals, nursing homes, sports related places for training and residential purpose is also included. Places visited by the employee, including transportation provided by the employer for such journeys also come in the ambit. A house or dwelling place is also a workplace as per the new piece of legislation.

The Vishakha guidelines had been invented keeping in mind the traditional office like setup whereas this Act has gone further by including all kinds of possible workplace and transgressing the traditional working setup.

EFFECTIVE COMPLAINT MECHANISM

Section 4 has laid down provision regarding constitution of Internal Complaints Committee. Similarly section 6 is regarding Local Complaints Committee. The work of facilitating and monitoring the implementation of the provisions of the new Act shall be the responsibility of a District officer.

A complaint of sexual harassment has to be in writing and can be filed within a time limit of 3 months. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same.

When the workplaces employ 10 or more than 10 workers, such workplace are under an onus by virtue of the Act to constitute an Internal Complaints Committee. It will be a 4 member committee under the Chairpersonship of a senior woman employee and will include 2 members from amongst the
employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member (NGO etc.) as well. Complaints from workplaces with less than 10 workers or when the complaint is against the employer then the matter will be looked into by the Local Complaints Committee.

COMPOSITION OF THE LOCAL COMPLAINTS COMMITTEE
Local Complaints Committee will be a five member committee comprising a chairperson who is to be nominated from amongst eminent women in the field of social work or committed to the cause of women. A member from amongst women working in block/taluka/tehsil/municipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment. It is mandatory that at least one of the nominees should preferably have a background in law or legal knowledge. The concerned officer dealing with the social welfare or women and child development shall be an ex officio member.

WHAT FOLLOWS AFTER COMPLAINT?
After receiving the complaint, the Internal Complaints Committee or Local Complaints Committee has to make an inquiry in compliance with the service rules applicable or in case the rules do not exist, in accordance with rules framed under the Act.

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if the Local Complaints Committee is of the opinion that any case prima facie exists, the Local Complaints Committee will be forwarding the complaint to the police. The police will then register a case under the relevant provisions of the Indian Penal Code. Where the Internal Complaints Committee holds an inference that the allegations against the respondent are valid, it has to submit a report to the employer to take an action for sexual harassment against the delinquent in compliance with the provisions of the applicable service rules and if no service rules exist, in accordance with rules framed under the Act and to deduct from the salary or wages of the transgressor so that such amount as it may consider appropriate be paid to the aggrieved woman or to her legal heirs. The employer must act within 60 days.

SCOPE FOR CONCILIATION
The Act comes with a provision for conciliation as well. Therefore an option of conciliation is available but before initiating an inquiry. The Internal Complaints Committee / Local Complaints Committee might take steps to settle the matter between the aggrieved woman and the respondent. Conciliation option can be used but only at the request of the woman. Section 10(1) of the Act specifically provides that monetary settlement shall not be a basis of conciliation. In case, if any of the conditions of the settlement is not carried out by the respondent, the complainant has an option to go back to the Committee and the Committee shall proceed to make an inquiry.

ONUS ON THE EMPLOYER
As per the Act the employer is under the responsibility to take safeguarding measures. The measures are as follows:
1. To provide a safe working environment at the workplace which shall include safety from all the persons with whom a woman comes in contact with at the workplace.
2. To display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Complaints Committee.
3. To organize workshops and awareness programs.
4. To provide necessary facilities to the Internal Complaints Committee for dealing with complaints and conducting inquiries.
5. To assist in securing the attendance of the alleged perpetrator and witnesses before the Internal Complaints Committee.
6. To make available such information to the Internal Complaints Committee or Local Complaints Committee, as it may require.
7. To provide assistance to the affected if she so chooses to file a criminal complaint.
8. To initiate criminal action against the perpetrator.
9. To treat sexual harassment as a misconduct under the service rules and initiating action for such misconduct.
10. To monitor the timely submission of reports by the Internal Complaints Committee.

PENALTY FOR NON-COMPLIANCE WITH PROVISIONS OF THE ACT
Section 26 provides for penalty in two cases:

- In case of failure to fulfil the responsibility he has been put under by this Act and in case when he himself is the transgressor.
- If the employer fails to:
  a) Constitute an Internal Committee under sub-section (1) of section 4
  b) Take action under sections 13, 14 and 22
  c) Contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with fine which may extend to fifty thousand rupees

If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on the first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

- Cancellation, of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.
Psychology is my subject. So what is my article doing in a magazine meant for students studying Law? Well, as I understand – all subjects are interrelated and that there are no fixed compartments in education. Secondly, the underlying factor of any career is happiness of self and service of others. Thus it is important to inform the young students of law, the many changes that have happened in my field of preschool education in the last two decades. After all, they are going to be a part of new policies, new laws, new technology and ultimately the new world!

Over the last couple of years, there has been a marked increase in the number of children suffering with Autism Spectrum Disorder (ASD). It is a developmental disorder characterised by:

- Problems in social relatedness
- Lack of eye contact
- Delayed language milestones
- Stereotypical repetitive behaviour
- Restricted repertoire of activities

Early detection and intervention can help the children in many ways and help them reach their optimum potential. While on one hand, a lot of pre-schools have no training in detection techniques (labelling these children as stupid or mentally retarded), there are others who face the difficulty of sending the children to ‘Big’ schools and thus putting them into the ‘Mainstream’ system. Hence the initial efforts seem wasted and parents are left confused and helpless.

**LET US FIRST LOOK AT HOW THE LAW DEFINES DISABILITY**

People may be disabled by physical, intellectual or sensory impairment, emotional and behavioural disorders, mental health difficulties and multiple disabilities. It would cover the disabilities as defined under the Persons with Disability Act (1995) and the National Trust Act (1999):

- Blindness
- Low vision
- Leprysy cured
- Hearing Impairments
- Locomotor Disabilities
- Mental retardation
- Mental illness
- Autism
- Cerebral palsy
- Multiple disabilities

In the 0-6 years, this may also cover all children indicating developmental delay, low birth weight, termed at risk and medical problems that may lead to disabling conditions. The 6-14 years group may also be referred to as Children with Special Needs (CWSN), as under the Sarva Shiksha Abhiyan program whose guidelines may be taken as a reference point. These disabled person are no longer discriminated due to their physical problems but are treated equally under the eyes of law. Article 14, 15, 16 and 21 of our Indian Constitution depicts about providing equal liberty, integrity and dignity to all the citizens.

However, there has been a considerable shift in the understanding of disability, from earlier medical interpretations of seeing disability as a defect within the individual to that of viewing it in the context of Human Rights issue.

The National Policy on Education (NPE), 1986 and the Programme of Action (1992) gives the basic policy framework for education, emphasizing the correction of existing inequalities. It stresses on reducing dropout rates, improving learning achievements and expanding access to students who have not had an easy opportunity to be a part of the mainstream system. The NPE 1986 envisaged measures for integrating the physically and mentally handicapped with the general community as equal partners, to prepare them for normal growth and to enable them to face life with courage and confidence.

The Indian Disability Laws for the Rights of persons with Disability include (which have been enacted and implemented at both central and state levels):

**Rehabilitation Council of India Act, 1992**, which deals with the development of manpower for provision of rehabilitation services.

**Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**, which provides for education, employment, creation of a barrier free environment, social security, etc. The Act endeavours to promote the integration of learners with disabilities in mainstream schools.

**National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999**, which has provisions for legal guardianship and creation of an enabling environment that will allow as much independent living as is possible.

The 93rd Amendment of the Constitution of India has made education a fundamental human right for children in the 6-14 yrs age group. This includes children with disability. Inclusive education, as an approach, seeks to address the learning needs of all children, youth and adults with a specific focus on those who are vulnerable to marginalization and exclusion. It implies that all learners are able to learn together through access to common pre-school provisions, schools and community educational settings. It aims at all stakeholders in the system (learners, parents, community, teachers, and administrators, policy makers) to be comfortable with the diversity and see it as a challenge rather than a problem.

Research shows that inclusive education results in improved social development and academic outcomes for all learners. The non-disabled peers adopt positive attitudes and actions towards
learners with disabilities as a result of studying together. Thus inclusive education lays the foundation to a society with better social interactions among people with unique characteristics, interests and abilities.

As young students, I hope you will be sensitive to the needs of differently-abled children and be a part of the change in world which accepts, respects and celebrates diversity!
AN ECONOMIC ANALYSIS OF MEDICAL NEGLIGENCE
WITH A SPECIFIC STUDY OF THE DR BALRAM V DR KUNAL SAHA CASE

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“How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident or negligence...But nevertheless the law recognizes that as a topic upon which damages may be given.”

Lord Halsbury, L.C., In Mediana, Re 4

The medical profession has been considered as one of the noblest profession since ancient times. They have been treated next to God. However with the growing commercialization of medical profession and corporate entering into the business, the usual corruptness and carelessness has popped up in this sector too. Profit rather than service has become the main motive of the doctors and hospital owners. This has led to emergence of unethical habits and negligence in medical profession. With this the safety and well-being of patient is secondary consideration after the motive of earning. This is called as medical malpractices across the globe. The question of fixing civil liability of the doctors and hospital becomes relevant in India also. In India medical malpractice is called as medical negligence (hereinafter I shall use ‘medical negligence to convey the idea of medical malpractice). The law of civil liability in medical negligence evolved in India under broad head of ‘torts’ and consumer protection law. In the strict sense of the term, there is no difference between negligence by a doctor and negligence by a plumber. 2 To succeed in a case against the doctor, the proof of legal duty to take case, breach of such duty and consequential damage suffered by the complainant needs to be established. In the case of State of Haryana v. Smt. Santra 3, the Apex Court observed, “Every doctor has a duty to act with a reasonable degree of care and skill.” 4 This question of what is degree of duty is discussed in next part of the paper.

4 Lord Halsbury, L.C., In Mediana, Re
6 (2005) 5 SCC 182.
7 Ibid. at 190.

THE ECONOMIC ANALYSIS OF MEDICAL NEGLIGENCE: MAJOR THREADS

The economic analysis of medical negligence revolves around the harms that induce injuries and victims to internalize the costs of harm which occur from failing to take precautions. 5 The discussion basically revolves and relate to the wider circle of tort rather than medical negligence specifically. The major issues relate to the impact of negligence law upon the precautions which the doctors are taking to avoid payment of compensations. The major aim of law on medical negligence by providing compensation is to deter medical professionals from being careless. The main theoretical argument traces the general theory on the premise that negligence liability deters negligent treatment. The research in this field focuses around how the growing quantum of compensation in medical negligence has led to evolution of new reforms in the service delivery line. The economic theory describes and estimates the effectiveness of actual medical reforms. In fact the efficient compensation mechanism could be credited to the corporatization of medical practice. The literature on this issues focuses on the study of influence which liability has upon the precautions that medical professionals take to as to skip any incident of negligence. The literature further throws light on what kind of reforms has taken place in medical industry to deal with the increasing quantum of compensation. One group of scholars focuses on what kind of reform would be most appropriate to keep industry away from crisis and evolve a more efficient system. Another set of literature focuses upon what actual reforms at institutional level have taken place and how far they have in efficient. This kind of study has brought in medical insurance for probable medical negligence. This is very similar to the probable cost which could be required to pay for compensation under Kaldor-Hicks Efficiency Model.

The law on medical negligence generally hold that medical industry’s standard of care is established through a ‘court-determined’ legal standard of care which in case infringed, establishes the negligence of the service provider. The negligence so fixed determines the liability of doctor for any resultant injuries suffered by the patient. 6 Medical malpractice law, specifically, serves two primary purposes. Therefore they compensate injured parties for harms caused as a result of medical negligence. Further the threat of liability induces the potential injurers to take precaution against possible potential negligence. 7 The institutional reforms related to ‘Contractual liability’ evolved to tackle this issue. Its proponents claim that the best way state could best reform negligence liability by allowing patients to contract over and out of liability. It works on the assumption that the informed patients would be better off if he is permitted to contract over liability in comparison to the position when state-reformed negligence liability directly does as in the first case informed patient will settle for a position

which maximize their welfare. This shall be ‘pareto optimum’ position for both the parties. 8 However it is believed that the idea of contracting out liability beforehand shall lower the deterrence effect. There are four inefficiencies which prove it a less beneficial but more costly form of liability than the idea of state-imposed institutionalized liability. These are collective goods problems, adverse selection, time inconsistency and network externality problems.

The incentives created by law, known as the deterrence effect, in place of compensation model is certainly more efficient model. The issue of compensation concerned with the involuntary insurance is against adventurous outcomes is tilted towards insurance. The higher average compensation levels, with ever thing else being equal induces potential infringers shall increase the price of their service to all patients. The enhanced compensation serves as insurance contract against the risk of potential negligence harms. The idea of optimal insurance is conceptualized as the quantum of insurance that a fully informed consumer will tend to buy for himself. The only benefit with higher level of compensation is that it leads to increase in levels of implicit insurance than what an optimal insurance quantum would be. 9 In spite of the fact whether the liability is fixed under strict liability or no fault liability, it does create potential for optimal or efficient deterrence. The incentive to take actions or precautions, to minimize the liability and cost of medical injuries, what is expected accident costs of the injuries, the cost of averting injuries as well as the administration cost which is associated with the negligence-regime.10 In fact the possibility of liability keeps both the parties to take precaution and utmost care.

The Supreme Court of India discussing the ‘level of duty of care’ as a medical professional vis-a-vis ordinary negligence observed in Jacob Mathew v. State of Punjab and Anr.11 relied on the following observation in of McNair J., in Bolam v. Friern Hospital Management Committee12

“Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill . . . A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.”13

This question that which liability rule could be applied forms a very relevant part of literature. The prevailing practice in regard to negligence liability is based on the idea that the court establishes a standard of precaution as per which the medical professional actual precaution in an alleged case of medical negligence is compared and compensation fixed. On the other hand we could also use strict liability rule or no-fault rule to fix the liability. 14

If we work with strict liability, the modalities of compensation changes from negligence liability rule. Under the strict liability rule, the amount of precaution taken by the medical professional does not remain relevant. The only thing which is relevant is the establishment of liability is the presence of accident or harm or injury caused by the medical professional, he is found liable for the payment of damages. The major conceptual advantage with strict liability rule is that it minimizes the costs of legal system because it insists only on the presence of causation; it makes out case whereas in case of negligence liability both the causation and negligence needs to be established.

Establishing causation for medical harm is tricky question as adverse medical outcomes routinely happen because of prior medical condition. This being a world which is mix of both natural science and man-made world outcomes and causation cannot be put down with certainty. Medical negligence in comparison to other torts is determines when adverse outcomes occur and defendant is found negligent. So even when under strict liability causation is enough, negligence needs to be established because causation itself may be because of several reasons. Therefore the cost advantage element involved in strict liability rule also require establishment of negligence and therefore obviate the benefit asserted under standard strict liability regime for other torts. Therefore there exist a problem relatively to ‘non-fault’ proposal for medical negligence as ‘no-fault rules’ needs proof of causation too.15

Posner’s efficiency theory of law which asserts that legal rules do not necessarily produce results which are perfectly optimal or first-best outcomes and actually produce the best possible or second-best outcomes given the limitations occurring in real world. When we apply this ‘efficiency theory of law’ to medical negligence system as efficient- model actually produces imperfect system. The theorist asserts that through continuous reform16 shall one day reach its optimal efficiency level which shall be second best optimum.17

There is a clear need for medical negligence law to provide for lower standards of negligence for providers of care to poor.18 He asserts so because the higher standard of care shall make it difficult for the providers to provide cheaper health service to power because of increased transaction cost.

There is another thread of debate which suggests that the increased technological inspection techniques have brought about a crisis in medical negligence jurisprudence. There are demarcated regions of precaution: durable and non-durable precaution. 19 Durable Precaution could be perceived as a precaution which lasts long. Non-durable Precaution are actually

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11 AR2005CC0180.
12 [1957] 1 W.L.R. 582.
13 Supra note 11 (para 20).
complements with durable precaution. The use of technology has increased the harm attached to failure of non-durable precaution. The courts too have held medical professional liable for failures in respect to non-durable precautions, in spite of the fact that it is not efficient even when positive costs are associated with remembering to use the non-durable precaution.

**FIXING OF COMPENSATION IN THE DR. BALRAM V. DR. KUNAL SETH**

The present case titled *Dr. Balram v. Dr. Kunal Seth* 20 is a landmark case in the history of civil liability in case of medical negligence in India. This is the case wherein the highest compensation is awarded by the Apex Court till date in case of medical negligence. The amount of compensation which the claimant got after a fierce legal battle extending for more than 15 years is around 6.5 crores on the basis of proved medical negligence for the death of his wife Anuradha Saha (hereinafter referred as deceased). The Indian Jurisprudence on medical negligence works on the concept of ‘negligence liability’ wherein the court fixes the standard of care, its infringement, the damage caused and thereby taking into account other kind of expenses incurred awards compensation.

The researcher is doing so because the Supreme Court has not sustained the wrong.21 The court in this particular has categorically taken into consideration all these factors to come to a conclusion as to what should be the quantum of compensation.

The Supreme Court has granted compensation treating it as failure of ‘duty to take care’ leading to a harm similar to the ‘accident’ in the field of law of torts. The compensation is based on the principle of restitutio in integrum. This principle provides that a person is entitled to damages should get as nearly as possible the sum of money which would put him back into the position he would have been, had he not suffered an injury. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong.21

The court relied on the *Indian Medical Associatio v. V. P. Shantha* 22 in observing that to believe that court is having a bias against the hospital and doctor and is finding them an easy target shall be failure because they have so strong lobby as well as self-defined standard of ‘duty to take care’. They have strong resource line to fight out cases in court for longer duration with costly legal experts appearing on their side. In such a case it becomes impossible for an ordinary man to proceed against them and win their case. The poorest fears to start litigation with so many of contingent expenses abhor him from entering into litigation. When the court took into consideration and relevant in fixing liability of parties, the court is actually trying to achieve social efficiency objective of Posner. Taking a lead from Calabresi’s idea that the aim of tort law apart from doing justice is also to minimize the social costs of the alleged tort as the sum total of accident costs, administrative cost etc., we can say that the Supreme Court also did so here. In this case, it asked the defendant to also pay for chartered flights.23

The court further tool into account the fact of inflation and the relative prices hike to expand its usual multiplier method to avoid under-compensation for the costs borne by the claimant. This reflects that the court took into consideration the loss which shall be caused to the claimant because of the slow functioning of the administrative structure and continuing litigation. This is in consonance with the Calabresi’s idea of social cost of harm to includes factors related to loss of money, time and convenience and find its place in the wx of the equation [ SC= wx+ p(x)A].

The connected case of Malay Kumar Ganguly 24 clearly shows how callous and careless the team of doctor and hospital were in this given case. Even this case has observation against the team of four doctors and the hospital authority for their failure to take ‘due care’ and converting a very simple case to death. There the level of precaution was actually in the forbidden zone as per the Calaberi Model and therefore has no scope of any leniency on part of the court to lower the amount of compensation and subtracting the cost of precaution in such a case and therefore the appellant-claimants does not have a case to assert that they have performed their duty. The level of precaution in this case (x) was way below the socially efficient level of precaution(x*).

We could also justify the liability of the doctors on the basis of Hand’s Rule which provides that if B<PL,25 then the injurer shall be considered negligent. The court in this case observed that the doctors have shown utmost disrespect to their profession by staying casual in their approach in treating their patients. The injurer in this case i.e. doctors have failed to capitalize upon the efficient incentive for injurer exiting under the negligence rule to skip their liability. [The legal standard required precaution is exponentially more than the actual level of precaution exercised by the medical practitioner in the present case.

The amount of compensation which was awarded to the claimant in this case was calculated under following heads:

**Loss of income of deceased:** The court relying upon the United India Insurance Co. Ltd. and Ors. v. Patricia Jean Mahajan and Ors 26, Sarla Verma v. Delhi Transport 27, Nizam Institute of
Medical Sciences v. Prasanth S. Dhananka and Ors.\textsuperscript{28}, the court after taking into account her education, job prospects, the salary which she shall get, how many more years, shall she live determined compensation in this case. The court also reviewed the multiplicand in this case. It treated \$1= Rs. 55 to convert the probable salary in Indian currency. The compensation under this head came to under the head of 'loss of income of the deceased' the claimant is entitled to an amount of Rs. 5,72,00,550/- which is calculated as \[ \$ 40,000 + (30/100 \times 40,000) - (1/3 \times 52,000) \times 30 \times Rs. 55/- \] = Rs. 5,72,00,550/-.

Other pecuniary compensation included the medical treatment in Kolkata and Mumbai (7 lakhs) as well as travel and hotel expenses at Bombay (5 lakh).

Non-Pecuniary Damages: These damages related to the loss of family, agony which he suffered as a result of loss of family, loss of amenity etc. The court at least on this point did not agree with the compensations demanded from the claimant on the ground that such sum could only be a conventional sum which is acceptable to the prevailing societal norms.

Following graph shows how much compensation was being awarded by the court in this case

<table>
<thead>
<tr>
<th>Loss of income of the deceased</th>
<th>Rs.5,72,00,550/-</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Medical treatment in Kolkata and Mumbai</td>
<td>Rs.7,00,000/-</td>
</tr>
<tr>
<td>Travel and Hotel expenses at Mumbai</td>
<td>Rs.6,50,000/-</td>
</tr>
<tr>
<td>Loss of consortium</td>
<td>Rs.1,00,000/-</td>
</tr>
<tr>
<td>Pain and suffering</td>
<td>Rs.10,00,000/-</td>
</tr>
<tr>
<td>Cost of litigation</td>
<td>Rs.11,50,000/-</td>
</tr>
</tbody>
</table>

This is how the compensation was awarded in this case. The table beautifully depicts what kind of consideration played role in the determination of compensation in the instant case. The judgement takes into consideration every kind of transaction costs to ultimately arrive at 'just compensation' which forms parts of the cherished and well known pareto-optimality graph.

**CONCLUSION**

We can safely conclude from the economic analysis of medical negligence law in India with special study on Dr. Balram v. Dr. Kunal Seth that the idea of strict liability is not an appropriate tool for the fixing of liability and compensation. The medical negligence as a species of tort has some similarity, but then it being a field wherein the causation cannot explain every concept, it differs. The shift in law is towards strict liability theory in other forms of torts because of easiness of causation to establish the liability whereas in case of medical negligence, the analysis of 'causation'+ negligence is required to determine the period of time. This is probably because of life sciences involved in it which reduces possibility of reaching quality answer. Deterrence is the key argument in favour of providing compensation to the people as it shall provide reason for the medical professionals to take precaution. It serves a public policy goal and thereby has social value. The system is not efficient because it is too flexible and the transaction cost goes very high. Higher quantum of compensation results in medical practitioner raising their fees. Reforms are required in this direction. Posner’s notion of second-best efficient system is still not achieved and reforms should be continuously carried out.

The present case is a winning day for India because of it using the economic analysis of the law to arrive at conclusion. It has internalized all the externalities and provided appropriate compensation to the claimant. This is a landmark case because it provided compensation not only for the loss of income, but also for other administrative cost too. It shall definitely have deterring effect on medical professional as well as the hospital to take enough optimal level of precaution to skip any kind of liability against them.

\textsuperscript{28} MANU/SC/0803/2009.
When man dawned in this complex universe, it must have been a crude organization, and as naturalists say, began the evolution that has transformed this world into a society with man as its pivotal social animal. With society came the orderly and disciplined conduct of human beings with diverse theories and practices of governance that had preservation of civilization behind it as the driving force. Such rules of preservation gradually crystallised over centuries of governance into what we can term as manmade law. The roots of such laws lay in growth of knowledge, the finest expression of the power of mind, and in nature itself, from where the early time table of regulating every form of life, living and non-living, laid the foundation of basic reasoning to understand the bewilderments of this Universe. The diverse experience of man through different races and civilizations, their interactions either through conquests, wars or peaceful assimilations, brought into existence the filtered wisdom that ranges from the common sense and common wit of an uneducated individual to the complex propositions that govern life enunciated by scholars and learned men. This toil that involves this massive mental exercise spread over from the dawn of human civilization to today’s complex world has brought into existence that which governs life. It is for this reason that law is said to be a set of rules that governs society meant for its preservation through governance. It is an imposition, generally by consent, and adversely without consent in the name of public good or the good of the state, society nation/etc. Cicero in his wisdom described law as the perfection of reason. Law is thus which regulates Life.

This being the importance of law in life, its study carries with it the burden of a very careful study of the subject. It is for this reason that the early birds in this field should not consider this to be a favourite pass time or a mere side subject to be attempted only when you do not get an opportunity to avail what one thinks to be a better pursuit. Law is as serious as any other sciences and as diverse as any other art. It embraces life in all its dimensions, and in today’s world, beyond the barriers of Mother Earth. In our times, when we were students, law as a subject was pursued either by the affluent or by those who had nothing else to pursue. The study of law as a subject was introduced in the 19th century in modern universities of Bombay, Calcutta and Madras by the British. Before that it were codes and principles gathered from posterity from diverse cultures through their religions and philosophical texts. The codification of formal law had already commenced long back with manner, and was correlated with laws promulgated through centuries of different forms of governance in different civilizations throughout the world. That is why, an individual seeks to pursue the study of law, the science of known governance and the art of regulating life.

The emphasis on importance of the study of law having been expressed, the method to study it gains significance. To my mind, and with whatever little experience I have, you have to study law, and not merely read it. It has to be read in a spirit of enquiry with a spirit of doubt. Remember, doubt sets your mind in motion, makes you leap with imaginations and can end up in creations and inventions. At the same time, by a process of rational reasoning, clear your doubts as you are not supposed to retain needless mental congestion. This method, which is clearly empirical, involves hard labour and genuine concentration. A student of law attended his classes uninterestingly and often fell asleep when in class. His professor told him “I don’t mind your going to sleep. What hurts me is that you forget to wish me good night.” Law does need that much of understanding or else one would start justifying sleep even in serious work taking undue advantage of his right to sleep as enunciated as part of Art. 21 of the constitution in the Supreme Court decision of In re Ram Lila Maidan1. If legal study is pursued in an orderly and classified way, it will help you retain good memory, as methodical steps get imprinted easily, like enchanting couplets or powerful dialogues. A proposition of law binds your mind and it captivates you by its reason.

What worries students about their career is how to opt their choice in the study of law. Broadly students prepare themselves for competitive exams, for entering into academics, for joining the corporate sector or ultimately the world’s noblest and oldest profession of a lawyer. This choice is personal and as per the capacity of an individual, both physical and mental. An assessment therefore is necessary for which one can undergo counselling either formal through a professional or informal through parental guidance or advice of a good teacher. Once this step is taken then begins your own recognition about your possible talent. This introspection should be truthful and balanced. You have problems in taking decisions, but you do want certainty. You can therefore move calculatedly but remember, you can at best at this stage of your life, compute likelihoods. Yet the field that you identify should be an earnest choice. All are good and they all yield satisfaction if pursued earnestly. They have their advantages and also their short comings. The purse is heavy in some and less in others.

My personal choice in priority without disrespect to other branches would be that of a lawyer. The reason why I would prefer one being a lawyer is the choice of freedom that is enjoyed professionally. The imaginations of a lawyer knows no boundaries. His interpretive mind allows him to know the distinction between right and wrong. He learns the art of unravelling the truth and interpreting truth. It is for this reason that lawyers face criticism as inventors of lies and professional liars so as to make believe truth as falsehood and vice versa. This

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1 2012 SCC Vol 5 Pg 1
is ethically not true professionalism as it digresses from its noble ideals but the fact remains that a lawyer has to have the capacity to separate the wheat from the chaff like the swan does with milk and water. This high qualitative performance for a trouble or demand of justice in any walk of life, places the profession of a lawyer in my humble opinion, at one of the highest pedestals in human life. Additionally a successful lawyer’s purse adds to the satisfaction of mental and material achievements. A lawyer earns but he contributes immensely by his powerful persuasive art of oratory and presentation. He is the best salesman as he helps in deliverance from hopelessness and despair, to prosperity and peace.

The study of law, in whatever field, requires expression in correct and appropriate language. It requires precision and effective communication of ideas. You have to avoid vagueness; at the same time you require the skill of the use of correct phraseology to convey an exact and perfect meaning. It is this which brings appreciation and also incites challenges to be answered. This is how the spirit of enquiry would bear fruit when one embraces the profession. It is now when you are in the portals of an academic institution, that you have to groom yourself. These are just points to ponder to help you engage yourself in a serious study of law.
The copyright act is the oldest extant intellectual property right legislation in India. It has been amended five times prior to 2012, one each in the years 1983, 1984, 1992, 1994 and 1999. In 1999 it was further amended to fulfil the obligations of the TRIPS (Trade Related Intellectual Property Rights) Agreement. The amendments introduced by the Copyright Amendment Act, 2012 are significant in terms of range as they address the challenges posed by the internet and go beyond these challenges in their scope. In May 2012, both houses of the Indian Parliament unanimously placed their seal on the Copyright Amendment Bill, 2012, bringing Indian copyright law into compliance with the World Intellectual Property Organization. The amendments make Indian Copyright Law compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

The amendments introduced through Copyright (Amendment) Act 2012 can be categorized into:

1. Amendments to rights in artistic works, cinematograph films and sound recordings
2. WCT and WPPT related amendment to rights
3. Author-friendly amendments on mode of Assignment and Licenses
4. Amendments facilitating Access to Works
5. Strengthening enforcement and protecting against Internet piracy
6. Reform of Copyright Board and other minor amendments
7. Rights in artistic works, cinematograph films and sound recordings.

Section 14 relating to the exclusive rights in respect of a work has been amended. The amendments clarify the rights in artistic works, cinematograph films and sound recordings, by providing that the right to reproduce an artistic work, to make a copy of a cinematograph film or embodying a sound recording now includes ‘storing’ of it in any medium by electronic or any other means.

The right to store the work is of particular importance in a digital environment due to the special nature of transmission of digitized works over the internet where transient copies get created at multiple locations, including over the transmitting network and in the user’s computer. In a manner of speaking, it can be stated that copyright has been extended to the ‘right of storing’ of works.

The definition of the Cinematograph Film (Section 2(f)) has also been amended. The Act also introduces a definition of ‘visual recording’ (Clause xxa).

**WPPT AND WCT RELATED AMENDMENT TO RIGHTS**

The obligation under Article 11 of the TRIPS Agreement, Article 7 of WCT and Article 9 of WPPT is to provide for ‘commercial rental’ rights for computer programmes and cinematograph films. This right was introduced in section 14 by using the word ‘hire’.

The term ‘hire’ in sections 14(d) & (e) with regard to cinematograph film and sound recording, respectively, is replaced with the term ‘commercial rental’. The primary reason behind the replacement is to curtail the possibility of interpreting the term ‘hire’ to include non-commercial hire and also to keep in sync with the replacement (1999 amendment) of the term ‘hire’ to ‘commercial rental’ with respect to computer programme in section 14(b). The welcome side-effect of this is that the legality of lending by non-profit public libraries has been clarified.

**PERFORMERS RIGHT**

A new section 38A has been introduced which defines Performer’s right as the exclusive right to do or authorize for doing any of the following acts in respect of the performance or any substantial part thereof, namely:

To make a sound recording or a visual recording of the performance, Including:

• Reproduction of it in any material form including the storing of it in any medium by electronic or any other means,
• Issuance of copies of it to the public not being copies already in circulation
• Communication of it to the public
• Selling or giving it on the commercial rental or offer for sale or for commercial rental any copy of the recording
• b. To broadcast or communicate the performance to the public except where the performance is already broadcast

**AUTHOR FRIENDLY AMENDMENTS ON MODE OF ASSIGNMENT AND LICENSES**

Section 18 has been amended to disallow the assignment of copyright in a manner which would allow the assignee to exploit the copyright assigned to it via unspecified ‘future technologies’ i.e. any medium or mode of exploitation of a work which did not exist or was not in commercial use when the assignment was
signed. This amendment strengthens the position of the author if new modes of exploitation of the work come to exist.

Section 19 relates to the mode of assignment. Sub-section (3) has been amended to provide that the assignment shall specify the 'other considerations' besides royalty, if any, payable to the Assignor. Therefore, it is not necessary that only monetary compensation by way of royalty could lead to assignment.

**AMENDMENTS TO FACILITATE ACCESS TO WORKS**

A. Grant of Compulsory and statutory licenses
B. Administration of Copyright Societies
C. Relinquishment of copyright

A. The Compulsory Licensing provisions under section 31, (in relation to published work) and 31A (in relation to unpublished work or anonymous work) which were earlier restricted only to Indian works have now been made applicable to all works. A new provision has been inserted where the work may be made available under the Compulsory License for the benefit of the people suffering from disabilities. The amendment has introduced the concept of “statutory license” in relation to the published works. Any broadcasting organization, that proposes to broadcast any published work to the public including performance of any published musical/lyrical work and sound recording, shall be required to first give a notice of its intention to the owners of the rights. Such notice shall contain details regarding the duration and territorial coverage of the broadcast and royalties for each work at the rate and manner fixed by the copyright board shall be duly paid to the owners of the rights. Moreover, the names of the author and the principal performer will have to be announced with the broadcast.

B. The amendment also permits authors of the work to be members of the Copyright Societies. Copyright Societies will be granted registration for a term of five years and would need to re-register within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012. Further, Copyright Societies will be required to have governing bodies consisting of equal number of authors and owners of work for the purpose of administration of the society. As per a new section 33A, Copyright Societies will also be required to publish their respective tariff Schemes.

C. Section 21 deals with the right of author to relinquish copyright. The amendment facilitates relinquishment of copyright by way of public notice. Sub-section 1 now provides relinquishment of copyright either by giving notice to the Registrar of Copyrights or by way of public notice.

**STRENGTHENING ENFORCEMENT AND PROTECTING AGAINST INTERNET PIRACY**

Section 53, Section 63A and 63B deal with internet piracy. Section 53 has been substituted stating that the owner of the copyright can make an application to the Commissioner of Customs for seizing of infringing copies of works that are imported into India.

The new section 65A, introduced for protection of technological protection measures (TPM) used by a copyright owner to protect his rights on the work, makes circumvention of it a criminal offence punishable with imprisonment.

Section 65B has been introduced to provide protection of rights management information, which has been defined under clause (xa) of section 2.

**REFORMATION OF COPYRIGHT BOARD**

Section 11 has been substantially amended. The Copyright Board is to comprise a Chairman and two other members (as opposed to ‘not less than two or more than fourteen other members’ as was earlier the case).

Overall the amendments introduced are forward looking. This will enable the Copyright Act 1957 to become as one of the best copyright legislations in the world.
Exhaustion of Trademark Rights

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Parallel import is a “grey” area in Indian trademarks laws and the jurisprudence is still evolving whether India follows international exhaustion or national exhaustion. This article briefly covers the concept of parallel imports and the present situation vis-a-vis India.

Simply, parallel import can be defined as lawfully acquired branded goods that are imported from a foreign country and sold in domestic market without the consent of brand owner in the domestic market.

Propponents in favour of Parallel import claim that parallel imports encourage, amongst others, free trade and benefits the consumer as branded goods available at lower prices. Not allowing parallel import may result in creation unrestricted monopoly. The other side of the coin is the adverse impact to the extent that goods not meant for Indian market may not be compatible for local conditions and laws such as non-application of packaging and metrological laws, no guarantees/warranties, no consumer support, defects and impairment of goods and no legal recourse which may have adverse impact on the reputation and goodwill of the brand.

Exhaustion in India

Exhaustion of trademark rights means once the goods are put in the market for sale and if the goods are legitimately purchased by a buyer, the owner of the trademark in the goods cannot prevent further sale of the goods.

The jury is still out on whether India follows international exhaustion or national exhaustion. There are only a handful of Indian cases where this issue has been dealt, but none of these cases have been of any legal consequence to establish the law of exhaustion.

At the time of writing this article, this question is sub judice before Supreme Court of India. There is a high possibility that the exhaustion of rights should be settled. The genesis of the issue is a trade mark infringement dispute between Samsung Electronics Company Limited & Anr. v. Kapil Wadhwa & Ors. Briefly, the Defendants were importing Samsung printers from different countries and selling in India without Samsung’s permission. Samsung filed a suit in the Delhi High Court for infringement of trademark rights under the Indian Trade Marks Act, 1999. The primary defense of the Defendants India follows international exhaustion of trademarks rights and therefore there was no infringement. Defendants relied on Section 30(3)(b) of the Trade Marks Act, 1999 (Act). Thus, the primary question for determination before the Delhi High Court was - whether the provisions of Trade Marks Act, 1999 provide for import of genuine goods from the international market without the consent of the brand owner in India and will such import without consent will amount to trade mark infringement.

The Single Judge ruled in favour of Samsung holding India follows the principle of National Exhaustion and not International Exhaustion. For Section 30(3)(b) of the Act to apply the lawful acquisition of products as mentioned in the section must be from domestic “market” and the sale therefore must also be in the domestic “market” i.e. India.

The Defendant’s appealed to the Division Bench of Delhi High Court. The Division Bench allowed overturned the Single Judge’s decision and has held that India follows International Exhaustion of rights.

The Division Bench has noted that the question of international exhaustion v. national exhaustion of trademark rights is a question of policy as laid down by the Indian Government. The Statement of Objects and Reasons of Trade Marks Act 1999 state that India follows the principle of international exhaustion. Further based upon the statement of object and reasons the Division Bench also interpreted the term ‘market’ to mean international market. The key words used in the explanation are “any geographical area” that envisages the legislative intent of recognizing the principle of international exhaustion.

The order of the Division Bench has been appealed by the Plaintiff Supreme Court of India and is pending adjudication.

The principle laid down by the Division Bench in the Samsung case has also been relied upon by the Delhi High Court in the recent judgement dated 10.03.2014 of Philip Morris Products S.A. v. Sameer & Ors. where the High Court has held that if the products have been lawfully acquired by a person and thereafter sold in the local market by him or others representing him or purchasing them from him, it would not amount to infringement of Plaintiff’s trademarks by virtue of section 30(3)(b) of the Act. Till the time the order of the Division bench does not gets overturned by the Supreme Court the law on parallel import is clear that India follows the principle of international exhaustion. The only exception to Section 30(3) (b) is if the condition goods is changed or goods are impaired.

To sum up, at present if the goods bearing registered trademarks are lawfully acquired and sold in the local markets, without changing the condition or impairing the goods, does not amount of infringement of trade mark.

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1 C.S. (OS), No. 1155/2011
2 [FAO (OS) 93/2012]
3 C.S(OS) 3723/2010
4 CS(OS) 1723/2010

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FIRST ISSUE

THE LEX SCRIPTA REVIEW

19
PROBLEMS OF LABOUR DURING MERGERS & ACQUISITIONS

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“If I take care of my people, they will take care of the customer”
Max Turner

In this era of globalization, liberalization, privatization, technological developments and intensely competitive business environment, merger and acquisition are the big part of corporate finance world which gained momentum in India during 1990s with the open ended policies introduced by the Government of India. They are used for restructuring the business organization. After that the trends of merger and acquisition of changed over the years with diverse affect across various sectors of the Indian economy including labour economics.

The recent scenario is that merger and acquisition is a marriage not only between business organization but also the culture and most importantly the workforce of two entities. Without safeguarding the interests of the workforce, the prime objective of merger and acquisition is to achieve long run success in business can never be achieved.

In the case of merger, two companies combined in such a way that such one Corporation is completely absorbed by another Corporation. The less important Company loses its identity and becomes part of the more important Corporation, which retains its identity For Example, Merger of Tata Fertilizers Ltd. by Tata Chemicals Ltd. On the other hand, acquisition means an act of effective control and acquiring the target company mutually and willingly by another Company over its assets and management.

However, if an acquisition is forced or unwilling, it is takeover. Work Trend, one of the Databases maintained by Kenexa Research Institute in 2008 shows that 13% of the US Workforce went through the Merger and Acquisition process. The experience of USA works very similar to that of the workers from Netherlands, Australia, Germany and Brazil. The highest impact of merger and acquisition suffered by Indian workforce, 19% and least suffered country is Japan, 5%.

The practice of Merger and Acquisition resulted adversely not only to the general employees but also the management at the top level.

IMPACT AT GENERAL EMPLOYEES
The reason for failure in merger and acquisition is due to the different style of functioning resulted in the downstream of the Company and on the work culture. Secondly, there is difference in organizational structure and so is designation which affects salaries, benefits and passion of employees. Thirdly, during such transition period, it had great impact on the working culture as it disturbs whole organization of the Company. Therefore, the effect is that after merger and acquisition, the Company would require less number of people to perform its task and so the Company reduces labour force by retrenchment and lay-off. Hence, it would not be wrong to say that the buyer Company plays the role of parent and acquired Company as step child.

IMPACT AT TOP LEVEL
More often it is seen that the two organisations that are merging are culturally at opposite poles from each other. This gives rise to ego clashes at the top of the management. Under the changed circumstances the manager or other officers of the company may be asked to implement such policies or strategies, which may not be quite approved by him. When such a situation arises the main focus of the company gets diverted and the executives become busy in settling disputes among themselves. This problem is more prominent in cases of mergers between equals.

Effects on the CEOs of the company is not minute because they are the most creative and talented people within the organization. The resultant loss of control over the affairs of the management devastates these individuals.

PROVISIONS OF INTERNATIONAL LAW FOR SAFEGUARDING INTERSTS OF LABOURS DURING MERGERS AND ACQUISITIONS
The following provisions of the International Instruments directly or indirectly deal with the protection of labourers such as Article 23 and 25 of the Universal Declaration of Human Rights, 1948; Article 6 and 11 of the International Covenant on Economic, Social and Cultural Rights; Articles 4, 8, 11, 12, 13 and 14 of the ILO Convention on Termination of Employment Convention, 1982.

INDIAN LAW
Provisions of the Industrial Disputes Act, 1947
25FF – Compensation to workmen in case of transfer of undertakings:

“Where the ownership of management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

a) The service of the workman has not been interrupted by such transfer;

b) The terms and conditions of service applicable to the workman after such transfer are not in any way less
favourable to the workman than those applicable to him immediately before the transfer; and

c) The new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.”

From the point of view of social security of labours in case of transfer of undertakings by mergers and acquisitions this sector has immense significance. The workmen become entitled to notice and compensation unless and until the transfer is covered by the proviso laid down in the section. The judicial pronouncements make it clear.

In the case of Board of Directors of South Arcot Electricity Distribution Company Ltd. v. Elumalai ¹, the Company was undertaken by the State. The conditions of service of the workmen were less favourable in the new organisation. So, the workmen claimed compensation from the company. The company pleaded that it is not liable. It was held that the proviso of section 25FF cannot be invoked by the company for the purpose of defeating the claim of the workmen under the principle clauses of that section, as under section 25FF, if the right to retrenchment accrues under it, it must be a right to receive compensation from the previous employer who was the owner at the date of transfer.

Provisions of the Indian Constitution

The labour friendly provisions are as follows:-

Article 39(a), which entails that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood.

Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 43 provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A lays down that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

CASE LAWS

The above provisions are of no relevance until they have been applied and when they are applied, the main function of the judiciary comes to protect the interest of workmen. As, in the case of Bank of Baroda v. Mahindra Ugine Steel Co. Ltd.² where the Court held that the employees’ interest of the amalgamating companies must be taken into consideration by the courts and it must that the rights of the workmen are not adversely affected and adequate provisions are made for them.

In Bengal Tea Co. v. Union of India³, it was held that the employees do have a right to say “no” to be transferred to the transferee company but they do not have the right to object to the proposed amalgamation as long as they enjoy the same position and status in all respects as that in the transferor company.

In Gurmail Singh v. State of Punjab⁴ the appellants were in service as tube well operators in the irrigation department of the Public Works Department of the state of Punjab. The State took a decision to transfer all the tube wells to the Punjab tube-well Corporation, wholly owned and managed by the government of Punjab. Consequent to this all the permanent and temporary posts in the tube well circle that existed previously were abolished. When challenged before the Punjab High Court the same was rejected. However the Supreme Court held that the state should act as a model employer and should bear the burden of the extra money that is to be paid by the newly formed Tube-well Corporation having regard to the long length of service of the appellants.

SUITABLE MEASURES FOR PROTECTING THE RIGHTS OF WORKMEN DURING MERGERS AND ACQUISITIONS

Since, judiciary is not only the solution but there must be some practice to be followed that could take care of the organizational structure of the Company as well as the benefits of the workmen. One of the best example in three steps is the Acquisition Strategy of CISCO –

I. Pre-Acquisition Stage

Understanding benefit of acquisition as to how the organization will fit into each other or how the employees from acquired organization can fit into the working culture of CISCO.

II. Analysing how one Organization can fit into another

CISCO contemplated that it totally against forced acquisition and lay-off. It also guarantees job securities to employee of acquired Corporation.

III. Integration Process

Where the information is given about future role of the employee of the acquired firm, the employees of the acquired Company is given 30 days orientation training to enable them to fit into the new organization and to assimilate themselves into the new working culture.

TATA TEA MERGER WITH THE TETLY GROUP

The Tata’s acquisition of the Tetly group was one of the rarest examples of an Indian firm acquiring a larger British group. Initially the cultural gap between the companies was a big issue and had to be handled carefully. For example, there was complains from the Tata Executives that they were kept waiting for longer hours at Tetly’s head office in the UK, in spite being the senior partners. On the other hand the Tetly people complained about the ignorance of the Tata executives about

¹ 1970) 2 SCC 118
² 1976) 46 Com Case 227 (Guj)
³ 1988-1989) 93 CWN 542 (Cal)
⁴ 1993) 2 LLJ 76 (SC)
the western market. However a careful approach both sides helped in the cultural integration of both the companies. Both the sides instead of trying to dominate each other over the cultural issues adopted a focussed approach consisting of a blend of both the cultures. They worked towards adding to each other’s knowledge and skills and tried to create a business with better value prospects. However the best part was that the companies decided to leave behind the separate cultures of the Tata and Tetly and moved towards defining a single company. The key learning points from this merger were firstly to pre estimating the importance of cultural differences, adopting a non-threatening approach and absence of time pressure.

CONCLUSION

Therefore, one can say that with FDI policies becoming liberalized, mergers and acquisitions are heating up in India as well and are growing with an ever increasing cadence. Though merger and acquisition lessened in 2008, but with the global economic meltdown expected to rebound as the worldwide recession comes to an end, and the Company stock prices rise, the merger and acquisition are expected to reach at their highest.

Hence, if success is to be achieved in merger and acquisition, cohesive, well-integrated and motivated workforce are required who is willing to take on the challenge that arise in the process of merger and acquisition. So, without safeguarding the issues of employees and cultural integration, no Company can fulfil the objectives inherent in the acquisition scheme.
RESERVATION NOW OF ANY KIND IS UNCONSTITUTIONAL

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The question, whether reservation of any kind or its continuance in any part now is constitutional is agitating the country. It has stirred the feelings of the nation and torn the country into antagonistic groups. The inquiry into the whole problem can be divided into three parts: firstly, whether reservation is at all warranted or can be enacted under Article 15(4) of the Constitution; secondly, reservation under Article 16(4); and thirdly, the reservation in the election of legislature and the various bodies of the local self-government and other units of society.

All exercise in interpretation is to find out the intention of the enacting body. Constitution has to be interpreted by finding out why the provision was inserted in the Constitution and what it meant to the Constituent Assembly and not what it means today to the political parties.

RIGHT TO “EQUALITY” BEFORE THE LAW

No society (much less a State) can exist along without basic attribute of equality among its individual members or constituents. The Supreme Court has recognised this by calling “equality before the law and equal protection of laws” as a basic feature and tenet of the Constitution. It is thus enshrined in Article 14 and subsequent articles of the chapter on Fundamental Rights. It is the golden thread which binds a nation. The quest for equality has gone on throughout the ages the world over. The concept however continues to elude mankind. It is mainly so, as we have hankered after it at the wrong places. According to Smritikars in ancient law, “samata” (equality) arises out of inner consciousness that “God or the Divine resides in everyone”. This means that it does not lie in “ekrupata” (identity of form) but in “ekamata” (oneness of soul) or “samrasta” (equanimity). The two concepts of equality are poles apart; “ekrupata” leads to struggle and disruption, while “samrasta” leads to unity and strength. The so-called “social structuring” can only be based on “samrasta”. Any other method will either lead to fissiparous tendencies in the society or will violate the mandate of equality.

Unfortunately, the way equanimity has been abandoned by populist political sloganeering, which creates a personal stake or vested interest in caste. Instead of unity, it breeds acrimony, resulting in disunity and ever-increasing claims for higher reservation, nay proportional representation to their supposed number. The so-called casted that that repudiated their earlier supposed status and had joined the other castes now feel sorry for it and have tried to fall back upon professional archaic names.

Both Articles 15 and 16 (as well as that follow) are different facets of “equality” embodied in Article 14 of the Constitution. They state the universal rule embodied in particular cases and also enumerate certain exceptions necessitated by change over from the foreign rule and an agglomeration of what were called Indian States to a democratic entity and for historical and other reasons. Thus Articles 15(1), 15(2) and 16(1), 16(2) state the general rule, while those that follow are exceptions, required to produce an egalitarian social order.

QUESTIONS 1 AND 2

Thus the very first thing to notice is that these exceptions must be temporary or short-lived. They were considered essential for removal of deficiencies or disparities noted therein in what may be termed as “classes” of the society. But when their deficiency is removed, they rank with the rest of the citizens and stand with them partaking on equal footing in the life of a nation. The aim is not to create more or another class of citizens but to eliminate what may be called “disabilities” of that “class”. There can be no secondary class of citizens in a nation. The whole purpose is to get rid of or annihilate, in the political field, any subordinate class, whatever might be the cause and to create one harmonious cadre of citizens.

A comparison of the provisions of Articles 15 and 16 (as they stood when the Constitution came into force) are revealing. They are different and distinct:

They deal with different types of backward classes. Article 15(4) (added by the Constitution First Amendment) talks of socially and educationally backward classes of citizens and of the Scheduled Castes and Scheduled Tribes. Article 16 speaks of a different class of citizens, which in the opinion of the State, is not adequately represented in its services. Again the constitutional amendments draw a distinction between classes and the Scheduled Castes and Scheduled Tribes.

Clearly they have different objects in view. Article 15(4) speaks of special provisions by law for advancement of socially and educationally backward classes i.e. for their social and educational upliftment. The other provision provides for reservation in appointments or posts under the State.

The remedies suggested are also different. Adequate representation of any class in the services and posts under the State can be measured, while social and educational backwardness cannot be measured. The latter are elusive factors and differ from place and climate and individuals and other imponderables.

The provisions of “equality before the law equal protection of the laws” for every person (Article 14) is a basic feature of the Constitution. Articles 15 and 16 are only different facets of it. They specifically prohibit discrimination against any citizen on stated grounds, including race, caste or religion (and descent in Article16). In case of discrimination on other grounds one has to fall back on the general prohibition contained in Article 14. The gamut of articles under the heading “Right to Equality” when
read together demonstrate that equality is the rule and special provisions or reservation for any section class of people, which obviously contradicts the rule, are exceptions. That these exceptions are meant to be transient, for the time being only, and cannot be a basic feature of the Constitution, follows from their very object, the Constituent Assembly Debates, and the spirit behind Article 334. Special provisions can exist for the purpose of advancement of socially and educationally backward class, of citizens, so that persons constituting it may join the mainstream of the nation. In case of “class” is taken to mean caste, the transient nature of the provision regarding reservation is lost, as caste inherited from father to son, goes on. It can end only by repealing the enumeration of caste in defining a class. We know how caste reservation has been abused. The provisions of Article 15(4) and 16(4), being meant for different classes, circumstances and being distinct, the remedies suggested are also at variance with each other. They cannot be obviously grouped together, yet (in our humble opinion) a mistake was committed in taking them together in Indra Sawhney v. Union of India 1 (often alluded to as Mandal Commission Case). It is strange that in that lengthy judgment of majority Judges, this distinction was not emphasised with the result that all later judgments went awry. The Supreme Court elevated what was merely an exception to the pedestal of a Fundamental Right; what was a temporary measure to be thus a permanent feature of the Constitution. As noted earlier the word “reservation” has not been used in Article 15(4) in the remedy suggested, as in Article 16(4). The use of word “reservation” in Article 16(4) where there can be an objective test, cannot be applied to a case of Article 15(4) under the guise of interpreting the word “special provisions” as contemplated by Article 15(4). Regard being had to Articles 15(1), 15(2), 16(1) and 16(2) and reading articles 15(4) and 16(4) in their light it is apparent that clauses (1) and (2) lay down the general rule and clause (4) is an exception. An exception from its very nature cannot take the place of a general rule. Article 15(4) cannot be elevated to the pedestal of a fundamental right as was sought to be done in Indra Sawhney case. Thus the various statutes, rules or notifications purporting to be made under Article 15(4) are unconstitutional. MINORITIES These Scheduled Castes and Scheduled Tribes do not exist and could not exist among the so-called minorities, the Muslims and Christians. In fact the Muslims and Christians were a privileged class, when Muslim invaders and Christians ruled in India. Article 15 and 16 did not relate to minorities, who are dealt with in articles 29 and 30 of the Constitution (see draft Constitution). The Constituent Assembly amended the draft by deleting or substituting the word “minority” in the draft in the Articles 15 and 16 by other words. The Muslim and Christian invaders have been Rulers and privileged class in this country. The various reports including the report of Rangnath Mishra Commission characterised education among Christians as far above the average, being 80% to 90%, as against the average of 40% in some states. When Muslims and Christians were Rulers, these so-called minorities had special privilege, they were granted special privileges in services and occupied important positions in the body politic of the country. It is absurd to characterize any section of Muslims and Christians educationally and socially backward as a class in India. CLASS In case “class” is taken to mean caste, the transient nature of the provision regarding “reservation” is lost, as caste inherited from father to son goes on. It can end only by repealing the enumeration of that caste in defining a “class”. “Class” denotes a homogenous body. No heterogeneous body can be called a class. The “class” talked about in Articles 15 and 16 are different. They cannot be clubbed or looked at together from the same angle. For this reason the relief talked about in Article 16(4) is different than the relief in Article 15(4). There is difference between “reservation” and “special provision” as the object is different. The very fact that Indra Sawhney case suggests a “creamy-layer” to be taken out shows that caste is not a homogeneous entity. Taking caste as a class is contrary to the Constitution. QUESTION 3: RESERVATIONS IN ELECTIONS The Constitution provided for reservations in the Lok Sabha and the State Assemblies in para 294 of the draft Constitution, now Article 332 of the Constitution. A reading of all the two clauses together are revealing. In the draft the reservation in the legislature was suggested for Muslims and Indian Christians. There was a separate provision for Anglo-Indians, which is now not in vogue. It may be mentioned that certain minorities like the Parsi community, the Jews, the Jains and ultimately the Sikhs declined to have any reservation. The only reservation was retained for the Scheduled Castes and Scheduled Tribes. Constituencies initially elected two representatives, one representative was always to belong to the General category, while in reserved constituencies the other to the Scheduled Caste or to the Scheduled Tribe. Later on, when the constituencies came to elect a single representative, some were reserved for the Scheduled Castes and some for the Scheduled Tribes. There was no reservation for the so-called minorities. All reservation and special provisions were to cease after a period of 10 years (vide para 305 of the draft Constitution). This period was changed to 15 years by a Constitutional amendment. Thereafter the Constitution has been amended under Article 368 thereof, the latest being the Constitution (Ninety-seventh Amendment) Act, 2011, which has extended the period to 70 years. Much water has flown down since Indra Sawhney case. Now it is settled law that Article 368 of the Constitution (the power to amend the Constitution) does not give a blank cheque to amend the Constitution in any way the legislature liked. It has ultimately been held that the basic feature or structure of the Constitution

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1 1992 Supp (3) SCC 217
cannot be amended under Article 368 (vide Keshavanand Bharti v State of Kerala\textsuperscript{2}, Indira Nehru Gandhi v. Raj Narain\textsuperscript{3} and I.R. Coelho v. State of Tamil Nadu\textsuperscript{4}). The right to equality being a basic feature of the Constitution and reservation being contrary to it, the amendments for reservation were beyond the power granted by Article 368 of the Constitution and ultra vires. The amendments in the true light were made to appease certain sections of the society and were ultra vires. The result is that there can now be no reservation in the elections and the Ninety-seventh Amendment must be declared invalid.

**THE POSITION NOW**

The Supreme Court had held earlier before Article 15(4) was amended by the First Constitutional Amendment that reservation was unconstitutional (vide State of Madras v. Champakam Dorairajan\textsuperscript{5} and upholding Champakam Dorairajan v. State of Madras).

In view of the latest pronouncements of the Supreme Court, the amendments being otiose or invalid, the position of the above case revives. Thus all reservations except that existed initially are invalid on this ground also.

Reservations were temporary exceptions and the power to create new exceptions amounts to a law counter to the basic feature of equality and is now unreasonable (60 years after coming into force of the Constitution). It is a said commentary that even after 62 years, we have not been able to cure the deficiency for which the reservation was meant. There must be something radically wrong with the policy pursued. The power if it existed must be taken now to be non-existent. Further the continuance of previous reservation has become otiose and its exercise is not warranted by the Constitution. It is unreasonable and hit by Article 14 thereof. The Constitution does not empower any legislature to enact an unreasonable law, as that would be discriminatory. Article 14 of the Constitution applies to the legislature also.
LEGAL PERSONALITY OF THE YEAR
JAGDISH SHARAN VERMA

Mr Justice (Rtd.) Jagdish Sharan Verma was one of India's most highly regarded Chief Justices and eminent jurists. He served as the 27th Chief Justice of India from 25 March 1997 to 18 January 1998. Thereafter he was the Chairman of National Human Rights Commission from 1999 to 2003, and Chairman of the Justice Verma Committee Report on Amendments to Criminal Law after the 2012 Delhi gang rape case.

EARLY LIFE, EDUCATION & FAMILY
Jagdish Sharan Verma was born on 18th January, 1933. Educated at Venkat High School, Satna (Madhya Pradesh); Government Jubilee Inter College, Lucknow. He obtained the degrees of B.Sc. from Ewing Christian College, Allahabad and LL.B. from the University of Allahabad.

Justice Verma has a limited social life - of his own volition. He and his wife have two daughters, one settled in Delhi, the other in UK. Nearly four decades ago, when he was practising in his hometown Satna in Madhya Pradesh, his father, a retired railway employee, wanted to file a suit and asked his son to represent him. But Verma not only declined to appear as his counsel, he refused to even draft the plaint, a decision that shocked and upset his father. He says he saw a potential conflict of interests.

As a young man, Verma had set his heart on joining the armed forces. But discouraged by objections from his mother, he took up law on his father's suggestion.

LEGAL CAREER
He started his legal career when he was 22-years-old in 1955 as a pleader in the Judicial Commissioner's Court of Vindhyapur Pradesh at Rewa (Madhya Pradesh) in January 1955. He started practised as an advocate of Madhya Pradesh High Court in August, 1959. He practised in constitutional, civil, criminal, taxation and revenue matters.

He was appointed as Additional Judge of the Madhya Pradesh High Court from September 12, 1972, and became Permanent Judge of that High Court from 2.6.1973. He acted as Company Judge in the High Court of Madhya Pradesh for several years; and was also Chairman of Advisory Boards constituted under the National Security Act and other preventive detention laws. He headed the Administrative Committee of Madhya Pradesh High Court for several years. He was appointed as Acting Chief Justice of Madhya Pradesh High Court from 27.10.1985 and permanent Chief Justice from 14.6.1986 and also served as Chief Justice of Rajasthan High Court from September 1986.

He was appointed as a Judge of the Supreme Court on 3rd June, 1989. Then he was appointed as the Chief Justice of India on 25th March, 1997. He retired on 18th January, 1998. He was also the Acting Governor of Rajasthan, twice between 1987 and 1989.

AN EMINENT JURIST
He is known for his judicial innovation through landmark judgements, which made him "the face of judicial activism" in India. His decisions are credited with the forging of powerful new judicial tools such as Continuing Mandamus, and the expanded protection of fundamental rights as in the Vishaka Judgement. Alongside judicial activism and fundamental rights protection, he is strongly associated with women's empowerment, probity in public life, judicial accountability, as well as enhancing social justice.

LANDMARK JUDGEMENTS
High Court
As a Judge of Madhya Pradesh High Court, in 1974 he delivered a judgement arguing that a juvenile convicted of murder ought to be tried under separate procedures to an adult. This went on to form the basis for the 1986 Juvenile Justice Act.

He was one of the first judges who after the declaration of State of Emergency in India rejected the Government's proclamation that Emergency took precedence over rights to life and liberty. Before the Supreme Court stopped High Courts from entertaining Habeas Corpus petitions, Verma "stood out" as one of the few high court judges that released detainees arrested under the Maintenance of Internal Security Act.

Supreme Court
During his time at the Supreme Court, Justice Verma gave numerous landmark judgements. Some notable cases are:-
• Kumari Shrileka Vidyarthi etc V. State of U.P. & Ors.
The NHRC led by Justice Verma brought a petition to the Supreme Court seeking retrial of the Best Bakery case and also four additional cases outside Gujarat after a local court had acquitted individuals accused to be involved.

**POST-RETIREMENT PUBLIC SERVICE**

**Right to Information**

Justice Verma was a strong believer in the Right to Information. He was one of the leading figures involved in the movement for the Right to Information Act 2005 and in its implementation. He was of opinion to bring judiciary within the ambit of the Right to Information Act 2005.

**Justice Verma Committee**

In the aftermath of the gang rape in Delhi, Justice Verma was appointed Chairperson of a three member commission tasked with reforming and invigorating anti-rape law and to suggest changes required in existing criminal laws to provide better security to Women in India. The comprehensive 630 page report, which was completed in 29 days, was lauded both nationally and internationally. This eventually led to the passing of the Criminal Law (Amendment) Act, 2013.

**HONOURS AND AWARDS**

Among the several honours conferred on him, which include- the Honoris Causa degrees of LL.D. by the Banaras Hindu University and the Universities of Allahabad and Jabalpur; the Honoris Causa degree of Vakpati (D.Litt.) by the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi; and the Honoris Causa degree of D.Sc. by the G.B. Pant University of Agriculture & Technology, Pantnagar; the ‘Distinguished Alumni Award’ by the Allahabad University Alumni Association; Shri Gulzarilal Nanda Birth Centenary (Naitik Diwas) Award, 1998; National Law Day Award, 2001; and Dr. B.R.Ambedkar National Award for Social Justice, 2002.

Justice Verma, who headed the government committee to frame stricter laws in the wake of the December 16 Delhi gang-rape had been awarded the Padma Bhushan posthumously in the public affairs category, in 2014 after his death. However his family has refused to accept the Padma Bhushan award on his behalf.

**His own Publications:** His publications include two Miscellanies titled the ‘New Dimensions of Justice’ (2000) and ‘The New Universe of Human Rights’ (2004) containing speeches and articles relating to law, human rights and public affairs apart from many later lectures, speeches and articles on similar topics.

**PUBLIC OPINION**

Some lawyers say his several bold rulings against the Government and politicians could have delayed his promotion. Whatever the reason, the one-time lawyer from Satna seems to have come to the nation’s apex court with a resolve to make up for lost time by setting for him a blistering pace of work.

Mr Justice (Rtd.) Markandey Katju a former judge of Supreme Court has said, “Justice Verma was one of the giants of the Indian Judiciary, who set very high standards of integrity on the bench & even thereafter. He was a role model for many of us, who would often seek his advice even after he had retired. Justices
Venkatchaliah, Krishna Iyer, and Verma have always been our father figures.”

LEGACY
Justice Verma died from multiple organ failure on 22 April 2013 at the age of 80. He is always remembered for his legal innovation and firm commitment to women's empowerment, accountability of judiciary and government, probity in public life, social justice and secularism. Justice Verma is considered to be one of the best Chief Justices of India.
“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us,”. Charles Dickens wrote these famous words in the late 1800’s in his famous book “A Tale of Two Cities”. Even after a century has passed, still these words still hold true today when it comes to defining a relationship between an apartment owner and a promoter/builder.

The legislature in its infinite wisdom decided that Charles Dickens was not writing these famous words in 19th century but rather for the apartment owner in early 21st century. It enacted The U.P. Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 on 19.03.2010 (notified in the official Gazette on 21.07.2010) to ring these words true. By enacting the 2010 Act, The U.P. Ownership of Flats Act, 1975 was repealed. The 2010 Act is now a mandatory statute creating statutory obligations between a promoter/builder and an apartment owner as defined under the Act. There is no opting to apply the 2010 Act as was the requirement of 1975 Act. The Act is now binding on all Development Authorities in the State of U.P. as the State Government issued necessary directions with regard to its implementation thus taking a positive step with regard to regulation of rights of an apartment owner.

But like it was said it was the best of times and it was the worst of times. The mere enactment of the 2010 Act did not automatically means benefits for an apartment owner. The implementation of the 2010 Act was left at the sweet will of the Competent Authority as defined under the Act and it is this grey area where Charles Dickens words ring true. As is the case for any Act, the enforcement of an Act becomes paramount and in this regard the Competent Authority has been an utter and complete failure. They have failed to follow the 2010 Act and enforce it in the true sense that it was required. This failure has led to utter chaos and is clearly a colourable exercise of power on part of any Competent Authority. This colourable exercise of power can be better highlighted by specific examples with regard to rights and obligations flowing under the Act:

**AMENDMENT IN THE ORIGINAL SANCTIONED MAP**

Before any building permission can be granted, the appropriate development authority is required under the U.P. Urban Development Act, 1973 to pass a map according to which construction activity is supposed to take place. Under the Act this map is sacrosanct and can’t be changed. Section 4 of the 2010 Act prohibits any major alterations in the sanctioned map once it is disclosed to the intending purchaser. However the proviso to the section allows for alterations provided previous consent is taken from the intending purchaser by the promoter/builder. This consent is never asked for by the Competent Authority when sanctioning an amendment. The State of U.P. has enacted a policy of purchasable FAR to enable the promoter/builder to purchase extra FAR to the tune of 33% in already existing FAR of the plot. This allows the promoter/builder to build extra building/stories after amending the original sanctioned map which was shown to the intending purchaser. The alteration is allowed by the proviso to section 4 but the previous consent is always missing before the amendment is allowed. The Competent Authority whose duty is to enforce the Act never asks the promoter/builder to furnish the consent or the intending purchaser is given any notice with regard to amendment. The result is that the purchaser is completely unaware of the amendment and finds that the common area and facilities guaranteed under section 3(i) and section 5 are drastically reduced. This amended plan is drastically different from the original sanctioned plan shown to the buyer. This is not only in violation of the Act but also amounts to colourable exercise of power by the Competent Authority.

**PURCHASABLE FAR**

Purchasable FAR is the extra FAR that a promoter/builder is permitted to buy over and above the permitted FAR. The policy of purchasable FAR was enacted in 1999 when the 2010 act was not enforced. But now the policy has been integrated into Building Regulations for all major Development Authorities. This policy is now in violation of the 2010 Act. Proviso to section 4 prohibits any alteration without previous consent and section 5 states that percentage of undivided interest of each apartment owner in the common areas and facilities shall have a permanent character and shall not be altered without the written consent of all the apartment owners. Both the sections though deal with two different time period in the life of an apartment owner but have the same effect i.e. without permission no alterations can be made in the original sanctioned map. The Purchasable FAR thus would be in violation of the Act as it seeks to change the percentage of undivided interest of each apartment owner in the common areas and facilities which is not permissible under the Act. Any sanction without consent from all the apartment owners would be in violation of the Act and thus would render any purchasable FAR null and void.

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2. [http://awas.up.nic.in/LinkFile/Flats.htm](http://awas.up.nic.in/LinkFile/Flats.htm)
3. [http://awas.up.nic.in/LinkFile/FAR.htm](http://awas.up.nic.in/LinkFile/FAR.htm)
ASSOCIATION OF APARTMENT OWNERS

Section 14 of the 2010 Act requires that an Association of Apartment owners be formed which shall look after the management and affairs of the group housing society. Each apartment owner is required to become the member of such Association and to abide by the Model Byelaws enacted in the Rules. Section 14(5) clearly states that on the formation of the Association, the management of the affairs of the apartment regarding their common areas and facilities shall be deemed to be transferred from the promoter to the Association which shall thereupon maintain them. However, this deemed transfer never happens as the promoter does not wish to relinquish control of a property which can be exploited further by callous attitude of the Competent Authorities. The plea taken by the promoter is always the same i.e. the plot is private property of the promoter. The Competent Authority has abstained itself from enforcing this aspect of the 2010 Act which has resulted in sheer harassment and torture to hundreds of apartment owners. The true meaning of a Group Housing Society is co-ownership of the plot. In any group housing society, the apartment will belong to the owner but the land will be in co-ownership of all the apartment owners thus enabling the Association to manage the group housing society.

DECLARATION UNDER THE 2010 ACT AND 2011 RULES

Under the 2010 Act and 2011 Rules, the promoter is required to submit a Declaration in the prescribed format with the Competent Authority. The Declaration is the most important document for any apartment owner/ Association of Apartment owners as it states the specifications with regard to construction carried out in the lot. As per Rules 3, a specific time frame has been provided for submitting the same. The Competent Authority has again and again failed to implement and enforce the said Rule. Declarations have never been provided to the Competent Authorities and in cases where they have been provided, it is only under pressure from a Court of competent jurisdiction. Without the Declaration, the Association as well as the individual owner is helpless as he is unaware of the specification of his apartment/ plot.

TO WHOM DOES THE FAR BELONG

This question is the most fundamental question which needs to be answered before any attempt can be made to enforce the Act and the Rules. By providing a solution to this riddle, the Act can be implemented in its true sense. In layman terms, FAR is the area over which construction activity can happen. Purchasable FAR increases the already existing FAR by 33% thus giving the promoter/ builder extra FAR which the promoter/ builder did not have when the original map was sanctioned for purposes of construction activity. FAR runs with the land and is part and parcel of the land. The area utilized for building a particular apartment forms a part of the total FAR. Similarly, the common areas and facilities also form part of the total FAR. Thus FAR is indivisible from the land. Section 3 (i) sub clause (viii) states that Common Areas and Facilities include all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in use. Going by this definition the FAR or for that matter Purchasable FAR would form part of Common Areas and Facilities and thus would stand transferred to the Association of Apartment Owners. The Maharashtra Ownership of Flats Act, 1963 draws the same conclusion and the same has been upheld by Bombay High Court as well as the Supreme Court. The FAR/ Purchasable FAR under the Maharashtra Act belongs to the Co-operative Housing Society and not the builder. Thus the FAR or any part of it would necessarily belong to the Association who should be permitted to use it as and when required. A stellar judgment and the first judgment with regard to implementation and enforcement of U.P. Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 was given by Hon’ble Mr. Justice Sunil Ambwani and Hon’ble Mr. Justice Bharat Bhushan in Civil Misc. Writ Petition No.33826 of 2012; M/s Designarch Infrastructure Pvt. Ltd. & Anr. v. Vice Chairman, Ghaziabad Development Authority & Ors.5 The judgment amongst other points specifically dealt with this particular problem and came to this particular conclusion: “(14) The FAR or any additional FAR is a property, appended to rights in the property on which the building is constructed, and is thus a property in which the apartment owners have interest by virtue of the provisions of the UP Apartment Act, 2010. The purchase of additional FAR is not permissible to be appropriate by the promoter without any common benefits to the apartment owners. The consent of the 61 apartment owners obtained by resolution in the meeting of the apartment owners by majority will be necessary for purchasing additional FAR. Its utilization will also be subject to the consent of the apartment owners.”

The matter is now pending in Supreme Court in Petition(s) for Special Leave to Appeal (Civil) No(s).3205/2014; M/S Designarch Infr. Pvt Ltd. & anr versus V.C. Ghaziabad Development Auth. & ors.6 The Court has raised a specific query as to whom does the FAR belong to however no interim protection has been granted to the builder as on date. It is hoped that the Supreme Court would recognize the rights of the apartment owners with regards to FAR as has been done in case of the Maharashtra Ownership of Flats act, 1963.

It is indeed the need of the hour that the Competent Authorities get their act together in implementation and enforcement of the 2010 Act. An act of Legislature can’t result in anarchy and chaos as has been exhibited in the case of 2010 Act. This anarchy and chaos rests solely with the Development Authorities who have shown remarkable lethargy and close-mindedness with regard to implementation and enforcement of the 2010 Act. Despite best efforts of various Association of Apartment owners, the Competent Authorities have resisted the implementation and enforcement of the 2010 Act on flimsy grounds. Perhaps in the words of Robert Frost7 “The woods are lovely, dark and deep, But I have promises to keep, and miles to go before I sleep, and miles to go before I sleep.” the Competent Authorities can draw some inspiration. One can but only hope.

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2 For reference please see http://elegalix.allahabadhighcourt.in/elegalix/StartWebSearch.do
3 http://www.poetryfoundation.org/poem/171621
4 http://courtnic.nic.in/supremecourt/temp/sc%20320514p.txt
Education should play a vital role in the development of personality of an individual. As Nehruji said,” Higher education should be so designed to meet challenges of the changing times. Students must be guided by a strong commitment to human values and social justice. Education is an index of human development. It has always been an instrument of social change.

Education is a man making service. It should contribute to the full, wholesome and integrated development of the personality of the student.

However, today we think and refer to education as only being related to cognitive skills. Current education system was put in place by the British in 1834-1837. After much deliberation Lord Macaulay made English the language of education. Sanskrit and Arabic were the languages of education in India at that time. Macaulay headed the council for the education system and he emphasized the importance of English as the medium of education in India. He came to India only for four years but left an everlasting impact on the education system of India. The knowledge of English language in the past 200 years did renew our contact with the world. But the education system was thus planned to roll out people who were barely educated to follow the instructions of the British officers. To this day the degree which is being imparted to the students in the higher education system institutions does not equip them to earn money and to live a decent life. Education should impart competencies combined with theoretical knowledge to provide to the nation a workforce which is competent to do a particular job.

In the European Union Frame work of key competencies that were used as indicators to measure progress made towards “Knowledge economy” and a greater “Social cohesion”. Both the competencies, learning to learn and civic competence have been identified as important. Both these competencies are tools for empowering the individual and giving them motivation autonomy and responsibility to control their own lives beyond the social circumstances in which they find themselves.

A competence refers to a complex combination of knowledge skills attitudes and desire which lead to effective embodied human action in the world. Ones achievement at work, in personal relationships or in society are not based simply on the accumulation of second hand knowledge stored as data but as a combination of knowledge with skills values, attitudes, desire, and motivation and its application in a particular human setting at a particular point in the trajectory of time. In other words it is accomplishment of real world tasks and a multiplicity of ways of knowing-how to do something, knowing oneself and ones desires. Knowing why something is important. Delor had developed 4 pillars of learning for UNESCO Learning to live together, learning to know, learning to do and learning to be. (1996)

Competencies are expressed in action and by definition and are embedded in narratives and shaped by values. Competencies are based upon real world experience and take into account the full spectrum of learning opportunities (informal and formal).

Key competencies

Goody writes the major competency should be how best to spend ones leisure time within the framework of society in which one lives. So competencies are multifunctional. They refer to a higher order of mental complexity which includes an active, reflective and responsible approach to life. They incorporate

A. Know How
B. Analytical
C. Critical
D. Creative
E. Communication skill
F. Common sense

They key competencies that have been listed are as follows:

1. Social competencies- knowledge about people can be got when one socializes among them. Seamless interaction with people around, team work.
2. Literacy- intelligent and applicable knowledge.
3. Learning competencies- learning to learn
4. Communication competencies-expressive writing and also public speaking, communication in mother tongue and also in foreign language
5. Mathematical competence and basic competence in science and technology
6. Digital competence
7. Social and civic competence
8. Sense of initiative and entrepreneurship
9. Cultural awareness and expression
10. Life related skills-cooking rearing children, correct parenting methods, adjustment in marriages, and other skills which turn people to ones favour. (playing games, singing, dancing, playing instruments)

Cognitive skills are important but they are not distinct from personal social and moral development. Cognitive outcomes are easy to measure. Whereas the latter are described as soft or affective outcomes which are difficult to assess. The competence requires the cumulative development of a range of cognitive affective and motivational capacity; they are related to each other.
Values are a type of belief, centrally located within the one belief system about how one ought to and ought not to behave. Once a value is internalized it becomes a criterion for guiding action. Based on the above following is the detailed list of knowledge, skills attitude and values as necessary for leading a good civic life.

**KNOWLEDGE**: Human rights, and responsibilities, political literacy, historical knowledge, current affairs, diversity, cultural heritage

**SKILLS**: Conflict resolution, intercultural competence, informed decision making, creativity, ability of active listening, problem solving, coping with ambiguity, assessing risk.

**ATTITUDE**: Independence, resilience, cultural appreciation, respect for other cultures, openness to change

**VALUES**: Gender equality, sustainability, peace, nonviolence, fairness and equality.

**IDENTITY**: Sense of personal identity, community-identity and national identity.

Just as civic competence is the sum total of individual learning outcomes, learning to learn competence can be understood as that competence which makes an individual life long learner, engaging in learning opportunities throughout life span. Both formally and informally and effective utilization of time and information. This includes awareness of one’s learning needs and how to assimilate new knowledge in a variety of contexts at home in work place education and training. Motivation and confidence are crucial to an individual’s competence. Intentional leaning implies a novel sense of choice on part of the learner and involves self-awareness, ownership and responsibility. This requires students to be motivated to learn, to be aware of themselves and others as learners.
In a number of cases, various Directive Principles of State Policy have been interpreted as being essential to right to life with dignity, and that has been related to ‘life and liberty’ under Article 21, and thus protected as a fundamental right. On these lines, various rights that have not been directly mentioned in Part III of the Constitution, have been read into it indirectly. For example, the right to clean environment, right to free legal aid, right to be protected against police torture - all now enjoy the status of fundamental rights. A lot of this activism has stemmed from Article 32 of the Constitution.

But this activist image of the Judiciary has suffered a serious setback in Suresh Kumar Kaushal v. Naz Foundation. In this, the Court has found that Section 377 of the IPC does not suffer from the vice of unconstitutionality. It has abstained from doing what it had done in the past and has been doing. It refused to uphold the guidelines that the Delhi High Court gave with respect to the unconstitutionality of Section 377, insofar as it criminalised consensual sexual acts of adults in private. For that matter, it refused to give any guidelines whatsoever with respect to the discriminatory attitudes and actions reinforced by Section 377.

The Court has found that the affidavits and reports of NGOs which show how Section 377 has been used to discriminate against the homosexual population cannot be relied upon for recording that homosexuals were being singled out for a discriminatory treatment.

It is hard to stomach such a decision coming from a court which has been responsible for Vishakha guidelines for sexual harassment at workplace, or for that matter the adoption guidelines in Lakshmi Kant Pandey v. Union of India, areas where there was no parliamentary legislation at the time these judgments were given. The Supreme Court has used its power to issue directions in a number of other cases also – State of West Bengal v. Sampat Lal, Union Carbide Corp. v. Union of India, Advocate-on-Record Association v. Union of India.

Article 142(1) of the Constitution provides that the Supreme Court is entitled to pass any decree, or make any order as is necessary for doing complete justice in any cause or matter pending before it. This Article makes it clear that the Supreme Court has the power to pass any order which it deems necessary to do complete justice.

The power of the Supreme Court under Article 142(1) to do complete justice is entirely on a different level and of a different quality and that any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the Supreme Court (Delhi Judicial Service Association v. State of Gujarat).

Ample powers are conferred on the Court under Articles 32, 141, 142 and 144 to issue necessary directions to fill the vacuum till either the legislature steps in to cover the gap or discharge its role (Vineet Narain v. Union of India). Despite the availability of ample jurisprudence on judicial intervention, the Court in December 2013 refused to do so citing Montesquieu’s doctrine of separation of powers.

It is interesting to note that Suresh Kumar Kaushal, who in the first place chose to challenge the decision of the Delhi High Court, had completely different reasons for doing so. It did not have much to do with the constitutionality or unconstitutionality of an action, as much as it had to do with preserving the religious and familial mores of the society. He, like countless others, believes that homosexuality is a social evil. Ironically, while he challenges the Delhi High Court Judgment, the Supreme Court maintains that Section 377 does not target any particular group! The irony does not actually end there. A law borrowed from Britain, had been repealed there a decade after the recommendation of the Wolfenden Committee’s report in 1957, but it continues to operate in India. Perhaps we could use some insight from the Hart-Devlin debate insofar as that aspect of Suresh Kumar Kaushal is concerned. Perhaps there indeed is a realm of private morality and immorality which, as the Wolfenden Committee Report stated, is not the law’s business. The rights of the homosexual population goes beyond the right to choose and be with a partner of their liking. A number of rights, like the right relating to property, right to adoption, etc. are also linked with that. Section 377 is perhaps only one of the impediments to those rights, but a major one at that. The Supreme Court had extensive constitutional power to do justice to the sexual minorities in India. For all of these reasons, Suresh Kumar Kaushal v. Naz Foundation will go down as a major let down in judicial history.
The horrendous and tragic Delhi gang-rape of December 16, 2012 and subsequent nation-wide outrage and international condemnation exhorted the Government of India to drive the issue of violence against women to centre-stage of political discourse.

Based on the recommendations of the Justice Verma Committee Report, an ordinance was promulgated by the Hon'ble President of India Mr. Pranab Mukherjee on Feb 03, 2013. The Criminal Law (Amendment) Bill, 2013 passed in the Lok Sabha and Rajya Sabha on March 19, 2013 and March 21, 2013 respectively. This Bill received the assent of the president on the April 2, 2013. Thus, Criminal Law (Amendment) Act, 2013 came into force on 3rd day of February, 2013.


**AMENDMENTS TO THE INDIAN PENAL CODE, 1860**

Popularly known as Anti-rape Law, it has expressly recognised certain acts and offences, incorporating them into the Indian Penal Code.

Section 3 of this Act inserts new sections 166A and 166B dealing with the Public Servant disobeying direction under law and punishment for non-treatment of victim respectively.

Section 5 of this Act inserts new sections 326A and 326B dealing with voluntarily causing grievous hurt by use of acid and voluntarily throwing or attempting to throw acid respectively.

Section 7 of this Act inserts new sections after Section 354 IPC, namely:
- Section 354A: Sexual harassment and its punishment.
- Section 354B: Assault or use of criminal force to women with intent to disrobe.
- Section 354C: Voyeurism.
- Section 354D: Stalking.

Section 8 of this Act further substitutes new sections 370 and Section 370A for Section370 dealing with trafficking of a person and exploitation of such a person respectively.

Section 9 of this Act leads to the substitution of new sections in Sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code, whereby it widens the meaning of Rape and extends the punishment for this offence.

This Act further adds Section 376E whereby it denounces punishment for repeat offenders (under Section 376 or 376A or 376D).

Besides, the Criminal Law (Amendment) Act, 2013, amends Section 100 adding a ‘Seventhly’ clause to it;

Amends Section 228A, substituting “offence under Section 376, Section 376A, Section376C or Section 376D” by “offence under Section 376, Section 376A, Section376C, Section 376D or Section 376E”;

Amends Section 509 of the Penal Code, extending the imprisonment term to three years (from one year).

**AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973**


Section 15 of this Act amends Section 154, CrPC, making a way to effective First Information Report (FIR) under Sections dealing with violence against women.

Section 21 of this Act, amends Section 309 of the Code of Criminal Procedure mandating the trial or inquiry to be completed within a period of two months from the date of filing of the charge-sheet, when the inquiry relates to an offence under the sections, dealing with violence against women.

Section 23 of this Act inserts new Sections 357B and 357C after Section 357A, dealing with compensation to be in addition to fine under Section 326A or Section 376D of IPC and treatment of victims respectively.

**AMENDMENT TO THE INDIAN EVIDENCE ACT, 1872**

This Act of 2013, inserts new Section 53A which makes evidence of character or previous sexual experience of the victim not relevant in the certain cases of violence against women.

Besides, this Act amends Sections 114A, 119 and 146 of the IEA.

**AMENDMENT TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

Section 29 of the Act of 2013, amends Section 42 of PCSO, 2012, making it not in derogation of the provisions of any other law for the time being in force and in case of any inconsistency, the provisions of this Act, having an over-riding effect on the provisions of any such law to the extent of the inconsistency.
The all-round agitation was instrumental in the enactment of this law.
For the first time, there is punishment for the police officers, who fail to register FIR. This Act further exerts penalties for other abominable offences of stalking, touching, sexual remarks, voyeurism, human trafficking and acid attacks, pronouncing a minimum 10 years jail term to the offenders. But there is no clear mention of how such offenders will be prosecuted.
The laws are made but there is neither a bar on production, storage, distribution and sale of ‘acid’ nor there is a concrete plan to do this in the recent future.
Legislation is still to amend the Armed Forces Special Powers Act, 1958 despite the heroic and horrified hunger strike of Irom Sharmila3 and other protestors.
The Act has increased the age of consent to 18 years (which remained 16 since 1983). Critics argue that raising the age of consent may lead to wrong prosecution of teen-agers (boys) below 18 as rapists or offenders.
Ross Ashroft, Chairperson, IBA Human Rights Law Working Group, reviewing the Act says,” Changes in the law are insufficient to end violence against women, unless they are backed up by adequate long term permanent institution and social changes, and lawyers need to be a part of these changes”. He further adds, “These laws would only be effective when the police are trained, equipped and are non-abusive”.  

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3 The Iron Lady of Manipur, on continuous hunger strike, since November 02, 2000, demanding AFSPA, 1958 to be repealed.
The Meerut Conspiracy Case

Hon’ble Justice Pankaj Mithal
Judge, Allahabad High Court

Our constitutional system is embedded with the traditions of British ‘parliamentary sovereignty’ and legal positivism and initially a strong Judiciary, capable of challenging the Legislature’s actions, seemed unlikely. But the scope of judicial review was limited during the making of the Constitution for another reason. Draft Article 15 (present Article 21) which contained the ‘due process clause’ (which implies judicial review) was replaced by the words ‘procedure established by law’ on Justice Frankfurter’s suggestion to Constitutional Adviser, B.N. Rau- that such a clause not only empowered the judiciary to strike down laws passed by a democratic majority, but also made this a burdensome task. This reasoning has given us Gopalan, considered to be the high watermark of legal positivism, wherein the provisions under Articles 20 and 22 were treated independent of the provisions under Article 19. In other words, this meant that the due process under Articles 20 or 22 to deprive a person of their life or liberty, would be constitutional and valid under Article 21, and that Article 19 could not be invoked unless a right directly mentioned under it was directly challenged.

The scope of judicial review has considerably expanded post the Emergency of the 1970s. Most of the judicial activism in the country has taken place after the Supreme Court’s pronouncement in Maneka. The Court, in this case, laid down that ‘no Article in the Constitution pertaining to Fundamental Rights is an island in itself’, meaning thereby that Articles 19 and 21 should be read together. One of the most significant aspects of Maneka was that substantive due process was read into Article 21 of the Constitution. Substantive due process implies that the procedure for depriving a person of their life or liberty must be fair and reasonable. If this is not the case, the act is amenable to scrutiny by the judiciary.

The Supreme Court of India has come to be regarded as the most powerful Apex Court in the world. This statement is backed by some of the provisions in the Constitution itself. Moreover, the highly activist approach of our Supreme Court Maneka onwards has rendered it a status unmatched in the judicial systems of the world.

Meerut is an ancient city of Western U.P. in India. It is recognized in mythology and history both. The first war of Indian Independence, the Great Indian Mutiny of 1857 started from Meerut. One lesser known reason for its prominence on the British colonial map is a controversial case of the years 1929-1933. In the judicial annals it is commonly and popularly known as Meerut Conspiracy Case. It attracted the attention of people in Great Britain so much so that a Manchester street theatre group ‘The Red Megaphones in 1932 enacted a play titled ‘Meerut’ in England.

An organization, communist International commonly known as 'COMINTERN' was operating in Russia and was slowly spreading its tentacles in other parts of the world. Its main object was to cause the downfall of all existing forms of governments throughout the length and breadth of the earth by means of armed uprising and organising general strikes. It created trade unions, youth leagues, workers and peasants parties etc. to achieve its objectives. A communist Party of Great Britain was also formed to foster its aims. In 1921, a branch of it was established in British India by number of communists. Two Britishers, Philip Sprat and B.F. Bradly were sent out to India by the Communist International to carry out its design and to strengthen its movement. They together with persons of communist convictions formed a Workers and Peasants Party and held a conference of it at Meerut.

This worried the Britishers. They raided and arrested persons connected with Workers and Peasants Party, some trade unions and All India Congress. In all 32 persons were charged and 31 of them were arrested including the two Britishers.

The accused were put to trial under Section 121-A of the Indian Penal Code of 1860 for depriving the king Emperor of the sovereignty of British India and for such purpose to use the methods and carry out the programmes and plan of campaign outlined and ordained by the Communist International.

The trial commenced with the filing of complaint by Dr R.A. Horton (OSD under the Director, I.B. Home Dept. Govt. of India) on 15th March 1929 and on a supplementary complaint dated 11th June, 1929 against one of the accused. The preliminary proceedings before the Magistrate at Meerut took seven months whereupon the case was committed to the Court of Sessions on 14th January, 1930. The prosecution took thirteen months to complete the evidence. The recording of statements of the accused consumed another ten months and their defence lasted for about two months. The parties advanced arguments for over four and half month. The District and Sessions Judge, Meerut Mr R.L. Yorke took five months to write the judgment and pronounce it.

The sessions court on 17.1.1933 acquitted five of the accused, one having died and convicted 27 others with stringent sentences; one was transported for life; five others for 12 years; three for 10 years; three others for 7 years; four for 5 years; six for 4 years; and the rest five for 3 years.

The convicts filed appeals in the Allahabad High Court. The last of them was filed on 17.3.1933. The paper books were printed and made ready within no time and 10.4.1933 was fixed for hearing but on account of ensuing long summer vacation, on the request of accused themselves, the hearing was adjourned to 24th July, 1933. The hearing commenced as scheduled before the bench presided over by Chief Justice Sulaiman and Justice Young. It lasted for 8 working days. Sir Tej and Sri K.N. Katju and others represented the convicts. The crown was defended by Mr Me. I Kemp and J.P. Mitter.
The Judgment was delivered by the Chief Justice and the conviction of all was upheld but with considerably reduced sentences. The Bench classified the convicts into four different groups. The first group of 12 were all members of the Communist Party of India. The second group comprised of Sprat and Bradly who were members of Communist Party of Great Britain, The third group consisted by six who were communist by conviction but not members of the Communist Party. The fourth group comprised of seven persons who were neither communists nor members of any communist party but were simply political workers.

The High Court held that the evidence ex facie proved that the members of the communist party who subscribed to the programme of 'COMINTERN', have undoubtedly formed a revolutionary body with the professed object of over throwing the present order of society to bring about complete Independence of India by armed uprisings.

The trial and the judgment acquired significance and importance primarily for three reasons.

The trial was an offspring of the British Governments fear for the growth of the communist idea in India. It was aimed to nip the movement in the bud. The accused were branded as Bolsheviks. The trial though resulted in conviction of almost all of them but ended in publicising, lunching and strengthening the communist movement in the county in a gigantic way. During the trial the courtroom was turned into a public platform for espousing the communist cause.

Secondly, it indicated the pace with which the justice delivery system in those days used dispense justice despite enormous and voluminous evidence which was dealt with minute precision but even then the time consumed in trial was frowned upon by the superior Court observing that it could have been shortened with some care both on part of the accused and the Court.

Lastly, it laid down that the magnitude of punishment or sentence is dependent upon three basic principles:

- protection of the people;
- prevention of the crime; and
- reformation of the offender.

The punishment awarded by the Sessions Court tested on the anvil of these principles was held to be too harsh and severe particularly looking to the fact all the accused have remained in jail during the entire trial except for short period of time when some of them were admitted to bail.

In reducing the sentence the bench observed that the trial was political and any severe punishment would result in confirming the belief of the people in the political movement which was sought to be checked, creating in more offenders causing greater evil and danger to public. The Meerut conspiracy case is a landmark that would go a long way in the history of communist movement in India.\footnote{Ref: A.L.R. 1933 Alld. 690, S.H.Jhawala and others v. Emperor}
Soon the Companies Act, 1956 shall be repealed and in its place, The Companies Act, 2013 shall be put to force that has been passed by the parliament and assented by the President on 29th August 2013. Its 98 sections have been brought into force whereas the other sections shall come into force when notified by the central government. It introduces several new concepts and tries to streamline many of the requirements by introducing new definitions. One of the new concepts that the act introduces is that of a “One Person Company”.

As law students we all have studied that there are two types of companies. They are a Public company and a Private company. For formation of a company a minimum of two members are required for a private company and a minimum of seven members are required for formation of public company. But now under The Companies Act 2013, one shall be able to form a company with just one member. This form of company that can be formed just with one member shall be regarded as a “One Person Company”. This concept was first introduced in the JJ Irani Report in 2005.

**Definition of an OPC**

Section 2 (62) provides the definition of a One Person Company as follows-

‘One Person Company means a company which has only one member’.

Therefore, we can say that the concept of an OPC is an exception to the basic principle of a company that is an OPC is a form of company that is formed and exists with just one member.

**Why the need of an OPC was felt?**

The reason why the old Companies Act of 1956 had made it compulsory for a Company to have a minimum of two members was so that it could be clearly separated from a sole proprietorship, a corporate structure which is categorically excluded from the Act. However, the duplicity of this provision was blatant and rampant. People started forming companies by adding a nominal member/director, allotting them one single share, which is the minimum requirement for a director as per the Act, and retaining the rest of the shares themselves. Thus, a person could enjoy the status and benefits of a Company while operating and functioning like a proprietary concern for all practical purposes. Hence, to make things clearer and more logical, an option has been created wherein a person can form a company as a one person entity.

Further, the evolution of the one-man company can be found in the desire to combine limited liability (a key feature of a company) with the complete dominion of the sole proprietorship.

**Requirements to form a One Person Company**

For a person to incorporate an OPC he is required to be a natural person (not an artificial person) who is an Indian citizen as well as a resident in India (who has stayed in India for a period not less than 182 days during immediately preceding one year). At the same time, it shall also be worth mentioning that a person cannot form more than five OPC’s nor can be a nominee director of more than five OPC’s at the same time.

The Act requires that the memorandum of an OPC to indicate the name of another person, also regarded as a nominee director, who shall, in the event of the subscriber’s death or his incapacity to contract become the sole member of the company. This is a necessary requirement to be fulfilled so as to maintain the feature of perpetual succession of a company. It further requires that the written consent of such Nominee Director should be filed before Registrar of Companies.

Further all OPCs are required to suffix the term ‘One Person Company’ to their name. Moreover, the Act classifies an OPC as a Private Company for all other legal purposes with only one member. This means an OPC is required to fulfil further two requirements, they are-

1. Have a minimum share capital of ₹ 1,00,000.
2. Restricted rights to transfer share.

**Relaxations given to a One Person Company**

- One Person Companies have been given the option to dispense with the requirement of holding an Annual General Meeting.
- Provisions relating to minimum board meeting and minimum quorum shall not apply to One person Company having single director. In case of more than one director, it shall conduct at least one board meeting in each half year and time gap between two meetings should be minimum 90 days.
- Financial Statements needs to be signed only by the director and Annual returns by the Company Secretary, else by the director.
- One person Companies have been relaxed from preparing Cash Flow Statements.
- One person companies are required to file Financial Statements and Annual Returns to Registrar Of Companies within 180 days from closure of financial year.

The concept of OPC in the Companies Bill indeed looks promising. This concept has already been adopted in countries like USA, UK, Singapore, China etc. However, the success of this concept in India could correctly be gauged only after its implementation. An OPC will provide greater flexibility to an individual or a professional to manage his business efficiently and at the same time enjoy the benefits of a company. But at the same time it has may shortcomings like high cost of compliance, difficulty in raising money and no effective checks and balances.
Therefore it is difficult to comment on the success of the concept and shall depend on the successive legislations enacted by the government, so as to promote and substantiate the concept of an OPC.
THE CONCEPT OF PLEA BARGAINING
AND ITS POSITION IN INDIA

Aarushi Khare
VIIIth Semester

Plea bargaining is essentially derived from the principal of 'Nalo Contendere' which literary means 'I do not wish to contend. According to the Oxford dictionary, Plea Bargaining means, an arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges.1 It is a process by which a criminal defendant and prosecutor reach a mutually satisfactory disposition of a criminal case, subject to court approval.

It is an agreement in which the defendant agrees to plead guilty without a trial, and, in return, the prosecutor agrees to dismiss certain charges or make favourable sentence recommendations to the court. Plea bargaining is expressly authorized in statutes and in court rules.

Generally a judge will authorize a plea bargain if the defendant makes a knowing and voluntary waiver of his or her right to a trial. The defendant understands the charges and the maximum sentence he or she could receive after pleading guilty, and then makes a voluntary confession in court. Even if a defendant agrees to plead guilty, a judge may decline to accept the guilty plea and plea agreement if the charge or charges have no factual basis. The judge does not participate in plea bargain discussions. Prosecutors have discretion whether to offer a plea bargain or not.

A plea bargain allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at trial on a more serious charge. For example, in the U.S. legal system, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge, which may not carry a custodial sentence.2

Plea Bargaining may be done in different forms. In charge bargaining, defendants plead guilty to a less serious crime than the original charge. In count bargaining, they plead guilty to a subset of multiple original charges. In sentence bargaining, they plead guilty agreeing in advance what sentence will be given; however, this sentence can still be denied by the judge. In fact bargaining, defendants plead guilty but the prosecutor agrees to stipulate (i.e., to affirm or concede) certain facts that will affect how the defendant is punished under the sentencing guidelines.

Plea Bargaining is an essential part of the criminal justice system in the United States, the vast majority of criminal cases in the United States are settled by plea bargain rather than by a jury trial. This concept is also accepted in India now and has been introduced in the Indian criminal justice system.

THE CONCEPT OF PLEA BARGAINING IN INDIA

The law commission of India advocated the introduction of Plea Bargaining in the 142th, 154th & 177th reports. The 154th report of the Law commission recommended the new XXI A to be incorporated in the criminal procedure code. Plea bargaining was introduced in India by The Criminal Law (Amendment) Act, 2005, which amended the Code of Criminal Procedure and introduced a new chapter XXI(A) in the code, enforceable from January 11, 2006. It allows plea bargaining for cases in which the maximum punishment is imprisonment for 7 years; however, offenses affecting the socio-economic condition of the country and offenses committed against a woman or a child below 14 are excluded.

In 2007, Sakharam Bandekar case became the first such case in India where the accused Sakharam Bandekar requested lesser punishment in return for confessing to his crime (using plea bargaining). However, the court rejected his plea and accepted CBI’s argument that the accused was facing serious charges of corruption. Finally, the court convicted Bandekar and sentenced him to 3 years imprisonment.3

RELEVANT PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE REGARDING PLEA BARGAINING

Section 265-A states that plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years.

Section 265 A (2) of the Code gives power to notify the offences to the Central Government. The Central Government issued Notification No. SO1042 (II) dated 11-7/2006 specifying the offences affecting the socioeconomic condition of the country.

Section 265-B contemplates an application for plea bargaining to be filed by the accused which shall contain a brief details about the case relating to which such application is filed.

Section 265-C prescribes the procedure to be followed by the court in working out a mutually satisfactory disposition.

Section 265-D deals with the preparation of the report by the court as to the arrival of a mutually satisfactory disposition or failure of the same.

Section 265-E prescribes the procedure to be followed in disposing of the cases when a satisfactory disposition of the case is worked out.

Section 265-F deals with the pronouncement of judgment in terms of mutually satisfactory disposition.

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1 http://www.oxforddictionaries.com/definition/english/plea-bargaining
2 http://en.wikipedia.org/wiki/Plea_bargain#Indi
3 http://en.wikipedia.org/wiki/Plea_bargain#cite_note-RBI_clerk_sent_to_3_yrs_in_jail-42
Section 265-G says that no appeal shall be against such judgment.

Section 265-H deals with the powers of the court in plea bargaining.

Section 265-I specifies that Section 428 is applicable to the sentence awarded on plea bargaining.

Section 265-J talks about the provisions of the chapter which shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of the Code.

Section 265-K specifies that the statements or facts stated by the accused in an application for plea bargaining shall not be used for any other purpose except for the purpose as mentioned in the chapter.

Section 265-L makes this chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.

Plea Bargaining does not solve the entire problem but reduces its severity of penalty. The introduction of plea bargaining is a shortcut aimed at quickly reducing the number of under-trial prisoners and increasing the number of convictions, with or without justice. It is undoubtedly a disputed concept since few have welcomed it while others have abandoned it. Law cannot solve all problems, but it can reduce the severity. Plea bargaining in India endeavours to address the same, which despite its shortcomings can go a long way in speeding the caseload disposition and attributing efficiency and credibility to Indian Criminal Justice system.
FAST FACTS – I
SURESH KUMAR KOUSHAL & ANOTHER V. 
NAZ FOUNDATION & OTHERS

BENCH: Division Bench of the Supreme Court consisting of Justices G.S. Singhvi and S.J. Mukhopadhaya.
DATE OF JUDGEMENT: 11th December, 2013

LAWS INVOLVED:
The Constitution: Article 14 (Equality before the law); Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth); Article 19 (Protection of freedom of speech, assembly, association and movement and others); Article 21 (Protection of life and personal liberty).
The Indian Penal Code, 1860: Section 375 (Rape); Section 376 (Punishment for rape); Section 377 (Unnatural offences).

FACTS: In 2001 the NAZ Foundation – a non-governmental organisation working in the field of HIV/AIDS intervention and prevention – filed a writ petition before the Delhi High Court seeking a declaration that Section 377, to the extent that it penalised sexual acts in private between consenting adults, violated the India Constitution, specifically, Articles 14 (equality before the law), 15 (non-discrimination), 19(1)(a)-(d) (freedom of speech, assembly, association and movement) and 21 (right to life and personal liberty). In 2004, the High Court dismissed the writ petition on the grounds that only purely academic issues had been submitted which could not be examined by the court. It did the same in relation to a subsequent review petition. The NAZ Foundation challenged both orders and the writ petition was remitted for a fresh decision in 2006. In its 2009 decision, the High Court found in favour of the NAZ Foundation and accepted its arguments that consensual same-sex sexual relations between adults should be decriminalised, holding that such criminalisation was in contravention of the Constitutional rights to life and personal liberty. The Court also held that:
“Section 377 criminalises the acts of sexual minorities, particularly men who have sex with men. It disproportionately affects them solely on the basis of their sexual orientation. The provision runs counter to the constitutional values and the notion of human dignity which is considered to be the cornerstone of our Constitution.”
The decision was appealed before the Supreme Court the and following contentions were put before it.

APPELLANTS’ CONTENTIONS:
The Appellants’ denied that Section 377 was unconstitutional and made a variety of submissions as to why it was not:
• The High Court committed a severe error by declaring Section 377 to violate Articles 14, 15 and 21 of the Constitution as it ignored the lack of any foundational facts in the Respondent’s writ which would be necessary for pronouncing upon the constitutionality of any statutory provision. The documentary evidence supplied in its place was not a basis for finding that homosexuals were singled out for discriminatory treatment by the law.
• The statistics incorporated in the Respondent’s petition were insufficient for finding that Section 377 adversely affected the control of HIV AIDS and that decriminalisation would reduce the number of such cases. The Appellants also argued that the data presented was manufactured and fraudulent.
• Section 377 is entirely gender neutral and covers voluntary acts of carnal intercourse irrespective of the gender of persons committing the act. As no specific class is targeted by the law, no classification has been made, therefore rendering the finding of the High Court that it offended Article 14 to be without basis.
• Section 377 does not violate the right to privacy and dignity under Article 21 and the right to privacy does not include the right to commit any offence as defined under Section 377 or any other section.
• If the declaration were approved, India’s social structure and the institution of marriage would be detrimentally affected and it would cause young people to become tempted towards homosexual activities.
• Courts by their very nature should not undertake the task of legislating which should be left to Parliament. The High Court was unsure whether it was severing the law or reading it down and, as long as the law is on the statute book, there is a constitutional presumption in its favour. Whether a law is moral or immoral is a matter that should be left to Parliament to decide.

RESPONDENTS’ CONTENTIONS:
• Section 377 targets the LGBT community by criminalising a closely held personal characteristic such as sexual orientation. By covering within its ambit consensual acts between persons within the privacy of their homes, it is
repugnant to the right to equality. Sexual rights and sexuality are human rights guaranteed under Article 21. Section 377 therefore deprives LGBT of their full moral citizenship.

- The criminalisation of certain actions which are an expression of the core sexual personality of homosexual men makes them out to be criminals with deleterious consequences impairing their human dignity. As Section 377 outlaws sexual activity between men which is by its very nature penile and non vaginal, it impacts homosexual men at a deep level and restricts their right to dignity, personhood and identity, equality and right to health by criminalising all forms of sexual intercourse that homosexual men can indulge in.

- Sexual intimacy is a core aspect of human experience and is important to mental health, psychological well-being and social adjustment. By criminalising sexual acts engaged in by homosexual men, they are denied this human experience while the same is allowed to heterosexuals.

- The Court should take account of changing values and the temporal reasonableness of Section 377. The Constitution is a living document and it should remain flexible to meet newly emerging problems and challenges. The attitude of Indian society is fast changing and the acts which were treated as an offence should no longer be made punitive.

- The right to equality under Article 14 and the right to dignity and privacy under Article 21 are interlinked and must be fulfilled for other constitutional rights to be truly effectuated.

- Section 377 is impermissibly vague, delegates policy making powers to the police, and results in the harassment and abuse of the rights of LGBT persons. Appellants provided evidence of widespread abuse and harassment (citing judicial evidence and NGO reports).

- Section 377 does not lay down any principle or policy for exercising discretion as to which of all the cases falling under the broadly phrased law may be investigated. It is silent on whether the offence can be committed within the home.

- Criminalisation increases stigma and discrimination and acts as a barrier to HIV prevention programmes. It thwarts health services by preventing the collection of HIV data, impeding dissemination of information, preventing the supply of condoms; limiting access to health services, driving the community underground, preventing disclosure of symptoms, creating an absence of safe spaces leading to risky sex.

**THE DECISION:**

The panel of two Supreme Court judges deciding the case allowed the appeal and overturned the High Court’s previous decision, finding its declaration to be “legally unsustainable”. The Supreme Court ultimately found that Section 377 IPC does not violate the Constitution and dismissed the writ petition filed by the Respondents consent. The Court nevertheless maintained that:

“Section 377 does not criminalise a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation.”

With little analysis, the court held that:

“Those who indulge in carnal intercourse in the ordinary course and those who indulge in canal intercourse against the order of nature constitute different classes and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification.”

TLSR
Ok, so first year of law school starts with new and fresh stuff to incorporate into our tender virgin minds. These make way and shape us into skilled lawyers with chiselled brains. Two of these big hoaxes are Internships and Moot Courts. Legal Internships back in the last decade changed; from a mere clerk work to a paralegal and sometimes even more. Perspectives of employers and students both altered. Students started filling and decorating their C.V’s with anything they could lay their hands on. The employers followed this trend and gave a little favour if you had good internships. This was pre-maturely cut copied and pasted from the U.K. sphere, where you get hired after your initial internship period of six months. Mind you I’m talking of the last decade when Europe wasn’t in such big economic turmoil. Now the scenery is quite gloomy and mortifying. After this model was taken by the Indian firms they started this trend. But reality is subjective. In most of the big firm’s & corporates you’re hardly trained at anything. It’s just specific projects and research at macro level, giving no real legal skills. In extremely rare cases you will find that your internship made you learn anything at all. Internships in India are mostly unpaid and knowledge gained is trivial compared to the time and money invested over the period of two or more months. Some have got used to this fashion and use such internships as a “getaway/holiday” from the daily routine. Promise of a job offer is rare and most go astray looking for it. Recently I came across some HRs, who don’t really count your internship experience AT ALL. It’s just something which should be there, just like your degree.

Internships are fun, great way to know new people and do some networking. But the real purpose of a rewarding and knowledge building purpose is gradually being killed over time. Possible causes of such a decline is the resulting number of internship seekers which are around 80,000 students per year, 50% of which are 1st and 2nd year students who nobody wants to spoon feed or give valuable pointers. Most people are just jaded. They trained for few years with all their will and might, and now training internees is just a formality for them only to be done on paper. Internships are hardly ever regulated in India. Like social service it is unregulated, dark, vague and plagiaristic in its ideals. So do you really want to do an internship this year?

Further speaking, moots are the best thing about law school. It polishes your verbal and reasoning skills in real time. From perks ranging from international recognition, several internship offers, sometimes pre-placements options at the firms who conducted the said moot to developing excellent drafting and research skills. From a student’s point of view it should and must be done by all. Now let’s look at the job market perspective of moots. From an HR’s viewpoint, unless you won a moot or you were the runner-up, you’re as good as the person who didn’t moot at all. If you really want to set aside your coursework, your tests, for the object of mooting you’re actually missing the very point of law school. Your investment of 1-2 months of preparation, meticulous examining of all facts, details, possible questions, arguments, statements, all go in vain, if you didn’t win, strictly speaking from the employer’s point of view.

Law school is a myriad of all forms of extra-curricular; Moots, training, internships, MUNs, all have their big merits and degrading demerits, which all depends on your needs and your requirements.

So choose wisely and fare well.
The legislature, executive and judiciary are the main functionaries of the system, it is essential that these organs function harmoniously yet separately. So far as the judiciary is concerned, it is required to invigorate the Judiciary. There is need to change the appointment procedure with regard to the judges. The judiciary is of utmost importance for the continuation of other institutions. In our nation, democracy is surviving because there is a strong judiciary and an independent Election Commission. So it is essential that we must have a courageous and an independent judiciary.

The present practice of making appointments to the Higher Judiciary is through the Collegium System, earlier to that; there was the supremacy of the executive in the appointment of judges. The present Collegium System was introduced by the decision of a Constitution Bench of 9 judges in Judges Transfer Case II by a majority of 7/2. The courts are required to interpret the Constitution but they cannot alter the Constitution. The courts had virtually changed the Constitution by passing the power of selection and appointment of judges from the hands of executive into the hands of higher judiciary in 1993. But what happened after the decision of 1993? Frankly speaking, the situation has worsened and it has turned out to be a disaster.

Even Justice J.S. Verma, who was the author of the judgment in the year 1993 himself, told that “the Bench had committed a mistake in rendering the Judgment. The Bench thought of something positive but quite the opposite has happened”. One of the country’s top legal luminaries Fali S. Nariman had made bold exposure on drawbacks of Collegiums-system of appointing judges. His statement directly hinted towards personal equations and not merits being followed in recommending elevation of judges at Supreme Court. Even Justice P.N. Bhagwati had unequivocally said that “this system does not work satisfactorily. I am not in favour of it. I don’t know what the truth is but going by rumours, bargaining goes on between the Collegium judges. People are losing confidence in the mode of appointing judges. Therefore, it is necessary to change it”.

The judgment of 1993 was reaffirmed in Judges Transfer Case III, (Re Presidential Reference) in a unanimous opinion rendered by a nine judges Bench of the Apex Court on a Presidential reference under Article 143 of the Constitution. The source of the present mechanism of appointment of judges is the decision of the Supreme Court and there is no other backing of any constitutional provision showing any norms or principles for selection in clear terms. It is interesting to know that India is the only country in the world where judges appoint themselves.

There is now a continuous demand from the people that matters dealing with appointments, transfers and other misconduct by the Higher Judiciary need to be carried out by an independent body employing transparent criteria. Therefore, the best way to invigorate the judiciary is to place the power of appointment not with the judiciary but with a Judicial Commission.

People often felt that the entire process of appointment, transfer, removal or taking of any action with regard to the matter of judges is shrouded in secrecy. There is no transparency and the entire control is with the Collegium. It is for this reason that former Chief Justice of India Justice Venkatachaliah has also advised for the constitution of National Judicial Commission. The National Judicial Commission should consist of a minimum of nine members which includes the Chief Justice of India, the Union Law Minister, the Leader of the opposition, one person from the Media, one person from the Judiciary, a Law Professor of integrity and three eminent jurists of integrity.

In the first Judges Transfer case, Justice Bhagwati had suggested for the appointment of a Judicial Commission on the line of Australian Judicial Commission. In fact, a bill was introduced in Lok Sabha by the National Front Government for setting up a National Judicial Commission in 1990 by the then Law Minister, Dinesh Goswami empowering the President to constitute a high level Judicial Commission for making recommendation for the appointment of a judge to the Supreme Court (other than the Chief Justice of India), Chief Justice of High Courts and to transfer of judges from one High Court to another. However, the Constitution Amendment Bill lapsed consequent to the dissolution of the Lok Sabha.

In the Indian context the controversy has arisen because the two sides- the Executive and the Judiciary both are trying to assert themselves in a tug of war for the supremacy in the matter. However, both the sides have shown their failings on the matter. The solution, perhaps, lies in a practice where neither side enjoys supremacy. A constitutional body reflecting the aspersions of all sections should be entrusted with the task of bringing in harmony between the two conflicting wings of the government. As suggested by the Law Commission of India in 1987, a National Judicial Service Commission should have the final say in matters of selection, promotion, and transfer of judges.
THE XVII\textsuperscript{TH} ALL INDIA UNIVERSITY LAW COLLEGE NATIONAL MOOT COURT COMPETITION, 2013 & THE MAHAMANA MALVIYA BEN ARAS HINDU UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2014

By Shreya Gupta

**THE TEAM:** Shreya Gupta, Karan Kapoor and Taniya Pandey

**WHAT WAS THE SUBJECT MATTER OF THE MOOT?**
The former was exclusively a constitutional law moot and the latter was a blend of banking law and constitutional law.

**WHAT MADE YOU CHOOSE THE MOOT IN THE FIRST PLACE? (WHAT SHOULD A STUDENT KEEP IN MIND WHILE CHOOSING A MOOT?)**
Constitutional law has always interested me. It is beautifully complex. Also, the fact that it gelled well with our examination curricula made us choose this moot.

**DESCRIBE THE PROCESS OF PREPARATION. HOW DID YOU GO ABOUT THE ENTIRE PREPARATION STAGE? (WHAT IS THE IMPORTANCE OF MOOT PRESENTATIONS WHICH TAKE PLACE IN THE COLLEGE?)**
Initially, we read through the moot problem numerous times. Indecisive about where to begin from, we put in a lot of toil and undeterred focus in drafting our memorial and, voila, the alchemist’s portion was ready. What seemed to be far out of reach, eventually transformed into a piece of cake!

During my four years in law school and several internships, I have seen the best of lawyers walk home with an order in their favour owing much to their amazing persuasive skills. We therefore, focussed a lot on the pre-moot presentations to make our oral submission more articulate and impressive.

**WHAT HELPED YOU IN THE MOOT COURT COMPETITIONS?**
I was never one of those chaps who participated regularly in the debate competitions during my school days. However, the idea of mooting struck the chord since the very first time I was briefed about moot court competitions by my seniors. I owe much to them.

Intra faculty moot court competitions organised annually in our college helped me crack the shell for the first time. Eventually, several prestigious moots like K.K. Luthra International Moot Court Competition, 2012, and the Bar Council of India International Moot Court Competition, 2011 (where we stood as the semi-finalists) helped me polish my skills further.

**HOW WAS IT LIKE WORKING WITH THE TEAM? WHAT DO YOU THINK ARE YOUR TEAM’S FORTES?**
With the team, I couldn’t ask for more. What kept us going was the fact that we understood each other’s rhythm. This helped us overcome whatever little qualms each one of us had. All in all these two experiences were extremely enriching and memorable.

Therefore, our forte was our camaraderie, the way we clicked as a team.

**WHAT, ACCORDING TO YOU, WERE THE MAJOR ROADBLOCKS?**
Though the moots were essentially constitutional law moot competitions, each of them required a thorough study of the socio-economic conditions that were prevailing in India at the time along with an in-depth knowledge of bio-fuel plants. We therefore, invested much time and skill in collecting and analysing statistical data and used it to our advantage, apart from the legal issues that were involved therein.

**WHAT GAVE YOU AN EDGE OVER YOUR COMPETITORS DURING THE MOOTING SESSIONS?**
We adopted many unconventional ways of addressing the issues that were our rallying points. Perhaps, our ability to judge the judges’ reactions and accordingly transcend the rest of the arguments came together as a healthy equation. So an out-of-the-box approach is what made the difference for us.

**WHAT ADVICE WOULD YOU LIKE TO PASS ON TO THE MOOTERS AND THE NON-MOOTERS?**
Even though an active participant in co-curricular activities, the idea of public speaking continues to give me goose bumps and makes me weak in the knee. However, being your best when you’re at your worst is where the challenge lies. Five years back, as a student of B.A. LL.B. (Hons.), I contested the first moot court competition. Ever since I’ve been enthusiastically participating in such competitions, and each moot has turned out to be a confidence booster, irrespective of the rank my team or I secured.

At the end of the day, winning or losing doesn’t make much difference. Experience is what counts - being all by yourself, making yourself vulnerable to the male dominated society, travelling independently, working and living as a team, bearing with what is unbearable and gaining joy from what gives you pleasure.

What I mean to convey is that, non-mooters- a genre as such should not exist. Give it a go and I bet it’ll be better than the addictive sweet roots.
IMMORTALIS VERITATEM NATIONAL MOOT COURT
COMPETITION, ANAND LAW COLLEGE, 2012

By Shubham Agarwal

THE TEAM: Ketaki Kumar Khatri, Shubham Agarwal, Tejasvi Mishra

WHAT WAS THE SUBJECT MATTER OF THE MOOT?
Indian Constitutional law

WHAT MADE YOU CHOOSE THE MOOT IN THE FIRST PLACE?
(WHAT SHOULD A STUDENT KEEP IN MIND WHILE CHOOSING A MOOT?)
Constitutional law has always interested me. It is beautifully complex. Also, the fact that it gelled well with our examination curricula made us choose this moot.

DESCRIBE THE PROCESS OF PREPARATION. HOW DID YOU GO ABOUT THE ENTIRE PRE-PREPARATION STAGE? (WHAT IS THE IMPORTANCE OF MOOT PRESENTATIONS WHICH TAKE PLACE IN THE COLLEGE?)
Before selecting a moot a student shall first look for the subject matter which the moot problem deals with and whether research on that issue will be possible or not.

WHAT HELPED YOU IN THE MOOT COURT COMPETITIONS?
Preparation includes first a detailed research on the subject matter keeping in mind all the statutes that are related to it and recent amendments secondly drafting and thirdly moot presentation in the college which is a very important part of the preparation as it gives us a glimpse of our level of preparation and an opportunity to overcome our mistakes

HOW WAS IT LIKE WORKING WITH THE TEAM? WHAT DO YOU THINK ARE YOUR TEAM’S FORTEs?
It is always great working with the team

WHAT, ACCORDING TO YOU, WERE THE MAJOR ROADBLOCKS?
Major roadblocks are lack of guidance and research facilities

WHAT GAVE YOU AN EDGE OVER YOUR COMPETITORS DURING THE MOOTING SESSIONS?
Our deep and systematic research gave us an edge over others and we were able to defeat them and secure 1st runners up position.

WHAT ADVICE WOULD YOU LIKE TO PASS ON TO THE MOOTERS AND THE NON-MOOTERS?
Just go for it without thinking about losing or winning because one get a lot to learn from it.
The people of India were rejoicing. It was an historic day in the lives of millions of people and also the centuries-old existence of India as the country had become free in real sense after many centuries and the people on the streets were free to celebrate that freedom from hordes of foreign invaders like Mughals, East India Companies and many more. This also included freedom from Indian kings and emperors who have fought with the foreign powers and also among themselves to establish their kingdoms. It was a grand transition from Plutocracy and Autocracy to Democracy.

August 15th 1947 was indeed a historic day in the world history as two new nations, India and Pakistan took birth on this day and it was also almost the end of British rule around the globe. It was a regime which has carved the world as we see it as today and has influenced the global sense of nationalism and patriotism. The birth of these two nations, India and Pakistan was a landmark and a farewell to the Rule of Queen. The sun had finally set behind the horizon for the British colonial power.

It has been 67 years since we have become independent from the clutches of foreign powers. We have come a long way from being ruled to being governed. Contemporary India is an amalgamation of the British sense of power and India’s cultural diversity. It has come a long way to become world’s largest democracy but what we see of it today is not what the national leaders like Bal Gangadhar Tilak, Sardar Patel, Subhash Chandra Bose and many others like them had perceived. They imagined an India which would prosper and progress but not at the cost of its people.

Independence Day is a perfect time for us to introspect. It is a time to rejoice for our achievements and accomplishments and repent for the mistakes we have committed. This collective introspection is also necessary because now we are a Democracy and it’s a rule of, for and by the People. So we need to analyse what we have achieved and where have we lagged behind. It will only give a better chance to us to take leaps forward in our future endeavours.

The cultural, religious and linguistic diversity of India is its strength. The population of India is spread across distinct landforms but these also carve out the problems like Sectarianism, Regionalism, Linguistic Bias, Communalism etc. These are widespread problems which have an adverse impact on the sense of nationalism and patriotism. We cannot speak of One India when such prejudices are omnipresent and when the political class is also driven by these factors. The caste based elections are an example of such prejudices being used to realise vested interests. The problems in Jammu and Kashmir and North-Eastern states are also perennial and have grown manifold over the years. The insurgency in these states and the constant measures by the government to counter the insurgency are always a mooting point and nothing substantive has been achieved so far. The political class is always on the boil over these problems and the common people in these areas face constant disturbances in the form of vehement protests by the Separatist Powers and Fringe Groups, who always resort to violence to make themselves audible to the Government. It yields no fruitful result for any faction, but it has become a favourite modus operandi of the separatists who always try to disintegrate the social fabric and disturb the tranquillity of the society.

The problem of Naxalism is also a behemoth. It is rooted in the widespread conditions of Poverty, Unemployment, Illiteracy, Discrimination and many more, the list of which is not exhaustive. It has engulfed a vast portion of the Indian populace which resides in different states but faces similar situations. They fight against the government machinery which in most of the cases is defunct and is unable to provide them with basic amenities. They pose a great threat to the internal security of India and also depict a sorry state of affairs which is becoming the huge dark backdrop of the ‘Shining India’, the one which shimmers and glows in the Metro cities with the wave of Consumerism and materialistic values inundating the lives of poverty-stricken people. It is hard not to notice the brazen conditions in which majority of the Indian population is surviving. The numbers of poor people have only declined in the government’s statistical reports, but not in actuality. The audacious speeches given by the politicians are all based on these reports and not at all portray the real picture.

So in this time of the year when patriotism is at its peak and we can see tricolour atop buildings, let us try to realise the dreams of our founding fathers by creating a society which is free from vices and is based on the holistic principles which have been overshadowed by the rampant problems in form of Corruption, Illiteracy, Unemployment and many more.
BENCH: Chief Justice of India Mr Justice P. Sathasivam and Justices Ranjana Prakash Desai and Ranjan Gogoi.


LAWS INVOLVED:

WHAT IS NOTA?
“Right to reject” is a provision that empowers the voters to have an option to reject the candidates contesting election. Using this provision the voter can push a button during voting that says “None of the above” (NOTA) and can reject all the candidates in case she or he doesn’t believe in any candidate. The Right to Reject, relies on the concept that in a Democracy if the citizens have the right to select the candidates, then they should also have the right to reject the candidates.

So why not just remain absent during voting?
There is a difference in voting NOTA and remaining absent. The NOTA votes are counted and if the percentage of the NOTA votes are more than the votes secured by any candidate, for example, if a total of 1000 votes were cast by the voters, Party A received 300 votes, Party B received 200 votes and NOTA received 500 votes, then re-polling can be carried out and the candidates who stood for the first round of voting will be disqualified from contesting in the second round of voting.

When the voter opts for the NOTA option, her or his name is stricken off in the Voter list indicating that she or he has been present. This avoids fake voting.

FACTS:
In this case writ petition, under Article 32 of the Constitution of India, has been filed by the petitioners challenging the constitutional validity of Rules 41(2) & (3) and 49-O of the Conduct of Election Rules, 1961 (in short ‘the Rules’) to the extent that these provisions violate the secrecy of voting which is fundamental to the free and fair elections and is required to be maintained as per Section 128 of the Representation of the People Act, 1951.

The petitioners herein prayed for declaring Rules 41(2) & (3) and 49-O of the Rules ultra vires and unconstitutional and also prayed for a direction to the Election Commission of India, to provide necessary provision in the ballot papers as well as in the electronic voting machines for the protection of the right of not to vote in order to keep the exercise of such right a secret under the existing RP Act/the Rules or under Article 324 of the Constitution.

PETITIONERS’ CONTENTIONS:
Mr. Rajinder Sachhar, learned senior counsel for petitioner, taking into account Section 128 of the RP Act as well as Rules 39, 41, 49-M and 49-O of the Rules submitted that in terms of Rule 41(2) of the Rules, an elector has a right not to vote but still the secrecy of his having not voted is not maintained under Rules 41(2) and (3) thereof. The main substance of the arguments was that though right not to vote is recognized by Rules 41 and 49-O of the Rules and is also a part of the freedom of expression of a voter, if a voter chooses to exercise the said right, it has to be kept secret. Learned senior counsel further submitted that both the above provisions, to the extent of such violation of the secrecy clause are not only ultra vires but also contrary to Section 128 of the RP Act, Rules 39 and 49-M of the Rules as well as Articles 19(1) (a) and 21 of the Constitution.

RESPONDENTS’ CONTENTIONS:
Mr. P.P. Malhotra, learned Additional Solicitor General appearing for the Union of India submitted that the right to vote is neither a fundamental right nor a constitutional right nor a common law right but is a pure and simple statutory right. He asserted that neither the RP Act nor the Constitution of India declares the right to vote as anything more than a statutory right and hence the present writ petition is not maintainable.

He further pointed out that though the power of Election Commission under Article 324 of the Constitution is wide enough, but still the same can, in no manner, be construed as to cover those areas, which are already covered by the statutory provisions. He further pointed out that even from the existing provisions, it is clear that secrecy of ballot is a principle which has been formulated to ensure that in no case it shall be known to the candidates or their representatives that in whose favour a particular voter has voted so that he can exercise his right to vote freely and fearlessly. He also pointed out that the right of secrecy has been extended to only those voters who have exercised their right to vote and the same, in no manner, can be extended to those who have not voted at all. Finally, he submitted that since Section 2(d) of the RP Act specifically defines “election” to mean an election to fill a seat, it cannot be construed as an election not to fill a seat.
THE DECISION:
Declaring Rules 41(2) & (3) and 49-O of the Rules are ultra vires Section 128 of the RP Act and Article 19(1) (a) of the Constitution to the extent they violate secrecy of voting, the Supreme Court held the citizen’s right ‘not to vote’ as a “mechanism of negative voting that serves a very fundamental and essential part of a vibrant democracy.”

The Supreme Court agreed with PUCL’s contention that the prevailing system u/Rule 41(2), (3) and Rule 49(O) of the Conduct of Election Rules, 1961 are violative of the citizen’s right to secrecy as provided u/s 128 of the Representation of People Act and Article 19(1)(a) of the Constitution of India. In effect the SC accepted PUCL’s position that the voter has a right to indicate their dissatisfaction against all the candidates in secrecy. The Court pointed out that “secrecy in casting vote is necessary for strengthening democracy.”

The inclusion of a NOTA button will ensure participation of voters who are frustrated with all the candidates. The SC has rightly pointed out that NOTA “will accelerate the effective political participation in the present state if democratic system and the voter will, in fact, be empowered”. The SC also points out that this will prevent bogus voting.

The apex court pointed out that the political parties will realise that when a large number of people express their disapproval through NOTA, “there will gradually be systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity”. Quoting the verdict:

“Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity.”

VIEWS OF MR N GOPALASWAMI (FORMER CHIEF ELECTION COMMISSIONER)

This seemingly innocuous judgment to add a button to the EVM may sound very plebeian but the skilfully worded order has put a seal of approval on the distinction made between the right to vote, which it confirmed was a statutory right, and the act of exercising that right by the casting of a vote which it confirmed as a constitutional right as enshrined in Article 19(1) (a), the right to freedom of speech and expression. It then added a constitutional lustre to ‘negative voting’ by declaring “not allowing a person to cast vote negatively defeats the very freedom of expression and the right ensured in Article 21, i.e., the right to liberty.”

The Supreme Court’s recognition of “negative voting” as a constitutional right is by all means a giant step forward for the voter. Civil society has thus won an important and vital point. From here the next logical step will be one of raising the status of the button to that of “negative vote” with consequences, in other words a vote for ‘rejection’ of all candidates, instead of its current status of merely being “no vote or negative vote.” This step would inevitably have to follow if political parties do not see the writing on the wall and belie the expectation that NOTA “will indeed compel the political parties to nominate a sound candidate,” as the Supreme Court said.
The position of Privacy Laws in India

Devesh Saxena
VIIIth Semester

“Gradually the scope of legal rights broadened; and now the right to life has come to mean the right to enjoy life - the right to be let alone.”

Louis Brandeis, J. (1890)

The term ‘privacy’ refers to the use and disclosure of personal information and is only applicable to information specific to individuals. As such, the right to privacy has been given paramount importance by the Indian judiciary and can only be fettered with for compelling reasons such as, security of the state, public interest or for preventing incitement to the commission of any cognizable offence. With robust growth and comparatively stable economy, India continues to be a key and fast developing market across the world. Number of foreign companies operating in India grows 100% every year. Yet India is still to embark upon a law that matches to developed nations’ legal system and meets investors’ expectations. However, the courts in India have used existing laws to afford protection and confer rights to secure a fair privacy to everyone.

Legal Framework in India

Presently, there is no specific legislation dealing with privacy and data protection. The protection of privacy and data can be derived from various laws pertaining to information technology, intellectual property, crimes and contractual relations. Although there is no statutory enactment expressly guaranteeing a general right of privacy to individuals in India, elements of this right, as traditionally contained in the common law and in criminal law is recognized by Indian courts.

Privacy under the Constitution of India

Under the Indian Constitution, Article 21 of the Indian Constitution is a fairly innocuous provision in itself i.e. “No person shall be deprived of his life or personal liberty except according to procedure established by law”. However, the above provision has been deemed to include within its ambit, inter-alia, the Right to Privacy - "The Right to be left alone", as the Supreme Court termed it in many illustrious cases including Kharak Singh v. State of U.P.¹. Further, in a detailed exposition on Right to Privacy, the Supreme Court in R. Rajgopal v. State of TN² laid down that, the right to privacy is implicit in the right to life and liberty guaranteed to a citizen under Art.21 of the Constitution, a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish (meaning "make known to the public") anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical, unless they are part of public records.

Privacy in Tort Law

The Right to Privacy is further encompassed in the field of Torts which include the principles of nuisance, trespass, harassment, defamation, malicious falsehood and breach of confidence. The tort of Defamation involves the right of every person to have his reputation preserved inviolate. It protects an individual's estimation in the view of the society and its defences are ‘truth’ and ‘privilege’, which protect the competing right of freedom of speech.

Privacy in Contract Law

Under Indian laws, the governing legislation for contractual terms and agreements is the Indian Contract Act. There exist certain other means by which parties may agree to regulate the collating and use of personal information gathered, viz. by means of a "privacy clause" or through a "confidentiality clause". Accordingly, parties to a contract may agree to the use or disclosure of an individual's personal information, with the due permission and consent of the individual, in an agreed manner and/or for agreed purposes, but, any unauthorized disclosure of information, against the express terms of the agreement would amount to a breach of contract inviting an action for damages as a consequence of any default in observance of the terms of the contract.

Privacy Obligations under Specific Relationships

There are instances of specific inter-personal relationships wherein one party might be obligated to maintain a certain measure of confidentiality. A doctor-patient, husband-wife, customer-insurance company or an attorney-client relationship; are instances where there exists a strong ethical obligation on the part of one party to protect the privacy of information relating to an individual which may expose him to social humiliation and/or ridicule. The above principle also receives legal recognition in Ss. 123-126 of the Indian Evidence Act, 1871.

Relevant Provisions under Various Statutes

Information Technology Act, 2000: The (Indian) Information Technology Act, 2000 deals with the issues relating to payment of compensation (Civil) and punishment (Criminal) in case of wrongful disclosure and misuse of personal data and violation of contractual terms in respect of personal data. The said Act creates personal liability for illegal or unauthorized use of computers, computer systems and data stored therein. However, the said section is silent on the liability of internet service providers or network service providers, as well as entities handling data. The liability of the entities is further diluted in Section 79 by providing the criteria of “knowledge” and “best
efforts” before determining the quantum of penalties. This means that the network service provider or an outsourcing service provider would not be liable for the breach of any third party data made available by him if he proves that the offence or contravention was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence or contravention.

The law makes no differentiation based on the ‘intentionality’ of the unauthorized breach, and no criminal penalties are associated with the breach. Section 65 offers protection against intentional or knowing destruction, alteration, or concealment of computer source code while Section 66 makes alteration or deletion or destruction of any information residing in a computer an offence. Both sections 65 and 66 are punishable with criminal penalties including imprisonment up to 3 years or a monetary penalty of up to $440,000/-. Indian Penal Code: The Indian Criminal law does not specifically address breaches of data privacy. Under the Indian Penal Code, liability for such breaches must be inferred from related crimes. For instance, Section 403 of the India Penal Code imposes criminal penalty for dishonest misappropriation or conversion of “movable property” for one’s own use.

Intellectual Property Laws: The Indian Copyright Act prescribes mandatory punishment for piracy of copyrighted matter commensurate with the gravity of the offence. Section 63B of the Indian Copyright Act provides that any person who knowingly makes use on a computer of an infringing copy of computer program shall be punishable for a minimum period of six months and a maximum of three years in prison.

Credit Information Companies Regulation Act, 2005 (“CICRA”): As per the CICRA, the credit information pertaining to individuals in India have to be collected as per privacy norms enunciated in the CICRA regulation. Entities collecting the data and maintaining the same have been made liable for any possible leak or alteration of this data. CICRA has created a strict framework for information pertaining to credit and finances of the individuals and companies in India.

THE PRIVACY BILL, 2011

A Bill to provide for the right to privacy to the citizens of India and regulate the collection, regulation, maintenance, use and dissemination of their personal information and provide for penalization for violation of such rights and for matters connected therewith or incidental hereto.

Few broad heads under the privacy bill are as follows:

- Interception (S.4) (Exception S.5 of Indian Telegraphs Act) (S.14 Procedure for Interception)
- Surveillance (S.24); Includes thorough following a person on close circuit television or other electronic mode or by any other mode
- Use of Photographs, DNA Samples, fingerprints, etc. (S.25)
- Health Information (S.27)
- Collection, Processing and use of Personal Data (S.29)

NEED FOR SPECIFIC PRIVACY LAW

There exists in India an impending need to frame a model statute which safeguards the Right to Privacy of an individual, especially given the emergence of customer-service corporate entities which gather extensive personal information relating to its customers. It’s evident that despite the presence of adequate non-mandatory, ethical arguments and precedents established by the Supreme Court of India, but, in the absence of an explicit privacy statute, the right to privacy remains a de facto right.

The urgency for such a statute is augmented by the absence of any existing regulation which monitors the handling of customer information databases, or safeguards the Right to Privacy of individuals who have disclosed personal information under specific customer contracts viz. contracts of insurance, credit card companies or the like. The need for a globally compatible Indian privacy law cannot be understated, given that transnational businesses in the services sector, who find it strategically advantageous to position their establishments in India and across Asia. For instance, India is set to emerge as a global hub for the setting up and operation of call centres, which serve clients across the world. Extensive databases have already been collated by such corporates, and the consequences of their unregulated operations could lead to a no-win situation for customers in India who are not protected by any privacy statute, which sufficiently guards their interests.

In the privacy and data protection area, the winds of change are blowing across India, and they are likely to alter the landscape. But the new shape of that landscape is not yet clear. The near future is likely to see major modifications to the Information Technology Act 2000.

The long-term shape of Indian data protection law may depend on the success (or lack of it) that the short-term solution enjoys. But, one way or another, Indian privacy law is likely to change dramatically in the next few years.3
They say “when women lost their self-reverence, degeneration set in”. Besant stated, “Indian greatness will not return until womanhood obtains a larger, freer, fuller life for largely in the hands of Indian women must be the redemption of India.”

Emancipation of women and their empowerment has an intense consequence on the society. India, where the population of women contribute to half of the population approximately, parliamentarian women can easily serve as vanguard for the native female fraternity.

The first woman to stand for the elections was Kamla Devi Chatopadhya. In order to narrate the efficacious role of women parliamentarian it is incumbent to trace back to 1936. Then Sarojini Naidu had appealed to women to seek their livelihood. During the prime time of revivalist ideology (1901-1918) Sarojini Naidu and Annie Besant delivered speeches, prepared pamphlets and wrote essays to promote female suffrage. The “wonderful ideal of womanly perfection” contributed a great deal in India’s struggle for independence. They participated in the Swadeshi Movement, resumed the duties of their male counterparts when our freedom fighters were sent to the jail.

In the long span of four decades (1950-89), the women parliamentarians who were either ordinary MPs or held some ministerial position introduced 150 bills. This covered a period of eight parliaments. In the first parliament the bills related to issues such as dowry, children and women institution, suppression of immoral trafficking, marriage, divorce, food, health etc. Hence the women who entered the parliament aimed towards elevation of the status of women. In the second parliament they brought issues such as equal remuneration, maternity benefit, taxation, military and legal matters, constitution, property, technical training, industries, employment etc. Therefore those who took the initiative in parliament regarding these matters are to be credited with the development in these fields. Rajkumari Amrit Kaur, Sucheta Kriplani, Durga Bai, Uma Nehru, Maniben Vallabhai Patel, Indira Gandhi, Lakshmi N.Menon were some of the prominent figures. Besides taking the initiative these women became part of the joint committees. Not only this, they also headed some of the committees. The parliamentarian women then time took active part in the parliamentary proceedings, expressed their views with competence. Mrs. Reddi caused the enactment which led to the elimination of devdasi system. The Indian Nursing Council (Amendment) Bill was introduced by Rajkumari Amrit Kaur, the first woman Health Minister of India. The Bill received the consent of the President and stood qualified and acknowledged as an Act. Jai Shri, Uma Nehru, Renu Chakrobarty, Sushila Advarekar, Krishna Sahi, Pramila Dandavate and Margret Alwa are to be credited with the task of introducing Dowry Prohibition Bills in their respective tenures. They pointed out that black money was given in the form of gifts and dowry had assumed a humungous shape and proportion in the marriages. Margret Alwa in the year 1986 had made effective mention in her objectives of the bill.

Without pointing out the stalwart among women parliamentarians and the first woman Prime Minister of India, Indira Gandhi the discussion of the achievements of women leaders would be incomplete. There might have been a dud end to her regime but her accomplishments paved the path for technical soundness and self-sufficiency for India. In addition to various successful projects her prime and much needed success for the country, was the Green Revolution. The stoppage of import of PL480 wheat is credited to the stringently required Green Revolution.

Evidently women in power influence and stir more women to assume and occupy a designation of power and decision making position. Vulnerable and pitiful plight of women is like inertia towards the pace of growth and development in the organic growth of a nation. The evils of female foeticide leading to female trafficking can only be outcast when women acquire respectable position and their credibility is not thrown in the gallows of doubt every now and then. Mamta Banerjee has significantly contributed to the strengthening of the democracy.

In order to “legitimize democracy” the partnership and association of men and women is a pre-condition. Hence women parliamentarian such as Sushma Swaraj, Mayawati, Renuka Chaudhary and every one amongst the female fraternity who thrive in the political arena serve as examples for the society to believe in the competency of the fairer sex.

“Democracy is premised on the assumption that members of Parliament act for the groups they represent. This is not a straight forward exercise however, as most members of Parliament may act for or in the interest of, many different groups such as political party, a constituency, a region or clan, the national interest or interest of a particular sex. This creates a multi-dimensional nature of representation.”

Sonia Gandhi who became the leader of Congress in 1998 is another woman parliamentarian who should be seen as an able leader who procured the confidence which the party had lost.

1 Besant, Speeches, p. 79.
She had made secularism her ideal and hence due to her campaign the turnout of female voters went up by eighteen percent in 1996. Her role in policy making and decision making depicts that politics is not a hard task for a woman. When the prospects for congress appeared bleak she turned the scenario to heyday. The party came in power under her presidency carried out various development tasks and turned India to a self-efficient nation.

A democracy can only run when the interests of various sections are preserved properly. And the task of the parliamentarian is beyond the Parliament, reaching out to people, feeling for them and having eagle eyes towards issues that bother different sections. Hence it goes true that if the women are not adequately represented there stand chances of their issues being ignored. Even the issues related to children, parentage, pension etc. can be undermined amidst other issues of concern. And so the democracy shall stand paralyzed. So to maintain the essence, true colour and the real aspect of the Constitution i.e. democracy, women parliamentarians play a cardinal role. The role of women leaders can be justified exclusively by them. Indeed the road ahead looks paved for the development of a stronger nation owing to the role of women parliamentarian such as Sushma Swaraj, Jay Lalita and many more who deserve appreciation.
In the present scenario, the judiciary has widened its scope of interference in the public administration and of the policy decisions of the government, but it is well aware of the limitations within which it should function. In the case of 
P. Ramachandra Rao v. State of Karnataka,
the Hon'ble Supreme Court has observed that “the Supreme court does not consider itself to be an imperium in imperio, or would function as a despotic branch of the State.”

The Indian Constitution does not envisage a rigid separation of powers, the respective powers of the three wings being well defined with the object that each wing must function within the field earmarked by the constitution. The Supreme Court of India took all this into account in the judgment reported in the case 
State of Kerala v. A Lakshmi Kutty
, stating that “Special responsibility devolves upon the judge to avoid an over activist approach and to ensure that they do not trespass within the spheres earmarked for the other two branches of the State.”

The judges should not enter the fields constitutionally delineated for the legislature and the executive. Judges cannot become legislators, as they have neither the mandate of the people nor the practical wisdom to understand the needs of different sections of the society. They are forbidden from assuming the role of administrators; governmental machinery cannot be run by judges as that is not the intention of our constitution makers. While interpreting the provisions of the constitution the judiciary often rewrites them without explicitly stating so. As a result of this process some of the personal options of the judge crystallize into legal principles and constitutional values.

A classic example of the above problem is the order by the Supreme Court of India to demolish and seal off all commercial entities run in residential areas in Delhi. Even though the Delhi Government passed a Bill regularizing all the constructions, which were illegal, the Apex Court took the view that all those places should be sealed off. The Delhi Municipal Corporation was reluctant to continue with the sealing drive because it was against the popular sentiments of the people. However, the Supreme Court remained steadfast on its decision and the municipal authorities had no other option except to comply with the court orders. There were demonstrations and violent protests against the sealing drive; the Congress Party, which was in power during the sealing drive; lost municipal councillor seats in the elections conducted during that time. The arguments against the demolition drive did not dissuade the court.

The Supreme Court of India is well aware of its limitations, and hence exercises self-restraint and caution over encroachment of the field exclusively reserved for the Legislature and the Executive. The seven judges’ bench of the Supreme Court declared in P Ramachandra Rao’s case that:

“The primary function of the Judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation properly meant for the legislature. It is not difficult to perceive the dividing line and enacting law-the field exclusively reserved for the legislature.”

In the case of 
Keshaavananda Bharthi (1973)
the Supreme Court held for the first time that a constitutional amendment duly passed by the legislature was invalid for damaging or destroying its basic structure. This was a gigantic judicial leap unknown to any legal system. The supremacy and permanency of the constitution was ensured by the pronouncement, with the result that the basic features of the constitution are now beyond the reach of Parliament. The criticism of this judgment by the Supreme Court is that since the court has not exhaustively defined what these basic features are, the judicial arm can be extended to any distance at will.

Article 21 of the Constitution of India which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law, has become the most dynamic article in the hands of the Indian courts. Therefore a whole new set of rights which were not provided by the Constitution were read into the Article 21.

Also it will not be a healthy situation if there is extensive use of judicial powers in the administrative field as it will blunt the judicial powers themselves. Thus judiciary cannot arrogate to itself the powers of the executive or legislature. There is a broad separation of powers under the Constitution of India, and the judiciary, too, must know its limits. Therefore the awareness of the limitations and exercising of self-restraint and caution by judiciary will not make it a despotic branch of the State.
FAST FACTS – III
NOVARTIS AG V. UNION OF INDIA & OTHERS

BENCH: Mr. Justice Aftab Alam, joined by Ms. Justice Ranjana Prakash Desai.

DATE OF JUDGEMENT: 1st April, 2013.

LAWS INVOLVED:
Sections 2(1) (j), 2(1) (j a) and 3(d) of Indian Patent Act, 1970.

BRIEF BACKGROUND:
In 1997, Novartis AG, a pharmaceutical company based in Switzerland, filed a patent application in the Chennai (Madras) Patent Controller’s office for the beta-crystalline of imatinib mesylate, brand name Gleevec (Gleevec) on the ground that it invented the beta crystalline salt form (imatinib mesylate) of the free base, imatinib.

Novartis’ patent application was kept in the mailbox and not opened until 2005 as the TRIPS Agreement permitted developing countries such as India that did not provide product patent protection to pharmaceuticals and agrochemicals to introduce such product patent protection from 1 January 2005.

In the meantime, Novartis had obtained Exclusive Marketing Rights (EMR) for marketing Gleevec in India. On the basis of this, it obtained orders preventing some of the generic manufacturers from manufacturing and selling generic versions of the medicine.

At that time, Novartis was selling Gleevec at USD 2666 per patient per month. Generic companies were selling their generic versions at USD 177 to 266 per patient per month.

In 2005, India amended its patent law to comply with its obligations under the TRIPS Agreement to provide process and product patent protection in all fields of technology, including pharmaceuticals and agrochemicals.

Cognisant of patenting practices, Parliament introduced a significant and important provision to prevent ever greening and granting of frivolous patents—section 3(d).

After the 2005 amendment to the patent law, CPAA and other generic companies filed pre-grant oppositions against Novartis’ patent application for imatinib mesylate, claiming, among other things, that Novartis’ alleged “invention” lacked novelty, was obvious to a person skilled in the art, and that it was merely a “new form” of a “known substance” that did not enhance the substance’s efficacy, and was thus not patentable under section 3(d).

These arguments were based on the fact that Novartis had already been granted a patent in 1993 in the United States and other jurisdictions for the active molecule, imatinib, and that the present application only concerned a specific crystalline form of the salt form of that compound.

CPAA and the generic companies contended that the 1993 patent effectively disclosed both the free base, imatinib, and the acid-addition salt, imatinib mesylate. Further, CPAA and generic companies argued that different crystalline forms of imatinib mesylate did not differ in properties with respect to efficacy, and thus the various forms of imatinib mesylate must be considered the “same substance” under section 3(d).

Novartis’ patent application rejected by Patent Controller [January 2006]
In January 2006, the Patent Controller in Chennai, in a landmark decision, refused to grant Novartis a patent, agreeing, amongst others, with the contentions of the CPAA and generic companies that the subject application lacked novelty, was obvious, and was not patentable under section 3(d).

The patent rejection meant that generic companies could manufacture and market their generic versions of the drug, both in India and abroad, and make available the generic imatinib mesylate priced at less than one-tenth of Novartis’ price.

In June 2006, Novartis AG and its Indian subsidiary, Novartis India, filed a series of writ petitions against the Government of India, CPAA, and four Indian generic manufacturers (Natco, Cipla, Hetero and Ranbaxy), before the Madras High Court. These writ petitions challenged the decision of the Patent Controller to refuse to grant Novartis a patent for the beta-crystalline form of its anticancer drug, imatinib mesylate, as well as the validity of section 3(d) that provided one of several grounds for rejecting its patent application.

Over a period of time, the writ petitions challenging the decision of the Patent Controller were converted into statutory appeals.

Constitutional validity of section 3(d) upheld by Madras High Court [August 2007]
Meanwhile, in August 2007, the Madras High Court issued its decision rejecting Novartis’ writ petitions challenging the validity of section 3(d). The Madras High Court refused to examine whether section 3(d) was in compliance with the TRIPS Agreement.

Novartis’ primary contention in its challenge to the constitutional validity of section 3(d) was that the use of the term “efficacy” in section 3(d) is vague and ambiguous, and therefore violates the equality provision (Article 14) of the Indian Constitution.

JUDGEMENT:
There were three questions before the Court:
What is the true import of section 3(d) of the Patents Act, 1970?
How does it interplay with clauses (j) and (j a) of section 2(1)?
Does the product for which the appellant claims patent qualify as a “new product” which comes by through an invention that has a feature that involves technical advance over the existing knowledge?

The IPAB reversed the findings of the Assistant Controller on the issues of anticipation and obviousness. It held that the appellant’s invention satisfied the tests of novelty and non-obviousness, and further that in view of the amended section 133, the appellant was fully entitled to get July 18, 1997, the date on which the patent application was made in Switzerland, as the priority date for his application in India. The IPAB, however, held that the patentability of the subject product was hit by section 3(d) of the Act. Referring to section 3(d) the IPAB observed: “Since India is having a requirement of higher standard of inventive step by introducing the amended section 3(d) of the Act, what is patentable in other countries will not be patentable in India. As we see, the object of amended section 3(d) of the Act is nothing but a requirement of higher standard of inventive step in the law particularly for the drug/pharmaceutical substances.”

As this Court now proceeds to decide the case on merits, it needs to be noted that after notice was issued in the SLPs filed by Novartis AG, all the five parties who had filed pre-grant oppositions before the Controller (hereinafter referred to as the Objectors) filed their respective counter- affidavits. Two of the Objectors, namely NATCO Pharma Ltd. and M/S Cancer Patients Aid Association, additionally filed Special Leave Petition, challenging the findings recorded by the IPAB in favour of Novartis AG. Leave to appeal has also been granted in all those SLPs, and hence, all the issues are open before this Court and this Court is deciding the case unbound by any findings of the authority or the tribunal below. The application was then put in the “mailbox” and was taken out for consideration when many changes had been made in the Patents Act, 1970, with effect from January 1, 2005, to make the patent law in the country compliant with the terms of an international agreement entered into by the Government of India. Following the international agreement, the Patents Act, 1970, was subjected to large scale changes in three stages; and finally, by the Patents (Amendment) Act, 2005, section 5 was altogether deleted from the Parent Act (Patents Act, 1970). Between January 1, 1995 and January 1, 2005, the Patents Act, 1970, underwent wide ranging changes, but if we are asked to identify the single most important change brought about in the law of patent in India as a result of the country’s obligations under the international agreement, we would unhesitatingly say the deletion of section 5 from the Patents Act, which opened the doors to product patents in the country.

VIEWS OF ‘THE HINDU’ ON THE JUDGEMENT:
No matter where we start, the saga has come to a close, and the key lesson seeping through is that good sense won. Firstly, the Supreme Court decision was not about the patentability of the imatinib compound as such: that patent, having been instituted in 1993, is excluded from the purview of the Indian patent system, which is only obliged to consider patents filed in 1995 or after. The case the Supreme Court heard was whether Novartis’ beta crystalline form of imatinib was worthy of patent protection: its judgment was that this modification by Novartis did not satisfy the standard of inventiveness required under Indian patent law. Secondly, Indian patent law is as yet unchallenged at the WTO; Novartis’s earlier challenge to the constitutionality and TRIPs compatibility of Indian patent law was rebuffed by the Madras High Court in 2007 and no appeal was pursued. Thirdly, the Supreme Court judgment effectively recast Indian patent law as being nuanced and original in its meshing of domestic political economy concerns with the integrated global economy it participates in.

The outcome of this nuance and originality? Imatinib will continue to be available to patients in India from multiple suppliers at a price 10 times less than the current cost of Glivec; approximately 27,000 cancer patients in the country who pay for their imatinib will continue to have access to the medicine in the public and private sectors at the lowest cost possible; and should Novartis ever suspend its charitable programme, all 15,000 of the cancer patients who currently receive imatinib free from Novartis will have similarly equitable access to the medicine.
In this great world of miseries, the bowl of inequities and discrimination is greatly tilted towards the female gender. It is often said what’s life without sufferings and problems, but the female gender in general suffers from their womb to tomb and by no means are their sufferings and miseries coming to an end. Starting from their birth till their death, in all seven stages of life they are made subject to the harsh realities of it. But the question arises why do they suffer most of all? And do they knowingly or unknowingly contribute to their sufferings? There have been various constitutional provisions, Acts, legislations, awareness programs which have contributed in curbing the persistent basis of discrimination against women in almost every sphere of society but the result is still the same for them, ‘SUFFERING’.

Women not only suffer largely in the societal vicinity but also in the economic and political regions. Women have never attained an equal status as to that of men, they have always been second. From the age long, even where the position of women in societies was appreciable, they were protected in homes, were treated as home makers and even after being seen in a dignified manner were never allowed to make decisions for their own wellbeing.

Slowly and gradually as the socio-temporal domain has evolved, the position of women, to a surprise, in spite of improving has deteriorated in the society. Women, by their creation are bound to be a weaker sex with submissive nature but what differentiates them is their ‘will’. They are psychologically stronger and intensified and are good followers of policies. But still none of the efforts made have proved to be fruitful as were expected, and we should ask why? The reason somewhat is – women at large have accepted such treatment. They have submitted to the malicious intentions of the opposite gender, have prepared themselves for the tomb in the preparation of the worst, have almost killed their inner conscience and the most astonishing part is that they are imparting such depressed feelings and frustration to their future generations.

The primary reasons why women have submitted to the devilish intentions are the present structure of the society, the societal pressure, the unnecessary formation of certain norms and customs that have bound them from flying free, their inner conscience and an urge to protect them and their families from getting stigmatized. The effect of such reasons is more intriguing than you and I can actually imagine. They commit suicide, they kill, and they destroy but are still caught in the situation of helplessness. The problem of women is that in this state of confusion they are losing their track. Apart from knowing their rights to a deeper level they need someone to take strong steps on their behalf; moral upliftment, conscience boosting, development of constructive thinking pattern are some of the measures to be adopted for them. Julius Stone rightly stated that equality can only be talked of in between ‘likes’ and not ‘alikes’, but the adoption of the stated measures is the need of the hour and the need of the female gender community.

Majority have accepted the fact and have set in their minds that nothing would change and improve for them. This is the basic reason for their unending sufferings, women now a days lack the will to fight and have psychologically accepted it to be their destiny. To attain gender justice and to uplift the female gender, they should be empowered enough to make decisions for themselves and should be supported in those decisions; this is the basic thing they lack, ‘CONFIDENCE’. They need to take steps to break through the shackles of the persisting myths, customs and norms of the society. Talking of empowerment, it should not be confined only to political and social front for that wouldn’t help much, they need to be supported in their day to day decisions. People around should understand that though they have a weak decision making capability, not everybody is born perfect and one learns from one’s mistakes. Fair chances and emotional support are mostly required in such cases. And one should always remember with a better will we can have a better tomorrow.
BENCH: Justices G.S. Singhvi and K.S. Radhakrishnan
DATE OF JUDGEMENT: 9th December, 2013.

LAWS INVOLVED:
The current petition was preferred under Articles 129 and 142 of the Indian Constitution, read with Section 12 of the Contempt of Courts Act 1971 and Rule 12 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975

BRIEF BACKGROUND:
The present contempt petition was filed under Article 136 of the Constitution of India praying for a court monitored investigation by the Central Bureau of Investigation (CBI), what was described as 2G Spectrum Scam and also for a direction to investigate the role played by A. Raja, the then Union Minister for DoT, senior officers of DoT, middlemen, businessmen and others. Before this Court, it was pointed out that the CBI had lodged a first information report on 21.10.2009 alleging that during the years 2000-2008 certain officials of the DoT entered into a criminal conspiracy with certain private companies and misused their official position in the grant of Unified Access Licenses causing wrongful loss to the nation, which was estimated to be more than Rs.22,000 crores. CBI, following that, registered a case No.RC-DAI-2009-A-0045(2G Spectrum Case) on 21st of October, 2009 under Section 120B IPC, 13(1) (d) of the Prevention of Corruption Act, 1988 against a former Cabinet Minister and others.

FACTS:
This Contempt Petition was instituted before the SC by Mr. Rajeshwar Singh (Petitioner herein), who is the Assistant Director of the Enforcement Directorate, who was entrusted with the investigation of the 2G spectrum case. It is submitted by the Petitioner that during the course of his investigation, he found that various concerns of the Sahara Group were involved not only in the 2G scam but also what is popularly known as the Madhu Koda Scam. It was submitted that these investigations undertaken by the petitioner has irked the Sahara Group and more particularly the respondents. It is the allegation of the Petitioner that he is being personally attacked by the Respondents with intent of hindering his investigation against them. Mr. Singh also stated that he received a letter on 05.05.2011 purported to be sent by the Respondent No.3, which contains a wielded threat to start a campaign against the him with a view to intimidate and, thus, interfere in the ongoing investigations against the Sahara Group companies in the 2G Spectrum case. The petitioner thus contends that the respondents are attempting to interfere and obstruct the administration of justice, thereby bringing their conduct within the scope of criminal contempt under section2(c) of the 1971 Act.

PETITIONERS’ CONTENTIONS:
The petitioner contends that the respondents are attempting to interfere and obstruct the administration of justice, thereby bringing their conduct within the scope of criminal contempt under section2(c) of the Contempt of Courts Act 1971. The main allegation of the petitioner herein is that the Respondents have indulged in activities with a clear intent to dissuade the Petitioner from proceeding in his investigation again the Sahara Group, especially in the 2G case.

RESPONDENTS’ CONTENTIONS:
The respondents made contention that (i) the petition is not maintainable since it has been filed without the consent of the Attorney General of India or other officer mentioned in Section 15 of the Contempt of Courts Act 1971; (ii) the power conferred on this Court to issue suo motu notice is limited and could be exercised only in exceptional circumstances and thirdly, that they have nothing to do with the service tenure in the Enforcement Directorate or the cases relating to the 2G Scam.

Issues before the Court:
The main issue that was considered by the SC were:
1. Whether the Court’s power under Articles 129 and 142 is confined by any statutory provisions?
2. Whether consent of Attorney General is necessary under Article 129 and 142?
3. Whether this Petition is maintainable or not?

JUDGEMENT:
The petition filed under the above mentioned provisions is perfectly maintainable and this Court has got a constitutional obligation to examine the truth of the allegations as to whether the respondents are attempting to derail the investigation which is being monitored by this Court. The SC has concluded that prima facie there has been an attempt by the respondents to interfere with an investigation undertaken by the petitioner which is being monitored by this Court. The decision of Delhi
Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and others was cited to support this conclusion. Issuing notice to the respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation.

**Ratio Decidendi**

Discussing Article 129, it was held in this case that the power of the SC under this Article is an inherent power and the jurisdiction vested is a special one not derived from any other statute but derived only from Article 129 of the Constitution of India and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. The SC has also endorsed the view that that the power conferred on this Court under Article 129 is a constitutional power which cannot be circumscribed or delineated either by the Contempt of Courts Act, 1971 or Rules or even the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, as held in I. Manilal Singh v. Dr. H. Borobabu Singh and another.

The SC has further sustained its conclusion by placing reliance on the decision of Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and another, which held that the Court’s power under Article 142 to do complete justice is not confined by any statutory provision.

The consent of the Attorney General is not necessary in the light of the above mentioned Constitutional provisions. The petition is perfectly maintainable and that the court has a constitutional obligation to examine the truth of the allegations as to whether the respondents are attempting to derail the investigation which is being monitored by this Court.
Democracy and the role the Media plays in this ‘popular’ but yet ‘contested’ and problematic mode of governance has long been the subject of intense debate. Does media influence democracy? Does the media influence political behaviour & elections? How does the media influence voting patterns? How does it impact political processes and power? These are some critical questions constantly being asked as society deliberates the role the media plays, or ought to play in political and democratic processes. Despite the overwhelming ambivalence over the role of media in political and democratic processes, there is somewhat popular acknowledgement that the media plays a significant role in society by providing information upon which critical decisions are based. In essence, the media is a key instrument in decision making, providing information and providing a platform for articulation, aggregation and formation of general public opinion, either favourable or unfavourable.

The media is considered a key factor in demarcating how society operates by articulating ideas and influencing perceptions and attitudes. In democratic societies, media and journalism act as vehicles that reflect public opinion by highlighting public concerns and making people aware of state policies and important events and viewpoints of their leaders. In any democracy, information and communication are considered vital organs without which this system of governance would not survive. In fact, democracy is considered a communication-intensive mode of governance in which there is continual discussion, analysis, debate and study. With access to reliable information from a variety of perspectives and a diversity of opinions on current affairs, people will arrive at their own views on important issues and thus prepare adequately for political participation. The Media are thus the vehicle through which people receive and disseminate this information. The media is considered an effective tool of communication, providing a powerful channel of information between the political elite and the electorate. It makes it possible for widely dispersed citizens to receive, disseminate and act on the information availed to them by the mass media.

‘Media’ often refers to institutions and technologies that perform various functions. In their most basic form, media are apparatuses that ‘come in-between’ or mediate between two or more parties. In fact, we have become used to the term ‘mass media’ which refers to the ‘organized means for communicating openly and at a distance to many receivers within a short span of time’. The vibrant and free media in India is considered to be the fourth estate of democracy which enjoys almost unlimited access to information and without major regulations imposed upon their operation.

The Indian media has a glorious tradition of safeguarding the democratic rights of her people and exposing all kinds of injustice and inequities by playing the role of a watchdog of democracy. While democratic elections are a relatively new phenomenon for many countries in the world, the free media in India has been educating and informing voters in a non-partisan manner and contributing to the opinion formation of the electorate. The overall aim of media is fair and objective reporting especially during campaigning, providing information to the electorate about the political parties, their programs, agendas and candidates. Besides, media also provides information about the constituencies and various human development index parameters, offering chances for people to comment on the work done by their elected representatives and providing feedbacks to the candidate. Emerging as a potentially powerful force, electronic media has also been playing a similar role like the print media in conducting free and fair elections. Though there are no specific laws or regulations governing media activities during elections especially during campaigning, the Election Commission of India has been issuing guidelines from time to time to prevent the media from influencing voters for the wrong reasons. Political parties and candidates tend to find the media, especially television, more and more important for campaigning and would seek as much media exposure as possible. With Satellite Television invading into the drawing rooms of Indian populace especially during the post-reform period, television channels are widely regarded as the most important instrument for campaigning and communicating with the voters due to its audience size and widespread coverage.

Many cases of blatant misuse of print and electronic media by parties and candidates contesting the general elections came to light during general elections in 2004 and 2009. The modus was such that prominent business houses were used to institutionalize paid news in print and electronic media to influence public opinion especially during the elections. The journalists became news “managers” succumbing to pressure from media executives.

The issue was raised by the Andhra Pradesh Union of Working Journalists (APUWJ). A two-member sub-committee of the Press Council of India defined “paid news” as “any news or analysis appearing in any media (print or electronic) for a price in cash or kind as consideration.” Paid news provides scope to publish or telecast an advertisement by a candidate pronouncing his or her achievements, chances of winning and popularity levels during the campaign. The advertisement normally appears in the form of news along with the dateline and credit like any other news story on TV, thus misleading the reader or viewer into believing that it is a news story produced by the local correspondent. Hobnobbing with politicians, the management of the newspaper or channel collects money for the “report” according to its advertisement tariff without acknowledging that it is an
advertisement. This provides wealthier candidates with an edge over other candidates. Such practices deny equal opportunity for other candidates, defeating the very principle of fair elections. The unaccounted advertisements dressed up as news are causing much concern. Though unaccounted, they are estimated to be worth 50 million Rupees per month in the 2009 general election. It raises questions about conducting free and fair elections, which provides more opportunities for those with money and power. The top ministers and leaders of national and regional parties plus independent candidates were no exception to this practice. Reams of newsprint published ‘news packages’, positive stories and interviews about the candidates who were ready to pay. However, neither the candidates nor media management acknowledged the reports as advertisements and accounted for them in their books. Professional bodies like Editor’s Guild, Indian Newspaper Society, Indian Broadcasting Foundation, the News Broadcasters Association, Press Council of India and even the Election Commission of India have observed that a majority of national and vernacular newspapers as well as many television channels were involved in the activity of surrogate advertising especially during elections and deplored such practices.

The Election Commission of India has issued measures to its Chief Electoral Officers (CEOs) in the states to check paid news during elections. And the same have been implemented by the state CEOs in the by-elections held subsequently. However, the measures and guidelines are not sufficient per se. In a bid to check the phenomenon of paid news, a special two-member sub-committee of the Press Council of India has recommended in the last week of July 2010 an amendment to Representation of the People’s Act, 1951, to declare any payment for publication of news as a malpractice and has asked the Election Commission of India to set up a special unit to receive and take action on complaints about “paid news” in the run-up to elections. It has further asked the Government to set up a committee comprising Members of Parliament from both Lok Sabha and Rajya Sabha to hold sessions for suggesting changes in the Representation of the People’s Act to prevent the malpractice of paying for news coverage in newspapers and television channels.

Conclusion

The practice of paid news or surrogate political advertising is not limited to election campaigns. Though it is not something new for the country, the enormity of its spread and the manner in which it is being institutionalized is causing much concern among journalists and the professional bodies, not least the political parties and the government. Nevertheless, guidelines can be worked out to increase transparency and improve monitoring of the electoral process.

There is a need to have uniform regulations and guidelines for both public and private as well as print and electronic media to ensure a level playing field for all parties and candidates during campaigning. A single initiative or measure cannot improve the situation. A combination of efforts is required to install a system of “checks and balances”. This includes self-regulation by the media itself and guidelines from professional bodies such as
INTERNSHIP EXPERIENCES

AT KHAITAN & CO. – NEW DELHI  
Student: Taniya Pandey, Alumna (2014 Batch)  
Duration of the internship: 5 weeks  
Timings: 9 am to 6 pm (officially), but I often used to stay in office till 10 or 11 pm.  
Team strength: Over 100 lawyers. I worked with the Litigation Team, which had close to 50 lawyers.  
Application procedure: Wrote to the HR, attaching my CV along with the Cover Letter, got interviewed by the supervising Partner over the phone and then got a call for the internship.  
Accommodation: Self arranged  
First impression, first day, formalities etc.: Khaitan’s first impression was that of a happy place, everyone smiling at everyone and getting on to their respective jobs. I was inducted on the first day by the HR, asked my choice of team and assigned the same accordingly and then provided a Mentor who is usually a Senior Associate. I was assigned to one of the Principle Associates instead.  
Main tasks: Mainly good research work. In addition, researched on specific issues and prepared notes and briefs for my Mentor and others on the team. Also got to visit several Courts. Khaitan is probably the only law firm which allows interns to visit Courts. Drafting also came as an additional learning experience, which was rare though.  
Work environment: Extremely nice and helpful people.  
Best things: The kind of work, the people and the location of the law firm.  
Bad things: Can’t really think of any.  
What did you do to chill? Took munching and drinking breaks with co-interns, who eventually became very good friends. Though at times due to excessive work load, all the breaks had to be dispensed with.  
Stipend: Rs. 4000/month  
Anything else you’d like to add? Khaitan is one of those law firms that make you look at a brighter and happier life ahead. But that is, if you’re working hard enough and being appreciated for the same. If you worked very hard and left your mark, there are chances of getting placed too.

AT AMARCHAND & MANGALDAS, SURESH A. SHROFF CO. – NEW DELHI  
Student: Taniya Pandey, Alumna (2014 Batch)  
Duration of the internship: 4 weeks  
Timings: 9:30 am onwards. No specific time for leaving office. There were very few days when I got free before 9 pm  
Team strength: The office has more than 200 employees. The team I was allotted had 3 associates, one Senior Associate and a Partner.  
Application procedure: Wrote to the HR, attaching my CV along with the Cover Letter, filled out a questionnaire and then followed up. Went through an interview and got a call.  
Accommodation: Self arranged.  
First impression, first day, formalities etc.: AMSS’ first impression is that of a luxury hotel. On the first day, I went through an induction process, where I was acquainted with the working of the firm, asked to fill out my particulars in a form, including my area of interest, and then was allotted a team.  
Main tasks: In the beginning, the work mainly comprised of research, proof-reading (which seemed to be a waste of time), research again. However, within two days, I started getting good research work, notes and briefs to prepare, and eventually, even got to try my hand at drafting. I was with the Corporate Team, but since they did not have much work, I got work from the Litigation team, which kept me thoroughly occupied.  
Work environment: The work environment was cordial and the people were nice. But they were very particular about the work, so if you made a mistake, you couldn’t escape being rebuked.  
Best things: Continuous work to keep you occupied.  
Bad things: The work could have been better. Also, overload of work made it difficult to wrap things up early and reach home in time, which was a huge matter of concern at home. Also, since AMSS is located in Okhla, it took a very long time to commute from my place of residence.  
What did you do to chill? There wasn’t much time to chill, seeing as how work kept everyone occupied. However, we were free to go to take breaks and munch whenever we liked.  
Stipend: None  
Anything else you’d like to add? Internship experiences differ from person to person. So do not consider this as the usual practice. It all depends upon how much labour you’re willing to put in. So make the best out of whichever internship you go for. There will be plenty to learn.

AT FOX MANDAL, CORPORATE OFFICE – FM HOUSE, NOIDA  
Student: Akarsh Dwivedi, Xth Semester  
Duration of the internship: 1 month  
Timings: 10 am to 6 pm (officially)  
Team strength: 20 interns. I worked with the Litigation Team.  
Application procedure: First called the office and asked whether there were any positions open for interns. Then sent an application attaching my CV along with the Cover Letter.  
Accommodation: Self arranged  
First impression, first day, formalities etc.: Through and through corporate, well organised with an amazing library. My name was registered and I was issued an electronic key card without which I could not enter the office.
Main tasks: The interns were tasked only with research.
Work environment: An entire floor was set aside for the interns. All the associates and lawyers were very helpful and interns were at full liberty to utilize the resources of the firm.
Best things: The best thing was the free lunch.
Bad things: There were too many interns working there at any time. This made the place quite crowded.
What did you do to chill? Took breaks to chill out at the Fox Mandal canteen with other interns.
Stipend: No stipend.

Anything else you'd like to add? Some advice for the juniors is that they should study procedures and familiarise themselves with drafting so that when they apply for internships at such firms they can make their mark there and the associates may become favourably disposed towards them. Moreover, interns should try to interact and work more with Partners than the associates and this may lead to them finally landing a job at that place.

**AT THE STATE LAW OFFICE, HIGH COURT OF JUDICATURE AT ALLAHABAD**

**Student:** Devesh Saxena, VIIIth Semester
**Internship, Under:** Mr Govind Saxena, Additional Government Advocate, High Court of Judicature at Allahabad.
**Duration of the internship:** 20 Days
**Team strength:** 5 co-interns

**Application procedure:** The application procedure is very simple. One just needs to carry an approval letter from the college Head/Dean/Coordinator plus a copy of his/her college identity card and 2 pass-port sized photographs and approach the reception office of the building on the ground floor and they will confirm the internship once they are satisfied with the documents.

**Timings:** 5 working days a week. 10 am to 5 pm, but one is not strictly expected to attend the court proceedings till 5.

**Accommodation:** Self arranged.

**First impression, first day, formalities etc.:** My first impression was not an ideal one, as I had arrived a bit early and there was no electricity in the office. On the first day, there were absolutely no formalities except a casual introduction. Mr Saxena will probably ask about you and will check your basic knowledge of law. The internship is all about attending court sessions at the Allahabad High Court so he will ask about whether you are interested in attending civil or criminal court.

**Main tasks:** The main purpose of the 20 days internship is to attend the court proceedings in order to make you aware of the various practical aspect of the law. It will definitely help you in the application of various procedural laws in real circumstances. Moreover, you get to witness beautiful repartee by some eminent lawyers of the High Court. This will also help you in your moot preparations. Mr Saxena will also give you probably the best notes and study material about various topics in law.

**Work environment, people:**
Since one has to be a part of court rooms where everyone comes for their own purpose, you will find very few who will notice you or will come across to you. But co-interns are great company and are very supportive.

**Best things:** I would suggest this internship for those who are either willing to join the field of litigation or want to opt for the civil examinations such as PCS(J), or IAS, because you gather useful knowledge regarding the application of procedural laws.

**Bad things:** The most irritating thing which I experienced was the electricity problem in the office building. There were times when there were too many faults in the electricity supply and you had to sit there in the scorching heat wearing formals. Also in certain courtrooms I found that the proceedings were not audible due to faulty speakers or microphones.

**What did you do to chill?** I had the company of some good co-interns. We went to nearby restrants, malls and cafés.

**Stipend/Certificate:** No stipend is awarded. But, you will surely get a certificate.

TLSR
Sanyukta Ma’am remained an outstanding scholar while pursuing the 5 year course securing the first position in every semester. Thereafter, she completed her LL.M. from the University of Cambridge and is currently practicing at Allahabad High Court.

Dear all,

I am touched by your thought and initiative to include this section on me in the magazine. I will try and answer most of the questions. Hope it helps.

FIRST OF ALL WE WOULD LIKE TO KNOW, WHAT INSPIRED YOU TO CHOOSE LAW AS A PROFESSION?

I was not born in a family of lawyers but opted to study law by choice. It would be difficult for me to identify one single incident that inspired me to study the subject but each day of studying it has only inspired me to learn more.

WHAT DID YOU EXPERIENCE IN THE FACULTY OF LAW, AS A PERIOD OF FIVE YEARS IS A VERY LONG TIME AND ONE IS BOUND TO EXPERIENCE UPS AND DOWNS?

Having completed first year of B.A., I had almost given up on the decision to pursue a five years integrated law course. Ours was the first batch wherein the entrance test took place at a rather unconventional time of the year by the Hon’ble Allahabad High Court’s order. I appeared in this one rather for my parents than for myself and was surprised to find my name at the second place on the entrance merit list. To secure the first position was never a goal. It just happened in the first semester and the rest, as they say, is history. I remember some close friends once joked about me doing a hat-trick. But I was always clear about one thing, I competed with myself in every semester. My performance had to go better every time for me. If I faltered, I made it a point to correct myself. If I didn’t I still had to find a way to improve myself.

My experience in the faculty is something I would cherish for life. I think you can do no more. Beyond a point it is not diligence, intelligence or dedication. It’s the mental strength and commitment to pull yourself till the very end. Coordinating studies and other activities is something very individual. We all do it. I just set myself goals. If I had to study, I had to. No matter how tired I was at the end of the day I had to complete what I had decided to do. I thought about my projects and assignments, each topic, in detail while I was driving or walking or simply taking a break. I improvised on my approach towards each assignment and project at least thrice before preparing a final draft.

HOW WILL YOU SUMMARIZE YOUR LIFE AT FACULTY OF LAW IN FIVE WORDS?

Challenging, Demanding, Eventful, Tumultuous but Rewarding.

WE WOULD ALSO LIKE TO KNOW ABOUT YOUR Moot COURT ACTIVITIES AND IMPORTANT INTERNSHIPS THAT YOU WENT TO.

I interned under two senior advocates of the Hon’ble Allahabad High Court - Shri Bharatji Agrawal and Shri B.K. Srivastava and participated in two intra faculty moots.

THE STUDENTS ARE VERY INTERESTED TO KNOW ABOUT YOUR JOURNEY TO CAMBRIDGE AND YOUR EXPERIENCE THERE.

I completed my LL.M from the University of Cambridge in International Law in 2013 as a Commonwealth Scholar. The experience was enriching and perhaps the best I have had so far. I had the opportunity to interact with students from all over the world. Being the top university in the world, Cambridge, not only has a world renowned faculty but also offers access to extensive research through its vast library. It has contributed greatly towards my research skills and has refined my approach towards the study of the subject.

AND WHAT ARE YOU CURRENT ENDEAVOURS IN LIFE?

I am practising at the Hon’ble Allahabad High Court under Mr. Bharatji Agarwal, Senior Advocate.

WHAT WERE THE HINDRANCES FACED BY YOU IN THIS LONG JOURNEY?

It would be very difficult to pen them. It has not been easy at all. But for whatever I have achieved, I think, it was worth it.

WHAT ARE YOUR HOBBIES AND OTHER LEISURE TIME ACTIVITIES?

I love to read. I was an avid sportsperson but now I must admit it has become difficult to continue with it. When I am not working I spend time with my family.
ANY SORT OF STRESS RELIEVING MECHANISM THAT YOU RESORTED TO IN TIMES OF PRESSURE?
It is difficult to think of a mechanism. But yes, I did feel the pressure sometimes and all I did was talk myself out of it. I would often tell myself that there can be nothing worse than succumbing to pressure so it is better to fight it out. If I am unsuccessful at least it is better than giving up.

ANY MESSAGE FOR THE STUDENTS OF THE LAW FACULTY.
As students we have one million things around us which we feel should have been the other way round in order that we perform better. But few years later all we have is an output which only tells us how well we managed ourselves during this time. So regardless of the hurdles you face, remain focused. Five years later when you think of this time all you will remember is what you did and not what happened or could have happened. All the very best to all of you!!